

# Journal of Neurophysiology



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Federal Register

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 930

[Docket No. FV99-930-3 FR]

#### Tart Cherries Grown in the States of Michigan, et al.; Decreased Assessment Rates

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which decreased the assessment rate for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from \$0.0025 per pound to \$0.00225 per pound. The interim final rule also decreased the assessment rate for cherries utilized for juice, juice concentrate, or puree from \$0.00125 per pound to \$0.001125 per pound. Both assessment rates are established for the Cherry Industry Administrative Board (Committee) under Marketing Order No. 930 for the 1999-2000 and subsequent fiscal periods. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in the production area. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The fiscal period began July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** November 29, 1999.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room

2530-S, P.O. Box 96456, Washington, DC 20090-6456, telephone: (202) 720-2491; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491; Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 930, both as amended (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable tart cherries beginning July 1, 1999, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection

with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect a decrease in the assessment rate established for the Board for the 1999-2000 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from \$0.0025 to \$0.00225 per pound of cherries. The assessment rate for cherries utilized for juice, juice concentrate, or puree also was decreased from \$0.00125 per pound to \$0.001125 per pound.

The tart cherry marketing order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of tart cherries. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1997-98 fiscal period, the Board recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on March 18-19, 1999, and unanimously recommended 1999-2000 expenditures of \$497,780 and an assessment rate of \$0.00225 per pound of cherries that are utilized in the production of tart cherry products other

than juice, juice concentrate, or puree, and an assessment rate of \$0.001125 per pound of cherries utilized for juice, juice concentrate, or puree. In comparison, last year's budgeted expenditures were \$540,000. Decreased assessment rates have been recommended by the Board because the cherry industry has experienced record high crops for the past two seasons, and the Board wants to reduce handler costs and keep its monetary reserve within the authorized maximum of approximately one year's operational expenses specified in § 930.42(a). The decreased rates are expected to generate enough income to meet the Board's reduced operating expenses in 1999–2000.

The major expenditures recommended by the Board for the 1999–2000 crop year include \$222,780 for personnel, \$100,000 for Board meetings, and \$100,000 for compliance. Budgeted expenses for these items in 1998–99 were \$150,000 for personnel, \$80,000 for Board meetings, and \$175,000 for compliance.

The order provides that when an assessment rate based on the number of pounds of tart cherries handled is established, it should provide for differences in relative market values for various cherry products. The discussion of this in the order's promulgation record indicates that proponents testified that cherries utilized in high value products such as frozen, canned, or dried cherries should be assessed one rate while cherries used to make low value products such as juice concentrate or puree should be assessed at one-half that rate.

Data from the National Agricultural Statistics Service (NASS) states that for 1998, tart cherry utilization for juice, wine, or brined uses was 28.3 million pounds for all districts covered under the order. The total processed amount of tart cherries for 1998 was 303.8 million pounds. Juice, wine, and brined tart cherries represented less than 10 percent of the total processed crop, and about 8 percent over the last three seasons (1996 through 1998).

In deriving the recommended assessment rates, the Board estimated assessable tart cherry production for the crop year at 260 million pounds. It further estimated that about 204.5 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 55.5 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued

products would be approximately \$460,125 (204.5 million pounds × \$0.00225 per pound). Potential income from tart cherries utilized for juice, juice concentrate, or puree would be \$62,500 (55.5 million pounds × \$0.001125 per pound). Therefore, total assessment income for 1999–2000 is estimated at \$522,625, which will be adequate to cover expenses. Funds in the reserve (currently \$225,000) will be kept within the approximately one year's operational expenses permitted by the order (§ 930.42(a)).

The assessment rates established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other available information.

Although the assessment rates are effective for an indefinite period, the Board will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 1999–2000 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

#### **The Regulatory Flexibility Act and Effects on Small Businesses**

The Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) would allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

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

There are approximately 40 handlers of tart cherries who are subject to regulation under the marketing order and approximately 900 producers of tart cherries in the regulated area. The number of reported tart cherry producers in the regulated area has been reduced from 1,220 to 900 based on more recent information received by the Board. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of tart cherry producers and handlers may be classified as small entities.

This rule continues in effect decreases in the assessment rate established for the Board and collected from handlers for the 1999–2000 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from \$0.0025 to \$0.00225 per pound, and the assessment rate for cherries utilized for juice, juice concentrate, or puree from \$0.00125 to \$0.001125 per pound. The Board unanimously recommended 1999–2000 expenditures of \$497,780 and the reduced assessment rates. The quantity of assessable tart cherries for the 1999–2000 crop year is estimated at 260 million pounds. Assessment income, based on this crop, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 1999–2000 fiscal period include \$222,780 for personnel, \$100,000 for Board meetings, and \$100,000 for compliance. Budgeted expenses for these items in 1998–99 were \$150,000 for personnel, \$80,000 for Board meetings, and \$175,000 for compliance.

The Executive Committee of the Board, after discussing a proposed budget and assessment rates in executive session, recommended the continuation of the current rates. It concluded that it was prudent for the Board to have approximately one year's budget amount in the operating reserve.

However, after considerable discussion, the Board concluded it should reduce handlers' assessment costs and that the reserve should not exceed one-half year's budget amount. Further, the amount budgeted for Board compliance costs has been reduced. The Board discussed the alternative of continuing the existing assessment rates, but concluded that would cause the amount in the operating reserve to exceed what is actually needed.

After the discussion, the Board voted unanimously to decrease the assessment rates.

In deriving the recommended assessment rates, the Board estimated assessable tart cherry production for the crop year at 260 million pounds. It further estimated that about 204.5 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 55.5 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be approximately \$460,125 (204.5 million pounds × \$0.00225 per pound). Potential income from tart cherries utilized for juice, juice concentrate, or puree would be \$62,500 (55.5 million pounds × \$0.001125 per pound). Therefore, total assessment income for 1999–2000 is estimated at \$522,625, which will be adequate to cover expenses. Funds in the reserve (currently \$225,000) will be kept within the approximately one year's operational expenses permitted by the order (§ 930.42(a)).

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, the assessment rate decreases reduce the burden on handlers, and may reduce the burden on producers. In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the March 18–19, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are

periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on July 27, 1999. Copies of the rule were mailed by the Board's staff to all Board members and cherry handlers. In addition, the rule was made available through the Internet by the office of the Federal Register. That rule provided a 60-day comment period which ended September 27, 1999. No comments were received.

A small business guide on complying with fruit, vegetable and specialty crop marketing agreement and orders may be viewed at the following website: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is found that finalizing this interim final rule, without modifications, as published in the **Federal Register** (64 FR 40511), will tend to effectuate the declared policy of the Act.

#### **List of Subjects in 7 CFR Part 930**

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

#### **PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN**

Accordingly, the interim final rule amending 7 CFR part 930 which was published at 64 FR 40511 on July 27, 1999, is adopted as a final rule without change.

Dated: October 26, 1999.

**Eric M. Forman,**

*Acting Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99–28377 Filed 10–28–99; 8:45 am]

BILLING CODE 3410–02–P

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 984**

[Docket No. FV99–984–2 FR]

#### **Walnuts Grown in California; Reporting Walnuts Grown Outside of the United States and Received by California Handlers**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule revises the administrative rules and regulations of the Federal marketing order for California walnuts (order) to require handlers to report receipts of walnuts grown outside of the United States. The order regulates the handling of walnuts grown in California and is administered locally by the Walnut Marketing Board (Board). Requiring handlers to report to the Board receipts of walnuts grown outside of the United States will allow the Board to have better information on the total available supply of walnuts within California, which includes both California and foreign product. This will facilitate program administration.

**EFFECTIVE DATE:** This rule becomes effective November 1, 1999.

**FOR FURTHER INFORMATION CONTACT:** Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901; Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the “order.” The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

The Department of Agriculture (Department) is issuing this final rule in conformance with Executive Order 12866.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule revises the order's administrative rules and regulations to require handlers to report to the Board receipts of walnuts grown outside of the United States. This will allow the Board to have better information on the total available supply of walnuts within California, which includes both California and foreign product, which will facilitate program administration. This action was unanimously recommended by the Board at a meeting on September 11, 1998.

Section 984.76 of the order provides authority for the Board, with the approval of the Secretary, to require handlers to furnish reports and information to the Board as needed to enable the Board to perform its duties under the order. The Board meets during the season to make decisions on various programs authorized under the order. These programs include quality control (minimum grade and size requirements for both inshell and shelled walnuts placed into channels of commerce), volume regulation, and projects regarding production research, and marketing research and development.

The Board would like to have better information on the total supply of walnuts within California, which includes both California and foreign

product. The Board will use this information in its marketing policy deliberations each fall when it reviews the crop estimate, handler carryover, and other factors to determine whether volume regulation would be appropriate. In addition, the Board has some concerns that, particularly in short crop years when handlers may import more walnuts to meet customer demands, imported walnuts could be included in handler inventory reports of California walnuts. Accurate information regarding the supply of walnuts within California is needed by the Board in its administration of the order.

According to the National Agricultural Statistics Service, the 10-year average annual production of California walnuts is 235,000 inshell tons. Bureau of Census data indicates that the 10-year average annual import figure for walnuts is 1,036.5 shelled tons. However, during short crop years in California such as the 1992-93 (203,000 inshell tons) and 1996-97 (208,000 inshell tons) seasons, imports increased to 8,046 and 5,806 shelled tons, respectively.

Thus, the Board recommended that handlers be required to report to the Board receipts of walnuts grown outside of the United States. This report, WMB Form No. 7, will be submitted to the Board four times per year as follows: On or before November 5 for such walnuts received during the period August 1 to October 31; on or before February 5 for such walnuts received during the period November 1 to January 31; on or before May 5 for such walnuts received during the period February 1 to April 30; and on or before August 5 for such walnuts received during the period May 1 to July 31. The report will include the quantity of such walnuts received, country of origin, and whether such walnuts were inshell or shelled. Given the effective date of this final rule, the first reporting date will be February 5, 2000, for walnuts received during the period November 1 to January 31.

The Board also recommended that, with each report, the handler submit a copy of a product tag issued by the Dried Fruit Association of California (DFA) for compliance purposes. The DFA is a private agency designated under the marketing order to provide inspection services for handlers to ensure that California walnuts meet minimum grade and size requirements in effect under the order. The product tag will indicate the name of the person from whom the walnuts were received, the date the walnuts were received by the handler, the number of containers and U.S. Custom's Service entry

number, whether the product is inshell or shelled, the quantity of walnuts, country of origin, the name of the DFA inspector who issued the tag, and the date such tag was issued. The Board believes product tags are necessary to verify handler receipt reports for imported walnuts. Accordingly, a new § 984.476 is added to the orders' administrative rules and regulations.

#### **Final Regulatory Flexibility Analysis and Paperwork Reduction Act**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the AMS has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

There are approximately 5,000 producers of walnuts in the production area and approximately 50 handlers subject to regulation under the order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of producers of California walnuts may be classified as small entities.

During the 1997-98 season, as a percentage, 33 percent of the handlers shipped over 2.4 million kernelweight pounds of walnuts, and 67 percent of the handlers shipped under 2.4 million kernelweight pounds of walnuts. Based on an average price of \$2.10 per kernelweight pound at the point of first sale, the majority of handlers of California walnuts may be classified as small entities.

This rule adds a new § 984.476 to the order's administrative rules and regulations which requires handlers to report to the Board receipts of walnuts grown outside of the United States. This will allow the Board to have better information on the total available supply of walnuts, including California and foreign product, which will facilitate program administration. Authority for requiring handlers to submit this information to the Board is provided in § 984.76 of the order.

Regarding the impact of this action on affected entities, this rule should impose minimal additional costs. The Board estimates that about six handlers have imported walnuts over the past few years. Such handlers will be required to submit an additional report to the Board four times per year along with tags issued by the DFA verifying receipts of foreign product. The DFA currently provides inspection services for all handlers of California walnuts and will be available at no additional cost to issue product tags to handlers receiving imports. Handlers will then submit these tags to the Board for verification purposes.

An alternative to this action would be to not collect information from handlers on receipts of imported walnuts. However, as previously mentioned, the Board would like to have better information on the total available supply of walnuts within California, which includes both California and foreign product. The only way this information can be obtained by the Board is to collect it from handlers. This information will facilitate program administration by improving the Board's base of information from which to make decisions.

The Board also recommended that a system be established for monitoring walnuts grown outside of the United States that are received by California handlers. Under the proposed monitoring system, DFA inspectors would check whether or not foreign product had been inspected and met the requirements of section 8e of the Act. Under section 8e, whenever certain specified commodities are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestic commodity. Walnuts are included under section 8e, and thus importers of walnuts are required to have such walnuts inspected. However, it is the USDA's responsibility to ensure that imported walnuts meet the requirements of section 8e. Thus, we are not proceeding with this recommendation.

Finally, the Board considered whether it would be useful to collect information on walnuts grown outside of California, but within the United States. However, Board members agreed that the amount of such walnuts was so small, it was not worth requiring handlers to report such information.

This action imposes some additional reporting and recordkeeping burden on handlers that receive walnuts grown outside of the United States. It is

estimated that six handlers may import walnuts during the season. Such handlers will be required to submit a receipt report to the Board four times per year. It is estimated that it will take such handlers 5 minutes to complete each report. Thus, the additional annual burden should total no more than 2 hours for the industry. The information will be collected on WMB Form No. 7. That form has been approved by the Office of Management and Budget (OMB) under OMB Control No. 0581-0178. As with other similar marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has identified one relevant Federal rule regarding requirements for walnuts grown outside of the United States. As previously stated, walnuts are included under section 8e. Thus, importers of walnuts are required to have such walnuts inspected by the USDA's inspection service. Importers whose walnuts meet section 8e requirements do not have to submit any paperwork to the USDA. However, importers whose walnuts fail section 8e requirements, or whose walnuts are exempt from section 8e because such walnuts are so immature that they cannot be used for drying and sale as dried walnuts (green walnuts), or are being sent to designated outlets (animal feed, processing, or charity) have to submit paperwork to the USDA. However, only a small amount of information requested by the USDA in these instances or by the Board through this rule, will be duplicative.

In addition, the Board's meeting on September 11, 1998, where this action was deliberated was a public meeting widely publicized throughout the walnut industry. This issue was also deliberated at an earlier Board meeting on February 2, 1998, and at a Grades and Standards Subcommittee meeting on June 5, 1998. All interested persons were invited to attend these meetings and participate in the industry's deliberations. A proposed rule concerning this action was published in the **Federal Register** on August 19, 1999 (64 FR 45208). Copies of the rule were mailed to all handlers, Board members, and alternate members. The rule was also made available through the Internet by the Office of the Federal Register. A 60-day comment period ending October 18, 1999, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and speciality crop marketing agreements and orders may

be viewed at the following web site: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) The Board would like to begin collecting this report as soon as possible in order to have better information on the total supply of walnuts within California; (2) the first report would be due to the Board on or before February 5, 2000; (3) handlers are aware of this rule which was unanimously recommended at a public meeting; and (4) a 60-day comment period was provided in the proposed rule; no comments were received.

#### **List of Subjects in 7 CFR Part 984**

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

#### **PART 984—WALNUTS GROWN IN CALIFORNIA**

1. The authority citation for 7 CFR part 984 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

2. A new § 984.476 is added to read as follows:

#### **§ 984.476 Report of walnut receipts from outside of the United States.**

Each handler who receives walnuts from outside of the United States shall file with the Board, on WMB Form No. 7, a report of the receipt of such walnuts. The report shall be filed beginning with the February 5, 2000, report as follows: On or before November 5 for such walnuts received during the period August 1 to October 31; on or before February 5 for such walnuts received during the period November 1 to January 31; on or before May 5 for such walnuts received during the period February 1 to April 30; and on or before August 5 for such walnuts received during the period May 1 to July 31. The report shall include the quantity

of such walnuts received, the country of origin for such walnuts, and whether such walnuts are inshell or shelled. With each report, the handler shall submit a copy of a product tag issued by a DFA of California inspector for each receipt of such walnuts that includes the name of the person from whom such walnuts were received, the date such walnuts were received by the handler, the number of containers and the U.S. Custom's Service entry number, whether such walnuts are inshell or shelled, the quantity of such walnuts received, the country of origin for such walnuts, the name of the DFA of California inspector who issued the product tag, and the date such tag was issued.

Dated: October 26, 1999.

**Eric M. Forman,**

*Acting Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99-28376 Filed 10-28-99; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 92-ANE-15; Amendment 39-11392; AD 99-22-14]

RIN 2120-AA64

#### **Airworthiness Directives; Pratt & Whitney JT8D-200 Series Turbofan Engines**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Pratt & Whitney JT8D-200 series turbofan engines, that currently requires installation of high pressure turbine (HPT) containment hardware. This amendment requires removing low pressure turbine (LPT)-to-exhaust case bolts and nuts and replacement with improved LPT-to-exhaust case bolts and nuts, and installation of improved HPT containment hardware. This amendment is prompted by uncontained HPT events resulting from HPT shaft fractures and LPT flange separations resulting from LPT blade failures. The actions specified by this AD are intended to prevent damage to the airplane resulting from uncontained engine debris following an HPT shaft fracture or an LPT blade failure.

**DATES:** Effective December 28, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 28, 1999.

**ADDRESSES:** The service information referenced in this AD may be obtained from Pratt & Whitney, Publications Department, Supervisor Technical Publications Distribution, M/S 132-30, 400 Main St., East Hartford, CT 06108; telephone (860) 565-8770, fax (860) 565-4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA 01803-5299; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7152, fax (781) 238-7199.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93-23-10, Amendment 39-8746 (57 FR 57705, December 17, 1993), which is applicable to certain Pratt & Whitney (PW) JT8D-200 series turbofan engines, was published in the **Federal Register** on March 15, 1999 (64 FR 12770). That action proposed to require removing low pressure turbine (LPT)-to-exhaust case bolts and nuts and replacement with improved LPT-to-exhaust case bolts and nuts, and installation of improved high pressure turbine (HPT) containment hardware.

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 requests Revision 1 of PW Service Bulletin (SB) No. 6149, dated August 27, 1998, be the required SB for performance of the actions required by paragraph (b) of the proposed rule. The FAA concurs. Since publication of the NPRM, PW has also issued Revision 1 to PW Alert Service Bulletin (ASB) No. A6346, dated April 23, 1999. The FAA has added both later revisions to this final rule as references. Operators who have installed hardware in accordance with the original versions of the SB and the ASB are not required to apply for an Alternate Method of Compliance (AMOC) in order to be considered as having complied with the AD.

One commenter states that the estimated number of domestic JT8D-217C/219 engines is incorrect in the economic analysis of the proposed rule, and offers a better estimate. The FAA concurs and has revised the economic analysis in this final rule.

One commenter has no objection to the rule as proposed.

One commenter agrees with the rule as proposed.

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

There are approximately 2,727 engines of the affected design in the worldwide fleet. The FAA estimates that 1,473 engines installed on airplanes of U.S. registry will be affected by this AD, and that no additional work hours per engine to accomplish the required actions are necessary since they should take place when an engine is already sufficiently disassembled for normal maintenance on those parts. Required parts will cost approximately \$19,911 per engine for the 1,030 engines requiring improved (over AD 93-23-10) containment hardware, and \$3,275 for 1,473 engines requiring improved bolts and nuts. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$25,332,405. The manufacturer may be providing parts free of charge; therefore the actual cost to operators may be reduced.

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 removing Amendment 39-8746 (57 FR 57705, December 17, 1993) and by adding a new airworthiness directive, Amendment 39-11392, to read as follows:

99-22-14 **Pratt & Whitney:** Amendment 39-11392. Docket 92-ANE-15. Supersedes AD 93-23-10, Amendment 39-8746.

*Applicability:* Pratt & Whitney (PW) Model JT8D-209, -217, -217A, -217C, and -219

turbfan engines, installed on but not limited to McDonnell Douglas MD-80 series airplanes.

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

**Compliance:** Required as indicated, unless accomplished previously.

To prevent damage to the airplane resulting from uncontained engine debris following a high pressure turbine (HPT) shaft fracture or a low pressure turbine (LPT) blade failure, accomplish the following:

(a) For PW Model JT8D-217C and -219 engines, install improved HPT containment hardware at the next shop visit after the effective date of this AD, but no later than December 31, 2004, in accordance with PW JT8D Alert Service Bulletin (ASB) No. A6346, dated September 10, 1998, or Revision 1, dated April 23, 1999.

(b) For PW Model JT8D-209, -217, -217A, -217C and -219 engines, install improved LPT-to-turbine exhaust case bolts and nuts at

the next shop visit after the effective date of this AD but no later than December 31, 2004, in accordance with paragraph 2.A.(1) and 2.B.(1) of PW Service Bulletin (SB) No. 6149, January 19, 1994, or Revision 1, dated August 27, 1998.

(c) For the purpose of this AD, an engine shop visit is defined as engine maintenance that entails the separation of the J and K flanges.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

**Note 2:** Information concerning the existence of approved alternative method of compliance with this AD, if any, may be obtained from the ECO.

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

(f) The actions required by this AD shall be done in accordance with the following PW service documents:

Document No.	Pages	Revision	Date
ASB No. A6346 .....	1,2 .....	1 .....	April 23, 1999.
	3 .....	Original .....	September 10, 1998.
	4 .....	1 .....	April 23, 1999.
	5,6 .....	Original .....	September 10, 1998.
	7-25 .....	1 .....	April 23, 1999.
Total pages: 25.			
ASB No. A6346 .....	1-23 .....	Original .....	September 10, 1998.
Total pages: 23.			
SB No. 6149 .....	1-3 .....	1 .....	August 27, 1998.
	4-10 .....	Original .....	January 19, 1994.
Total pages: 10.			
SB No. 6149 .....	1-10 .....	Original .....	January 19, 1994.
Total pages: 10.			

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 Pratt & Whitney, Publications Department, Supervisor Technical Publications Distribution, M/S 132-30, 400 Main St., East Hartford, CT 06108; telephone (860) 565-8770, fax (860) 565-4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on December 28, 1999.

Issued in Burlington, Massachusetts, on October 21, 1999.

**David A. Downey,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 99-28075 Filed 10-28-99; 8:45 am]

**BILLING CODE 4910-13-U**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

[Airspace Docket No. 99-ASW-24]

**Revision of Class E Airspace; Hebronville, TX**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This amendment revises the Class E airspace at Hebronville, TX.

The development of a Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedure (SIAP), at Jim Hogg County Airport, Hebronville, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Jim Hogg County Airport, Hebronville, TX.

**DATES:** Effective 0901 UTC, February 24, 2000.

Comments must be received on or before December 13, 1999.

**ADDRESSES:** Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99-ASW-24, Fort Worth, TX 76193-0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 a.m. and 3 p.m. Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

**FOR FURTHER INFORMATION CONTACT:** Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193-0520, telephone 817-242-5593.

**SUPPLEMENTARY INFORMATION:** This amendment to 14 CFR part 71 revises the Class E airspace at Hebronville, TX. The development of a NDB SIAP, at Jim Hogg County Airport, Hebronville, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Jim Hogg County Airport, Hebronville, TX.

Class E airspace designations are published in Paragraph 6005 at FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

#### The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to

comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

#### Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99-ASW-24." The postcard will be date stamped and returned to the commenter.

#### Agency Findings

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 level 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.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation: (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) 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. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

#### PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

#### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005: Class E Airspace Areas  
Extending Upward From 700 Feet or More  
Above the Surface of the Earth

\* \* \* \* \*

**ASW TX E5 Hebronville, TX [Revised]**

Hebronville, Jim Hogg County Airport, TX  
(Lat. 27°20'58" N., long. 98°44'13" W.)

Hebronville, O.S. Wyatt Airport, TX  
(Lat. 27°25'18" N., long. 98°36'16" W.)

Hebronville NDB  
(Lat. 27°21'14" N., long. 98°44'39" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Jim Hogg County Airport and within 2.5 miles each side of the 325° bearing from the Hebronville NDB extending from the 6.5-mile radius to 7.5 miles northwest of the airport and within a 6.9-mile radius of O.S. Wyatt Airport.

\* \* \* \* \*

Issued in Fort Worth, TX, on October 12, 1999.

**Robert N. Stevens,**

*Acting Manager, Air Traffic Division,  
Southwest Region.*

[FR Doc. 99-27506 Filed 10-28-99; 8:45 am]

BILLING CODE 4910-13-M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

[Airspace Docket No. 99-ASW-25]

**Revision of Class E Airspace;  
Beaumont, TX**

**AGENCY:** Federal Aviation  
Administration (FAA), DOT.

**ACTION:** Direct final rule; request for  
comments.

**SUMMARY:** This amendment revises the Class E airspace at Beaumont, TX. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), at Beaumont Municipal Airport, Beaumont, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Beaumont Municipal Airport, Beaumont, TX.

**DATES:** Effective 0901 UTC, February 24, 2000.

Comments must be received on or before December 13, 1999.

**ADDRESSES:** Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99-ASW-25, Fort Worth, TX 76193-0520. The official docket may be examined in the Office of the Regional Counsel, Southwest

Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

**FOR FURTHER INFORMATION CONTACT:** Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193-0520, telephone 817-252-5593.

**SUPPLEMENTARY INFORMATION:** This amendment to 14 CFR part 71 revises the Class E airspace at Beaumont, TX. The development of a GPS SIAP, at Beaumont Municipal Airport, Beaumont, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Beaumont Municipal Airport, Beaumont, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

**The Direct Final Rule Procedure**

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, as adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

**Comments Invited**

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99-ASW-25." The postcard will be date stamped and returned to the commenter.

**Agency Findings**

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 level 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.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation: (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) 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. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

#### PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

##### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

*Paragraph 6005: Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth*

\* \* \* \* \*

##### ASW TX E5 Beaumont, TX [Revised]

Beaumont, Beaumont/Port Arthur, Southeast Texas Regional Airport, TX

(Lat. 29°57'03" N., long. 94°01'15" W.)

Beaumont Municipal Airport, TX

(Lat. 30°04'14" N., long. 94°12'56" W.)

Orange County Airport, TX

(Lat. 30°04'09" N., long. 93°48'03" W.)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of Southeast Texas Regional Airport and within a 6.4-mile radius of Beaumont Municipal Airport and within 2 miles each side of the 312° bearing from the airport extending from the 6.4-mile radius to 8.3 miles northwest of the airport and within a 6.6-mile radius of Orange County Airport.

\* \* \* \* \*

Issued in Fort Worth, TX, on October 12, 1999.

**Robert N. Stevens,**

*Acting Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 99–27505 Filed 10–28–99; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 99–ASW–26]

#### Revision of Class E Airspace; El Paso, TX

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This amendment revises the Class E airspace at El Paso, TX. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), at El Paso International Airport, El Paso, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to El Paso International Airport, El Paso, TX.

**DATES:** Effective 0901 UTC, February 24, 2000.

Comments must be received on or before December 13, 1999.

**ADDRESSES:** Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–26, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

**FOR FURTHER INFORMATION CONTACT:** Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–262–5593.

**SUPPLEMENTARY INFORMATION:** This amendment to 14 CFR part 71 revises

the Class E airspace at El Paso, TX. The development of a GPS SIAP, at El Paso International Airport, El Paso, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to El Paso International Airport, El Paso, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

#### The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

#### Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is

extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99-ASW-26." The postcard will be date stamped and returned to the commenter.

#### Agency Findings

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 level 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.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation: (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) 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. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

#### PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

##### §71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

*Paragraph 6005: Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth*

\* \* \* \* \*

#### ASW TX E5 El Paso, TX [Revised]

El Paso, Biggs AAF, TX  
(Lat. 31°50'58" N., long. 106°22'48" W.)  
El Paso International Airport, TX  
(Lat. 31°48'24" N., long. 106°22'40" W.)  
El Paso VORTAC, TX  
(Lat. 31°48'57" N., long. 106°16'55" W.)  
El Paso, West Texas Airport, TX  
(Lat. 31°43'11" N., long. 106°14'21" W.)

That airspace extending upward from 700 feet above the surface within a 9.1-mile radius of Biggs AAF and within a 8.4-mile radius of El Paso International Airport and within 2 miles each side of the 050° bearing from the airport extending from the 8.4-mile radius to 13 miles northeast of the airport and within 1.6 miles each side of the 093° radial of the El Paso VORTAC extending from the 8.4-mile radius to 7.3 miles east of the VORTAC and within a 6.6-mile radius of the West Texas Airport.

\* \* \* \* \*

Issued in Fort Worth, TX, on October 12, 1999.

**Robert N. Stevens,**

*Acting Manager, Air Traffic Division,  
Southwest Region.*

[FR Doc. 99-27504 Filed 10-28-99; 8:45 am]

BILLING CODE 4910-13-M

#### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

#### 29 CFR Parts 1604 and 1606

#### Sex Discrimination Guidelines and National Origin Discrimination Guidelines

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

**SUMMARY:** This rule rescinds those paragraphs of the Equal Employment Opportunity Commission's (EEOC's) Sex Discrimination Guidelines and National Origin Discrimination Guidelines that set a standard for employer liability for harassment by supervisors. This action is necessary as a result of recent Supreme Court rulings.

**EFFECTIVE DATE:** October 29, 1999.

#### FOR FURTHER INFORMATION CONTACT:

Dianna Johnston, Assistant Legal Counsel, Title VII/ADEA/EPA Division, Office of Legal Counsel, or Elaine Herskowitz, Senior Attorney/Advisor, Title VII/ADEA/EPA Division, Office of Legal Counsel. They can be reached at 202-663-4679. This final rule is also available in the following formats: large print, braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the EEOC's Publication Center by calling 1-800-669-3362 (voice) or 1-800-669-6820 (TDD).

**SUPPLEMENTARY INFORMATION:** The EEOC is rescinding those subsections of the Sex Discrimination Guidelines, found in 29 CFR 1604.11(c), and the National Origin Discrimination Guidelines, found in 29 CFR 1606.8(c), that address employer liability for harassment by supervisors. The standard set forth in those subsections is no longer valid in light of the Supreme Court's rulings in *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998), and *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998). The Commission has issued detailed guidance interpreting those decisions and explaining the circumstances under which employers are vicariously liable for unlawful harassment by supervisors. See EEOC Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors (6/18/99), EEOC Compliance Manual (BNA), N:4075 [Binder 3]; also available through EEOC's web site, at [www.eeoc.gov](http://www.eeoc.gov), or by calling the EEOC Publications Distribution Center, at 1-800-669-3362 (voice), 1-800-800-3302 (TTY).

**Regulatory Procedures**

*Regulatory Flexibility Act*

In accordance with the Regulatory Flexibility Act (Public Law 96-354, as amended by Public Law 104-121), the Commission has reviewed this regulation, and by approving it, certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

*Executive Order 12866*

This rule is not a significant regulatory action as defined in Executive Order 12866 and is therefore not subject to review by the Office of Management and Budget.

**List of Subjects**

*29 CFR Part 1604*

Advertising, Employee benefit plans, Equal employment opportunity, Sex discrimination.

*29 CFR Part 1606*

Equal employment opportunity.

For the Commission,

**Ida L. Castro,**  
*Chairwoman.*

**PART 1604—[AMENDED]**

1. The authority citation for part 1604 continues to read as follows:

**Authority:** Sec. 713(b), 78 Stat. 265, 42 U.S.C. 2000e-12.

2. Section 1604.11 is amended by removing and reserving paragraph (c).

3. Section 1604.11 is amended by adding Appendix A at the end of the section to read as follows:

**§ 1604.11 Sexual harassment.**

\* \* \* \* \*

**Appendix A to § 1604.11—Background Information**

The Commission has rescinded § 1604.11(c) of the Guidelines on Sexual Harassment, which set forth the standard of employer liability for harassment by supervisors. That section is no longer valid, in light of the Supreme Court decisions in *Burlington Industries, Inc. v. Ellerth*, 524 U.S.

742 (1998), and *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998). The Commission has issued a policy document that examines the Faragher and Ellerth decisions and provides detailed guidance on the issue of vicarious liability for harassment by supervisors. EEOC Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors (6/18/99), EEOC Compliance Manual (BNA), N:4075 [Binder 3]; also available through EEOC's web site, at [www.eeoc.gov](http://www.eeoc.gov), or by calling the EEOC Publications Distribution Center, at 1-800-669-3362 (voice), 1-800-800-3302 (TTY).

**PART 1606—[AMENDED]**

4. The authority citation for part 1606 continues to read as follows:

**Authority:** Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.*

5. Section 1606.8 is amended by removing and reserving paragraph (c).

6. Section 1606.8 is amended by adding Appendix A at the end of the section to read as follows:

**§ 1606.8 Harassment.**

\* \* \* \* \*

**Appendix A to § 1606.8—Background Information**

The Commission has rescinded § 1606.8(c) of the Guidelines on National Origin Harassment, which set forth the standard of employer liability for harassment by supervisors. That section is no longer valid, in light of the Supreme Court decisions in *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998), and *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998). The Commission has issued a policy document that examines the Faragher and Ellerth decisions and provides detailed guidance on the issue of vicarious liability for harassment by supervisors. EEOC Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors (6/18/99), EEOC Compliance Manual (BNA), N:4075 [Binder 3]; also available through EEOC's web site, at [www.eeoc.gov](http://www.eeoc.gov), or by calling the EEOC Publications Distribution Center, at 1-800-669-3362 (voice), 1-800-800-3302 (TTY).

[FR Doc. 99-28291 Filed 10-28-99; 8:45 am]

BILLING CODE 6570-01-P

**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**30 CFR Parts 46 and 48**

RIN 1219-AB17

**Training and Retraining of Miners Engaged in Shell Dredging or Employed at Sand, Gravel, Surface Stone, Surface Clay, Colloidal Phosphate, or Surface Limestone Mines; Correction**

**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects errors in the final rule for training and retraining of miners that appeared in the **Federal Register** on September 30, 1999. **EFFECTIVE DATE:** October 2, 2000.

**FOR FURTHER INFORMATION CONTACT:** Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, MSHA, (703) 235-1910.

**SUPPLEMENTARY INFORMATION:** On September 30, 1999, in FR Doc. 99-25273 (64 FR 53080), MSHA published a final rule amending existing health and safety training regulations by establishing new training requirements for shell dredging, sand, gravel, surface stone, surface clay, colloidal phosphate, and surface limestone mines. This document corrects errors in the preamble.

1. On page 53080, in the third column, in the second full paragraph the last three sentences from the end should read "Based on Table 2, MSHA estimates that mine operators will incur a total of 253,393 burden hours at a cost of about \$8.2 million in the first year, and in every other succeeding year (*i.e.*, 3, 5, 7, 9). MSHA estimates the mine operators will incur 240,575 burden hours at a cost of \$7.8 million in years 2, 4, 6, 8, etc. The first year burden hours and costs are composed by summing the figures in Tables 1, 2, 3, and 4."

2. On page 53081, Table 2 should read:

Table 2—Mine Operators' Annual Burden Hours and Costs

Prov.	Mines (1-5)		Mines (6-19)		Mines (≥20)		Totals	
	Hrs.	Costs	Hrs.	Costs	Hrs.	Costs	Hrs.	Costs
46.3 .....	254,584	\$8,614	166,180	\$5,620	124,032	\$4,321	545	\$18,554
46.5 .....	41,153	1,481,519	21,604	777,757	4,963	178,654	67,720	2,437,930
46.6 .....	8,534	307,213	4,641	167,066	1,092	39,327	14,267	513,606
46.7 .....	6,102	219,673	13,328	479,804	18,692	672,924	38,122	1,372,401
46.8 .....	34,944	1,257,994	15,538	559,369	5,552	199,882	56,035	2,017,246
46.9 .....	1,541	40,829	3,145	83,345	2,995	79,357	7,680	203,531

Table 2—Mine Operators' Annual Burden Hours and Costs—Continued

Prov.	Mines (1–5)		Mines (6–19)		Mines (≥20)		Totals	
	Hrs.	Costs	Hrs.	Costs	Hrs.	Costs	Hrs.	Costs
46.11 .....	25,298	581,843	22,155	509,565	8,730	200,790	56,183	1,292,198
Total .....	117,826	3,897,684	80,577	2,582,527	42,148	1,375,254	240,552	7,855,465

3. On page 53088, in the first column, in the first full paragraph the first sentence should read "Several commenters favored a six-month delay in the effective date, stating it would provide adequate time for compliance if MSHA and state agencies were available to assist operators in such areas as the development of training plans and training materials."

4. On page 53088, in the first column, the first sentence in the last paragraph should read "We have concluded that a one-year delay in the effective date, without interim compliance deadlines, will ensure that production-operators, independent contractors, and others affected by the final part 46 rule will have sufficient time to become familiar with the rule's requirements and take steps to come into compliance."

5. On page 53089, in the first column, in the first full paragraph, the last two sentences should read "MSHA's current budget includes \$6.013 million for the State Grants program. Our budget request for fiscal year 2000 would increase that sum to \$6.139 million."

Dated: October 20, 1999.

Marvin W. Nichols,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 99-27897 Filed 10-28-99; 8:45 am]

BILLING CODE 4510-43-P

**POSTAL RATE COMMISSION**

**39 CFR Parts 3001, 3002 and 3004**

[Docket No. RM99-2; Order No. 1267]

**Freedom of Information Act Administrative Rulemaking**

AGENCY: Postal Rate Commission.

ACTION: Final rule.

**SUMMARY:** The Commission is adopting previously-proposed changes to its rules of practice to implement the Electronic Freedom of Information Act and to reflect improved methods of information management. These changes establish consistency with current law. They also improve the Commission's administration of related responsibilities and the public's ability to obtain or review certain information.

**DATES:** Effective November 29, 1999.

**ADDRESSES:** Send correspondence concerning this document to the attention of Margaret P. Crenshaw, Secretary, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268-0001.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, Postal Rate Commission, 1333 H Street NW., Washington, DC 20268-0001, 202-789-6820.

**SUPPLEMENTARY INFORMATION:**

*Introduction.* The Commission hereby adopts, as a final rule, the revisions to its rules implementing the Freedom of Information Act (FOIA) described and identified here. (Order No. 1267, issued October 8, 1999.) The revisions, which were the subject of Commission Order No. 1253, were previously published at 64 FR 50031. No comments on the proposal were received.

The Commission has reviewed its initial proposal, and has determined that final adoption of the revisions is appropriate. The previous version is unchanged except for clarifying that claims that sensitive business information should be exempt from disclosure can be made under several subparts of 5 U.S.C. 552(b). Part I explains the changes. Part II summarizes the effect of the changes on organization of the rules. Part III sets out the final rules.

**Part I—Background**

The Commission's rules implementing the requirements of the FOIA, 5 U.S.C. 552, have not been amended since 1993. Consequently, they do not incorporate changes in applicable law since that time, most notably the requirements added by the Electronic FOIA, Pub. L. 104-231. Also, they do not reflect recent changes in the Commission's methods of information management, which have become increasingly computer-based, or other administrative changes affecting access to information at the Commission.

The rules adopted here are intended to address and accommodate these changes. They also incorporate a major structural change for the convenience of persons interested in obtaining information by various means. This

entails the transfer of all provisions describing FOIA access and processes at the Commission to a new Part 3004.

*A. Compliance With Public Inspection and Copying Requirements as Modified by the Electronic FOIA Amendments*

Subsection (a)(2) of the FOIA requires an agency to make available for public inspection and copying its final opinions in adjudicated cases, policy statements and interpretations not published in the **Federal Register**, and administrative staff manuals and instructions to staff that affect members of the public. The 1996 Electronic FOIA amendments extended this requirement by directing agencies to make such records created on or after November 1, 1996, available by computer telecommunications or other electronic means.

*Description of changes.* The final rules reflect the actions the Commission has taken to achieve compliance with the amended public inspection and copying requirements. Since 1996, the Commission has operated a website linked to the Internet for the purposes of telecommunication and publication of official information. Recently, the Commission has expanded the material available on its website to include all decisions issued on or after January 1, 1996; orders, notices and other documents issued in proceedings pending before the Commission; the domestic mail classification schedule, which is a compilation of all provisions that define the categories of mail and postal services available in the national postal system; and the rules of practices which govern the conduct of proceedings before the Commission. These materials are now available for viewing and downloading from the Commission's website at [www.prc.gov](http://www.prc.gov). Accordingly, 39 CFR 3004.2(c) identifies that domain as the location of the Commission's electronic reading room, and describes generally the categories of information available from the website.

*B. Transfer of FOIA Procedural Rules to New Part 3004*

Currently, the rules describing public information available at the Commission and procedures for obtaining access are

contained in 39 CFR 3001.42 and 3001.42a, within the rules of general applicability in part 3001. (Part 3001 is a compilation of all the Commission's rules of practice and procedure.) For the convenience of persons interested primarily in obtaining access to public information, the final rules incorporate a major structural change. Rules describing the procedures for obtaining access to public information at the Commission, fees associated with some retrieval and copying services, and procedures relating to the submission and disclosure of sensitive business information are transferred to a new part 3004, entitled "Freedom of Information Rules." Rules describing the Commission's public information resources generally are retained in section 3001.42, with additional detailed information in part 3002, the organizational description of the Commission.

In addition, new part 3004 includes revisions of, and updates to, the provisions transferred from sections 3001.42 and 42a to conform to current FOIA legal requirements and practices. Sections 3004.1 and 3004.2 describe the purpose of the rules and the sources of the Commission's public information, including the physical and electronic reading rooms. Section 3004.3 provides both for regular FOIA requests and requests for expedited processing based on a demonstration of compelling need. The time limit specified in section 3004.4 for responding to requests is changed from 10 days to 20 days, in accordance with the 1996 amendments. The period for filing an appeal of a denial of a request with the Commission, currently 20 days, is extended to one year under section 3004.4(a)(2).

#### *C. Provisions Relating to Submission of Sensitive Business Information*

Section 3004.8 adopts procedures for the Commission's treatment of materials containing sensitive business information that are considerably more detailed than those in current section 3001.42a. Section 3004.8(a) directs any person who submits information believed to be exempt from disclosure under 5 U.S.C. section 552(b) to designate the exempt information by appropriate markings, and provide a brief written statement explaining why the information is exempt. Any such designation expires 10 years after the date of submission, unless the submitter requests and justifies a longer duration.

Should the Commission receive an FOIA request seeking business information that has been properly designated under section 3004.8(a), or

one that may be exempt from disclosure under 5 U.S.C. section 552(b), section 3004.8(b) provides that the Commission is to notify the submitter that such a request has been made, and provide a copy of the notice to the requester. Under section 3004.8(c), the submitter has 7 days to submit written objections to the information's disclosure, specifying all grounds for withholding it under the FOIA. The submitter will be considered to have no objection to disclosure if it submits no response by the end of the 7-day period.

If the submitter objects to disclosure, the Commission then decides whether to disclose the information. If the decision is to disclose, section 3004.8(d) requires the Commission to provide the submitter with written notice of that decision and a brief explanation for not sustaining the submitter's objections. Actual disclosure is not to be made until 5 days after the submitter's receipt of the notice. Section 3004.8(e) provides that the Commission need not notify the submitter if it determines not to disclose the information; if the information has been lawfully published or officially made publicly available; or if disclosure is required by a regulation or a statute other than the FOIA.

Finally, section 3004.8(f) specifies that protection of business information made available in formal Commission proceedings, and under the periodic reporting requirements in subpart G of 39 CFR part 3001, is provided under the terms of section 3001.31a. Thus, the procedures in section 3004.8 do not apply to the potential disclosure of commercially sensitive materials in the course of the Commission's performance of its primary jurisdictional responsibilities.

#### *D. Updated Information Responsive to Publication Requirements*

Subsection (a)(1) of the FOIA specifies five categories of information that agencies are required to "currently publish in the **Federal Register** for the guidance of the public[.]" The final rules are designed to comply fully with these publication requirements, and also to carry out the intent of the Electronic FOIA Amendments of 1996 to increase the public availability of information through computer telecommunications.

The final rules address publication requirements by incorporating several amendments to existing rules that enhance the information provided regarding the Commission's operations, facilities, and information resources available to the public. Section 3002.2 adds a description of the Commission's statutory functions, including its jurisdictional responsibilities and the

means by which the public may participate in Commission proceedings, in response to 5 U.S.C. 552(a)(1)(B). Section 3002.3 describes the potential sources of public information in the Commission's docket room, physical reading room, and electronic reading room on its website, as directed in 5 U.S.C. 552(a)(1)(A). Section 3002.4(e) provides additional detail concerning the information available on the Commission's website, and clarifies the responsibility of the Commission's administrative office to maintain it and the other public information resources of the agency.

#### **Part II. Summary of Effect of Changes on the Rules**

In 39 CFR part 3001, paragraph (c) of existing 3001.42, captioned "Public information and requests," is deleted in its entirety. Existing 3001.42(d), captioned "Procedure in event of subpoena," is redesignated as 3001.42(c). In addition, 3001.42a, captioned "Protection of trade secrets and commercial or financial information" is deleted in its entirety.

In 39 CFR part 3002, 3002.1 is retained without change. Provisions currently designated as 3002.2, 3002.3 and 3002.4 are redesignated as 3002.3, 3002.4 and 3002.5, respectively. In the redesignated paragraphs, a new paragraph (c) is added in 3002.3 and a new paragraph (e) is added in 3002.4.

The redesignation leaves 3001.2 available. The Commission uses this space for new text addressing its functions. Accordingly, this section, formerly captioned "The Commission and its offices," is given the new caption of "Statutory functions," and new language appears therein.

A new part 3004, captioned "Freedom of Information Rules" is added. It contains eight paragraphs describing various responsibilities and requirements.

#### **Part III. Final Rules**

The final rules appear below.

#### **List of Subjects in 39 CFR Parts 3001, 3002 and 3004**

Administrative practice and procedure, Archives and records, Freedom of information, Organization, Privacy, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, 39 CFR chapter III is amended as follows.

#### **PART 3001—RULES OF PRACTICE AND PROCEDURE**

1. The authority citation for part 3001 continues to read as follows:

**Authority:** 39 U.S.C. 404(b), 3603, 3622–3624, 3661, 3662.

**§ 3001.42 [Amended]**

2. In § 3001.42, remove paragraph (c) in its entirety, and redesignate paragraph (d) as (c).

**§ 3001.42a [Removed]**

3. Remove § 3001.42a in its entirety.

**PART 3002—ORGANIZATION**

4. The authority citation for part 3002 continues to read as follows:

**Authority:** 39 U.S.C. 3603; 5 U.S.C. 552.

**§§ 3002.2, 3002.3, 3002.4 [Redesignated as §§ 3002.3, 3002.4, and 3002.5]**

5. Redesignate §§ 3002.2, 3002.3 and 3002.4 as §§ 3002.3, 3002.4, and 3002.5, respectively.

6. In newly designated § 3002.3, add a new paragraph (c) to read as follows:

**§ 3002.3 The Commission and its offices**

\* \* \* \* \*

(c) The Commission's offices are located at 1333 H Street, NW., Suite 300, Washington, DC 20268. On these premises, the Commission maintains offices for Commissioners and the staff components described in §§ 3001.4, 3001.5, 3001.6 and 3001.7; a docket room where documents may be filed with the Commission pursuant to § 3001.9 and examined by interested persons; a public reading room where the Commission's public records are available for inspection and copying; a library containing legal and technical reference materials; and a hearing room where formal evidentiary proceedings are held on matters before the Commission. The Commission also maintains an electronic reading room accessible through the Internet, on its website at [www.prc.gov](http://www.prc.gov).

7. In newly designated § 3002.4, add new paragraph (e) to read as follows:

**§ 3002.4 Administrative Office.**

\* \* \* \* \*

(e) The Administrative Office is also responsible for the maintenance of the Commission's public information resources, including the docket room, the physical reading room, and the library on the premises of the Commission's offices, as well as the electronic reading room accessible on the Commission's website at [www.prc.gov](http://www.prc.gov). The information available on the Commission's website is, in general, coextensive with that available from the Commission's docket room and physical reading room, and includes: Commission decisions, rules, orders and notices; testimony, pleadings and reference materials filed in Commission

proceedings; and current information concerning Commission activities, employment opportunities, and a calendar of upcoming events.

8. Add new § 3002.2 to read as follows:

**§ 3002.2 Statutory functions.**

(a) *Areas of jurisdiction.* The Commission has jurisdiction over changes in postal rates and fees under 39 U.S.C. 3622, and over mail classifications under 39 U.S.C. 3623. It issues recommended decisions to the Governors of the Postal Service on these matters. It also acts on postal patrons' appeals from Postal Service decisions to close or consolidate post offices under 39 U.S.C. 404(b). Further, the Commission investigates complaints of substantial national scope concerning postal rates, fees, mail classifications or services under 39 U.S.C. 3662. It also responds to requests of the Postal Service for advisory opinions on changes in the nature of postal services under 39 U.S.C. 3661. Because of the Commission's expertise, Congress occasionally asks it to undertake special studies on postal issues.

(b) *Public participation.* Interested persons may elect to participate in Commission rate and mail classification proceedings as formal intervenors (§ 3001.20), limited participators (§ 3001.20a), or commenters (§ 3001.20b). Interested parties who believe the Postal Service is charging rates which do not conform with the policies of the Postal Reorganization Act, or who believe that they are not receiving postal service in accordance with the policies of title 39, may lodge a complaint with the Commission under section 3001.82. Persons served by post offices that the Postal Service decides to close or consolidate with other post offices may appeal such determinations under § 3001.111.

9. Part 3004 is added to read as follows:

**PART 3004—FREEDOM OF INFORMATION RULES**

Sec.

- 3004.1 Purpose.
- 3004.2 Reading room.
- 3004.3 Requests for records and or expedited processing.
- 3004.4 Response to requests.
- 3004.5 Appeals.
- 3004.6 Fees.
- 3004.7 Aggregation of requests.
- 3004.8 Submission of business information.

**Authority:** 39 U.S.C. 3603; 5 U.S.C. 552, 552a.

**§ 3004.1 Purpose.**

(a) This part is published pursuant to the Freedom of Information Act (FOIA),

5 U.S.C. 552, to describe the procedures by which a person can request copies of Commission records. It also describes how a submitter of trade secrets or confidential business information can identify information that the submitter believes to be exempt from disclosure under 5 U.S.C. 552(b).

(b) An individual seeking access to a record about himself or herself that is subject to the Privacy Act of 1974 should also consult the Commission's Privacy Act rules in part 3003 for the procedures that apply to requests for records under that Act. Requests for first-party access can be made under both the FOIA and the Privacy Act of 1974.

(c) Information required to be published or made available pursuant to 5 U.S.C. 552(a)(1) and (a)(2) may be found in part 3002, elsewhere in this chapter, in the **Federal Register**, or on the Commission's website at [www.prc.gov](http://www.prc.gov). The Commission's guide to the FOIA, all required FOIA indexes, and any available annual FOIA reports, are also available at the website in the electronic reading room or elsewhere on the site.

(d) Section 3001.42(b) of this chapter identifies records that the Commission has determined to be public.

**§ 3004.2 Reading room.**

(a) The Commission maintains a public reading room at its offices at 1333 H Street NW., Washington, DC 20268. The reading room is open from 8:00 a.m. until 4:30 p.m. during business days.

(b) The records available for public inspection and copying in the reading room include: final opinions, statements of policy, administrative staff manuals and instructions that affect a member of the public, copies of selected records released under the FOIA, and indexes required to be maintained under the FOIA, and records described in 39 CFR 3001.42(b) relating to any matter or proceeding before the Commission.

(c) The Commission's electronic reading room is maintained at its website at [www.prc.gov](http://www.prc.gov). Commission decisions, orders, rules of practice, and other directives affecting the public are available from the electronic reading room. To the extent practicable, other documents available in the reading room are also posted and available on the website.

**§ 3004.3 Requests for records and for expedited processing.**

(a) A request for records must be in writing and must reasonably describe the records sought. A request should be addressed or delivered to the Secretary

of the Commission at the offices of the Commission at 1333 H Street NW., Washington, DC 20268. A request should be clearly identified as "Freedom of Information Act Request" both in the text of the request and on the envelope. A requester should include a daytime telephone number.

(b) A request for expedited processing may be made in cases in which the requester demonstrates a compelling need as defined in 5 U.S.C.

552(a)(6)(E)(v). The Commission may otherwise grant requests for expedited processing at its discretion. A request for expedited processing should be clearly identified as "Expedited Freedom of Information Act Request" both in the text of the request and on the envelope.

(c) A demonstration of compelling need by a requester seeking expedited processing must be made by a statement certified by the requester to be true and correct to the best of the requester's knowledge and belief. At its discretion, the Commission may waive the requirement for certification.

(d) A request for expedited processing may be made at the time of an initial request (or appeal) or at a later time.

#### § 3004.4 Response to requests.

(a) Within 20 days (excluding Saturdays, Sundays, and legal public holidays) after receipt of a request for a Commission record, the Secretary of the Commission will:

(1) Determine to comply with the request and immediately notify the requester of the determination and of any fees that must be paid; or

(2) Deny the request in writing. The denial letter will explain the reason for the denial, including each exemption used as a basis for withholding of the records sought. The denial letter will include an estimate of the volume of requested matter that was denied. If disclosure of a record has been partially denied, the amount of information deleted will be indicated on the released portion if technically feasible. If revealing the amount or location of a denied record will harm an interest protected by an exemption, then the description of the amount or location of deleted information may be withheld. The denial letter will inform the requestor that he/she may, within one year, appeal the denial to the Commission.

(b) A denial is any form of adverse determination, including: a determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that a record is not

readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to the FOIA; an adverse decision on any disputed fee matter, including a denial of a requested fee waiver; and a denial of a request for expedited treatment.

(c) Within ten days after the receipt of a request for expedited processing, the Secretary will:

(1) Grant the request for expedited processing and process the request for records as soon as practicable; or

(2) Deny a request for expedited processing in writing. Any request for records that has been denied expedited processing will be processed in the same manner as a request that did not seek expedited processing. The denial letter will inform the requestor that he/she may, within five days, appeal the denial to the Commission.

(d) If warranted by the unusual circumstances specified in 5 U.S.C. 552(a)(6)(B)(iii), the Secretary may extend the time for a response for up to ten working days. The Secretary will notify the requester of any extension, and the reason for the extension, in writing. The Secretary will also provide the requester with an opportunity to limit the scope of the request or to arrange an alternative time frame for processing the request or a modified request.

#### § 3004.5 Appeals.

(a) A requester who seeks to appeal any denial must file an appeal in writing with the Commission. The Commission may review any decision of the Secretary on its own initiative. The Commission will grant or deny the appeal in writing, within 20 days (excluding Saturdays, Sundays and legal public holidays) of the date the appeal is received. If on appeal the denial of the request for records is upheld, the Commission will notify the person making such request of the provisions for judicial review of that determination pursuant to 5 U.S.C. 552(c). The Commission will expeditiously consider an appeal of a denial of expedited processing.

(b) If warranted by the unusual circumstances specified in 5 U.S.C. 552(a)(6)(B)(iii), the Commission may extend the time for a response to an appeal for up to ten working days. The Commission will notify the requester of any extension, and the reason for the extension, in writing. The Commission will also provide the requester with an opportunity to limit the scope of the request or to arrange an alternative time frame for processing the request or a modified request.

#### § 3004.6 Fees.

(a) Definitions pertaining to fees:

(1) *Direct costs* means expenditures the Commission actually incurs in searching for, duplicating, and, where applicable, reviewing documents to respond to a request. They include (without limitation) the salary of the employee performing work (the basic pay rate of such employee plus 16 percent to cover benefits) and the cost of operating required machinery.

(2) *Search* includes all time spent looking for material responsive to a request, including identification of pages or lines within documents. The term covers both manual and computerized searching.

(3) *Duplication* means making copies of documents necessary to respond to a request. Such copies may be paper, microform, audiovisual, or machine-readable.

(4) *Review* means examining documents located in response to a commercial-use request to determine whether any portion is exempt from mandatory disclosure, and processing or preparing documents for release, but not determination of general legal or policy issues regarding application of exemptions.

(5) *Commercial use request* means a request from or on behalf of one seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or person on whose behalf the request is made. In determining the applicability of this term, the use to which a requester will put the document is considered first; where reasonable doubt exists as to the use, the Commission may seek clarification before assigning the request to a category.

(6) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of graduate or undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) *Noncommercial scientific institution* means an institution, not operated on a *commercial* basis (as referenced above), which is operated solely for the purpose of conducting scientific research whose results are not intended to promote any particular product or industry.

(8) *Representative of the news media* means any person actively gathering news for an entity organized and operated to publish or broadcast news to the public. *News* means information about current events or that would be of current interest to the public. *Freelance*

journalists will be regarded as working for a news medium if they demonstrate (for example, by a publication contract or a past record of publication) a solid basis for expecting publication through such organization even though not actually employed by it.

(b) Except in the case of commercial-use requesters, the first 100 pages of duplication and the first two hours of search time are provided without charge. A *page* for these purposes is a letter- or legal-size sheet, or the equivalent amount of information in a medium other than paper copy. *Search time* for these purposes refers to manual searching; if the search is performed by computer, the amount not charged for will be the search cost equivalent to two hours' salary of the person performing the search. No requester will be charged a fee when the Commission determines that the cost of collecting the fee would equal or exceed the fee itself. In determining whether cost of collection would equal or exceed the fee, the allowance for two hours' search or 100 pages of duplication will be made before comparing the remaining fee and the cost of collection.

(c) Fees will be charged in accordance with the following provisions:

(1) The level of fee charged depends on the category of requester:

(i) A request appearing to be for commercial use will be charged the full direct costs of searching for, reviewing, and duplicating the records sought.

(ii) A request from an educational or noncommercial scientific institution will be charged for the cost of duplication only (excluding charges for the first 100 pages). To be eligible for this category, a requester must show that the request is made under the auspices of a qualifying institution and that the records are not sought for commercial use but are in furtherance of scholarly (in the case of educational institutions) or scientific (in the case of noncommercial scientific institutions) research.

(iii) A request from a representative of the news media will be charged the cost of duplication only (excluding charges for the first 100 pages).

(iv) A request from any other requester will be charged the full direct cost of searching for and duplicating records responsive to the request, except that the first 100 pages of duplication and the first two hours of search will be furnished without charge.

(v) A request from a record subject for records about himself or herself filed in a Commission Privacy Act system of records will be charged fees as provided under the Commission's Privacy Act regulations in part 3003 of this chapter.

(2) Fees will be calculated as follows:

(i) Manual search: At the salary rate (basic pay plus 16 percent) of the employee(s) making the search. Search time may be charged for even if the Commission fails to locate records or if records located are exempt from disclosure.

(ii) Computer search: At the actual direct cost of providing the search, including computer search time directly attributable to searching for records responsive to the request, runs, and operator salary apportionable to the search.

(iii) Review (commercial-use requests): At the salary rate (basic pay plus 16 percent) of the employee(s) conducting the review. Charges are imposed only for the review necessary at the initial administrative level to determine the applicability of any exemption, and not for review at the administrative appeal level of an exemption already applied.

(iv) Duplication: At 15 cents per page for paper copy, which the Commission has found to be the reasonable direct cost thereof. For copies of records prepared by computer (such as tapes or printouts), the actual cost of production, including operator time, will be charged.

(v) Additional services: Postage, insurance, and other additional services that may be arranged for by the requester will be charged at actual cost.

(d) Interest at the rate prescribed in 31 U.S.C. 3717 will be charged on unpaid fee bills, starting on the 31st day after the bill was sent. Receipt of a fee by the Commission, whether processed or not, will stay the accrual of interest.

(e) Advance payment may be required only when the allowable fees are likely to exceed \$250, in which case advance payment in part or in full may be required of requesters with no history of prompt payment, and satisfactory assurance of payment from requesters with such history; or when the requester has previously failed to pay a fee timely (within 30 days of the billing date), in which case the Commission may require full payment of the amount owed, plus applicable interest, or a demonstration that the fee has in fact been paid, together with full advance payment of the estimated fee. When advance payment is required, the administrative time limits prescribed in subsection (a)(6) of the FOIA begin only after such payment has been received.

(f) Records will be provided without charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or

activities of the government and is not primarily in the commercial interest of the requester.

#### § 3004.7 Aggregation of requests.

Should the Secretary or the Commission reasonably believe that a requester or a group of requesters acting in concert, have attempted to evade fees or to seek a procedural advantage over other requesters by breaking down a request into a series of requests, the Commission may aggregate the separate requests and treat them as a single request. Multiple requests involving unrelated subjects will not be aggregated.

#### § 3004.8 Submission of business information.

(a) Any person who submits to the Commission a trade secret or commercial or financial information that the submitter reasonably believes to be exempt from disclosure under 5 U.S.C. 552(b) must designate the exempt information by appropriate markings at the time of submission or at a reasonable time after submission. The submission should be accompanied by a brief written statement explaining why the information is exempt. Any designation will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer period.

(b) Before disclosing, in response to a FOIA request, any information properly designated under this part, the Commission will provide the submitter with written notice that a request seeks disclosure of the information. The Commission may also provide notice when it has reason to believe that business information possibly exempt from disclosure may fall within the scope of any FOIA request. The requester will be provided a copy of any notice sent to the submitter.

(c) A submitter has seven days to submit written objections to the disclosure specifying all grounds for withholding the information under the FOIA. If the submitter fails to respond to the notice, the submitter will be considered to have no objection to the disclosure of the information.

(d) If, after considering the submitter's objections to disclosure, the Commission decides to disclose the information, it will give the submitter written notice of the decision and a brief explanation of the reasons for not sustaining the submitter's objections. The actual disclosure will not be made before five days after the submitter has received the notice.

(e) A submitter may not receive notice if the Commission determines that the

information should not be disclosed; if the information has been lawfully published or officially made available to the public; or if a statute (other than the FOIA) or a regulation requires disclosure.

(f) Protection of information made available pursuant to proceedings subject to the rules in 39 CFR part 3001, including information provided pursuant to that subpart requiring the filing of periodic reports, is provided upon request to the Commission as described in § 3001.31a.

Dated: October 22, 1999.

**Margaret P. Crenshaw,**  
Secretary.

[FR Doc. 99-28126 Filed 10-28-99; 8:45 am]

BILLING CODE 7710-FW-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MD081-3043a; FRL-6449-3]

### Approval and Promulgation of Air Quality Implementation Plans; State of Maryland; Enhanced Inspection and Maintenance Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** We are converting our conditional approval of the State of Maryland's State Implementation Plan (SIP) revision for an enhanced vehicle inspection and maintenance (I/M) program, which was granted on July 31, 1997 (61 FR 40938), to a full approval. In the State of Maryland the I/M program is known as the vehicle emissions inspection program (VEIP). In our July 31, 1997 conditional approval, we imposed fifteen conditions for full approval. We have determined that Maryland has met all of those conditions for full approval. The intent of this action is to convert our conditional approval of Maryland's VEIP SIP to a full approval.

**DATES:** This rule is effective on December 28, 1999 without further notice, unless EPA receives adverse written comment by November 29, 1999. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224. Please contact Christopher Cripps at (215) 814-2179 if you wish to arrange an appointment to view the docket at the Philadelphia office.

#### FOR FURTHER INFORMATION CONTACT:

Christopher Cripps, (215) 814-2179, at the EPA Region III address above, or by e-mail at [cripps.christopher@epa.gov](mailto:cripps.christopher@epa.gov).

#### SUPPLEMENTARY INFORMATION:

This Supplementary Information section is organized as follows:

- I. What action is EPA taking today?
- II. Who is affected by this action?
- III. Who will benefit from this action?
- IV. What Maryland SIP revision is the topic of this action?
- V. What were the requirements for full approval of the Maryland program?
- VI. How did Maryland fulfill these requirements for full approval?
- VII. What is EPA doing Regarding Vehicles at Federal Facilities?
- VIII. EPA Action
- IX. Administrative Requirements

#### I. What Action is EPA Taking Today?

In this action, we are converting our conditional approval of Maryland's I/M program as a revision to the SIP to a full approval.

#### II. Who is Affected by This Action?

Residents of the following jurisdictions in Maryland: Anne Arundel County, Baltimore County, Calvert County, Carroll County, Cecil County, Charles County, Frederick County, Harford County, Howard County, Montgomery County, Queen Anne's County, Washington County and Baltimore City. It is important to note that our action today does not impose any new requirements on Maryland residents; we are merely granting full

approval (versus the conditional approval previously granted) to the Maryland laws and regulations already in place at the state level to implement enhanced I/M in Maryland. These laws and regulations were made part of the Maryland SIP by the conditional approval that was published on July 31, 1997.

#### III. Who Will Benefit From This Action?

The residents of Maryland will benefit from this program, which is designed to keep vehicles maintained and operating within pollution control standards. Because air pollution does not recognize political boundaries, neighboring states' residents will also benefit from implementation of this program, designed to prevent excessive vehicle pollution.

#### IV. What Maryland SIP Revision is the Topic of this Action?

This notice deals with a revision to the State of MD SIP entitled "Enhanced Vehicle Emissions Inspection Program (SIP Revision 98-13)" which was submitted by the Secretary of the Maryland Department of the Environment (MDE) September 25, 1998 and supplemented on May 25, 1999. Today we are acting only upon this September 25, 1998, SIP revision and supplemental submittals to determine that Maryland satisfied certain deficiencies of its conditionally approved enhanced I/M plan, and in so doing we are not reopening our July 31, 1997, final rulemaking granting conditional approval of Maryland's enhanced I/M SIP submitted on July 10, 1995, as supplemented on March 27, 1996.

#### V. What Were the Requirements for Full Approval of the Maryland Program?

Approval of Maryland's I/M program SIP was subject to 15 conditions which are summarized in Table 1. These were also discussed in detail in our July 31, 1997 conditional approval.

#### VI. How Did Maryland Fulfill These Requirements for Full Approval?

On September 25, 1998, Maryland submitted revisions to its enhanced I/M SIP to EPA in order to correct conditions for full approval, as detailed in Table 1.

TABLE 1.—SATISFACTION OF THE CONDITIONS FOR FULL APPROVAL  
 [Major Conditions “ As Summarized from the July 31, 1997 Rule]

Requirement for Full Approval	How Maryland Satisfied the Requirement
(1) Submit fully adopted regulations for the enhanced I/M program .....	Maryland submitted copies of fully adopted enhanced I/M regulations, COMAR 26.11.14 “Vehicle Emissions Inspection Program”, adopted on November 21, 1997, and on September 16, 1998.
(2) Provide an opinion from the Attorney General’s Office or legislation that demonstrates that the legislative authority for the program expires no earlier than November 15, 2005.	Maryland submitted a Certification by the Maryland Attorney General’s Office that Maryland’s Transportation Article authorizes the Maryland I/M program for as long as is required by federal law.
(3) Submit a modeling demonstration of the program using appropriate assumptions for the years 2002 and 2005.	Maryland submitted an acceptable modeling demonstration of their program.
(4) Demonstrate that adequate funding and tools exist for the years 1997 and 1998 for running the program. This included information on the numbers of personnel dedicated to the I/M program areas and budget allocations for equipment resources.	Maryland submitted staffing and budget data for the years 1997 and 1998.
(5) Provide an explanation of how all vehicles in the I/M program will be identified Maryland provided information on how vehicles in the I/M program are identified.	Maryland provided information on how vehicles in the I/M program are identified. Maryland law requires residents residing in the program area to register these vehicles properly. This is enforced by checking registration information whenever a vehicle is stopped by police for any reason and by surveys of parked vehicles to identify vehicles with out-of-state tags that are operated routinely in or by de facto residents of the program area.
(6) Provide information on applicable Maryland law and regulations on how “engine switching is handled” and how vehicles without a certified configuration will be testing.	Maryland submitted a copy the Maryland law that prohibits any modification to the vehicle’s original emission control system Maryland submitted a procedures document which specifies that Maryland’s engine switch guidelines require that a switched engine must meet or exceed the requirements for the vehicles model year and class and that owners of vehicles with a non-certified engine configuration or replacement engine may request a one-time extension, which may not exceed one-year, to the emission testing requirements in order to bring the vehicle into compliance.
(7) Submit written specifications for gas cap testing .....	Maryland submitted written specifications for gas cap testing.
(8) Submit a description of Maryland’s practice of issuing short-term time extensions due to economic hardship and the time limit(s) for such exemptions.	Maryland submitted the procedures and documentation that adequately address the issuance of short-term time extensions due to economic hardship and the time limit for such exemptions.
(9) Submit documentation regarding: (a) aspects of the I/M program as applied to exemptions for residents out-of-state, to residents newly located in the I/M program area, and to require confirmation of exempt status, and (b) citation of owners for noncompliance with Maryland’s registration requirements and practices regarding impounding of vehicles.	Maryland submitted the procedures for handling exemptions for residents out-of-state, the procedures and documentation that adequately address residents newly located in The I/M program areas and that require verification of exempt status. Maryland submitted the procedures and documentation that adequately address citation of owners for noncompliance with Maryland’s registration requirements and practices regarding impounding of vehicles.
(10) Demonstrate that Maryland’s enforcement program oversight is quality controlled and quality assured.	Maryland submitted acceptable quality assurance oversight procedures and documentation.
(11) Provide a description of Maryland’s auditing program .....	Maryland submitted a description of Maryland’s auditing program.
(12) Submit documentation regarding the penalty schedule applicable to the I/M program contractor.	Maryland submitted the current penalty schedule for the I/M program contractor.
(13) Submit evidence that inspectors must be re-certified at least every two years or less.	Maryland submitted a procedures document that requires such recertification every 24 months.
(14) Submit documentation on how it investigates and responds to motorist complaints, and submit documentation relating to protection of whistle blowers.	Maryland submitted a procedures document that outlines the procedures used to investigate and respond to complaints Maryland submitted a copy of Maryland Code Title 5, subtitle 3 which provides for whistle blower protection.
(15) Start mandatory testing of all subject vehicles as soon as possible, or by November 15, 1997 at the latest.	On October 1, 1997 Maryland commenced implementation of its VEIP and required affected vehicles to pass I/M testing as a condition of eligibility for registration.

**VII. What is EPA Doing Regarding Vehicles at Federal Facilities?**

EPA is not requiring Maryland to implement section 40 CFR 51.356(a)(4) of the I/M rule which deals with federal installations within I/M areas at this time. The Department of Justice has recommended to EPA that this regulation be revised since it appears to grant states authority to regulate federal installations in circumstances where the federal government has not waived

sovereign immunity. Federally owned vehicles operated in Maryland are required to meet the same requirements as Maryland registered vehicles, but it would not be appropriate to require compliance with this regulation if it is not constitutionally authorized. EPA will be revising this provision in the future and will review state I/M SIPs with respect to this issue when this new rule is final. EPA is not approving or disapproving requirements which apply to federal facilities at this time.

**VIII. EPA Action**

EPA is converting its conditional approval of Maryland’s enhanced I/M program to a full approval the exception of the provisions regarding federal facilities. EPA is not approving or disapproving requirements which apply to federal facilities at this time. An extensive discussion of Maryland’s enhanced I/M program and our rationale for our approval action was provided in the previous final rule that

conditionally approved the enhanced I/M program (see 62 FR 40938 and 61 FR 56194). This action to convert our conditional approval to a full approval is being published without prior proposal because we view this as a noncontroversial amendment and because we anticipate no adverse comments. In a separate document in the "Proposed Rules" section of this **Federal Register** publication, we are proposing to convert our conditional approval of Maryland's enhanced I/M program SIP revision to a full approval if adverse comments are filed. This action will be effective without further notice unless we receive relevant adverse comment by November 29, 1999. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. Any parties interested in commenting must do so at this time. If no such comments are received by November 29, 1999, you are advised that this action will be effective on December 28, 1999.

## IX. Administrative Requirements

### A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

### B. Executive Orders on Federalism

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose

any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule. On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999),) which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 (52 FR 41685 (October 30, 1987)) on federalism still applies. This rule will not have a substantial direct effect on 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, as specified in Executive Order 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

### C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

### D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a

summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

### E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

### F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that

achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to convert our conditional approval of Maryland's enhanced I/M program to a full approval must be filed in the United States Court of Appeals for the appropriate circuit by December 28, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action converting our conditional approval of the Maryland enhanced I/M SIP to a full approval may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons,

Incorporation by reference, Intergovernmental relations, Ozone.

Dated: September 28, 1999.

**W. Michael McCabe,**

*Regional Administrator, Region III.*

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401 *et seq.*

#### Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(144) to read as follows:

#### § 52.1070 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(144) Revisions to the Maryland State Implementation Plan submitted by the Maryland Department of the Environment on July 10, 1995, March 27, 1996, and September 25, 1998 as supplemented on May 25, 1999:

(i) Incorporation by reference.

(A) Letter of July 10, 1995, from the Maryland Department of the Environment transmitting an Enhanced Vehicle Emissions Inspection Program.

(B) Regulations for the Vehicle Emissions Inspection Program COMAR 11.14.08. adopted by the Secretary of the Environment on August 1, 1994, effective January 2, 1995:

(1) COMAR 11.14.08.01 through COMAR 11.14.08.02, inclusive.

(2) COMAR 11.14.08.03A.

(3) COMAR 11.14.08.03A(1).

(4) COMAR 11.14.08.03A(2) except the word "federal," in the first line.

(5) COMAR 11.14.08.03B.

(6) COMAR 11.14.08.04.

(7) COMAR 11.14.08.05, section A.

(8) COMAR 11.14.08.05 sections B(1) through (7), inclusive.

(9) COMAR 11.14.08.05 sections C. through F., inclusive.

(10) COMAR 11.14.08.06 through COMAR 11.14.08.42, inclusive.

(C) Letter of March 27, 1996, from the Maryland Department of the Environment transmitting amendments to the Enhanced Vehicle Emissions Inspection Program.

(D) Letter of September 25, 1998, from the Maryland Department of the Environment transmitting amendments to the Enhanced Vehicle Emissions Inspection Program.

(E) The following revisions to the provisions of COMAR 11.14.08 adopted by the Secretary of the Environment on November 21, 1996, effective December 16, 1996:

(J) Amendments to COMAR

11.14.08.03B.

(2) The addition of a new COMAR 11.14.08.03C.

(3) Amendments to COMAR

11.14.08.05B(4).

(4) Amendments to COMAR

11.14.08.06D(7).

(5) Renumbering COMAR

11.14.08.09A to .09B, .09B to .09C, .09C to .09D and .09D to .09E, .09E to .09F, and .09F to .09G.

(6) The addition of a new COMAR

11.14.08.09A, A(1) and A(3).

(7) Amendments to COMAR

11.14.08.09B(1), B(1)(a), B(1)(b), B(2), B(3), B(3)(a), B(3)(b) and B(4).

(8) Amendments to COMAR

11.14.08.09E.

(9) The addition of a new COMAR

11.14.08.09-1 except the phrase "and, to the extent allowed by federal law, a

vehicle owned by the federal

government" in section COMAR

11.14.08.09-1A.

(10) Renumbering COMAR

11.14.08.06B(3) to B(4), B(4) to B(5), B(5) to B(6), and B(6) to B(7).

(11) Creation of a new COMAR

11.14.08.06B(3) from the last two sentences of COMAR 11.14.08.06B(2).

(12) Amendments to COMAR

11.14.08.10B(3).

(13) Amendments to COMAR

11.14.08.10C.

(14) Deletion of COMAR

11.14.08.10C(1), C(1)(a) through C(1)(c), inclusive, and C(2).

(15) Renumbering COMAR

11.14.08.10C(2)(a) to C(1), C(2)(b) to

C(2), C(2)(c) to C(3), C(2)(d) to C(4),

C(2)(e) to C(5), and C(2)(f) to C(6).

(16) The addition of a new COMAR

11.14.08.11-1 except the phrase "and, to the extent allowed by federal law, a

vehicle owned by the federal

government" in section COMAR

11.14.08.11-1A.

(17) Amendments to COMAR

11.14.08.12A.

(18) Deletion of COMAR

11.14.08.12A(1) through .12A(6), inclusive.

(19) Amendments to COMAR

11.14.08.12B(1).

(20) Amendments to COMAR

11.14.08.29A(2).

(21) Amendments to COMAR

11.14.08.30D(2).

(22) Amendments to COMAR

11.14.08.32A.

(23) Amendments to COMAR

11.14.08.32B(5).

(24) Amendments to COMAR

11.14.08.42.

(F) The following revisions to the provisions of COMAR 11.14.08 adopted by the Secretary of the Environment on September 16, 1998, effective October 19, 1998:

(J) Amendments to COMAR  
11.14.08.02B(40), B(40)(a), and B(40)(b).  
(2) Deletion of COMAR 11.14.08.03C.  
(3) Addition of a new COMAR  
11.14.08.03C and .03D.  
(4) Amendments to COMAR  
11.14.08.06A(2).  
(5) Amendments to COMAR  
11.14.08.06A(3)(k), (p), (q) and (r).  
(6) Renumbering COMAR  
11.14.08.06A(3)(s) and (t) to COMAR  
11.14.08.06A(3)(t) and (u), respectively.  
(7) The addition of a new COMAR  
11.14.08.06A(3)(s).  
(8) Amendment of COMAR  
11.14.08.06D(7).  
(9) Addition of a new COMAR  
11.14.08.07C.  
(10) Amendments to COMAR  
11.14.08.09A.  
(11) Deletion of COMAR  
11.14.08.09A(1) through .09A(3),  
inclusive.  
(12) Addition of a new COMAR  
11.14.08.09A(1).  
(13) Addition of a new COMAR  
11.14.08.09A(2), A(2)(a) and A(2)(b).  
(14) Amendments to COMAR  
11.14.08.09B, B(1), B(1)(a) and B(1)(a)(i).  
(15) Amendments to COMAR  
11.14.08.09B(1)(b).  
(16) Amendments to COMAR  
11.14.08.09B(2) and B(2)(a).  
(17) Amendments to COMAR  
11.14.08.09B(3).  
(18) Amendments to COMAR  
11.14.08.09B(3)(a) and (b).  
(19) Amendments to COMAR  
11.14.08.09A(4).  
(20) Amendments to COMAR  
11.14.08.09A(4)(a).  
(21) Renumbering of COMAR  
11.14.08.09E to .09F, .09F to .09G, and  
.09G to .09H.  
(22) Reservation with notes of  
COMAR 11.14.08.09C and .09D,  
(23) Addition with a note of a new  
reserved COMAR 11.14.08.09E.  
(24) Amendments to COMAR  
11.14.08.09F and .09G.  
(25) Amendments to COMAR  
11.14.08.10B(1)(c) and B(1)(d).  
(26) Amendments to COMAR  
11.14.08.10C(6)(b).  
(27) Renumbering of COMAR  
11.14.08.11 to COMAR 11.14.08.11-1.  
(28) Addition of a new COMAR  
11.14.08.11.  
(29) Amendments to COMAR  
11.14.08.11-1, .11-1A(3), .11-1A(4),  
11-1B, 11-1B(4) and 11-1B(5).  
(30) Reservation with a note of  
COMAR 11.14.08.11-1C.  
(31) Amendments to COMAR  
11.14.08.11-1D(1) and 11-1D(2).  
(32) Amendment to COMAR  
11.14.08.12.  
(33) Renumbering of COMAR  
11.14.08.12B to .12C.

(34) Reservation with a note of  
COMAR 11.14.08.12A.  
(35) Addition a new COMAR  
11.14.08.12B and .12B(1).  
(36) Addition with a note of a new  
reserved COMAR 11.14.08.12B(2).  
(37) Amendments to COMAR  
11.14.08.12C(1) and C(3).  
(38) Amendments to COMAR  
11.14.08.15C(7)(c).  
(39) Amendments to COMAR  
11.14.08.16.  
(40) Renumbering COMAR  
11.14.08.16C to COMAR 11.14.08.16D.  
(41) Reservation with a note of  
COMAR 11.14.08.16A and .16B.  
(42) Addition with a note of a new  
reserved COMAR 11.14.08.16C.  
(43) Amendments to COMAR  
11.14.08.16D.  
(44) Renumbering COMAR  
11.14.08.22C to COMAR 11.14.08.22D.  
(45) Reservation with a note of  
COMAR 11.14.08.22A and .22B.  
(46) Addition with a note of a new  
reserved COMAR 11.14.08.22C.  
(47) Amendments to COMAR  
11.14.08.27C(2).  
(48) The deletion of COMAR  
11.14.08.27C(3).  
(49) Renumbering COMAR  
11.14.08.27C(4) to COMAR  
11.14.08.27C(3).  
(50) Amendments to COMAR  
11.14.08.28A.  
(51) Amendments to COMAR  
11.14.08.32A.  
(52) Amendments to COMAR  
11.14.08.32B(5).  
(53) Amendments to COMAR  
11.14.08.42.  
(G) Letter of May 25, 1999, from the  
Maryland Department of the  
Environment transmitting amendments  
to the Enhanced Vehicle Emissions  
Inspection Program.  
(ii) Additional material.  
(A) Remainder of the July 10, 1995,  
submittal;  
(B) Remainder of March 27, 1996,  
submittal;  
(C) Remainder of September 25, 1998,  
submittal; and  
(D) Remainder of May 25, 1999,  
submittal.

#### § 52.1072 [Amended]

3. In § 52.1072, paragraph (a) is  
removed and reserved.

[FR Doc. 99-27197 Filed 10-28-99; 8:45 am]  
BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MN42-01-7267; FRL-6465-3]

### Approval and Promulgation of State Implementation Plans; Minnesota

AGENCY: Environmental Protection  
Agency.

ACTION: Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving an amendment to the carbon monoxide (CO) State Implementation Plan (SIP) for Minnesota. Minnesota submitted this amendment to the SIP to the EPA in five separate submittals, dated November 14, 1995, July 8, 1996, September 24, 1996, June 30, 1999, and September 1, 1999. EPA proposed this action on August 6, 1999 (64 FR 42888). No adverse comments were received on EPA's proposed approval.

The submittals include revisions to the motor vehicle inspection and maintenance (I/M) program currently in operation in the Minneapolis/St. Paul CO nonattainment area. The revisions make changes to the State's I/M program, including model year coverage, vehicle waiver provisions, and other program deficiencies identified by the EPA. The revision also contains provisions for the discontinuation of the I/M program if EPA redesignates the area to attainment for CO.

**DATES:** This final rule is effective on November 29, 1999.

**ADDRESSES:** Copies of the revision requests are available for inspection at the following address: United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone John Mooney at 312-886-6043 before visiting the Region 5 Office.)

**FOR FURTHER INFORMATION CONTACT:** John Mooney, Regulation Development Section (AR-18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6043.

#### I. SUPPLEMENTARY INFORMATION

##### Overview

The Minnesota Pollution Control Agency (MPCA) submitted its initial I/M submittals to EPA in November and December of 1993. As described in EPA's proposed approval action (64 FR 42888), the EPA conditionally approved Minnesota's initial submittal on October

13, 1994 (59 FR 51860). Subsequently, Minnesota submitted to the EPA five additional revisions to the State's I/M program. The changes proposed since 1993 reflect actions taken by the State Legislature pertaining to model year coverage, waiver provisions, and other program changes required by EPA's conditional approval.

The information in this section is organized as follows:

A. What SIP amendments is EPA approving?

B. Who sent comments on EPA's proposed action?

C. What happens if the Minneapolis/St. Paul area is redesignated to attainment for CO?

*A. What SIP Amendments is EPA Approving?*

The following table outlines the revisions submitted by the State to EPA subsequent to the State's initial I/M submittal in 1993. The State's most recent submittal identifies those provisions of their earlier submittals that address EPA's conditional approval. In this submittal, the State also withdraws Part 7023.1010, Subp. 35(B), Part 7023.1030, Subp. 11(B, C), and Part 7023.1055, Subp. 1(E)(2) of the Minnesota Rules. The State is withdrawing these provisions because they have been superceded by recent amendments to the State I/M program. EPA is approving the relevant portions of each of these submittals as requested by the State on June 30, 1999.

Date of submittal to EPA	Items received
November 14, 1995.	Basic I/M performance standard modeling. I/M legislation with changes to model year coverage. Response to EPA's October 13, 1994 conditional approval (59 FR 51860).
July 8, 1996 ... September 24, 1996.	Notification of public hearing. Administrative materials for the November 14, 1995, and July 6, 1996 submittals, including proof of public hearing.
June 30, 1999	Minnesota Statute Sections 116.60 to 116.65 as amended by the 1999 Minnesota State Legislature. Letter from the Minnesota Attorney General detailing the prevalence of statute over rules.

Date of submittal to EPA	Items received
September 1, 1999.	Letter from the Minnesota Pollution Control Agency (MPCA) requesting approval of I/M legislation, certain portions of Minnesota's I/M regulation, and performance standard modeling from earlier submittals. This letter also withdraws certain obsolete sections of the State's earlier submittals. Notice of public hearing on June 30, 1999 submittal.

As requested by the State, the EPA is proposing to approve: Minnesota Statutes Sections 116.60 to 116.65; Minnesota Rules 7023.1010-7023.1105 (except Part 7023.1010, Subp. 35(B), Part 7023.1030, Subp. 11(B, C), and Part 7023.1055, Subp. 1(E)(2)); and technical materials showing that the program meets EPA's basic I/M performance standard, as well as the conditions of EPA's October 13, 1994 conditional approval.

*B. Who Sent Comments on EPA's Proposed Action?*

The MPCA submitted the only comments on EPA's proposal in a letter dated September 1, 1999. The MPCA's letter included the required notice of public hearing that completed the State's SIP submittal. The EPA deemed the State's submittal complete in a letter dated October 7, 1999. As a result, the State's I/M submittal meets all approval criteria. There were no other comments on EPA's proposed approval of Minnesota's I/M SIP.

*C. What Happens if the Minneapolis/St. Paul Area Is Redesignated to Attainment for CO?*

As noted in EPA's proposed approval of Minnesota's I/M SIP, the MPCA has performed computer photochemical modeling which shows that in the future the I/M program will not be necessary to attain or maintain the National Ambient Air Quality Standard (NAAQS) for CO. In its redesignation request, the State also included the I/M program as a contingency measure if the program is subsequently needed to correct a violation of the CO NAAQS. The EPA has reviewed the modeling submitted with the redesignation and has found that it meets EPA's technical modeling criteria. As a result, once the Minneapolis/St. Paul CO nonattainment area is redesignated to attainment, the State may discontinue operation of its I/M program. If EPA does not approve the redesignation request for the area, I/

M will remain as an applicable requirement and EPA will work with the State to ensure that all nonattainment control programs are implemented in accordance with the requirements of the Act.

**II. Administrative Requirements**

*A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

*B. Executive Orders on Federalism*

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132 (64 FR 43255 (August 10, 1999)) which will take effect on November 2, 1999. In the interim, the current Executive Order 12612, (52 FR 41685 (October 30, 1987)) on federalism still applies. This rule will not have a substantial direct effect on 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, as specified in Executive Order 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

### C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

### D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

### E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not

have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

### F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

### G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small

Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

### H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

### I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 28, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Carbon monoxide.

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

Dated: October 21, 1999.

**David A. Ullrich,**

*Acting Regional Administrator, Region 5.*

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

**PART 52—[AMENDED]**

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

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart Y—Minnesota**

2. Section 52.1220 is amended by adding paragraph (c)(51) to read as follows:

**§ 52.1220 Identification of Plan.**

\* \* \* \* \*

(c) \* \* \*  
 (51) On November 14, 1995, July 8, 1996, September 24, 1996, June 30, 1999, and September 1, 1999, the State of Minnesota submitted revisions to its State Implementation Plan for carbon monoxide regarding the implementation of the motor vehicle inspection and maintenance program in the Minneapolis/St. Paul carbon monoxide nonattainment area. This plan approves Minnesota Statutes Sections 116.60 to 116.65 and Minnesota Rules 7023.1010-7023.1105. This plan also removes Minnesota Rules Part 7023.1010, Subp. 35(B), Part 7023.1030, Subp. 11(B,C),

and Part 7023.1055, Subp. 1 (E)(2) from the SIP.

- (i) Incorporation by reference.
  - (A) Minnesota Statutes Sections 116.60 to 116.65;
  - (B) Minnesota Rules 7023.1010–7023.1105 (except Part 7023.1010, Subp. 35(B), Part 7023.1030, Subp. 11(B,C), and Part 7023.1055, Subp. 1 (E)(2)).

3. In § 52.1222 the table is amended by revising the entry for motor vehicles to read as follows:

**§ 52.1222 EPA-approved Minnesota State regulations.**

\* \* \* \* \*

TABLE 52.1222.—EPA APPROVED REGULATIONS:

Rule description	Minnesota rule numbers	Contents of SIP	Effective date	Relevant ¶s in § 52.1220 <sup>1</sup>
Motor Vehicles.	7023.1010–7023.1105	All rules except Part 7023.1010, Subp. 35(B), Part 7023.1030, Subp. 11(B,C), and Part 7023.1055, Subp. 1 (E)(2).	November 29, 1999.	c51

<sup>1</sup> Recodifications affect essentially all rules but are shown only for substantially revised rules.  
<sup>2</sup> "Existing" sources are sources other than those subject to a new source performance standard.

[FR Doc. 99–28309 Filed 10–28–99; 8:45 am]  
 BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[MN58–01–7283; FRL–6465–4]

**Approval and Promulgation of State Implementation Plans; Minnesota**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving the State of Minnesota's request to redesignate the Minneapolis/St. Paul area, which includes Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Washington, and Wright Counties to attainment for carbon monoxide (CO). The EPA is also approving the corresponding 175A maintenance plan associated with the redesignation request as a revision to the Minnesota State Implementation Plan (SIP) for attaining and maintaining the National Ambient Air Quality Standard (NAAQS) for CO. The EPA proposed to approve this plan on May 13, 1999 (64 FR 25855).

**DATES:** This rule will be effective November 29, 1999.  
**ADDRESSES:** Copies of the SIP revision, public comments and EPA's responses are available for inspection at the following address: Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Michael Leslie at (312) 353–6680 before visiting the Region 5 Office.)  
 A copy of these SIP revisions are available for inspection at the following location: Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, (202) 260–7548.

**FOR FURTHER INFORMATION CONTACT:** Michael G. Leslie, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6680.

**SUPPLEMENTARY INFORMATION:**

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**I. Background**

**A. Minneapolis/St. Paul CO Nonattainment Area**

On March 3, 1978 (43 FR 8902), pursuant to section 107 of the Clean Air Act (Act), EPA designated the Minneapolis/St. Paul area as nonattainment for CO. Under the 1990 amendments to the Act, the EPA is authorized to designate nonattainment areas and to classify them according to degree of severity. Therefore, on November 16, 1991 (56 FR 56694), the EPA designated the Minneapolis/St. Paul area moderate CO nonattainment.

### B. Redesignation Request

On March 23, 1998, pursuant to Section 107(d)(3) of the Act, the State of Minnesota requested the redesignation of the Minneapolis/St. Paul area to attainment with respect to the CO NAAQS. In order to qualify for redesignation, an area must first demonstrate that monitored air quality levels are within the applicable NAAQS. Since attaining the standard in 1995 and 1996, air quality monitors in the Minneapolis/St. Paul area continue to show attainment of the CO NAAQS. Therefore, pursuant to section 107(d) of the Act, the area is eligible for redesignation from nonattainment to attainment. In order to ensure continued attainment of the CO standard, Minnesota also submitted a maintenance plan under section 175A of the Act. Once redesignation is approved, the section 175A maintenance plan will become a federally enforceable part of the SIP for the Minneapolis/St. Paul area.

### II. Public Comments

On May 13, 1999, the EPA proposed approval of a revision to the Minnesota SIP for attainment and maintenance for the NAAQS for CO (64 FR 25855) and opened a 30 day comment period on the proposed action. During the comment period, the Izaak Walton League of America, Envirotest Corporation, and Envirotest Corporation's consultant ENVIRON submitted adverse comments on EPA's proposed action. These comments are summarized below, along with EPA's response.

#### A. Comments From the Izaak Walton League of America

*Comment:* Discontinuance of the Vehicle Inspection/Maintenance (I/M) Program Leaves the State without a Fully-Approved SIP for the Area.

In the proposal, EPA stated that the Agency "will not finalize its approval of the redesignation until such time that EPA approves the state's I/M SIP for the Minneapolis St. Paul area." 64 FR 25855, 25858 (May 13, 1999). But the Legislature has subsequently discontinued the I/M program. Clearly, EPA cannot finalize this proposed redesignation without a fully approved SIP in place. 42 U.S.C. § 7407(d)(3)(E)(ii). Just as clearly, EPA has stated that a fully approved SIP sufficient to justify a redesignation to attainment for CO must include an EPA-approved vehicle I/M program.

*EPA Response:* As discussed in the May 13, 1999 proposal, the SIP for the Minneapolis/St. Paul area must be fully approved in order to be redesignated to

attainment. At the time of proposal, the EPA had approved every required element into the SIP, except for the I/M program. As noted in EPA's proposed action on the redesignation request, final approval of the redesignation request is contingent on the approval of the I/M program. EPA proposed full approval of the I/M plan on August 6, 1999 (64 FR 42888) and is finalizing its approval elsewhere in today's **Federal Register**.

Furthermore, EPA policy contained in a September 4, 1992, memorandum from John Calcagni, Director of the Air Quality Management Division entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" (Calcagni memo) notes that "the State will be expected to maintain its implemented control strategy despite redesignation to attainment, unless such measures are shown to be unnecessary for maintenance." Additional guidance on this issue is contained in a memorandum dated September 17, 1993, from Michael Shapiro, Acting Assistant Administrator for Air and Radiation entitled, "State Implementation Plan Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide National Ambient Air Quality Standards on or after November 15, 1992" (Shapiro memo). This memo states:

As a general policy, a State may not relax the adopted and implemented SIP upon the area's redesignation to attainment. States should continue to implement existing control strategies in order to maintain the standard. However, section 175A recognizes that States may be able to move SIP measures to the contingency plan upon redesignation if the State can adequately demonstrate that such action will not interfere with maintenance of the standard. The type of demonstration necessary is dependent upon the pollutant for which the area has been redesignated to attainment.

In order to make such a demonstration for an area redesignated to attainment for CO, EPA believes that the State could submit a revised control strategy demonstration showing that the measure is not necessary to maintain the standard.

In its redesignation request, Minnesota shows through an emissions analysis, as well as through microscale modeling, that the area can maintain the CO NAAQS without the implementation of the I/M program. This analysis is described in more detail in EPA's proposed approval of the State's I/M SIP published on August 6, 1999 (64 FR 42888). The EPA has reviewed the State's emissions inventory and modeling analyses and finds that they meet applicable guidance and requirements. Therefore, the State has

made the necessary demonstration that the I/M program is not necessary to maintain the CO NAAQS. In accordance with this policy, the State must include the program as a contingency measure in the maintenance plan for the redesignated area, which it has done.

Today's approval of Minnesota's I/M SIP applies to the program while it remains in effect, while recognizing the potential redesignation of the Minneapolis/St. Paul area to attainment. This action also approves the State's plan to discontinue the program after the area is redesignated to attainment and move it to the contingency measures portion of the maintenance plan for the area in accordance with the policy noted above and the requirements of the Act. The State has made the necessary corrections to its I/M plan, and has also made the appropriate demonstrations that the program is not necessary for attainment. Therefore, the I/M plan has been fully approved, fulfilling the requirement that the area have a fully approved SIP in order to be redesignated to attainment.

*Comment:* Minnesota has not demonstrated that the improvements to CO are due to permanent and enforceable emissions decreases.

EPA also must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions before an area can be redesignated. 42 U.S.C. 7407(d)(3)(E)(iii). The State has based its request on statements that this element has been met through the implementation of federally enforceable FMVCP, oxygenated fuel and vehicle I/M reductions. But as noted above, the vehicle I/M program will no longer be implemented.

*EPA response:* Section 107(d)(3)(E)(iii) requires that, for the EPA to approve a redesignation, it must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions. The Calcagni memo clarifies this requirement by stating that "attainment resulting from temporary reductions in emission rates (e.g., reduced production or shutdown due to temporary adverse economic conditions) or unusually favorable meteorology would not qualify as an air quality improvement due to permanent and enforceable emission reductions." As discussed in the May 13, 1999 **Federal Register** notice, the Minneapolis/St. Paul area has reasonably demonstrated that permanent and enforceable emission reductions are responsible for the recent improvement in air quality. This demonstration was accomplished through an estimate of the reductions

(from a nonattainment year, 1990 to an attainment year, 1996) of CO achieved primarily through implementation of the Federal Motor Vehicle Control Program (FMVCP), oxygenated gasoline and the I/M program, in line with the Calcagni memo. However, since the I/M program may be discontinued upon redesignation, the EPA has analyzed the State's emissions data to ensure that the area can meet the permanent and enforceable test without counting the I/M program. This analysis indicates that the permanent and enforceable reductions from FMVCP and the oxygenated gasoline programs are large enough to meet the permanent and enforceable test without reductions from I/M. The State, therefore, adequately demonstrated that the improvement in air quality is due to permanent and enforceable emission reductions.

The commenter notes that the I/M program will be discontinued in future years. A future year analysis is necessary as part of an approvable maintenance plan under sections 107(d)(3)(E)(iv) and 175(A) of the Act. In general, maintenance plans are designed to show that an area will continue to remain in attainment of the applicable NAAQS for a period of at least ten years beyond approval of a redesignation request. As noted in the Calcagni memo, States must make a maintenance demonstration, either through an emissions analysis, or through computer modeling, that future year emissions levels will not cause a violation of the NAAQS. This demonstration should include an analysis of future growth in industry and population, increases in the number of vehicle miles traveled, and other changes that would affect air quality levels in the area, such as the discontinuation of a required control program. The State of Minnesota has made this demonstration through both the emissions analysis and modeling methods in accordance with EPA's emissions inventory and modeling guidance. The State's Technical Support Document (TSD) for the redesignation request contains an analysis of emissions levels with and without the I/M program, and has shown that the CO standard can be maintained without I/M in the future. A more detailed discussion of the I/M demonstration is contained in EPA's proposed approval of the I/M SIP, published on August 6, 1999 (64 FR 42888).

*Comment:* Minnesota does not have an approvable maintenance plan for the area.

Minnesota also must submit, and EPA must approve, a maintenance plan for the area. 42 U.S.C. 7407(d)(3)(E)(iv). EPA has stated that an approvable

maintenance plan for the area must include the state's continuance of "all the control measures contained in the SIP prior to redesignation," and contingency measures in the event of a future CO problem. 64 FR 25855, 25859 (May 13, 1999). Among those contingency measures is a basic vehicle I/M program. Id. at 25860-61. But EPA seems unaware that the Minnesota Legislature has invalidated such programs.

*EPA response:* As noted in the Calcagni memo "the State will be expected to maintain its implemented control strategy despite redesignation to attainment, unless such measures are shown to be unnecessary for maintenance." Additional guidance on moving implemented programs to the contingency plan portion of the maintenance plan is contained in the Shapiro memo. As noted above, this memo allows for an area to discontinue a required measure and move it to the contingency plan if the State is able to make the appropriate demonstrations. Minnesota has submitted a modeling-based revised control strategy demonstration showing that the area can maintain the CO NAAQS without the implementation of the I/M program. This analysis is described in more detail in EPA's proposed approval of the State's I/M SIP published on August 6, 1999 (64 FR 42888). The EPA has reviewed the State's emissions inventory and modeling analyses and finds that they meet applicable guidance and requirements. Therefore, the State has made the necessary demonstration that the I/M program is not necessary to maintain the CO NAAQS in accordance with the Shapiro memo. As required, the State has included the program as a contingency measure in the maintenance plan for the redesignated area. The commenter is incorrect in stating that the "Minnesota Legislature has invalidated such programs," since the I/M program continues to operate and is clearly identified as a contingency measure in the State's maintenance plan.

*Comment:* The redesignation request, coupled with the vehicle I/M discontinuance, means that all requirements of section 110 of the Act are not met.

In order for an area to be redesignated to attainment, the state must show that it has met "all requirements applicable to the area under Section 110 of this title and part D of this subchapter." 42 U.S.C. 7407(d)(3)(E)(v). We read this as requiring the state to demonstrate and the Agency to consider and determine whether plans for implementation, maintenance and enforcement of all

NAAQS, promulgated or revised, would continue in the event of the redesignation. This proposal, however, accompanied as it will be by the discontinuance of the vehicle I/M program, will undoubtedly result in increased oxides of nitrogen (NO<sub>x</sub>) emissions (as well as increased CO). NO<sub>x</sub> are precursors, along with volatile organic compounds (VOCs), of ozone smog. Automobiles and other vehicles emit NO<sub>x</sub> and VOCs, as well as CO. When the vehicle I/M program is discontinued, we believe that automobiles will pollute in an unchecked fashion in Minnesota, causing increases in NO<sub>x</sub> and VOC emissions. Increased NO<sub>x</sub> emissions, however, and the resulting implications for the area's and state's ability to meet the 1-hour and 8-hour NAAQS for ozone have not been assessed as part of this redesignation. We believe that the statute requires EPA to make such an analysis where it is aware that there is a risk that any air quality problem may ensue. Indeed the Agency has noted that contingency plans must be in place "to assure prompt correction of any air quality problems." 64 FR 25855, 25859 (May 13, 1999). However the proposed redesignation does not include analysis of the potential effects on the area's ozone status to be expected from the CO redesignation and subsequent lifting of the vehicle I/M program. We believe this makes the redesignation request unapprovable.

*EPA response:* As noted above, the State's I/M SIP is approved elsewhere in today's **Federal Register**. As a result, the area has met all requirements of section 110 and Part D of the Act. At present, the I/M program remains in operation and the State has made the required demonstrations to discontinue the program after redesignation to attainment for CO.

Under the sections 107 and 175A of the Act, the State is only required to address the pollutant for which the area was violating and demonstrate that there will not be subsequent violations of the applicable NAAQS following redesignation. The State has performed modeling that shows continued attainment of the CO standard, and projected CO emissions through the maintenance period which show decreases from the attainment level. Notwithstanding the commenter's interpretation of EPA's proposed action, which stated that "maintenance plans must contain contingency measures, with schedules to assure prompt correction of any air quality problems" (64 FR 25859), section 175A(d) of the Act specifies that "each plan revision submitted under this section shall

contain such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area." Clearly, this language indicates that contingency plans need only include measures for the pollutant for which the area is being redesignated.

Section 110(l) of the Act notes that "the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of this Act." While the I/M program was put into place for purposes of CO, the issue of whether the discontinuation of the I/M program will interfere with the area's ability to meet other applicable NAAQS must be addressed. As noted above, I/M programs do have additional air quality benefits in that they reduce emissions of VOC and NO<sub>x</sub>, both precursors of ground level ozone.

Historically, however, the Minneapolis/St. Paul area has never experienced a ground level ozone nonattainment problem. The EPA has reviewed monitoring data for the one-hour ozone levels recorded since 1980, showing attainment of the one-hour NAAQS. In fact, monitors in the area have not shown a single exceedance of the one-hour ozone NAAQS since 1990. The one-hour ozone NAAQS that was established in 1979 allows three exceedances of the standard at any monitor over a three year period before an area is considered to violate the standard. In no year since 1980 have more than two exceedances occurred, including 1988, a year known for its high ozone levels around the country. In 1980, by far the worst year on record in the Minneapolis/St. Paul area, three monitors in the area recorded only five exceedances of the one-hour ozone standard. Even then, the three year values at these monitors did not show a violation of the NAAQS. Since the last exceedance in 1990, ozone levels measured in the Minneapolis/St. Paul area have continued to drop off and remain well below the health based one-hour ozone standard. The current ozone design value, the measure that EPA uses to assess the nonattainment status of an area, in Minneapolis/St. Paul is 24 percent below the one-hour ozone NAAQS with a value of .091 ppm compared to the .120 ppm standard.

In 1997, the EPA established a new, more stringent eight-hour ozone standard based on more recent health effects information. Since that time, EPA has been developing guidance and

regulations to establish compliance strategies for the new standard. As part of this effort, the EPA will be establishing new nonattainment areas for the eight-hour standard in July 2000. In preparation for this activity, the EPA has analyzed eight-hour ozone data for areas around the country to see which areas have monitored levels over the new standard. The analysis that was done for Minnesota concludes that since 1993, the first year that eight-hour ozone information is available, current eight-hour concentrations are well below the health-based NAAQS. Unlike the one-hour standard which is exceedance based, allowing three exceedances over a three year period, the eight-hour standard looks at the average of the fourth highest level over a three year period. Since 1993, no monitor in the area has recorded a fourth high over the eight-hour standard at any time. In order to be considered in violation of the NAAQS, the average of the fourth high over a three year period would need to be over the standard. EPA's analysis shows that monitors in the Minneapolis/St. Paul area are well below these levels, and does not expect the area to experience a nonattainment problem in the future.

Much of the improvement in ozone levels nationwide has been attributed to the reduction in emissions from the automobile. The EPA continues to establish more stringent motor vehicle emissions standards at the national level and emissions from the automobile continue to drop dramatically. This, along with other control programs, has brought many areas into attainment with the one-hour ozone NAAQS without implementation of I/M programs. The ozone levels recorded in Minneapolis/St. Paul are well below levels seen in areas that have been successfully redesignated. Since the area has never experienced an exceedance of the one-hour ozone standard, continues to show low eight-hour ozone values, and automobile emissions continue to decline overall, the EPA has no reason to believe that any marginal increase in VOC and NO<sub>x</sub> emissions resulting from the shutdown of the I/M program will interfere with the area's ability to meet either the one-hour or the eight-hour ozone NAAQS standard.

#### *B. Comments from Envirotest Corporation*

*Comment:* We are concerned with the disposition of a series of CO violations that took place in September 1998. According to the EPA Aerometric Information Retrieval System (AIRS) web page (<http://www.epa.gov/airs/>

[nonattn.html](#)) Minneapolis had experienced violations of the NAAQS for CO. We learned that EPA allowed MPCA to erase these violations. It is our understanding that the MPCA was successful in getting these violations erased from the database because the problem was explained to be an equipment malfunction, yet that same piece of equipment is still in place and there were no repairs made to it! This seems odd to us. It appears that the monitoring system is used as a measure of air quality until such time as the air quality levels are exceeded.

*EPA response:* The EPA retrieved the air quality data for the 1997 and 1998 CO season from AIRS. The data illustrates that all the monitors in the area continue to demonstrate attainment of the CO NAAQS.

On September 26-28, 1998, a downtown Minneapolis, MN CO monitor (27-053-0954), located at 528 Hennepin Avenue, measured three periods of high concentrations. In a February 26, 1999 letter, the MPCA requested EPA concurrence on the removal of the September 26-28, 1998 CO monitoring data from AIRS for this site. MPCA prepared a report on an investigation into the validity of this data. This report concluded that this data is the result of equipment malfunction, most likely due to thunderstorm activity in the area.

The MPCA monitoring network was granted approval in November of 1998. On December 29 and 30, 1998, EPA-Region 5 Air Monitoring Section staff performed a Technical Systems Audit (TSA) on the Minnesota monitoring network. The TSA concluded that there are no deficiencies in the monitoring network. The Air Monitoring Section further documented information on the CO episode in a memorandum entitled "Minnesota Carbon Monoxide Episode," dated February 26, 1999. The MPCA investigation coupled with the TSA and additional information was used to make a decision on the validity of the abnormally high CO monitoring data. On March 2, 1999, USEPA concurred on the MPCA request to withdraw the erroneous data from AIRS. The likely malfunction identified in the State's report is uncommon but has been seen in other areas. Malfunctions of this type do not typically require replacement of the monitor, and the EPA believes that the State has acted appropriately to ensure that this monitoring site records accurate data. The EPA has reviewed the monitoring quality assurance procedures present in the Minneapolis/St. Paul area and finds that they meet the requirements of 40 CFR 51.110(k).

C. Comments From ENVIRON Corporation

i. Impact of Discontinuing I/M Program on Ambient CO Concentrations

*Comment:* VMT growth factors used to estimate future year mobile source CO emissions appear to exhibit anomalous behavior within individual areas, with rates of growth varying widely from one five year period to the next and from one area to the next. For example, VMT growth rates for the St. Paul Central Business district alternate between positive and negative for each successive time interval and these rates bear no apparent relationship to the rates for any other area (most of which exhibit their own fluctuating and highly unusual growth rates). Emission projections based on such anomalous growth rates are highly suspect.

*EPA response:* The Metropolitan Council, the Metropolitan Planning Organization for the Minneapolis/St. Paul area, provides the VMT growth factors used to estimate future VMT. These growth rates are consistent with the 2020 Regional Transportation Plan for the area. On November 25, 1997, the EPA made a determination that this plan was adequate for transportation planning purposes. This information represents the best available forecast of on-road travel, and has been developed in accordance with EPA and Department of Transportation guidance. The EPA believes that these estimates are appropriate for use in the State's maintenance projections.

*Comment:* CO dispersion modeling methods used by the MPCA to estimate future year CO concentrations are not consistent with EPA guidelines. The deviation from guideline procedures affected the model results in at least two ways:

1. A Gaussian dispersion model (CAL3QHC) was used to estimate peak concentrations around ten major intersections in the nonattainment area. This model only estimates the contribution of the specific intersection being modeled to the total CO concentration; the urban background concentration must be added to the model predictions. Current state-of-the-art procedures rely on an urban-wide grid model such as the Urban Airshed Model (UAM) for estimating this urban background concentration under current and future emission conditions. These models are able to account for the fact that the appropriate "background" concentration may vary from one intersection to the next based on the distribution of surrounding sources and prevailing meteorological conditions. This is the EPA guideline procedure for

preparation of CO State Implementation Plans (SIPs) and would therefore be the most appropriate procedure for use in a CO redesignation request. Despite this, the TSD did not include a UAM analysis and instead used a very limited amount of ambient data from a single monitoring site to estimate the background concentration for each intersection. No justification is given in the TSD for not following the SIP guideline procedure. Projected background levels given in the TSD were based on the anomalous regional VMT growth projections noted above. As the individual region-type growth factors are suspect (see above), the future-year background concentrations are equally suspect. For example, this projection procedure predicts that, by 2018, the highest background concentrations (by a significant margin) will be in the rural areas and the lowest will be in the Minneapolis and St. Paul CBDs. This makes no sense. Furthermore, according to the SAI report, no allowance was made for the expected growth in non-road mobile and stationary sources. This is significant as the area and non-road mobile emissions are projected to increase by 2018 as shown in Table 3-1 of the TSD and the fraction of total emissions contributed by these sources is also projected to increase as shown in Figure 3-1 of the TSD.

2. Dispersion modeling was based on a single year of meteorological data. This represents a significant departure from the EPA guidelines which require the use of at least five years of meteorological data so as to maximize the opportunity to simulate the worst-case conditions that can lead to CO exceedances. Additional years of meteorological data are readily available for the study area from EPA and from the National Climatic Data Center and should be used. It should also be noted that the TSD relies on meteorological data collected at the Minneapolis/St. Paul International Airport which is located a considerable distance from most of the modeled intersections. These data may therefore not be representative of actual conditions at the intersections.

*EPA response:* The Calcagni memo states that areas may assess areawide maintenance through emissions projections, demonstrating that emissions do not increase from the attainment year, or through areawide modeling such as UAM. The State utilized the emissions projection method and an intersection "hot-spot" analysis to show that emissions levels will be below the attainment level, and the CO concentrations at the selected

intersections. The Calcagni memo notes that hot-spot modeling is EPA's preferred approach for CO demonstrations. The CAL3QHC model is EPA's approved model for performing CO hot-spot analysis. The EPA believes that the States analysis is appropriate and meets redesignation and modeling criteria.

The State's TSD describes the meteorological inputs used in the first screen microscale analysis. The State assumed worst case meteorological conditions for wind speed, wind direction, stability class, and mixing height as defined by the EPA's "Guideline for Modeling Carbon Monoxide from Roadway Intersection." The State developed temperature inputs for the modeling using methodology which is consistent with EPA's "Guideline for Modeling Carbon Monoxide from Roadway Intersections" and "procedure for Emission Inventory Preparation Volume IV: Mobile Sources." As a result, the EPA believes that the State has developed the appropriate inputs for the modeling analysis.

*Comment:* Intersections selected for the TSD modeling analysis resulted in the selection of seven intersections (in addition to the three "required" intersections where monitoring data are available) with some unusual characteristics one would not normally associate with transportation facilities that produce peak CO concentrations. The seven selected intersections were all located well away from the congested Minneapolis and St. Paul urban centers, had free flow speeds of 45 to 55 mph on at least one artery, and had free-flow right turn lanes in every case. These seven intersections represent primarily busy highways intersecting with relatively low volume secondary roads so that the bulk of the traffic volume is accounted for by the high speed links. Based on additional information provided by the MPCA about the intersection ranking procedure, it appears that the selection process gave too much weight to the average daily traffic volume (ADT) of intersections without taking into consideration the number of traffic lanes present or the degree to which cross traffic interferes with the free flow of vehicles. This resulted in high volume, high capacity suburban intersections being favored over lower volume (but more congested) urban intersections. The level of service ranking procedure was apparently insufficient to overcome this bias. This is evident from the fact that the three modeled intersections with a known history of NAAQS exceedances (e.g., University at

Lexington Ave., Snelling at University, and Hennepin Ave. at Lake St.) received the three lowest ranks in the selection procedure. Furthermore, two of these intersections receive mid-level ranks when sorted by maximum CAL3QHC predicted concentrations instead of the bottom rankings suggested by the intersection selection procedure.

*EPA response:* The State selected intersections for modeling based on traffic and congestion. The State initially identified 30 intersections in the nonattainment area as potential candidates for modeling. These 30 intersections were ranked by level of congestion, and ultimately reduced to ten, the top seven ranked and the three historic CO NAAQS violating intersections, for the modeling analysis. As a result, the EPA believes that the State's selection of intersections to model for hot-spot analysis is appropriate and represents a good mix of high congestion intersections and intersections where high levels of CO have been monitored.

The method utilized by the State is consistent with EPA guidelines which require areas to model the top three intersections based on traffic volume and congestion level. None of the intersections selected for modeling by the State exceeded the CO NAAQS in the modeling and, therefore, adequately demonstrate maintenance of the CO NAAQS.

#### ii. Impact of Discontinuing I/M Program on O<sub>3</sub>, PM and Regional Haze

*Comment:* When evaluating the impact of discontinuing the current I/M program in Minneapolis/St. Paul as is proposed in Minnesota's maintenance plan, it must be recognized that such an action, by itself, can be expected to result not only in higher CO emissions than would otherwise occur but also higher emissions of reactive organic gases (commonly referred to as VOCs) and nitrogen oxides (NO<sub>x</sub>) that are an important precursor of ground-level ozone, particulate matter, and regional haze. Thus, irrespective of the program's continuing role in maintaining attainment of the ambient CO standard, discontinuation of the program can be expected to have an adverse impact on ozone levels and PM levels in the Twin Cities as well as regional haze in nearby Class I areas. This issue is particularly critical in light of EPA's recent promulgation of a revised NAAQS for 8-hour ozone which is significantly more stringent than the previous 1-hour standard, a new PM<sub>2.5</sub> NAAQS, and a Regional Haze regulation.

*EPA response:* As discussed above, Section 110(l) of the Act notes that "the

Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of this Act." This includes an area's ability to meet the NAAQS for ozone and PM<sub>2.5</sub>, as well as the requirements of EPA's Regional Haze regulation. A detailed discussion on why EPA believes that discontinuation of the I/M program will not interfere with attainment of the ozone NAAQS has already been discussed in today's action.

In the past, the PM<sub>10</sub> problems that have been experienced in the Minneapolis/St. Paul area have been due to emissions from large factories or groups of factories or other stationary sources, or from road dust that is blown in the air from wind or heavy duty vehicle traffic. The area has never experienced a PM<sub>10</sub> nonattainment problem caused by motor vehicle emissions. As a result, the EPA has no reason to believe that the discontinuation of the I/M program and the potential increase in NO<sub>x</sub> or VOC emissions would interfere with the area's ability to meet the PM<sub>10</sub> NAAQS.

For fine particles, or PM<sub>2.5</sub>, the EPA is currently working with States to establish monitoring networks to assess the magnitude of the problem. Without accurate monitoring data, it is impossible to identify where PM<sub>2.5</sub> problems exist, assess the cause of these problems, or develop control strategies to correct the problem and bring areas to attainment. At present, there is not enough information to indicate whether there is a PM<sub>2.5</sub> problem in the Minneapolis/St. Paul area or not, much less enough information to indicate whether motor vehicle emissions cause or contribute to the problem. As a result, the EPA has no reason to believe that discontinuation of the I/M program will contribute to the area's ability to meet the PM<sub>2.5</sub> NAAQS.

For regional haze, the EPA has developed regulations to address the impairment of visibility in Federal Class I areas. Like PM<sub>2.5</sub>, the first part of this process is focused on monitoring where visibility is impaired, and then assessing the causes of the problem. At present, a nationwide monitoring network is being established and information on the contributors to regional haze problems is not yet available. Studies that have been performed to date indicate that in the Midwest, sulfate emissions are the major contributor to haze problems, and that the problem is regional in nature. As a result, EPA expects that control strategies for regional haze in the

Midwest will focus on region wide industrial source controls, rather than local controls on the automobile. At present, therefore, the EPA has no reason to believe that discontinuation of the I/M program will contribute to the area's ability to meet the regional haze regulations.

### III. EPA Final Action

The EPA approves the Minneapolis/St. Paul CO maintenance plan as a SIP revision meeting the requirements of section 175A. In addition, the EPA is approving the redesignation request for the Minneapolis/St. Paul area because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

CO SIPs are designed to satisfy the requirements of part D of the Act and to provide for attainment and maintenance of the CO NAAQS. This proposed redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the CO emission limitations and restrictions contained in the approved CO SIP. Changes to CO SIP regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation [section 173(b) of the Act] and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the Act.

### IV. Administrative Requirements

#### A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

#### B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the

Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132 [64 FR 43255 (August 10, 1999)] which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 [52 FR 41685 (October 30, 1987)] on federalism still applies. This rule will not have a substantial direct effect on 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, as specified in Executive Order 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

#### C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

#### D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

#### E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The

Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

#### F. Unfunded Mandates Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

#### H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal

agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

**I. Petitions for Judicial Review**

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 28, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects**

**40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Carbon monoxide.

**40 CFR Part 81**

Environmental protection, Air pollution control, National Parks, Wilderness areas.

**Authority:** 42 U.S.C. 7401-7671 *et seq.*

Dated: October 21, 1999.

**David A. Ullrich,**

*Acting Regional Administrator, Region 5.*

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

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

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart Y—Minnesota**

2. Section 52.1237 is amended by adding paragraph(c) to read as follows:

**§ 52.1237 Control strategy: Carbon monoxide.**

\* \* \* \* \*

(c) Approval—On March 23, 1998, the Minnesota Pollution Control Agency submitted a request to redesignate the Minneapolis/St. Paul CO nonattainment area (consisting of portions of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Washington, and Wright) to attainment for CO. As part of the redesignation request, the State submitted a maintenance plan as required by 175A of the Clean Air Act, as amended in 1990. Elements of the section 175A maintenance plan include

a base year (1996 attainment year) emission inventory for CO, a demonstration of maintenance of the ozone NAAQS with projected emission inventories to the year 2009, a plan to verify continued attainment, a contingency plan, and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. If the area records a violation of the CO NAAQS (which must be confirmed by the State), Minnesota will implement one or more appropriate contingency measure(s) which are contained in the contingency plan. The menu of contingency measures includes oxygenated fuel, transportation control measures, or a vehicle inspection and maintenance program. The redesignation request and maintenance plan meet the redesignation requirements in section 107(d)(3)(E) and 175A of the Act as amended in 1990, respectively.

**PART 81—[AMENDED]**

1. The authority citation for part 81 continues to read as follows:

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

2. In § 81.324 the table for "Minnesota-CO" is amended by revising the entry for the Minneapolis/St. Paul area for carbon monoxide to read as follows:

**§ 81.324 Minnesota**

\* \* \* \* \*

**MINNESOTA-CO**

Designated Areas	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Minneapolis-Saint Paul Area:				
Anoka .....	November 29, 1999.	Attainment.		
County .....	.....do .....	Attainment.		
Carver County (part)				
Carver, Chanhassen, Chaska, Hamburg, Norwood, Victoria, Waconia, Watertown, Young America, Chaska Township, Laketown Township, Waconia Township, Watertown Township, Young America Township.	.....do .....	Attainment.		
Dakota County (part)				
Apple Valley, Burnsville, Eagan, Farmington, Hastings, Inver Grove Heights, Lakeville, Lilydale, Mendota, Mendota Heights, Rosemount, South St. Paul, Sunfish Lake, West St. Paul.	.....do .....	Attainment.		
Hennepin .....	.....do .....	Attainment.		
County .....	.....do .....	Attainment.		
Ramsey County				
Scott County (part)	.....do .....	Attainment.		
Belle Plaine, Elko, New Market, New Prague, Prior Lake, Savage, Shakopee, Credit River Township, Jackson Township, Louisville Township, New Market Township, Spring Lake Township.	.....do .....	Attainment.		

MINNESOTA-CO—Continued

Designated Areas	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Washington County (part) All cities and townships except Denmark Township				
Wright County (part) Albertville, Annandale, Buffalo, Clearwater, Cokato, Delano, Hanover, Monticello, Montrose, Rockford, St. Michael, South Haven, Waverly, Dayton (Wright Co. part), Buffalo Township, Chatham Township, Clearwater Township, Cokato Township, Corrinna Township, Franklin Township, Maple Lake Township, Franklin Township, Marysville Township, Monticello Township, Ostego Township, Rockford Township, Silver Creek Township, Southside Township				
* * * * *				

<sup>1</sup> This date is November 15, 1990, unless otherwise noted.

[FR Doc. 99-28310 Filed 10-28-99; 8:45 am]  
BILLING CODE 6560-50-P

**DEPARTMENT OF TRANSPORTATION**

**Office of Motor Carrier Safety**

**49 CFR Chapter III**

[Docket No. OMCS-99-6386]

RIN 2125-AE70

**Motor Carrier Safety Regulations**

**AGENCY:** Office of Motor Carrier Safety (OMCS), DOT.

**ACTION:** Final rule.

**SUMMARY:** This document amends the heading for chapter III concerning motor carrier safety regulations. On October 9, 1999, the Secretary of Transportation (Secretary) rescinded the authority previously delegated to the Federal Highway Administrator to perform motor carrier functions and operations, and redelegated that authority to the Director, Office of Motor Carrier Safety, a new office within the Department of Transportation (Department). The title of chapter III is therefore being changed from "Federal Highway Administration, Department of Transportation" to "Office of Motor Carrier Safety, Department of Transportation" to reflect the organizational changes.

**EFFECTIVE DATE:** This final rule is effective October 29, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mr. Neill L. Thomas, Office of Motor Carrier Safety, HMCS-10, (202) 366-4009; or Mr. Charles Medalen, Office of the Chief Counsel, HCC-20, (202) 366-1354, Federal Highway Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Office of the **Federal Register's** home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>.

**Background**

Section 338 of the FY 2000 Department of Transportation and Related Agencies Appropriations Act [Public Law 106-69, 113 Stat. 986, at 1022 (October 9, 1999)] prohibits the expenditure of any funds appropriated by that Act "to carry out the functions and operations of the Office of Motor Carriers within the Federal Highway Administration" (FHWA). Section 338 further provides that, if the authority of the Secretary on which the functions and operations of the Office of Motor Carriers are based is redelegated outside the FHWA, the funds available to that office under the Act may be transferred and expended to support its functions and operations.

The Secretary has rescinded the authority previously delegated to the FHWA to carry out motor carrier functions and operations. This authority has been redelegated to the Director, Office of Motor Carrier Safety, a new office within the Department [64 FR 56270, October 19, 1999].

The new OMCS includes the following headquarters offices of the FHWA's former Office of Motor Carrier and Highway Safety (OMCHS): the Office of Motor Carrier Research and

Standards, the Office of Data Analysis and Information Systems, the Office of Motor Carrier Enforcement, the Office of Policy and Program Management, the Office of National and International Safety Programs, the Office of Technology Evaluation and Deployment, and the Office of Program Evaluation. However, the Office of Highway Safety Infrastructure remains part of the FHWA. In addition, the motor carrier functions of the FHWA's Resource Centers and Division (i.e., State) Offices have been transferred to OMCS Resource Centers and OMCS Division Offices, respectively. Rulemaking, enforcement, and other activities of the OMCHS while part of the FHWA will be continued by the new OMCS. The redelegation will cause no changes in the motor carrier functions and operations of the offices or resource centers listed above. For the time being, all phone numbers and addresses are unchanged.

The heading for 49 CFR chapter III is changed to read "Chapter III—Office of Motor Carrier Safety, Department of Transportation."

This rule is being published as a final rule and made effective on the date of publication in the **Federal Register**. As the rule relates to Departmental organization, procedure, and practice, notice and comment on it are unnecessary under 5 U.S.C. 553(b). This action makes no substantive changes to the motor carrier safety regulations. It simply provides a chapter heading change to 49 CFR chapter III. Therefore, prior notice and opportunity to comment are unnecessary and good cause exists to dispense with the 30-day delay in effective date requirement so that the Office of Motor Carrier Safety may resume its rulemaking functions.

In consideration of the foregoing and under the authority of 49 U.S.C. 301 and

322, Public Law 106-69, 113 Stat. 986, at 1022, and 49 CFR 1.73, the heading for chapter III of title 49, Code of Federal Regulations, is revised to read as follows:

**CHAPTER III—OFFICE OF MOTOR CARRIER SAFETY, DEPARTMENT OF TRANSPORTATION**

Issued on: October 21, 1999.

**Julie Cirillo,**

*Acting Director, Office of Motor Carrier Safety.*

[FR Doc. 99-28177 Filed 10-28-99; 8:45 am]

BILLING CODE 4910-22-P

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**49 CFR Part 1**

[Docket No. OST-1999-6189]

**Organization and Delegation of Powers and Duties; Redelegation to the Director, Office of Motor Carrier Safety**

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Secretary of Transportation (Secretary) redelegates to the Director, Office of Motor Carrier Safety (OMCS), the authority previously delegated by statute to the Federal Highway Administrator to carry out the duties and powers related to motor carrier safety vested in the Secretary by chapters 5 and 315 of title 49, United States Code. This action, combined with the Secretary's previous delegation to the OMCS, enables that office to exercise all of the authority previously held by the Federal Highway Administration's Office of Motor Carriers.

**EFFECTIVE DATE:** This rule is effective on October 9, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles Medalen, Office of the Chief Counsel, HCC-20, (202) 366-1354, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590; or Ms. Gwyneth Radloff, Office of the General Counsel, (202) 366-9319, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

An electronic copy of this document may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-

1661. Internet users may reach the Office of the Federal Register's home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>. You can also view and download this document by going to the webpage of the Department's Docket Management System (<http://dms.dot.gov/>). On that page, click on "search." On the next page, type in the four digit docket number shown on the first page of this document (6189). Then click on "search."

**Background**

Section 338 of the FY 2000 Department of Transportation and Related Agencies Appropriations Act (Public Law 106-69, 113 Stat. 986, at 1022, October 9, 1999) prohibits the Federal Highway Administration (FHWA) from spending funds to carry out the functions and operations of its Office of Motor Carriers (OMC). The legislation provides that, if the Secretary delegates those functions and operations outside of the FHWA, the funds shall also be transferred. Accordingly, on October 9, 1999, the Secretary rescinded as much of the current delegation of his authority to the Federal Highway Administration to carry out motor carrier functions and operations as he could (see Final rule, 64 FR 56270, October 19, 1999), and redelegated that authority to the Director of the new Office of Motor Carrier Safety in the Department of Transportation.

However, the duties and powers related to motor carrier safety vested in the Secretary by chapters 5 and 315 of title 49, United States Code, were delegated by statute to the Federal Highway Administrator by 49 U.S.C. 104(c)(2) and could not be exercised or transferred by the Secretary without legislative approval. Public Law 106-73 (113 Stat. 1046, October 19, 1999) amended the second proviso of Sec. 338 to read as follows: "Provided further, That notwithstanding section 104(c)(2) of title 49, United States Code, the Federal Highway Administrator shall not carry out the duties and functions vested in the Secretary under 49 U.S.C. chapters 5 and 315." Sec. 338, as amended by Public Law 106-73, now prohibits the Federal Highway Administrator from carrying out the duties and powers related to motor carrier safety vested in the Secretary by chapters 5 and 315 and restores the Secretary's authority to exercise or delegate these authorities, effective retroactively to October 9, 1999.

Accordingly, the Secretary delegates the authority to carry out certain portions of chapters 5 and 315 to the

Director, Office of Motor Carrier Safety. This restores to the Office of Motor Carrier Safety the authority under 49 U.S.C. 521(b) to issue civil penalties or assist the Department of Justice in pursuing civil or criminal cases, authority that could not be exercised under the original version of Sec. 338. Also being delegated to OMCS is the Secretary's authority: (1) To investigate motor carriers, subpoena witnesses and records and take depositions (49 U.S.C. 502); (2) relating to service of process, designation of agents to receive service of process, and identification of interstate motor vehicles (49 U.S.C. 503 and 31504); (3) to establish recordkeeping and reporting requirements for, and inspect the equipment and records of, motor carriers (49 U.S.C. 504); (4) to require motor carriers to file copies of their contracts or other arrangements with shippers (49 U.S.C. 505); (5) to investigate violations of chapter 5 by motor carriers (49 U.S.C. 506); (6) to bring a civil action or request the Attorney General to bring court proceedings against motor carriers or brokers to enforce chapter 5 or a regulation or order based on chapter 5 (49 U.S.C. 507); (7) to issue regulations governing the release by a motor carrier of a former driver's safety performance records to his or her subsequent motor carrier employers (49 U.S.C. 508); (8) to levy civil penalties against motor carriers for violations of certain statutes on which the Federal Motor Carrier Safety Regulations (FMCSRs) are based (49 U.S.C. 521(b)(1)-(5), (7)); (9) relating to the disclosure of certain business information obtained during inspections by Department of Transportation employees (49 U.S.C. 523); (10) relating to qualifications and maximum hours of service of motor carrier drivers (49 U.S.C. 31502); and (11) relating to investigation of the need for regulation of qualifications and maximum hours of service of motor carrier drivers (49 U.S.C. 31503).

This rule is being published as a final rule effective retroactively to October 9, 1999 pursuant to section 2 of Public Law 106-73. As the rule relates to Departmental organization, procedure, and practice, notice and comment on it are unnecessary under 5 U.S.C. 553(b). In addition, the functions addressed in this rule were transferred to enable the Department's motor carrier safety program to continue. For this reason, the Secretary finds good cause under 5 U.S.C. 553(d)(3) to make this rule effective retroactively to October 9, 1999.

**List of Subjects in 49 CFR Part 1**

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

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended as follows:

**PART 1—[AMENDED]**

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

**Authority:** 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S. 3711(a)(2); Pub. L. 101-552, 104 Stat. 2736; Pub. L. 106-69, 113 Stat. 1022; Pub. L. 106-73, 113 Stat. 1046.

**§ 1.48 [Amended]**

2. In § 1.48, remove and reserve paragraphs (e), (f), and (g).

3. In § 1.73, remove paragraph (j) and redesignate paragraph (k) as paragraph (j).

4. In § 1.73, add paragraphs (k), (l), (m), and (n) to read as follows:

**§ 1.73 Delegation to the Director of the Office of Motor Carrier Safety.**

\* \* \* \* \*

(k) Carry out 49 U.S.C. 31503 as it relates to investigation of the need for regulation of qualifications and maximum hours of service of employees of motor carriers and motor private carriers.

(l) Carry out 49 U.S.C. 31502 relating generally to qualifications and maximum hours of service of employees and safety of operation and equipment of motor carriers, motor private carriers and motor carriers of migrant workers.

(m) Carry out 49 U.S.C. 503 and 31504 relating generally to service of process,

designation of agents to receive service of process, and identification of interstate motor vehicles so far as they pertain to motor private carriers of property and motor carriers of migrant workers (except motor contract carriers).

(n) Carry out 49 U.S.C. 502, 504, 506, and 523 to the extent they relate to motor carriers, motor carriers of migrant workers, and motor private carriers; 49 U.S.C. 507 to the extent it relates to motor carriers, motor carries of migrant workers, motor private carriers, or freight forwarders; and 49 U.S.C. 505, 508, and 521(b)(1), (2), (3), (4), (5), and (7).

Issued in Washington, DC, on October 22, 1999.

**Rodney E. Slater,**

*Secretary of Transportation.*

[FR Doc. 99-28346 Filed 10-27-99; 9:59 am]

BILLING CODE 4910-62-P

# Proposed Rules

Federal Register

Vol. 64, No. 209

Friday, October 29, 1999

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 75

[Docket Number LS-99-06]

#### Increase in Fees for Federal Seed Testing and Certification Services

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) proposes to increase the hourly fee rate charged for voluntary Federal seed testing and certification services. The fee rate needs to be increased to cover increases in salaries of Federal employees, rent, supplies, replacement equipment, and other increased Agency costs.

**DATES:** Comments must be received on or before December 28, 1999.

**ADDRESSES:** Send written comments to Richard C. Payne, Acting Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, USDA; Building 306, Room 209, BARC-East; Beltsville, MD 20705-2325. Comments may be faxed to (301) 504-8098.

State that your comments refer to Docket No. LS-99-06 and note the date and page number of this issue of the **Federal Register**.

Comments received may be inspected at the above location between 8:00 a.m. and 4:30 p.m., Eastern Time, Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Richard C. Payne, Acting Chief, Seed Regulatory and Testing (SRT) Branch, (301) 504-9430.

#### SUPPLEMENTARY INFORMATION:

##### A. Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB).

##### B. Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the AMS has considered the economic impact of this action on small entities. It is determined that its provisions would not have a significant economic impact on a substantial number of small entities.

The AMS provides, under the authority of the Agricultural Marketing Act (AMA) of 1946, a voluntary, user-fee funded seed testing and certification service to approximately 65 businesses per year. Many of the users of the testing and certification services would be considered small businesses under the criteria established by the Small Business Administration (13 CFR 121.601). Over ninety percent of the samples tested in this program represent seed and grain scheduled for export. Grain is examined for the presence of specified weed and crop seeds upon request of the Department's Grain Inspection, Packers and Stockyards Administration. A Federal Seed Analysis Certificate, containing purity, germination, noxious-weed seed examination, and other test results is issued upon completion of the testing. The Federal Seed Analysis Certificate is required documentation for shipments of seed and grain from the United States entering certain countries.

The AMS regularly reviews its user fee financed programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Without a fee increase, FY 2000 revenues for seed testing and certification services are projected at \$104,000, costs are projected at \$108,000, and the trust fund balance would be \$78,000. With a fee increase, FY 2000 revenues are projected at \$114,000, costs are projected at \$113,000, and the trust fund balance would be \$83,000.

This action would raise the hourly rate charged to users of the seed testing and certification services. The AMS estimates that this proposed rule would yield an additional \$10,000 during FY 2000. The hourly rate for seed testing and certification services would increase by approximately 9.9 percent. The costs to entities will be proportional to their use of the service, so that costs

are shared equitably by all users. The increase in costs to individual firms would be, on average, approximately \$6.70 per Federal Seed Analysis Certificate issued. There would also be an increase of \$1.10 for each duplicate certificate issued.

##### C. Civil Justice Reform

This action has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

##### D. Paperwork Reduction Act

The information collection requirements that appear in Part 75 of the regulations have been previously approved by OMB and assigned OMB Control Number 0581-0140 under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

##### Background and Proposed Changes

The Secretary of Agriculture is authorized by the AMA of 1946, as amended, 7 U.S.C. 1621 *et seq.*, to provide voluntary Federal seed testing and certification services to facilitate the orderly marketing of seed and grain and to enable consumers to obtain the quality of seed and grain they desire. The AMA provides that reasonable fees be collected from users of the program services to cover, as nearly as practicable, the costs of services rendered.

The AMS regularly reviews programs to determine if fees are adequate and if costs are reasonable. This action would increase the hourly fee rate and charges for voluntary seed testing and certification services provided to the seed and grain industries to reflect the costs currently associated with providing the services.

A recent review of the current hourly fee rate, effective October 1, 1998, revealed that anticipated revenue will not cover increased program costs. Without a fee increase FY 2000 revenues for seed testing and certification services are projected at \$104,000, costs are projected at \$108,000, and the trust fund balance would be \$78,000. With a fee increase,

FY 2000 revenues are projected at \$114,000, costs are projected at \$113,000, and the trust fund balance would be \$83,000.

The hourly fee for service is established by distributing the projected annual program operating costs over the estimated hours of service—revenue hours—provided to users of the service. Revenue hours include the time spent conducting tests, keeping sample logs, preparing Federal Seed Analysis Certificates and storing samples. As program operating costs continue to rise, the hourly fees must be adjusted to enable the program to remain financially self-supporting as required by law. Program operating costs include salaries and fringe benefits of seed analysts, supervision, training, and all administrative costs of operating the program.

Employee salaries and benefits account for approximately 90 percent of the total budget. A general and locality salary increase of 3.68 percent for Federal employees involved in the seed testing and certification service became effective in January 1999 and has materially affected program costs. Another general and locality salary increase estimated at 4.8 percent is expected in January 2000.

This proposed fee increase is necessary to offset increased program operating costs resulting from: (1) Salary increases for all Federal employees for 1999 and projected increases in 2000, (2) increases in rent, (3) increases in costs of supplies needed for testing samples, and (4) purchases of replacement equipment needed to provide the service.

In view of these increases in costs, the Agency is proposing to increase the hourly rate charged to applicants for the service, including the issuance of Federal Seed Analysis Certificates from \$40.40 to \$44.40. The fee for issuing additional duplicate certificates would increase from \$10.10 to \$11.10.

The proposed action will fully recover all costs associated with providing the voluntary testing service to the seed and grain industry. Although the proposed user-fee increase would increase costs to individual firms, the cost for providing the seed testing and certification services would increase by an average of only \$6.70 per Federal Seed Analysis Certificate and \$1.10 for each duplicate certificate. It is estimated that the total revenue generated will increase by approximately \$10,000 annually.

#### List of Subjects in 7 CFR Part 75

Administrative practice and procedure, Agricultural commodities,

Reporting and recordkeeping requirements, Seeds, Vegetables.

For the reasons set forth in the preamble, 7 CFR part 75 is proposed to be amended as follows:

#### PART 75—REGULATIONS FOR INSPECTION AND CERTIFICATION OF QUALITY OF AGRICULTURAL AND VEGETABLE SEEDS

1. The authority citation for part 75 continues to read as follows:

**Authority:** 7 U.S.C. 1622 and 1624

##### § 75.41 [Amended]

2. In § 75.41, “\$40.40” is removed and “\$44.40” is added in its place.

##### § 75.47 [Amended]

3. In § 75.47, “\$10.10” is removed and “\$11.10” is added in its place.

Dated: October 26, 1999.

**Barry L. Carpenter,**

*Deputy Administrator, Livestock and Seed Program.*

[FR Doc. 99-28374 Filed 10-28-99; 8:45 am]

BILLING CODE 3410-02-P

#### DEPARTMENT OF TRANSPORTATION

##### Federal Aviation Administration

##### 14 CFR Part 39

[Docket No. 98-CE-88-AD]

RIN 2120-AA64

##### Airworthiness Directives; Bob Fields Aerocessories Inflatable Door Seals

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to revise Airworthiness Directive (AD) 98-21-21, which currently requires deactivating the electric door seal inflation system for all aircraft equipped with Bob Fields Aerocessories inflatable door seals. Since issuance of that AD, the manufacturer has developed a modification that would allow these electric door seal inflation systems to remain in service, and the Federal Aviation Administration (FAA) has approved this modification. The proposed AD would incorporate this modification as a method of complying with the current AD, and would exclude those airplanes with manual door seal inflation systems from the AD requirements of deactivating the system. The actions specified by the proposed AD are intended to prevent smoke and a possible fire in the cockpit

caused by overheating of the electric door seal inflation systems, which could result in passenger injury.

**DATES:** Comments must be received on or before December 23, 1999.

**ADDRESSES:** Submit comments in triplicate to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-CE-88-AD, Room 506, 901 Locust, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Bob Fields Aerocessories, 340 East Santa Maria St., Santa Paula, California 93060; telephone: (805) 525-6236; facsimile: (805) 525-5286. This information also may be examined at the Rules Docket at the address above.

##### FOR FURTHER INFORMATION CONTACT:

George Y. Mabuni, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627-5341; facsimile: (562) 627-5210.

##### SUPPLEMENTARY INFORMATION:

##### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: “Comments to Docket No. 98-CE-88-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, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-CE-88-AD, Room 506, 901 Locust, Kansas City, Missouri 64106.

### Discussion

AD 98-21-21, Amendment 39-10844 (63 FR 55321, October 15, 1998), currently requires the following on aircraft equipped with Bob Fields Aerocessories inflatable door seals installed in accordance with either the applicable supplemental type certificate (STC) or through field approval:

—De-activating the electric door seal inflation system, fabricating and installing a placard specifying that the system is inoperative, and inserting a copy of the AD into the Limitations Section of the airplane flight manual (AFM).

The AD only applies to those aircraft equipped with the Bob Fields Aerocessories inflatable door seals. With this in mind, the owner/operator also has the option of removing all provisions of the Bob Fields Aerocessories inflatable door seals installation, and installing original equipment manufacturer door seals or an FAA-approved equivalent that is of different design than the referenced Bob Fields Aerocessories inflatable door seals.

AD 98-21-21 resulted from occurrences of overheated components associated with the electric door seal inflation system on aircraft equipped with the affected inflatable door seals. The actions specified by AD 98-21-21 are intended to prevent smoke and a possible fire in the cockpit caused by overheating of the electric door seal inflation systems, which could result in passenger injury.

### Actions Since Issuance of Previous Rule

Since AD 98-21-21 has become effective, the FAA has determined that the requirements of de-activating the door seal inflation system should only affect those airplanes with an electric door seal inflation system. Those airplanes incorporating a manual door seal inflation system should not be affected by these actions. In addition, Bob Fields Aerocessories has developed modifications that would allow these electric door seal inflation systems to remain in service. These modifications are:

—*Option 1:* Converting all previous inflatable door seal systems into a manual system by connecting a new

bulb and hose assembly to the 3814-6 hose that was attached to the electric pump and inflating the door seals manually. Complete removal of the inflatable door system is not required for this option; and

—*Option 2:* Converting all previous inflatable door seal systems into an electrical system, which includes replacing the existing pump with a new compressor pump.

Bob Fields Aerocessories Service Bulletin No. BFA-001, Dated: November 3, 1998, contains the procedures for accomplishing these modifications.

### The FAA's Determination

After examining the circumstances and reviewing all available information related to this subject, including the above-referenced service information, the FAA has determined that:

—The requirements of de-activating the electric door seal inflation system contained in AD 98-21-21 should only affect those airplanes with an electric system, and those airplanes incorporating a manual door seal inflation system should be excluded from these requirements;

—Accomplishing one of the modifications referenced in Bob Fields Aerocessories Service Bulletin No. BFA-001, Date: November 3, 1998, should be considered as an alternative method of compliance with the system de-activation requirements of AD 98-21-21; and

—AD action should be taken to incorporate this information into the current AD and to continue to prevent smoke and a possible fire in the cockpit caused by overheating of the electric door seal inflation systems, which could result in passenger injury.

### Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other aircraft equipped with Bob Fields Aerocessories inflatable door seals that are installed in accordance with either the applicable STC or through field approval, the FAA is proposing AD action to revise AD 98-21-21. The proposed AD would retain the requirements of the existing AD, would exclude those airplanes incorporating a manual inflatable door seal system from the system de-activation requirements, and would provide the option of incorporating one of the modifications referenced in Bob Fields Aerocessories Service Bulletin No. BFA-001, Date: November 3, 1998, as a method of accomplishing the AD.

Like AD 98-21-21, the proposed AD would only apply to those aircraft equipped with the Bob Fields Aerocessories inflatable door seals. With this in mind, the owner/operator also has the option of removing all provisions of the Bob Fields Aerocessories inflatable door seals installation, and installing original equipment manufacturer door seals or an FAA-approved equivalent that is of a different design than the referenced Bob Fields Aerocessories inflatable door seals.

### Cost Impact

The FAA does not know the number of aircraft that have the affected electric door seal inflation systems installed. The manufacturer is presently compiling a distribution list of all aircraft owners and aircraft dealers the electric door seal inflation system kits have been sold to under the existing STC's and field approvals.

The FAA estimates that it would take approximately 3 workhours per airplane to accomplish the optional modifications that would allow these systems to be put back in service, at an average labor rate of approximately \$60 an hour. Based on these figures, the total cost impact of the optional modification proposed in this document on U.S. operators is estimated to be \$180 per airplane aircraft equipped with Bob Fields Aerocessories inflatable door seals.

### 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 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) 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 has been placed 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 removing Airworthiness Directive (AD)

98-21-21, Amendment 39-10844, and adding a new AD to read as follows:

**Bob Fields Aerocessories:** Docket No. 98-CE-88-AD; Revises AD 98-21-21, Amendment 39-10844.

*Applicability:* Electric inflatable door seals, installed either in accordance with the applicable supplemental type certificate (STC) or through field approval, that are installed on, but not limited to, the following aircraft:

Affected STC	Make and model aircraft affected
SA3735NM .....	Cessna Models 170, 170A, and 170B Airplanes.
SA4136WE .....	Cessna Models 310, 310A, 310B, 310C, 310D, 310E, 310F, 310G, 310H, 310I, 310J, 310K, 310L, 310N, 310P, 310Q, 310R, T310P, T310Q, and T310R Airplanes.
SA2226NM .....	Cessna Models P210N and P210R Airplanes.
SA3736NM .....	Cessna Models 185, 185A, 185B, 185C, 185D, A185E, and A185F Airplanes.
SA4177WE .....	Cessna Models 175, 175A, 175B, and 175C Airplanes.
SA4212WE .....	Cessna Models 210, 210A, 210B, 210C, 210D, 210E, 210F, 210G, 210H, 210J, 210K, 210L, 210M, 210N, T210F, T210G, T210H, T210J, T210K, T210L, T210M, T210N, 210-5 (205), and 210-5A (205A) Airplanes.
SA4283WE .....	Cessna Models 172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 172K, 172L, 172M, and 172N Airplanes.
SA4284WE .....	Cessna Models 180, 180A, 180B, 180C, 180D, 180E, 180F, 180G, 180H, 180J, and 180K Airplanes.
SA4285WE .....	Cessna Models 182, 182A, 182B, 182C, 182D, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, R182, and TR182 Airplanes.
SA4286WE .....	Cessna Models 206, P206, P206A, P206B, P206C, P206D, P206E, TP206A, TP206B, TP206C, TP206D, TP206E, U206, U206A, U206B, U206C, U206D, U206E, U206F, U206G, TU206A, TU206B, TU206C, TU206D, TU206E, TU206F, and TU206G Airplanes.
SA4287WE .....	Cessna Models 320, 320A, 320B, 320C, 320D, 320E, 320F, and 320-1 Airplanes.
SA4180WE .....	Raytheon (Beech) Models H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, 35-33, 35-A33, 35-B33, 35-C33, 35-C33A, E33, E33A, E33C, F33, F33A, F33C, G33, 36, A36, A36TC, and B36TC Airplanes.
SA4184WE .....	Raytheon (Beech) Models 95, B95, B95A, E95, 95-55, 95-A55, 95-B55, 95-B55A, 95-B55B, 95-C55, D55, E55, 56TC, 58, and 58A Airplanes.
SA4239WE .....	Raytheon (Beech) Models 58P, 58PA, 58TC, and 58TCA Airplanes.
SA4240WE .....	Raytheon (Beech) Models 50, B50, C50, D50, D50A, D50B, D50C, D50E, D50E-5990, E50, F50, G50, H50, and J50 Airplanes.
SA4282WE .....	Raytheon (Beech) Models 35, A35, B35, C35, D35, E35, F35, G35, and 35R Airplanes.
SA4178WE .....	Mooney Models M20, M20A, M20C, M20D, M20E, M20F, M20G, M20J, and M20K Airplanes.
SA4234WE .....	The New Piper Aircraft, Inc. (Piper) Models PA-34-200, PA-34-200T, and PA-34-220T Airplanes.
SA4179WE .....	Piper Models PA-24, PA-24-250, PA-24-260, and PA-24-400 Airplanes.
SA4235WE .....	Piper Models PA-44-180 and PA-44-180T Airplanes.
SA4236WE .....	Piper Models PA-28-140, PA-28-150, PA-28-160, PA-28-180, PA-28-235, PA-28-151, PA-28-181, PA-28-161, PA-28-236, PA-28-201T, PA-28S-160, PA-28S-180, PA-28R-180, PA-28R-200, PA-28R-201, PA-28R-201T, PA-28RT-201, and PA-28RT-201T Airplanes.
SA4237WE .....	Piper Models PA-23, PA-23-160, PA-23-235, PA-23-250, and PA-E23-250 Airplanes.
SA4238WE .....	Piper Models PA-30, PA-39, and PA-40 Airplanes.
SA4385WP .....	Piper Models PA-31, PA-31-300, PA-31-325, and PA-31-350 Airplanes.
SA4288WE .....	Piper Models PA-32-260, PA-32-300, PA-32S-300, PA-32-301, PA-32-301T, PA-32R-300, PA-32R-301, PA-32R-301T, PA-32RT-300, and PA-32RT-300T Airplanes.
SA2511NM .....	Bellanca Models 17-30, 17-31, and 17-31TC Airplanes.
SA2510NM .....	Bellanca Models 17-30A, 17-31A, and 17-31ATC Airplanes.
SA4316WE .....	Wing Aircraft Company Model D-1 Airplanes.

**Note 1:** This AD applies to each aircraft identified in the preceding applicability provision that has the affected inflatable door seals installed, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft 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 (f) 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 smoke and a possible fire in the cockpit caused by overheating of the electric door seal inflation systems, which could result in passenger injury, accomplish the following:

(a) Prior to further flight after October 30, 1998 (the effective date of AD 98-21-21), deactivate the electric door seal inflation system by accomplishing the following:

- (1) Disconnect the battery.
- (2) Locate the air pump and identify the power wire to the air pump.

(3) Trace the power wire to its connection to the airplane's original electrical power system. Disconnect the power wire at its attachment to the airplane's electrical power system and stow the wire end.

(4) For non-pressurized airplanes, fabricate a placard that incorporates the following words utilizing letters that are at least 0.10-inch in height, and install this placard on the instrument panel within the pilot's clear view:

"ELECTRIC DOOR SEAL INFLATION SYSTEM INOPERATIVE"

(5) For pressurized airplanes or for airplanes that do not have an operating manual door seal inflation system, fabricate a placard that incorporates the following

words utilizing letters that are at least 0.10-inch in height, and install this placard on the instrument panel within the pilot's clear view:

"ELECTRIC DOOR SEAL INFLATION SYSTEM INOPERATIVE. THIS AIRPLANE CAN ONLY BE OPERATED IN UNPRESSURIZED FLIGHT"

(6) Reconnect the battery before returning to service.

(b) Prior to further flight after October 30, 1998 (the effective date of AD 98-21-21), insert a copy of this AD into the Limitations Section of the airplane flight manual (AFM).

**Note 2:** The prior to further flight compliance time of paragraphs (a) and (b) of this AD is being retained from AD 98-21-21. The only substantive difference between this AD and AD 98-21-21 is the addition of the alternative method of compliance referenced in paragraph (c) of this AD.

**Note 3:** This AD only applies to those aircraft equipped with the Bob Fields Aerocessories inflatable door seals. With this in mind, the owner/operator also has the option of removing all provisions of the Bob Fields Aerocessories inflatable door seals installation, and installing original equipment manufacturer door seals or an FAA-approved equivalent that is of a different design than the referenced Bob Fields Aerocessories inflatable door seals.

(c) One of the following actions may be accomplished as an alternative method of compliance to the requirements of paragraphs (a) and (b) of this AD. No further action is required by this AD as long as one of these configurations remains incorporated on the aircraft.

(1) Modify the electric door seal inflation system in accordance with the procedures in Bob Fields Aerocessories Service Bulletin No. BFA-001, Date: November 3, 1998; or

(2) Install a manual door seal inflation system instead of an electric system. Aircraft with existing manual systems as of the effective date of this AD are excluded from the requirements of paragraphs (a) and (b) of this AD.

(d) As of the effective date of this AD, no person may install, on any aircraft, a Bob Fields Aerocessories electric door seal inflation system unless the actions specified in Bob Fields Aerocessories Service Bulletin No. BFA-001, Date: November 3, 1998, are incorporated.

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

(f) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Blvd., Lakewood, California 90712.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

(2) Alternative methods of compliance approved in accordance with AD 98-21-21

are considered approved as alternative methods of compliance for this AD.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(g) All persons affected by this directive may obtain copies of the document referred to herein upon request to Bob Fields Aerocessories, 340 East Santa Maria St., Santa Paula, California 93060; or may examine this document(s) at the FAA, Central Region, Office of the Regional Counsel, Room 506, 901 Locust, Kansas City, Missouri 64106.

(h) This amendment revises AD 98-21-21, Amendment 39-10844.

Issued in Kansas City, Missouri, on October 22, 1999.

**Marvin R. Nuss,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99-28416 Filed 10-28-99; 8:45 am]

**BILLING CODE 4910-13-U**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 99-ASO-19]

#### Proposed Amendment to Class D

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend Class D airspace at Eglin AFB, FL. The Non-Directional Radio Beacon (NDB) Runway (RWY) 32 Standard Instrument Approach Procedure (SIAP) at Destin—Fort Walton Beach Airport has been amended. As a result, additional controlled airspace extending upward from the surface is needed to accommodate the SIAP at Destin—Fort Walton Beach Airport. An extension via the 147° bearing from the Destin NDB for the NDB RWY 32 SIAP would be necessary. The length of the Class D airspace extension southeast of the NDB would be 7 miles, and the width of the airspace extension would be 5 miles.

**DATES:** Comments must be received on or before November 29, 1999.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 99-ASO-19, Manager, Airspace Branch, ASO-520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305-5627.

**FOR FURTHER INFORMATION CONTACT:** Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5627.

#### SUPPLEMENTARY INFORMATION:

#### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99-ASO-19." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO-520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

#### The Proposal

The FAA is considering an amendment to part 71 of the Federal

Aviation Regulations (14 CFR part 71) to amend Class D airspace at Eglin AFB, FL. The NDB RWY 32 SIAP at the Destin—Fort Walton Beach Airport has been amended. Additional controlled airspace extending upward from the surface is needed to accommodate the SIAP at Destin—Fort Walton Beach Airport. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation list in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operational current. It, therefore, (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) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

In considering of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

#### PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

##### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

#### Paragraph 5000. Class D airspace.

\* \* \* \* \*

#### ASO FL D Eglin AFB, FL [Revised]

Eglin AFB, FL

(Lat. 30°29'13" N, long. 86°31'34" W)

Destin—Fort Walton Beach Airport

(Lat. 30°24'01" N, long. 86°28'18" W)

Destin NDB

(Lat. 30°24'30" N, long. 86°28'43" W)

Duke Field

(Lat. 30°39'07" N, long. 86°31'23" W)

Hurlburt Field

(Lat. 30°25'44" N, long. 86°41'20" W)

That airspace extending upward from the surface, to and including 2,600 feet MSL within a 5.5-mile radius of Eglin AFB and within a 4-mile radius of Destin—Fort Walton Beach Airport and within 2.5 miles each side of the 147° bearing from the Destin NDB, extending 7 miles southeast of the NDB, excluding the portion north of a line connecting the 2 points of intersection within a 5.2-mile radius circle centered on Duke Field; excluding the portion southwest of a line connecting the 2 points of intersection within a 5.3-mile radius of Hurlburt Field; excluding a portion east of a line beginning at lat. 30°30'43" N., long. 86°26'21" W., extending north of the 5.5-mile radius and north of a line beginning at lat. 30°30'43" N., long. 86°26'21" W., extending east to the 5.5-mile radius.

\* \* \* \* \*

Issued in College Park, Georgia, on October 18, 1999.

**Nancy B. Shelton,**

*Acting Manager, Air Traffic Division,  
Southern Region.*

[FR Doc. 99–28323 Filed 10–28–99; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 99–ASO–18]

#### Proposed Amendment to Class D

**AGENCY:** Federal Aviation Administration (FAA), DOT.  
**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend Class D airspace at Mc Entire ANGB, Eastover, SC. In accordance with a periodic review, the Non-Directional Radio Beacon (NDB) Runway (RWY) 32 Standard Instrument Approach Procedure (SIAP) requires additional airspace. As a result, additional controlled airspace extending upward from the surface is needed to accommodate the SIAP at Mc Entire ANGB. An extension via the 164° bearing from the Mc Entire NDB for the NDB RWY 32 SIAP would be necessary. The length of the Class D airspace extension southeast of the NDB would

be 6.3 miles, and the width of the airspace extension would be 5 miles.

**DATES:** Comments must be received on or before November 29, 1999.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 99–ASO–18, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320. The office docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

**FOR FURTHER INFORMATION CONTACT:** Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they made desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–ASO–18." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposal rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO-520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

### The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class D airspace at Mc Entire ANGB, Eastover, SC. A periodic review reveals the NDB RWY 32 SIAP requires additional airspace. Additional controlled airspace extending upward from the surface is needed to accommodate the SIAP at Mc Entire ANGB. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulation 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) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

### PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

#### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

*Paragraph 5000. Class D airspace.*

\* \* \* \* \*

#### ASO SC D Eastover, SC [Revised]

Eastover, Mc Entire ANGB, SC  
(Lat. 33°55'06" N, long. 80°47'59" W)  
Mc Entire NDB  
(Lat. 33°56'09" N, long. 80°47'56" W)

That airspace extending upward from the surface, to and including, 2,800 feet MSL within a 4.5-mile radius of Mc Entire ANGB and within 2.5 miles each side of the 164° bearing from the Mc Entire NDB, extending 6.3 miles southeast of the NDB. This Class D airspace area is effective during the dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

\* \* \* \* \*

Issued in College Park, Georgia, on October 18, 1999.

**Nancy B. Shelton,**

*Acting Manager, Air Traffic Division,  
Southern Region.*

[FR Doc. 99-28322 Filed 10-28-99; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Fiscal Service

#### 31 CFR Part 380

#### Collateral Acceptability and Valuation

**AGENCY:** Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of the Treasury is publishing for comment a proposed rule that will govern the acceptability and valuation of all collateral pledged to secure deposits of public monies and other financial interests of the government under Treasury's three Fiscal Service collateral programs. These programs are titled and described in existing parts of the Code

of Federal Regulations ("CFR") as: Depositories and Financial Agents of the Government; Payment of Federal Taxes and the Treasury Tax and Loan Program; and Acceptance of Bonds Secured by Government Obligations in Lieu of Bonds with Sureties.

The standards of this proposed rule are essentially the same as those under current requirements and procedures. This proposed rule has been drafted using "plain language," and we specifically request comment on its clarity and how we can make it easier to understand.

**DATES:** Submit comments on or before November 29, 1999.

**ADDRESSES:** You may send your hard copy comments to: Government Securities Regulations Staff, Bureau of the Public Debt, Department of the Treasury, 999 E Street N.W., Room 315, Washington, D.C. 20239-0001. You may also send us comments by e-mail to govsecreg@bpd.treas.gov. When sending comments over the Internet, please use an ASCII file format and provide your full name and mailing address.

Comments received will be available for public inspection and downloading from the Internet and for public inspection and copying at the Treasury Department Library, FOIA Collection, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. To visit the library, call (202) 622-0990 for an appointment. You can download this proposed rule from the following web site: [www.publicdebt.treas.gov](http://www.publicdebt.treas.gov).

**FOR FURTHER INFORMATION CONTACT:** Lori Santamora (Executive Director), or Kurt Eidemiller (Senior Financial Advisor), Department of the Treasury, Bureau of the Public Debt, Government Securities Regulations Staff, (202) 691-3632.

### SUPPLEMENTARY INFORMATION:

#### I. Background

The Department of the Treasury ("Treasury," "Department," or "we") is publishing for comment a proposed new rule that will govern the determination of the acceptable types of collateral and their assigned values when pledged to secure deposits of public monies and other financial interests of the government under Treasury's collateral programs. We would establish a new part 380 of Title 31 for this purpose.

The Department's Fiscal Service administers several financial programs that involve the pledging of specific collateral. These programs are described in, and governed by, existing regulations at 31 CFR Part 202 (Depositories and Financial Agents of the Government), 31

CFR Part 203 (Payment of Federal Taxes and the Treasury Tax and Loan Program), and 31 CFR Part 225 (Acceptance of Bonds Secured by Government Obligations in Lieu of Bonds with Sureties). The Financial Management Service ("FMS"), a bureau within the Department's Fiscal Service, administers these programs, which are handled operationally by the Federal Reserve System, acting as the fiscal agent for Treasury. FMS is responsible for administering and amending the regulations for these programs. The Bureau of the Public Debt ("Public Debt"), another bureau within the Department's Fiscal Service, will administer the specific regulations pertaining to the acceptability and valuation of the collateral in these programs.

FMS will continue to be responsible for any other operational and regulatory oversight of Treasury's collateral programs and will provide for corresponding regulatory amendments to parts 202, 203, and 225 in 31 CFR. After consideration of any comments received in response to this proposed rule, we will publish new Part 380 in final form. We expect that new Part 380 (final rule) will be published in the **Federal Register** concurrently with amendments to Parts 202, 203, and 225 (final rules), which will delete certain collateral provisions and will provide appropriate cross-references.

At this time, we're proposing that acceptable types of collateral be consistent with the collateral that is currently acceptable under Parts 202, 203, and 225. The proposed rule simply establishes a different regulatory structure by centralizing the collateral provisions in a single place and specifically setting out the classes of acceptable collateral in the regulations.

The proposed rule also addresses how the acceptable collateral will be valued, consistent with current requirements. Acceptable collateral for part 202 will be valued at par, or at 90% of par, depending on the pledged asset as set out in § 380.2. As described in § 380.3, the valuation of pledged collateral for Part 203 will be based on the class of acceptable security or instrument using those valuation methods applied by the Federal Reserve System, at the direction of the Treasury. Effective September 21, 1998, this assigned value typically reflects a market valuation methodology or mark-to-market pricing. Acceptable collateral for part 225 will be valued at par as noted in § 380.4.

We may choose in the final rule not to set out the acceptable classes of collateral and respective valuations as proposed. Instead, we may choose to

reference current Treasury guidance by stating: "We will specify the types and valuation of acceptable collateral in Treasury procedural instructions." The term "procedural instructions," though subject to change, is currently defined in 31 CFR Section 203.2 as "the Treasury Financial Manual, Volume IV (IV TFM), other Treasury instructions issued through the TFAs, and FRB operating circulars issued consistent with this part."

The office responsible for implementing new Part 380, including any guidance and interpretation, is the Office of the Commissioner. Public Debt also intends to post all related information about collateral acceptability and valuation on its Internet website at the following address: [www.publicdebt.treas.gov](http://www.publicdebt.treas.gov).

## II. Procedural Requirements

This proposed rule is not a "significant regulatory action" under Executive Order 12866. We certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation merely sets forth, without substantive change, existing standards and procedures for the acceptability and valuation of collateral pledged to the government under the three collateral programs. Accordingly, we are not required to perform a regulatory flexibility analysis. Finally, this proposed rule contains no new collection of information. Therefore, the Paperwork Reduction Act does not apply.

### List of Subjects in 31 CFR Part 380

Collateral, Depositaries, Government obligations, Government securities, Securities, Surety bonds.

For the reasons set forth in the preamble, we propose to amend subchapter B of chapter II of Title 31 of the Code of Federal Regulations, by adding part 380 to read as follows:

## PART 380—COLLATERAL ACCEPTABILITY AND VALUATION

### Subpart A—General Information

Sec.

380.0 What do these regulations govern?

380.1 What special definitions apply to this part?

### Subpart B—Acceptable Collateral and its Valuation

380.2 What collateral may I pledge if I am a depository or a financial agent of the Government under 31 CFR part 202, and what value will you assign to it?

380.3 What collateral may I pledge if I am a Treasury Tax and Loan depository under 31 CFR part 203, and what value will you assign to it?

380.4 What collateral may I pledge instead of a surety bond under 31 CFR part 225, and what value will you assign to it?

### Subpart C—Miscellaneous Provisions

380.5 Where can I find current information, and who can I contact for additional guidance and interpretations?

**Authority:** 12 U.S.C. 90, 265–266, 332, 391, 1452(d), 1464(k), 1767, 1789a, 2013, 2122, 3101–3102; 26 U.S.C. 6302; 31 U.S.C. 321, 323, 3301–3304, 3336, 9301, 9303.

### Subpart A—General Information

#### § 380.0 What do these regulations govern?

The regulations in this part govern the types of acceptable collateral that you may pledge to secure deposits of public monies and other financial interests of the federal government, as well as the valuation of that collateral. Specifically, the regulations in this part apply to the programs governed by the Department of the Treasury's regulations at 31 CFR Part 202 (Depositaries and Financial Agents of the Government), 31 CFR Part 203 (Payment of Federal Taxes and the Treasury Tax and Loan Program), and 31 CFR Part 225 (Acceptance of Bonds Secured by Government Obligations in Lieu of Bonds with Sureties). The regulations in this part apply only to the acceptability and valuation of collateral that may be pledged under these programs. 31 CFR parts 202, 203, and 225 continue to govern the respective programs themselves.

#### § 380.1 What special definitions apply to this part?

Special definitions that may apply to this part are contained in 31 CFR parts 202, 203 and 225.

### Subpart B—Acceptable Collateral and its Valuation

#### § 380.2 What collateral may I pledge if I am a depository or a financial agent of the Government under 31 CFR part 202, and what value will you assign to it?

(a) Unless we specify otherwise, you may pledge the following classes of marketable securities, to be valued as follows:

(1) Obligations issued, fully insured, or guaranteed by the United States Government or any United States Government agency. We will value these obligations at par;

(2) Obligations of United States Government-sponsored corporations that under specific statute may be accepted as security for public funds. We will value these obligations at ninety percent of par; and

(3) Obligations issued or fully guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the

Asian Development Bank, or the African Development Bank. We will value these obligations at ninety percent of par.

(b) You may not pledge zero-coupon or declining balance obligations of any entity defined above in this section.

**§ 380.3 What collateral may I pledge if I am a Treasury Tax and Loan depository under 31 CFR part 203, and what value will you assign to it?**

(a) Unless we specify otherwise, you may pledge marketable securities or instruments of the following classes:

(1) Obligations issued, fully insured, or guaranteed by the United States Government or any United States Government agency;

(2) Zero-coupon obligations of the United States Government;

(3) Obligations of United States Government-sponsored corporations that under specific statute may be accepted as security for public funds;

(4) Obligations issued or fully guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, or the African Development Bank;

(5) Obligations partially insured or guaranteed by a United States Government agency;

(6) Insured student loans or notes representing educational loans insured or guaranteed under a program authorized under Title IV of the Higher Education Act of 1965, as amended, or Title VII of the Public Health Service Act, as amended;

(7) General obligations issued by states of the United States and Puerto Rico;

(8) Obligations of counties, cities, or other governmental authorities or instrumentalities within the United States that are not in default as to payments on principal or interest and that may be purchased by banks as investment securities under the limitations established by appropriate federal bank regulatory agencies;

(9) Obligations of domestic corporations that may be purchased by banks as investment securities under the limitations established by appropriate federal bank regulatory agencies; and

(10) Qualifying commercial paper, commercial and agricultural loans, and bankers' acceptances approved by the Federal Reserve System, at the direction of the Treasury.

(b) Collateral for Special Direct Investment Program:

(1) Unless we specify otherwise, to secure your Special Direct Investment (SDI) balances, you may only pledge:

(i) One to four family mortgages; and

(ii) Insured student loans or notes representing education loans insured or

guaranteed under a program authorized under Title IV of the Higher Education Act of 1965, as amended, or Title VII of the Public Health Service Act, as amended.

(2) In addition, all pledged collateral must be:

(i) Acceptable by the Federal Reserve System to secure borrowings from a Federal Reserve Bank for its borrow-in-custody of collateral program; and

(ii) Held by the pledging depository institution which retains possession of the collateral on its own premises under an off-premises collateral arrangement.

(c) We will value all collateral acceptable under this section based on the class of collateral as described using the valuation methods applied by the Federal Reserve System, at the direction of the Treasury. The assigned value typically employs a market valuation methodology.

**§ 380.4 What collateral may I pledge instead of a surety bond under 31 CFR part 225, and what value will you assign to it?**

(a) Unless we specify otherwise, you may pledge a public debt obligation of the United States Government or an obligation whose principal and interest is unconditionally guaranteed by the United States Government. We will value these obligations at par.

(b) You may not pledge zero-coupon obligations of the United States Government or any United States Government agency.

**Subpart C—Miscellaneous Provisions**

**§ 380.5 Where can I find current information, and who can I contact for additional guidance and interpretations?**

You can find a current list of acceptable classes of securities and instruments described in this Part at Public Debt's website, [www.publicdebt.treas.gov](http://www.publicdebt.treas.gov). You can also contact your local Federal Reserve Bank for general assistance in interpreting our criteria. You also may contact the Office of the Commissioner, Bureau of the Public Debt. We can be reached by postal mail at: Office of the Commissioner, Bureau of the Public Debt, Department of the Treasury, 999 E Street, NW, Room 315, Washington, DC 20239-0001, or by e-mail at [govsecreg@bpd.treas.gov](mailto:govsecreg@bpd.treas.gov).

Dated: October 22, 1999.

**Van Zeck,**

*Commissioner.*

[FR Doc. 99-28145 Filed 10-28-99; 8:45 am]

BILLING CODE 4810-39-P

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 165**

[CGD01-99-180]

RIN 2115-AA97

**Safety Zone: Ambassador Construction Fireworks, Hudson River, Anchorage Channel**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone on the Hudson River for the Ambassador Construction Fireworks display. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on a portion of the Hudson River.

**DATES:** Comments must reach the Coast Guard on or before November 29, 1999.

**ADDRESSES:** Comments may be mailed to the Waterways Oversight Branch (CGD01-99-180), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 205 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354-4193.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01-99-180) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments

should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Waterways Oversight Branch at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

Bay Fireworks has submitted an Application for Approval of a Marine Event for a fireworks display on the Hudson River. This proposed regulation establishes a temporary safety zone in all waters of the Hudson River and Anchorage Channel within a 360-yard radius of the fireworks barge in approximate position 40°42'00" N 074°01'17" W (NAD 1983), about 340 yards south of The Battery, Manhattan, New York. The proposed safety zone would be effective from 8:30 p.m. until 10 p.m. on December 17, 1999. There is no rain date for this event. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and Anchorage Channel, and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 780 yards of the 1400-yard wide Hudson River, the eastern 300 yards of the 730-yard wide Anchorage Channel, and the East River during the event. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to the event via local notice to mariners, and marine information broadcasts. The Coast Guard is limiting the comment period for this NPRM to 30 days because the proposed safety zone is only for a one and a half hour long local event and it should have negligible impact on vessel transits. The Coast Guard expects to receive no comments on this NPRM due to the limited duration of the event and the fact that it should not interfere with vessel transits.

### Discussion of Proposed Rule

The proposed safety zone is for the Ambassador Construction Fireworks display held on the Hudson River at The Battery, Manhattan, New York. This

event will be held on Friday, December 17, 1999. There is no rain date for this event. This rule is being proposed to provide for the safety of life on navigable waters during the event and to give the marine community the opportunity to comment on this event.

### Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting a portion of the Lower Hudson River and Anchorage Channel during the event, the effect of this regulation will not be significant for several reasons: the minimal time that vessels will be restricted from the area, that vessels are not precluded from getting underway, or mooring at, piers at The Battery, Manhattan, that vessels may safely transit through the Hudson River and Anchorage Channel during the event, and advance notifications which will be made to the local maritime community by the Local Notice to Mariners, and marine information broadcasts.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**)

explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

### Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

### Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104-4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, \$100 million or more in any one year, the UMRA analysis is required. This proposed rule would not impose Federal mandates on any State, local, or tribal governments, or the private sector.

### Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that under figure 2-1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

### Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

**PART 165—[AMENDED]**

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01-180 to read as follows:

**§ 165.T01-180 Safety Zone: Ambassador Construction Fireworks, Hudson River, Anchorage Channel.**

(a) *Location.* The following area is a safety zone: All waters of the Hudson River and Anchorage Channel within a 360-yard radius of the fireworks barge in approximate position 40°42'00" N 074°01'17" W (NAD 1983), about 340 yards south of The Battery, Manhattan, New York.

(b) *Effective Period.* This section is effective from 8:30 p.m. to 10 p.m. on December 17, 1999. There is no rain date for this event.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard.

Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: October 21, 1999.

**R. E. Bennis,**

*Captain, U. S. Coast Guard, Captain of the Port, New York.*

[FR Doc. 99-28381 Filed 10-28-99; 8:45 am]

BILLING CODE 4910-15-U

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**DEPARTMENT OF AGRICULTURE**

**36 CFR Chapter II**

**Forest Service**

**Negotiated Rulemaking Advisory Committee; Fixed Anchors in Wilderness**

**AGENCY:** Forest Service.

**ACTION:** Notice of intent to establish.

**SUMMARY:** The Secretary of Agriculture intends to establish an advisory committee to develop recommendations for a proposed rulemaking for the placement, use, and removal of fixed anchors used for recreational rock climbing purposes in congressionally designated wilderness areas administered by the Forest Service. This

committee, called the Fixed Anchors in Wilderness Negotiated Rulemaking Advisory Committee, will be made up of individuals representing a broad cross section of interests with a definable stake in the outcome of the proposed rule. The Committee will be established in accordance with the provisions of the Federal Advisory Committee Act and will be engaged in the process of a negotiated rulemaking pursuant to the provisions of the Negotiated Rulemaking Act.

**DATES:** Written comments in response to this notice and nominations for membership must be postmarked not later than November 29, 1999.

**ADDRESSES:** Written comments or nominations should be sent to the Director, Recreation, Heritage and Wilderness Resources Staff, Mail Stop 1125, Forest Service, U.S. Department of Agriculture, P.O. Box 96090, Washington, DC 20090-6090.

Comments may also be telefaxed to the Director at (202) 205-1145 or sent by Internet (anchors/wo@fs.fed.us). All comments received, including names and addresses where provided, are available for public inspection and copying.

**FOR FURTHER INFORMATION CONTACT:** Jerry Stokes, Recreation, Heritage, and Wilderness Resources, (202) 205-0956.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Secretary of Agriculture is establishing a negotiated rulemaking advisory committee to assist in the development of a proposed rule regarding the placement, use, and removal of fixed anchors used for recreational rock climbing purposes in congressionally designated wilderness areas administered by the Forest Service. The Department invites comment in response to this notice, especially on whether the proposed composition and membership of the Fixed Anchors in Wilderness Negotiated Rulemaking Advisory Committee (Committee) provides sufficient representation of the broad cross section of interests that would be significantly affected by rules governing fixed anchors in wilderness.

**Rock Climbing**

Recreational rock climbing has occurred on National Forest System lands for many years. The activity occurs within designated wilderness areas as well as on nonwilderness lands administered by the Forest Service. Rock climbers routinely use a piece of equipment known as a "fixed anchor" to assist them in their climb and to help

them navigate dangerous terrain with a modicum of safety. The safest, most common, and most reliable type of fixed anchor is an "expansion bolt," which is a small steel bolt placed into a hole that has been drilled into a rock. Frequently, a "hanger" is used by a climber to link an expansion bolt to the rope or safety system.

Although fixed anchors can be removed, it is difficult and time consuming to do so. As a result, many climbers leave their fixed anchors in a rock even after the completion of their climb. Many rock climbers argue that fixed anchors are an important and necessary device which enables them to engage in a legitimate recreational activity that predates an area's designation as wilderness. Many wilderness enthusiasts, on the other hand, have asserted that fixed anchors are "installations" that are not necessary for the administration of a wilderness area and, therefore, are prohibited by the express terms of the Wilderness Act itself.

**Fixed Anchors in Wilderness Negotiated Rulemaking**

The Secretary has determined that the best way to resolve this issue in the wilderness areas on National Forest System lands is to proceed with a negotiated rulemaking pursuant to the Negotiated Rulemaking Act, 5 U.S.C. 561 *et seq.* To carry out the rulemaking process, an advisory committee is established which consists of an agency representative and other parties representing a broad cross section of the interests significantly affected by the rulemaking. Through a series of meetings, the members of the advisory committee negotiate in good faith and strive to reach consensus on recommendations for a proposed rule.

As provided for in the Negotiated Rulemaking Act, the Forest Service retained the services of a convener highly experienced in negotiated rulemakings to determine whether such a process would be useful to resolve the fixed-anchor issue. After speaking directly with representatives of many of the parties that would be affected by a fixed anchor in wilderness regulation, the convener issued a convening report to the Forest Service on January 26, 1999, with a recommendation to proceed with a negotiated rulemaking. Among other things, the report noted that with respect to fixed anchors, the following criteria established by the Negotiated Rulemaking Act were satisfied: (1) There is a need for a rule; (2) there is a limited number of identifiable interests that would be significantly affected by the rule; (3)

there is a reasonable likelihood that a committee can be established with a balanced representation of interested parties who would be willing to negotiate in good faith to reach consensus; (4) there is a reasonable likelihood that the committee would be able to reach consensus; (5) the negotiated rulemaking procedure will not unreasonably delay the promulgating of a fixed-anchor rule; (6) the agency has adequate resources to finance the committee operations; and (7) to the extent practicable, the agency will use the consensus of the committee as the basis for a proposed rule.

Having considered the recommendations of the convener in the January 26, 1999, report, the Secretary has decided that the establishment of the committee is in the public interest in connection with the Forest Service's responsibility to administer congressional designated wilderness areas in accordance with the Wilderness Act. The Committee meetings will serve as a forum in which committee members, with input from other interested parties, can discuss issues involved in regulating the use of fixed anchors for recreational climbing purposes in wilderness areas administered by the Forest Service. The Secretary believes that this process will enable the agency to develop and promulgate effective regulations governing the use of these devices within wilderness areas on National Forest System lands.

#### **Key Issues To Be Considered for Negotiation**

Among the issues that may be considered by the Committee during the course of their deliberations are the following:

- What type of rock climbing-related equipment should be allowed in wilderness areas and under what circumstances;
- What process should be used to decide whether the insertion or removal of a fixed anchor should take place and who should be party to the decision;
- Who should be responsible for the insertion and removal of fixed anchors; and
- What is the impact on the Forest Service and the climbing industry if the agency assumes an active role in regulating the use, the insertion, and the removal of fixed anchors.

#### **Proposed Committee Membership**

The January 26, 1999, convening report identified the interest most likely to be directly affected by a fixed anchor in wilderness regulation as including the following: climbers, outfitters,

education/experience providers; environmental organizations, and conservation organizations. The following parties have been identified as potential participants on the Negotiated Rulemaking Committee: Access Fund; American Alpine Club; American Mountain Guide Association; Idaho Conservation League; National Outdoor Leadership School; National Parks and Conservation Association; Outdoor Recreation Coalition of America; Outward Bound; Recreation Equipment Incorporated; Sierra Club; Wild Wilderness; Wilderness Society; Wilderness Watch; and Steve Wolper, an active climber as well as an advocate for wilderness conservation. The report also mentioned that Native Americans may have concerns about fixed-anchor issues that are different from the concerns of the other interests and, therefore, should be represented on the Committee.

The Forest Service representative, Larry Gadt, Director of Minerals and Geology, will participate in the deliberations and activities of the Committee with the same rights and responsibilities as other Committee members. This official will be authorized to fully represent the agency in the discussions and negotiations of the Committee. Three other Federal land management agencies, the National Park Service, the Bureau of Land Management, and the Fish and Wildlife Service, will have representatives who will serve as consultants to the Forest Service to provide their perspective on the issues. These Federal agencies will not participate as members on the Committee.

The Forest Service will consider nominations for Committee membership from organizations or interests that believe they may be substantially affected by the subject of the negotiations. Each application or nomination for membership or nomination to the Committee should include: (1) The name, address, telephone number(s), and e-mail address(es) of the nominee; (2) the organization the nominee will represent; (3) written documentation from the organization providing evidence that the applicant or nominee is authorized to represent that organization or interest and participate in the negotiated rulemaking process; (4) a promise from the nominee to participate in the negotiated rulemaking proceedings in good faith, and (5) the reasons that the interests or persons specified in this notice do not adequately represent this applicant's interest.

It is not necessary that every concerned organization be represented

on the Committee as long as every significant interest is represented. In addition, the Negotiated Rulemaking Act restrict the total number of representatives on a committee to twenty-five (25). Nonetheless, the Department will carefully consider any and all nominations received from individuals or organizations not included on the Proposed Committee Membership list.

#### **Schedule of Meetings**

After the 30-day comment period for this notice ends, the Forest Service will review the comment received on establishment of the committee and the nominations and provide the information to the Secretary. Following appointment of members by the Secretary, the agency will publish a notice announcing the names of the individuals and the interests that represent and give notice of the first meeting's location and time. The agency expects to hold three meetings, with each meeting consisting of two to three 8-hour days for the committee to negotiate the issues raised at the convening stage and other issues relevant to the use of fixed anchors in wilderness. The first meeting is to be held within 60 days of the establishment of the committee and appointment of its membership. The meetings and their agendas will be announced in the **Federal Register**. Administrative staff support for the meetings will be provided by the Forest Service. Assuming that the committee reaches consensus, the agency would attempt to publish a proposed rule in the **Federal Register** reflecting that consensus within six months following submission of the committee's report to the Secretary.

Dated: October 20, 1999.

**Sally Thompson,**

*Acting Assistant Secretary for Administration.*

[FR Doc. 99-28219 Filed 10-28-99; 8:45 am]

BILLING CODE 3410-11-M

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[MD081-3043b; FRL-6449-4]

#### **Approval and Promulgation of Air Quality Implementation Plans; State of Maryland; Enhanced Inspection & Maintenance Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

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**SUMMARY:** EPA proposes to convert our conditional approval of the Maryland's State Implementation Plan (SIP) revision for an enhanced vehicle inspection and maintenance (I/M) program to a full approval. In the Final Rules section of this **Federal Register**, EPA is converting its conditional approval to a full approval as a direct final rule without prior proposal because the Agency views this as noncontroversial and anticipates no adverse comments. A detailed rationale for the full approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by November 29, 1999.

**ADDRESSES:** Written comments should be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224. Please contact Christopher Cripps at (215) 814-2179 if you wish to arrange an appointment to view the docket at the Philadelphia office.

**FOR FURTHER INFORMATION CONTACT:** Christopher Cripps, (215) 814-2179, at the EPA Region III address above, or by e-mail at [cripps.christopher@epa.gov](mailto:cripps.christopher@epa.gov).

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: September 20, 1999.  
**W. Michael McCabe,**  
*Regional Administrator, Region III.*  
 [FR Doc. 99-27198 Filed 10-28-99; 8:45 am]  
 BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 372

[OPPTS-400140B; FRL-6391-6]

RIN 2070-AD38

### Lead and Lead Compounds; Lowering of Reporting Thresholds; Community Right-to-Know Toxic Chemical Release Reporting; Extension of Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** On August 3, 1999, EPA issued a proposed rule to lower the reporting thresholds for lead and lead compounds which are subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). The proposed rule also included a limitation on the reporting of lead when contained in certain alloys and proposed modifications to certain reporting exemptions and requirements for lead and lead compounds. On September 21, 1999, EPA issued a **Federal Register** document extending the comment period 45 days until November 1, 1999. The purpose of today's action is to inform interested parties that, in an effort to ensure adequate opportunities for input from all affected parties, including small businesses, EPA is extending the comment period by another 45 days until December 16, 1999. The comment period for the proposed rule was initially scheduled to close on September 17, 1999, and was extended 45 days to November 1, 1999. **DATES:** Written comments, identified by the docket control number OPPTS-400140, must be received by EPA on or before December 16, 1999.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the SUPPLEMENTARY INFORMATION section of this document.

**FOR FURTHER INFORMATION CONTACT:** For technical information on this action contact: Daniel R. Bushman, Petitions

Coordinator, Environmental Protection Agency, Mail Code 7408, 401 M St., SW., Washington, DC 20460; telephone number 202-260-3882, e-mail address: [bushman.daniel@epa.gov](mailto:bushman.daniel@epa.gov). For general information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1-800-535-0202, in Virginia and Alaska: 703-412-9877 or Toll free TDD: 1-800-553-7672.

### SUPPLEMENTARY INFORMATION:

#### I. General Information

##### A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, process, or otherwise use lead or lead compounds. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of Potentially Affected Entities
Industry	Facilities that: process copper ores, lead and zinc ores; operate pulp mills, petroleum refineries, primary copper smelters, primary and secondary nonferrous metal smelters, gray/ductile iron foundries, steel foundries, blast furnaces, steel mills, petroleum bulk stations and terminals, industrial boilers that burn coal, wood, petroleum products, and electric utilities that combust coal and/or oil for distribution of electricity in commerce; facilities that manufacture, process, or use inorganic pigments, small arms ammunition, asphalt paving mixtures and blocks, storage batteries, motor vehicles and motor vehicle equipment; manufacture electronic components and accessories.
Federal Government	Federal facilities that: manufacture, process, or use lead or lead compounds; burn coal or petroleum products.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your

facility would be affected by this action, you should carefully examine the applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations. 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.

**B. How Can I Get Additional Information or Copies of this Document or Other Support Documents?**

1. *Electronically.* You may obtain electronic copies of this document from the EPA Internet Home Page at <http://www.epa.gov/>. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register--Environmental Documents." You can also go directly to the "Federal Register" listings at <http://www.epa.gov/fedrgstr/>.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS-400140. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B-607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260-7099.

**C. How and to Whom Do I Submit Comments?**

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number (i.e., "OPPTS-400140") in your correspondence.

1. *By mail.* Submit written comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in the East Tower

Rm. G-099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is: 202-260-7093.

3. *Electronically.* Submit your comments electronically by E-mail to: "oppt.ncic@epamail.epa.gov." Please note that you should not submit any information electronically that you consider to be CBI. 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 standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPPTS-400140. Electronic comments on this proposal may also be filed online at many Federal Depository Libraries.

**D. How Should I Handle CBI Information that I Want to Submit to the Agency?**

You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section.

**II. Background Information**

**A. What Does this Notice Do and What Action Does this Notice Affect?**

This document extends the comment period for EPA's August 3, 1999 proposed rule (64 FR 42222) (FRL-6081-4) to lower the reporting thresholds for lead and lead compounds which are subject to reporting under EPCRA section 313 and PPA section 6607. EPA proposed the lowering of the reporting thresholds for lead and lead compounds pursuant to its authority under EPCRA section 313(f)(2) to revise reporting thresholds. The August 3, 1999 proposed rule also included a limitation on the reporting of lead when contained in certain alloys and proposed modifications to certain reporting exemptions and requirements for lead and lead compounds.

**B. Why and for How Long is EPA Extending the Comment Period?**

EPA noted in the initial extension (64 FR 51093, September 21, 1999) (FRL-6382-9) that it had received requests from a number of groups to extend the comment period for the August 3, 1999 proposed rule. Since that time, EPA has received requests for an additional extension from a number of groups, including small businesses. In order to ensure adequate opportunities for input from all affected parties, including small businesses, EPA has determined that extending the comment period is an appropriate action and will not cause significant delay in the evaluation of the proposed rule. Therefore, EPA is extending the comment period on the August 3, 1999 proposed rule by another 45 days. All comments must be received by December 16, 1999.

**III. Do Any of the Regulatory Assessment Requirements Apply to this Action?**

No. As indicated previously, this action merely announces the extension of the comment period for the proposed rule. This action does not impose any new requirements. As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). Nor does it require prior consultation with State, local, and Tribal government officials as specified by Executive Order 12875, entitled *Enhancing Intergovernmental Partnerships* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). The

Agency has determined that this action will not have a substantial direct effect on 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, as specified in Executive Order 12612, entitled *Federalism* (52 FR 41685, October 30, 1987). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). In addition, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying proposed rule, is discussed in the preamble to the proposed rule (64 FR 42222).

#### List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements, Superfund.

Dated: October 25, 1999.

**Susan H. Wayland,**

*Deputy Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

[FR Doc. 99-28487 Filed 10-28-99; 8:45 am]

BILLING CODE 6560-50-F

## DEPARTMENT OF TRANSPORTATION

### Office of Motor Carrier Safety

#### 49 CFR Part 392

[Docket No. OMCS-98-4202]

#### Railroad-Highway Grade Crossing; Safe Clearance; Public Meeting

**AGENCY:** Office of Motor Carrier Safety (OMCS), DOT.

**ACTION:** Proposed rule; public meeting.

**SUMMARY:** This document announces a public meeting to discuss the problem of railroad-highway grade crossing crashes involving commercial motor vehicles (CMVs) in general, and specifically crashes in which the CMV was struck by a train because the driver of the CMV, for whatever reason, stopped the vehicle prior to clearing the railroad track. The meeting is intended to promote the sharing of information

between the Office of Motor Carrier Safety (OMCS), the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA); State agencies with responsibilities related to railroad-highway grade crossing safety; motor carriers, and rail carriers; and interested parties concerning the adequacy of current Federal and State laws and regulations governing the operation of CMVs at grade crossings, and devices and technologies that could be installed at these locations to help reduce the incidence of CMV-train crashes. The meeting will include presentations by the OMCS, the FHWA, and the FRA explaining their respective roles. The agencies would provide all interested parties with an opportunity to voice their concerns about the adequacy of current Federal and State requirements and present suggestions or recommendations for practical ways to reduce the incidence of railroad-highway grade crossing crashes.

**DATES:** The meeting will be held on Tuesday, November 9, 1999. The meeting will begin at 9:30 a.m. and end at 4:30 p.m.

**ADDRESSES:** The meeting will be held in Room 2230, Nassif Building, DOT Headquarters, 400 Seventh Street, SW., Washington, DC. 20590

**FOR FURTHER INFORMATION CONTACT:** Mr. David M. Lehrman, Office of Motor Carrier Safety (202) 366-0994; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC-20, (202) 366-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Office of the Federal Register's home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>.

##### Creation of New Agency

Section 338 of the FY 2000 Department of Transportation and Related Agencies Appropriations Act prohibits the expenditure of any funds appropriated by that Act "to carry out the functions and operations of the Office of Motor Carriers within the Federal Highway Administration" (Public Law 106-69, October 9, 1999,

113 Stat. 986, at 1022). Section 338 further provides that, if the authority of the Secretary of Transportation on which the functions and operations of the Office of Motor Carriers are based is redelegated outside the FHWA, the funds available to that Office under the Act may be transferred and expended to support its functions and operations.

The Secretary has rescinded the authority previously delegated to the FHWA to perform motor carrier functions and operations. This authority has been redelegated to the Director, Office of Motor Carrier Safety (OMCS), a new office within the Department of Transportation (64 FR 56270, October 19, 1999).

The new OMCS includes the following headquarters offices of the FHWA's former Office of Motor Carrier and Highway Safety (OMCHS): the Office of Motor Carrier Research and Standards, the Office of Data Analysis and Information Systems, the Office of Motor Carrier Enforcement, the Office of Policy and Program Management, the Office of National and International Safety Programs, the Office of Technology Evaluation and Deployment, and the Office of Program Evaluation. However, the Office of Highway Safety Infrastructure remains part of the FHWA. In addition, the motor carrier functions of the FHWA's Resource Centers and Division (i.e., State) Offices have been transferred to OMCS Resource Centers and OMCS Division Offices, respectively. Rulemaking, enforcement and other activities of the OMCHS while part of the FHWA will be continued by the new OMCS. The redelegation will cause no changes in the motor carrier functions and operations of the offices or resource centers listed above. For the time being, all phone numbers and addresses are unchanged.

##### Background

On August 26, 1994, the President signed the Hazardous Materials Transportation Authorization Act of 1994 (Public Law 103-311, 108 Stat. 1673) (the Act). Section 112 of the Act requires the Secretary of Transportation to amend the Federal Motor Carrier Safety Regulations to prohibit the driver of any CMV from driving a motor vehicle onto a railroad-highway grade crossing without having sufficient space to drive completely through the crossing without stopping.

On July 30, 1998 (63 FR 40691), the OMCS published a notice of proposed rulemaking (NPRM) to implement the statutory mandate. The NPRM also sought comments and information about the number of railroad grade crossings

that lacked sufficient clearance for some CMVs to be driven completely across the tracks before stopping.

The OMCS believes a public meeting is necessary to establish dialogue among Federal and State agencies, motor and rail carriers, safety groups, and interested parties concerning practical approaches for reducing the incidence of CMV crashes with trains, especially crashes in which the CMV was struck by the train because the driver of the CMV, for whatever reason, stopped the vehicle prior to clearing the railroad track.

**Magnitude of the Problem of Railroad-Highway Grade Crossing Crashes**

The OMCS believes that it is important to address accidents at railroad-highway grade crossings because they are numerous, as can clearly be seen in the figures set forth below. While the downward trend is encouraging, in that the overall total number of railroad-highway grade crossing fatalities and nonfatalities both dropped between 1997 and 1998, some segments of the population having accidents, for example, pickup trucks, have actually increased. Furthermore, motor vehicle property damage, as a result of railroad-highway grade crossing accidents remains at over \$15 million annually. Yet, another important factor is maintaining the confidence of the public in our ability to promote safety at railroad-highway grade crossings. That confidence will grow by initiating a vigorous program to prevent these accidents. The Office of Motor Carrier Safety is committed to proactively continuing the 1998 decline in railroad-highway grade crossing accidents. This public meeting scheduled for Tuesday, November 9, 1999, is an important step in soliciting engineering and other technological ideas to achieve that goal.

**1997 INCIDENTS**

	Incidents	Motor vehicle damage
Truck .....	681 17.6%	\$3,982,275.00
Truck-trailer	490 12.7%	6,139,783.00
Pickup truck	335 8.7%	1,264,135.00
Truck total ..	1506 39.0%	11,386,193.00
Overall		
Total .....	3865 100%	18,675,374.00
Car .....	2078 53.8%	5,968,309.00

**1997 FATALS/NONFATAL**

	Fatals	Nonfatal
Truck .....	89 19.3%	275 17.9%
Truck-trailer ...	21 4.6%	232 15.1%
Pickup truck ...	28 6.0%	120 7.7%
Truck total .....	138 29.9%	627 40.7%

**1997 FATALS/NONFATAL—Continued**

	Fatals	Nonfatal
Overall Total ..	461 100%	1540 100%
Car .....	247 53.6%	795 51.6%

**1998 INCIDENTS**

	Incidents	Motor Vehicle Damage
Truck .....	460 13.1%	\$2,149,600.00
Truck-trailer	477 13.6%	6,423,570.00
Pickup truck	444 12.6%	1,993,971.00
Truck total ..	1381 39.3%	10,567,141.00
Overall		
Total .....	3508 100%	16,790,748.00
Car .....	1810 51.6%	5,318,227.00

**1998 FATAL/NONFATAL**

	Fatal	Nonfatal
Truck .....	57 13.2%	188 14.4%
Truck-trailer ...	17 3.9%	185 14.2%
Pickup truck	60 13.9%	147 11.3%
Truck total .....	134 31.0%	520 39.9%
Overall Total ..	431 100%	1303 100%
Car .....	206 47.8%	668 51.3%

**Topics of Discussion During the Meeting**

*OMCS NPRM Concerning Storage Space*

1. What are the potential problems facing CMV drivers at railroad-highway grade crossings?
2. What would a rule, if promulgated, require?
3. How would a driver or motor carrier ensure compliance? Note that irrespective of whatever signs are posted concerning the space between the rails and the traffic control device, etc., the driver must make a judgment call on whether the vehicle can clear the tracks completely. Is there current technology available to help make this determination? If not, can industry develop the necessary technology to determine adequate storage space?
4. Would a sign showing how much space exists between the rails and the next traffic control device help? If so, where should such a sign be placed? Would it suffice for a sign to indicate, perhaps through a universal graphic symbol, that vehicle storage at an at-grade highway-rail crossing is shorter than the longest legal CMV?
5. Are there disadvantages to safety arising out of the proposed rule of July 30, 1998? For example, consider the following scenario: A truck makes a right turn onto railroad tracks. After completing the turn, the driver then realizes that there is insufficient storage space available—it is occupied on the other side of the tracks by a truck which

the driver could not see prior to making his turn. The driver now has to back up onto a street at right angles to the front of his truck or tractor. The driver may find it difficult to see oncoming traffic on the street from which the vehicle has just turned. In what ways could a spotter, or flagman help in complying with a rule prohibiting entering storage space without ability to clear the tracks?

6. Would it be helpful for CMVs to be detoured around routes containing at-grade railroad-highway crossings with insufficient space to accommodate the vehicle?

7. Is there anything else that would help drivers comply with the law?

*Final Rule on Commercial Driver Disqualification Provision*

On September 2, 1999 the OMCS published a final rule adopting new disqualification periods for holders of commercial drivers' licenses (CDLs) who are convicted of railroad-highway grade crossing violations (64 FR 48104).

1. Do we know enough about the configurations of all the railroad-highway grade crossings to effectively develop a solution for this problem if a rule were promulgated addressing storage space? For example, at railroad-highway grade crossings where tracks cross each other at right angles, is it possible to determine whether storage space considerations can be accommodated safely? Would there be a potential problem with traffic control devices?

2. What are the penalties? Answer: Disqualification of the driver for certain periods, and up to \$10,000 civil penalty for employers who knowingly allow, require, permit, or authorize a driver to operate a CMV in violation of a Federal, State, or local law or regulation pertaining to railroad-highway grade crossings.

*FRA Initiatives To Reduce Grade Crossing Crashes*

*Infrastructure Changes To Improve Grade Crossing Safety*

*Other Topics (Time Available for Interested Parties To Give Presentations)*

**Meeting Information**

The meeting will be held on Tuesday, November 9, 1999, in Room 2230, Nassif Building, 400 Seventh Street, SW., Washington, DC. Since access to the DOT building is controlled, all visitors must sign in with the security office located at the entrance of the lobby and wear a visitor's badge at all times while in the building.

Individuals who wish to make a formal presentation should contact Mr.

David M. Lehrman at (202) 366-0994 no later than November 4, 1999, to ensure that sufficient time is allotted for the presentation and to identify any audio-visual equipment needed for the presentation.

**Authority:** 49 U.S.C. 31136, 31502; and 49 CFR 1.73.

**Julie Cirillo,**

*Acting Director, Office of Motor Carrier Safety.*

[FR Doc. 99-28233 Filed 10-28-99; 8:45 am]

**BILLING CODE 4910-22-P**

# Notices

Federal Register

Vol. 64, No. 209

Friday, October 29, 1999

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

### Office of the Secretary

#### Commission on 21st Century Production Agriculture

**ACTION:** Notice of meeting.

**SUMMARY:** The U.S. Department of Agriculture (USDA) has established the Commission on 21st Century Production Agriculture. In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is hereby given of a meeting in November of the Commission on 21st Century Production Agriculture. The purpose of this meeting will be to address issues regarding small farms. This meeting is open to the public.

**PLACE, DATE, AND TIME OF MEETINGS:** This meeting will be held November 15, 1999 in Room 201 at the Georgia Department of Agriculture, Capital Square, Atlanta, Georgia 30334-4201 from 12:00 EST—5:00 PM EST; and on November 16, 1999, the Commission will be touring small farms and small farm cooperatives throughout rural Georgia.

**FOR FURTHER INFORMATION CONTACT:** Timothy M. Peters (202-720-4860), Assistant Director, Commission on 21st Century Production Agriculture, Room 3702 South Building, 1400 Independence Avenue, SW, Washington, DC 20250-0524.

Dated: October 20, 1999.

**Keith J. Collins,**

*Chief Economist.*

[FR Doc. 99-28300 Filed 10-28-99; 8:45 am]

BILLING CODE 3410-01-M

## DEPARTMENT OF AGRICULTURE

### Agricultural Research Service

#### Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

**AGENCY:** Agricultural Research Service, USDA.

**ACTION:** Notice of availability and intent.

**SUMMARY:** Notice is hereby given that a Federally owned invention U.S. Patent No. 5,919,446 (S.N. 08/958,475 filed October 27, 1997, entitled "Control of Fire Blight on Pome Fruit Trees with *Erwinia herbicola*" is available for licensing and the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Northwest Agricultural Products of Wasco, Washington, an exclusive license to Serial No. 08/958,475.

**DATES:** Comments must be received on or before January 27, 2000.

**ADDRESSES:** Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4-1158, Beltsville, Maryland 20705-5131.

**FOR FURTHER INFORMATION CONTACT:** June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301-504-5989.

**SUPPLEMENTARY INFORMATION:** The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Northwest Agricultural Products has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

**Richard M. Parry, Jr.,**  
*Assistant Administrator.*

[FR Doc. 99-28379 Filed 10-28-99; 8:45 am]

BILLING CODE 3410-03-P

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### Notice of Request for Approval of a New Information Collection

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** Commodity Credit Corporation (CCC) is seeking approval from the Office of Management and Budget (OMB) for use of the forms necessary to implement the Total Quality Systems Audit (TQSA) program.

This information collection will allow CCC to determine compliance with TQSA standards. This program is being implemented to ensure that CCC purchases meet customer requirements and needs. Vendors offering processed commodities covered by TQSA for sale to CCC will have to meet quality control standards to assure the quality of the end product to be purchased by CCC.

**DATES:** Comments on this notice must be received on or before December 28, 1999 to be assured consideration.

**FOR FURTHER INFORMATION CONTACT:** Tim Mehl, Chief, Warehouse License and Examination Division, Kansas City Commodity Office, 9200 Ward Parkway, Kansas City, Missouri 64114, telephone (816) 926-6843, fax (816) 926-1774.

#### SUPPLEMENTARY INFORMATION:

*Title:* Total Quality Systems Audit Program.

*OMB Control Number:* 0560-NEW.

*Type of Request:* Approval of a new information collection.

*Abstract:* TQSA is a fee for service program open to food processors and other food related manufacturers of certain products purchased by CCC. Participation in the TQSA program may be required by CCC. Such requirement will be included in the applicable CCC commodity purchase announcement or invitation. A TQSA team has been organized in the Farm Service Agency (FSA) from personnel in FSA's Commodity Operations Division and the Department's Kansas City Commodity Office (KCCO).

During a TQSA audit, the participating vendor must make available to the audit team records pertaining to organization, production, work procedures, quality testing, shipping, sub-supplier certifications,

proof of U.S. origin, and all USDA contract documents. The vendor will make available key personnel and production workers for interview.

The TQSA team coordinates the audit with the vendor's management. The team makes detailed assessments of the vendor's production facilities, equipment, and procedures. Quality procedures and documentation are reviewed and assessed for compliance to TQSA standards. Records pertaining to purchasing, production, shipping, and safety are appraised. A review of CCC contracted products is made.

Four types of TQSA audits are performed:

1. Baseline audits are done for new or potential TQSA participants. The audit provides the company with guidelines to meet the TQSA standards.

2. Full audits are mandatory for those vendors that have previously met the TQSA standards and wish to remain in compliance with the TQSA program.

3. Surveillance audits are limited in scope to confirm corrective actions, found during full audits, are complete and successfully implemented.

4. Destination reviews are conducted at a point in the commodity distribution chain to verify the product conforms to standards. The review is usually conducted as part of an audit program to check product quality, but may be conducted in response to a customer complaint.

To be compliant with TQSA standards the vendor must completely conform to Good Manufacturing Practices (21 CFR Part 110), Applicable Federal or State food safety requirements, and current commodity announcement/invitations, if applicable. Vendors must also demonstrate an acceptable level of conformance with ISO/ANSI/ASQ 9001-1994 Quality Systems Model for Quality Assurance in Design, Development, Production, Installation, and Servicing Standards.

All observations and findings of non-conformance will be recorded on the Audit Summary (KC-1TQ). Evidence of major non-conformance or system failures will be reported on the Corrective Actions Request (KC-3TQ).

At the conclusion of the audit a score is determined according to established procedures. This score is also used to determine the frequency of future audits. The score, the audit results on the KC-1TQ, the KC-3TQ, and the billable hours are discussed with the vendor's representative at an exit meeting. Any disputes will be settled during this meeting and the results and the score revised if necessary. The score

finalized during this meeting cannot be disputed at a later date.

The Audit Summary (KC-1TQ) and the Corrective Action Request (KC-3TQ) require the signature of the vendor's representative. The signature constitutes agreement with the results and score of the audit. The signed forms are provided to KCCO. This information may be used to determine the eligibility for and awarding of contracts.

*Estimate of Burden:* Public reporting burden for collecting information under this notice is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Respondents:* Food vendors participating in the TQSA Program.

*Respondents:* 250.

*Estimated Number of Annual Responses per Respondent:* 2.

*Estimated Total Annual Burden Per Respondent:* 1 hour.

*Total Annual Responses:* 500.

*Total Annual Burden Hours:* 250.

*Proposed topics for comment include:*

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; or (d) ways to minimize the burden of the collection of the 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.

Comments regarding this information collection requirement may be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for USDA, Washington, DC 20503, and to Timothy P. Mehl, Chief, Warehouse Licensing and Examination Division, Kansas City Commodity Office, 9200 Ward Parkway, Kansas City, Missouri 64114, telephone (816) 926-6843, fax (816) 926-1774.

All comments will become a matter of public record.

Signed at Washington, DC, on October 25, 1999.

**Keith Kelly,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 99-28378 Filed 10-28-99; 8:45 am]

BILLING CODE 3410-05-P

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

#### Notice of Request for Extension of Currently Approved Information Collection

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's (FAS) intention to request an extension for a currently approved information collection in support of the Public Law 480, Title I program, found at 7 CFR part 17.

**DATES:** Comments on this notice must be received by December 28, 1999 to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** Acting Director, Public Law 480 Operations Division, Export Credits, Foreign Agricultural Service, Room 4549 South Building, Stop 1033, U.S. Department of Agriculture, 1400 Independence Ave., SW, Washington, DC 20250-1033. Telephone: (202) 720-3664.

#### SUPPLEMENTARY INFORMATION:

*Title:* Declaration of Sale, Form FAS-359.

*OMB Number:* 0551-0009.

*Expiration Date of Approval:* February 29, 2000.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended, (Public Law 480) authorizes the Commodity Credit Corporation (CCC) to finance the sale and exportation of agricultural commodities on concessional credit terms. 7 U.S.C. 1701 *et seq.* Commodity suppliers must report details of sales for price approval. Form FAS-359, "Declaration of Sale," is the written record, signed by the commodity supplier, of the terms of sale as reported by telephone. When signed for the General Sales Manager, it provides evidence of the USDA price approval required for CCC financing.

*Estimate of Burden:* The public reporting burden is 15 minutes per response for commodity suppliers reporting details of sales.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 15.

*Estimated Total Annual Burden on Respondents:* 30.25 hours.

Copies of this information collection can be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720-2568.

#### Request for Comments

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 will have 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; and (d) ways to 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. Comments may be sent to Acting Director, Public Law 480 Operations Division, Export Credits, Foreign Agricultural Service, Room 4549 South Building, Stop 1033, U.S. Department of Agriculture, 1400 Independence Ave., SW, Washington, DC 20250-1033 and the desk officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Signed at Washington, DC, on October 21, 1999.

**Richard Fritz,**

*General Sales Manager, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.*

[FR Doc. 99-28298 Filed 10-28-99; 8:45 am]

BILLING CODE 3410-10-M

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## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

#### Notice of Request for Extension of Currently Approved Information Collection

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's (FAS) intention to request an extension for a currently

approved information collection in support of the Public Law 480, Title I program, found at 7 CFR part 17.

**DATES:** Comments on this notice must be received by December 28, 1999 to be assured of consideration.

#### FOR FURTHER INFORMATION CONTACT:

Acting Director, Public Law 480 Operations Division, Export Credits, Foreign Agricultural Service, Room 4549 South Building, Stop 1033, U.S. Department of Agriculture, 1400 Independence Ave., SW, Washington, DC 20250-1033. Telephone: (202) 720-3664.

#### SUPPLEMENTARY INFORMATION:

**Title:** Regulations-Financing Commercial Sales of Agricultural Commodities under Title, Public Law 480.

**OMB Number:** 0551-0005.

**Expiration Date of Approval:** February 29, 2000.

**Type of Request:** Extension of a currently approved information collection.

**Abstract:** Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended, (Public Law 480) authorizes the Commodity Credit Corporation (CCC) to finance the sale and exportation of agricultural commodities on concessional credit terms. 7 U.S.C. 1701 et seq. Suppliers of commodities and ocean transportation must retain records for three years. Prospect commodity suppliers must provide information for the Department to determine eligibility. Commodity suppliers must report details of sales for price approval and to submit to USDA, for approval, information on any amendments to the sales. Shipping agents nominated by importing countries must submit information to allow identification of possible conflicts of interest.

**Estimate of Burden:** CCC estimates the public reporting burden to be eight hours per year per supplier for the recordkeeping requirements; two hours for new suppliers that need to develop the information necessary for eligibility under Public Law 480, Title I program; 15 minutes for commodity suppliers to prepare telephonic notices of sale and requests for approval of sale amendments; and, one hour for shipping agents to prepare a complete package of information required by the regulations each fiscal year and 15 minutes to prepare each subsequent submission updating information as changes occur.

**Respondents:** Suppliers of commodities and ocean transportation; prospective commodity suppliers; shipping agents.

**Estimated Number of Respondents:** 64.

**Estimated Total Annual Burden on Respondents:** 441.75 hours.

Copies of this information collection can be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720-2568.

#### Request for Comments

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 will have 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; and (d) ways to 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. Comments may be sent to Acting Director, Public Law 480 Operations Division, Export Credits, Foreign Agricultural Service, Room 4549 South Building, Stop 1033, U.S. Department of Agriculture, 1400 Independence Ave., SW, Washington, DC 20250-1033 and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Signed at Washington, DC, on October 21, 1999.

**Richard Fritz,**

*General Sales Manager, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.*

[FR Doc. 99-28299 Filed 10-28-99; 8:45 am]

BILLING CODE 3410-10-M

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## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletions from Procurement List

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**SUMMARY:** The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** November 29, 1999

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202-4302.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 603-7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

#### Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action will result in authorizing small entities to furnish the commodities and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

#### Commodities

Tab, Hanging File Folder  
7510-01-375-0502  
7510-01-375-4510  
NPA: Lions Club Industries, Inc., Durham, North Carolina

#### Services

Administrative Services, U.S. Army District Corp of Engineers, 696 Virginia Road, Concord, Massachusetts.  
NPA: Minute Man Arc for Human Services, Inc., Concord, Massachusetts  
Base Supply Center and Operation of Individual Equipment Element Store, Langley Air Force Base, Virginia.  
NPA: Virginia Industries for the Blind, Richmond, Virginia.  
Management Services  
U.S. Department of Housing and Urban Development, 611 W. Sixth Street, Los Angeles, California.  
NPA: Pacific Coast Community Services, Truckee, California.  
Management Services  
U.S. Department of Housing and Urban Development, 450 Golden Gate Avenue, San Francisco, California.  
NPA: Pacific Coast Community Services Truckee, California.  
Operation of Individual Equipment Element Store and HAZMART  
McGuire Air Force Base, New Jersey  
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.  
Operation of Warehouse, Supply Room Operations and Seasonal Grounds Maintenance  
Software Development Center, Fort Lee, Virginia.  
NPA: Richmond Area Association for Retarded Citizens, Richmond, Virginia

#### Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will result in authorizing small entities to furnish the commodities to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Binder, Pilot's  
7510-00-NSH-0010  
Calendar Pad  
7510-01-363-4999  
Executive/Personal Time Management System

7530-01-444-7740  
7530-01-444-7741  
7530-01-444-7742  
7530-01-444-7743  
7530-01-444-7744  
7530-01-444-7745  
7530-01-444-7746  
7530-01-444-7747  
7530-01-444-7748  
7530-01-444-7749  
7530-01-444-7750  
7530-01-444-7751  
7530-01-444-7752  
7530-01-444-7702  
7530-01-444-7703  
7510-01-444-7704  
7510-01-444-7706  
7510-01-444-7707  
7510-01-444-7709  
7510-01-444-7710  
7510-01-444-7711  
7530-01-445-0719  
7530-01-445-0720  
7510-01-445-0721  
7520-01-429-7411  
Pocket Planning Set  
7510-01-363-5003  
Refill, Appointment Book  
7530-01-363-6709

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 99-28358 Filed 10-28-99; 8:45 am]

BILLING CODE 6353-01-P

#### COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

#### Procurement List Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled

**ACTION:** Additions to and Deletions from the Procurement List

**SUMMARY:** This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a commodity and services previously furnished by such agencies.

**EFFECTIVE DATE:** November 29, 1999

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202-4302.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 603-7740.

**SUPPLEMENTARY INFORMATION:** On March 12, and 26, July 9, August 6 and 13, and September 17, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 FR 12284, 14687, 37098, 42902, 44198 and 50485) of proposed additions

to and deletions from the Procurement List:

#### Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

- Base Supply Center, Columbus Air Force Base, Mississippi
- Base Supply Center and Operation of Individual Equipment Element Store, Beale Air Force Base, California
- Base Supply Center and Operation of Individual Equipment Element Store, Cannon Air Force Base, New Mexico
- Food Service, Marine Corps Base, Mess Halls 31611, 210702, 53502, 62502 and 22186, Camp Pendleton, California
- Food Service, Marine Corps, Mess Hall #569 and 1620, San Diego, California
- Janitorial/Custodial, Basewide, Picatinny Arsenal, New Jersey
- Operation of Individual Equipment Element Store, Pope Air Force Base, North Carolina
- Operation of Individual Equipment Element Store, Brooks Air Force Base, Texas

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

#### Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodity and services.

3. The action may result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity and services deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodity and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

Accordingly, the following commodity and services are hereby deleted from the Procurement List:

#### Commodity

Cleaner, Water Soluble, 7930-01-367-2962

Bus Service, Veterans Affairs Medical Center, Outpatient Clinic, Tomah, Wisconsin

Document Processing, U.S. Coast Guard Institute, 5900 SW 64th Street, Oklahoma City, Oklahoma

#### Beverly L. Milkman,

*Executive Director.*

[FR Doc. 99-28359 Filed 10-28-99; 8:45 am]

BILLING CODE 6353-01-P

#### COMMISSION ON CIVIL RIGHTS

##### Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:30 p.m. on November 18, 1999, at the Radisson Hotel, 4728 Constitution, Baton Rouge, Louisiana 70808. The purpose of the meeting is to hold new member orientation and plan future projects.

Persons desiring additional information, or planning a presentation

to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913-551-1400 (TDD 913-551-1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

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

Dated at Washington, DC, October 14, 1999.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 99-28385 Filed 10-28-99; 8:45 am]

BILLING CODE 6335-01-M

#### DEPARTMENT OF COMMERCE

##### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* Business and Professional Classification Report.

*Form Number(s):* SQ-CLASS.

*Agency Approval Number:* 0607-0189.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 9,448 hours.

*Number of Respondents:* 43,600.

*Avg Hours Per Response:* 13 minutes.

*Needs and Uses:* The Bureau of the Census conducts the Business and Professional Classification Report to collect sales and other information from a sample redrawn every quarter of retail, wholesale, service, and unclassified businesses recently assigned Federal Employer Identification numbers (EIN). We are informed of the existence of these new businesses from lists provided by the Internal Revenue Service and the Social Security Administration. From the information we collect in this survey, we determine an appropriate measure of size, company organization and establishment information, taxable or tax-exempt status, wholesale inventories, type of operation, and assign a new or more refined kind-of-business classification. We use this information to include these businesses in our retail, wholesale, and service surveys. This keeps the samples for our current business surveys up-to-date with the business universe.

In this request, we are revising the data collection form to improve the kind-of-business codes based on the new North American Industry Classification System (NAICS). This includes the collection of additional information on method of selling which is a key component of ensuring correct NAICS classification. We do not expect these inquiries to increase overall reporting burden.

**Affected Public:** Businesses or other for-profit organizations, not-for-profit institutions.

**Frequency:** One time only.

**Respondent's Obligation:** Voluntary.

**Legal Authority:** Title 13 U.S.C., section 182.

**OMB Desk Officer:** Susan Schechter, (202) 395-5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: October 26, 1999.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 99-28421 Filed 10-28-99; 8:45 am]

BILLING CODE 3510-07-P

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## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

#### 2000 Evaluation of DARPA Communicator Systems

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, 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)).

**DATES:** Written comments must be submitted on or before December 28, 1999.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet LEngelme@doc.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Gregory A. Sanders, Ph.D., National Institute of Standards and Technology (NIST), 100 Bureau Drive, Stop 8940, Gaithersburg, MD 20899-8940.

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

In 2000, NIST will perform evaluations of Communicator implementations, as part of the Defense Advanced Research Project Agency (DARPA) Communicator program. Using the Communicator involves task-based spoken dialogue with the system. The evaluations that are to be performed are intended to achieve three goals. First, to help implementors of Communicator programs to identify the successes and weaknesses of their implementations. Second, to enable the research sponsors to identify and measure progress in order to assess the success of the program. Third, to advance the state of research knowledge about metrics and evaluation of task-based dialogue systems. The proposed evaluations will be performed with paid research subjects, who will each use the implementations to perform tasks representative of the tasks that Communicator systems are intended to perform. As part of the evaluation, the paid research subjects will be asked to respond to a user questionnaire that is intended to assess the subjects' user-satisfaction and their subjective opinions about various aspects of each system that are being objectively measured. The subjects are being paid to complete the questionnaire, and they will not be paid if they do not complete the questionnaire.

The user-questionnaire will enable us to study correlations of various objective metrics with the users' satisfaction and the users' subjective opinions.

##### II. Method of Collection

Most questions will be Likert-scale type items (items consisting of a statement with the requested response being a choice on a scale running from "fully agree" through "fully disagree"). We anticipate that the research subject users will read and respond to the questions on paper or else by using a web browser.

##### III. Data

**OMB Number:** None.

**Form Number:** None.

**Type of Review:** Regular submission.

**Affected Public:** The research subjects (who will be adult persons, with any American accent and no speech impediment, who are familiar with the task domain).

**Estimated Number of Respondents:** 360.

**Estimated Time per Response:** Less than 10 minutes per questionnaire.

**Estimated Total Annual Burden Hours:** 60 Hours.

**Estimated Total Annual Cost to the Public:** \$0 (no capital expenditures required).

##### IV. Request for Comments

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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (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. Comments submitted in response to the notice will be summarized and/or included in the request for OMB approval of the information collection; they also will become a matter of public record.

Dated: October 22, 1999.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 99-28422 Filed 10-28-99; 8:45 am]

BILLING CODE 3510-13-P

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 101399F]

#### New England Fishery Management Council; Public Meetings; Correction

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

**ACTION:** Notice of correction to a public meeting notice.

**SUMMARY:** The New England Fishery Management Council (Council) has

scheduled a public meeting of its Scientific and Statistical Committee (SSC) and Social Sciences Advisory Committee (SSAC) in November, 1999. The SSC meeting days were incorrectly listed in the October 20, 1999 Federal Register notice. There has also been an addition to the SSC meeting agenda. The October 20, 1999 Federal Register notice also did not include the meeting location of the SSAC meeting.

**DATES:** The meeting for the SSC will be held on Thursday, November 4, 1999, at 10 a.m. and Friday, November 5, 1999, at 8:30 a.m. The meeting for the SSAC will be held on Friday, November 5, 1999, at 10 a.m.

**ADDRESSES:** See **SUPPLEMENTARY INFORMATION** for location of the SSAC meeting.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231-0422.

**SUPPLEMENTARY INFORMATION:** The New England Fishery Management Council's SSC and SSAC notice of public meetings was published in the Federal Register on October 20, 1999 (64 FR 56487).

The original notice stated that the SSC meeting would be held on Monday, November 4, 1999. The correct date should read Thursday, November 4, 1999.

In addition to the agenda items in the original meeting notice, the SSC will receive a presentation on the scientific basis of management measures in the joint Mid-Atlantic/New England Fishery Management Council Monkfish Fishery Management Plan. No formal action will be taken at this meeting on the information presented.

Friday, November 5, 1999, 10 a.m.—SSAC Meeting

Location was omitted and should read as follows: Holiday Inn, One Newbury Street, Route 1, Peabody, MA; telephone: (978) 535-4600.

All other information previously published remains unchanged.

Dated: October 25, 1999.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 99-28275 Filed 10-28-99; 8:45 am]

**BILLING CODE 3510-22-F**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 101599B]

#### Marine Mammals

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

**ACTION:** Issuance of photography permit no. 867-1525

**SUMMARY:** Notice is hereby given that Moana Productions, Inc., 311 Portlock Road, Honolulu, Hawaii 96825, has been issued a permit to take by Level B harassment several species of non-threatened, non-endangered marine mammals for purposes of commercial photography.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS,

1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289);

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213

(310/980-4001);

Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Bin C15700, Building 1, Seattle, WA 98115-0070 (206/526-6150); and

Regional Administrator, Alaska Region, 709 W. 9<sup>th</sup> Street, Federal Building Room 461, P.O. Box 21668, Juneau, AK 99802 (907/586-7235).

**SUPPLEMENTARY INFORMATION:** On September 7, 1999, notice was published in the **Federal Register** (64 FR 48607) that the above-named applicant had submitted a request for a permit to take several species of marine mammals by Level B harassment during the course of commercial photographic activities in Hawaii and South Carolina waters. The requested permit has been issued, under the authority of § 104(c)(6) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*).

Dated: October 22, 1999.

**Ann D. Terbush,**

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 99-28424 Filed 10-28-99; 8:45 am]

**BILLING CODE 3510-22-F**

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meeting

**AGENCY:** U.S. Consumer Product Safety Commission, Washington, DC 20207.

**TIME AND DATE:** Tuesday, November 9, 1999, 10:00 a.m.

**LOCATION:** Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Open to the public.

**MATTER TO BE CONSIDERED:**

#### Hydrocarbons

The staff will brief the Commission on options concerning whether the Commission should issue a proposed rule to require child-resistant packaging for low-viscosity liquid hydrocarbons.

For a recorded message containing the latest agenda information, call (301) 504-0709.

**CONTACT PERSON FOR ADDITIONAL**

**INFORMATION:** Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504-0800.

Dated: October 27, 1999.

**Sadye E. Dunn,**

*Secretary.*

[FR Doc. 99-28548 Filed 10-27-99; 3:36 pm]

**BILLING CODE 6355-01-M**

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

#### Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Broward County Beach Erosion Control Project in Broward County, FL

**AGENCY:** U.S. Army Corps of Engineers, Department of Defense.

**ACTION:** Notice of intent.

**SUMMARY:** The Jacksonville District, U.S. Army Corps of Engineers intends to prepare a Draft Environmental Impact Statement for construction of appropriate reaches of Segments II (Hillsboro Inlet to Port Everglades) and III (Port Everglades to South County Line) of the Broward County Beach Erosion Control Project. The Project is a cooperative effort between the U.S. Army Corps of Engineers (lead Federal agency) and Broward County Department of Planning and Environmental Protection (cooperating agency).

**FOR FURTHER INFORMATION CONTACT:** Kenneth Dugger, 904-232-1686, Environmental Branch, Planning

Division, P.O. Box 4970, Jacksonville, Florida 32232-0019.

**SUPPLEMENTARY INFORMATION:** The Broward County, Florida, Beach Erosion Control and Navigation Project was authorized by Public Law (Pub. L.), Public Works—River and Harbor (79 Stat. 1073) passed 27 October 1965 in accordance with the recommendations of the Chief of Engineers in House Document 91, 89th Congress. Authorization for periodic beach nourishment of the Project was extended to 50 years from the date of original construction by Section 506(a)(1) of the Water Resources Development Act of 1996. The Project will involve placement of approximately 3.5 million cubic yards of material along 17.35 miles of Broward County's coastline. The authorized Project includes two segments. In Segment II (Hillsboro Inlet to Port Everglades), fill will be placed along beaches in southern Pompano Beach, Lauderdale-By-The-Sea, and northern and central Fort Lauderdale. In Segment III (Port Everglades to the south County line), fill will be placed along the entire segment, including John U. Lloyd Beach State Recreation Area, Dania Beach, Hollywood, and Hallandale Beach. Fill will be obtained from seven discrete borrow areas located offshore of the central and northern portion of the County. Previous beach fill construction, totaling approximately twelve miles of beach length, has occurred twice in Segment II (Pompano Beach/Lauderdale-By-The-Sea in 1970 and 1983) and twice each in two areas of Segment III (John U. Lloyd Beach State Recreation Area in 1976 and 1989, and Hollywood/Hallandale in 1979 and 1991). Authorization for Federal participation in periodic beach nourishment of Segment II expires in 2020 and in Segment III in 2030.

**Alternatives:** Alternatives considered include no action, continued nourishment of previously restored areas, initial restoration of previously unconstructed areas, modifications to beach fill amounts, widths, elevations, and/or extent, construction of groins and/or breakwaters, and beach fill/groin combination. Alternative sand sources in addition to the use of a borrow area for nourishment, include the use of other sand sources such as upland sources, Bahamian sand, other foreign sands, or other distant sources.

**Issues:** The EIS will consider impacts on coral reefs and other hardbottom communities, protected species, shore protection, health and safety, water quality, aesthetics and recreation, fish and wildlife resources, cultural

resources, energy conservation, socio-economic resources, and other impacts identified through scoping, public involvement, and interagency coordination.

**Scoping:** The scoping process will involve Federal, State, County and municipal agencies and other interested persons and organizations. A scoping letter will be sent to interested organizations and individuals and to Federal, State, County, and municipal agencies, requesting their comments and concerns.

**Public Involvement:** We invite the participation of affected Federal, State and local agencies, affected Indian tribes, and other interested private organizations and parties. At this time, we have no plans to hold a public scoping meeting.

**Coordination:** The proposed action is being coordinated with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service under Section 7 of the Endangered Species Act, with the FWS under the Fish and Wildlife Coordination Act, and with the State Historic Preservation Officer.

**Other Environmental Review and Consultation:** The proposed action would involve evaluation for compliance with guidelines pursuant to Section 404(b) of the Clean Water Act; application (to the State of Florida) for Water Quality Certification pursuant to Section 401 of the Clean Water Act; certification of state lands, easements, and rights of way; and determination of Coastal Zone Management Act consistency.

**Agency Role:** As cooperating agency, non-Federal sponsor, and leading local expert; The Broward County Department of Planning and Environmental Protection, Biological Resources Division, will provide extensive information and assistance on the resources to be impacted, mitigation measures, and alternatives.

**DEIS Preparation:** It is estimated that the DEIS will be available to the public by January 2000.

Dated: October 1, 1999.

**James C. Duck,**

Chief, Planning Division.

[FR Doc. 99-28308 Filed 10-28-99; 8:45 am]

BILLING CODE 3710-AJ-M

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### Public Hearing for the Draft Environmental Impact Statement (DEIS) for the Transfer and Reuse of Naval Weapons Industrial Reserve Plant (NWIRP), Bethpage, NY

**AGENCY:** Department of the Navy, DOD.  
**ACTION:** Notice.

**SUMMARY:** The Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency (EPA) a DEIS for the transfer and reuse of NWIRP Bethpage, New York. A public hearing will be held for the purpose of receiving oral and written comments on the DEIS. Federal, state and local agencies, and interested individuals are invited to be present or represented at the hearing.

**DATES:** The public hearing will be held on November 18, 1999, beginning at 7:00 p.m.

**ADDRESSES:** The meeting will be held at the Bethpage High School, Cherry Street, Bethpage, New York.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Ostermueller (Code 202) at Northern Division, Naval Facilities Engineering Command, 10 Industrial Highway, Lester, Pennsylvania 19113, telephone (610) 595-0759, facsimile (610) 595-0778).

**SUPPLEMENTARY INFORMATION:** 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 Department of the Navy has prepared and filed with the EPA a DEIS for the transfer and reuse of NWIRP Bethpage, New York. A Notice of Intent for this DEIS was published in the **Federal Register** on March 8, 1999 and a public scoping meeting was held in Bethpage, New York, on March 23, 1999.

The proposed action is the U.S. Navy's transfer of the NWIRP Bethpage to the County of Nassau, New York. The transfer of NWIRP Bethpage was authorized by the Department of Defense Authorization Act for fiscal year 1998. The legislation authorizes the Secretary of the Navy to convey NWIRP Bethpage to Nassau County, New York for economic redevelopment purposes or such other public purposes. The NWIRP Bethpage property consists of two non-contiguous land parcels encompassing approximately 109.5 acres and an individual building (Plant 5) located within the former 605-acre Northrop Grumman manufacturing campus in the hamlet of Bethpage,

Town of Oyster Bay, Nassau County, New York. Currently, the property is developed with manufacturing, light industrial, and administrative land uses. In December 1998, Nassau County, through the Grumman Master Planning Council, identified a Preferred Reuse Plan for NWIRP Bethpage, described in Navy/Grumman Site Reuse Plan-Alternative Report. This plan is presented as the preferred reuse alternative that, along with its alternatives, is analyzed in the DEIS.

The DEIS evaluates three reuse alternatives. The Reuse Plan Alternative (preferred alternative) proposes a mix of light industry and office, with some warehousing on the 105-acre parcel and commercial use on the 4.5-acre parcel. The Preferred Reuse Plan would result in an estimated 5,410 full-time jobs. "Reuse Alternative A" comprises a mix of light industry and warehousing with limited office use. "Reuse Alternative B" would develop the properties entirely for office use. A "No Action Alternative" was also evaluated that assumes no disposal, and therefore, retention of the property by the U.S. Navy in caretaker status.

Potential impacts evaluated in the DEIS include, but are not limited to: Land use, socioeconomic, community facilities, transportation, air quality, noise, infrastructure, cultural resources, natural resources, hazardous wastes and soils contamination. Analysis includes the evaluation of direct, indirect, short-term, and cumulative impacts; and irreversible and irretrievable commitment of resources associated with the proposed action. No decision on the proposed action will be made until the NEPA process has been completed and a Record of Decision is signed.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, and special interest groups and public libraries. The DEIS is also available for public review at the Bethpage Public Library located at 47 Powell Avenue, Bethpage, New York 11714.

Navy will conduct a public hearing to receive oral and written comments concerning the DEIS. A brief presentation will precede a request for public information and comments. Navy representatives will be available at the hearing to receive information and comments from agencies and the public regarding issues of concern. Federal, state, and local agencies, and interested parties are invited and urged to be present or represented at the hearing. Those who intend to speak will be asked to submit a speaker card (available at the door). Oral comments

will be heard and transcribed by a stenographer. To ensure accuracy of the record, all statements should also be submitted in writing. All statements, both oral and written, will become part of the public record in the study. Equal weight will be given to both oral and written comments. In the interest of available time, each speaker will be asked to limit oral comments to three minutes. Longer comments should be summarized at the public hearing and submitted in writing either at the hearing or mailed to: Commanding Officer, Northern Division, Naval Facilities Engineering Command, Code 202, 10 Industrial Highway, Lester, Pennsylvania 19113, (Attn. Mr. Robert Ostermueller, telephone (610) 595-0759, facsimile (610) 595-0778). Written comments must be received not later than Monday, December 13, 1999.

Dated: October 26, 1999.

**C.G. Carlson,**

*Major, U.S. Marine Corps, Alternate Federal Register Liaison Officer.*

[FR Doc. 99-28403 Filed 10-28-99; 8:45 am]

BILLING CODE 3810-FF-P

**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**Meeting of the Board of Visitors of Marine Corps University**

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The Board of Visitors of the Marine Corps University (BOV MCU) will meet to review, develop and provide recommendations on all aspects of the academic and administrative policies of the University; examine all aspects of professional military education operations; and provide such oversight and advice as is necessary to facilitate high educational standards and cost effective operations. The Board will be reviewing the fiscal plan for next year and the status of the University's accreditation process with the Southern Association of Colleges and Schools. All sessions of the meeting will be open to the public.

**DATES:** The meeting will be held on Monday and Tuesday, November 15-16, from 9:00 a.m. to 4:00 p.m.

**ADDRESSES:** The meeting will be held at the Marine Corps University Research Center, 2040 Broadway Street, Room 164, Quantico, Virginia 22134.

**FOR FURTHER INFORMATION CONTACT:** Garry Smith, Executive Secretary, Marine Corps University Board of Visitors, 2076 South Street, Quantico, Virginia 22134, (703) 784-4037.

Dated: October 19, 1999.

**J.L. Roth,**

*Lieutenant Commander, Judge Advocate General's Corps, Federal Register Liaison Officer.*

[FR Doc. 99-28286 Filed 10-28-99; 8:45 am]

BILLING CODE 3810-FF-P

**DEPARTMENT OF ENERGY**

**DOE Response to Recommendation 99-1 of the Defense Nuclear Facilities Safety Board, Safe Storage of Fissionable Material called "Pits".**

**AGENCY:** Department of Energy.

**ACTION:** Notice.

**SUMMARY:** The Defense Nuclear Facilities Safety Board published Recommendation 99-1, concerning the safe storage of fissionable material called "pits," on August 27, 1999 (64 FR 46894). Under section 315(e) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(e), the Department of Energy was required to transmit a response to the Defense Nuclear Facilities Safety Board by October 12, 1999. The Secretary's response follows.

**DATES:** Comments, data, views, or arguments concerning the Secretary's response are due on or before November 29, 1999.

**ADDRESSES:** Send comments, data, views, or arguments concerning the Secretary's response to: Department of Energy, 1000 Independence Avenue, SW, Washington, DC, 20585.

**FOR FURTHER INFORMATION CONTACT:** Mr. David E. Beck, Deputy Assistant Secretary for Military Application and Stockpile Operations, Defense Programs, Department of Energy, 1000 Independence Avenue, SW, Washington DC, 20585.

Issued in Washington, DC, on October 25, 1999.

**Mark B. Whitaker, Jr.,**

*Departmental Representative to the Defense Nuclear Facilities Safety Board.*

The Honorable John T. Conway, *Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004.*

Dear Mr. Chairman: The Department of Energy acknowledges receipt of Recommendation 99-1, issued on August 11, 1999, and published in the **Federal Register** on August 27, 1999, and accepts the Board's recommendations.

The Department has initiated activities to develop and implement improved pit storage programs and to develop a shipping container for transporting pits to the plutonium disposition facility. We also implemented a pit repackaging program to ensure that pits are stored in accordance with applicable specifications.

In support of nuclear material disposition activities, departmental program offices have been working together to ensure that timely actions are completed to accomplish defined programmatic end states. Actions include a systems analysis study to generate programmatic requirements for a pit shipping container, a review of pit surveillance data to characterize pit integrity in current environments, and increasing the pit repackaging rate to 200 pits per month. The Department will continue these efforts to ensure the adequacy of complex-wide pit management.

The Department accepts the recommendations contained in Recommendation 99-1 and will develop an implementation plan to accomplish the following:

1. Expediently resolve the compatibility issues that have the potential to impact the long-term safe storage of pits. Through a container surveillance program, the Department will monitor the AL-R8 Sealed Insert container to ensure its continued quality and reliability.

2. Ensure that repackaging takes place at an accelerated rate so that pits are expeditiously placed into containers suited to safe storage. The actions undertaken in the implementation plan will focus on ensuring a safe and timely repackaging program. A process to develop a resource-loaded repackaging schedule will be established with an initial baseline repackaging rate of 200 per month.

3. Develop a system of statistical sampling for the AL-R8 Sealed Insert containers to assess container integrity and to provide horizons for future repackaging and repackaging rate requirements.

4. Assign a single individual the responsibility and accountability, along with the necessary resources and authority for accomplishment of the above.

Mr. David E. Beck, Deputy Assistant Secretary for Military Application and Stockpile Operations, Defense Programs, (202) 586-4879, is appointed the manager responsible for preparation of the implementation plan in accordance with sub-recommendation 4 of the Defense Nuclear Facilities Safety Board letter. He will work with you to develop a plan that meets our mutual expectations.

Yours sincerely,

**Bill Richardson**

[FR Doc. 99-28318 Filed 10-28-99; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Floodplain Statement of Findings for Fire Protection Systems Upgrade at the Oak Ridge National Laboratory

**AGENCY:** Office of Science, DOE.

**ACTION:** Floodplain statement of findings.

**SUMMARY:** This is a Floodplain Statement of Findings for upgrading the fire suppression and life safety systems

in selected facilities at the Oak Ridge National Laboratory (ORNL), Roane and Anderson Counties, Tennessee, in accordance with 10 CFR part 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements. Fire suppression and life safety systems in many ORNL facilities are over 30 years old, obsolete, and do not provide adequate fire protection for personnel, equipment, and research activities. The installation of below ground waterlines would include disturbances of the 100-year floodplain of White Oak Creek (WOC). DOE has prepared a floodplain assessment describing the possible effects, alternatives, and measures designed to avoid or minimize potential harm to floodplains or their flood storage potential. DOE will allow 15 days of public review after publication of the Statement of Findings before implementation of the proposed action.

**FOR FURTHER INFORMATION CONTACT:** Stanley D. Frey, U.S. Department of Energy, Post Office Box 2008, Oak Ridge, TN 37831-6269, (423) 576-0136.

**FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT:** Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH-42, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone: (202) 586-4600 or (800) 472-2756.

**SUPPLEMENTARY INFORMATION:** A Notice of Floodplain Involvement was published in the **Federal Register** on September 16, 1999 (64 FR 50277), and subsequently a floodplain assessment was prepared. The floodplain assessment covers the installation of approximately 7,200 ft of underground water mains (16-in-diameter piping installed in a loop configuration) in the 6000 Area of ORNL and would include (as detailed in the September 16, 1999, notice), but is not limited to: (1) Constructing coffer dams or similar structures in WOC and its tributaries; (2) routing the stream water around the disturbed channel areas by constructing a bypass using a culvert or similar device; (3) removing stream bed rock in preparation for the under-creek, reinforced-concrete pipe trench; (4) pouring the concrete; (5) embedding the pipeline in the concrete structure; (6) covering the structure to the level of the original stream bed; and (7) routing the stream water back into the stream bed. Activities outside the creek/stream channel but within the floodplain area would include (1) excavating a trench approximately 5 ft wide and 4 ft deep, (2) installing the pipeline, and (3) covering the pipe with excavated fill.

No aboveground structures (i.e., fire hydrants, valves, etc.) would be located in the floodplain area.

Alternatives considered in the assessment were (1) no action, (2) installing water mains above the floodplain, (3) installing water mains below ground by tunneling beneath the floodplain and creeks, and (4) installing water mains below ground to provide water in a dependable looped system. The no-action alternative would result in noncompliance with DOE Order 420.1 (Facility Safety) and the potential failure of fire suppression systems in the 6000 Area of ORNL. Installing water mains above the floodplain would require additional equipment and material (e.g., force main, insulation, etc.), and the increased number of 90-degree turns will increase the possibility of pipe stress-failure. Tunneling beneath the floodplain, creeks, and wetlands was not considered practicable because of the shallow elevation of bed rock and the difficulties associated with tunneling when compared to the preferred alternative. Therefore, after considering the various alternatives and the area to install the water mains, no other practicable routes were available that would avoid the floodplain area of WOC. The activities addressed by the floodplain assessment will result in no measurable impact on floodplain cross-section or flood stage, and thus do not increase the risk of flooding.

Water quality within WOC and its tributaries will be protected during excavation to the extent practicable by several measures. Administrative controls will be used to stop work during major storm events. When excavations would remain exposed overnight, erosion controls will be installed to prevent the transport of silt downstream by stormwater flows. Additionally, silt dams will be constructed in areas where the existing drainage right-of-way route deviates significantly from the defined drainage channel. Restoration of excavated areas will include grading to avoid steep or vertical slopes, and to minimize ponding and backfilling. Areas of exposed soil outside the stream channels will be mulched and reseeded with an annual grass to minimize erosion and allow the natural seedbank to reestablish vegetative cover.

Equipment and personnel in the floodplain area will be limited in accordance with an approved Best Management Practices (BMP) plan, and excavated hydric soils will be placed next to the site and reused as fill material. In addition, silt fences will be installed to minimize runoff into the floodplain in accordance with the BMP.

Underground piping installation activities addressed in the floodplain assessment conform to applicable floodplain protection standards.

Issued in Oak Ridge, Tennessee on October 20, 1997.

**James L. Elmore,**

*Alternate National Environmental Policy Act Compliance Officer.*

[FR Doc. 99-28319 Filed 10-28-99; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Senior Executive Service; Performance Review Board

**AGENCY:** Department of Energy.

**ACTION:** SES Performance Review Board Standing Register.

**SUMMARY:** This notice provides the Performance Review Board Standing Register for the Department of Energy. This listing supersedes all previously published lists of PRB members.

**EFFECTIVE DATE:** These appointments are effective as of September 30, 1999.

ACHARYA, SARBESWAR NMN  
 ACKERLY, LAWRENCE R  
 ADAMSON, DANIEL M  
 ALCOCK, ROBERT M  
 ALLARD III, EDWARD T  
 ANDERSON, BROOKE D  
 ARMSTRONG, M BRENT  
 ARTHUR III, WILLIAM JOHN  
 BACA, FRANK A  
 BACA, MARK C  
 BAJURA, RITA A  
 BAKER, KENNETH E  
 BAMBERGER, CRAIG S  
 BARKER JR, WILLIAM L  
 BARRETT, LAKE H  
 BAUER, CARL O  
 BAUER, LINDA K  
 BECKETT, THOMAS H  
 BEECY, DAVID J  
 BENEDICT, GEORGE W  
 BERGHOLZ JR, WARREN E  
 BERKOVITZ, DAN M  
 BERNARD, PETER A  
 BERUBE, RAYMOND P  
 BIELAN, DOUGLAS J  
 BLACK, RICHARD L  
 BLACKWOOD, EDWARD B  
 BLADOW, JOEL K  
 BORCHARDT, CHARLES A  
 BORGSTROM, CAROL M  
 BORGSTROM, HOWARD G  
 BORNHOFT JR, BUDD B  
 BOSTOCK, JUDITH L  
 BOWMAN, GERALD C  
 BOYD, GERALD G  
 BRADLEY JR, THERON M  
 BRADLEY, SAMUEL M  
 BRECHBILL, SUSAN R  
 BRENDLINGER, TERRY L  
 BREZNAY, GEORGE B

BRICE, JAMES F  
 BRODMAN, JOHN R  
 BROWN III, ROBERT J  
 BROWN JR, CHARLES H  
 BROWN, FREDERICK R  
 BROWN, RICHARD W  
 BURNS, ALLEN L  
 BURROWS, CHARLES W  
 CAMPBELL, ELIZABETH E  
 CARABETTA, RALPH A  
 CARDINALI, HENRY A  
 CARLSON, JOHN T  
 CARLSON, KATHLEEN ANN  
 CARLSON, LYNDA T  
 CASTELLI, BRIAN T  
 CAVANAGH, JAMES J  
 CHRISTENSEN, WILLIAM J  
 CHRISTOPHER, ROBERT K  
 CHUN, SUN W  
 CLARK, JOHN R  
 CLAUSEN, MAX JON  
 COBURN, LEONARD L  
 COMBS, MARSHALL O  
 COOK, BEVERLY ANN  
 COOK, JOHN S  
 COWAN, GWENDOLYN S  
 CRAIG JR, JACK R  
 CRANDALL, DAVID H  
 CRAWFORD, TIMOTHY S  
 CROSS, CLAUDIA A  
 CROWE, RICHARD C  
 CUMESTY, EDWARD G  
 CURTIS, JAMES H  
 CYGELMAN, ANDRE I  
 DALTON, HENRY F  
 DARUGH, DAVID G  
 DAVIES, NELIA A  
 DAVIS, JAMES T  
 DE LORENZO, RALPH H  
 DECKER, JAMES F  
 DEDIK, PATRICIA  
 DEGRASSE JR, ROBERT W  
 DEHANAS, THOMAS W  
 DEHMER, PATRICIA M  
 DEHORATIIS JR, GUIDO  
 DEIHL, MICHAEL A  
 DEMPSEY, ROBERT D  
 DENNISON, WILLIAM J  
 DER, VICTOR K  
 DEVER, GERTRUDE L  
 DIFIGLIO, CARMEN NMN  
 DIRKS, TIMOTHY M  
 DIVONE, LOUIS V  
 DIXON, ROBERT K  
 DOHERTY, DONALD P  
 DOMAGALA, MARTIN J  
 DOOLEY III, GEORGE J  
 DURNAN, DENIS D  
 DYER, J RUSSELL  
 EBERWEIN, CATHERINE D  
 EDMONDSON, JOHN J  
 EGGER, MARY H  
 EMMETT, ROBERT A  
 ENGEL, WALTER P  
 ERICKSON, LEIF  
 ESVELT, TERENCE G  
 FALLE, J GARY  
 FARIELLO, THERESA M  
 FELDT, ELISABETH G

FIDLER, SHELLEY N  
 FIORE, JAMES J  
 FITZGERALD JR, JOSEPH E  
 FITZGERALD, CHERYL P  
 FOLKER, ROBERT D  
 FORD, JAMES L  
 FOWLER, JENNIFER JOHNSON  
 FRANKLIN, JOHN R  
 FRAZIER, MARVIN E  
 FREI, MARK W  
 FRENCH, RICHARD T  
 FURIGA, RICHARD D  
 FYGI, ERIC J  
 GARSON, HENRY K  
 GEBUS, GEORGE R  
 GEIDL, JOHN C  
 GIBSON JR, WILLIAM C  
 GIBSON, JUDITH D  
 GIESSING, DANIEL F  
 GILBERTSON, MARK A  
 GILLIGAN, JOHN M  
 GINSBERG, MARK B  
 GLASS, RICHARD E  
 GLICK, RICHARD A.  
 GOLAN, PAUL M  
 GOLDENBERG, NEAL NMN  
 GOLDENBERG, RALPH D  
 GOLDMAN, DAVID TOBIAS  
 GOLDSMITH, ROBERT NMN  
 GOLLOMP, LAWRENCE A  
 GOODRUM, WILLIAM S  
 GOTTLIEB, PAUL A  
 GREENWOOD, JOHNNIE D  
 GROSS, THOMAS J  
 GRUENSPECHT, HOWARD K  
 GUIDICE, CARL W  
 GUNN JR, MARVIN E  
 GURULE, DAVID A  
 HABERMAN, NORTON NMN  
 HABIGER, EUGENE E  
 HACSKAYLO, MICHAEL S  
 HAMER JR, DAVID L  
 HANSEN, CHARLES A  
 HARDIN, MICHAEL G  
 HARDWICK JR, RAYMOND J  
 HARTMAN, JAMES K  
 HASPEL, ABRAHAM E  
 HAWKINS, FRANCIS C  
 HEADLEY, LARRY C  
 HEATH, CHARLES C  
 HEENAN, THOMAS F  
 HEINKEL, JOAN E  
 HENDERSON, LYNWOOD H  
 HENSLEY JR, WILLIE F  
 HEUSSER, ROGER K  
 HICKOK, STEVEN G  
 HIRAHARA, JAMES S  
 HIRNING, KATHLEEN M  
 HOFFMAN, ALLAN R  
 HOLBROOK, PHILLIP L  
 HOLGATE, LAURA S H  
 HOLMES, NANCY H  
 HOOPER, MICHAEL K  
 HOPF, RICHARD H  
 HOPKINS, T J  
 HORTON, DONALD G  
 HOWES, WALTER S  
 HUGHES, JEFFREY L  
 HUIZENGA, DAVID G

HUMPHREY, CALVIN R  
HUNEMULLER, MAUREEN A  
HUTZLER, MARY JEAN  
INADOMI, LEEANN R  
INLOW, RUSH O  
IZELL, KATHY D  
JAFFE, HAROLD  
JOHANSEN, JUDITH A  
JOHNSON, FREDERICK M  
JOHNSON, MILTON D  
JOHNSON, OWEN B  
JOHNSON, SANDRA L  
JOHNSTON, MARC  
JONES, RICK  
JONES, DAVID A  
JOSEPH, ANTIONETTE GRAYSO  
JUAREZ, LIOVA D  
JUCKETT, DONALD A  
JUDGE, GEOFFREY J  
KELLY, CYNTHIA C  
KENDERDINE, MELANIE ANNE  
KENNEDY, JOHN P  
KIGHT, GENE H  
KILGORE, WEBSTER C  
KILPATRICK, MICHAEL A  
KING, GARY K  
KINZER, JACKSON E  
KIRKMAN, LARRY D  
KLAUS, DAVID M  
KLEIN, KEITH A  
KLEIN, SUSAN ELAINE  
KNOLLMAYER, PETER M  
KONOPNICKI, THAD T  
KOVAR, DENNIS G  
KRIPOWICZ, ROBERT S  
KUSEK, JODY Z  
LANDERS, JAMES C  
LANE, ANTHONY R  
LANGE, ROBERT G  
LASH, TERRY R  
LEITER, DAVID J  
LEVIN JR, WILLIAM B  
LEWIS JR, WILLIAM A  
LEWIS, ROGER A  
LIEN, STEPHEN CT  
LIGHTNER, RALPH G  
LINGLE, LINDA A  
LIVINGSTON-BEHAN, ELLEN A  
LOWE, DAVID C  
LOWE, OWEN W  
LYLE, JERRY L  
MAGWOOD, IV WILLIAM D  
MAHALEY, JOSEPH S  
MAHARAY, WILLIAM S  
MAHER, MARK W  
MALOSH, GEORGE J  
MANGENO, JAMES J  
MANN, THOMAS O  
MARIANELLI, ROBERT S  
MARKEL JR, KENNETH E  
MARLAY, ROBERT C  
MASTERSON, MARY A  
MAXEY, KENNETH G  
MAZUR, MARK J  
MCCALLUM, EDWARD J  
MCCCLARY, MICHAEL VANCE  
MCCOY III, FRANK R  
MCGUIRE, PADDY J  
MCKEE, BARBARA N  
MELLINGTON, SUZANNE P  
MICHELSEN, STEPHEN J  
MILLER, CLARENCE L  
MILLER, DEBORAH C  
MILLHONE, JOHN P  
MILLMAN, WILLIAM S  
MILNER, RONALD A  
MONETTE, DEBORAH D  
MOORER, RICHARD F  
MORGAN, JEAN M  
MORRIS, MARCIA L  
MOSQUERA, JAMES P  
MOURNIGHAN, STEPHEN D  
MULHOLLAND, JOSEPH W  
MURPHY, ALICE Q  
MURPHY, ROBERT E  
NAGURKA, STUART C  
NEALY, CARSON L  
NEILSEN, FINN K  
NELSON, RODNEY R  
NICHOLS, CLAYTON R  
NOLAN, ELIZABETH A  
NORMAN, PAUL E  
NULTON, JOHN D  
NULTY, TIMOTHY E  
O BRIEN, BETSY K  
O'FALLON, JOHN R  
OLIVER, LAWRENCE R  
OOSTERMAN, CARL H  
OWENDOFF, JAMES M  
PARNES, SANFORD J  
PATIL, PANDIT G  
PATRINOS, ARISTIDES A  
PATTON, GLORIA S  
PEARSON, ORIN F  
PENRY, JUDITH M  
PERIN, STEPHEN G  
PETTENGILL, HARRY J  
PETTIS, LAWRENCE A  
PIPER II, LLOYD L  
PODONSKY, GLENN S  
POE, ROBERT W  
PONCE, VICTORIA L  
POWERS, JAMES G  
POWERS, KENNETH W  
PRAY, CHARLES P  
PRICE JR, ROBERT S  
PRUDOM, GERALD H  
PRZYBYLEK, CHARLES S  
PUMPHREY, DAVID L  
PYE, DAVID B  
RABBEN, ROBERT G  
RHOADES, DANIEL R  
RICHARDSON, HERBERT  
RICHARDSON, STEVEN D  
ROBERSON, JESSIE M  
ROBERTS, MICHAEL NMN  
ROBERTSON, JOHN S  
ROBINSON, JOHN M  
ROBISON, SALLY A  
RODEHEAVER, THOMAS N  
RODEKOHR, MARK E  
RODGERS, STEPHEN J  
ROHLFING, JOAN B  
ROLLOW, THOMAS A  
ROONEY, JOHN M  
ROSEN, SIMON PETER  
ROSSELLI, ROBERT M  
RUDINS, GEORGE NMN  
RUDY, GREGORY P  
RYDER, THOMAS S  
SALM, PHILIP E  
SAN MARTIN, ROBERT L  
SATO, WALTER N  
SCHEPENS, ROY J  
SCHMITT, EUGENE C  
SCHMITT, WILLIAM A  
SCHNAPP, ROBERT M  
SCHNEIDER, SANDRA L  
SCHWARTZ, MARK S  
SCOTT, RANDAL S  
SELLERS, ELIZABETH D  
SENA, RICHARD F  
SHELOR, DWIGHT E  
SHERMAN, HELEN O  
SIEBERT JR, ARLIE B  
SILBERGLEID, STEVEN A  
SINGER, MARVIN I  
SISSON, BARBARA A  
SITZER, SCOTT B  
SKUBEL, STEPHEN C  
SMEDLEY, ELIZABETH E  
SMITH, ALAN C  
SMITH, ALEXANDRA B  
SOHINKI, STEPHEN M  
SPECTOR, LEONARD S  
SPIGAL, HARVARD P  
STADLER, SILAS D  
STAFFIN, ROBIN NMN  
STALLMAN, ROBERT M  
STARK, RICHARD M  
STEWART JR, JAKE W  
STEWART JR, FRANK M  
STRAKEY JR, JOSEPH P  
STRAUSS, NEAL J  
STUART, CHARLES E.  
SULAK, STANLEY R  
SULLIVAN, JOHN R  
SUMMERSVILLE, SARAH J  
SWEENEY II, JAMES R  
SWINK, DENISE F  
SYE, LINDA G  
SYLVESTER, WILLIAM G  
TABOAS, ANIBAL L  
TAMURA, THOMAS T  
TAVARES, ANTONIO F  
TEDROW, RICHARD T  
THOMAS, IRAN L  
THROCKMORTON, RALPH R  
TODD, G THOMAS  
TOENYES, JERRY W  
TOMFORD, NANCY W  
TORKOS, THOMAS M  
TRIAY, INES R  
TRYON, ARTHUR E  
TSENG, JOHN C  
TURI, JAMES A  
TURNER, JAMES M  
VAGTS, KENNETH A  
VANZANDT, VICKIE A  
VASQUEZ, PHILIP D  
WAGNER, M PATRICE  
WAGNER, MARY LOUISE  
WAISLEY, SANDRA L  
WALDRON, ROBERT E  
WALGREN, DOUGLAS NMN  
WALSH, ROBERT J  
WARNICK, WALTER L

WATKINS, ANTHONY LEE  
WEGNER, GERALD C  
WEIGAND, GILBERT G  
WERNER, JAMES D  
WHITAKER JR, MARK B  
WHITE, JAMES K  
WHITEMAN, ALBERT E  
WIEKER, THOMAS L  
WILKEN, DANIEL H  
WILLIAMS, MARK H  
WILLIS, JOHN W  
WILMOT, EDWIN L  
WISENBAKER JR, WILLIAM  
WRIGHT, STEPHEN J  
WYMER, NATALIE D  
YUAN-SOO HOO, CAMILLE C  
ZAMORSKI, MICHAEL J

Issued in Washington, DC, October 21, 1999.

**David M. Klaus,**

*Director of Management and Administration.*

[FR Doc. 99-28320 Filed 10-28-99; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Senior Executive Service; Performance Review Board

**AGENCY:** Department of Energy.

**ACTION:** Designation of PRB Chair.

**SUMMARY:** This notice designates the Performance Review Board Chair for the Department of Energy.

**EFFECTIVE DATE:** The appointment is effective as of September 30, 1999.

*Performance Review Board Chair*

David L. Hamer, Department of Energy.

Issued in Washington, DC, October 21, 1999.

**David M. Klaus,**

*Director of Management and Administration.*

[FR Doc. 99-28321 Filed 10-28-99; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER00-195-000]

### Geysers Power Company, LLC; Notice of Filing

October 25, 1999.

Take notice that on October 14, 1999, Geysers Power Company, LLC filed an amendment to their quarterly report for the quarter ending June 30, 1999.

Any person desiring to be heard or to protest such 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 385.214). All such motions and protests should be filed on or before November 3, 1999. Protests will be considered by the Commission to determine 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. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 99-28329 Filed 10-28-99; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. CP00-6-000, CP00-7-000, and CP00-8-000]

### Gulfstream Natural Gas System, L.L.C.; Notice of Applications for Certificates

October 25, 1999.

Take notice that on October 15, 1999, Gulfstream Natural Gas System, L.L.C. (Gulfstream or Applicant), 500 Renaissance Center, Detroit, Michigan 48243, filed an application in Docket No. CP00-6-000 pursuant to and in accordance with Section 7(c) of the Natural Gas Act (NGA) and the optional certificate procedures of Part 157(E) of the Federal Energy Regulatory Commission's (Commission) regulations, for a certificate of public convenience and necessity authorizing the construction and operation of natural gas pipeline facilities. On that same date Gulfstream filed in Docket No. CPP00-7-000 for a blanket certificate of public convenience and necessity to render firm and interruptible transportation services on an open access basis pursuant to Part 284(G) of the Commission's regulations and for approval of initial rates. Also, Gulfstream requests in Docket No. CP00-8-000 the issuance of a blanket certificate of public convenience and necessity under Part 157(F) of the Commission's regulations authorizing certain facility construction, operation and abandonment, all as more fully set forth in the applications which are on file with the Commission and open to public inspection. This filing may be viewed on the web at [http://](http://www.ferc.us/online/rims.htm)

[www.ferc.us/online/rims.htm](http://www.ferc.us/online/rims.htm) (call 202-208-2222 for assistance).

Any questions regarding the application should be directed to Mr. Richard H. Leehr, Vice President, Gulfstream Natural Gas System, L.L.C., 500 Renaissance Center, Detroit, Michigan 48243, or call (313) 496-3679.

Consistent with Section 157.102(b) of the Commission's regulations, Gulfstream requests that its application be considered under the optional procedures of part 157(E) and agrees to comply with all terms and conditions specified in Section 157.103.

Gulfstream requests that the Commission issue a preliminary determination on the non-environmental aspects of this proposal by April 15, 2000, and a final order granting the authorizations requested herein by February 2001. Gulfstream states that this timing is necessary to allow construction of the project can commence no later than June 2001 and be completed prior to June 2002, the proposed-in-service date for this project.

Gulfstream states that it does not currently own pipeline facilities and is not currently engaged in any natural gas transportation operations. Upon acceptance of the certificate requested in this application and commencement of operations, Gulfstream states that it will become a "natural gas company" within the meaning of Section 2(6) of the NGA and, as such, will be subject to the jurisdiction of the Commission.

Gulfstream states that the State of Florida is experiencing a substantial increase in the demand for electric power, which has led to an increasing need for natural gas as the fuel of choice for generating such power. Gulfstream contends that Florida will require more than 9,600 megawatts of generating capacity, equivalent to approximately 2 Bcf per day (Bcf/d) of natural gas demand, by the year 2007 to meet the needs of its growing population. To meet this need for natural gas, Gulfstream proposes to construct, own and operate approximately 744 miles of natural gas pipeline of varying diameter to transport up to 1.13 Bcf/d of natural gas from supply areas in Alabama and Mississippi across the Gulf of Mexico to new incremental markets in central and eastern Florida. It is stated that Gulfstream will serve electric utilities, gas distribution companies, municipalities and independent power generators. The project will include one compressor station, six gas receiving and sixteen delivery meter stations, a pressure regulator station, mainline valves, and other associated facilities, including pig launching and receiving facilities. Gulfstream estimates that the

total capital cost of constructing the pipeline and appurtenant facilities will be \$1,653,934,142.

Gulfstream states that its system consists of three interrelated geographic components: (1) Supply area facilities in Alabama and Mississippi; (2) transmission facilities in the gulf of Mexico; and (3) pipeline facilities located in and serving the State of Florida.

In the supply area, Gulfstream proposes several interconnections. In Alabama, Gulfstream proposes to interconnect with the Dauphin Island Gathering Partners (DIGP) 20-inch pipeline system, and with the Mobile Bay Processing Partners' Plant (known as the "DIGP Plant"). Gulfstream also proposes Alabama interconnections with Mobil's Mary Ann Plant, Williams' Mobile Bay Processing Plant, and Koch-Gateway Pipeline Company. In Mississippi, Gulfstream proposes to interconnect with the Pascagoula Gas Processing Plant (known as the "Destin Plant") which is operated by Amoco. Through the Koch-Gateway Interconnection, and the Destin and Williams' Plant connections, Gulfstream states that shippers will have access to several interstate natural gas pipeline systems.

According to Gulfstream, the six receipt points are designed to provide measurement capacity, in the aggregate, of approximately 2.2 Bcf/d, thus creating substantial flexibility for shippers acquiring gas supply to fully utilize the 1.13 Bcf/d of pipeline capacity. Gulfstream states that this gas supply will be commingled and transported to a central compressor station in Mobile County, Alabama (Station 100). It is stated that the compressor station will consist of 120,000-ISO rated horsepower (hp) of compression (three operating 30,000-ISO hp units plus one stand-by unit<sup>1</sup>). Gulfstream states that once compressed, the gas will be transported across the Gulf of Mexico using approximately 429.6 miles of 36-inch pipeline (Line 200), ending onshore at Station 200, a pressure regulator station in Manatee County, Florida.

Downstream of Station 200, Gulfstream proposes to construct a pipeline system that traverses Manatee, Hardee, Polk, Osceola, Highlands, Okeechobee, Martin and St. Lucie Counties and terminates in Palm Beach County, Florida. Gulfstream contends that the Florida mainline totals 173.3

miles of pipe and consists of Line 300 (46.2 miles of 36-inch pipe), Line 500 (89.4 miles of 30-inch pipe), and Line 700 (37.7 miles of 24-inch pipe). It is stated that three delivery meter stations (Nos. 505, 515, and 700) are located directly off of this mainline. In addition, it is stated that the mainline feeds four laterals, two of which include "sublaterals" that connect directly to specific plant sites. Gulfstream states that these lateral total 70.8 miles of pipe and are comprised of Line 330 (9.1 miles of 24-inch pipe), in Hardee and Polk Counties, Line 400 in Polk County (33.4 miles of 30-inch pipe), Line 600 (22 miles of 24-inch pipe), in Martin and St. Lucie Counties and Line 710 (6.1 miles of 16-inch pipe) in Palm Beach County. Lastly, the sublaterals include 41.7 miles of pipe and consist of: Line 320 (0.9 miles of 16-inch pipe) in Hardee County; Line 310 (0.7 miles of 16-inch pipe), in Polk and Hardee Counties; Line 410 (6.1 miles of 16-inch pipe); Line 430 (1.2 miles of 16-inch pipe), and Line 440 (6.9 miles of 16-inch pipe) all within Polk County; and Line 450 (25.9 miles or 24-inch pipe) in Polk and Osceola Counties, Florida. Gulfstream states that an additional 13 delivery points are proposed to be located off of the above laterals and sublateral. Gulfstream also proposes to construct pig launching and receiving facilities and mainline valves.

According to the Gulfstream, the pipeline was designed to parallel existing rights-of-ways (ROW) as often as feasible. Gulfstream states that of the total 307.1 pipeline miles constructed onshore in Mississippi, Alabama, and Florida, approximately 77 percent, or 235 miles will follow existing ROW.

Gulfstream states that construction ROW for its pipeline typically will be: for 30-inch to 36-inch pipe, 110 feet wide; for 24-inch pipe, 95-foot wide; and for 16-inch pipe, 80 feet wide. It is stated that the pipeline will require 50 feet of permanent ROW for 24-inch to 36-inch pipe and 30 feet for 16-inch pipe and up to 30 to 60 feet of temporary ROW. Gulfstream states that during construction it will require pipe coating and storage yards, and contractor staging areas. It is further stated that additional workspace may be required at major road, rail and river crossings and under other special circumstances.

Gulfstream states that the pipeline facilities will be constructed, at a minimum, to meet the requirements of the Natural Gas Pipeline Safety Act of 1968 and 49 CFR Part 192, Transportation of Natural Gas and Other Gas by Pipeline: Minimum Federal

Standards, as well as other applicable construction and safety requirements.

Gulfstream states that as a result on an open season it held from March 15, 1999 to March 29, 1999, it has negotiated, with non-affiliated shippers, 10 precedent agreements for firm transportation service for terms of 15 to 20 years. It is stated that two of these customers have options to increase their firm contractual volumes, which, if exercised, would increase the capacity contracted for. Gulfstream states that, overall, their firm commitments currently represent a significant percentage of the pipeline capacity. Gulfstream further states that because shippers negotiated confidentiality agreements as part of their precedent agreements, and since its application is filed under the optional certificate regulations, which do not require a showing of market support, Gulfstream is not filing the precedent agreements with its application.

Gulfstream proposes to offer firm and interruptible transportation services, and interruptible parking and lending services on a non-discriminatory, open-access basis, consistent with Commission policy. Gulfstream proposes to provide a firm transportation service under Rate Schedule FTS, an interruptible transportation service under Rate Schedule ITS and interruptible parking and lending services under Rate Schedule PALS, under rates, terms and conditions in its pro forma tariff included with the application. Gulfstream states that under Rate Schedule FTS, shippers will be entitled to elect a firm Maximum Hourly Quantity (MHQ) for delivery of gas at the shipper's primary delivery point. It is stated that this firm hourly quantity may be at the rate of 4.2 percent, 5.0 percent, 6.0 percent, 7.0 percent, or 8.0 percent of the shipper's maximum daily quantity. Gulfstream states that the firm hourly entitlement is designed to serve the fluctuating needs of electric generation customers and other shippers with similar requirements.

Gulfstream states that the shippers subscribing to its firm transportation service will be given the option of paying a negotiated rate or a cost-based recourse rate for service under its firm rate schedule. Gulfstream states that its recourse rates are based on a first year total annual cost of service of \$273.2 million. It is stated that the cost of service includes an overall return on rate base of 9.8 percent, predicated on a capital structure of 70 percent debt and 30 percent equity, a proposed return on common equity of 14 percent, and an 8 percent cost of debt. It is further stated

<sup>1</sup> Gulfstream intends to use the stand-by unit to enhance system reliability. The stand-by unit will only be used for back-up compression in the event of outages in other units.

that the initial net rate base used is \$1,624.1 million.

Gulfstream states that its proposed rate design is intended to take into account the service flexibility which will be provided to its shippers while employing a rate structure which is consistent with Commission policies. Gulfstream contends that since the operational and contractual delivery characteristics of its system will be similar to those of a storage field, the rate design proposed for Gulfstream's recourse rates is based upon the *Equitable*<sup>2</sup> method used by the Commission to design rates for storage service.

Gulfstream seeks a limited waiver for certain aspects of its tariff. It states that Section 154.109 of the Commission's regulations requires that the general terms and conditions of a tariff must contain a statement of the order in which the pipeline discounts its rates and charges, and that this order must be in accordance with Commission policy. Gulfstream requests waiver of the requirement to include a discount recognition provision in its tariff. According to Gulfstream, this requirement is inapplicable to it because Gulfstream currently has no categories of costs other than the base rate reservation charge. Gulfstream claims that the Commission has granted this waiver to other new pipeline projects under similar circumstances.<sup>3</sup>

Gulfstream asserts that approval of its application is required by the public convenience and necessity. Gulfstream states that it has complied with the filing requirements of Section 157.102 and has satisfied the terms and conditions of Section 157.103. In that regard, Gulfstream states that the certificate which it seeks will be nonexclusive, and will in no way prejudice any other application for other certificates. It is stated that the certificate will also provide authority to construct and operate facilities to provide new service and the rates proposed for services comply with the objectives set forth in § 157.103(d) of the regulations.

In addition to satisfying the requirements of the optional certificate regulations, Gulfstream indicates that there is a substantial factual basis from which to conclude that the project is required by the present or future public convenience and necessity. First, it is stated that there is substantial market demand for the project. Second,

Gulfstream states that the project is consistent with and promotes the policies and goals of the Commission. Finally, it is stated that there are substantial regional benefits which will occur as a result of constructing the project.

Any person desiring to be heard or to make protest with reference to said application should on or before November 15, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) 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 Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other 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 Commission by Sections 7 and 15 of the NGA 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 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 Gulfstream to appear or be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 99-28324 Filed 10-28-99; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER00-111-000]

#### Little Bay Power Corporation; Notice of Filing

October 25, 1999.

Take notice that on October 14, 1999, Little Bay Power Corporation (Little Bay) tendered for filing a service agreement between Great Bay Power Corporation and Little Bay for service under Little Bay Rate Schedule No. 1. Little Bay's rate schedule was accepted for filing by the Commission on June 1, 1999, in Docket No. ER99-3050-000. Under the service agreement, Little Bay will provide Great Bay with energy and/or capacity on a short-term basis.

The service agreement is proposed to be effective November 1, 1999.

Any person desiring to be heard or to protest such 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 385.214). All such motions and protests should be filed on or before November 3, 1999. Protests will be considered by the Commission to

<sup>2</sup>Equitable Gas Company, 36 FERC ¶ 61,147 (1986).

<sup>3</sup>See Vector Pipeline, L.P., 85 FERC at p. 61,304; Alliance Pipeline L. P., 80 FERC at 61,598.

determine 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. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 99-28326 Filed 10-28-99; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER00-176-000]

#### Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin); Notice of Filing

October 25, 1999.

Take notice that on October 8, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP) tendered for filing a Short-Term Firm Point-to-Point Transmission Service Agreement between NSP and Wisconsin Public Service Corporation.

NSP requests that the Commission accept the agreement effective September 30, 1999, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 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). All such motions and protests should be filed on or before November 3, 1999. Protests will be considered by the Commission to determine 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. This filing may be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

[www.ferc.fed.us/online/rims.htm](http://www.ferc.fed.us/online/rims.htm) (call 202-208-2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 99-28328 Filed 10-28-99; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP00-11-00]

#### Tennessee Gas Pipeline Company; Notice or Request Under Blanket Authorization

October 25, 1999.

Take notice that on October 20, 1999, Tennessee Gas Pipeline (Tennessee), a Delaware Corporation, Post Office Box 2511, Houston, Texas 77252, filed a request with the Commission in Docket No. CP00-11-000, pursuant to Sections 157.205 and 157.208(f)(2) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to increase the maximum allowable operating pressure (MAOP) through an uprate of Tennessee's Grand Cheniere-N.W. Chalkey Line also designated as Line 507A-800 (Line 807A-800) and a delivery meter designated as Meter No. 02-0484 located in Calcasieu Parish, Louisiana, authorized in blanket certificate issued in Docket No. CP82-413-000, all as more fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

Tennessee proposes to increase the MAOP of Line 507A-800 from 800 p.s.i.g. to 999 p.s.i.g. Tennessee wishes to uprate Line 507A-800 and Meter No. 02-0484 in order to increase the operational efficiency of the lateral and to eliminate the manual efforts required to operate the lateral. Line 507A-800 is a lateral that consists of approximately 2.2 miles of six-inch diameter pipe. The lateral is used only to provide natural gas deliveries to a single agricultural end-user in Calcasieu Parish, Louisiana. Line 507A-800 is connected to Tennessee's mainline 507A-100 which operates at 999 p.s.i.g. To provide service to the delivery tap on the lateral, Meter No. 02-0484, Tennessee personnel must manually bleed gas into Line 507A-800 from Line 507A-100. Once Line 507A-800 and Meter No. 02-0484 are uprated to 999 p.s.i.g., the manual monitoring can be eliminated. The estimated cost of this uprate is \$15,000.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

**David P. Boergers,**

*Secretary.*

[FR Doc. 99-28325 Filed 10-28-99; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER00-115-000, ER00-116-000, and ER00-117-000]

#### West Georgia Generating Company L.P., Ameren Services Company, Central and South West Services, Inc., Notice of Filings

October 25, 1999.

Take notice that on October 14, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending March 31, 1999.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 3, 1999. Protests will be considered by the Commission to determine 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. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/>

online/rims.htm (call 202-208-2222 for assistance).

**David P. Boergers,**  
Secretary.

[FR Doc. 99-28327 Filed 10-28-99; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EC00-11-000, et al.]

#### LSP-Kendall Energy, LC, et al.; Electric Rate and Corporate Regulation Filings

October 21, 1999.

Take notice that the following filings have been made with the Commission:

##### 1. LSP-Kendall Energy, LC, et al.

[Docket No. EC00-11-000]

Take notice that, on October 13, 1999, LSP-Kendall Energy, LC, LSP Energy Limited Partnership and Denver City Energy Associates, L.P. filed a joint application pursuant to Section 203 of the Federal Power Act for approval of a reorganization of their company ownership structure. The proposed reorganization will not change the ultimate ownership or control of the joint Applicants or of their respective electric generation facilities nor will it affect the respective electric rate schedules of the joint Applicants on file with the Commission.

The joint Applicants have also requested that the Commission consider and approve the joint application on an expedited basis and grant waivers of the Commission's regulations so that the reorganization may be completed on the earliest possible date, but no later than November 25, 1999. A copy of the application has been served on the Illinois Commerce Commission, the Public Service Commission of Mississippi and the Public Utilities Commission of Texas.

*Comment date:* November 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

##### 2. FortisUS Energy Corporation

[Docket No. EC00-13-000]

Take notice that on October 15, 1999, FortisUS Energy Corporation (FortisUS) submitted for filing, pursuant to Section 203 of the Federal Power Act, an application for authorization to acquire through purchase certain facilities that may be subject to the jurisdiction of the Commission. FortisUS seeks authorization for the acquisition of facilities associated with its purchase of hydroelectric projects in the state of

New York with a total net capacity of not more than 35.5 MW of capacity.

FortisUS requested expedited action on its application.

*Comment date:* November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

##### 3. La Paloma Generating Company, LLC

[Docket No. EG00-5-000]

Take notice that on October 13, 1999, La Paloma Generating Company, LLC (La Paloma), a Delaware limited liability corporation with its principal place of business at 7500 Old Georgetown Road, Bethesda, MD 20814, filed with the Federal Energy Regulatory Commission an application for determination, on an expedited basis, of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

La Paloma proposes to own or lease and operate a nominally rated approximately 1,040 MW natural gas-fired, combined cycle power plant near the town of McKittrick, California. The proposed power plant is expected to commence commercial operation beginning in the winter of 2001. All capacity and energy from the plant will be sold exclusively at wholesale.

*Comment date:* November 4, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its comments to those that concern the adequacy or accuracy of the application.

##### 4. Colorado Power Partners

[Docket No. EG00-7-000]

Take notice that on October 8, 1999, Colorado Power Partners (CPP), 1001 Louisiana Street, Houston, Texas 77002, (Applicant) tendered for filing with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations and Section 32 of the Public Utility Holding Company Act, as amended (the Application).

The Application seeks a determination that CPP will maintain Exempt Wholesale Generator status after a transfer for financing purposes of certain upstream equity interests to Mesquite Investors, L.L.C., a newly-created entity, as described in the Application. CPP is a Colorado general partnership that owns the Brush Cogeneration Facility consisting of Brush 1 and Brush 3 (Facility), located in Brush, Colorado, and is engaged exclusively in the generation of electric energy for sale at wholesale. The Facility is a topping cycle cogeneration facility consisting of two gas turbines, a

heat recovery steam generator, an extraction-condensing steam turbine, a waste-heat steam boiler, a steam-heat exchanger and waste-heat hot water boilers. The Facility is operated by Colorado Cogen Operators Limited Liability Company pursuant to an operation and maintenance agreement. No rate or charge for, or in connection with, the construction of the Facility, or for electric energy produced thereby (other than any portion of a rate or charge that represents recovery of the cost of a wholesale rate or charge), was in effect under the laws of any State of the United States on October 24, 1992.

Copies of this application have been served upon the Colorado Public Utility Commission and the Securities and Exchange Commission.

*Comment date:* November 12, 1999, 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.

##### 5. BIV Generation Company, L.L.C.

[Docket No. EG00-8-000]

Take notice that on October 8, 1999, BIV Generation Company, L.L.C. (BIV), 350 Indiana Street, Suite 300, Golden, Colorado 80401, tendered for filing with the Federal Energy Regulatory Commission (Commission) an Application for Commission Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations and Section 32 of the Public Utility Holding Company Act, as amended (the Application).

The Application seeks a determination that BIV will maintain exempt wholesale generator status after a transfer for financing purposes of the upstream equity interest in BIV to Mesquite Investors, L.L.C., a newly-created entity, as described in the Application. BIV leases, with an option to purchase, a 60 megawatt gas-fired generation plant located in Brush, Colorado (the Facility), and will be directly and exclusively engaged in the business of owning an eligible facility and selling electric energy at wholesale. Retail sales of electricity within the meaning of Section 32 of PUHCA will not be made from the Facility.

The Facility will be operated, under the direction of BIV, by Colorado Cogen Operators LLC, pursuant to an operation and maintenance agreement. No rate or charge for, or in connection with, the construction of the Facility, or for electric energy produced thereby (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge), was in effect

under the laws of any State of the United States on October 24, 1992. Copies of this application have been served upon the Colorado Public Utility Commission and the Securities and Exchange Commission.

*Comment date:* November 12, 1999, 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.

#### **6. Milford Power Company, LLC**

[Docket No. EG00-9-000]

Take notice that on October 18, 1999, Milford Power Company, LLC (Milford Power), 301 Bic Drive, Milford, Connecticut, filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations and Section 32 of the Public Utility Holding Company Act, as amended (the Application).

The Application seeks a determination that Milford Power will maintain Exempt Wholesale Generator status after a transfer for financing purposes of certain upstream equity interests to Mesquite Investors, L.L.C., a newly-created entity, and El Paso Power Holding Company, a direct subsidiary of El Paso Energy Corporation, as described in the Application. Milford Power is a Delaware limited liability company that was formed for the purpose of owning and operating the Milford Power Plant (Facility), a 544-megawatt gas-fired generation plant being constructed in Milford, Connecticut, and is directly and exclusively engaged in the generation of electric energy for sale at wholesale. No rate or charge for, or in connection with, the construction of the Facility, or for electric energy produced thereby (other than any portion of a rate or charge that represents recovery of the cost of a wholesale rate or charge), was in effect under the laws of any State of the United States on October 24, 1992. Copies of the Application have been served upon the Connecticut Department of Public Utility Control and the Securities and Exchange Commission.

*Comment date:* November 12, 1999, 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.

#### **7. American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling power Company, Consumers Energy Company, The Detroit Edison Company**

#### **FirstEnergy Corp. on behalf of: The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, The Toledo Edison Company, Virginia Electric and Power Company**

[Docket Nos. ER99-3144-000 and EC99-80-000 (not consolidated)]

Take notice that on October 1, 1999, Alliance Companies filed a supplement to their pending applications in the above-referenced dockets.

*Comment date:* November 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

#### **8. Southern California Edison Company**

[Docket No. ER00-60-000]

Take notice that on October 12, 1999, Southern California Edison Company (SCE), tendered for filing letter confirming City of Riverside, California support for amendment to the Transmission Service Agreements with SCE.

*Comment date:* November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

#### **9. Virginia Electric and Power Company**

[Docket No. ER00-118-000]

Take notice that on October 14, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing the following:

1. Service Agreement for Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Edison Mission Marketing & Trading, Inc.

2. Service Agreement for Non-Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Edison Mission Marketing & Trading, Inc.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreements, Virginia Power will provide point-to-point service to Edison Mission Marketing & Trading, Inc., under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of October 14, 1999, the date of filing of the Service Agreements.

Copies of the filing were served upon Edison Mission Marketing & Trading, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

*Comment date:* November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

#### **10. Monroe Power Company**

[Docket No. ER00-119-000]

Take notice that on October 14, 1999, Monroe Power Company (MPC), tendered for filing an executed Agreement with Municipal Electric Authority of Georgia under the provisions of MPC's Market-Based Rates Tariff, FERC Electric Tariff No. 1.

MPC is requesting an effective date of December 15, 1999, for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission, the South Carolina Public Service Commission and the Georgia Public Service Commission.

*Comment date:* November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

#### **11. Kentucky Utilities Company**

[Docket No. ER00-120-000]

Take notice that on October 14, 1999, Kentucky Utilities Company (KU), tendered for filing several executed contracts with its wholesale customers under which the customers are to receive the benefit of power made available to them from the South Eastern Power Administration.

*Comment date:* November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

#### **12. Bangor Hydro-Electric Company**

[Docket No. ER00-122-000]

Take notice that on October 14, 1999, Bangor Hydro-Electric Company tendered for filing an executed service agreement for non-firm point-to-point transmission service with FPL Energy Power Marketing, Inc.

*Comment date:* November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

#### **13. Maine Public Service Company**

[Docket No. ER00-123-000]

Take notice that on October 14, 1999, Maine Public Service Company (Maine Public), tendered for filing an executed Service Agreement for non-firm point-to-point transmission service under Maine Public's open access transmission tariff with PDI New England, Inc.

*Comment date:* November 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

**14. Bangor Hydro-Electric Company**

[Docket No. ER00-124-000]

Take notice that on October 14, 1999, Bangor Hydro-Electric Company tendered for filing an executed service agreement for short-term firm point-to-point transmission service with FPL Energy Power Marketing, Inc.

*Comment date:* November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

**15. Central Illinois Light Company**

[Docket No. ER00-125-000]

Take notice that on October 13, 1999, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements for two new customers, Illinova Power Marketing, Inc. and Edison Mission Marketing & Trading, Inc., and three name changes, FirstEnergy Trading Services, Inc., which is the new name for FirstEnergy Trading and Power Marketing, Inc.; NewEnergy, Inc., which is the new name for New Energy Ventures, Inc., and Strategic Energy Ltd., which has changed its name to Strategic Energy L.L.C.

CILCO requested an effective date of October 2, 1999.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

*Comment date:* November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm>

[www.ferc.fed.us/online/rims.htm](http://www.ferc.fed.us/online/rims.htm) (call 202-208-2222 for assistance).

**David P. Boergers,***Secretary.*

[FR Doc. 99-28334 Filed 10-28-99; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests**

October 25, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 7931-017.

c. *Date Filed:* August 27, 1999.

d. *Applicants:* Larry Hensley and Eugene Mark Souza.

e. *Name of Project:* 29 Mile Creek Project.

f. *Location:* The 29 Mile Creek project is located in El Dorado County, California. The project occupies lands of the United States within the El Dorado National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)-825(r).

h. *Applicant Contact:* Eugene Mark Souza, 108 Dawn Lane, Placerville, California 95667.

i. *FERC Contact:* Any questions on this notice should be addressed to Dave Snyder at (202) 219-2385 or by e-mail at [david.snyder@ferc.fed.us](mailto:david.snyder@ferc.fed.us).

j. *Deadline for filing comments and or motions:* November 29, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the Project Number (7931-017) on any comments or motions filed.

k. *Description of Transfer:* Larry Hensley, the licensee for Project No. 7931, and Eugene Mark Souza request approval of the transfer of the project license from Larry Hensley to Eugene Mark Souza and that the instrument of such approval by the commission be made effective as of the date of conveyance of the project properties.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located to 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling

(202) 208-1371. The application may be viewed on the web at [www.ferc.fed.us/online/rims.htm](http://www.ferc.fed.us/online/rims.htm). Call (202) 208-2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

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.

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, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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.

**David P. Boergers,***Secretary.*

[FR Doc. 99-28330 Filed 10-28-99; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

Federal Energy Regulatory  
CommissionNotice of Application To Amend  
License, and Soliciting Comments,  
Motions To Intervene, and Protests

October 25, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Application to Amend License for the Black Bear Lake Project.

b. *Project No.*: 10440-051.

c. *Date Filed*: March 12, 1999.

d. *Applicant*: BBL Hydro, Inc.

e. *Name of Project*: Black Bear Lake Project.

f. *Location*: The Project is located on Black Bear Lake, in the First Judicial District on Prince of Whales Island, Alaska. The project does utilize federal lands.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. § 791(a)-825(r).

h. *Applicant Contact*: Mr. Glen D. Martin, P.O. Box 222, Port Townsend, WA 98368, (360) 385-1733.

i. *FERC Contact*: Any questions on this notice should be addressed to Vedula Sarma at (202) 219-3273 or by e-mail at vedula.sarma@ferc.fed.us.

j. *Deadline for filing comments and/or motions*: November 29, 1999.

Please include the project number (10440-051) on any comments or motions filed.

k. *Description of Filing*: BBL Hydro, Inc. proposes to remove the Big Salt Road portion of the transmission line from the project's license. The licensee states the transmission line along the Big Salt Road is a regional distribution line transmitting power along its route from several other sources in addition to BBL's Black Bear Lake Project.

l. *Location of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208-1371. This filing may be viewed on <http://www.ferc.fed.us/online/rims.htm> [call (202) 208-2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included in the Commission's mailing list should be indicated by writing to the Secretary of the Commission.

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.

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 providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must be served upon each representative of the Applicant specified in the particular application.

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.

**David P. Boergers,**  
Secretary.

[FR Doc. 99-28331 Filed 10-28-99; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

Federal Energy Regulatory  
CommissionNotice of Application Accepted for  
Filing and Soliciting Motions To  
Intervene and Protests

October 25, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: P-11813-000.

c. *Date filed*: September 2, 1999.

d. *Applicant*: Universal Electric Power Corporation.

e. *Name of Project*: Cedar Falls Milldam Hydroelectric Project.

f. *Location*: At the existing Cedar Falls Dam located on the Cedar River, near the Town of Cedar Falls, Blackhawk County, Iowa.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact*: Mr. Gregory S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535-7115.

i. *FERC Contact*: Monte TerHaar (202) 219-2768 or E-mail address at monte.terhaar@FERC.fed.us.

j. *Deadline for filing motions to intervene and protest*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project.

Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *Description of Project*: The proposed project would utilize the existing Cedar Falls Dam with lands owned by the town of Cedar Falls, and would consist of the following facilities: (1) four new rectangular steel penstocks, each about 20-foot-long; (2) a new 60-foot-by 30-foot powerhouse to be constructed on the downstream side of the dam; (3) 4 turbine/generator units having a total installed capacity of 2 megawatts; (4) a new 1,500-foot-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The proposed average annual generation is estimated to be 12 gigawatthours per year. The cost of the studies under the permit will not exceed \$800,000.

m. *Available Locations of Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2-A, Washington, DC 20426, or by calling (202) 219-1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Gregory S.

Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535-7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at <http://www.ferc.fed.us/online/rims.htm> or call (202) 208-2222 for assistance.

n. Individuals desiring to be included on the commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comment, 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.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "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, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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.

**David P. Boergers,**

Secretary.

[FR Doc. 99-28332 Filed 10-28-99; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application Accepted for Filing And Soliciting Motions To Intervene And Protests

October 25, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P-11824-000.

c. *Date filed:* September 27, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Delta Dam Hydroelectric Project.

f. *Location:* At the existing Delta Dam located on the Mohawk River, near the

Town of Rome, Oneida County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Gregory S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535-7115.

i. *FERC Contact:* Monte TerHaar (202) 219-2768 or E-mail address at [monte.terhaar@FERC.fed.us](mailto:monte.terhaar@FERC.fed.us).

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *Description of Project:* The proposed project would utilize the existing Delta Dam with lands owned by the NYSCC, and would consist of the following facilities: (1) three new rectangular steel penstocks, each about 200-foot-long and 96 inches in diameter; (2) a new 90-foot-by 30-foot powerhouse to be constructed on the downstream side of the dam; (3) 3 turbine/generator units having a total installed capacity of 3.4 megawatts; (4) a new 1,000-foot-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The proposed average annual generation is estimated to be 20 gigawatthours per year. The cost of the studies under the permit will not exceed \$1,200,000.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2-A, Washington, DC 20426, or by calling (202) 219-1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Gregory S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535-7115. A copy of the application may also be reviewed or printed by accessing the Commission's website on the Internet at

<http://www.ferc.fed.us/online/rims.htm> or call (202) 208-2222 for assistance.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

**Preliminary Permit**—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

**Notice of intent**—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

**Proposed Scope of Studies under Permit**—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

**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.

**Filing and Service of Responsive Documents**—Any filings must bear in all capital letters the title

“COMMENTS”, “NOTICE OF INTENT TO FILE COMPETING APPLICATION”, “COMPETING APPLICATION”, “PROTEST”, “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, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing, application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

**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.

**David P. Boergers,**

Secretary.

[FR Doc. 99-28333 Filed 10-28-99; 8:45 am]

BILLING CODE 6717-01-M

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6464-2]

### Agency Information Collection Activities: Proposed Collection; Comment Request; See List of ICRs Planned To Be Submitted in Section A

**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 seven continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described at the beginning of Supplementary Information.

**DATES:** Comments must be submitted on or before December 28, 1999.

**ADDRESSES:** U.S. Environmental Protection Agency, Office of Compliance, Mail Code 2223A, 401 M Street SW, Washington, DC 20460. A hard copy of an ICR may be obtained without charge by calling the identified information contact individual for each ICR in Section B of the **SUPPLEMENTARY INFORMATION**. or download off the Internet at <http://www.epa.gov/icr/icr.htm>.

**FOR FURTHER INFORMATION CONTACT:** For specific information on the individual ICRs see Section B of the **SUPPLEMENTARY INFORMATION**.  
**SUPPLEMENTARY INFORMATION:**

#### For All ICRs

The following information collection activities are mandatory. These ICRs are renewals of information collections associated with Clean Air Act regulations. The EPA is charged to establish standards of performance for new stationary sources. These New Source Performance Standards (NSPS) under Section 111 of the Clean Air Act, as amended, reflect:

\* \* \* application of the best technological system of continuous emissions reduction which (taking into consideration the cost of achieving such emissions reduction, or any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

The Agency refers to this charge as selecting the best demonstrated technology (BDT). Section 111 also requires that the Administrator review and, if appropriate, revise such standards every four years.

EPA is also charged under Section 112 of the Clean Air Act, as amended, to establish standards of performance for each category or subcategory of major sources and area sources of hazardous air pollutants. These standards are applicable to new or existing sources of hazardous air pollutants and shall require the maximum degree of emission reduction:

In addition, Section 114(a) states that:

\* \* \* the Administrator may require any owner or operator subject to any requirement of this Act to (A) establish and maintain such records, (B) make such reports, (C) install, use and maintain such monitoring equipment or methods (in accordance with such methods at such locations, at such intervals, and in such manner as the Administrator shall prescribe), (D) sample such emissions, (E) keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical, (F) submit compliance certifications, and (G) provide such other information as he may reasonably require.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

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.

#### A. List of ICRs Planned To Be Submitted.

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following seven continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB):

- (1) NSPS Subpart Dc, Small Industrial-Commercial-Institutional Steam Generating Units; EPA ICR Number 1564.05, and OMB Control Number 2060-0202, expires March 31, 2000.
- (2) NSPS subpart KK, Lead Acid Battery Manufacturing Plants, EPA ICR No. 1072.06, OMB Control No. 2060-0081; expires April 30, 2000.
- (3) NSPS subpart FFF, Flexible Vinyl and Urethane Coating and Printing,

- EPA ICR No. 1157.06, OMB No. 2060-0073, expires April 30, 2000.
- (4) NSPS subpart OOO, Nonmetallic Mineral Processing; EPA ICR No. 1084.06, OMB Control No. 2060-0050, expires March 31, 2000.
- (5) NSPS subpart PPP, Wool Fiberglass Insulation Manufacturing; EPA ICR No. 1160.06, OMB Control No. 2060-0114, expires March 31, 2000.
- (6) NESHAP Subpart M, Dry Cleaning Facilities/Perchloroethylene (PCE), EPA ICR Number 1415.04, and OMB Control Number 2060.0234 expires 2/28/00.
- (7) NESHAP subpart DD, Off-Site Waste and Recovery Operations, EPA ICR Number 1717.02, OMB Control Number 2060-0313, expires March 31, 2000.

#### B. Contact Individuals for ICRs

- (1) NSPS Subpart Dc, Small Industrial-Commercial-Institutional Steam Generating Units; Chris Oh (202) 564-7004, [oh.christopher@epa.gov](mailto:oh.christopher@epa.gov), EPA ICR Number 1564.05, and OMB Control Number 2060-0202, expires March 31, 2000.
- (2) NSPS subpart KK, Lead Acid Battery Manufacturing Plants, Deborah Thomas at (202)564-5041, [thomas.deborah@epa.gov](mailto:thomas.deborah@epa.gov) EPA ICR No. 1072.06, OMB Control No. 2060-0081; expires April 30, 2000.
- (4) NSPS subpart OOO, Nonmetallic Minerals Processing; Gregory Fried, (202)564-7016/(202) 564-0050 (fax), [Fried.gregory@epa.gov](mailto:Fried.gregory@epa.gov), EPA ICR No.1084, OMB Control No.2060-0050, expires March 31, 2000.
- (5) NSPS subpart PPP, Wool Fiberglass Insulation Manufacturing Plants; Gregory Fried, (202)564-7016/(202) 564-0050 (fax), [Fried.gregory@epa.gov](mailto:Fried.gregory@epa.gov), EPA ICR No.1160.06, OMB Control No. 2060-0114, expires March 31, 2000.
- (6) NESHAP (National Emission Standard for Hazardous Air Pollutants) for Perchloroethylene (PCE) Dry Cleaning Facilities Subpart M Recordkeeping and Reporting, Joyce Chandler, 202-564-7073, fax 202-564-0009, [chandler.joyce@epa.gov](mailto:chandler.joyce@epa.gov); EPA ICR No.1415.04, OMB Control No. 2060.0234 expires February 28, 2000.
- (7) NESHAP (National Emission Standard for Hazardous Air Pollutants) subpart DD, Off-Site Waste and Recovery Operations, Walter Derieux, (202) 564-7067, [derieux.walter@epa.gov](mailto:derieux.walter@epa.gov), EPA ICR Number 1717.02, OMB Control Number 2060-0313, expires March 31, 2000.

#### C. Individual ICRs

- (1) NSPS Subpart Dc, Small Industrial-Commercial-Institutional Steam Generating Units; EPA ICR Number 1564.05, and OMB Control Number 2060-0202, Expires March 31, 2000

**Affected Entities:** Entities affected by this action are those steam generating units for which construction, modification, or reconstruction is commenced after June 29, 1989, and that has a maximum design heat input capacity of 29 megawatts (MW) (100 million Btu per hour (Btu/hr)) or less, but greater than or equal to 2.9 MW (10 million Btu/hr).

**Abstract:** NSPS for Subpart Dc were proposed on June 9, 1989 and promulgated on September 12, 1990. These standards apply to steam generating units with a maximum design heat input of 29 megawatt (MW) (100 million Btu per hour (Btu/hr)) or less, but greater than or equal to 2.9 MW (10 million Btu/hr) commencing construction, modification, or reconstruction after the date of proposal. The pollutants regulated under this subpart include sulfur dioxide (SO<sub>2</sub>) and particulate matter (PM). Owners or operators of the affected facilities described must provide EPA or delegated State regulatory authority with the following one time-only reports specified in 40 CFR 60.7): notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of demonstration of the continuous monitoring system (CMS); notification of the date of the initial performance test; and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are required, in general, of all sources subject to NSPS.

The standards require reporting of the results of the initial performance test to determine compliance with the applicable SO<sub>2</sub> and/or PM standards. For units using a continuous emission monitoring system (CEMS) to determine compliance with the SO<sub>2</sub> standard, the regulation requires submittal of the results of the CEMS demonstration. After the initial report, the standard for SO<sub>2</sub> requires each affected facility to submit quarterly compliance reports.

After the initial report, the standard for PM requires quarterly reports to be submitted to notify of any emissions exceeding the applicable opacity limit. If there are no excess emissions, a semiannual report stating that no exceedances occurred may be submitted.

The recordkeeping requirements for small industrial-commercial-institutional steam generating units consist of the occurrence and duration of any startup and malfunctions as described. They include the initial performance test results including information necessary to determine the conditions of the performance test, and performance test measurements and results, including the applicable sulfur dioxide and/or particulate matter results. Records of startups, shutdowns, and malfunctions should be noted as they occur. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements.

The reporting requirements for this type of facility currently include the initial notifications listed, the initial performance test results, and quarterly report of SO<sub>2</sub> emissions, and instances of excess opacity. Semiannual opacity reports are required when there is no excess opacity. Semiannual excess emission reports and monitoring system performance reports shall include the magnitude of excess emissions, the date and time of the exceedances or deviance, the nature and cause of the malfunction (if known) and corrective measures taken, and identification of the time period during which the CMS was inoperative (this does not include zero and span checks nor typical repairs/adjustments).

**Burden Statement:** The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry. Where applicable, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paper Reduction Act. The estimate was based on a assumption that there would be 71 new affected facilities each year, and that there were approximately 425 sources in existence for the three years covered by the ICR. The annual burden of reporting and recordkeeping requirements for facilities subject to Subpart Dc are summarized by the following information.

The reporting requirements are as follows: read instruction (1 person-hour); initial performance test (for 10–30 million Btu/hr: 8 person-hours) (for

30–100 million Btu/hr: 330 person-hours). Sources are required to write reports on: notification of construction/reconstruction (2 person-hours), notification of physical/operational change (8 person-hours), notification of anticipated startup (2 person-hours), notification of initial performance test for CEM (2 person-hours), Quarterly continuous compliance report, for SO<sub>2</sub> (16 person-hours), Quarterly reports of fuels fired (2 person-hours), Excess opacity emission reports, for quarterly (16 person-hours), for semi annually (16 person-hours). Recordkeeping requirements include the following: maintaining records of start-ups, shutdowns, and malfunctions (1.5 person-hours), and measurements (1.5 person-hours).

(2) NSPS Subpart KK, Lead Acid Battery Manufacturing Plants, EPA ICR No. 1072.06, OMB Control No. 2060–0081; Expires April 30, 2000

**Affected Entities:** Entities potentially affected by this action are lead-acid battery manufacturing plants that produce or have the capacity to produce in one day (24 hours) batteries containing an amount of lead equal to or greater than 6.5 tons. Specifically, the affected facilities in each plant include grid casting, paste mixing, three-process operations, lead oxide manufacturing, lead reclamation, and other lead-emitting operations in lead acid battery manufacturing plants that commenced construction, modification, or reconstruction after the date of proposal.

**Abstract:** The largest single use of lead in the United States is in the manufacture of lead-acid, or secondary, storage batteries. Lead-acid battery manufacturing plants emit lead particulates in quantities that, in the Administrator's judgment, cause or contribute to air pollution that may endanger public health or welfare. Consequently, New Source Performance Standards were promulgated for this source category. These standards rely on the proper installation, operation and maintenance of particulate control devices such as electrostatic precipitators or scrubbers.

In order to ensure compliance with the standards, adequate record-keeping and reporting is necessary. This information enables the Agency to: (1) Identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. Specifically, the rule requires an application for approval of construction, notification of startup, notification and report of the initial emissions test, and notification of any

physical or operational change that may increase the emission rate. In addition, sources are required to keep records of all startups, shutdowns, and malfunctions.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Consequently, these information collection requirements are mandatory, and the records required by this NSPS must be retained by the owner or operator for two years. In general, the required information consists of emissions data and other information deemed not to be private. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information (See 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 39999, September 8, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 23, 1979).

**Industry Burden Statement:** In the previously approved ICR, the average annual burden to the industry over the next three years to meet these recordkeeping and reporting requirements was estimated at 320 person-hours. This is based on an estimated 48 respondents. The average annual burden for reporting only is projected to be 128 person-hours. EPA estimates a two hour burden for each of the following initial notifications; notification of the date of construction or reconstruction, notification of the date of actual startup, and notification of the date of the performance test. The initial performance tests requires 24 hours, and the Method 9 test 4 hours. The Agency also assumes that 20% of all affected facilities will have to repeat the performance test.

(3) NSPS Subpart FFF Supplementary Information NSPS Subpart FFF: Standards of Performance for Flexible Vinyl and Urethane Coating and Printing Industry, EPA ICR Number 1157.06, OMB Number 2060–0073, Expires April 30, 2000

**Affected entities:** Entities potentially affected by this action are those which are subject to NSPS Subpart FFF, or each rotogravure printing line used to print or coat flexible vinyl or urethane products, and for which construction, modification, or reconstruction commenced after January 18, 1983.

**Abstract:** In the Administrator's judgment, VOC emissions from flexible vinyl and urethane coating and printing

industry cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, the New Source Performance Standards (NSPS) were promulgated for this source category. The NSPS for the Flexible Vinyl and Urethane Coating and Printing Industry were proposed on January 18, 1983, and promulgated on June 29, 1984. These standards apply to each rotogravure printing line used to print or coat flexible vinyl or urethane products, and for which construction, modification or reconstruction commenced after the date of proposal. Volatile organic compounds (VOCs) are the pollutants regulated under this Subpart. The standards restrict the use of inks to those with a weighted average VOC content of less than 1.0 kilogram VOC per kilogram of ink solids, unless the source can otherwise reduce emissions to the atmosphere by 85 percent.

Owners or operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; and the notification of the date of the initial performance test. For those facilities using solvent recovery systems, a notification of the date upon which demonstration of the continuous monitoring system performance standards must be sent in.

The recordkeeping requirements will be different for each facility based upon which method they use to meet the emissions standards. The following listing includes all the recordkeeping requirements for all methods. All of these requirements are not required for each facility.

The recordkeeping requirements for NSPS subpart FFF consist of the initial performance test results and other information necessary to determine the conditions of the performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. Any owner or operator subject to the provisions of the part shall maintain a file of these measurements, and retain the file for at least two years following the date of those records.

Recordkeeping specific to flexible vinyl and urethane coating operations include: Recording the VOC content and amount of ink, any diluent solvent, and ink used and recovered (if using the

inventory system) whenever emission control equipment is not used; the average temperature of control device exhaust gases (during performance tests of system using a thermal incinerator); the record made by the continuous monitoring device for temperature for a thermal or catalytic incinerator and for VOC concentration for solvent recovery systems; the average temperature of each 3-hour clock period of printing operations when the average temperature of the exhaust gases is more than 28 degrees C below the average temperature demonstrated during the most recent performance test of the thermal incinerator; the average gas temperature both upstream and downstream of the catalyst bed during performance testing of units using a catalytic incinerator; the average temperature for each 3-hour clock period of printing operation when the average temperature of the gas stream before the catalyst bed is more than 28 degrees C below the average temperature demonstrated during the most recent performance test or the average temperature difference across the catalytic bed is less than 80 percent of the average temperature difference of the device during the most recent performance test; the time periods of operation when emission control devices are not being used; the average exhaust vent VOC concentration in parts per million by volume (during the performance test for solvent recovery systems); record the average exhaust vent VOC concentration for each 3-hour clock period of printing operation when the average concentration is greater than 50 ppm and more than 20 percent greater than the average concentration value demonstrated during the most recent performance test of the solvent recovery system.

The reporting requirements for this industry currently include the initial notifications listed, the initial performance test results, and the semiannual reports. These reports are needed if the weighted average VOC is exceeded, if the average value of the exhaust vent VOC concentration solvent recovery controls are exceeded, and if drops in incinerator temperatures and drops in the average temperature of the gas stream immediately before the catalyst bed or drops in the average temperature across the catalyst bed occur. They are also needed when the continuous monitoring device registers an exceedance.

All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Notifications are used

to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated and the standard is being met. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard, and note the operating conditions (temperature of exhaust gases, VOC concentrations, and temperature across the catalytic bed) under which compliance was achieved. The semiannual reports are used for problem identification, as a check on source operation and maintenance, and for compliance determinations.

**Burden Statement:** The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved 1997 Information Collection Request (ICR). Where appropriate, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paper Reduction Act.

This estimate is based on the assumption that there would be one new affected facility over the three years of the existing ICR and that there were approximately 8 sources in existence at the start of the three years covered by the ICR. The annual burden of reporting and recordkeeping requirements for facilities subject to Subpart FFF are summarized by the following information. The reporting requirements are as follows: Read Instructions (1 person-hour), Initial performance test (280 person-hours). It is assumed that 20% of tests are repeated due to failure. Estimates for report writing are: Notification of construction/reconstruction (2 person-hours), Notification of anticipated startup (2 person-hours), Notification of actual startup (1 person-hour), Notification of initial performance test (2 person-hours), Report of performance test (included in reporting requirements listed above), Semiannual report (4 person-hours). Records must be kept for a period of two years. The average burden to industry over the three years of the current ICR from these recordkeeping and reporting requirements was estimated to be 73.5 person hours.

(4) NSPS Subpart OOO, Nonmetallic Mineral Processing; EPA ICR No. 1084.06, OMB Control No. 2060-0050, Expires March 31, 2000

**Affected Entities:** This standard applies to owners or operators of new,

modified, or reconstructed facilities at nonmetallic mineral processing plants that commenced construction, modification, or reconstruction after August 1, 1985. Nonmetallic mineral processing includes the following affected facilities: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, and enclosed truck or railcar loading station. This standard does not apply to facilities located in underground mines; stand-alone screening operations; operations that only involve recycled asphalt; fixed sand gravel, or crushed stone plants with capacities of 25 tons per hour or less; portable sand, gravel, or crushed stone plants with capacities of 150 tons per hour or less; common clay or pumice plants with capacities of 10 tons per hour or less. Additionally, when an existing facility is replaced by a piece of equipment of equal or smaller size it is not subject to the standard until all facilities in a production line are replaced. Affected facilities in the plant process that are subject to 40 CFR Part 60, Subpart F for Portland Cement NSPS, or Subpart I, Asphalt Concrete Plants NSPS, are not subject to this NSPS, Subpart 000.

*Abstract:* Particulate matter is the pollutant regulated under this standard. Respondents must submit the following one-time-only reports: notification of the date of construction or reconstruction, notification of the actual date of initial startup, notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate, notification of demonstration of the continuous emission monitor system (CMS) where the CMS is required (wet scrubber), notification of the date of the initial performance test, and the results of the initial performance test. Wet mining/screening operations are exempt from all requirements of the regulation, except an initial report and record describing the location of these operations. The general provision requirement to submit a notification of the anticipated date of initial startup is being waived for respondents subject to this standard.

Respondents are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Owners or operators of facilities using a wet scrubber must record the measurements of both the change in pressure of the gas stream across the scrubber and the scrubbing liquid flow rate and submit semiannual

reports for occurrences when the measurements of the scrubber pressure loss (or gain) and liquid flow rate differ by more than  $\pm 30$  percent from the averaged determined during the most recent performance test. All records shall be retained for at least two years.

*Burden Statement:* There are 2500 sources subject to this standard. It is estimated that 2 additional sources per year will become subject to the standard. The current ICR estimates an average annual burden to the industry of 6,586 person-hours. The following is a breakdown of burden used in the ICR. EPA estimates a two hour burden for each of the following notifications; notification of the date of construction or reconstruction, notification of the date of actual startup, and notification of the date of the performance test. EPA estimated a 330 hour burden for initial performance tests. The Agency also assumed that 20% of all affected facilities will have to repeat the performance test.

EPA estimated that 84 of the existing 2500 facilities use wet scrubbers. For these facilities, 8 burden hours are estimated for semiannual scrubber malfunction reports. In addition, the daily recordkeeping burden of scrubber operating parameters is estimated at 15 minutes daily. It is also assumed that 5 percent, or 42 facilities, will have wet screening operations. It is estimated that these facilities will incur a 20 minute annual burden to verify exemption from this standard.

(5) NSPS Subpart PPP, Wool Fiberglass Insulation Manufacturing; EPA ICR No. 1160.06, OMB Control No. 2060-0114, Expires March 30, 2000

*Affected Entities:* This standard applies to each rotary spin wool fiberglass insulation manufacturing line for which construction, modification or reconstruction commenced after February 2, 1984.

*Abstract:* This standard regulates particulate matter. Owners or operators of the affected facilities described must make the following one-time-only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; and the notification of the date of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. These notifications, reports and records

are required, in general, of all sources subject to NSPS.

Recordkeeping requirements specific to wool fiberglass insulation manufacturers include continuous measurements of control device operating parameters. Where a wet scrubbing control device is used, the owner or operator of an affected facility must measure the gas pressure drop across each scrubber and the scrubbing liquid flow rate to each scrubber no less than once every four hours. Owners or operators who comply using a wet electrostatic precipitator control device must measure the primary and secondary current and voltage in each electrical field and the inlet water flow rate no less than once every four hours. Daily records of this information shall be kept at the source for a period of two years.

The reporting requirements for this industry include the initial notifications listed, the initial performance test results, and semiannual reports of excess emissions. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated and the standard is being met. Performance test records are needed as these are the Agency's record of a source's initial capability to comply with the emission standard.

*Burden Statement:* There are 20 sources subject to this standard. It is estimated that no additional sources will become subject to the standard over the next three years. The current ICR estimates an average annual burden to the industry of 1,410 person-hours. The following is a breakdown of burden used in the ICR. EPA estimates a 15 minute burden for the daily measurements of the control devices. EPA also estimates a four hour burden for each semiannual report of exceedances of the control device operating parameters. In addition, the operation and maintenance costs for particular matter monitoring equipment is approximately \$16,500 per year. Because no new sources are anticipated for this source category over the past three years, the capital startup costs, and the costs associated with performance testing were zero.

(6) NESHAP Subpart M, Dry Cleaning Facilities/Perchloroethylene (PCE), EPA ICR Number 1415.04, and OMB Control Number 2060.0234 Expires February 28, 2000

*Affected Entities:* Entities potentially affected by this action are those which are subject to NESHAP Subpart M, owners or operators of dry cleaning facilities using Perchloroethylene (PCE) as a solvent.

*Abstract:* The information collected is needed to determine which sources are subject to the regulation and whether these sources are in compliance with the standards. EPA is required under Section 112(d) of the Clean Air Act (Act) to regulate emissions of 189 hazardous air pollutants (HAPs) listed in Section 112(b) of the Act. One of these pollutants, PCE, is emitted from dry cleaning facilities. In the Administrator's judgement, PCE emitted from dry cleaning facilities causes, or contributes significantly, to the air pollution that may reasonably be anticipated to endanger public health. Consequently, National Emission Standards for Hazardous Air Pollutant (NESHAP) for this source category have been developed. Certain records and reports are necessary to enable the Administrator to identify sources subject to the standards and to ensure that standard, which is based on maximum achievable control technology (MACT) or generally achievable control technology (GACT), is being achieved. The Agency will use the information to identify sources subject to the standards to ensure that MACT or GACT is being properly applied, monitoring is being conducted on a weekly basis to ensure that the emission control devices are being properly operated and maintained on a continuous basis to reduce vented PCE emissions, and leak detection and repair are being conducted on a weekly basis to reduce fugitive PCE emissions. The records and reports are necessary to enable the EPA to identify facilities that may not be in compliance with the standard. Based on reported information, the EPA can decide which facilities should be inspected/receive compliance assistance, and what records or processors should be inspected at these facilities. The records that the facilities maintain would indicate to the EPA whether they are operating and maintaining equipment properly to control vented emissions and whether transfer emissions and other fugitive emissions are being properly controlled. To minimize the burden, much of the information the Agency needs to determine compliance

would be recorded and retained on site at the facility. Such information would be reviewed by enforcement/compliance assistance personnel during an inspection and would not need to be routinely reported to the EPA.

The recordkeeping and reporting requirements under Subpart M are mandatory under 40 CFR 63.324. These requirements include the 5 year retention of records (40 CFR 63.324(d)). In addition to the general provision requirements there are records of solvent purchase per month (40 CFR 63.324(d)(1)), records of calculation and results of yearly PCE consumption (40 CFR 63.324(d)(2)), records of weekly or biweekly inspections (40 CFR 63.324(d)(3)), records of dates of repair or purchase orders (40 CFR 63.324(d)(4)), records of monitoring (40 CFR 63.324(d)(5) and (6)), initial report requirements (all) (40 CFR 63.324(a)), report on compliance (40 CFR 63.324(b)), report on facility status change to major source (40 CFR 63.324(c)), report on exceedance of low solvent consumption exemption level (40 CFR 63.324(c)).

*Burden Statement:* Since the dry cleaning industry is considered to be comprised primarily of small businesses, the EPA took special steps to ensure that the burdens imposed on the small businesses were reasonable. There are an estimated 25,090 affected facilities. The previous ICR estimated the annual public reporting burden for this collection of information as an average 9 hours per response for new dry cleaning facilities and zero hours per response for existing dry cleaning facilities. The public recordkeeping burden was estimated to average 48 hours per respondent for a total 1,192,879 hours.

(7) NESHAP (National Emission Standard for Hazardous Air Pollutants Subpart DD, Off-Site Waste and Recovery Operations, EPA ICR Number 1717.02, OMB Control Number 2060-0313, Expires March 31, 2000

*Affected entities:* Entities potentially affected by this action are certain types of waste management facilities that are "major sources," as defined in section 112(b) of the Clean Air Act (CAA), and receive from other facilities wastes containing specific organic compounds listed as hazardous air pollutants (HAPs).

*Abstract:* This ICR contains record keeping and reporting requirements that are specifically authorized by Section 14 of the CA (42 U.S.C. 7414) and set out in the NESHAP General Provisions. This information is used by Agency to: (1) identify major sources and newly

constructed sources subject to the standards; (2) ensure that maximum achievable control technol (MACT) is being properly applied; and (3) ensure that the emission control devices are being properly operated and maintained on a continuous basis. The records that the facility is required to maintain would indicate to the Agency whether facility personnel are operating and maintaining control of equipment properly. Owners or operators of the affected facilities described must make the following one-time reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollution emission rate; notification of the date of the initial performance test; and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. The standards require periodic record keeping to document process information relating to the sources' ability to meet the requirements of the standard and to note the operational conditions under which compliance was achieved.

*Burden Statement:* The annual public reporting and record keeping burden for this collection of information is estimated to average 208 hours per response.

Dated: October 4, 1999.

**Bruce R. Weddle,**

*Director, Office of Compliance.*

[FR Doc. 99-28041 Filed 10-28-99; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6466-7]

**Agency Information Collection Activities: Proposed Collection; Comment Request; Extension of Application Requirements for the Approval and Delegation of Federal Air Toxics Programs to State, Territorial, Local, and Tribal Agencies**

**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 continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Application Requirements for the Approval and Delegation of Federal Air Toxics Programs to State, Territorial, Local, and Tribal Agencies, OMB No. 2060-0264, ICR no. 1643.04, expiration date currently 3/31/2000. Before submitting this ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before December 28, 1999.

**ADDRESSES:** Send all comments on this ICR to Ms. Holly Reid, Information Transfer and Program Integration Division (MD-12), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. Interested persons may obtain a copy of the ICR without charge by contacting Ms. Yulonda Thorpe, at (919) 541-5319.

**FOR FURTHER INFORMATION CONTACT:** Ms. Holly Reid, (919) 541-5344, or electronic mail at reid.holly@epa.gov.

**SUPPLEMENTARY INFORMATION:**

*Affected entities:* Entities potentially affected by this action are those State, Territorial, Local, and Tribal agencies (S/L/Ts) participating in this voluntary program.

*Title:* Application Requirements for the Approval and Delegation of Federal Air Toxics Programs to State, Territorial, Local, and Tribal Agencies, OMB No. 2060-0264 (ICR No. 1643.04), Expiration date March 31, 2000.

*Abstract:* A rule developed under the authority of section 112(l) of the Clean Air Act, as amended in 1990, calls for us, EPA, to "publish guidance that would be useful to States in developing programs \* \* \* allowing for delegation of the Administrator's authorities and responsibilities to implement and enforce emissions standards and prevention requirements." Affected entities include S/L/Ts choosing to participate in this voluntary program. No industries are included among the respondents.

The ICR reflects the approval process codified in 40 CFR 63, subpart E, which we proposed to amend on January 12, 1999 (64 FR 1880). Under the amended process, the S/L/T can select one of five delegation options to implement and enforce the Federal section 112 rule, requirement, or program. These options include:

—Accepting straight delegation of the unchanged Federal standard;

- Requesting an adjustment to the Federal standard;
- Requesting to substitute S/L/T requirements or rules for the Federal standard;
- Requesting to substitute Title V permit or Title V general permit terms and conditions for the Federal standard; or,
- Requesting to substitute an S/L/T program for the Federal standard.

In addition, the S/L/T may also request delegation of the 40 CFR part 68 accidental release prevention program using subpart E. When the S/L/T requests to adjust or substitute requirements under subpart E, they must demonstrate that their changes are as least as stringent as the Federal standard they would replace.

The approval options vary in the types of changes allowed and in the level of demonstrations required for approval. Respondents interested in using this program must submit an application package to their EPA Regional Office. We will use this information to determine whether the S/L/T request is approvable according to the criteria specified in subpart E. The intent of this voluntary program is to encourage S/L/Ts to accept delegation of the Federal section 112 standards, and to allow them to adjust or substitute S/L/T requirements when they can be shown to be at least as stringent as the Federal requirements. These provisions for alternatives will help preserve existing S/L/T programs and prevent dual regulation of sources.

We also reserve the right to review and withdraw an approved S/L/T rule, program, or requirement if we decide it is not as stringent as the otherwise applicable Federal standard or if the S/L/T is failing to adequately implement or enforce it. In this case, the S/L/T would be asked to submit information regarding permits, monitoring, resources, etc. We will use this information to decide if the rule, program, or requirement should be withdrawn. Our ability to review and withdraw approval is needed to ensure we can satisfy our obligations under the Act to implement and enforce the section 112 requirements.

This collection of information is authorized under 42 U.S.C. 7401-7671q. We will safeguard any information we obtain for which a claim of confidentiality is made according to our policies outlined in title 40, chapter 1, part 2, subpart B, Confidentiality of Business Information.

Note that 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 our regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

- We would like to solicit comments to:
- 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 our 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; or,
  - Minimize the burden of the collection of information on S/L/Ts, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Burden statement:* 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.

We estimate that the amended subpart E program will pose an overall average burden on all respondents of 130,198 hours and \$5.3 million per year. We estimate that each of the 127 S/L/Ts subject to subpart E may request delegation for up to 35 section 112(d) standards per year during the 3-year approval period we are requesting for this collection. In addition to delegations of the section 112(d) standards, the total costs include the one-time request for approval to receive delegation, requests for up-front approval to use the equivalency by permit and State program approval options, the one-time request to take delegation of the accidental release prevention program during the 3-year

period, and the effort for S/L/Ts to respond to our decision to withdraw up to two approved rules, programs, or requirements in year 3. Therefore, the average annual burden for each S/L/T is 29 hours and \$1,194 per response.

The cost estimate is based on the labor costs for S/L/Ts to request delegation under the various options in subpart E and to respond to potential program withdrawal reviews by us. There are no separate capital/startup costs associated with the final rule.

Dated: October 15, 1999.

**Richard A. Wayland,**

*Acting Director, Information Transfer and Program Integration Division.*

[FR Doc. 99-28391 Filed 10-28-99; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

[ER-FRL-6247-6]

**Environmental Impact Statements and Regulations; Availability of EPA Comments**

Availability of EPA comments prepared October 11, 1999 Through October 15, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564-7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1999 (63 FR 17856).

**Draft EISs**

*ERP No. D-AFS-J65308-UT Rating EC2, Wasatch Powderbird Guides Permit Renewal, Proposal to Conduct Guided Helicopter Skiing Activities on National Forest System Land, Issuance of a Special-Use-Permit, Wasatch-Cache National Forest, Uinta National Forest, Salt Lake County, UT.*

*Summary:* EPA expressed concern regarding potential wildlife impacts, air quality impacts and human disturbance from helicopter noise. EPA requested that these issues be addressed in the final EIS.

*ERP No. D-AFS-J65309-UT Rating EC2, Trout Slope East Timber Project, Timber Harvest and Associated Activities, Implementation, Vernal Ranger District, Ashley National Forest, Uintah County, UT.*

*Summary:* EPA requested additional information on sediment control procedures and water quality to fully

assess impacts from the Preferred Alternative.

*ERP No. D-AFS-L65325-ID Rating EC2, Sloan-Kennally Timber Sale, Proposal to Harvest and Regenerate Timber Strands, Implementation, Payette National Forest, McCall Ranger District, Valley County, ID.*

*Summary:* EPA expressed environmental concerns regarding lack of information with how this project relates to TMDL efforts and the construction of roads in a roadless area. EPA requested that information be provided on any expectations of the Payette National Forest to help implement any TMDL and that an explanation be provided on why entry into a roadless area cannot be avoided.

*ERP No. D-AFS-L65327-WA Rating EC2, Stimson ANILCA Access Easement Project, Reconstruct and Construct, Colville National Forest, Sullivan Lake Ranger District, Pend Oreille County, WA.*

*Summary:* EPA identified concerns with the purpose and need, the treatment of reasonably foreseeable actions, the characterization of impacts to grizzly bears from Alternative C, and the lack of baseline information. EPA recommended that a revised purpose and need statement be developed, and that additional baseline information and analyses be included in the final EIS.

*ERP No. D-COE-E39037-TN Rating EC2, Reelfoot Lake Project, Implementation of Wetland Preservation, Waterfowl Habitat Restoration, Fishery Improvement, Lake and Obion Counties, TN and Fulton County, KY.*

*Summary:* The restoration measures proposed should result in significant long term environmental benefits. EPA requested the collection of additional information to determine how design features will be installed.

*ERP No. D-FHW-C40148-NY Rating EC2, Miller Highway Project (P.I.N. 103.27), Relocation of Miller Highway between West 59th Street to West 72nd Streets, on the Upper West Side of Manhattan, Funding and COE Section 404 Permit, New York County, NY.*

*Summary:* EPA expressed environmental concerns about the lack of characterization of the contaminated materials at the areas of concern. EPA requested that these issues be address in the final document.

*ERP No. D-FHW-G40152-LA Rating EC2, North-South Expressway Const. I-220 in Shreveport, LA to the Arkansas State Line, Funding and COE Section 404 Permit Issuance, Caddo Parish, LA.*

*Summary:* EPA has environmental concerns in the areas of impacts on transportation, air quality, construction,

induced growth/secondary economic impacts, impacts to oil and gas facilities, agriculture, property values, and other resources. EPA requested that these issues be clarified.

*ERP No. D-FTA-C53004-NY Rating LO, Mid-Harlem Line Third Track Project, Construct a New 2.5 mile Third Track between Fleetwood and Crestwood Stations, Funding, Westchester County, NY.*

*Summary:* EPA has no objection to the project as proposed.

*ERP No. D-NPS-L65328-WA Vancouver National Historic Reserve Cooperative Management Plan, Preservation, Education and Public Use, Implementation, Clark County, City of Vancouver, WA.*

*Summary:* EPA Region 10 used a screening tool to conduct a limited review of this action. Based on this screen, EPA does not foresee having any environmental objections to the proposed project. Therefore, EPA will not be conducting a detailed review.

*ERP No. D-SFW-L64046-WA Rating LO, Little Pend Oreille National Wildlife Refuge, Implementation, Comprehensive Conservation Plan, Stevens and Pend Oreille Counties, WA.*

*Summary:* EPA is pleased to see that the USFWS has developed a plan that incorporates better management and protection of the natural resources while maintaining and in some cases, enhancing the recreational uses within the refuge.

**Final EISs**

*ERP No. F-AFS-J65298-CO South Fork Salvage Analysis Area, Implementation, Routt Divide Blowdown, Land and Resource Management Plan, Medicine Bow-Routt National Forests, Hahns Peak/Bears Ears Ranger District, Routt County, CO.*

*Summary:* EPA review finds the alternative selected can be implemented without significant impact to the environment, therefore EPA has no objection to the proposed action.

*ERP No. F-BLM-J65294-UT Grand Staircase-Escalante National Monument Management Plan, Implementation, Cedar City, UT.*

*Summary:* No formal comment letter was sent to the preparing agency.

*ERP No. F-FHW-H40155-MO MO-13 and MO-7 Highway/Freeway Improvements, MO-13 from US 24 in Lexington to Truman Reservoir south of Clinton and MO-7 in the immediate area of Clinton, Funding, Lafayette, Johnson and Henry Counties, MO.*

*Summary:* EPA concerns expressed in 1995 have been adequately addressed in the FEIS.

*ERP No. F-NPS-J61101-MT* Glacier National Park, General Management Plan, Implementation, Waterton Glacier International Peace Park, Lake National Park, Flathead and Glacier, MT.

*Summary:* EPA supports the preferred alternatives for each of the issues in the Final EIS which have the potential for environmental impact. In each case, the selection of the preferred alternative would offer maximal environmental protection while also protecting the experiences of Park visitors.

*ERP No. F-UMC-K11096-AZ* Yuma Marine Corps Air Station (MCAS), To Improve Ordnance Handling and Storage, Construct a new Combat Aircraft Loading Area (CALA); New Station Ordnance Area and Relocation of MCAS Yuma, AZ.

*Summary:* No formal comments were sent to the preparing agency.

*ERP No. FA-AFS-J65200-CO* Telluride Ski Area Expansion Project, Implementation, New/Additional Information, Special-Use-Permit and COE Section 404 Permit, Grand Mesa Uncompahgre and Gunnison National Forests, Norwood Ranger District, San Miguel County, CO.

*Summary:* EPA continues to express concerns with proposed adverse impacts to wetlands from indirect and cumulative impacts from ski area expansion activities.

Dated: October 26, 1999.

**William D. Dickerson,**

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99-28431 Filed 10-28-99; 8:45 am]

BILLING CODE 6560-50-U

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6247-5]

### Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7167.

Weekly receipt of Environmental Impact Statements  
Filed October 18, 1999 Through October 22, 1999

Pursuant to 40 CFR 1506.9.

*EIS No. 990388, Final EIS, FHW, ID,* Sandpoint North and South (NH-IR-F-CM-5116(68) Projects, Construction, US 95 (Milepost 466.8 to Milepost 4786), Funding and COE Section 404 Permit, City of Sandpoint, Bonner County, ID, Due: November 29, 1999, Contact: Jack T. Coe (208) 334-1843.

*EIS No. 990389, Draft EIS, AFS, ID,* Brown Creek Timber Sale Project,

Implementation, Payette National Forest, New Meadow Ranger District, Adam County, ID, Due: December 27, 1999, Contact: Jack Irish (208) 347-0300.

*EIS No. 990390, Draft EIS, UAF, FL,* Tyndall Air Force Base, Implementation, Proposed Conversion of Two F-15 Fighter Squadrons to F-22 Fighter Squadron, FL, Due: December 13, 1999, Contact: Herman Bell (850) 283-8572.

*EIS No. 990391, Final EIS, AFS, LA,* Kisatchie National Forest Revision Land and Resource Management Plan, Implementation, Claiborne, Grant, Natchitoches, Rapides, Vernon, Webster and Winn Parishes, LA, Due: November 29, 1999, Contact: Lynn C. Neff (318) 473-7160.

*EIS No. 990392, Final EIS, FHW, NY,* US-20/Broadway (Transit Road to Lancaster East Village Line) Reconstruction, Funding, COE Section 10 and 404 Permit, in the Villages of Depew and Lancaster, Erie County, NY, Due: November 29, 1999, Contact: Harold J. Brown (518) 431-4127.

*EIS No. 990393, Final EIS, COE, WY,* Little Snake Supplemental Irrigation Water Supply Project, Construction, Right-of-Way Permit and COE Section 404 Permit, Carbon County, WY, Due: November 29, 1999, Contact: Patsey Freeman (402) 221-3803.

*EIS No. 990394, Final EIS, AFS, ID,* North Fork St. Joe River Project, Implementation, Idaho Panhandles National Forest, St. Joe Ranger District, Shoshone County, ID, Due: November 29, 1999, Contact: Chuck Stock (208) 245-2531.

*EIS No. 990395, Draft EIS, AFS, TX,* Texas Blowdown Reforestation Project, Implementation, National Forests and Grasslands in Texas, Angeline and Sabine National Forests, San Augustine and Shelby Counties, TX, Due: December 15, 1999, Contact: Keith Baker (409) 344-6205.

*EIS No. 990396, Final EIS, UAF, NV,* Nellis Airforce Base, Proposal to Base or Beddown F-22 Aircraft Force Development Evaluation and Weapons School, Clark County, NV, Due: November 29, 1999, Contact: Langdon A. Kellogg (210) 536-4183.

*EIS No. 990397, Draft EIS, FAA, OH,* Cleveland Hopkins International I Airport, To Provide Capacity, Facilities, Highway Improvements, and Enhancement to Safety, Funding, Cuyahoga County, OH, Due: December 13, 1999, Contact: Ernest P. Guby (734) 487-7280.

*EIS No. 990398, Draft EIS, USA,* Programmatic EIS—Transportable Treatment Systems for Non-Stockpile

Chemical Warfare Material (CWM), To Destroy Non-Stockpile (CWM) in order to Protect Human, Health, Safety and the Environment, To Comply with the International Treaty, Nationwide, Due: February 04, 2000, Contact: John K Gieseking (410) 436-3768.

*EIS No. 990399, Final EIS, DOE, NM,* Sandia National Laboratories/New Mexico (SNL), Continue Operation, Site-Wide (DOE/EIS-0281), Albuquerque, NM, Due: November 29, 1999, Contact: Julianne Levings (888) 635-7305.

*EIS No. 990400, Draft EIS, USN, NY,* Naval Weapons Industrial Reserve Plant Bethpage to Nassau County, Transfer and Reuse, Preferred Reuse Plan for the Property, Town of Oyster Bay, Nassau County, NY, Due: December 14, 1999, Contact: Robert K. Ostermueller (610) 595-0759.

*EIS No. 990401, Final EIS, USN, CA,* Alameda Naval Air Station and Fleet and Industrial Supply Center, Disposal and Reuse, Alameda Annex and Facility, City of Alameda and Alameda County, CA, Due: November 29, 1999, Contact: Jerry Hemstock (650) 244-3023.

*EIS No. 990402, Final EIS, USN, PA,* Philadelphia (Former) Naval Base Hospital Disposal and Reuse, Implementation, City of Philadelphia, PA, Due: November 29, 1999, Contact: Robert K. Ostermueller (610) 595-0759.

*EIS No. 990403, Draft EIS, HUD, CA,* City of Monterey Park Project, Construction and Operation of the Monterey Park Towne Plaza, North of the Pomona Freeway and west of Paramount Boulevard, Los Angeles County, CA, Due: December 13, 1999, Contact: Ray Hamada (626) 307-1463.

Dated: October 26, 1999.

**William D. Dickerson,**

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99-28432 Filed 10-28-99; 8:45 am]

BILLING CODE 6560-50-U

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6247-4]

### Notice of Environmental Assessment and Preliminary Finding of No Significant Impact

**AGENCIES:** U.S. Department of Transportation (DOT) and U.S. Environmental Protection Agency.

**ACTION:** The U.S. Department of Transportation (DOT), Research and Special Programs Administration, Office

of Pipeline Safety, and the U.S. Environmental Protection Agency (EPA), Region 6, completed an Environmental Assessment (EA) and Preliminary Finding of No Significant Impact (FNSI) on the proposed petroleum products pipeline to be operated by Longhorn Partners Pipeline, L.P. The purpose of this notice is to make the EA and preliminary FNSI available for agency and public review during the 30-day comment period, and to notify interested parties that EPA and DOT will hold the following public meetings to foster public discussions: November 9th, Cook Middle School, Houston, TX; November 16th, James Bowie High School, Austin, TX; November 17th, Gillespie County Agricultural Bldg, Fredericksburg, TX; November 18th, Bastrop Opera House, Bastrop, TX; and November 22, 1999, Neill Auditorium (UTEP), El Paso, TX. A copy of the EA/FNSI is available for public review at County Clerk Offices in counties along the pipeline route. Address comments and requests for copies of the EA/FNSI to Robert D. Lawrence (6EN-XP), EPA, 1445 Ross Avenue, Dallas, TX, 75202-2733.

Dated: October 26, 1999.

**Richard E. Sanderson,**

*Director, Office of Federal Activities.*

[FR Doc. 99-28433 Filed 10-28-99; 8:45 am]

BILLING CODE 6560-50-U

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-00626; FRL-6390-2]

### Antimicrobial Stakeholder Meeting; Notice of Public Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of public meeting.

**SUMMARY:** The Antimicrobial Division (AD) of the Office of Pesticide Programs of EPA is continuing its series of stakeholder meetings to keep the public, industry and other interested parties updated and informed about antimicrobial activities that may affect them.

**DATES:** The meeting will be held on Tuesday, November 16, 1999 from 1:00 p.m. to 5:00 p.m.

**ADDRESSES:** The meeting will be held at the Crystal Gateway Marriott Hotel, 1770 Jefferson Davis Hwy, Arlington, VA 22215, on the first floor in the Grand Ballrooms J and K.

**FOR FURTHER INFORMATION CONTACT:** By mail: David Liem, Antimicrobial Division (7510C), Office of Pesticide Programs, Environmental Protection

Agency, 401 M St., SW., Washington, DC 20460. Office location: Third floor, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy, Arlington, VA 22215. Telephone number: (703) 305-1284; fax number: (703) 308-6467; e-mail address: liem.david@epa.gov.

### SUPPLEMENTARY INFORMATION:

#### I. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to the antimicrobial community interested in regulatory changes/revisions in antimicrobial activities, policies, procedures and guidelines. While the meeting is open to the public and the agenda of the meeting will be available upon request, comments are not being solicited for this meeting. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

#### II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

*Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register--Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

#### List of Subjects

Environmental protection; antimicrobial.

Dated: October 19, 1999.

**Frank Sanders,**

*Director, Antimicrobial Division, Office of Pesticide Programs.*

[FR Doc. 99-28048 Filed 10-28-99; 8:45 am]

BILLING CODE 6560-50-F

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6467-1]

### Culbertson Plastics Drum Site; Notice of Proposed Settlement

**AGENCY:** Environmental Protection Agency

**ACTION:** Notice; request for public comment

**SUMMARY:** In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Culbertson Plastics Drum Site in Opa-Locka, Dade County, Florida with the following Settling Parties: the Culbertson-Pedigo Partnership and Joe M. Pedigo. The settlement requires the Settling Parties to pay up to \$223,711.73 from the sale of the Site property to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling party pursuant to 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, Waste Management Division 61 Forsyth Street, S.W., Atlanta, Georgia 30303, 404/562-8887.

Written comments may be submitted to Ms. Batchelor at the above address within 30 days of the date of publication.

Dated October 8, 1999.

**James Miller,**

*Acting Chief, Program Services Branch, Waste Management Division*

[FR Doc. 99-28388 Filed 10-28-99; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-6466-3]

**Operating Industries, Inc. Landfill Superfund Site; Notice of Proposed CERCLA Administrative De Minimis Settlement****AGENCY:** Environmental Protection Agency.**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), the Environmental Protection Agency ("EPA") is hereby providing notice of a proposed administrative *de minimis* settlement concerning the Operating Industries, Inc. Landfill Superfund site in Monterey Park, California (the "OII Site"). Section 122(g) of CERCLA, 42 U.S.C. 9622(g), provides EPA with the authority to enter into administrative *de minimis* settlements. This settlement is intended to resolve the liabilities of 76 settling parties for the OII Site under CERCLA and section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973. The settlement will also resolve OII Site-related claims by California Department of Toxic Substances Control against the settling parties. The settling parties will pay a total of \$5,477,209 toward OII Site response costs.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. In accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d), commenters may request an opportunity for a public meeting in the affected area. EPA will consider all comments it receives during this period, and may modify or withdraw its consent to the settlement if any comments disclose facts or considerations indicating that the settlement is inappropriate, improper, or inadequate.

**DATES:** Comments must be submitted on or before November 29, 1999.**ADDRESSES:** Comments and requests for a public meeting should be addressed to the Regional Hearing Clerk, U.S. EPA Region IX (ORC-1), 75 Hawthorne Street, San Francisco, CA 94105, and should refer to: Operating Industries, Inc. Landfill Superfund Site, Monterey Park, CA, U.S. EPA Docket No. 99-09. The proposed settlement and additional background information relating to the settlement are available for inspection, and EPA's response to any comments received will be available for inspection,

at the U. S. EPA Region IX Superfund Records Center, 95 Hawthorne Street, Suite 403 S, San Francisco, CA 94105; at the Bruggemeyer Memorial Library, 318 South Ramona Avenue, Monterey Park, CA 91754; the Montebello Regional Library, 1550 West Beverly Boulevard, Montebello, CA 90640; and the Chet Holifield Library, 1060 South Greenwood Avenue, Montebello, CA 90640. A copy of the proposed Administrative Order on Consent may be obtained from the Regional Hearing Clerk at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Arthur Haubenstock, Assistant Regional Counsel, U.S. EPA Region IX (ORC-3), 75 Hawthorne Street, San Francisco, CA 94105; E-Mail: haubenstock.arthur@epa.gov; Tel: (415) 744-1355.

Dated: October 19, 1999

**Nancy Lindsey,***Acting Director, Superfund Division, Region IX.*

[FR Doc. 99-28313 Filed 10-28-99; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-6466-9]

**San Gabriel Valley Superfund Sites; Notice of Proposed Administrative Settlement****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9600 *et seq.*, notice is hereby given that on September 30, 1999, the United States Environmental Protection Agency ("EPA") and the United States Department of Justice ("DOJ") executed a proposed Prospective Purchaser Agreement pertaining to a property transaction within the San Gabriel Valley Superfund Sites. The proposed Prospective Purchaser Agreement would resolve certain potential claims of the United States under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and section 7003 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6973, against the Industry Urban Development Agency (the "Purchaser") and the City of Industry, California. The Purchaser plans to acquire a 17 acre parcel located within the Puente Valley

Operable Unit of the San Gabriel Valley Superfund Sites near Los Angeles, California for the purposes of developing and operating a solid waste transfer and recycling station. The proposed settlement requires the Purchaser to make a one-time payment of \$25,000, which would be used for response actions in the Puente Valley Operable Unit.

For thirty (30) calendar days following the date of publication of this document, EPA will receive written comments relating to this proposed settlement. If requested prior to the expiration of this public comment period, EPA will provide an opportunity for a public meeting in the affected area. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

**DATES:** Comments must be submitted on or before November 29, 1999.**Availability**

The proposed Prospective Purchaser Agreement and additional background documentation relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA, 94105. A copy of the proposed settlement may also be obtained from EPA at the address listed below. Comments should reference "Industry Urban-Development Agency Prospective Purchaser Agreement, Docket No. 99-11, San Gabriel Valley Superfund Sites" and should be directed to Brett Moffatt at the address below.

**FOR FURTHER INFORMATION CONTACT:** Brett Moffatt, Assistant Regional Counsel (ORC-3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA, 94105; E-mail:

moffatt.brett@epamail.epa.gov; Phone:(415) 744-1374.

**Keith A. Takata,***Director, Superfund Division, Region IX.*

[FR Doc. 99-28389 Filed 10-28-99; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

[OPPTS-62162; FRL-6386-8]

**Asbestos-Containing Materials in Schools; State Request for Waiver from Requirements****AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed waiver.

**SUMMARY:** EPA has received from Texas a request for a waiver from the Agency's asbestos-in-schools program. A waiver of these requirements will be granted if EPA determines, after notice and comment and opportunity for a public hearing, that Texas is implementing or intends to implement a program of asbestos inspection and management at least as stringent as EPA's program. This notice announces an opportunity for a public hearing on the Texas waiver request and solicits written comments.

**DATES:** Written comments under docket control number OPPTS-62162 must be received on or before December 28, 1999. Each comment must include the name and address of the submitter. Any request for a public hearing must be in writing, be received on or before December 28, 1999, and detail specific objections to the grant of the waiver. If, during the comment period, EPA receives such a request for a public hearing, EPA will schedule a public hearing in Texas following the comment period. EPA will announce the date of the public hearing in the **Federal Register**.

**ADDRESSES:** Written comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided under Unit I. of "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, you must identify docket control number OPPTS-62162 on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Neil Pflum, Asbestos Coordinator, (6PD-T), Region VI, Environmental Protection Agency, 1445 Ross Ave., Dallas, TX 75202; telephone: (214) 665-2295; e-mail: pflum.neil@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

This action is directed to the public in general. This action may, however, be of special interest to teachers and other school personnel, their representatives, and parents in Texas, and asbestos professionals working in Texas. Since other entities may also be interested, the Agency has not attempted to describe all entities that may be affected by this action. If you have any questions regarding the applicability of this action to any entity, contact the person under "FOR FURTHER INFORMATION CONTACT."

*B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?*

EPA has established an official record for this action under docket control number OPPTS-62162. The official record consists of the documents referenced in this action, as well as any public comments received during the comment period, and other related information. The official record, which includes printed versions of any electronic comments, is available for inspection in Rm. 12D13 (Library 12th floor), EPA Region VI, 1445 Ross Ave., Dallas, TX. The Library is open from 8 a.m. to noon, Monday through Friday, excluding legal holidays. The telephone number is (214) 665-6427.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, you must identify docket control number OPPTS-62162 on the first page of your response.

1. *By mail.* Submit your comments to: Neil Pflum, Region VI Asbestos Coordinator (6PD-T), Environmental Protection Agency, 1445 Ross Ave., Dallas, TX 75202.

2. *In person or by courier.* Deliver your comments to: Rm. 12D13 (Library 12th floor), EPA Region VI, 1445 Ross Ave., Dallas, TX. The Library is open from 8 a.m. to noon, Monday through Friday, excluding legal holidays. The telephone number is (214) 665-6427.

3. *Electronically.* You may submit your comments by e-mail to: pflum.neil@epa.gov, or mail your computer disk to the address identified above. 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 standard disks in WordPerfect 5.1/6.1.

**II. Background**

*A. What Action is the Agency Taking and under What Authority?*

EPA is considering granting, with conditions, a waiver of the asbestos-in-schools program to Texas. This notice is issued, and the waiver, if granted, would be issued under section 203(m) of TSCA and 40 CFR 763.98. Section 203 is within Title II of TSCA, the Asbestos Hazard Emergency Response Act (AHERA).

In 1987, under TSCA section 203, the Agency promulgated regulations that require the identification and management of asbestos-containing material by local education agencies (LEAs) in the nation's elementary and

secondary school buildings: the "AHERA Schools Rule" (40 CFR part 763, subpart E). Under section 203(m) of TSCA and 40 CFR 763.98, upon request by a State Governor and after notice and comment and opportunity for a public hearing in the State, EPA may waive, in whole or in part, the requirements of the asbestos-in-schools program (TSCA section 203 and the AHERA schools rule) if EPA determines that the State has established and is implementing or intends to implement a program of asbestos inspection and management that contains requirements that are at least as stringent as those in the Agency's asbestos-in-schools program. A State seeking a waiver must submit its request to the EPA Region in which the State is located.

The Agency recognizes that a waiver granted to any State would not encompass schools operated under the defense dependents' education system (the third type of LEA defined at TSCA section 202(7) and 40 CFR 763.83), which serve dependents in overseas areas, and other elementary and secondary schools outside a State's jurisdiction, which generally include schools in Indian country. Such schools would remain subject to EPA's asbestos-in-schools program.

*B. When Did Texas Submit its Request for a Waiver and How is EPA Proposing to Respond?*

On July 27, 1999, Texas Governor George W. Bush, submitted to Gregg A. Cooke, Regional Administrator, EPA Region VI, a letter requesting a full waiver of the requirements of EPA's asbestos-in-schools program.

EPA is hereby issuing a notice in the **Federal Register** announcing receipt of the complete Texas waiver request and an opportunity for comment and public hearing, and making the request and the supporting documentation available in the public record for this notice. The Agency is also describing the information submitted by Texas and the Agency's preliminary determinations as to how the waiver request meets the criteria for the grant of a waiver.

*C. What was EPA's Determination with Regard to the Completeness of Texas' Waiver Request?*

The Texas waiver request has been deemed complete by EPA and contains the following:

1. A copy of the Texas provisions that include its program of asbestos inspection and management in schools. These consist of: The Texas Asbestos Health Protection Act (Texas Revised Civil Statutes Article 4477-3a) and implementing regulations (Texas

Administrative Code, Title 25, Part I, Chapter 295, Subchapter C "Texas Asbestos Health Protection," Sections 295.31-295.71).

2. The name of the Texas agency responsible for administering and enforcing the requirements of a waiver, namely the Texas Department of Health (TDH). Responsible officials include: John A. Jacobi, P.E., Chief, Bureau of Environmental Health; Claren Kotrla, Director, Toxic Substances Control Division; Todd F. Wingler, Chief, Asbestos Programs Branch; and Gordon Leeks, Inspector, PCB/AHERA program—telephone: (512) 834-6600.

3. Reasons, supporting papers, and the rationale for concluding that Texas' asbestos inspection and management programs, for which the waiver request is made, are at least as stringent as the requirements of EPA's program, as discussed in EPA's Preliminary Determinations in Units II.D.2. and 3.

4. A discussion of any special situations, problems, and needs pertaining to the waiver request accompanied by an explanation of how Texas plans to handle them, as discussed in EPA's Preliminary Determination in Unit II.D.6.

5. A statement of the resources that Texas intends to devote to the administration and enforcement of its program, as discussed in EPA's Preliminary Determination in Unit II.D.5.

6. Copies of Texas laws and regulations relating to the request, including provisions for assessing penalties, as referenced in Unit II.C.1.

7. Assurance from the legal counsel of TDH that the Department has the legal authority necessary to carry out the requirements relating to the waiver request, as indicated in a letter from Susan Steeg, General Counsel, to Gregg Cooke, dated February 22, 1999.

*D. What are the Criteria for EPA's Grant of the Waiver and What are EPA's Preliminary Determinations Relating to These Criteria?*

EPA may waive the requirements of the Agency's asbestos-in-schools program if the Agency determines that Texas has met the criteria set forth at 40 CFR 763.98. The criteria and EPA's preliminary determinations relating to the grant of the waiver to Texas are set forth below:

1. *Criterion:* Texas' lead agency has the legal authority necessary to carry out the provisions of asbestos inspection and management in schools relating to the waiver request.

*EPA's Preliminary Determination:* EPA has determined preliminarily that the statutory and regulatory provisions

cited at Unit II.C.1. give TDH such legal authority.

2. *Criterion:* Texas' program is or will be at least as stringent as the EPA asbestos-in-schools program.

*EPA's Preliminary Determination:* Since Texas has adopted the AHERA schools rule by reference in its regulations, EPA has determined preliminarily that Texas' program is or will be at least as stringent as EPA's program. See EPA's Preliminary Determination in Unit II.D.6.

3. *Criterion:* Texas has an enforcement mechanism to allow it to implement the program described in the waiver request.

*EPA's Preliminary Determination:* EPA has determined preliminarily that the compliance and enforcement provisions of Texas' asbestos-in-schools program are adequate to run the program. Inspectors will use site visits to determine if the LEAs are complying with the program. Violations will be cited for enforcement action which can range from warning letters (notices of noncompliance) to administrative actions to civil actions.

4. *Criterion:* TDH has or will have qualified personnel to carry out the provisions relating to the waiver request.

*EPA's Preliminary Determination:* EPA has preliminarily determined that TDH has or will have qualified personnel to carry out the provisions of the waiver. An inspector currently employed by TDH has had experience in conducting asbestos inspections in schools. The Department also employs a number of individuals that have experience in asbestos program enforcement who are available to lend their expertise to the asbestos-in-schools program.

5. *Criterion:* Texas will devote adequate resources to the administration and enforcement of the asbestos inspection and management provisions relating to the waiver request.

*EPA's Preliminary Determination:* EPA has determined preliminarily that Texas has adequate resources to administer and enforce the provisions of the program. Texas plans to devote \$114,311 to the program annually. It plans to match a Federal grant of \$85,733, with \$28,578 of State funds. The budget allows for two full-time employees, travel, supplies, and training.

6. *Criterion:* Texas gives satisfactory assurances that the necessary steps, including specific actions it proposes to take and a time schedule for their accomplishment, will be taken within a reasonable time to conform with applicable criteria in Units II.D.2.4.

*EPA's Preliminary Determination:* For EPA to grant a full waiver to Texas, the State, as a condition of the grant of the waiver, would need to give a written assurance satisfactory to EPA that, if following the grant of the waiver, any provision of either TSCA section 203 or the AHERA schools rule is changed, the State would, within a reasonable period of time, make appropriate changes, as necessary, to the statutory and regulatory provisions of its asbestos-in-schools program to ensure that the program remains at least as stringent as the EPA asbestos-in-schools program.

In addition, if a waiver is granted and as long as it remains in effect, Texas, utilizing adequate resources, would need to continue its asbestos-in-schools implementation and enforcement strategy. EPA may evaluate periodically the adequacy of Texas' program under 40 CFR 763.98, and, under circumstances set forth in the regulation, may, in whole or in part, rescind the waiver if the Agency determines the program to be inadequate.

*E. What Recordkeeping and Reporting Burden Approvals Apply to the Texas Waiver Request?*

The recordkeeping and reporting burden associated with waiver requests was approved by the Office of Management and Budget (OMB) under OMB control number 2070-0091. This document announces the Agency's receipt of the Texas waiver request and, therefore, imposes no additional burden beyond that covered under existing OMB control number 2070-0091.

**III. Materials in the Official Record**

The official record, under docket control number OPPTS-62162, contains the Texas waiver request, supporting documentation, and other relevant documents.

**List of Subjects**

Environmental protection, Administrative practice and procedure, Asbestos, Hazardous substances, Imports, Intergovernmental relations, Labeling, Occupational safety and health, Reporting and recordkeeping requirements, Schools.

Dated: October 19, 1999.

**Jerry Clifford,**

*Acting Regional Administrator, Region VI.*

[FR Doc. 99-28392 Filed 10-28-99; 8:45 am]

BILLING CODE 6560-50-F

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-OW-6466-6]

**Notice of Intent To Revise Aquatic Life Criteria for Copper, Silver, Lead, Cadmium, Iron and Selenium; Notice of Intent To Develop Aquatic Life Criteria for Atrazine, Diazinon, Nonylphenol, Methyl Tertiary-Butyl Ether (MtBE), Manganese and Saltwater Dissolved Oxygen (Cape Cod to Cape Hatteras); Notice of Data Availability; Request for Data and Information**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of intent to revise aquatic life criteria for copper, silver, lead, cadmium, iron and selenium; notice of intent to develop aquatic life criteria for atrazine, diazinon, nonylphenol, methyl tertiary-butyl ether (MtBE), manganese and saltwater dissolved oxygen (Cape Cod to Cape Hatteras); notice of data availability; request for data and information.

**SUMMARY:** Section 304(a)(1) of the Clean Water Act requires the Environmental Protection Agency (EPA) to develop and publish, and from time to time revise, criteria for water accurately reflecting the latest scientific knowledge. Today, EPA is notifying the public of its intent to revise the current aquatic life criteria for copper, silver, lead, cadmium, iron and selenium and to develop new aquatic life criteria for atrazine, diazinon, nonylphenol, methyl tertiary-butyl ether (MtBE), manganese and saltwater dissolved oxygen (Cape Cod to Cape Hatteras). Lists of references available to the Agency for copper, silver, lead, cadmium, selenium, atrazine, diazinon, nonylphenol and saltwater dissolved oxygen (Cape Cod to Cape Hatteras) are available on the Office of Science and Technology's Home-page. References for iron, MtBE and manganese will be posted on the Office of Science and Technology's Home-page when they are available. EPA is soliciting any additional pertinent data or scientific views that may be useful in revising or developing these criteria.

**ADDRESSES:** Send an original and three copies of any data, references or information to W-99-15 Comment Clerk, Water Docket, MC 4104, US EPA, 401 M Street, S.W., Washington, D.C. 20460. Information may also be submitted electronically to [OW-Docket@epa.gov](mailto:OW-Docket@epa.gov). Information should be submitted as a WP5.1, 6.1 and/or 8.0 or an ASCII file with no form of encryption.

**DATES:** Submissions of information would be most useful if submitted within 60 days. Information submitted too long after that time, and too near the end of the document preparation process, may not receive the degree of consideration that information received earlier would.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Mitchell, Health and Ecological Criteria Division (4304), US EPA, 401 M. Street, S.W., Washington, D.C. 20460; (202) 260-6101; [mitchell.jennifer@epa.gov](mailto:mitchell.jennifer@epa.gov) (copper, silver, iron) Cindy Roberts, Health and Ecological Criteria Division (4304), US EPA, 401 M. Street, S.W., Washington, D.C. 20460; (202) 260-2787; [roberts.cindy@epa.gov](mailto:roberts.cindy@epa.gov) (cadmium and lead) Frank Gostomski, Health and Ecological Criteria Division (4304), US EPA, 401 M. Street, S.W., Washington, D.C. 20460; (202) 260-1321; [gostomski.frank@epa.gov](mailto:gostomski.frank@epa.gov) (atrazine, diazinon, nonylphenol, MtBE and manganese) Keith Sappington, Health and Ecological Criteria Division (4304), US EPA, 401 M. Street, S.W., Washington, D.C. 20460; (202) 260-9898; [sappington.keith@epa.gov](mailto:sappington.keith@epa.gov) (selenium) Erik Winchester, Health and Ecological Criteria Division (4304), US EPA, 401 M. Street, S.W., Washington, D.C. 20460; (202) 260-6107; [erik.winchester@epa.gov](mailto:erik.winchester@epa.gov) (saltwater dissolved oxygen (Cape Cod to Cape Hatteras)).

**SUPPLEMENTARY INFORMATION:****What Are Water Quality Criteria?**

Section 304(a)(1) of the Clean Water Act requires the EPA to develop and publish, and from time to time revise, criteria for water accurately reflecting the latest scientific knowledge. Water quality criteria developed under section 304(a) are based solely on data and scientific judgments. They do not consider economic impacts or the technological feasibility of meeting the criteria in ambient water. Section 304(a) criteria provide guidance to States and Tribes in adopting water quality standards and provide a scientific basis for them to develop controls of discharges or releases of pollutants. The criteria also provide a scientific bases for EPA to develop federal regulations under section 303(c).

**What Type of Information Does EPA Want From the Public?**

Today, EPA is notifying the public of its intent to revise the current aquatic life criteria for copper, silver, lead, cadmium, iron and selenium and to develop new aquatic life criteria for atrazine, diazinon, nonylphenol, MtBE,

manganese and saltwater dissolved oxygen (Cape Cod to Cape Hatteras). EPA has recently completed a comprehensive review of the available data for copper, silver, lead, cadmium, selenium, atrazine, diazinon, nonylphenol and saltwater dissolved oxygen (Cape Cod to Cape Hatteras). The lists of references identified by the Agency for these chemicals are available on the Office of Science and Technology's Home-page at: [www.epa.gov/ost/standards/aqualife.html](http://www.epa.gov/ost/standards/aqualife.html). EPA is soliciting any additional pertinent data or scientific views that may be useful in revising or developing the aquatic life criteria for copper, silver, lead, cadmium, iron, selenium, nonylphenol, MtBE and manganese. In particular, EPA is interested in acquiring from the public any new data, not identified by the Agency's literature review, on the acute or chronic toxicity of these chemicals to aquatic life and scientific views on the interpretation of data or on the application of the Agency's methodology for deriving water quality criteria for these chemicals. Any data submitted should be adequately documented and contain enough supporting information to indicate that acceptable test procedures were used and that the results are likely reliable.

The Agency is developing new criteria for atrazine, diazinon and saltwater dissolved oxygen (Cape Cod to Cape Hatteras); however, these criteria were under development prior to the Agency's revising its criteria development process. Consequently, the criteria for diazinon, atrazine and saltwater dissolved oxygen (Cape Cod to Cape Hatteras) are near completion, but were not developed totally in accordance with the Agency's new procedures. The availability of these criteria will be announced in the **Federal Register** around the same time as this notice. At that time the Agency plans to publish the atrazine, diazinon and saltwater dissolved oxygen (Cape Cod to Cape Hatteras) documents as EPA recommended criteria with an invitation to submit additional data and comments. Additional data and comments will be considered in any subsequent revisions to the criteria.

**Biotic Ligand Model**

EPA is assessing the biotic ligand model for copper, silver, lead and cadmium. The biotic ligand model describes and quantifies the bioavailability of certain metals to aquatic life. The model is based on the theory that toxicity is not only related to total aqueous metal concentration, but that metal complexation and

interaction at the site of action (biotic ligand) of toxicity need to be considered. Mortality occurs in aquatic organisms when the concentration of metal bound to the biotic ligand (e.g., fish gill) exceeds a certain threshold concentration. More detailed information on the biotic ligand model can be found in the document entitled, Integrated Approach to Assessing the Bioavailability and Toxicity of Metals in Surface Waters and Sediments (EPA-822-E-99-001).

To help assess the applicability of the biotic ligand model to the aquatic life criteria for these four metals, EPA is interested in receiving toxicity test data that include measurements of dissolved metal as well as: dissolved organic carbon (DOC), alkalinity or dissolved inorganic carbon (DIC), pH, calcium, magnesium, sodium, chloride, sulfate and sulfide. Additionally, studies that measure metal accumulation at the surface of the fish gill or at physiologically active receptor sites for invertebrates are particularly useful.

#### **Where Can I Find More Information on EPA's Revised Process for Developing New or Revised Criteria?**

The Agency published detailed information about its revised process for developing and revising criteria in the **Federal Register** on December 10, 1998 (63 FR 68354) and in the EPA document entitled, National Recommended Water Quality—Correction (EPA 822-Z-99-001, April 1999). The purpose of the revised process is to provide expanded opportunities for public input, and to make the criteria development process more efficient.

**Geoffrey H. Grubbs,**

*Director, Office of Science and Technology.*

[FR Doc. 99-28314 Filed 10-28-99; 8:45 am]

BILLING CODE 6560-50-P

#### **EXPORT-IMPORT BANK OF THE UNITED STATES**

#### **Notice of Open Special Meeting of the Sub-Saharan African Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank)**

**SUMMARY:** The Sub-Saharan African Advisory Committee was established by Public Law 105-121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank. Further, the committee shall make

recommendations on how the Bank can facilitate greater support by U.S. commercial banks for trade with Sub-Saharan Africa.

**Time and Place:** Wednesday, November 17, 1999, at 9:00 a.m. to 12:00 noon. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW, Washington, DC 20571.

**Agenda:** This meeting will include a discussion of the development and implementation of policies and programs designed to support the expansion of Ex-Im Bank's Financial commitments in Sub-Saharan Africa. The discussion will focus on themes raised over the course of the year and conclusions based on our successes and challenges presented to Ex-Im Bank in implementing the 1998 recommendations.

**Public Participation:** The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to November 3, 1999, Teri Stumpf, Room 1203, Vermont Avenue, NW, Washington, DC 20571, Voice: (202) 565-3502 or TDD (202) 565-3377.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact Teri Stumpf, Room 1203, 811 Vermont Ave., NW, Washington DC 20571, (202) 565-3502.

**John M. Niehuss,**

*General Counsel.*

[FR Doc. 99-28284 Filed 10-28-99; 8:45 am]

BILLING CODE 6690-01-M

#### **FEDERAL COMMUNICATIONS COMMISSION**

[CC Docket No. 92-237; DA 99-2294]

#### **Next Meeting of the North American Numbering Council**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** On October 25, 1999, the Commission released a public notice announcing the November 16 and 17, 1999, meeting and agenda of the North American Numbering Council (NANC).

**FOR FURTHER INFORMATION CONTACT:** Jeannie Grimes at (202) 418-2320 or jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The

Portals, 445 Twelfth Street, S.W., Suite 6A320, Washington, DC 20554. The fax number is: (202) 418-2345. The TTY number is: (202) 418-0484.

**SUPPLEMENTARY INFORMATION:** Released: October 25, 1999. The next meeting of the North American Numbering Council (NANC) will be held on Tuesday, November 16, 1999, from 8:30 a.m., until 3:30 p.m., and on Wednesday, November 17, 1999, from 8:30 a.m., until 12 noon. The meeting will be held at the Federal Communications Commission, Portals II, 445 Twelfth Street, S.W., Room TW-C305, Washington, DC 20554.

**SUPPLEMENTARY INFORMATION:** This meeting is open to the members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

1. Approve October 19-20, 1999, meeting minutes.

2. North American Numbering Plan Administrator (NANPA) Report. Discussion of requirements for refinements to the NANP exhaust and pooling models assumptions, pursuant to paragraph 165 of the Numbering Resource Optimization, Notice of Proposed Rulemaking, CC Docket 99-200.

3. North American Numbering Plan Administration (NANPA) Oversight Working Group Report. Presentation of the consensus Audit Framework document. Status of the 1999 NANPA performance evaluation remaining issues; discussion of the proposed 2000 NANPA performance evaluation process.

4. Numbering Resource Optimization (NRO) Working Group Report. Discussion of the proposed work plan, per discussion with the LNPA WG, NANPA, INC and State Public Service Commissions.

5. Local Number Portability Administration (LNPA) Working Group. Update on the impact of the billing and Call Detail Record (CDR) management to the timeline for wireless wireline

integration by November 2002. Status of NPAC Release 1.4 and 3.0 regarding number pooling.

6. Industry Numbering Committee (INC) Report. Summary of the unassigned number porting (Issue 177) activity. Discussion of possible delay of INC NANP Expansion (Issue 022) report until January 2000.

7. Number Pooling Issue Management Group (IMG) Report. Status update on Year 2000 pooling effort.

8. Oversight of the Limited Liability Corporations (LLCs) and Number Portability Administration Centers (NPAC) activities.

### Wednesday, November 17, 1999

9. Steering Group Report.

10. Cost Recovery Working Group Report. North American Billing and Collection (NBANC) update.

11. Public participation, if any.

12. Other Business.

Federal Communications Commission.

**Blaise A. Scinto,**

*Deputy Chief, Network Services Division,  
Common Carrier Bureau.*

[FR Doc. 99-28439 Filed 10-28-99; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Agency Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10 a.m. on Tuesday, October 26, 1999, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and resolution activities.

In calling the meeting, the Board determined, on motion of Director Ellen S. Seidman (Director, Office of Thrift Supervision), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days, notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW, Washington, DC.

Dated: October 26, 1999.

Federal Deposit Insurance Corporation.

**James D. LaPierre,**

*Deputy Executive Secretary.*

[FR Doc. 99-28437 Filed 10-26-99; 4:48 pm]

BILLING CODE 6714-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-3140-EM]

### California; Amendment No. 4 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of California (FEMA-3140-EM), dated September 1, 1999, and related determinations.

**EFFECTIVE DATE:** October 21, 1999

**FOR FURTHER INFORMATION CONTACT:**

Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is re-opened as a result of the continuing fires in the State of California. The incident period is August 24, 1999, and continuing.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**James L. Witt,**

*Director.*

[FR Doc. 99-28394 Filed 10-28-99; 8:45 am]

BILLING CODE 6718-02-P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-3150-EM]

### Florida; Emergency and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of an emergency for the State of Florida (FEMA-3150-EM), dated October 15, 1999, and related determinations.

**EFFECTIVE DATE:** October 15, 1999

**FOR FURTHER INFORMATION CONTACT:**

Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated October 15, 1999, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the emergency conditions in certain areas of the State of Florida, resulting from Hurricane Irene on October 14, 1999, and continuing is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288, as amended ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of Florida.

You are authorized to coordinate all disaster relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to identify, mobilize, and provide at your discretion, equipment and resources necessary to alleviate the impacts of the emergency. I have further authorized direct Federal assistance, at 75 percent Federal funding. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act, as you may deem appropriate. However, this assistance would exclude regular time costs for subgrantees regular employees.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint David Rodham of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared emergency:

FEMA intends to coordinate all disaster relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, FEMA is authorized to identify, mobilize, and provide at its discretion, equipment and resources necessary to alleviate the impacts of the emergency. FEMA is further authorized to provide direct Federal assistance, at 75 percent Federal funding.

This assistance is for the counties of Brevard, Broward, Charlotte, Collier, Dade, DeSoto, Glades, Hardee, Hendry, Highlands, Hillsborough, Indian River, Lake, Lee, Manatee, Martin, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, St. Lucie, Sarasota, Seminole, and Volusia.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**James L. Witt,**

*Director.*

[FR Doc. 99-28395 Filed 10-28-99; 8:45 am]

BILLING CODE 6718-02-P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-3150-EM]

### Florida; Amendment No. 2 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency for the State of Florida, (FEMA-3150-EM), dated October 15, 1999, and related determinations.

**EFFECTIVE DATE:** October 20, 1999.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

**SUPPLEMENTARY INFORMATION:** The notice of an emergency for the State of Florida is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared an

emergency by the President in his declaration of October 15, 1999, :

Flagler County for direct Federal assistance and Categories A and B (debris removal and emergency protective measures) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 99-28396 Filed 10-28-99; 8:45 am]

BILLING CODE 6718-02-P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-3150-EM]

### Florida; Amendment No. 3 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency for the State of Florida (FEMA-3150-EM), dated October 15, 1999, and related determinations.

**EFFECTIVE DATE:** October 19, 1999.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective October 19, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 99-28397 Filed 10-28-99; 8:45 am]

BILLING CODE 6718-02-P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1305-DR]

### New Hampshire; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of New Hampshire (FEMA-1305-DR), dated October 18, 1999, and related determinations.

**EFFECTIVE DATE:** October 18, 1999.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated October 18, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of New Hampshire, resulting from Tropical Storm Floyd on September 16-18, 1999, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288, as amended ("the Stafford Act").

I, therefore, declare that such a major disaster exists in the State of New Hampshire.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint William Lokey of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New Hampshire to have been affected adversely by this declared major disaster:

Belknap, Cheshire, and Grafton Counties for Public Assistance.

All counties within the State of New Hampshire are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

**James L. Witt,**

*Director.*

[FR Doc. 99-28393 Filed 10-28-99; 8:45 am]

BILLING CODE 6718-02-P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Opening Meeting, National Dam Safety Review Board

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with § 8(h) of the National Dam Safety Program Act (P.L. 104-303), the Federal Emergency Management Agency gives notice that the following meeting will be held:

*Name:* Interagency Committee on Dam Safety.

*Date of Meeting:* November 3, 1999.

*Place:* Federal Emergency Management Agency, 500 C Street, S.W., Room 345, Washington, D.C. 20472.

*Time:* 9:00 a.m.-12:00 noon.

*Proposed Agenda:* Review initiatives for FY2000.

*Status:* This meeting is open to the public.

**FOR FURTHER INFORMATION CONTACT:** Donald Bathurst, Director, National Dam Safety Program, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, S.W., Room 416, Washington, D.C. 20472, telephone (202) 646-2753 or by facsimile at (202) 646-3990.

**SUPPLEMENTARY INFORMATION:** This meeting is open to the public with limited seating available on a first-come, first served basis. Members of the general public who plan to attend the meeting should contact Rita Henry, Federal Emergency Management Agency, 500 C Street, S.W., Room 416, Washington, D.C. 20472, Telephone

(202) 646-2704 or Bud Andress at (202) 646-2801 or by facsimile at (202) 646-3990 on or before November 2, 1999.

Minutes of the meeting will be prepared and available upon request 30 days after they have been approved by the Interagency Committee on Dam Safety.

Dated: October 22, 1999.

**Craig Wingo,**

*Director, National Earthquake Program, Mitigation Directorate.*

[FR Doc. 99-28398 Filed 10-28-99; 8:45 am]

BILLING CODE 6718-05-P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Open Meeting, Technical Mapping Advisory Council

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice of teleconference meeting.

**SUMMARY:** In accordance with § 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, the Federal Emergency Management Agency gives notice that the following meeting will be held:

*Name:* Technical Mapping Advisory Council.

*Date of Meeting:* November 10, 1999.

*Place:* The FEMA Conference Operator in Washington, DC will administer the teleconference. Individuals interested in participating should call 1-800-320-4330 at the time of the teleconference. Callers will be prompted for the conference code, #11, and they will then be connected through to the teleconference.

*Time:* 2:00 p.m. to 4:00 p.m., EST.

*Proposed Agenda:*

1. Call to order.
2. Announcements.
3. Action on minutes from September 1999 meeting.
4. Discuss agenda for December 1999 meeting in Washington, DC.
5. New business.
6. Adjournment.

*Status:* This meeting is open to the public.

**FOR FURTHER INFORMATION CONTACT:** Michael K. Buckley, P.E., Federal Emergency Management Agency, 500 C Street SW., room 421, Washington, DC 20472, telephone (202) 646-2756 or by facsimile at (202) 646-4596.

**SUPPLEMENTARY INFORMATION:** Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved by the next

Technical Mapping Advisory Council meeting in December 1999.

**Craig S. Wingo,**

*Director, National Earthquake Program.*

[FR Doc. 99-28399 Filed 10-28-99; 8:45 am]

BILLING CODE 6718-04-P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 15, 1999.

**A. Federal Reserve Bank of Richmond** (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:  
*I. John Walter Ratliff,* Tazewell, Virginia; to acquire additional voting shares of GNB Bankshares Corporation, Grundy, Virginia, and thereby indirectly acquire Grundy National Bank, Grundy, Virginia.

Board of Governors of the Federal Reserve System, October 26, 1999.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 99-28360 Filed 10-28-99; 8:45 am]

BILLING CODE 6210-01-F

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies

owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 26, 1999.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. *Wilson & Muir Bancorp, Inc.*, Bardstown, Kentucky; to acquire 100 percent of the voting shares of Farmers Bank of Vine Grove, Vine Grove, Kentucky. Comments regarding this application must be received not later than November 22, 1999.

**B. Federal Reserve Bank of Minneapolis** (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. *Glacier Bancorp, Inc.*, Kalispell, Montana; to acquire 100 percent of the voting shares of Mountain West Bank, Coeur d'Alene, Idaho.

**C. Federal Reserve Bank of Kansas City** (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Marion Bancshares, Inc., Marion, Kansas*, Marion, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Marion National Bank, Marion, Kansas.

Board of Governors of the Federal Reserve System, October 26, 1999.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 99-28362 Filed 10-28-99; 8:45 am]

BILLING CODE 6210-01-F

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engage in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 99-27727) published on page 57458 of the issue for Monday, October 25, 1999.

Under the Federal Reserve Bank of New York heading, the entry for UBS AG, Zurich, Switzerland, is revised to read as follows:

**A. Federal Reserve Bank of New York** (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. *UBS AG*, Zurich, Switzerland; to acquire 100 percent of the voting shares of ARI Acquisition Corporation, Hartford, Connecticut, and thereby acquire managing membership interests in Allegis Realty Investors LLC, AgriVest LLC, and Allegis Capital LLC, all of Hartford, Connecticut, and thereby engage in financial and investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y, and in securities brokerage activities, pursuant to § 225.28(b)(7)(i) of Regulation Y. These activities will be conducted worldwide.

Comments on this application must be received by November 8, 1999.

Board of Governors of the Federal Reserve System, October 26, 1999.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 99-28361 Filed 10-28-99; 8:45 am]

BILLING CODE 6210-01-F

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 10:00 a.m., Wednesday, November 3, 1999.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

#### MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, Assistant to the Board; 202-452-3204.

**SUPPLEMENTARY INFORMATION:** You may call 202-452-3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at <http://www.federalreserve.gov> for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 27, 1999.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 99-28486 Filed 10-27-99; 11:12 am]

BILLING CODE 6210-01-P

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### Sunshine Act Meeting Notice

**TIME AND DATE:** 9:00 a.m. (EST) November 8, 1999.

**PLACE:** 4th Floor Conference Room, 1250 H Street, NW., Washington, DC

**STATUS:** Open.

#### MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the October 12, 1999, Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director.

3. Review of KPMG Peat Marwick audit report: Pension and Welfare Benefits Administration Review of Thrift Savings Plan C and F Fund Investment Management Operations at Barclays Global Investors, N.A.

4. Labor Department audit briefing.

5. Semiannual review of status of audit recommendations.

6. Quarterly Investment policy review.

7. Annual ethics briefing.

**CONTACT PERSON FOR MORE INFORMATION:** Thomas J. Trabucco, Director, Office of External Affairs, (202) 942-1640.

Dated: October 26, 1999.

**Elizabeth S. Woodruff,**

*Secretary to the Board, Federal Retirement Thrift Investment Board.*

[FR Doc. 99-28436 Filed 10-26-99; 4:48 pm]

BILLING CODE 6760-01-M

## FEDERAL TRADE COMMISSION

[File No. 991-0319]

### VNU N.V.; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before November 23, 1999.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Richard Parker or Ann Malester, FTC/S-2308, 600 Pennsylvania Ave., NW, Washington, D.C. 20580, (202) 326-2574 or 326-2682.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 22, 1999), on the World Wide Web, at "<http://www.ftc.gov/os/actions97.htm>." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

### **Analysis of Agreement Containing Consent Orders To Aid Public Comment**

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from VNU N.V. ("VNU"), which is designed to remedy the anticompetitive effects resulting from VNU's acquisition of Nielsen Media Research, Inc. ("Nielsen"). Under the terms of the agreement, VNU will be required to divest its division, Competitive Media Reporting ("CMR"), which supplies advertising expenditure measurement services, to a Commission-approved buyer no later than six (6) months from the date VNU signed the Consent Agreement. If the sale of CMR is not made within six (6) months, the Commission may appoint a trustee to divest CMR.

The proposed Consent Agreement has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (3) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make final the Decision & Order.

Pursuant to an August 16, 1999 cash tender offer, VNU agreed to acquire 100 percent of the issued and outstanding voting securities of Nielsen for approximately \$2.5 billion. The Commission's Complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the market for advertising expenditure measurement services.

Nielsen, through its Monitor Plus division, and VNU, through its CMR division, are the only providers of advertising expenditure measurement services in the United States. Both companies track the occurrence of commercial advertisements across numerous media, including: national and local broadcast television; national and local syndication; national and local cable; national and local radio; national, local, trade and Sunday magazines; national and local newspapers; outdoor advertising; and the Internet. This information is typically integrated with other data, such as estimated advertising costs and television ratings, in order to create advertising expenditure measurement reports. Customers, such as advertising

agencies, use these reports to create advertising strategies for their clients, to study the advertising strategies of their clients' competitors, and to monitor what their clients' competitors are spending on advertising. Monitor Plus and CMR are the only providers of advertising expenditure measurement services across multiple media in the United States.

The United States advertising expenditure measurement services market is highly concentrated, and the proposed acquisition would combine the only providers of these services. For many years, CMR was the only supplier of advertising expenditure measurement services. Monitor Plus's entry into this market in the mid-1990's and its subsequent head-to-head competition with CMR has provided customers with significant price savings and innovations, including better methods of tracking the occurrence of advertisements. By eliminating competition between the only two competitors in this highly concentrated market, the proposed acquisition would allow VNU to exercise market power unilaterally, thereby increasing the likelihood that purchasers of advertising expenditure measurement services would be forced to pay higher prices and that innovation in the advertising expenditure measurement services market would decrease.

Substantial barriers to new entry exist in the advertising expenditure measurement services market. A new entrant into this market would need to undertake the difficult, expensive, and time-consuming process of obtaining access to the technology required for television, cable, and radio advertising monitoring; developing or acquiring at least two years of historical advertising expenditure data; hiring employees to manually track advertising in print and outdoor media; establishing a track record for data quality, depth, and accuracy; developing software that would permit customers to access and manipulate data; creating a knowledgeable sales force; and forming a service and support network. In addition, entry into the advertising expenditure measurement market is made more unlikely because of long-term contracts that may reduce the amount of sales opportunities available to new entrants. Because of the difficulty of accomplishing these tasks, new entry into the advertising expenditure measurement services market could not be accomplished in a timely manner and is therefore unlikely to deter or counteract the

anticompetitive effects resulting from the transaction.

The Consent Agreement effectively remedies the acquisition's anticompetitive effects in the advertising expenditure measurement services market by requiring VNU to divest its CMR Division. CMR is the dominant firm in the market, with an approximate market share of 70 percent. Pursuant to the Consent Agreement, VNU is required to divest CMR no later than six (6) months from the date VNU signed the Consent Agreement. In the event that VNU fails to divest CMR within this six-month time frame, the commission may appoint a trustee to divest CMR. The Consent Agreement also ensures that the acquirer of CMR will continue to have access to Nielsen's television ratings data by extending the duration of CMR's contract with Nielsen for the supply of television ratings information.

In order to ensure that CMR remains a viable, independent competitor pending its divestiture, the Commission has issued an Order to Hold Separate. Under the Order to Hold Separate, the Commission may appoint an Independent Auditor to monitor VNU's compliance with its obligation to hold CMR separate and independent. In addition, in order to ensure that the acquirer of the divested assets has access to key employees currently involved in CMR's advertising expenditure measurement services business, the Order to Hold Separate requires VNU to provide financial incentives for these individuals to accept employment with the acquirer. The Order to Hold Separate also requires VNU to provide to the Commission a report of compliance with the divestiture provisions of the Order to Hold Separate within thirty (30) days following the date the Consent Agreement becomes final, and every thirty (30) days thereafter until VNU has completed the required divestiture.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the Consent Agreement or to modify in any way its terms.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 99-28357 Filed 10-28-99; 8:45 am]

BILLING CODE 6750-01-M

## GENERAL SERVICES ADMINISTRATION

### Office of Communications; Cancellation of a Standard Form

**AGENCY:** General Services Administration.

**ACTION:** Notice.

**SUMMARY:** The following Standard Form is cancelled because of nonuse:

SF 335, Summary Worksheet for Estimating Forms Cost.

**DATES:** Effective October 29, 1999.

#### FOR FURTHER INFORMATION CONTACT:

Ms. Barbara Williams, General Services Administration, (202) 501-0581.

Dated: October 21, 1999.

**Barbara M. Williams,**  
*Deputy Standard and Optional Forms  
Management Officer.*

[FR Doc. 99-28406 Filed 10-28-99; 8:45 am]

BILLING CODE 6820-34-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry (ATSDR)

[ATSDR-155]

#### Notice of the Revised Priority List of Hazardous Substances That Will Be the Subject of Toxicological Profiles; Correction

A notice announcing the availability of the Revised CERCLA Priority List of 275 Hazardous Substances based on the most recent information available to ATSDR and EPA was published in the **Federal Register** on October 21, 1999, (64 FR 56792). This notice is corrected as follows:

On page 56792, in the third column, under the heading of: **FOR FURTHER INFORMATION CONTACT**, the telephone number should read: 1-888-422-8737.

All other information and requirements of the October 21, 1999, notice remain the same.

Dated: October 25, 1999.

**Georgi Jones,**

*Director, Office of Policy and External Affairs  
Agency for Toxic Substances and Disease  
Registry.*

[FR Doc. 99-28305 Filed 10-28-99; 8:45 am]

BILLING CODE 4163-70-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[60Day-00-04]

#### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Center for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639-7090.

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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

#### Proposed Projects

1. Risk Perceptions Among Youth of Environmental Hazards—New—Agency for Toxic Substances and Disease Registry (ATSDR). In 1996, the Agency for Toxic Substances and Disease Registry (ATSDR) launched a child health initiative to investigate knowledge and awareness of environmental hazards among children and youth. ATSDR is designing a new study, Risk Perceptions Among Youth of Environmental Hazards, to evaluate whether an educational intervention influences risk perceptions and knowledge of environmental toxins among middle school-aged students in a large metropolitan area. The results of this study will shed light on the ways young people learn about and use new information on environmental hazards. The results of this study will also be used to develop targeted environmental health education campaigns and

improve communication strategies aimed at young people, and inform and guide ATSDR partners who may be planning similar educational interventions.

An educational intervention will be designed and implemented in a school-based setting to see if and how three communication variables influence young people's knowledge and behavior

of environmental hazards. The key variables in this study are the source of the message, the contaminant, and the individual's perception of risk. A study population of 360 male and female students will be randomly selected from 7th and 8th grade science classes in a large metropolitan school district. Each study participant will complete two

written surveys (e.g., a pre-test and post-test) administered prior to and immediately after listening to risk and hazard information. The results will be evaluated to determine the impact of different types and sources of information on the risk perceptions of participants. The total cost to the respondents is \$0.

Type of respondents	Number of respondents per year	Number of responses/respondent	Avg. burden per response (in hrs.)	Total annual burden (in hrs.)
Middle school students (male and female)—7th and 8th grade .....	360	2	12/60=0.2	144

Dated: October 25, 1999.

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 99-28302 Filed 10-28-99; 8:45 am]

BILLING CODE 4163-18-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control And Prevention**

[60Day-00-05]

**Proposed Data Collections Submitted for Public Comment and Recommendations**

In compliance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639-7090.

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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

**Proposed Projects**

1. National Telephone Survey of Chronic Fatigue Syndrome—New—National Center for Infectious Disease (NCID). In 1997, OMB approved the information collection "Chronic Fatigue Syndrome Surveillance and Related Studies, Prevalence and Incidence of Fatiguing Illness in Sedgwick County, Kansas" under OMB Number 09200401. Data from this cross-sectional, random-

digit-dial survey of prolonged fatiguing illness in Sedgwick County (Wichita), Kansas concluded that prolonged fatigue affects over 6% of the population, the prevalence of chronic fatigue syndrome (CFS) was 0.24%, and that CFS prevalence was highest in white females (0.36%).

The proposed study replicates the Sedgwick County study using identical methodology and data collection instruments. Beginning with a random-digit-dial telephone survey to identify fatigued and non-fatigued individuals followed by a detailed telephone interview to obtain additional data on participants' health status. Study objectives are to refine estimates of the magnitude of fatiguing illness and CFS in the United States, with special consideration of under-served populations (children and racial/ethnic minorities), and to determine if the occurrence of fatiguing illness exhibits metropolitan, urban, and rural differences. Prevalence estimates from this proposed cross-sectional study of the U.S. population will be compared to those obtained for Sedgwick County to determine if the Sedgwick County findings can be generalized to the U.S. The total cost to the respondent is \$0.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden hours
Screener interview .....	51,000	1	0.083	4,233
Telephone interview .....	12,500	1	0.25	3,125
Total .....	.....	.....	.....	7,358

Dated: October 25, 1999.  
**Nancy Cheal,**  
*Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).*  
 [FR Doc. 99-28304 Filed 10-28-99; 8:45 am]  
 BILLING CODE 4163-18-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

[30DAY-02-00]

**Agency Forms Undergoing Paperwork Reduction Act Review**

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance

Officer at (404) 639-7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

**1. Proposed Project**

Methodological Study of the Youth Risk Behavior Survey (YRBS)—New—The National Center for Chronic Disease and Health Promotion, Division of Adolescent and School Health. The purpose of this study (1) the test-retest reliability of the questions contained on the YRBS questionnaire and (2) the validity of selected YRBS items. The YRBS is a biennial survey administered to students attending public and private schools in grades 9-12 nationwide. The questionnaire measures priority health risk behaviors related to the major preventable causes of mortality, morbidity, and social problems among both youth and adults in the U.S. OMB

clearance to conduct the national YRBS will expire in January, 2000 (OMB No. 0920-0258, expiration 1/00). Data on the health risk of adolescents is the focus of at least 26 national health objectives in Healthy People 2000: Midcourse Review and 1995 Revisions. The YRBS is providing end-of-decade data to help measure these objectives as well as baseline data to measure many new national health objectives for 2010. A study of the test-retest reliability of the original YRBS questionnaire was conducted several years ago. In 1997-1998 an extensive review of the YRBS was undertaken and then a modified YRBS questionnaire was fielded nationally in 1999. This psychometric study will provide data on the test-retest reliability of the new modified questionnaire and provide data on the validity of selected questions (such as self-reported height and weight). The results will be used to improve the widely-used YRBS questionnaire. The total annual burden hours are 7,882.

Respondents	Number of respondents	Number of responses/re-spondent	Avg. burden per response (in hrs.)
Students—time 1 survey .....	5,280	1	0.75
Students—height and weight measurement .....	5,280	1	0.05
Students—time 2 survey .....	4,800	1	0.75
School administrators .....	116	1	0.50

Dated: October 25, 1999.  
**Nancy Cheal,**  
*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC)*  
 [FR Doc. 99-28303 Filed 10-28-99; 8:45 am]  
 BILLING CODE 4163-18-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

[Document Identifier: HCFA-R-0299]

**Agency Information Collection Activities: Proposed Collection; Comment Request**

**AGENCY:** Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this

collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* New; *Title of Information Collection:* A Project to Develop an Outcome-Based Continuous Quality Improvement System for PACE; *Form No.:* HCFA-R-0299 (OMB# 0938-NEW); *Use:* The purpose of this project is to develop an out-come based continuous quality improvement (OBCQI) approach for the PACE program by (a) developing and testing potential outcome measures, (b) testing risk adjustment methods so that each site's outcomes can be appropriately evaluated, and (c) designing an OBCQI approach to improve quality in a systematic, evolutionary manner; *Frequency:* On occasion; *Affected Public:* Not-for-profit institutions and Individuals or

households; *Number of Respondents:* 8,298; *Total Annual Resonses:* 26,402; *Total Annual Hours:* 7,203.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to [Paperwork@hcfa.gov](mailto:Paperwork@hcfa.gov), or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2-14-26, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: October 19, 1999.

**John Parmigiani,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 99-28382 Filed 10-28-99; 8:45 am]

BILLING CODE 4120-03-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

[HCFA-3026-N]

**Medicare Program; Open Town Hall Meeting To Discuss Transplant Center Criteria**

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a meeting to convene all parties interested in providing input to our Medicare coverage policy pertaining to criteria for approving organ transplant facilities. This meeting represents one aspect of the evolving process for making the coverage reviews more open and responsive to the public.

**DATES:** The meeting is scheduled for Wednesday, December 1, 1999 from 8:30 a.m. until 5 p.m., eastern standard time.

**ADDRESSES:** The meeting will be held in the Health Care Financing Administration Main Auditorium, 7500 Security Boulevard, Baltimore, Maryland 21244.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline Sheridan, (410) 786-4635.

**SUPPLEMENTARY INFORMATION:**

**Background**

Medicare currently covers heart, liver, and lung transplants only in facilities that meet the following specified criteria, which are similar for the three organ types: Patient selection criteria, patient management protocols, commitment of resources and planning, facility resources, experience and survival, agreement to maintain data, agreement with organ procurement organizations, and laboratory services. (We published three notices in the **Federal Register** related to our criteria for Medicare coverage of heart, liver, and lung transplants, respectively, as follows: April 6, 1987 (52 FR 10935); April 12, 1991 (56 FR 15006); and February 2, 1995 (60 FR 6537).) These criteria have been in place for many years and need to be reevaluated because of advancements in the area of organ transplants.

The purpose of the Town Hall meeting is to convene dialogue on criteria for Medicare coverage of facilities to perform organ transplants, including the possibility of additional rulemaking. Discussion of other controversial transplant-related issues, such as organ allocation policies, organ donation policies, or standards for organ procurement organizations, will not be permitted at this meeting due to time constraints. We anticipate attendance by national professional medical organizations; staff of hospitals that currently perform transplants; experts in technology assessment, health policy, and clinical research; other Federal agencies; managed care organizations; transplant recipients and their families; and other members of the public with an interest in transplants.

The format for the meeting will be four subject-related panel presentations followed by an opportunity for comments from the audience. The panel topics will include (1) aspects of center performance that should be considered in determining coverage; (2) methodology for outcome measures; (3) data; and (4) target thresholds. It is our intent for invited panelists to stimulate further discussion based on the presentations. This discussion will be free-flowing and will not result in consensus statements or a set of advisory recommendations.

The meeting is open to the public, but attendance is limited to space available. We encourage individuals to register early to secure availability and allow time for receipt of background materials. Individuals must register in advance as described below.

**Registration**

Casals and Associates, Incorporated in Alexandria, Virginia will handle registration for the meeting. Individuals may register by contacting Alison Holder at Casals and Associates, Incorporated by FAX at (703) 920-5750, or by mail at Casals and Associates, Incorporated, 1199 North Fairfax Street, Alexandria, Virginia 22314. Registrants must provide their name, title, firm name, address, telephone number, FAX number, and Internet electronic mail address (if applicable).

Casals and Associates, Incorporated will provide all registrants with a confirmation packet and background papers before the meeting.

Participants who wish to display an exhibit or make a presentation at the meeting must contact Connie Conrad at (410) 786-4631 or via e-mail at cconrad@hcfa.gov, or Jacqueline Sheridan at (410) 786-4635 or via e-mail

at jsheridan@hcfa.gov, no later than November 15, 1999.

We will accept written questions, comments, or other materials from individuals or individual organizations either before the meeting, or up to 14 days after the meeting. Individuals who wish to submit comments must do so by mail to the Health Care Financing Administration, Attention: Jacqueline Sheridan, Office of Clinical Standards and Quality/CAG, Room S3-02-01, 7500 Security Boulevard, Baltimore, Maryland 21244-1850; or by FAX at (410) 786-9286; or by e-mail at jsheridan@hcfa.gov.

There is no special format for the materials; however, we request that commenters be clear about the issue or aspect of the proposed process on which they have a question, comment, or suggestion.

Individuals may access information regarding the agenda and schedule of presentations on our home page ([www.hcfa.gov/quality/8b.htm](http://www.hcfa.gov/quality/8b.htm)).

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: October 13, 1999.

**Michael M. Hash,**

*Deputy Administrator, Health Care Financing Administration.*

[FR Doc. 99-28400 Filed 10-28-99; 8:45 am]

BILLING CODE 4120-01-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of Inspector General**

**Draft OIG Compliance Program Guidance for Nursing Facilities**

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

**ACTION:** Notice and comment period.

**SUMMARY:** This **Federal Register** notice seeks the comments of interested parties on draft compliance guidance developed by the Office of Inspector General (OIG) for nursing facilities. Through this notice, the OIG is setting forth its general views on the value and fundamental principles of nursing facilities' compliance programs, and the specific elements that nursing facilities should consider when developing and implementing an effective compliance program.

**DATE:** To assure consideration, comments must be delivered to the

address provided below by no later than 5 p.m. on November 29, 1999.

**ADDRESSES:** Please mail or deliver written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG-5P-CPG, Room 5246, Cohen Building, 330 Independence Avenue, SW, Washington, DC 20201.

We do not accept comments by facsimile (FAX) transmissions. In commenting, please refer to file code OIG-5P-CPG. Comments received timely will be available for public inspection as they are received, generally beginning approximately 2 weeks after publication a document, in Room 5541 of the Office of Inspector General at 330 Independence Avenue SW., Washington, DC 20201 on Monday through Friday of each week from 8:00 a.m. to 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Lewis Morris, Office of Counsel to the Inspector General, (202) 619-2078.

**SUPPLEMENTARY INFORMATION:**

**Background**

The creation of compliance program guidance is a major initiative of the OIG in its effort to engage the private health care community in combating fraud and abuse. In the last several years, the OIG has developed and issued compliance program guidance directed at the following segments of the health care industry: the hospital industry; home health agencies; clinical laboratories; third-party medical billing companies; the durable medical equipment, prosthetics, orthotics and supply industry; and hospices. The development of these types of compliance program guidance is based on our belief that a health care provider can use internal controls to more efficiently monitor adherence to applicable statutes, regulations and program requirements.

Copies of these compliance program guidances can be found on the OIG website at <http://www.hhs.gov/oig>.

**Developing Draft Compliance Program Guidance for Nursing Facilities**

On December 18, 1998, the OIG published a solicitation notice seeking information and recommendations for developing formal guidance for nursing facilities (63 FR 70137). In response to that solicitation notice, the OIG received 16 comments from various outside sources. In developing this notice for formal public comment, we have considered those comments, as well as previous OIG publications, such as other compliance program guidances

and Special Fraud Alerts. In addition, we have also taken into account past and recent fraud investigations conducted by the OIG's Office of Investigations and the Department of Justice, and have consulted with the Health Care Financing Administration.

This draft guidance for nursing facilities contains seven elements that the OIG has determined are fundamental to an effective compliance program:

- Implementing written policies;
- Designating a compliance officer and compliance committee;
- Conducting effective training and education;
- Developing effective lines of communication;
- Conducting internal monitoring and auditing;
- Enforcing standards through well-publicized disciplinary guidelines; and
- Responding promptly to detected offenses and developing corrective action.

These elements are contained in previous guidances issued by the OIG. As with previously issued guidances, this draft compliance program guidance represents the OIG's suggestions on how nursing facilities can best establish internal controls and prevent fraudulent activities. The contents of this guidance should not be viewed as mandatory or as an exclusive discussion of the advisable elements of a compliance program; the document is intended to present voluntary guidance to the industry and not represent binding standards for nursing facilities.

**Public Input and Comment in Developing Final Guidance**

In an effort to ensure that all parties have an opportunity to provide input into the OIG's guidance, we are publishing this guidance in draft form. We welcome any comments from interested parties regarding this document. The OIG will consider all comments that are received within the above-cited time frame, incorporate any specific recommendations as appropriate, and prepare a final version of the guidance thereafter for publication in the **Federal Register**.

**Draft Compliance Program Guidance for Nursing Facilities**

**I. INTRODUCTION**

The Office of Inspector General (OIG) of the Department of Health and Human Services (DHHS) continues in its efforts to promote voluntarily implemented compliance programs for the health care

industry.<sup>1</sup> This compliance guidance is intended to assist nursing facilities<sup>2</sup> develop and implement internal controls and procedures that promote adherence to applicable statutes and regulations of the Federal health care programs<sup>3</sup> and private insurance program requirements. Compliance programs strengthen Government efforts to prevent and reduce fraud and abuse, as well as further the mission of all nursing facilities to provide quality care to their residents.

Through this document, the OIG provides its views on the fundamental elements of nursing facility compliance programs, as well as the principles that each nursing facility should consider when developing and implementing an effective compliance program. While this document presents basic procedural and structural guidance for designing a compliance program, it is not in and of itself a compliance program. Rather, it is a set of guidelines that nursing facilities should consider when developing and implementing a compliance program.

Implementing an effective compliance program in a nursing facility may require a significant commitment of time and resources by all parts of the organization. However, superficial efforts or programs that are hastily constructed and implemented without a long-term commitment to a culture of compliance will likely be ineffective and may expose the nursing facility to greater liability than if it had no

<sup>1</sup> Currently, the Office of Inspector General has issued compliance program guidances for the following six industry sectors: hospitals, clinical laboratories, home health agencies, durable medical equipment suppliers, third-party medical billing companies and hospices. Over the next year, the OIG plans to issue compliance guidances for Medicare+Choice organizations offering coordinated care plans, ambulance companies and small group physician practices.

<sup>2</sup> For the purpose of this guidance, the term "nursing facility" includes a skilled nursing facility (SNF) and a nursing facility (NF) organization that meet the requirements of sections 1819 and 1919 of the Social Security Act (Act), respectively, 42 U.S.C. 1395i-3 and 42 U.S.C. 1396r. Where appropriate we distinguish between SNFs and other facilities.

<sup>3</sup> The term "Federal health care programs," as defined in 42 U.S.C. 1320a-7b(f), includes any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government (i.e., via programs such as Medicare, Federal Employees Health Benefits Act, Federal Employees' Compensation Act, Black Lung, or the Longshore and Harbor Worker's Compensation Act) or any State health plan (e.g., Medicaid, or a program receiving funds from block grants for social services or child health services). In this document, the term "Federal health care program requirements" refers to the statutes, regulations and other rules governing Medicare, Medicaid, and all other Federal health care programs.

program at all.<sup>4</sup> Although an effective compliance program may require a reallocation of existing resources, the long-term benefits of establishing a compliance program significantly outweigh the initial costs. In short, compliance measures are an investment that advances the goals of the nursing facility, the solvency of the Federal health care programs, and the quality of care provided to the nursing home resident.

In a continuing effort to collaborate closely with health care providers and the private sector, the OIG placed a notice in the **Federal Register** soliciting comments and recommendations on what should be included in this compliance program guidance.<sup>5</sup> In addition to considering these comments in drafting this guidance, we reviewed previous OIG publications, including OIG Special Fraud Alerts and OIG Medicare Advisory Bulletins, as well as reports issued by OIG's Office of Audit Services (OAS) and Office of Evaluation and Inspections (OEI) affecting the nursing home industry.<sup>6</sup> In addition, we relied on the experience gained from fraud investigations of nursing home operators conducted by OIG's Office of Investigations, the Department of Justice, and the Medicaid Fraud Control Units.

#### A. Benefits of a Compliance Program

The OIG believes a comprehensive compliance program provides a mechanism that brings the public and private sectors together to reach mutual goals of reducing fraud and abuse, improving operational functions, improving the quality of health care services, and reducing the cost of health care. Attaining these goals provides positive results to the nursing facility, the Government, and individual citizens alike. In addition to fulfilling its legal

duty to ensure that it is not submitting false or inaccurate claims to Government and private payers, a nursing facility may gain numerous additional benefits by voluntarily implementing a compliance program. The benefits may include:

- The formulation of effective internal controls to assure compliance with statutes, regulations and rules;
- A concrete demonstration to employees and the community at large of the nursing facility's commitment to responsible corporate conduct;
- The ability to obtain an accurate assessment of employee and contractor behavior;
- An increased likelihood of identifying and preventing unlawful and unethical behavior;
- The ability to quickly react to employees' operational compliance concerns and effectively target resources to address those concerns;
- Improvement of the quality, efficiency, and consistency of providing services;
- A mechanism to encourage employees to report potential problems and allow for appropriate internal inquiry and corrective action;
- A centralized source for distributing information on health care statutes, regulations and other program directives;<sup>7</sup>
- A mechanism to improve internal communications;
- Procedures that allow the prompt, thorough investigation of alleged misconduct; and
- Through early detection and reporting, minimizing loss to the Government from false claims, and thereby reducing the nursing facility's exposure to civil damages and penalties, criminal sanctions, and administrative remedies.<sup>8</sup>

The OIG recognizes that the implementation of a compliance program may not entirely eliminate

fraud and abuse from the operations of a nursing facility. However, a sincere effort by the nursing facility to comply with applicable statutes and regulations as well as Government and private payer health care program requirements, through the establishment of a compliance program, significantly reduces the risk of unlawful or improper conduct.

#### B. Application of Compliance Program Guidance

Given the diversity within the long-term care industry, there is no single "best" nursing facility compliance program. The OIG recognizes the complexities of this industry and is sensitive to the differences among large national chains, regional multi-facility operators, and small independent homes. However, the elements of this guidance can be used by all nursing facilities to establish a compliance program, regardless of size (in terms of employees and gross revenue), number of locations, or corporate structure. Similarly, a corporation that provides long term care as part of an integrated health care delivery system may incorporate these elements into its structure.<sup>9</sup>

We recognize that some nursing facilities may not be able to adopt certain elements to the same degree that others with more extensive resources may achieve. At the end of several sections of this document, the OIG has offered suggestions to assist these smaller nursing facility providers in implementing the principles expressed in this guidance. Regardless of size, structure or available resources, the OIG recommends that every nursing facility should strive to accomplish the objectives and principles underlying all of the compliance policies and procedures in this guidance.

By no means should the contents of this guidance be viewed as an exclusive or complete discussion of the advisable elements of a compliance program. On the contrary, the OIG strongly encourages nursing facilities to develop and implement compliance elements that uniquely address the areas of potential problems, common concerns, or high risk areas that apply to their own facilities. Furthermore, this guidance may be modified and expanded as more information and knowledge is obtained by the OIG, and as changes in the statutes, regulations and rules of the Federal, State, and private health plans occur. New

<sup>4</sup> Recent case law suggests that the failure of a corporate director to attempt in good faith to institute a compliance program in certain situations may be a breach of a director's fiduciary obligation. See, e.g., *In re Caremark International Inc. Derivative Litigation*, 698 A.2d 959 (Ct. Chanc. Del. 1996).

<sup>5</sup> See 63 FR 70137 (December 12, 1998) "Notice for Solicitation of Information and Recommendations for Developing OIG Compliance Program Guidance for the Nursing Home Industry."

<sup>6</sup> The OIG periodically issues advisory opinions responding to specific inquiries concerning the application of the OIG's authorities and Special Fraud Alerts setting forth activities that raise legal and enforcement issues. These documents, as well as reports from OAS and OEI can be obtained on the Internet at: <http://www.hhs.gov/oig>. We also recommend that nursing home providers regularly review the Health Care Financing Administration (HCFA) website on the Internet at: <http://www.hcfa.gov>, for up-to-date regulations, manuals, and program memoranda related to the Medicare and Medicaid programs.

<sup>7</sup> Counsel to the nursing facility should be consulted as appropriate regarding interpretation and legal analysis of laws related to the Federal health care programs and laws related to fraud, abuse and other legal requirements.

<sup>8</sup> The OIG, for example, will consider the existence of an *effective* compliance program that pre-dated any governmental investigation when addressing the appropriateness of administrative sanctions. However, the burden is on the nursing facility to demonstrate the operational effectiveness of the compliance program. Further, the False Claims Act, 31 U.S.C. 3729-3733, provides that a person who has violated the Act, but who voluntarily discloses the violation to the Government within 30 days of detection, in certain circumstances will be subject to not less than double, as opposed to treble, damages. See 31 U.S.C. 3729(a). In addition, criminal sanctions may be mitigated by an effective compliance program that was in place at the time of the criminal offense. See note 11.

<sup>9</sup> For example, this would include providers that own hospitals, skilled nursing facilities, long-term care facilities and hospices.

compliance practices also may be incorporated into this guidance if the OIG discovers enhancements that promote effective compliance.

## II. Compliance Program Elements

### A. The Seven Basic Compliance Elements

The OIG believes that every effective compliance program must begin with a formal commitment<sup>10</sup> by the nursing facility's governing body to address all of the applicable elements listed below, which are based on the seven steps of the Federal Sentencing Guidelines.<sup>11</sup> The OIG recognizes that full implementation of all elements may not be immediately feasible for all nursing facilities. However, as a first step, a good faith and meaningful commitment on the part of nursing facility management will substantially contribute to the program's successful implementation. As the compliance program is effectuated, that commitment should cascade down through management to every employee and contractor of the nursing facility.

At a minimum, a comprehensive compliance program should include the following seven elements:

(1) The development and distribution of written standards of conduct, as well as written policies, procedures and protocols that promote the nursing facility's commitment to compliance (e.g., by including adherence to the compliance program as an element in evaluating managers and employees) and address specific areas of potential fraud and abuse, such as claims development and submission processes, quality of care issues facing residents, and financial arrangements with physicians and outside contractors that may affect the health care provided to beneficiaries;

(2) The designation of a compliance officer and other appropriate bodies (e.g., a corporate compliance committee), charged with the responsibility for developing, operating and monitoring the compliance

<sup>10</sup> A formal commitment may include a resolution by the board of directors, owner(s), or president, where applicable. Evidence of that commitment should include the allocation of adequate resources, a timetable, and the identification of an individual to serve as a compliance officer or coordinator to ensure that each of the recommended and adopted elements is addressed. Once a commitment has been established, a compliance officer should immediately be chosen to oversee the implementation of the compliance program.

<sup>11</sup> See United States Sentencing Commission Guidelines, *Guidelines Manual*, 8 A1.2, Application Note 3(k). The Federal Sentencing Guidelines are detailed policies and practices for the Federal criminal justice system that prescribe the appropriate sanctions for offenders convicted of Federal crimes.

program, and who reports directly to the owner(s), governing body and/or CEO;<sup>12</sup>

(3) The development and implementation of regular, effective education and training programs for all affected employees;<sup>13</sup>

(4) The creation and maintenance of an effective line of communication between the compliance officer and all employees, including a process, such as a hotline or other reporting system, to receive complaints, and the adoption of procedures to protect the anonymity of complainants and to protect whistle blowers from retaliation;

(5) The use of audits and/or other risk evaluation techniques to monitor compliance, identify problem areas, and assist in the reduction of identified problems;<sup>14</sup>

(6) The development of policies and procedures addressing the non-employment or retention of excluded individuals or entities; and the enforcement of appropriate disciplinary action against employees or contractors who have violated corporate or compliance policies and procedures, applicable statutes, regulations, or Federal, State, or private payor health care program requirements; and

(7) The development of policies and procedures with respect to the investigation of identified systemic problems, which include direction regarding the prompt and proper response to detected offenses, such as the initiation of appropriate corrective action, repayments and preventive measures.

### B. Written Policies and Procedures

Every compliance program should develop and distribute written compliance standards, procedures and practices that guide the nursing facility and the conduct of its employees throughout day-to-day operations. These

<sup>12</sup> The roles of the compliance officer and the corporate compliance committee in implementing an effective compliance program are discussed throughout this guidance. However, the OIG recognizes that the differences in the sizes and structures of nursing facilities may result in differences in the way in which compliance programs function.

<sup>13</sup> Training and educational programs for nursing facilities should be detailed, comprehensive and at the same time targeted to address the needs of specific employees based on their responsibilities within the facility. Existing in-service training programs can be expanded to address general compliance issues, as well as the risk areas identified in that part of nursing home operations.

<sup>14</sup> For example, periodically spot-checking the work of coding and billing personnel should be part of a compliance program. In addition, procedures to regularly monitor the care provided nursing facility residents and to ensure that deficiencies identified by surveyors are corrected should be incorporated into the compliance program's evaluation and monitoring functions.

policies and procedures should be developed under the direction and supervision of the compliance officer, the compliance committee, and operational managers. At a minimum, they should be provided to all employees who are affected by these policies, as well as physicians, suppliers, nursing facility agents, and contractors who may affect or be affected by the nursing facility's billing and care functions.<sup>15</sup> In addition to general corporate policies and procedures, an effective compliance program should include specific policies and procedures for the different clinical, financial, and administrative functions of a nursing facility.

#### 1. Code of Conduct

While a clear statement of policies and procedures is at the core of a compliance program, the OIG recommends that nursing facilities start the process with the development of a corporate statement of principles that will guide the operations of the provider. One common expression of this statement of principles is the code of conduct.<sup>16</sup>

The code should function in the same fashion as a constitution, i.e., as a foundational document that details the fundamental principles, values, and framework for action within an organization. The code of conduct for a nursing facility should articulate the organization's expectations of employees, as well as summarize the basic legal principles under which the organization must operate. Unlike the more detailed policies and procedures, the code of conduct should be brief, easily readable and cover general principles applicable to all employees.

The code of conduct should be distributed to, and comprehensible by, all affected employees.<sup>17</sup> Depending on

<sup>15</sup> According to the Federal Sentencing Guidelines, an organization must have established compliance standards and procedures to be followed by its employees and other agents in order to receive sentencing credit for an "effective" compliance program. The Federal Sentencing Guidelines define "agent" as "any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization." See United States Commission Guidelines, *Guidelines Manual*, 8A1.2, Application Note 3(d).

<sup>16</sup> The OIG strongly encourages the participation and involvement of the nursing facility's owner(s), governing board, CEO, as well as other personnel from various levels of the organizational structure in the development of all aspects of the compliance program, especially the standards of conduct. Management and employee involvement in this process communicates a strong and explicit commitment to all employees of the need to comply with the organization's standards of conduct.

<sup>17</sup> The code also should be distributed, or at least available, to the residents and their families, as well

the facility's work force, this may mean that the code should be translated into other languages when necessary and written at appropriate reading levels. Further, any employee handbook delineating the standards of conduct should be regularly updated to reflect developments in applicable Government and private health care program requirements. Finally, the OIG recommends that current employees, as well as those newly hired, should certify that they have received and read the organization's code of conduct. These certifications should be updated on a regular basis, possibly as part of an annual training program, retained in the employee's personnel file and made available for review.<sup>18</sup>

The OIG believes that *all* nursing facilities should operate under the guidance of a code of conduct. While the OIG recognizes that some nursing facilities may not have the resources to establish a comprehensive compliance program, we believe that every nursing facility can design a program that addresses the seven elements set out in this guidance, albeit at different levels of sophistication and complexity. In its most fundamental form, a facility's code of conduct is a basic set of standards that articulate the organization's philosophy, summarizes basic legal principles, and teaches employees how to respond to practices that may violate the code of conduct and standards. These standards should be posted and distributed to every employee. Further, even a small nursing facility should obtain written attestation from its employees to confirm their understanding and commitment to the nursing facility's code of conduct.

## 2. Specific Risk Areas

As part of their commitment to a compliance program, nursing facilities should prepare a comprehensive set of written policies and procedures that are in place to prevent fraud and abuse in facility operations and to ensure the appropriate care of their residents. These policies and procedures should educate and alert all affected managers and employees of the Federal health care program requirements, the consequences of noncompliance, and the specific procedures that nursing facility employees should follow to

as the physicians and contractors associated with the facility.

<sup>18</sup> Documentation of employee training and other compliance efforts is important in conducting internal assessments of the compliance program, as well as during any third-party evaluation of facility's efforts to comply with Federal health care program requirements. See section II.F.

report problems, to ensure compliance, and to rectify any prior noncompliance.

The OIG recognizes that most facilities have in place policies and procedures to prevent fraud and abuse in their institutions. These providers may not need to develop a new, comprehensive set of policies as part of their compliance program if existing policies encompass the provider's operations and relevant rules. However, the nursing home industry is subject to numerous Federal and State statutes, rules, regulations and manual instructions.<sup>19</sup> Because these program requirements are frequently modified, the OIG recommends that all nursing facilities evaluate their current compliance policies and procedures by conducting a baseline assessment of risk areas, as well as subsequent reevaluations.<sup>20</sup> The OIG also recommends that these internal compliance reviews be undertaken on a regular basis to ensure compliance with current program requirements.

To assist nursing facilities in performing this internal assessment, the OIG has developed a list of potential risk areas affecting nursing facility providers. These risk areas include quality of care and residents' rights, employee screening, vendor relationships, billing and cost reporting, and recordkeeping and documentation. This list of risk areas is not exhaustive, nor all encompassing. Rather, it should be viewed as a starting point for an internal review of potential vulnerabilities within the nursing facility.<sup>21</sup> The objective of this assessment should be to ensure that the employees, managers and directors are aware of these risk areas and that steps are taken to minimize, to the extent possible, the types of billing and quality of care problems identified. While there are many ways to accomplish this objective, the OIG has observed that comprehensive, clear written standards,

<sup>19</sup> See <http://www.hcfa.gov> for a set of all Medicare and Medicaid manuals.

<sup>20</sup> In addition, all providers should be aware of the enforcement priorities of Federal and State regulators and law enforcement agencies. OIG periodically issues Special Fraud Alerts and Special Advisory Bulletins that identify activities believed to raise enforcement concerns. These documents and other materials that provide insight into the nursing home enforcement priorities of the OIG are referenced throughout this guidance.

<sup>21</sup> The OIG recommends that, in addition to the list set forth below, the provider review the OIG's Work Plan to identify vulnerabilities and risk areas on which the OIG will focus during the following year. In addition, it is recommended that the nursing facility routinely review the OIG's semiannual reports, which identify program vulnerabilities and risk areas that the OIG has targeted during the preceding six months. All of these documents are available on the OIG's webpage at <http://www.hhs.gov/oig>.

policies and procedures that are communicated to all appropriate employees and contractors are the first step in an effective compliance program.

The OIG believes that sound operating compliance policies are essential to all nursing facilities, regardless of size and capability. If a lack of resources to develop such policies is genuinely an issue, the OIG recommends that those nursing facilities focus first on those risk areas most likely to arise in their business operations. At a *minimum*, resources should be directed to analyze the results of annual surveys,<sup>22</sup> and to verify that the facility has effectively addressed any deficiencies cited by the surveyors. An effective and low-cost means to accomplish this is through the use of the facility's Quality Assessment and Assurance Committee. The committee should consist of facility staff members, including the Director of Nursing and the facility physician. On a periodic basis, the committee should meet to identify compliance issues affecting the quality of care provided to the residents and to develop and implement appropriate corrective actions. The time commitment required for this collaborative effort will vary according to the magnitude of the facility's quality assessment and assurance issues.

Creating a resource manual from publicly available information may be a cost-effective approach for developing policies and procedures to improve the quality of each resident's life. For example, a simple binder that contains a facility's written policies and procedures, the most recent survey findings and plan of correction, relevant HCFA instructions and bulletins, and summaries of key OIG documents (e.g., Special Fraud Alerts, Advisory Bulletins, inspection and audit reports) can be regularly updated and made accessible to all employees. Particularly in the case of more technical materials, it may be advisable to provide summaries in the handbook and make the source documents available upon request. If individualized copies of this handbook are not made available to all employees, then a reference copy should be available in a readily accessible location, as well as from the designated compliance officer.

*a. Quality of Care.* The OIG believes that a nursing facility's compliance policies should start with a statement that affirms the facility's commitment to

<sup>22</sup> State and local agencies enter into agreements with DHHS under which they survey and make recommendations regarding whether providers meet the Medicare conditions of participation or other requirements for SNFs and NFs (See 42 CFR 488.10).

providing the care necessary to attain or maintain the resident's "highest practicable physical, mental and psychosocial well-being." <sup>23</sup> To achieve the goal of providing quality care, nursing facilities should continually measure their performance against comprehensive standards, which at a minimum should include the Medicare conditions of participation. <sup>24</sup> In addition to these regulations, a facility should develop its own standards of quality care and the mechanisms for evaluating its performance.

As noted above, current and past surveys are a good place to begin to identify specific risk areas and regulatory vulnerabilities at the individual facility. Any deficiencies discovered by annual State agency or Federal validation surveys may reflect noncompliance with the program regulations and can be the basis for enforcement actions. <sup>25</sup> Those deficiencies identified by the State health agency survey instrument should be addressed and, where appropriate, the corrective action should be incorporated into the facility's policies and procedures as well as reflected in its training and educational programs. In addition to responding promptly to deficiencies identified through the survey and certification process, nursing facilities should take proactive measures to identify, anticipate and respond to quality of care risk areas identified by the nursing home ombudsman or other sources.

As noted throughout this guidance, each provider must assess its vulnerability to particular abusive practices in light of its unique circumstances. However, the OIG, HCFA, the Department of Justice, and State enforcement agencies have substantial experience in identifying quality of care risk areas. Some of the special areas of concern include:

- Absence of a comprehensive, accurate assessment of each resident's functional capacity and a comprehensive care plan that includes measurable objectives to meet the resident's medical, mental and psychosocial needs;<sup>26</sup>
- Inappropriate or insufficient treatment and services to address residents' clinical conditions, including pressure ulcers, dehydration, malnutrition, incontinence of the bladder, and mental or psychosocial problems;<sup>27</sup>
- Failure to properly prescribe, administer and monitor drug medication usage, including psychotropic and anti-depressant medications;<sup>28</sup>
- Inadequate or insufficiently trained staff to provide medical, nursing, and related services;<sup>29</sup>

<sup>26</sup> As stated above, each resident must receive the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the resident's assessment and plan of care (see 42 CFR 483.25). The OIG recognizes that this standard does not always lend itself to easy, objective evaluation. The matter is further complicated by the right of the resident, or his or her legal representative, to decide on a course of treatment that may be contra-indicated. The Patient Self-Determination Act (P.L. 103-413) requires health care institutions to educate patients about advance directives and to document their decision on life-sustaining treatments.

<sup>27</sup> HCFA has created a repository of best practice guidelines for the care of residents at risk of pressure ulcers, dehydration and malnutrition. In addition, the Food and Nutrition Board of the National Research Council, National Academy of Sciences, has established recommended dietary allowances.

<sup>28</sup> The OIG has conducted a series of reviews that focused on prescription drug use in nursing homes. See OIG reports OEI-06-96-00080, OEI-06-96-0008, OEI-06-96-00082. "Prescription Drug Use in Nursing Homes." The OIG found that patients experienced adverse reactions to various drugs as a result of inappropriate prescribing and inadequate monitoring of medication usage. The reviews revealed serious concerns, including residents receiving drugs for which their medical records lacked evidence of a prescription; and the prescription of drugs judged inappropriate for use by elderly persons. The studies also found that medication records were often incomplete and not readily accessible, making it difficult for a pharmacist to identify or confirm drug regimens or problems.

<sup>29</sup> For example, Federal regulations require that the medical care of each resident should be supervised by a physician, who must see the resident at least once every 30 days for the first 90 days after admission and at least once every 60 days thereafter (see 42 CFR 483.40(c)). The facility also must retain the services of a registered nurse, 42 CFR 483.30, as well as a qualified dietitian. 42 CFR 483.35. In addition to these basic Federal requirements, the OIG strongly believes that the facility should conform to State-mandated staffing levels where they exist and adopt its own minimum "hours per patient" staffing standards in any case. At the heart of many quality of care deficiencies is a lack of adequate staff needed to provide basic nursing services.

- Failure to provide appropriate therapy services;<sup>30</sup>
- Failure to provide appropriate services to assist residents with activities of daily living (e.g., feeding, dressing, bathing, etc.); and
- Failure to report incidents of mistreatment, neglect, or abuse to the administrator of the facility and other officials as required by law.<sup>31</sup>

As noted previously, a nursing facility that has a history of serious deficiencies should use those survey results as a starting point for implementing a comprehensive plan to improve its quality of care. Effectively addressing these risk areas with written policies and procedures, which are then implemented through effective training programs, can most directly improve the quality of the nursing home residents' life.

b. *Residents' Rights.* The Budget Reconciliation Act (OBRA) of 1987, Public Law 100-203, established a number of requirements to protect and promote the rights of each resident.<sup>32</sup> In addition, many States have adopted specific lists of residents' rights.<sup>33</sup> The nursing facility's policies should address the residents' right to a dignified existence that promotes freedom of choice, self-determination, and reasonable accommodation of individual needs. To protect the rights of each resident, the OIG recommends that a provider address the following risk areas as part of its compliance policies:

- Discriminatory admission or improper denial of access to care;<sup>34</sup>

<sup>30</sup> See OIG report OEI-09-97-00120 "Medical Necessity of Physical and Occupational Therapy in Skilled Nursing Facilities," which found a high rate of medically unnecessary therapies in a number of nursing facilities; such unnecessary services lead to inappropriate care. With the introduction of the prospective payment system, nursing facilities should ensure that financial pressures do not create incentives to *underutilize* medically necessary therapeutic services.

<sup>31</sup> In addition to providing the facility's management important information about the state of care in the facility, the self-reporting of resident abuse, including injuries of unknown sources, is a condition of participation (See 42 CFR 483.13(c)(2)). Although State surveyors conduct complaint surveys when they receive a complaint, these surveys can only occur if the surveyors are aware of the problem.

<sup>32</sup> See generally, 42 U.S.C. 1395i-3 and 42 CFR part 483.

<sup>33</sup> In OIG report OEI-02-98-00350 "Long Term Ombudsman Program: Complaint Trends," the OIG points out that complaints about resident care and resident rights have been increasing. Resident care concerns included complaints about personal care, such as a pressure and hygiene, lack of rehabilitation, the inappropriate use of restraints, abuse and neglect, problems with admissions and eviction, and the exercise of personal rights.

<sup>34</sup> Nursing facilities should offer care to all patients who are eligible in accordance with Federal and State laws governing admissions (See

<sup>23</sup> 42 CFR 483.25. See OIG report OEI-02-98-00331 "Quality of Care in Nursing Homes: An Overview," in which the OIG found that, although the overall number of deficiencies identified through the survey and certification process was decreasing, the number of "quality of care" and other serious deficiencies was increasing.

<sup>24</sup> See 42 CFR part 483, which establishes requirements for long-term care facilities. HCFA's regulations establish conditions that must be met for a nursing facility to qualify to participate in the Medicare and Medicaid programs. State licensure laws may impose additional requirements for the establishment and certification of a nursing facility.

<sup>25</sup> See 42 CFR part 488, subparts A, B, C, E, and F. The survey instrument is used to identify deficiencies, such as: failure to notify residents of their rights; improper use of restraints for discipline purposes; lack of a clean and safe environment; failure to provide care for basic living activities, including failing to prevent and/or treat pressure sores, urinary incontinence, hydration; and failing to properly feed residents.

- Verbal, mental or physical abuse, corporal punishment and involuntary seclusion;<sup>35</sup>

- Inappropriate use of physical or chemical restraints;<sup>36</sup>

- Failure to ensure that residents have access to their personal records upon request and that the privacy and confidentiality of those records are protected;<sup>37</sup>

- Denial of a resident's right to participate in his or her care and treatment;<sup>38</sup>

- Failure to safeguard residents' financial affairs.<sup>39</sup>

c. *Billing and Cost Reporting.* Abusive and fraudulent billing practices in the Federal health care programs drain the public fisc of the funds needed to provide program beneficiaries medically necessary items and services. Over the last twenty years, the OIG has identified patterns of improper and fraudulent activities that cover the spectrum of health care services and have cost taxpayers billions of dollars.<sup>40</sup> These

42 CFR 483.12(d)). The provider also should maintain identical policies regarding "transfer, discharge, and provision of services under the State plan" for all residents, regardless of payment source (See 42 CFR 483.12(c)). See also OIG report OEI-02-99-00400 "Early Effects of the Prospective Payment System on Access to Skilled Nursing Facilities."

<sup>35</sup> See *California Nursing Homes: Care Problems Persist Despite Federal and State Oversight* (GAO/HEHS-98-202, July, 1998). As noted previously, the facility must establish a process by which the facility administrator is informed of incidents of abuse and an investigation is conducted within 5 days of the incident (See 42 CFR 483.13(c)(4)).

<sup>36</sup> See OIG Report OEI-01-91-00840 "Minimizing Restraints in Nursing Homes: A Guide to Action."

<sup>37</sup> It is a violation of the Medicare conditions of participation to make unauthorized disclosures from the resident's medical records (See 42 CFR 483.10(e)). The facility should also establish policies that respect each resident's right to privacy in personal communications, including the right to receive mail that is unopened and to the use of a telephone where calls can be made in privacy.

<sup>38</sup> The right of self-determination includes the resident's right to choose a personal physician, to be fully informed of his or her health status, and participate in treatment decisions, including the right to refuse treatment, unless adjudged incompetent or incapacitated (See 42 CFR 483.10(d)).

<sup>39</sup> This includes preserving the resident's right to manage his or her financial affairs or permit the facility to hold and manage personal funds. The resident should receive a full and complete accounting of personal funds held by the facility (See 42 CFR 483.10 (c)). If a misappropriation of a resident's property is uncovered, the facility administrator should be notified immediately and an investigation conducted. Finally, the provider should take measures to ensure that personal funds have not been used to pay for items or services paid for by Medicare or Medicaid.

<sup>40</sup> See OIG Report A-17-99-00099 "Improper Fiscal Year 1998 Fee-for-Service Payments" in which the OIG estimated that improper Medicare benefit payments made during FY 1998 totaled \$12.6 billion in processed fee-for-service payments. SNF payment errors were a result of claims for services lacking medical necessity and represented

fraudulent billing practices, as well as abuses in other risk areas that are described in these compliance program guidances, have resulted in criminal, civil and administrative enforcement actions. Because the consequences of these enforcement actions can have a profound adverse impact on a provider, the identification of risk areas associated with billing and cost reporting should be a major part of a nursing facility's compliance program.

The introduction of a prospective payments system (PPS) for Medicare SNFs and implementation of consolidated billing create additional issues to be addressed when designing billing and cost reporting compliance policies and procedures.<sup>41</sup> In the following discussion of billing risk areas, the OIG has attempted to identify issues that pose concerns under the current systems of reimbursement, the transition period to consolidated billing, as well as anticipate potential compliance issues stemming from these program changes. As is the case with all aspects of compliance, the nursing facility must continually reassess its billing procedures and policies to ensure that unanticipated problems are promptly identified and corrected. Listed below are some of the reimbursement risk areas a nursing facility should consider addressing as part of its written compliance policies and procedures:

- Billing for items or services not rendered or provided as claimed;<sup>42</sup>

7 percent of the total estimated improper payments. The OIG could not and did not quantify what percentage of the improper payments was the result of fraud. Significantly, it was only through a review of medical records that the majority of these billing errors were detected, since when the claims were submitted to the Medicare contractor, they contained no visible errors.

<sup>41</sup> The Balanced Budget Act of 1997 (BBA), Public Law 105-33, established PPS for SNFs. Under PPS, all costs (routine, ancillary, and capital) related to services furnished to beneficiaries covered under Part A, including certain Part B services, are paid a predetermined amount based on the medical condition and needs of the resident, as reflected in the Resource Utilization Group (RUG) code assigned to that resident. Other Part B services will continue to be reimbursed separately to the providers of such services pending implementation of a new consolidated billing system.

<sup>42</sup> For example, the OIG has investigated suppliers of ancillary services that improperly bill for an hour of therapy when only a few minutes were provided. Similarly, vendors that knowingly submit a claim for an expensive prosthetic device when the resident only received non-covered adult diapers have been the subject of enforcement actions. When consolidated billing is implemented, vendors will not submit bills directly to Medicare for such services. As the entity submitting the claim, the nursing facility will need to have any certifications or orders necessary to provide the service, as well as supporting documentation required, to receive payment.

- Submitting claims for equipment, medical supplies and services that are medically unnecessary;<sup>43</sup>

- Submitting claims to Medicare Part A for residents who are not eligible for Part A coverage;<sup>44</sup>

- Duplicate billing;<sup>45</sup>

- Failing to identify and refund credit balances;<sup>46</sup>

<sup>43</sup> Billing for medically unnecessary services, supplies and equipment involves seeking reimbursement for a service that is not warranted by a resident's documented medical condition. See 42 U.S.C. 1395i(a)(1)(A) ("no payment may be made under part A or part B [of Medicare] for any expenses incurred for items or services which \* \* \* are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of the malformed body member"). In the Special Fraud Alert "Fraud and Abuse in the Provision of Services in Nursing Facilities" (June 1996), the OIG identified several types of fraudulent arrangements through which health care providers inappropriately billed Medicare and Medicaid for unnecessary or non-rendered items and services.

Under PPS, the provision of unnecessary services may take a different form. As discussed below, manipulation of the Minimum Data Set (MDS) to fit a resident into a higher RUG can result in the provision of medically unnecessary services. In addition, a nursing facility may not enter into arrangements with providers of ancillary services through which the facility overutilizes services reimbursed under Part B in return for an offset in the cost of items or services covered under Part A.

<sup>44</sup> Medicare Part A benefits in skilled nursing facilities are limited to beneficiaries who require services rendered by technical or professional personnel in a skilled nursing setting (See 42 CFR 409.30). Knowingly misrepresenting the nature or level of services provided to a Medicare beneficiary to circumvent the program's limitation is fraudulent.

<sup>45</sup> Duplicate billing occurs when the nursing facility bills for the same item or service more than once or when a vendor bills the Federal health care program for an item or service also billed by the facility. Although duplicate billing can occur due to simple error, the knowing submission of duplicate claims—which is sometimes evidenced by systematic or repeated double billing—can create liability under criminal, civil, or administrative law. When Medicare Part B implements consolidated billing, facilities should modify all agreements with vendors to require that the vendor bill the facility for those services covered under consolidated billing requirements and not submit bills directly to Medicare for such services.

<sup>46</sup> A credit balance is an excess payment made to a health care provider as a result of patient billing or claims processing error. Nursing facilities should institute procedures to provide for the timely identification, accurate reporting and repayment of credit balances. In addition, the provider should promptly repay if a resident is also entitled to a credit. See OIG report OEI-07-09-00910 "Medicare Credit Balances in Skilled Nursing Facility Patient Accounts" and OEI-07-09-00911 "Medicaid Credit Balances in Skilled Nursing Facility Patient Accounts," in which the OIG found that skilled nursing facilities were not accurately or completely adjusting and reporting credit balance amounts due to the Medicare and Medicaid programs. Significantly, the intentional concealment of a known overpayment may expose a provider to criminal sanctions (See 42 U.S.C. 1320a-7b(a)(3)), and civil liability under the False Claims Act.

- Submitting claims for items or services not ordered;<sup>47</sup>
- Knowingly billing for inadequate or substandard care;<sup>48</sup>
- Providing misleading information about a resident's medical condition on the MDS or otherwise providing inaccurate information used to determine the RUG assigned to the resident;
  - Upcoding the level of service provided;<sup>49</sup>
  - Billing for individual items or services when they either are included in the facility's per diem rate or are of the type of item or service that must be billed as a unit and may not be unbundled;<sup>50</sup>
  - Billing residents for items or services that are included in the per diem rate or otherwise covered by the third-party payor;
    - Forging physician or beneficiary signatures on documents used to verify that services were ordered and/or provided;<sup>51</sup>
    - Failing to maintain sufficient documentation to establish that the services were ordered and/or performed; and
    - False cost reports.<sup>52</sup>

<sup>47</sup> Billing for services or items not ordered involves seeking reimbursement for services provided but not ordered by the treating physician or other authorized person.

<sup>48</sup> See discussion on quality of care standards in nursing facilities in section II.B.2.a above and the accompanying notes. Knowingly billing for inadequate or substandard care may create liability under administrative, civil and criminal law.

<sup>49</sup> Upcoding involves the selection of a Billing code that is not the most appropriate descriptor of the service or condition, in order to maximize reimbursement. Under PPS, upcoding may take the form of "RUG creep." RUG creep occurs when a provider falsely or fraudulently completes the MDS, which results in assigning a resident to a higher RUG category.

<sup>50</sup> A related risk area involves bill splitting schemes. This billing abuse usually takes the form of manipulating the billing for procedures to create the appearance that the services were rendered over a period of days when all treatment occurred during one visit.

<sup>51</sup> The OIG has investigated a number of cases where signatures were forged, either to fabricate evidence that a physician ordered equipment or services or to create a paper trail in support of items or services that were never provided.

<sup>52</sup> Nursing homes are required to submit various reports to Federal and State agencies in connection with facility operations and to receive reimbursement for the care provided to program beneficiaries. Because program payments are in part based on self-reported operating costs, providers must implement procedures to ensure that these reports are prepared as accurately as possible. This should include measures to ensure that adequate documentation exists to support information provided in the report, non-allowable costs are appropriately identified and removed, and related party transactions are treated consistent with program requirements (See 42 CFR part 413). If the provider intends to claim costs in non-conformity

The OIG recommends that a nursing facility, through its policies and procedures, take all reasonable steps to ensure compliance with the Federal health care programs when submitting information that affects reimbursement decisions. The risk areas associated with billing and cost reporting have been among the most frequent subjects of investigations and audits by the OIG. In addition to facing criminal sanctions and significant monetary penalties, providers that have failed to adequately ensure the accuracy of their claims and cost report submissions can be excluded from program participation, or in lieu of exclusion, be required by the OIG to execute a corporate integrity agreement (CIA).<sup>53</sup>

*d. Employee Screening.* Nursing facilities are required by Federal, and in some cases State, law to investigate the background of certain employees. Nursing facilities should conduct a reasonable and prudent background investigation and reference check before hiring those employees who have access to patients or their possessions, or who have discretionary authority to make decisions that may involve compliance with the law. The employment application should specifically require the applicant to disclose any criminal conviction, as defined by 42 U.S.C. 1320a-7; or exclusion from participation in the Federal health care programs.

This pre-employment screening is critical to ensuring the integrity of the facility's work force and safeguarding the welfare of its residents. Because providers of nursing care have frequent, relatively unsupervised access to vulnerable people and their property, a nursing facility also should seriously consider whether to employ individuals who have been convicted of crimes of neglect, violence, theft or dishonesty, or financial misconduct.<sup>54</sup>

with program rules, those items should be flagged in a letter accompanying the cost report. Prior enforcement actions involving nursing home cost reports have focused on nursing facilities that claimed salary expenses for employees who do not exist, inflated the number of residents served, included non-reimbursable costs with nursing home-related expenses, inappropriately shifted costs to cost centers that are below the reimbursement cap, and shifted non-Medicare related costs to Medicare cost centers.

<sup>53</sup> The CIA imposes reporting requirements, independent audits, and other procedures on providers who have demonstrated an inability or unwillingness to independently adopt these measures. It is clearly in a provider's best interest to avoid the implementation of a CIA by instituting its own prevention, detection, and disclosure mechanisms.

<sup>54</sup> In OIG report A-12-97-0003 "Safeguarding Long Term Care Residents," it was noted that although no Federal requirement exists for criminal

Nursing facility policies should prohibit the continued employment of individuals who have been convicted of a criminal offense related to health care or who are debarred, excluded, or otherwise become ineligible for participation in Federal health care programs.<sup>55</sup> In addition, if the facility has notice that an employee or contractor is charged with a criminal offense related to any Federal health care program, or is proposed for exclusion during his or her employment or contract, the facility shall take all appropriate actions to ensure that the responsibilities of that employee or contractor do not adversely affect the quality of care rendered to any patient or resident, or the accuracy of any claims submitted to any Federal health care program.<sup>56</sup> If resolution of the matter results in conviction, debarment, or exclusion, the nursing facility should terminate its employment or other contract arrangement with the individual.

In order to ensure that nursing facilities undertake background checks of all employees to the extent required by law, the OIG recommends that the following measures be incorporated into the compliance program's policies and procedures:

- Investigate the background of employees by checking with all

background checks on nursing home staff, 33 States currently require that such checks occur. However, there appears to be great diversity in the way States identify, investigate, and report suspected abuse of nursing home residents.

<sup>55</sup> The effect of an OIG exclusion from Federal health care programs is that no Federal health care program payment may be made for any items or services: (1) furnished by an excluded individual or entity; or (2) directed or prescribed by an excluded physician (See 42 CFR 1001.1901). An excluded individual or entity that submits a claim for reimbursement to a Federal health care program, or causes such a claim to be submitted, may be subject to a civil money penalty of \$10,000 for each item or service furnished during the period that the person or entity was excluded (See 42 U.S.C. 1320a-7a(a)(1)(D)). The individual or entity may also be subject to treble damages for the amount claimed for each item or service (See 42 U.S.C. 1320a-7a(a)). Also see OIG Special Advisory Bulletin "The Effect of Exclusion From Participation in Federal Health Care Programs" (September 1999).

<sup>56</sup> Likewise, the facility should establish standards prohibiting the execution of contracts with companies that have been recently convicted of a criminal offense related to health care or that are listed by a Federal agency as debarred, excluded, or otherwise ineligible for participation in Federal health care programs. Prospective employees or contractors that have been officially reinstated into the Medicare and Medicaid programs by the OIG may be considered for employment upon proof of such reinstatement.

applicable licensing and certification authorities to verify that requisite licenses and certifications are in order;<sup>57</sup>

- Require all potential employees to certify that they have not been convicted of an offense that would preclude employment in a nursing facility and that they are not excluded from participation in the Federal health care programs;

- Check available public sources, including the OIG's List of Excluded Individuals/Entities and the GSA's list of debarred contractors, to verify that employees are not excluded from participating in the Federal health care programs;<sup>58</sup> and

- Periodically check the OIG and GSA web sites to verify the participation/exclusion status of independent contractors and retain on file the results of that query.<sup>59</sup>

Regardless of the size or resources of the nursing facility, employee screening is a critical component of compliance policies and procedures. Nursing facilities, like all corporations, must act

<sup>57</sup> Among the sources of information on prospective employees are the State registry of nurse's aides, which provides a list of nurse aides that have successfully completed training and competency evaluations and the National Practitioner Data Bank. The Data Bank is a data base that contains information about medical malpractice payments, sanctions by boards of medical examiners or State licensing boards, adverse clinical privilege actions, and adverse professional society membership actions. Health care entities can have access to this data base to seek information about their own medical or clinical staff, as well as prospective employees or physician contractors.

<sup>58</sup> The OIG "List of Excluded Individuals/Entities" provides information to health care providers, patients, and others regarding individuals and entities that are excluded from participation in Medicare and Medicaid, and other Federal health care programs. This report, in both an on-line searchable and downloadable database, can be located on the Internet at [www.hhs.gov/oig](http://www.hhs.gov/oig). In addition, the General Services Administration maintains a monthly listing of debarred contractors, "List of Parties Excluded From Federal Procurement and Nonprocurement Programs," at [www.arnet.gov/epl](http://www.arnet.gov/epl).

The OIG sanction information is readily available to users in two formats on over 15,000 individuals and entities currently excluded from program participation through action taken by the OIG. The on-line searchable database allows users to obtain information regarding excluded individuals and entities sorted by: (1) the legal bases for exclusions; (2) the types of individuals and entities excluded by the OIG; and (3) the States where excluded individuals reside or entities do business.

<sup>59</sup> The introduction of PPS and consolidated billing for Medicare Part B services means that vendors and their subcontractors no longer submit bills directly to Medicare for their services. Instead, the nursing facility will be submitting consolidated bills for certain services provided to residents. Because of the new responsibilities that are imposed on nursing facilities under these reimbursement schemes, the facility may be held responsible if it claims reimbursement for items or services provided by a contractor that has been excluded.

through their employees and are held accountable for their actions. One of the best ways to ensure that the organization will act in conformance with the law is to hire employees and contractors who can be trusted to embrace a culture of compliance. While the resources required to check the OIG List of Excluded Individuals/Entities are minimal, the absence of an accessible centralized site for criminal background checks may result in inefficiencies and expense. While large providers may elect to outsource the screening process, this may not be a realistic option for smaller nursing facilities. Nevertheless, the OIG recommends that all nursing facilities implement a policy to undertake background checks of all employees.

*e. Kickbacks, Inducements and Self-Referrals.* A nursing facility should have policies and procedures to ensure compliance with the anti-kickback statute,<sup>60</sup> the Stark physician self-referral law<sup>61</sup> and other relevant Federal and State laws by providing guidance in situations that could lead to a violation of these laws.<sup>62</sup> In particular, arrangements with hospitals, hospices, physicians and vendors are vulnerable to abuse. For example, in the case of hospitals, physicians and hospital staff exert influence over the patient and can influence the choice of a nursing facility. In addition, his or her roles as medical director and/or attending physician, a physician frequently can influence the utilization of ancillary services.<sup>63</sup> Moreover, by contrast, a nursing facility operator can influence the selection of which hospices will provide hospice services and which vendors will deliver equipment and services to the facility's residents. In addition to developing policies to address arrangements with other health care providers and suppliers, nursing

<sup>60</sup> The anti-kickback statute provides criminal penalties for individuals and entities that knowingly offer, pay, solicit or receive bribes or kickbacks or other remuneration in order to induce business reimbursable by Federal health care programs (See 42 U.S.C. 1320a-7b(b)). Civil penalties and exclusion from participation in the Federal health care programs may also result from a violation of the prohibition (See 42 U.S.C. 1320a-7a(a)(5) and 1320a-7(b)(7)).

<sup>61</sup> The Stark physician self-referral law, 42 U.S.C. 1395nn, prohibits a physician from making a referral to an entity with which the physician or any member of the physician's immediate family has a financial relationship, if the referral is for the furnishing of designated health services.

<sup>62</sup> The OIG has issued several advisory opinions applying the Federal statutes to arrangements that affect nursing facilities. The opinions are available on the Internet at <http://www.hhs.gov/oig>.

<sup>63</sup> Contracts between the facility and any entity in which the facility's medical director has a financial interest may be subject to the Stark law and should be reviewed and approved by legal counsel.

facilities also should implement measures to avoid offering inappropriate inducements to residents. Possible risk areas that should be addressed in the policies and procedures include:

- Routinely waiving coinsurance or deductible amounts without a good faith determination that the resident is in financial need, or absent reasonable efforts to collect the cost-sharing amount;<sup>64</sup>

- Agreements between the facility and a hospital, home health agency, or hospice that involve the referral or transfer of any resident to or by the nursing home;<sup>65</sup>

- Soliciting, accepting or offering any gift or gratuity of more than nominal value to or from residents, potential referral sources, and other individuals and entities with which the nursing facility has a business relationship;<sup>66</sup>

- Conditioning admission or continued stay at a facility on a third-party guarantee of payment, or soliciting payment for services covered by Medicaid, in addition to any amount

<sup>64</sup> In the OIG Special Fraud Alert "Routine Waiver of Part B Co-payments/Deductibles" (May 1991), the OIG describes several reasons why routine waivers of these cost-sharing amounts pose abuse concerns. The Alert sets forth the circumstances under which it may be appropriate to waive these amounts.

<sup>65</sup> In the Special Fraud Alert "Fraud and Abuse in Nursing Home Arrangements With Hospices" (March 1998), the OIG sets out the vulnerabilities in nursing home arrangements with hospices. The Alert provides several examples of questionable arrangements between hospices and nursing homes that could inappropriately influence the referral of patients. Examples include the offering of free goods or goods at below fair market value to induce a nursing home to refer patients to the hospice. Other examples demonstrating vulnerability to fraud and abuse include: (1) a hospice paying for room and board in excess of the amounts the nursing home would normally charge or receive from Medicaid; (2) a hospice paying for additional services that should be already included in the room and board payment; (3) a hospice referring patients to the nursing home in return for the nursing home's referral to the hospice. While the Special Fraud Alert focused on arrangements with hospices, nursing facilities should adopt policies that prohibit similar questionable arrangements with all health care providers.

<sup>66</sup> Providers should establish clear policies governing gift-giving, because such exchanges may be viewed as inducements to influence business decisions. Offering or providing any gift of more than nominal value to any beneficiary may be done with the intent to inappropriately influence health care decisions of the beneficiary or his or her family. Similarly, accepting gifts, hospitality, or entertainment from a source that is in a position to benefit from the referral of business, raises concerns that the gift may influence the employee's independent judgment. If the provider decides to allow employees to accept gifts or other gratuities below a certain nominal value or in an aggregate amount below an established amount per year, the provider should consider requiring employees to report those gifts.

required to be paid under the State Medicaid plan;<sup>67</sup>

- Arrangements between a nursing facility and a hospital under which the facility will only accept a Medicare beneficiary on the condition that the hospital pays the facility an amount over and above what the facility would receive through PPS;<sup>68</sup>

- Financial arrangements with physicians, including the facility's medical director;<sup>69</sup>

- Arrangements with vendors that result in the nursing facility receiving non-covered items (such as disposable adult diapers) at below market prices or no charge, provided the facility orders Medicare-reimbursed products;<sup>70</sup>

- Soliciting or receiving items of value in exchange for providing the supplier access to residents' medical records and other information needed to bill Medicare;<sup>71</sup>

- Joint ventures with entities supplying goods or services;<sup>72</sup> and

<sup>67</sup> See 42 U.S.C. 1320a-7b(d)(2) which prescribes criminal penalties for knowingly and willfully charging for services provided to a Medicaid patient in excess of the rates established by the State; see also 42 CFR 483.12(d).

<sup>68</sup> Under PPS, the payment rates represent payment in full, subject to applicable coinsurance. This includes payment for all costs associated with furnishing covered SNF services to Medicare beneficiaries. It is impermissible for a hospital to pay for SNF services if it were to do so only for those residents who are Medicare beneficiaries discharged from that hospital. However, it would be permissible for a hospital to provide or pay for items or services that are furnished to SNF residents generally, if such payments are made without regard to the payment source for the individual resident. In addition, a hospital and a SNF can enter into a permissible bed reservation agreement (See HCFA *Provider Reimbursement Manual*, Part I, section 2105.3).

<sup>69</sup> All physician contracts and agreements should be reviewed to avoid violation of the anti-kickback, self-referral, and other relevant Federal and State laws. The OIG has published safe harbors that define practices not subject to the anti-kickback statute, because such arrangements would be unlikely to result in fraud or abuse. Failure to comply with a safe harbor provision does not make an arrangement per se illegal. Rather, the safe harbors set forth specific conditions that, if fully met, would assure the entities involved of not being prosecuted or sanctioned for the arrangement qualifying for the safe harbor. One such safe harbor applies to personal services contracts (See 42 CFR 1001.952(d)).

<sup>70</sup> See OIG Special Fraud Alert "Fraud and Abuse in the Provision of Medical Supplies to Nursing Facilities" (August 1995). As well as violating the anti-kickback statute, both the supplier and the nursing facility may be liable for false claims if the medically unnecessary items are billed to Federal health care programs. See also OIG Advisory Opinion No.99-2 (February 1999).

<sup>71</sup> In addition to raising concerns related to the anti-kickback statute, the unauthorized disclosure of confidential records violates the resident's rights (See 42 CFR 10(e)).

<sup>72</sup> See OIG Special Fraud Alert "Joint Venture Arrangements" (August 1989); OIG Special Fraud Alert "Fraud and Abuse in the Provision of Services in Nursing Facilities" (May 1996).

- Swapping.<sup>73</sup>

In order to keep current with this area of the law, a nursing facility should obtain copies of all relevant OIG and HCFA regulations, Special Fraud Alerts, and Advisory Opinions that address the application of the anti-kickback and Stark self-referral laws to ensure that the policies reflect current positions and opinions. Further, nursing facility policies should provide that all nursing facility contracts and arrangements with actual or potential sources of referrals are reviewed by counsel and comply with applicable statutes and requirements.

### 3. Retention of Records

Nursing facilities that implement a compliance program should provide for the development and implementation of a records retention system. This system should establish policies and procedures regarding the creation, distribution, retention, and destruction of documents. In designing a records systems, privacy concerns and regulatory requirements should be taken into consideration. In addition to maintaining appropriate and thorough medical records on each resident, the OIG recommends that the system should include the following types of documents:

- All records and documentation (e.g., billing and claims documentation) required for participation in Federal State, and private health care programs, including the resident assessment instrument, the comprehensive plan of care and all corrective actions taken in response to surveys;

- All records and documentation required by private payors and other governmental institutions;

- All records, documentation, and audit data that support and explain cost reports and other financial activity, including any internal or external compliance monitoring activities; and

- All records necessary to demonstrate the integrity of the nursing facility compliance process and to confirm the effectiveness of the program.<sup>74</sup>

<sup>73</sup> "Swapping" occurs when a supplier gives a nursing facility discounts on Medicare Part A items and services in return for the referrals of Medicare Part B business. With swapping, there is a risk that suppliers may offer a SNF an excessively low price for items or services reimbursed under PPS in return for the ability to service and bill nursing facility residents with Part B coverage. See OIG Advisory Opinion 99-2 (March 1999).

<sup>74</sup> Among the materials useful in documenting the compliance program are employee certifications relating to training and other compliance initiatives, copies of compliance training materials, and hotline logs and any corresponding reports of investigation, outcomes, and employee disciplinary actions. In addition, the facility should keep all relevant

While conducting its compliance activities, as well as its daily operations, a nursing facility should document its efforts to comply with applicable statutes, regulations, and Federal health care program requirements. For example, where a nursing facility requests advice from a Government agency (including a Medicare fiscal intermediary or carrier) charged with administering a Federal health care program, the nursing facility should document and retain a record of the request and any written or oral response. This step is extremely important if the nursing facility intends to rely on that response to guide it in future decisions, actions, or claim reimbursement requests or appeals. A log of oral inquiries between the nursing facility and third parties will help the organization document its attempts at compliance. In addition, these records may become relevant in a subsequent investigation to the issue of whether the facility's reliance was "reasonable" and whether it exercised due diligence in developing procedures and practices to implement the advice.

In short, all nursing facilities, regardless of size, must retain appropriate documentation. Further, the OIG recommends that the nursing facility:

- Secure this information in a safe place;

- Maintain hard copies of all electronic or database documentation; and

- Limit access to such documentation to avoid accidental or intentional fabrication or destruction of records.<sup>75</sup>

As the Government increases its reliance on electronic data interchange to conduct business and gather information more quickly and efficiently, it is important that the nursing facility develops the capacity to ensure that all informational systems maintained by the facility are in working order, secured, and capable of accessing Federal and State databases.

### 4. Compliance as an Element of Employee Performance

Compliance programs should require that the promotion of, and adherence to, the elements of the compliance program be a factor in evaluating the performance of all employees.

correspondence between carriers, fiscal intermediaries, private payor insurers, HCFA, and State survey and certification agencies.

<sup>75</sup> In addition to prohibiting the falsification and backdating of records, the provider should have clear guidelines, consistent with applicable professional and legal standards, that set out the circumstances when late entries may be made in a record.

Employees should be periodically trained in new compliance policies and procedures. In addition, policies should require that managers, especially those involved in the direct care of residents and in claims development and submission:

- Discuss with all supervised employees and relevant contractors the compliance policies and legal requirements applicable to their function;
- Inform all supervised personnel that strict compliance with these policies and procedures is a condition of employment; and
- Disclose to all supervised personnel that the nursing facility will take disciplinary action up to and including termination for violation of these policies or requirements.

Managers and supervisors should be disciplined for failing to adequately instruct their subordinates or for failing to detect noncompliance with applicable policies and legal requirements, where reasonable diligence would have led to the discovery of any problems or violations and given the nursing facility the opportunity to correct them earlier. Conversely, those supervisors who have demonstrated leadership in the advancement of the company's code of conduct and compliance objectives should be singled out for recognition.

The OIG believes that all nursing facilities, regardless of resources or size, should ensure that its employees understand the importance of compliance with program requirements and the value the company places on its compliance program. If the small nursing facility does not have a formal employee evaluation system, it should informally convey to employees their compliance responsibilities whenever the opportunity arises. Positive reinforcement is generally more effective than sanctions in conditioning behavior and managers should be given mechanisms to reward employees who promote compliance.

### C. Designation of a Compliance Officer and a Compliance Committee

#### 1. Compliance Officer

Every nursing home provider should designate a compliance officer to serve as the focal point for compliance activities. This responsibility may be the individual's sole duty or added to other management responsibilities, depending upon the size and resources of the nursing facility and the complexity of the task. Designating a compliance officer with the appropriate authority is critical to the success of the program,

necessitating the appointment of a high-level official with direct access to the nursing facility's president or CEO, governing body, all other senior management, and legal counsel.<sup>76</sup> The officer should have sufficient funding and staff to perform his or her responsibilities fully.

Coordination and communication are the key functions of the compliance officer with regard to planning, implementing, and monitoring the compliance program.

The compliance officer's primary responsibilities should include:

- Overseeing and monitoring implementation of the compliance program;<sup>77</sup>
- Reporting on a regular basis to the nursing facility's governing body, CEO, and compliance committee (if applicable) on the progress of implementation, and assisting these components in establishing methods to improve the nursing facility's efficiency and quality of services, and to reduce the facility's vulnerability to fraud, abuse, and waste;
- Periodically revising the program in light of changes in the organization's needs, and in the law and policies of Government and private payor health plans;
- Developing, coordinating, and participating in a multifaceted educational and training program that focuses on the elements of the compliance program, and seeking to ensure that all relevant employees and management understand and comply with pertinent Federal and State standards;
- Ensuring that independent contractors and agents who furnish physician, nursing, or other health care services to the residents of the nursing facility are aware of the requirements of the nursing facility's compliance program with respect to residents' rights, billing, and marketing, among other things;

<sup>76</sup> The OIG believes it is not advisable for the compliance function to be subordinate to the nursing facility's general counsel, or comptroller or similar financial officer. Free standing compliance functions help to ensure independent and objective legal reviews and financial analysis of the institution's compliance efforts and activities. By separating the compliance function from the key management positions of general counsel or chief financial officer (where the size and structure of the nursing facility make this a feasible option), a system of checks and balances is established to more effectively achieve the goals of the compliance program.

<sup>77</sup> For multi-facility organizations, the OIG encourages coordination with each facility owned by the corporation through the use of a headquarter's compliance officer, communicating with parallel positions or compliance liaison in each facility or regional office, as appropriate.

• Coordinating personnel issues with the nursing facility's Human Resources/Personnel office (or its equivalent) to ensure that (i) the National Practitioner Data Bank<sup>78</sup> has been checked with respect to all medical staff and independent contractors (as appropriate) and (ii) the List of Excluded Individuals/Entities<sup>79</sup> has been checked with respect to all employees, medical staff, and independent contractors;<sup>80</sup>

- Assisting the nursing facility's financial management in coordinating internal compliance review and monitoring activities, including annual or periodic reviews of departments;
- Independently investigating and acting on matters related to compliance, including the flexibility to design and coordinate internal investigations (e.g., responding to reports of problems or suspected violations) and any resulting corrective action (e.g., making necessary improvements to nursing facility policies and practices, taking appropriate disciplinary action, etc.) with all nursing facility departments, subcontracted providers, and health care professionals under the nursing facility's control;
- Participating with facility's counsel in the appropriate reporting of self-discovered violations of program requirements; and
- Continuing the momentum of the compliance program after the initial years of implementation.<sup>81</sup>

The compliance officer must have the authority to review all documents and other information that are relevant to compliance activities, including, but not limited to, medical and billing records, and documents concerning the marketing efforts of the nursing facility and its arrangements with other health care providers, including physicians and independent contractors. This review authority enables the compliance officer to examine contracts and obligations (seeking the advice of legal counsel, where appropriate) that may contain referral and payment provisions that could violate the anti-kickback statute or regulatory requirements.

<sup>78</sup> See note 60.

<sup>79</sup> See note 61.

<sup>80</sup> The compliance officer may also have to ensure that the criminal backgrounds of employees have been checked depending upon State requirements or nursing facility policy.

<sup>81</sup> There are many approaches the compliance officer may enlist to maintain the vitality of the compliance program. Periodic on-site visits of nursing facility operations, bulletins with compliance updates and reminders, distribution of audiotapes or videotapes on different risk areas, lectures at management and employee meetings, and circulation of recent health care articles covering fraud and abuse are some examples of approaches the compliance officer can employ.

A small nursing facility may not have the resources to hire or appoint a full time compliance officer. Multi-facility providers also may consider appointing one compliance officer at the corporate level and creating compliance liaisons officers at each facility. In any event, each facility should have a person in its organization (this person may have other functional responsibilities) who can oversee the nursing facility's compliance with applicable statutes, rules, regulations, and policies. The structure and comprehensiveness of the facility's compliance program will help determine the responsibilities of each individual compliance officer.

## 2. Compliance Committee

The OIG recommends that a compliance committee be established to advise the compliance officer and assist in the implementation of the compliance program.<sup>82</sup> When developing an appropriate team of people to serve as the nursing facility's compliance committee, a facility should consider a variety of skills and personality traits that are expected from those in such positions.<sup>83</sup> Once a nursing facility chooses the people that will accept the responsibilities vested in members of the compliance committee, the nursing facility needs to train these individuals on the policies and procedures of the compliance program, as well as how to discharge their duties.

The committee's functions should include:

- Analyzing the legal requirements with which the nursing facility must comply, and specific risk areas;
- Assessing existing policies and procedures that address these risk areas for possible incorporation into the compliance program;
- Working with appropriate departments to develop standards of conduct, and policies and procedures to

<sup>82</sup> The compliance committee benefits from having the perspectives of individuals with varying responsibilities in the organization, such as operations, finance, audit, human resources, and clinical management (e.g., the nursing facility physician), as well as employees and managers of key operating units. The compliance officer should be an integral member of the committee as well. All committee members should have the requisite seniority and comprehensive experience within their respective departments to implement any necessary changes to policies and procedures as recommended by the committee.

<sup>83</sup> A health care provider should expect its compliance committee members and compliance officer to demonstrate high integrity, good judgment, assertiveness, and an approachable demeanor, while eliciting the respect and trust of employees of the nursing facility. These interpersonal skills are as important as the professional experience of each member of the compliance committee.

promote compliance with legal and ethical requirements;

- Recommending and monitoring, in conjunction with the relevant departments, the development of internal systems and controls to carry out the organization's policies;
- Determining the appropriate strategies and approaches to promote compliance with program requirements and detection of any potential violations, such as through hotlines and other fraud reporting mechanisms;
- Developing a system to solicit, evaluate, and respond to complaints and problems; and
- Monitoring internal and external audits and investigations for the purpose of identifying deficiencies, and implementing corrective action.

The committee may also undertake other functions as the compliance concept becomes part of the overall nursing facility operating structure and daily routine. The compliance committee is an extension of the compliance officer and provides the organization with increased oversight. The OIG recognizes that some nursing facilities may not have the resources or the need to establish a compliance committee. However, when potential problems are identified, the OIG recommends these nursing facilities create a "task force," to address the particular problem. The members of the task force may vary depending upon the issue. For example, if problems are identified as a result of a State or Federal survey, the OIG recommends that a task force be created to examine the deficiencies identified by the survey and to develop plans of actions to correct the underlying causes of the deficiency.

### *D. Conducting Effective Training and Education*

The proper education and training of corporate officers, managers and health care professionals, and the continual retraining of current personnel at all levels are critical elements of an effective compliance program. These training programs should include sessions summarizing the organization's compliance program, fraud and abuse laws and Federal and private payor health care program requirements. More specific training on issues such as claims development and submission processes, resident rights, and marketing practices should be targeted at those employees and contractors whose job requirements make the information relevant.<sup>84</sup>

<sup>84</sup> Specific compliance training should complement any "in-service" training sessions that

The organization must take steps to communicate effectively its standards and procedures to all affected employees, physicians, independent contractors, and other significant agents by requiring participation in such training programs and by other means, such as disseminating publications that explain specific requirements in a practical manner.<sup>85</sup>

Managers of specific departments or groups can assist in identifying areas that require training and in carrying out such training.<sup>86</sup> Training instructors may come from outside or inside the organization, but must be qualified to present the subject matter involved and sufficiently experienced in the issues presented to adequately field questions and coordinate discussions among those being trained.

The nursing facility should train new employees soon after they have started working.<sup>87</sup> Training programs and materials should be designed to take into account the skills, experience, and knowledge of the individual trainees. The compliance officer should document any formal training undertaken by the nursing facility as part of the compliance program.

A variety of teaching methods, such as interactive training, and where a nursing facility has a culturally diverse staff, training in different languages, should be implemented so that all affected employees understand the institution's standards of conduct and procedures for alerting senior management to problems and concerns.<sup>88</sup>

In addition to specific training in the risk areas identified in section II.B.2, primary training for appropriate corporate officers, managers, and facility staff should include such topics as:

- Compliance with Medicare conditions of participation;

a nursing facility may regularly schedule to provide an ongoing program for the training of employees as required by its conditions of participation.

<sup>85</sup> Some publications, such as OIG's Special Fraud Alerts, audit and inspection reports, and advisory opinions are readily available from the OIG and can provide a basis for educational courses and programs for appropriate nursing facility employees.

<sup>86</sup> Significant variations in the functions and responsibilities of different departments or groups may create the need for training materials that are tailored to compliance concerns associated with particular operations and duties.

<sup>87</sup> Certain positions, such as those that involve billing, coding and the submission of reimbursement data, create greater organizational legal exposure, and therefore require specialized training. Those hired to treat residents should undergo specialized training in residents' rights and survey and certification procedures.

<sup>88</sup> Post-training tests can be used to assess the success of training provided and employee comprehension of the nursing facility's policies and procedures.

- Appropriate and sufficient documentation;
- Prohibitions on paying or receiving remuneration to induce referrals;
- Improper alterations to clinical or financial records;
- Resident rights; and
- The duty to report misconduct.

The OIG suggests that all relevant personnel participate in the various educational and training programs of the nursing facility.<sup>89</sup> Employees should be required to have a minimum number of educational hours per year, as appropriate, as part of their employment responsibilities.<sup>90</sup> For example, for certain employees involved in the nursing facility admission functions, periodic training in applicable reimbursement coverage and eligibility requirements should be required. In nursing facilities with high employee turnover, periodic training updates are critical.

The OIG recognizes that the format of the training program will vary depending upon the resources of the nursing facility. For example, a nursing facility with limited resources may want to create a videotape for each type of training session so new employees can receive training in a timely manner. If videos are used for compliance training, the OIG suggests that a nursing facility make an individual available to field questions from video trainees.

The OIG recommends that participation in training programs be made a condition of continued employment and that failure to comply with training requirements should result in disciplinary action, when such failure is serious. Adherence to the training requirements as well as other provisions of the compliance program should be a factor in the annual evaluation of each employee. The nursing facility should retain adequate records of its training of employees, including attendance logs and material distributed at training sessions.

<sup>89</sup> In addition, where feasible, the OIG recommends that a nursing facility give vendors and outside contractors the opportunity to participate in the nursing facility's compliance training and educational programs. Such training is particularly important for facilities that rely on agencies to provide temporary direct care staff. The introduction of consolidated billing gives added importance to educating vendors about the facility's compliance policies and procedures.

<sup>90</sup> Currently, the OIG is monitoring a significant number of corporate integrity agreements that require many of these training elements. The OIG usually requires a minimum of one to three hours annually for basic training in compliance areas. Additional training is required for specialty fields such as claims development and billing.

### *E. Developing Effective Lines of Communication*

#### 1. Access to the Compliance Officer

In order for a compliance program to work, employees must be able to ask questions and report problems. The first line supervisors play a key role in responding to employee concerns and it is appropriate that they serve as a first line of communications. In order to encourage communications, confidentiality and non-retaliation policies should be developed and distributed to all employees.<sup>91</sup>

Open lines of communication between the compliance officer and nursing facility employees is equally important to the successful implementation of a compliance program and the reduction of any potential for fraud and abuse. In addition to serving as a contact point for reporting problems, the compliance officer should be viewed as someone to whom personnel can go to get clarification on the facility's policies. Questions and responses should be documented and dated and, if appropriate, shared with other staff so that standards can be updated and improved to reflect any necessary changes or clarifications.<sup>92</sup>

#### 2. Hotlines and Other Forms of Communication

The OIG encourages the use of hotlines,<sup>93</sup> e-mails, newsletters, suggestion boxes, and other forms of information exchange to maintain open lines of communication.<sup>94</sup> If the nursing facility establishes a hotline, the telephone number should be made readily available to all employees, independent contractors, residents, and

<sup>91</sup> In some cases, employees sue their employers under the False Claims Act's *qui tam* provisions out of frustration because of the company's failure to take action when the employee brought a questionable, fraudulent, or abusive situation to the attention of senior corporate officials. Whistle blowers must be protected against retaliation, a concept embodied in the provisions of the False Claims Act (See 31 U.S.C. 3730(h)).

<sup>92</sup> Nursing facilities can also consider rewarding employees for appropriate use of established reporting systems. After all, the employee who identifies and helps stop an abusive practice can benefit the corporation as much as one who identifies cost-savings measures or increases corporate revenues.

<sup>93</sup> The OIG recognizes that it may not be financially feasible for a smaller nursing facility to maintain a telephone hotline dedicated to receiving calls about compliance issues. These companies may want to explore alternative methods, e.g., outsourcing the hotline or establishing a written method of confidential disclosure.

<sup>94</sup> In addition, an effective employee exit interview program could be designed to solicit information from departing employees regarding potential misconduct and suspected violations of nursing facility policy and procedures.

family members by circulating the number on wallet cards or conspicuously posting the telephone number in common work areas.<sup>95</sup> Employees should be permitted to report matters on an anonymous basis. Matters reported through the hotline or other communication sources that suggest substantial violations of compliance policies or Federal health care program statutes and regulations should be documented and investigated promptly to determine their veracity. The compliance officer should maintain a log that records such calls, including the nature of any investigation and its results.<sup>96</sup> Such information, redacted of individual identifiers, should be included in reports to the governing body, the CEO, and compliance committee.<sup>97</sup> While the nursing facility should always strive to maintain the confidentiality of an employee's identity, it should also make clear that there may be a point where the individual's identity may become known or may have to be revealed in certain instances. The OIG recognizes that protecting anonymity may be infeasible for small nursing facilities. However, the OIG believes all facility employees, when seeking answers to questions or reporting potential instances of fraud and abuse, should know to whom to turn for attention and should be able to do so without fear of retribution.

### *F. Auditing and Monitoring*

The OIG believes that an effective program should incorporate thorough monitoring of its implementation and an ongoing evaluation process. The compliance officer should document this ongoing monitoring, including reports of suspected noncompliance, and share these assessments with the nursing facility's senior management and the compliance committee. The extent and frequency of the compliance audits may vary depending on variables such as the nursing facility's available resources, prior history of

<sup>95</sup> Nursing facilities should also post in a prominent area the HHS-OIG Hotline telephone number, 1-800-447-8477 (1-800-HHS-TIPS).

<sup>96</sup> To efficiently and accurately fulfill such an obligation, the nursing facility should create an intake form for all compliance issues identified through reporting mechanisms. The form could include information concerning the date that the potential problem was reported, the results of the internal investigation, and, as appropriate, the corrective action implemented, the disciplinary measures imposed, and/or any identified overpayments returned.

<sup>97</sup> Information obtained over the hotline may provide valuable insight into management practices and operations, whether reported problems are actual or perceived.

noncompliance, and the risk factors particular to the facility.<sup>98</sup>

Although many assessment techniques are available, one effective tool is the performance of regular, periodic compliance audits by internal or external evaluators who have expertise in Federal and State health care statutes, regulations, and program requirements, as well as private payor rules. These assessments should focus both on the nursing facility's day-to-day operations, as well as its adherence to the rules governing claims development, billing and cost reports, and relationships with third parties. The reviews also should address the nursing facility's compliance with the Medicare conditions of participation and the specific rules and policies that have been the focus of particular attention by the Medicare fiscal intermediaries or carriers, survey agencies, and law enforcement.<sup>99</sup>

Monitoring techniques may include sampling protocols that permit the compliance officer to identify and review variations from an established performance baseline.<sup>100</sup> Significant variations from the baseline should trigger an inquiry to determine the cause of the deviation. If the inquiry determines that the deviation occurred for legitimate reasons, the compliance officer and nursing facility management may want to take no action. If it is determined that the deviation was caused by a departure from or misunderstanding of the facility's policies, the nursing facility should take prompt steps to correct the problem. Any overpayments discovered as a result of such deviations should be returned promptly to the affected payor,<sup>101</sup> with appropriate documentation and a sufficiently

<sup>98</sup> Even when a nursing facility or group of facilities is owned by a larger corporate entity, the regular auditing and monitoring of the compliance activities of an individual facility must be a key feature in any annual review. Appropriate reports on audit findings should be periodically provided and explained to a parent organization's senior staff and officers.

<sup>99</sup> See also section II.B.2.

<sup>100</sup> The OIG recommends that when a compliance program is established in a nursing facility, the compliance officer, with the assistance of department managers, should take a "snapshot" of their operations from a compliance perspective. This assessment can be undertaken by outside consultants or internal staff, provided they have knowledge of health care program requirements. This "snapshot" can serve as a baseline for the compliance officer and other managers to judge the nursing facility's progress in reducing potential areas of vulnerability.

<sup>101</sup> See Provider Reimbursement Manual 1, § 2836(D)(3), which sets out the MDS correction policy.

detailed explanation of the reason for the refund.<sup>102</sup>

In addition to evaluating the facility's conformance with program rules, an effective compliance program should also incorporate periodic (at least annual) reviews of whether the program's compliance elements have been satisfied, *e.g.*, whether there has been appropriate dissemination of the program's standards, ongoing educational programs, and internal investigations of alleged non-compliance. This process will assess actual conformance by all departments with the compliance program and may identify areas for improvements in the program, as well as the nursing facility's general operations.

The OIG requires a provider operating under a CIA to conduct an annual assessment of its compliance with the elements of the CIA. A compliance officer may want to review several CIAs in designing the facility's self-audit protocol.<sup>103</sup>

As part of the review process, the compliance officer or reviewers should consider techniques such as:

- On-site visits to all facilities owned and/or operated by the nursing home owner;
- Testing the billing and claims reimbursement staff on its knowledge of applicable program requirements and claims and billing criteria;
- Unannounced mock surveys and audits;
- Examination of the organization's complaint logs and investigative files;
- Legal assessment of all contractual relationships with contractors, consultants and potential referral sources;
- Reevaluation of deficiencies cited in past surveys for State requirements and Medicare conditions of participation;
- Checking personnel records to determine whether individuals who previously have been reprimanded for compliance issues are now conforming to facility policies;
- Questionnaires developed to solicit impressions of a broad cross-section of

<sup>102</sup> In addition, when appropriate, as referenced in section H.2, below, reports of fraud or systemic problems should also be made to the appropriate governmental authority.

<sup>103</sup> Examples of CIA audit protocols can be obtained from the OIG by submitting a request pursuant to the Freedom of Information Act. In addition, the American Institute of Certified Public Accountants (AICPA) has issued a detailed guide for conducting an independent assessment of a health care provider's conformance to a CIA. See AICPA Statement of Position 99-1, "Guidance to Practitioners in Conducting and Reporting on an Agreed-Upon Procedures Engagement to Assist in Evaluating Compliance with a Corporate Integrity Agreement" (May 1999).

the nursing facility's employees and staff;

- Validation of qualifications of nursing facility physicians and other staff, including verification of applicable State license renewals;
- Trend analysis, or longitudinal studies, that uncover deviations in specific areas over a given period;
- Analyzing past survey reports for patterns of deficiencies to determine if the proposed corrective plan of action identified the underlying problem and was undertaken within the assigned time limits.

The reviewers should:

- Have the qualifications and experience necessary to adequately identify potential issues with the subject matter that is reviewed;
- Be objective and independent of line management to the extent reasonably possible;<sup>104</sup>
- Have access to existing audit and health care resources, relevant personnel, and all relevant areas of operation;
- Present written evaluative reports on compliance activities to the CEO, governing body, and members of the compliance committee on a regular basis, but no less often than annually; and
- Specifically identify areas where corrective actions are needed.

The extent and scope of a nursing facility's compliance self-audits will depend on the facility's identified risk areas, past history of deficiencies and enforcement actions, and resources. If the facility comes under Government scrutiny in the future, the Government will assess whether the facility developed a reasonable audit plan based upon identified risk areas and resources. If the Government determines that the nursing facility failed to develop an adequate audit program, the Government will be less likely to afford the nursing facility favorable treatment under the Federal Sentencing Guidelines.

### G. Enforcing Standards Through Well-Publicized Disciplinary Guidelines

#### 1. Disciplinary Policy and Enforcement

An effective compliance program should include disciplinary policies that set out the consequences of violating the nursing facility's standards of conduct, policies and procedures. Intentional noncompliance should subject transgressors to significant sanctions. Such sanctions could range

<sup>104</sup> The OIG recognizes that nursing facilities that have limited resources may not be able to use internal reviewers who are not part of line management or hire outside reviewers.

from oral warnings to suspension, termination, or financial penalties, as appropriate. Disciplinary action may be appropriate where a responsible employee's failure to detect a violation is attributable to his or her negligence or reckless conduct. Each situation must be considered on a case-by-case basis to determine the appropriate response.

The written standards of conduct should elaborate on the procedures for handling disciplinary problems and those who will be responsible for taking appropriate action. Some disciplinary actions can be handled by department or agency managers, while others may have to be resolved by a senior administrator. The nursing facility should advise personnel that disciplinary action will be taken on a fair and equitable basis. Managers and supervisors should be made aware that they have a responsibility to discipline employees in an appropriate and consistent manner.

It is vital to publish and disseminate the range of disciplinary standards for improper conduct and to educate employees regarding these standards. The consequences of noncompliance should be consistently applied and enforced, in order for the disciplinary policy to have the required deterrent effect. All levels of employees should be potentially subject to the same types of disciplinary action for the commission of similar offenses, because the commitment to compliance applies to all personnel within a nursing facility. This means that corporate officers, managers, and supervisors should be held accountable for failing to comply with, or for the foreseeable failure of their subordinates to adhere to, the applicable standards, laws, and procedures.

#### *H. Responding to Detected Offenses and Developing Corrective Action Initiatives*

Violations of a nursing facility's compliance program, failures to comply with applicable Federal or State law, and other types of misconduct threaten a facility's status as a reliable, honest and trustworthy provider of health care. Detected but uncorrected misconduct can seriously endanger the reputation and legal status of the nursing facility. Consequently, upon receipt of reports or reasonable indications of suspected noncompliance, it is important that the compliance officer or other management officials immediately investigate the allegations to determine whether a material violation of applicable law or the requirements of the compliance program has occurred, and if so, take

decisive steps to correct the problem.<sup>105</sup> As appropriate, such steps may include a corrective action plan,<sup>106</sup> the return of any overpayments, a report to the Government,<sup>107</sup> and/or a referral to criminal and/or civil law enforcement authorities.

Where potential fraud is not involved, the OIG recommends that the nursing facility use normal repayment channels to return overpayments as they are discovered. However, even if the nursing facility's billing department is effectively using the overpayment detection and return process, the OIG believes that the facility needs to alert the compliance officer to those overpayments that may reveal trends or patterns indicative of a systemic problem.

Depending upon the nature of the alleged violations, an internal investigation will probably include interviews and a review of relevant documents. Under some circumstances, the facility may need to consider engaging outside counsel, auditors, or health care experts to assist in an investigation. Records of the investigation should contain documentation of the alleged violation, a description of the investigative process (including the objectivity of the investigators and methodologies utilized), copies of interview notes and key documents, a log of the witnesses interviewed and the documents reviewed, the results of the investigation, e.g., any disciplinary action taken, and the corrective action implemented. While any action taken as the result of an investigation will

<sup>105</sup> Instances of noncompliance must be determined on a case-by-case basis. The existence or amount of a *monetary* loss to a health care program is not solely determinative of whether the conduct should be investigated and reported to governmental authorities. In fact, there may be instances where there is no readily identifiable monetary loss, but corrective actions are still necessary to protect the integrity of the applicable program and its beneficiaries, e.g., where services required by a plan of care are not provided.

<sup>106</sup> The nursing facility may seek advice from its in-house counsel or an outside law firm to determine the extent of the facility's liability and to plan the appropriate course of action.

<sup>107</sup> Nursing facilities are required to immediately report all alleged incidents of mistreatment, neglect, abuse and misappropriation of resident property to both the facility administrator and other officials in accordance with State law (See 42 CFR 483.13(c)(2)). The OIG also has established a provider self-disclosure protocol that encourages providers voluntarily to report suspected fraud. The concept of voluntary self-disclosure is premised on a recognition that the Government alone cannot protect the integrity of the Medicare and other Federal health care programs. Health care providers must be willing to police themselves, correct underlying problems, and work with the Government to resolve these matters. The self-disclosure protocol can be located on the OIG's web site at: <http://www.hhs.gov/oig>.

necessarily vary depending upon the situation, nursing facilities should strive for some consistency by using sound practices and disciplinary protocols.<sup>108</sup> Further, the compliance officer should review the circumstances that formed the basis for the investigation to determine whether similar problems have been uncovered or modifications of the compliance program are necessary to prevent and detect other inappropriate conduct or violations.

If the nursing facility undertakes an investigation of an alleged violation and the compliance officer believes the integrity of the investigation may be at stake because of the presence of employees under investigation, the facility should remove those individuals from their current responsibilities until the investigation is completed (unless there is an ongoing internal or Government-led undercover operation known to the nursing facility). In addition, the compliance officer should take appropriate steps to secure or prevent the destruction of documents or other evidence relevant to the investigation. If the nursing facility determines that disciplinary action is warranted, it should be promptly imposed in accordance with the facility's written standards of disciplinary action.

#### Reporting

Where the compliance officer, compliance committee, or a management official discovers credible evidence of misconduct from any source and, after a reasonable inquiry, has reason to believe that the misconduct may violate criminal, civil or administrative law, the facility should promptly report the existence of misconduct to the appropriate Federal and State authorities<sup>109</sup> within a reasonable period, but not more than 60 days<sup>110</sup> after determining that there is

<sup>108</sup> The parameters of a claims review subject to an internal investigation will depend on the circumstances surrounding the issues identified. By limiting the scope of an internal audit to current billing, a nursing facility may fail to discover major problems and deficiencies in operations, and it may be subject to certain liability.

<sup>109</sup> Appropriate Federal and State authorities include the OIG, the Criminal and Civil Divisions of the Department of Justice, the U.S. Attorney in relevant districts, the Federal Bureau of Investigation, and the other investigative arms for the agencies administering the affected Federal or State health care programs, such as the State Medicaid Fraud Control Unit, the Defense Criminal Investigative Service, the Department of Veterans Affairs, and the Office of Personnel Management (which administers the Federal Employee Health Benefits Program). See note 107.

<sup>110</sup> In contrast, to qualify for the "not less than double damages" provision of the False Claims Act, the provider must provide the report to the

credible evidence of a violation.<sup>111</sup> Prompt voluntary reporting will demonstrate the nursing facility's good faith and willingness to work with governmental authorities to correct and remedy the problem. In addition, reporting such conduct will be considered a mitigating factor by the OIG in determining administrative sanctions (e.g., penalties, assessments, and exclusion), if the reporting provider becomes the target of an OIG investigation.<sup>112</sup>

When reporting to the Government, a nursing facility should provide all evidence relevant to the alleged violation of applicable Federal or State law(s) and potential cost impact. The compliance officer, under advice of counsel and with guidance from the governmental authorities, could be requested to continue to investigate the reported violation. Once the investigation is completed, the compliance officer should notify the appropriate governmental authority of the outcome of the investigation, including a description of the impact of the alleged violation on the operation of the applicable health care programs or their beneficiaries. If the investigation ultimately reveals that criminal, civil or OIG violations have occurred, the nursing facility should immediately notify appropriate Federal and State authorities.

As previously stated, the nursing facility should take appropriate corrective action, including prompt identification of any overpayment to the affected payor. If potential fraud is involved, the nursing facility should return any overpayment during the course of its disclosure to the Government. Otherwise, the nursing facility should use normal repayment channels for reimbursing identified

overpayments.<sup>113</sup> A knowing and willful failure to disclose overpayments within a reasonable period of time could be interpreted as an attempt to conceal the overpayment from the Government, thereby establishing an independent basis for a criminal violation with respect to the nursing facility, as well as any individual who may have been involved.<sup>114</sup> For this reason, nursing facility compliance programs should emphasize that overpayments should be promptly disclosed and returned to the entity that made the erroneous payment.

### III. Assessing the Effectiveness of a Compliance Program

Considering the financial and human resources needed to establish an effective compliance program, sound business principles dictate that the nursing home's management evaluate the return on that investment. In addition, a compliance program must be "effective" for the Government to view its existence as a mitigating factor when assessing culpability. How a nursing facility assesses its compliance program performance is therefore integral to its success. The attributes of each individual element of a compliance program must be evaluated in order to assess the program's "effectiveness" as a whole. Examining the comprehensiveness of policies and procedures implemented to satisfy these elements is merely the first step. Evaluating how a compliance program performs during the provider's day-to-day operations becomes the critical indicator.<sup>115</sup>

As previously stated, a compliance program should require the development and distribution of written compliance policies, standards, and practices that identify specific areas of risk and vulnerability. One way to judge whether these policies, standards, and

practices measure up is to observe how an organization's employees react to them. Do employees experience recurring pitfalls because the guidance on certain issues is not adequately covered in company policies? Do employees flagrantly disobey an organization's standards of conduct because they observe no sincere buy-in from senior management? Do employees have trouble understanding policies and procedures because they are written in legalese or at difficult reading levels? Does an organization routinely experience systematic billing failures because of poor instructions to employees on how to implement written policies and practices? Written compliance policies, standards, and practices are only as good as an organization's commitment to apply them in practice.

Every nursing facility needs to seriously consider whoever fills the integral roles of compliance officer and compliance committee members, and periodically monitor how the individuals chosen satisfy their responsibilities. Does a compliance officer have sufficient professional experience working with billing, clinical records, documentation, and auditing principles to perform assigned responsibilities fully? Has a compliance officer or compliance committee been unsuccessful in fulfilling their duties because of inadequate funding, staff, and authority necessary to carry out their jobs? Did the addition of the compliance officer function to a key management position with other significant duties compromise the goals of the compliance program (e.g., chief financial officer who discounts certain overpayments identified to improve the company's bottom line profits)? Since a compliance officer and a compliance committee can have a significant impact on how effectively a compliance program is implemented, those functions should not be taken for granted.

As evidenced throughout this guidance, the proper education and training of corporate officers, managers, health care professionals, and other applicable employees of a provider, and the continual retraining of current personnel at all levels, are significant elements of an effective compliance program. Accordingly, such efforts should be routinely evaluated. Are employees trained frequently enough? Do employees fail post-training tests that evaluate knowledge of compliance? Do training sessions and materials adequately summarize important aspects of the organization's compliance program, such as fraud and abuse laws,

Government within 30 days after the date when the provider first obtained the information. 31 U.S.C. 3729(a).

<sup>111</sup> Some violations may be so serious that they warrant immediate notification to governmental authorities prior to, or simultaneous with, commencing an internal investigation. By way of example, the OIG believes a provider should report misconduct that: (1) is a clear violation of OIG administrative authorities, civil fraud, or criminal laws; (2) has a significant adverse effect on the quality of care provided to residents (in addition to any other legal obligations regarding quality of care); or (3) indicates evidence of a systemic failure to comply with applicable laws or an existing corporate integrity agreement, regardless of the financial impact on Federal health care programs.

<sup>112</sup> The OIG has published criteria setting forth those factors that the OIG takes into consideration in determining whether it is appropriate to exclude a health care provider from program participation pursuant to 42 U.S.C. 1320a-7(b)(7) for violations of various fraud and abuse laws. See 62 FR 67392 (December 24, 1997).

<sup>113</sup> A nursing facility should consult with its Medicare fiscal intermediary (FI) and the appropriate sections of the PRM for additional guidance regarding refunds under Medicare Part A. See note 101. The FI may require certain information (e.g., alleged violation or issue causing overpayment, description of the internal investigative process with methodologies used to determine any overpayments, and corrective actions taken, etc.) to be submitted with return of any overpayments, and that such repayment information be submitted to a specific department or individual. When appropriate, interest may be assessed on the overpayment. See 42 CFR 405.376.

<sup>114</sup> See 42 U.S.C. 1320a-7(b)(3) and 18 U.S.C. 669.

<sup>115</sup> Evaluation may be accomplished through techniques such as employee surveys, management assessments, and periodic review of benchmarks established for audits, investigations, disciplinary action, overpayments, and employee feedback. The nursing facility should evaluate all elements of its compliance program, including policies, training, practices, and compliance personnel.

Federal health care program and private payor requirements, and claims development and submission processes? Are training instructors qualified to present the subject matter and experienced enough to field questions? When thorough compliance training is periodically conducted, employees receive the reinforcement they need to ensure an effective compliance program.

An open line of communication between the compliance officer and a provider's employees is equally important to the success of a compliance program. In today's intensive regulatory environment, the OIG believes that a provider cannot possibly have an effective compliance program if it receives minimal feedback from its employees regarding compliance matters. For instance, if a compliance officer does not receive appropriate inquiries from employees: Do policies and procedures fail to adequately guide employees to whom and when they should be communicating compliance matters? Do employees fear retaliation if they report misconduct? Are employees reporting issues not related to compliance through the wrong channels? Do employees have bad-faith, ulterior motives for reporting? Regardless of the means that a provider uses, whether it be telephone hotline, email, or suggestion boxes, employees should seek clarification from compliance staff in the event of any confusion or question dealing with compliance policies, practices, or procedures.

An effective compliance program should include guidance regarding disciplinary action for corporate officers, managers, health care professionals, and other employees who have failed to adhere to an organization's standards of conduct, Federal health care program requirements, or Federal or State laws. The number and caliber of disciplinary actions taken by an organization can be insightful. Have appropriate sanctions been applied to compliance misconduct? Are sanctions applied to all employees consistently, regardless of an employee's level in the corporate hierarchy? Have double-standards in discipline bred cynicism among employees? When disciplinary action is not taken seriously or applied haphazardly, such practices reflect poorly on senior management's commitment to foster compliance as well as the effectiveness of an organization's compliance program in general.

Another critical component of a successful compliance program is an ongoing monitoring and auditing

process. The extent and frequency of the audit function may vary depending on factors such as the size and available resources, prior history of noncompliance, and risk factors of a particular nursing facility. The hallmark of effective monitoring and auditing efforts is how an organization determines the parameters of its reviews. Do audits focus on all pertinent departments of an organization? Does an audit cover compliance with all applicable laws, as well as Federal and private payor requirements? Are results of past audits, pre-established baselines, or prior deficiencies reevaluated? Are the elements of the compliance program monitored? Are auditing techniques valid and conducted by objective reviewers? The extent and sincerity of an organization's efforts to confirm its compliance often proves to be a revealing determinant of a compliance program's effectiveness.

It is essential that the compliance officer or other management officials immediately investigate reports or reasonable indications of suspected noncompliance. If a material violation of applicable law or compliance program requirements has occurred, a provider must take decisive steps to correct the problem. Nursing facilities that do not thoroughly investigate misconduct leave themselves open to undiscovered problems. When a provider learns of certain issues, does it knowingly disregard associated legal exposure? Is there a correlation between deficiency identified and the corrective action necessary to remedy? Are isolated overpayment matters properly resolved through normal repayment channels? Is credible evidence of misconduct that may violate criminal, civil or administrative law promptly reported to the appropriate Federal and State authorities? If the process of responding to detected offenses is circumvented, such conduct would indicate an ineffective compliance program.

Documentation is the key to demonstrating the effectiveness of a nursing facility's compliance program. For example, documentation of the following should be maintained: audit results; logs of hotline calls and their resolution; corrective action plans; due diligence efforts regarding business transactions; records of employee training, including the number of training hours; disciplinary action; and modification and distribution of policies and procedures. Because the OIG encourages self-disclosure of overpayments and billing irregularities, maintaining a record of disclosures and refunds to the health care programs is

strongly endorsed. A documented practice of refunding of overpayments and self-disclosing incidents of non-compliance with Federal and private payor health care program requirements is powerful evidence of a meaningful compliance effort.

#### IV. Conclusion

Through this document, the OIG has attempted to provide a foundation for the process necessary to develop an effective and cost-efficient nursing facility compliance program. However, each program must be tailored to fit the needs and resources of a particular facility, depending upon its unique corporate structure, mission, and employee composition. The statutes, regulations, and guidelines of the Federal and State health insurance programs, as well as the policies and procedures of the private health plans, should be integrated into every nursing facility's compliance program.

The OIG recognizes that the health care industry in this country, which reaches millions of beneficiaries and expends about a trillion dollars annually, is constantly evolving. The time is right for nursing facilities to implement a strong voluntary health care compliance program. Compliance is a dynamic process that helps to ensure that nursing facilities and other health care providers are better able to fulfill their commitment to ethical behavior, as well as meet the changes and challenges being placed upon them by Congress and private insurers. Ultimately, it is the OIG's hope that a voluntarily created compliance program will enable nursing facilities to meet their goals, improve the quality of resident care, and substantially reduce fraud, waste, and abuse, as well as the cost of health care to Federal, State, and private health insurers.

Dated: October 22, 1999.

**June Gibbs Brown,**

*Inspector General.*

[FR Doc. 99-28094 Filed 10-28-99; 8:45 am]

BILLING CODE 4150-04-P

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4432-N-43]

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

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**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708-1234; TTY number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Steward B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B-41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the

opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Mr. Brian K. Polly, Assistant Commission, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501-0052; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374-5065; (202) 685-9200; (These are not toll-free numbers).

Dated: October 21, 1999.

**Fred Karnas, Jr.**,  
*Deputy Assistant Secretary for Economic Development.*

**TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM—FEDERAL REGISTER REPORT FOR 10/29/99**

**Suitable/Available Properties**

*Buildings (by State)*

Illinois

Homewood Natl Guard Facility  
1300 West 187th Street  
Homewood Co: Cook IL 60430-  
Landholding Agency: GSA  
Property Number: 54199940002  
Status: Excess

Comment: 4 old barracks, 5 storage bldgs., 1 guard house, need major repairs  
GSA Number: 5-D-IL-651

Wisconsin

Army Reserve Center  
401 Fifth Street  
Kewaunee Co: WI 54216-1838  
Landholding Agency: GSA  
Property Number: 54199940004  
Status: Excess

Comment: 2 admin. bldgs. (15,593 sq. ft.), 1 garage (1325 sq. ft.), need repairs  
GSA Number: 1-D-WI-597

*Land (by State)*

Puerto Rico

Bahia Rear Range Light  
Ocean Drive  
Catano Co: PR 00632  
Landholding Agency: GSA  
Property Number: 54199940003  
Status: Excess

Comment: 0.167 w/skeletal tower, fenced, aid to navigation  
GSA Number: 1-T-PR-508

**Unsuitable Properties**

*Buildings (by State)*

New Hampshire

Bldg. 55  
Portsmouth Naval Shipyard  
Portsmouth Co: NH 03804-5000  
Landholding Agency: Navy  
Property Number: 77199940020  
Status: Unutilized  
Reason: Secured Area

Bldg. 150  
Portsmouth Naval Shipyard  
Portsmouth Co: NH 03804-5000  
Landholding Agency: Navy  
Property Number: 77199940021  
Status: Unutilized  
Reason: Secured Area

North Carolina

Bldg. 1649

Marine Corps Air Station  
Cherry Point  
Havelock Co: Craven NC 28533-  
Landholding Agency: Navy  
Property Number: 77199940022  
Status: Excess  
Reasons:  
Secured Area  
Extensive deterioration

[FR Doc. 99-28002 Filed 10-28-99; 8:45 am]  
BILLING CODE 4210-29-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

*Applicant:* Charles Dennis Anderson, Anaheim, CA, PRT-018310.

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.

*Applicant:* Charles Walker, Gardena, CA, PRT-018622.

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.

*Applicant:* Brent Worth Holley, College Station, TX, PRT-018662.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained program of the Republic of South Africa for the purposes of enhancement of the survival of the species.

*Applicant:* David D. Flygare, Excelsior, MN, PRT-018720.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

*Applicant:* Theron Dewey Harden Jr., Chipley, FL, PRT-018721.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained program of the Republic of South Africa for the purposes of enhancement of the survival of the species.

*Applicant:* Triple S Game Farm, Edmond, OK, PRT-017888.

The applicant requests a permit to import two male and two female captive bred Cabot's tragopan (*Tragopan caboti*) from the Department of Biology, Beijing Normal University, China for the purpose of propagation for the enhancement of the survival of the species.

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).

*Applicant:* Harry S. Afflcek, Jr, San Antonio, TX, PRT-018704.

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.

*Applicant:* Marvin Vander Ark, Bryon Center, MI, PRT-018623.

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.

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).

**Pamela Hall,**

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 99-28297 Filed 10-28-99; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

#### Fish and Wildlife Service

#### Central Valley Project Improvement Act, California

**AGENCY:** Bureau of Reclamation and Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability of the Final Programmatic Environmental Impact Statement (FPEIS). FES-99-36.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended), the Bureau of Reclamation (Reclamation) and the Fish and Wildlife Service (Service) as co-lead agencies have prepared an FPEIS for the Central Valley Project Improvement Act (CVPIA). The alternatives provide a variety of means for implementing the CVPIA. The FPEIS includes comments received on the Draft Programmatic Environmental Impact Statement (DPEIS) and its supplement, and responses to these comments. Two appendices have been revised and errata sheets have been prepared for other appendices.

**DATES:** Reclamation and the Service will not make a decision on the proposed action until 30 days after release of the FPEIS. After the 30-day waiting period, Reclamation and the Service will complete a Record of Decision (ROD). The ROD will state the action that will be implemented and will discuss all factors leading to the decision.

**ADDRESSES:** For a copy of the FPEIS, contact Ms. Alisha Sterud, Bureau of Reclamation, 2800 Cottage Way, MP-120, Sacramento CA 95825, telephone: (916) 978-5190. Copies of the original appendices which were not revised are also available.

See **SUPPLEMENTARY INFORMATION** section for locations where copies of the FPEIS are available for public inspection.

**FOR FURTHER INFORMATION CONTACT:** For additional information contact Mr. Alan Candlish, Bureau of Reclamation, 2800 Cottage Way, MP-120, Sacramento CA 95825, telephone: (916) 978-5190; or James McKevitt, Fish and Wildlife

Service, 2800 Cottage Way, Sacramento CA 95825, telephone: (916) 414-6535.

**SUPPLEMENTARY INFORMATION:** The Preferred Alternative represents broad actions and policies that may be implemented within a range of actions. These actions were included in alternatives evaluated in the DPEIS and its supplement. The Preferred Alternative was developed through a review of impact assessments of the DPEIS alternatives, comments received concerning the DPEIS, and its supplement and interim implementation actions assisted by an administrative process.

The Preferred Alternative includes provisions of the CVPIA that have been recognized as either "Core" Programs which were included in all of the alternatives evaluated or programs with multiple options which formed the basis for differentiating between the alternatives. Some of the Core Programs are renewal of CVP water service contracts, construction of the Shasta Temperature Control Device, fish and wildlife non-flow related habitat restoration, and improvements to Coleman National Fish Hatchery. Multiple Implementation Programs include the dedication of CVP yield and supplemental water acquisition to meet fish and wildlife needs, including the provision of Level 2 and 4 water supplies to refuges, and implementation of levels of tiered water pricing for CVP water contracts.

Copies of the FPEIS are available for public inspection and review at the following locations:

- Bureau of Reclamation, Office of Policy, Room 7456, 1849 C Street NW, Washington DC 20240; telephone: (202) 208-4662.
- Bureau of Reclamation, Reclamation Service Center Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver CO 80225; telephone: (303) 445-2072.
- Bureau of Reclamation, Public Affairs Office, 2800 Cottage Way, Sacramento CA 95825-1898; telephone: (916) 978-5100.
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW, Main Interior Building, Washington DC 20240-0001.

Copies will also be available for inspection at the following public libraries:

Alum Rock Library, Alturas Public Library, Amador County Library, Auburn-Placer County Library, Bakersfield Library, Burbank Public Library, Butte County Library, Calaveras County Library, California State Library, College of the Redwoods, Colusa County Free Library, Concord Library, Contra Costa Library, CSU—Chico, Meriam Library-Government Publications, CSU Long Beach, Library-Government Documents, CSU-Stanislaus,

Del Norte County Library District, Dixon Unified School District Library, E.P. Foster and H.P. Wright Library, El Dorado County Library, Fresno County Public Library, Grass Valley-Sierra County Library, Humboldt County Library, Kern County Public Library, Kings County Library, Lake County Library, Lassen County Free Library, Lodi Public Library, Los Angeles Public Library, Los Banos City Library, Madera County Library, Marin County Civic Center Library, Mariposa County Library, Mendocino County Library, Mendota Unified School District, Merced Library, Modesto City Library, Monterey County Free Library, Napa City and County Library, Nevada City Library, Northwestern University, Oakland Public Library, Orange County Public Library, Plumas County Library, Red Bluff City Library, Redwood City-San Mateo County Library, Riverside City and County Library, Sacramento County Library, Sacramento Public Library, San Benito County Free Library, San Bernadino County Library, San Diego Public Library, San Diego State University, San Francisco Public Library, San Jose State University, San Luis Obispo City and County Library, San Rafael Civic Center Library, Santa Barbara Public Library, Santa Cruz Public Library, Shasta County Library, Siskiyou County Library, Solano County Library, Sonoma County Library, Stanford University Libraries, Stanislaus County Free Library, Stockton City Library, Stockton-San Joaquin County Public Library, Sutter County Library, Tehama County Library, Trinity County Library, Tulare County Free Library, Tulare Public Library, Tuolumne County Library, U.C. Berkeley Library, U.C. Davis Library, U.C. Hastings College of Law, U.C. Los Angeles, University Research Library, U.C. San Diego Government Documents/Maps Department, U.C. Santa Barbara, Library-Government Publications Section, U.C. Water Resources Center, Willows Public Library, Yolo County Library, Yuba County Library.

Dated: October 22, 1999.

**Kirk C. Rodgers,**

*Acting Regional Director, Mid-Pacific Region, Bureau of Reclamation.*

Dated: October 21, 1999.

**Wayne White,**

*Operations Manager, California and Nevada Operations Office, Fish and Wildlife Service.*

[FR Doc. 99-28425 Filed 10-28-99; 8:45 am]

BILLING CODE 4310-94-P

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**Resource Management Plans, CA**

[CA-320-1220-MA]

**AGENCY:** Bureau of Land Management, Alturas Field Office Alturas, California.

**ACTION:** Notice of intent to amend land use plan notice of availability of environmental assessment.

**SUMMARY:** Pursuant to the authorities in National Environmental Policy Act (Public Law 91-190) and the Federal Land Policy and Management Act (Public Law 94-579), the U.S. Bureau of Land Management's Alturas Field Office is proposing to amend the Alturas Resource Area Resource Management Plan through the Nelson Corral Reservoir Road and Delta Lake Road Access RMP Amendment.

**SUPPLEMENTARY INFORMATION:** The Nelson Corral Reservoir Road and the Delta Lake Road have been proposed for seasonal restrictions/closures to motorized vehicle access with limited exceptions. The proposed restrictions/closures would be in effect from March 1st to May 30th of each year. These dates would fluctuate depending on weather and site conditions.

Alternatives to the proposed closures have been developed through public scoping, meetings and coordination with various county committees. The proposal and alternatives have been analyzed in the Nelson Corral Reservoir Road and Delta Lake Road Access RMP Amendment Environmental Assessment CA320-NEPA99-66. Copies of the environmental assessment are available for review at the Alturas Field Office.

**LOCATION:** Nelson Corral Reservoir Road, T. 38 N., R 12., Sections 24, 25, and 26 and T. 38 N., R 13., Sections 17, 19 and 20, M.D.M.; Delta Lake Road, T. 40 N., R 12., Section 32 M.D.M.

**DATES:** Comments and recommendations will be received until November 29, 1999.

**FOR ADDITIONAL INFORMATION:** Contact Field Manager, Alturas Field Office, 708 W. 12th St., Alturas, CA 96101. (530) 233-4666. tburke@ca.blm.gov.

**Timothy J. Burke,**

*Alturas Field Manager.*

[FR Doc. 99-28384 Filed 10-28-99; 8:45 am]

BILLING CODE 4310-40-P

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[MT-929-00-1420-HE]

**Montana: Filing of Amended Protraction Diagram Plats**

**AGENCY:** Bureau of Land Management, Montana State Office, Interior.

**ACTION:** Notice.

**SUMMARY:** The plats of the amended protraction diagrams accepted October 13, 1999, of the following described lands, are scheduled to be officially filed in the Montana State Office,

Billings, Montana, thirty (30) days from the date of this publication.

Tps. 9, 10, and 12 N., Rs. 21 W. and Tps. 9 and 11 N., Rs. 22 W.

The plat, representing the Amended Protraction Diagram 20 Index of unsurveyed Townships 9, 10, and 12 North, Ranges 21 West and Townships 9 and 11 North, Ranges 22 West, Principal Meridian, Montana, was accepted October 13, 1999.

T. 9 N., R. 21 W.

The plat, representing Amended Protraction Diagram 20 of unsurveyed Township 9 North, Range 21 West, Principal Meridian, Montana, was accepted October 13, 1999.

T. 9 N., R. 22 W.

The plat, representing Amended Protraction Diagram 20 of unsurveyed Township 9 North, Range 22 West, Principal Meridian, Montana, was accepted October 13, 1999.

T. 10 N., R. 21 W.

The plat, representing Amended Protraction Diagram 20 of unsurveyed Township 10 North, Range 21 West, Principal Meridian, Montana, was accepted October 13, 1999.

T. 11 N., R. 22 W.

The plat, representing Amended Protraction Diagram 20 of unsurveyed Township 11 North, Range 22 West, Principal Meridian, Montana, was accepted October 13, 1999.

T. 12 N., R. 21 W.

The plat, representing Amended Protraction Diagram 20 of unsurveyed Township 12 North, Range 21 West, Principal Meridian, Montana, was accepted October 13, 1999.

The amended protraction diagrams were prepared at the request of the U.S. Forest Service to accommodate Revision of Primary Base Quadrangle Maps for the Geometrics Service Center.

A copy of the preceding described plats of the amended protraction diagrams, accepted October 13, 1999, will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against these amended protraction diagrams, accepted October 13, 1999, as shown on these plats, is received prior to the date of the official filings, the filings will be stayed pending consideration of the protests.

These particular plats of the amended protraction diagrams will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, 5001 Southgate Drive (59101), P.O. Box 36800, Billings, Montana 59107-6800.

Dated: October 15, 1999.

**Daniel T. Mates,**

*Chief Cadastral Surveyor, Division of Resources.*

[FR Doc. 99-28288 Filed 10-28-99; 8:45 am]

**BILLING CODE 4310-DN-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[MT-924-1430-ET; MTM 89384]

#### Notice of Proposed Withdrawal and Opportunity for Public Meeting; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management, proposes to withdraw approximately 2,244 acres of public land to protect resources in the Beaverhead River area acquired by the United States with Land and Water Conservation Fund and North American Wetlands Conservation Act funding. This notice segregates the land described below upon acquisition by the United States for up to 2 years from location and entry under the general land laws, including the mining laws, subject to valid existing rights.

**DATES:** Comments must be received by January 27, 2000.

**ADDRESSES:** Comments and meeting requests should be sent to the State Director, Bureau of Land Management, Montana State Office, P.O. Box 36800, Billings, Montana 59107.

**FOR FURTHER INFORMATION CONTACT:** Russ Sorensen, Dillon Field Office, 100 Selway Drive, Dillon, Montana 59725, (406) 683-2337.

**SUPPLEMENTARY INFORMATION:** On October 5, 1999, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described land from settlement, sale, location and entry under the general land laws, including location and entry under the mining laws, but not from leasing under the mineral leasing laws.

*Tract 1—*

Principal Meridian, Montana

T. 8 S., R. 10 W.,

Sec. 35, lots 3 and 4, and NW $\frac{1}{4}$ SE $\frac{1}{4}$ .

T. 9 S., R. 10 W.,

Sec. 1, lots 6 to 22, inclusive;

Sec. 2, lots 1 to 4, inclusive, S $\frac{1}{2}$ N $\frac{1}{2}$ , and S $\frac{1}{2}$ ;

Sec. 11, lot 1 and N $\frac{1}{2}$ , Excepting

Therefrom that tract of land described in Deed dated June 22, 1946, recorded in Book 110 of Deeds, Page 263, records of Beaverhead County, Montana;

Sec. 12, NW $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ , and SE $\frac{1}{4}$ .

Sec. 13, N $\frac{1}{2}$ NE $\frac{1}{4}$  and NE $\frac{1}{4}$ NW $\frac{1}{4}$ , Excepting Therefrom, Certificate of Survey 889, all those portions conveyed to the State of Montana for State Highway purposes, those portions conveyed for railroad purposes, and those portions taken by the Declaration of Taking dated September 13, 1960.

*Tract 2—*

Certificate of Survey 889 which is a parcel of land located in the NW $\frac{1}{4}$  of sec. 11,

Sec. 2, and lots 9 and 10 of sec. 1, T. 9 S., R. 10 W., PMM.

The above described land contains approximately 2,244.00 acres in Beaverhead County.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Montana State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above, subject to valid existing rights, unless the proposal is denied or canceled or the withdrawal is finalized prior to the end of the segregation. Further, the segregation does not preclude the issuance of land use permits, rights-of-way, or other authorizations that are needed to accommodate valid existing rights and previously authorized actions. All previously authorized activities and permitted uses of the segregated lands may be continued in accordance with the terms of the authorization.

Dated: October 19, 1999.

**John E. Moorhouse,**

*Acting Deputy State Director, Division of Resources.*

[FR Doc. 99-28383 Filed 10-28-99; 8:45 am]

**BILLING CODE 4310-DN-P**

## DEPARTMENT OF THE INTERIOR

## National Park Service

**Final Environmental Impact Statement/  
Fort Baker Plan Golden Gate National  
Recreation Area, Marin County, CA;  
Notice of Availability**

**SUMMARY:** Pursuant to section 102 (2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91-190, as amended), the National Park Service (NPS), Department of the Interior, has prepared a Final Environmental Impact Statement for the proposed Fort Baker Plan (FEIS/Plan), Golden Gate National Recreation Area. The FEIS/Plan details and analyzes proposed implementation of future building use, site improvements, visitor services, and cultural and natural resource management actions related to converting Fort Baker from a military installation to a unit of the National Park System.

*Alternatives and Proposed Action:*

Four alternatives were considered—a No Action Alternative, the 1980 General Management Plan Alternative, the Office and Cultural Center Alternative, and the Proposed Action. Each alternative is briefly described below.

Under the No Action Alternative, the buildings along the historic parade ground area would be occupied as residences. Non-residential structures would be stabilized for preservation with no new use. There would be minimal changes to the waterfront to provide for visitor safety, and no there would be no expansion by existing tenant U.S. Coast Guard (USCG) or Bay Area Discovery Museum (BADM) uses. The marina would be closed, the slips and docks removed, and the boat shop would be stabilized for preservation with no new use. Minimal preservation treatment of natural and cultural resources would be carried out to meet legislative requirements and to complete currently under way restoration efforts.

The 1980 General Management Plan Alternative would result in a 350-person conference center, artist-in-residence program and a hostel with no new construction. Non-historic buildings would be removed and replaced with a 700-car shuttle staging parking lot and NPS maintenance facility. The marina would be converted to a public facility with visitor services and short-term boat mooring. Urban landscape treatment would be applied to the waterfront area, and a ferry landing would be developed at the historic fishing pier. Roads and trails would be improved.

The Office and Cultural Center Alternative would use the historic

buildings for meeting, program, restaurant, performance and program space needs for private and non-profit groups. Non-historic residences would be retained and some removed to provide parking for the center. The marina would continue to provide long-term boat mooring and some public boat mooring and visitor services. Other treatments would be the same as the Proposed Action.

The Proposed Action would create a retreat and conference center in a combination of historic buildings, non-historic buildings and new construction containing meeting space, dining facilities and overnight accommodations. The existing BADM and USCG tenants and their facilities would be retained and expanded under the Proposed Action. Public services and short-term boat moorings/slips would be provided in the historic boat shop and marina area; the maximum number of boats accommodated is set at 60. Recreational and interpretive trails and programs would be provided. The waterfront landscape would be improved, the beach restored, and natural and cultural resources of the site preserved and maintained. Approximately 40 acres of natural habitat would be restored, including habitat for the federally threatened mission blue butterfly.

*Background:* Public scoping activities were conducted during July 16-23, 1997. In addition, Advisory Commission workshops and presentations were held September 2 and November 12, 1997. The Draft Environmental Impact Statement (DEIS) was released for a 60-day public review period on October 6, 1998 which ended on December 6, 1998. A public hearing was held during the review period to receive oral comments from the public on November 18, 1998. A total of 127 written letters, e-mails, and oral comments were received. Both the DEIS and the FEIS/Plan evaluate the same Proposed Action and alternatives.

The FEIS/Plan is comprised of two volumes; Volume I: DEIS, as amended; and Volume II: Response to Comments. Changes made to the DEIS include typographical corrections or points of clarification, refinement of existing mitigation, and new mitigation. Traffic effects, environmental consequences associated with potential ferry service at Fort Baker, and projected demand for wastewater services were the primary areas of additional analysis. Based on a correction to the assumptions used (and mathematical errors occurring in) the DEIS, the maximum total square footage of net new construction is reduced to 85,000sf (from 119,891sf). All text changes made in response to a comment

are clearly indicated in Volume II (with citation to relevant sections in Volume I).

**SUPPLEMENTARY INFORMATION:** Requests for information or copies of the FEIS/Plan should be directed to the Fort Baker Planning Team, Golden Gate National Recreation Area Headquarters, Fort Mason, Building 201, San Francisco, California, 94123; telephone (415) 561-3030 x2246. The FEIS/Plan will also be available for review at area libraries, and via the Internet at [www.nps.gov/goga/](http://www.nps.gov/goga/). The no-action period for the FEIS/Plan will extend for thirty (30) days after the Environmental Protection Agency's notification of the filing of the document is published in the **Federal Register**. Subsequently, the National Park Service will publish a notice of the Record of Decision in the Federal Register. The official responsible for the decision is the Regional director, Pacific West Region; the official responsible for implementation is the superintendent, Golden Gate National Recreation Area.

Dated: October 22, 1999.

**Cynthia Ip,**

*Acting Regional Director, Pacific West Region.*

[FR Doc. 99-28404 Filed 10-28-99; 8:45 am]

BILLING CODE 4310-70-P

## DEPARTMENT OF THE INTERIOR

## National Park Service

**Final Environmental Impact Statement,  
Backcountry and Wilderness  
Management Plan For Joshua Tree  
National Park, California; Notice of  
Availability**

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91-190 as amended), the National Park Service (NPS), Department of Interior, has prepared a final environmental impact statement (FEIS) assessing the potential impacts of amending the current General Management Plan (GMP), which was approved in 1995. The FEIS includes the Backcountry and Wilderness Management Plan for Joshua Tree National Park and identifies and evaluates the environmental consequences of the new proposed action and four alternatives.

*Proposal:* As described under Alternative E (the new proposed action), the NPS proposes to amend the GMP for Joshua Tree National Park. These amendments would include, but not be limited to, the following changes. The NPS would designate a trail system with prescriptions for certain uses: foot, bicycle, equestrian, and would identify

some of the unpaved roads in lands added to the park in 1994 as part of the developed zone and thus, open to motor vehicle use. Alternative E would also designate management prescriptions for recreational climbing throughout the park and would indicate locations in the park where roadside auto camping would or would not be permitted. Alternative E would prescribe the analysis of major artificial water sources installed for wildlife in designated wilderness and if such sources should be removed or maintained. It would adopt areas limited to day use only or closed to public access seasonally or permanently. It would establish group size limits for overnight stays in the backcountry and wilderness, implement the Department of Interior's Desert Tortoise Recovery Plan, and analyze proposed additions to wilderness. Implementing Alternative E would result in the protection of park lands and the reclamation of previously disturbed lands. User conflicts would be minimized by providing for a variety of visitor experiences, group sizes, trail designations, and a recreational climbing management program.

**Alternatives:** Alternatives to the new proposed action include Alternative A (the old proposed action), Alternative B (no action), Alternative C (maximum protection), and Alternative D (minimum protection). Alternative A would establish wilderness experience classes, and would designate slightly fewer miles of equestrian trails and roads. It does not provide reclamation prescriptions for the closed trails and roads. Alternative A would prohibit the replacement of existing bolts or the placement of new bolts in wilderness and would analyze only three of the four artificial water sources placed in the park's wilderness.

Under Alternative B, the park would maintain existing programs and operations. Alternative C would impose greater restrictions upon all uses in the park and afford the most rigorous and strict protection to the resources, in particular the wilderness resource. Also, those lands in the natural zone that are not wilderness would be treated and managed as if they were so designated. Alternative D would impose no restrictions on use of the old monument lands other than those that already exist. The public could use the new lands much as they were used prior to their inclusion within the park. Only those public recreational activities that are illegal in NPS or other regulations, such as hunting or operating vehicles in wilderness, would be prohibited.

The potential environmental consequences of Alternative E (the new

proposed action) and other alternatives were previously addressed in the Draft Environmental Impact Statement and the Supplement to the Draft Environmental Impact Statement. No significant adverse environmental impacts are anticipated.

**Background:** The NPS initiated scoping for the Wilderness and Backcountry Management Plan on January 30, 1995. A Draft Environmental Impact Statement was issued November 21, 1997 for a public review period which was extended from January 31, 1998 through February 28, 1998.

Approximately 1,100 written comments were received. In addition, approximately 260 persons attended three public workshops held December 2 and December 11, 1997 and on January 16, 1998. A Supplemental Environmental Impact Statement was issued November 3, 1998 for a public review period which ended January 20, 1999. Approximately 200 written comments were received. Both documents were made widely available through direct mailings, distribution to area libraries, and via the internet.

**SUPPLEMENTARY INFORMATION:** Written comments or questions regarding the final Wilderness and Backcountry Management Plan and Environmental Impact Statement should be directed to the Superintendent, Joshua Tree National Park, 74485 National Park Drive, Twentynine Palms, California 92277. Copies may be requested by contacting the park at (760) 367-5502. Copies are also available at libraries located in the park's vicinity, as well as on the park's website at <http://www.nps.gov/jotr>. The no-action period for the FEIS/MP will extend for thirty (30) days after the Environmental Protection Agency's notification of the filing of the document is published in the **Federal Register**. Subsequently, the National Park Service will publish a notice of the Record of Decision in the **Federal Register**. The official responsible for the decision is the Regional Director, Pacific West Region; the official responsible for implementation is the Superintendent, Joshua Tree National Park.

Dated: October 22, 1999.

**Cynthia Ip,**

*Acting Regional Director, Pacific West Region.*  
[FR Doc. 99-28405 Filed 10-28-99; 8:45 am]

BILLING CODE 4310-70-M

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Submission for OMB Review; Request for Comment

**AGENCY:** Overseas Private Investment Corporation.

**ACTION:** Notice and Request for Comments for Emergency Extension of the Expiration date on OPIC Form 139, Foreign Sponsor Disclosure Report in Support of an Application for Financing (OMB 3420-0017) which expires 11/30/99.

**SUMMARY:** Under the provisions of the Controlling Paperwork Burdens on the Public, The agency shall set forth in the **Federal Register** notice prescribed by § 1320.5(a)(1)(iv), unless waived or modified under this section, a statement that it is requesting emergency processing, and the time period so stated.

**ADDRESSES:** Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer.

**FOR FURTHER INFORMATION CONTACT:** *OPIC Agency Submitting Officer:* Carol Brock, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, N.W., Washington, D.C. 20527; 202/336-8563.

#### SUPPLEMENTARY INFORMATION:

**Type of Request:** Notice of request for emergency extension of the expiration date on the Foreign Shareholder Disclosure Report in Support of an Application for Financing, OPIC-139 (OMB 3420-0017) which expires 11/30/99. A ninety day extension to the expiration date is being requested.

**Title:** The Foreign Shareholder Disclosure Report in Support of an Application for Financing.

**Form Number:** OPIC-139.

**Authority for Information Collection:** Sections 231, 234 (b) and (c) of the Foreign Assistance Act of 1961, as amended.

**Abstract (Needs and Uses):** The Foreign Sponsor Disclosure Report is the principal document used by OPIC to gather information from project sponsors on whether a project might harm the U.S., and describes sponsor activities with the U.S. Government and other information for the underwriting and analysis of a project.

Dated: October 21, 1999.

**James R. Offutt,**

*Assistant General Counsel for Administrative Affairs, Department of Legal Affairs.*

[FR Doc. 99-28401 Filed 10-28-99; 8:45 am]

BILLING CODE 3210-01-P

**OVERSEAS PRIVATE INVESTMENT CORPORATION****Submission for OMB Review; Request for Comment**

**AGENCY:** Overseas Private Investment Corporation.

**ACTION:** Notice of Request for Emergency Extension of the Expiration date on OPIC Form 129, U.S. Sponsor Disclosure Report in Support of an Application for Financing (OMB 3420-0018) which expires 10/31/99.

**SUMMARY:** Under the provisions of the Controlling Paperwork Burdens on the Public, the agency shall set forth in the **Federal Register** notice prescribed by § 1320.5(a)(1)(iv), unless waived or modified under this section, a statement that it is requesting emergency processing, and the time period so stated.

**ADDRESSES:** Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer.

**FOR FURTHER INFORMATION CONTACT:** *OPIC Agency Submitting Officer:* Carol Brock, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527; 202/336-8563.

**SUPPLEMENTARY INFORMATION:**

*Type of Request:* Notice of request for emergency extension of the expiration date on the U.S. Sponsor Disclosure Report in Support of an Application for Financing, OPIC-129 (OMB 3420-0018) which expires 10/31/99. A ninety day extension to the expiration date is being requested.

*Title:* U.D. Sponsor Disclosure Report in Support of an Application for Financing.

Form Number: OPIC-129.

*Authority for Information Collection:* Sections 231, 234 (b) and (c) of the Foreign Assistance Act of 1961, as amended.

*Abstract (Needs and Uses):* The U.S. Sponsor Disclosure Report is the principal document used by OPIC to gather information from project sponsors on whether a project might harm the U.S., and describes sponsor activities with the U.S. Government and other information for the underwriting and analysis of a project.

Dated: October 21, 1999.

**James R. Offutt,**

*Assistant General Counsel for Administrative Affairs Department of Legal Affairs.*

[FR Doc. 99-28402 Filed 10-28-99; 8:45 am]

BILLING CODE 3210-01-P

**INTERNATIONAL TRADE COMMISSION**

[Investigation No. 731-TA-811 (Final)]

**Drams of One Megabit and Above From Taiwan**

**AGENCY:** United States International Trade Commission.

**ACTION:** Revised schedule for the subject antidumping investigation.

**EFFECTIVE DATE:** October 21, 1999.

**FOR FURTHER INFORMATION CONTACT:** Bob Carr (202-205-3402), 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:** On October 19, 1999, the Department of Commerce notified the Commission of its final determination. The Commission must make its final determination in antidumping investigations within 45 days after notification of Commerce's final determination, or in this case by December 2, 1999. The Commission is revising its schedule to conform with this statutory deadline.

The Commission's new schedule for the investigation is as follows: The Commission will make its final release of information on November 15, 1999; and final party comments are due on November 17, 1999.

For further information concerning this investigation see the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**Authority:** This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: October 25, 1999.

**Donna R. Koehnke,**  
*Secretary.*

[FR Doc. 99-28364 Filed 10-28-99; 8:45 am]

BILLING CODE 7020-02-P

**INTERNATIONAL TRADE COMMISSION**

Investigations Nos. 303-TA-13 (Review); 701-TA-249 (Review); and 731-TA-262, 263, and 265 (Review)

**Iron Metal Castings From India; Heavy Iron Construction Castings From Brazil; and Iron Construction Castings From Brazil, Canada, and China****Determinations**

On the basis of the record<sup>1</sup> developed in the subject five-year reviews, the United States International Trade Commission determines,<sup>2</sup> pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the countervailing duty order on heavy iron construction castings from Brazil would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission further determines<sup>3</sup> that revocation of the countervailing duty order on iron metal castings from India would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission also determines<sup>4</sup> that revocation of the antidumping duty orders on heavy iron construction castings from Brazil, Canada, and China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission further determines<sup>5</sup> that revocation of the antidumping duty orders on light iron construction castings from Brazil and China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

**Background**

The Commission instituted these reviews on November 2, 1998 (63 FR 58758), and determined on February 4, 1999, that it would conduct full reviews (64 FR 9176, February 24, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S.

<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

<sup>2</sup> Commissioner Carol T. Crawford dissenting.

<sup>3</sup> Vice Chairman Marcia E. Miller and Commissioner Jennifer A. Hillman dissenting.

<sup>4</sup> Commissioner Carol T. Crawford dissenting with regard to heavy iron construction castings from Brazil and China.

<sup>5</sup> Commissioner Carol T. Crawford dissenting.

International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on March 8, 1999 (64 F.R. 11039). The hearing was held in Washington, DC, on August 5, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

By order of the Commission.

Issued: October 25, 1999.

**Donna R. Koehnke,**  
Secretary.

[FR Doc. 99-28363 Filed 10-28-99; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-413]

### Certain Rare-Earth Magnets and Magnetic Materials and Articles Containing Same; Notice of Commission Determination Not To Review an Initial Determination Finding a Violation of Section 337; and Request for Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review a final initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation finding a violation of section 337 of the Tariff Act of 1930.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3098. Hearing-impaired individuals 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>).

**SUPPLEMENTARY INFORMATION:** On September 4, 1998, the Commission instituted an investigation based on a complaint filed by Magnequench International, Inc. (Magnequench) and Sumitomo Special Metals Co., Ltd. (SSMC). 63 *Fed. Reg.* 47319. The complaint alleged violations of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain rare-earth magnets or magnetic materials, or articles containing the same, that infringe claims 1, 4, 5, 8, 9,

or 11 of U.S. Letters Patent 4,851,058, (the '058 patent); claims 1-6, 10, 14-16, or 18-20 of U.S. Letters Patent 4,802,931 (the '931 patent); claims 13-18 of U.S. Letters Patent 4,496,395 (the '395 patent); claims 1-9, 12-20, 23-27, or 29-34 of U.S. Letters Patent 4,770,723 (the '723 patent); claims 1-6, 8-10, 13-19, 21-24, 27-35, or 37-39 of U.S. Letters Patent 4,792,368 (the '368 patent); or claims 1-3, 5, 15, 18, 19, 21, or 22 of U.S. Patent Letters 5,645,651 (the '651 patent).

On September 22, 1999, the Commission determined not review an ID granting complainants motion to withdraw from the investigation claims 1, 12, 23, 29, 30, and 32 of the '723 patent and claims 1, 13, 14, 22, 27, 32, 33, 34, and 39 of the '368 patent. Hence the claims in issue of the '723 patent and '368 patent are claims 2-9, 13-20, 24-27, 31, 33, and 34 of the '723 patent and claims 2-6, 8-10, 15-19, 21, 23, 24, 28-31, 35, 37, and 38 of the '368 patent.

The following respondents were named in the notice of investigation: Houghes International, Inc. (Houghes) of New York; International Magna Products, Inc. (IMI) of Indiana; Multi-Trend International Corp. a/k/a MTI-Modern Technology Inc. (Multi-Trend) of California; American Union Group, Inc. (AUG) of Maryland; High End Metals Corp. (High End) of Taiwan; Harvard Industrial America Inc. (Harvard) of California; H.T.I.E., Inc. (H.T.I.E.) of Pennsylvania; and CYNNY Magnets (CYNNY) of New Jersey.

On January 11, 1999, the Commission determined not to review an ID granting complainants' motion to amend the complaint and notice of investigation to add A.R.E., Inc. (A.R.E.) of Pennsylvania; NEOCO, L.C. (NEOCO) of Michigan; Beijing Jing Ma Permanent Magnets Materials Factory (Jing Ma) of China; and Xin Huan Technology Development Co., Ltd. (Xin Huan) of China as respondents.

On February 1, 1999, the Commission determined not to review an ID terminating the investigation as to respondent IMI on the basis of a consent order. On February 9, 1999, the Commission determined not to review IDs terminating the investigation as to respondents AUG, CYNNY, H.T.I.E., and Houghes on the basis of consent orders.

On May 25, 1999, the Commission determined not to review an ID granting complainants' motion for partial summary determination on the importation issue. On May 28, 1999, the Commission determined not to review an ID granting complainants' motion for summary determination on the domestic industry issue.

On August 6, 1999, the Commission determined not to review an ID finding respondents A.R.E., Jing Ma, and Xin Huan in default. On September 27, 1999, the Commission determined not to review an ID finding respondent Multi-Trend in default.

The prehearing conference and evidentiary hearing were conducted on June 9 to 18, 1999. Complainants, respondent NEOCO, and the Commission investigative attorneys (IAs) participated at the hearing. Following the filing of post-hearing submissions, closing arguments were heard on July 27, 1999.

On September 7, 1999, the ALJ issued his final ID finding a violation of section 337. His determination is based on his findings that the patents in issue are valid and enforceable, and that the accused imported magnets infringed all of the asserted claims, with the exception of claims 13-20, 25-27 and 33 of the '723 patent and claims 15-19, 21, 23, 24, 28, 30, 31, and 35 of the '368 patent.

At final disposition of this investigation, the Commission may issue (1) an order that could result in exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair action in the importation and sale of such articles. The Commission is therefore interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, entry for consumption from a foreign trade zone, or withdrawal from warehouse for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see In the Matter of: Certain Devices for Connecting Computers Via Telephone Lines, Inv. No. 337-TA-360, USITC Publication No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are the subject of this investigation, and (4) U.S. consumers. The Commission is

therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. Therefore, the Commission is interested in receiving written submissions concerning the amount of the bond that should be imposed.

#### Written Submissions

The parties to the investigation, interested Government agencies, and other interested persons or entities are encouraged to file written submissions on remedy, the public interest, and bonding.

The ALJ's final ID also contains the ALJ's recommended determination (RD) concerning remedy and bonding. The ALJ has recommended that the Commission issue a general exclusion order as well as cease and desist orders against domestic respondents A.R.E., Multi-Trend, and Harvard, and has further recommended that the Commission set the bond at 100 percent of the entered value of the infringing imports during the Presidential review period. The parties' written submissions on remedy, the public interest, and bonding should address the ALJ's RD. Complainants and the Commission investigative attorneys are requested to submit proposed remedial orders for the Commission's consideration.

All written submissions and proposed remedial orders must be filed with the Office of the Secretary no later than 5:15 p.m. on November 8, 1999. Reply submissions must be filed no later than 5:15 p.m. on November 15, 1999. No further submissions on remedy, the public interest, and bonding will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions and proposed remedial orders must file the original document and 14 true copies with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document or portion thereof in confidence must request confidential treatment unless the information contained in the document or portion thereof has already been granted such treatment during the investigation. All requests for confidential treatment should be directed to the Secretary of the Commission and must include a full

statement of the reasons that the Commission should grant such treatment. See 19 C.F.R. § 201.6. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

Nonconfidential versions of the ID, including the RD on remedy and public interest, and all other nonconfidential documents filed in the investigation are or will be available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Commission's Office of the Secretary, Dockets Branch, 500 E Street, SW., Room 112, Washington, D.C. 20436, telephone 202-205-1802.

By order of the Commission.

Issued: October 25, 1999.

**Donna R. Koehnke,**

Secretary.

[FR Doc. 99-28365 Filed 10-28-99; 8:45 am]

BILLING CODE 7020-02-P

#### DEPARTMENT OF JUSTICE

##### Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a Partial Consent Decree in *United States of America v. Calderon, et al.*, No. 96-2451 RLA (D. Puerto Rico), was lodged with the United States District Court for the District of Puerto Rico on October 4, 1999.

The proposed Partial Consent Decree would resolve the United States' allegations in this enforcement action against Defendants Enrique Calderon and Eva Garnier ("Defendants") for their alleged violations of Sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344 resulting from the unauthorized discharge of dredged or fill material into herbaceous wetlands in Mayaguez Puerto Rico without a permit.

The proposed Partial Consent Decree enjoins Defendants from discharging dredged or fill material into waters of the United States without a permit and requires Defendants to pay a \$10,000 civil penalty to the United States Treasury.

The Department of Justice will receive written comments relating to the proposed Partial Consent Decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Melaine A. Williams, Trial Attorney, Environmental Defense Section, P.O. 23986, Washington, DC 20026-3986, and should refer to *United States v.*

*Calderon, et al.*, DJ Reference No. 90-5-1-1-4413.

The proposed Partial Consent Decree may be examined at the Clerk's Office, United States District Court, District of Puerto Rico 00918-1756 (telephone number: 787-766-6160).

**Letitia J. Grishaw,**

Chief, Environmental Defense Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 99-28293 Filed 10-28-99; 8:45 am]

BILLING CODE 4410-15-M

#### DEPARTMENT OF JUSTICE

##### Notice of Lodging of Consent Decree Under the Title II of the Clean Air Act

Notice is hereby given that on September 30, 1999 to proposed Consent Decree ("Decree") in *United States v. Mazda Motor of America, Inc.*, Civil No. 1:99CV02618 (D.D.C.), was lodged with the United States District Court for the District of Columbia. The United States filed this action pursuant to Title II of the Clean Air Act, as amended, 42 U.S.C. 7521 *et seq.*, (the "Act"), and the regulations promulgated thereunder, relating to fuel evaporative emission standards applicable to new motor vehicles, and specifically the requirements that a manufacturer promptly report emission-related defects to EPA.

The Decree resolves civil claims against Mazda Motor of America, Inc. and Mazda (North America) Inc. (collectively "Mazda") that Mazda failed to timely notify EPA of an emission-related defect in the device, system, or assembly of a fuel liquid/vapor separator ("vapor separator") installed on 1989 to 1994 model year Mazda MPV minivans sold in the United States. Pursuant to the terms of the Decree, Mazda will: modify its defect investigation and reporting system; provide an extended warranty to vehicle owners; and notify all affected vehicle owners that they can have their MPVs repaired free of charge, and before the defective part might fail. The decree imposes a civil penalty in the amount of \$900,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to, *United States v. Mazda Motor of America, Inc.*, Civil No. 1:99CV02618 (D.C.C.), and D.J. Ref. # 90-5-2-1-06038.

The Decree may be examined at the office of the U.S. Attorney for the District of Columbia, 555 Fourth Street, NW, Washington, DC 20001. A copy of the Decree may be obtained by mail from the Consent Decree Library, 13th Floor, 1425 New York Avenue, NW, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of \$14.50 for the Decree (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Walker B. Smith,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 99-28292 Filed 10-28-99; 8:45 am]

BILLING CODE 4410-15-M

## DEPARTMENT OF JUSTICE

### Federal Bureau of Investigation

#### Meeting of the CJIS Advisory Policy Board

**AGENCY:** Federal Bureau of Investigation, Justice.

**ACTION:** Meeting notice.

**SUMMARY:** The purpose of this notice is to announce the meeting of the CJIS Advisory Policy Board. The CJIS Advisory Policy Board is responsible for reviewing policy issues, Uniform Crime Reporting reports, and appropriate technical and operational issues related to the programs administered by the FBI CJIS Division and thereafter, make appropriate recommendations to the FBI Director. The topics to be discussed will include the status on future enhancements to the Integrated Automated Fingerprint Identification System (IAFIS), IAFIS latent fingerprint processing, the National Crime Prevention and Privacy Compact, the Wireless Applications Test Program, the NCIC Protection Order File, and other issues related to the IAFIS, National Crime Information Center (NCIC), Law Enforcement Online, National Instant Criminal Background Check System, and UCR Programs.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement concerning the FBI CJIS Division programs or wishing to address this session should notify the Designated Federal Employee, Mr. Don M. Johnson, Section Chief, Programs Development Section (304) 625-2740, at least 24 hours prior to the start of the session.

The notification should contain the requestor's name, and corporate designation, consumer affiliation or government designation, along with a

short statement describing the topic to be addressed and the time needed for the presentation. A requestor will ordinarily be allowed not more than 15 minutes to present a topic.

**DATES AND TIMES:** The Advisory Policy Board will meet in open session from 9 a.m. until 5 p.m. on December 14-15, 1999.

**ADDRESSES:** The meeting will take place at the Marriott Riverwalk Hotel, 711 East Riverwalk, San Antonio, Texas, telephone (210) 224-4555.

**FOR FURTHER INFORMATION CONTACT:** Inquiries may be addressed to Mrs. Jennifer Hoke, Management Analyst, Advisory Groups Management Unit, Programs Development Section, CJIS Division, FBI, 1000 Custer Hollow Road, Module C3, Clarksburg, West Virginia 23606-0149, telephone (304) 625-4347, facsimile (304) 625-5090.

Dated: October 25, 1999.

**Roy G. Weise,**

*Acting Section Chief, Programs Development Section, Criminal Justice Information Services Division, Federal Bureau of Investigation.*

[FR Doc. 99-28306 Filed 10-28-99; 8:45 am]

BILLING CODE 4410-02-M

## DEPARTMENT OF JUSTICE

### Federal Bureau of Investigation

#### Meeting of the Compact Council for the National Crime Prevention and Privacy Compact

**AGENCY:** Federal Bureau of Investigation, Department of Justice.

**ACTION:** Meeting notice.

**SUMMARY:** The purpose of this notice is to announce the first meeting of the Compact Council created by the National Crime Prevention and Privacy Compact Act of 1998 (Compact). Thus far, the federal government and four states are parties to the Compact which governs the exchange of criminal history records for licensing, employment, and similar purposes. The Compact also provides a legal framework for the establishment of a cooperative Federal-state system to exchange such records.

The United States Attorney General will appoint fifteen persons from federal and state agencies to serve on the Compact Council. The Council will prescribe system rules and procedures for the effective and proper operation of the system.

Since this is the Compact Council's first meeting, the FBI will call the members to order for an organizational meeting to adopt bylaws and elect a chairman, followed by the regular meeting. Matters for discussion are

expected to include the mission and responsibilities the Compact requires of the Council, compact officers, and the states; how committees will be used to accomplish council business; state qualification requirements for the National Fingerprint File; Violence Against Children Act; and procedures for adjudicating disputes.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement with the Compact Council or wishing to address this session of the Compact Council should notify Mr. Emmet A. Rathbun at (304) 625-2720, at least 24 hours prior to the start of the session. The notification should contain the requestor's name and corporate designation, consumer affiliation, or government designation, along with a short statement describing the topic to be addressed, and the time needed for the presentation. Requestors will ordinarily be allowed not more than 15 minutes to present a topic.

**DATES AND TIMES:** The Compact Council will meet in open session from 9 a.m. until 5 p.m. on November 17, 1999, and from 9 a.m. until noon on November 18, 1999.

**ADDRESSES:** The meeting will take place at the Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW, Washington, DC, telephone (202) 484-1000.

**FOR FURTHER INFORMATION CONTACT:** Inquiries may be addressed to Mr. Emmet Rathbun, Unit Chief, Programs Development Section, CJIS Division, FBI, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306-0147, telephone (304) 625-2720, facsimile (304) 625-5388.

Dated: October 25, 1999.

**Roy G. Weise,**

*Acting Section Chief, Programs Development Section, Federal Bureau of Investigation.*

[FR Doc. 99-28307 Filed 10-28-99; 8:45 am]

BILLING CODE 4410-02-M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of information collection under review: Applicant survey.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in

accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 31, 1999 at 64 FR 47518, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 29, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202-395-7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) 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;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Extension of currently approved collection.

(2) Title of the Form/Collection: Applicant Survey.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form G-942, Human Resources Branch, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: individuals or

Households. This form is required to ensure compliance with Federal laws and regulations which mandate equal opportunity in the recruitment of applicants for Federal employment.

(5) An estimate of the total number of respondents and the amount of time estimate for an average respondent to respond: 75,000 responses at 4 minutes (.066 hours) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 4,950 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instruction, or additional information, please contact Richard A. Sloan 202-514-3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW, Washington, DC 20536. Additionally, comments, and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time any also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: October 22, 1999.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 99-28351 Filed 10-28-99; 8:45 am]

BILLING CODE 4410-10-M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of information collection under review: Early release for removal of criminal aliens in State custody convicted of nonviolent offenses.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in

the **Federal Register** on July 14, 1999 at 64 FR 38018. A correction of this notice was published in the **Federal Register** on August 3, 1999 at 64 FR 42146, allowing for a 60-day public comment period. The INS received no comments on the proposed information collection.

The purpose of this notice is to notify the public that INS is reinstating with change this information collection and to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 29, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestion regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202-395-7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) 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;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: *New Information collection.*

(2) Title of the Form/Collection: Early Release for Removal of Criminal Aliens in State Custody Convicted of Nonviolent Offenses.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: No Agency Form Number (File No. OMB-20). Office of

Investigations, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State, Local or Tribal Governments. This information collection is contained in a MOU outlined in proposed rule 1848-97. The information will be used by the INS to identify those recommended by the state to receive consideration for early release prior to completion of sentence of imprisonment and to determine eligibility in accordance with relevant statute, regulation and policy.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 33,050 responses at 1 hour per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 33,050 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202-514-3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: October 22, 1999.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 99-28352 Filed 10-28-99; 8:45 am]

BILLING CODE 4410-10-M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of information collection under review: Nonimmigrant checkout letter.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 26, 1999 at 64 FR 46723, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 29, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202-395-7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) 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;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Extension of currently approved collection.

(2) Title of the Form/Collection: Nonimmigrant Checkout Letter.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the

collection: Form G-146, Detention and Deportation Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. This form is used in making inquiries of persons in the United States or aboard concerning the whereabouts of aliens, and also requests departure information by the INS when initial investigation to locate the alien or verify his or her departure is unsuccessful.

(5) An estimate of the total number of respondents and the amount of time estimate for an average respondent to respond: 20,000 responses at 10 minutes (.166 hours) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 3,320 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202-514-3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: October 22, 1999.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 99-28353 Filed 10-28-99; 8:45 am]

BILLING CODE 4410-10-M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### Agency Information Collection Activities: Proposed Collection; Comment Request.

**ACTION:** Notice of information collection under review: Application for posthumous citizenship.

The Department of Justice, Immigration and Naturalization Service

(INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 31, 1999 at 64 FR 47519, allowing for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 29, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202-395-7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) 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;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Application for Posthumous Citizenship.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form N-644. Adjudications

Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. The information collected will be used to determine an applicant's eligibility to request posthumous citizenship status for a decedent and to determine the decedent's eligibility for such status.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 50 responses at 1 hour and 50 minutes (1.83) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 92 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202-514-3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required to contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: October 25, 1999.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 99-28426 Filed 10-28-99; 8:45 am]

BILLING CODE 4410-10-M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of information collection under review: Arrival departure record (transit without visa).

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the

Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 31, 1999 at 64 FR 47520, allowing for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 29, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202-395-7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) 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;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Arrival Departure Record (Transit Without Visa).

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I-94T. Inspections Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. The information collection is used to track the arrival and departure of aliens under the Transit Without Visa program to ensure compliance with 8 CFR 212.1(f) and 8 CFR 214.2(c).

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 200,000 responses at 4 minutes (.066) per response.

(6) As estimate of the total public burden (in hours) associated with the collection: 13,200 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202-514-3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: October 25, 1999.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 99-28427 Filed 10-28-99; 8:45 am]

BILLING CODE 4410-10-M

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## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of information collection under review: Guam visa waiver information.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork

Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 31, 1999 at 64 FR 47519, allowing for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 29, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, room 10235, Washington, DC 20530; 202-395-7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) 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;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Guam Visa Waiver Information.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I-736. Inspections Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. This form is used to record

an alien's application for a waiver of the nonimmigrant visa requirement for entry into Guam in compliance with 8 CFR 212.1(e).

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 170,000 responses at 5 minutes (.083) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 14,110 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202-514-3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: October 25, 1999.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 99-28428 Filed 10-28-99; 8:45 am]

BILLING CODE 4410-10-M

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## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of information collection under review: Monthly report naturalization papers.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 26, 1999 at 64 FR 46722,

allowing for a 60-day public comment period. No comment were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 29, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202-395-7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) 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;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Extension of currently approved collection.

(2) Title of the Form/Collection: Monthly Report Naturalization Papers.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form N-4. Adjudications Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Federal Government. This form is used by the clerk of courts that administer the oath of allegiance for naturalization to notify the Immigration

and Naturalization Service of all persons to whom the oath was administered.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 1,920 responses at approximately 30 minutes (.50) hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 960 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202-514-3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: October 25, 1999.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 99-28429 Filed 10-28-99; 8:45 am]

BILLING CODE 4410-10-M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of Information Collection under Review: Petition for Alien Finance(e).

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 31, 1999 at 64 FR 47518, allowing for a 60-day

public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 29, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202-395-7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) 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;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Petition for Alien Fiance(e).

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I-129F. Adjudications Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. Through the filing of this form a United States citizen may facilitate the entry of his/her fiance(e) into the United States so that a marriage may be concluded within 90 days of

entry between the United States citizen and the beneficiary.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 20,000 responses at 30 minutes per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 10,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202-514-3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: October 25, 1999.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 99-28430 Filed 10-28-99; 8:45 am]

BILLING CODE 4410-10-M

## DEPARTMENT OF JUSTICE

### Federal Bureau of Prisons

#### Notice of Availability and Publication of the Supplemental Final Environmental Impact Statement (SFEIS)

**AGENCY:** Federal Bureau of Prisons, DOJ.

**ACTION:** Notice of Availability of the Supplemental Final Environmental Impact Statement.

#### SUMMARY:

##### *Proposed Action*

The Federal Bureau of Prisons announces the publication of a Supplemental Final Environmental Impact Statement (SFEIS) regarding the proposed medium-security federal correctional institution at the federal correctional complex located south of Forrest City in Saint Francis County, Arkansas.

The document is being made available to provide for timely public comment and understanding of federal plans and programs with possible environmental consequences as required by the National Environmental Policy Act of 1969, as amended.

The purpose of the document is to afford the public and local officials an opportunity to learn of the Bureau's proposed planning, construction, and operation of a medium-security federal correctional institution at the federal correctional complex located south of Forrest City in Saint Francis County, Arkansas. The document is available at local libraries or a copy of the SFEIS can be obtained by contacting the Bureau of Prisons.

Interested persons are encouraged to express their views and comments on the SFEIS by submitting written comments to the Bureau of Prisons.

Items addressed in the SFEIS include, but are not limited to: utilities, traffic, noise, cultural resources and socio-economic impacts.

Written statements will be accepted until November 29, 1999.

*Written comments may be directed to:* David J. Dorworth, Chief, Site Selection and Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW, Washington, DC 20534, Telephone (202) 514-6470, Telefacsimile (202) 616-6024, [siteselection@bop.gov](mailto:siteselection@bop.gov).

Dated: October 8, 1999.

**David J. Dorworth,**

*Chief, Site Selection and Environmental Review Branch.*

[FR Doc. 99-26831 Filed 10-28-99; 8:45 am]

BILLING CODE 4410-05-P

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Submission for OMB Review; Comment Request

October 25, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills (202) 219-5096 ext. 143) or by E-Mail to [Mills-Ira@dol.gov](mailto:Mills-Ira@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs,

Attn: OMB Desk Officer for BLS DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395-7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Occupational Safety and Health Administration.

*Title:* Construction Records for Tests and Inspections for Personnel Hoists.

*OMB Number:* 1218-0231.

*Frequency:* On occasion; quarterly.

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 14,400.

*Estimated Time Per Respondent:* 15 minutes.

*Total Burden Hours:* 15,840.

*Total Annualized capital/startup costs:* \$0.

*Total annual costs (operating/maintaining systems or purchasing services):* \$0.

*Description:* Following assembly and erection of hoists, and before being put in service, an inspection and test of all functions and safety devices shall be made under the supervision of a competent person. A similar inspection and test is required following major alteration of an existing installation. All hoists shall be inspected and tested at not more than 3-month intervals.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 99-28336 Filed 10-28-99; 8:45 am]

BILLING CODE 4510-26-M

**DEPARTMENT OF LABOR****Office of the Secretary****Submission for OMB Review;  
Comment Request**

October 22, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills (202) 219-5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395-7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Occupational Safety and Health Administration.

*Title:* Construction Records for Blasting Operational.

*OMB Number:* 1218-0217.

*Frequency:* On occasion.

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 160 work sites with plans.

*Estimated Time Per Respondent:* 8 hours, once per work site.

*Total Burden Hours:* 1,280.

*Total annual costs (operating/maintaining systems or purchasing services):* \$227,200.

*Description:* The construction standard for blasting operations (1926.903(k)(3)(I) requires employers to post warning signs or use other alternative means to prevent premature detonation of electric blasting caps and explosives attached to them by mobile radio transmitters.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 99-28337 Filed 10-28-99; 8:45 am]

BILLING CODE 4510-26-M

**DEPARTMENT OF LABOR****Office of the Secretary****Submission for OMB Review;  
Comment Request**

October 22, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills (202) 219-5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395-7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Occupational Safety and Health Administration.

*Title:* Trucks Used Underground to Transport Explosives, Inspection Certifications (1926.903(e)).

*OMB Number:* 1218-0227.

*Frequency:* Weekly.

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 1.

*Estimated Time Per respondent:* 10 minutes every week.

*Total Burden Hours:* 9 hours.

*Total Annualized capital/startup costs:* \$0.

*Total annual costs (operating/maintaining systems or purchasing services):* \$0.

*Description:* The construction standard on underground transportation of explosives, 1926.903(e), requires certification of a weekly maintenance inspection of trucks used for this purpose. The inspection certification, which attests to the safety if the truck's electrical systems, is necessary to ensure compliance with the standards.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 99-28338 Filed 10-28-99; 8:45 am]

BILLING CODE 4510-26-M

**DEPARTMENT OF LABOR****Office of the Secretary****Submission for OMB Review;  
Comment Request**

October 25, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219-5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395-7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
  - Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
  - Enhance the quality, utility, and clarity of the information to be collected; and
  - Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.
- Agency:* Occupational Safety and Health Administration.  
*Title:* Rigging Equipment for Material Handling—29 CFR 1926.251.  
*OMB Number:* 1218-0233.  
*Frequency:* On occasion.  
*Affected Public:* Business or other for-profit.  
*Number of Respondents:* 18,940.  
*Estimated Time Per respondent:* 5 minutes.  
*Total Burden Hours:* 1,515 hours.  
*Total Annualized capital/startup costs:* \$0.  
*Total annual costs (operating/maintaining systems or purchasing services):* \$0.

*Description:* The construction standard on rigging equipment for material handling, 29 CFR 1926.251(c)(15)(ii), requires employers to retain a certificate of the proof-test performed on welded end wire rope attachments. The certification, prepared by the manufacturer or other equivalent entity, attest to the safety of the attachments after welding by testing them at twice their rated capacity.

**Ira L. Mills.**

*Departmental Clearance Officer.*

[FR Doc. 99-28339 Filed 10-28-99; 8:45 am]

BILLING CODE 4510-26-M

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Submission for OMB Review; Comment Request

October 25, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in

accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219-5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395-7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Employment and Training Administration.

*Title:* Quarterly determinations, Allowance Activities, and Employment Services Under the Trade Act.

*OMB Number:* 1205-0016.

*Frequency:* Quarterly.

*Affected Public:* State, Local, or Tribal government.

*Number of Respondents:* 52.

*Estimated Time Per respondent:* 12 minutes.

*Total Burden Hours:* 3,420 hours.

*Total Annualized capital/startup costs:* \$0.

*Total annual costs (operating/maintaining systems or purchasing services):* \$0.

*Description:* Quarterly data on Trade Adjustment Assistance and NAFTA Transitional Assistance activity is needed for timely program evaluation necessary for competent administration and for providing legally mandated

reports to the Congress on the Trade Adjustment Assistance Program.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 99-28340 Filed 10-28-99; 8:45 am]

BILLING CODE 4510-30-M

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Submission for OMB Review; Comment Request

October 25, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219-5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer, for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395-7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Bureau of Labor Statistics.

*Title:* Cognitive and Psychological Research.

*OMB Number:* 1220-0141.

*Frequency:* Other (as needed).

*Affected Public:* Individuals or households; business or for-profit; not-for-institutions; State, Local or Tribal Government.

*Number of Respondents:* 4,150.

*Estimated Time Per respondent:* 2.2 hours.

*Total Burden Hours:* 9,000 hours.

*Total Annualized capital/startup costs:* \$0.

*Total annual costs (operating/maintaining systems or purchasing services):* \$0.

*Description:* The proposed laboratory research will be conducted from Fiscal Year (FY) 2000 through FY 2002 to enhance data quality in the Bureau of Labor Statistics' (BLS) surveys. Improvements will be made by examining psychological and cognitive aspects of the BLS data collection procedures, including questionnaire design, interviewing procedures, and administration technology.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 99-28341 Filed 10-28-99; 8:45 am]

BILLING CODE 4510-24-M

## DEPARTMENT OF LABOR

### Employment Standards Administration Wage and Hour Division

#### Minimum Wage for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits

determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute in the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified class engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined in prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S-3014, Washington, DC 20210.

#### Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under The Davis-Bacon and

Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

#### Volume I

None.

#### Volume II

Pennsylvania:

PA990002 (Mar. 12, 1999)  
PA990003 (Mar. 12, 1999)  
PA990017 (Mar. 12, 1999)  
PA990038 (Mar. 12, 1999)  
PA990042 (Mar. 12, 1999)

Virginia:

VA990057 (Mar. 12, 1999)

#### Volume III

Florida:

FL990001 (Mar. 12, 1999)  
FL990015 (Mar. 12, 1999)  
FL990049 (Mar. 12, 1999)  
FL990053 (Mar. 12, 1999)  
FL990055 (Mar. 12, 1999)

#### Volume IV

Michigan:

MI990001 (Mar. 12, 1999)  
MI990002 (Mar. 12, 1999)  
MI990003 (Mar. 12, 1999)  
MI990004 (Mar. 12, 1999)  
MI990005 (Mar. 12, 1999)  
MI990012 (Mar. 12, 1999)  
MI990030 (Mar. 12, 1999)  
MI990031 (Mar. 12, 1999)  
MI990046 (Mar. 12, 1999)  
MI990047 (Mar. 12, 1999)  
MI990060 (Mar. 12, 1999)  
MI990062 (Mar. 12, 1999)  
MI990063 (Mar. 12, 1999)  
MI990066 (Mar. 12, 1999)  
MI990067 (Mar. 12, 1999)  
MI990068 (Mar. 12, 1999)  
MI990069 (Mar. 12, 1999)  
MI990070 (Mar. 12, 1999)  
MI990071 (Mar. 12, 1999)  
MI990072 (Mar. 12, 1999)  
MI990073 (Mar. 12, 1999)  
MI990074 (Mar. 12, 1999)  
MI990075 (Mar. 12, 1999)  
MI990076 (Mar. 12, 1999)  
MI990077 (Mar. 12, 1999)  
MI990078 (Mar. 12, 1999)  
MI990079 (Mar. 12, 1999)  
MI990080 (Mar. 12, 1999)  
MI990081 (Mar. 12, 1999)  
MI990082 (Mar. 12, 1999)  
MI990083 (Mar. 12, 1999)  
MI990084 (Mar. 12, 1999)  
MI990085 (Mar. 12, 1999)  
MI990086 (Mar. 12, 1999)  
MI990087 (Mar. 12, 1999)  
MI990088 (Mar. 12, 1999)

#### Volume V

Kansas:

KS990006 (Mar. 12, 1999)  
KS990008 (Mar. 12, 1999)  
KS990009 (Mar. 12, 1999)  
KS990011 (Mar. 12, 1999)  
KS990012 (Mar. 12, 1999)  
KS990013 (Mar. 12, 1999)  
KS990025 (Mar. 12, 1999)  
KS990026 (Mar. 12, 1999)

KS990069 (Mar. 12, 1999)

KS990070 (Mar. 12, 1999)

Louisiana:

LA990005 (Mar. 12, 1999)

Texas:

TX990005 (Mar. 12, 1999)

TX990010 (Mar. 12, 1999)

TX990014 (Mar. 12, 1999)

TX990018 (Mar. 12, 1999)

TX990019 (Mar. 12, 1999)

TX990054 (Mar. 12, 1999)

TX990100 (Mar. 12, 1999)

TX990114 (Mar. 12, 1999)

#### Volume VI

None.

#### Volume VII

None.

### General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1-800-363-2068

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 21st day of October 1999.

**Carl J. Poleskey,**

*Chief, Branch of Construction Wage Determinations.*

[FR Doc. 99-27996 Filed 10-28-99; 8:45 am]

BILLING CODE 4510-27-M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

#### Proposed Extension of Information Collection; 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 continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This 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 Pension and Welfare Benefits Administration is soliciting comments concerning the information collection requests (ICR) incorporated in regulation pertaining to the required content of Summary Plan Descriptions under ERISA, 29 CFR 2520.102-3. A copy of the ICR may be obtained by contacting the office listed in the addressee section of this notice.

**DATES:** Written comments must be submitted to the office shown in the addressee section below on or before December 28, 1999.

**ADDRESSES:** Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N-5647, Washington, DC 20210. Telephone: (202) 219-4782; Fax: (202) 219-4745. These are not toll-free numbers.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 104(b)(1) of the Employee Retirement Security Act of 1974 (ERISA) requires that the administrator of an employee benefit plan furnish plan participants and beneficiaries with Summary Plan Description (SPDs) which describe, in language understandable to an average plan participant, the benefits, rights and obligations of the participants in the plan. Plan administrators are required to furnish SPDs to participants and beneficiaries within 90 days after the participant is covered by the plan. The information required to be contained in the SPD is set forth in section 102(b) of

the statute. To the extent that there is a material modification in the terms of the plan or a change in the information required to be contained in the SPD, section 104(b)(1) requires that the administrator furnish participants and beneficiaries with a summary of such change within 210 days following the end of the plan year in which the change was adopted. Regulations published at 29 CFR 2520.102-3 provide guidance on the required contents of the SPD.

#### Review Focus

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Current Actions:** The Department is not proposing or implementing changes to the existing ICR at this time. Comments received in response to this notice will be incorporated in the submission to OMB for continued clearance of the ICR.

**Type of Review:** Extension of currently approved collections of information.

**Agency:** Pension and Welfare Benefits Administration.

**Titles:** Summary Plan Description Requirements under ERISA (SMM/SPD).

**OMB Number:** 1210-0039.

**Affected Public:** Individuals or households; business or other for-profit; not-for-profit institutions.

**Respondents:** 2,027,293.

**Frequency of Response:** On occasion.

**Responses:** 160,703,000.

**Estimated Total Burden Hours:** 1,928,889.

**Total Burden Cost (Operating and Maintenance):** \$216,316,365.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection

request; they will also become a matter of public record.

Dated: October 26, 1999.

**Gerald B. Lindrew,**

*Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.*

[FR Doc. 99-28420 Filed 10-28-99; 8:45 am]

BILLING CODE 4510-26-M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Experimental & Integrative Activities; 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 Experimental & Integrative Activities (1193).

*Date & Time:* November 8, 1999; 8:00 a.m.–5:00 p.m.

*Place:* Room 320, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Lawrence E. Brandt, Digital Government Program, Experimental and Integrative Activities, Room 1160, National Science Foundation, 4201 Wilson Boulevard, VA 22230 Telephone: (703) 306-1981.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

*Agenda:* To review and evaluate CISE Major Research Instrumentation proposals submitted in response to the program announcement (NSF 99-103).

*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: October 25, 1999.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 99-28418 Filed 10-28-99; 8:45 am]

BILLING CODE 7555-01-M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Experimental & Integrative Activities; 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 Experimental & Integrative Activities (1193).

*Date & Time:* December 14-15, 1999; 8:00 a.m.–5:00 p.m.

*Place:* Room 1020, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Lawrence E. Brandt, Digital Government Program, Experimental and Integrative Activities, Room 1160, National Science Foundation, 4201 Wilson Boulevard, VA 22230 Telephone: (703) 306-1981.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

*Agenda:* To review and evaluate CISE Major Research Instrumentation proposals submitted in response to the program announcement (NSF 99-103).

*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: October 25, 1999.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 99-28419 Filed 10-28-99; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

[IA 99-049]

### Randall G. Falvey; Order Prohibiting Involvement in NRC-Licensed Activities

**I**

Randall G. Falvey was employed from January 3, 1994 to October 30, 1998, as the training manager for the Wackenhut Corporation, the security contractor of the Wisconsin Public Service Corporation (Licensee). The Licensee holds license No. DPR-43 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on June 16, 1974. The license authorizes the operation of the Kewaunee Nuclear Power Plant (facility) in accordance with the conditions specified therein. The facility is located on the Licensee's site near Green Bay, Wisconsin.

**II**

From December 21, 1998 to June 21, 1999, an investigation of licensed activities was conducted by the NRC Office of Investigations (OI) in response to information provided to NRC Region III by the Licensee on October 14, 1998.

The Licensee reported that information had been received which indicated the annual test firing of shotguns used by the security force at the Kewaunee Nuclear Power Plant was not performed when due. The Licensee conducted an investigation and determined that Mr. Randall G. Falvey, the training manager for the Wackenhut Corporation, was assigned the responsibility for ensuring that each firearm at this site, including shotguns, was test fired annually. The investigation by the Licensee determined that Mr. Falvey had not ensured that 11 shotguns during 1997 and nine shotguns during 1998 were tested. The investigation by the Licensee also established that Mr. Falvey falsified the records of those tests in order to show that the tests had been conducted. The Licensee also reported that two shotguns which Mr. Falvey had not tested and for which he had falsified test records, failed to properly cycle during the test firing following the identification of this issue.

The OI investigation also determined that during the Licensee's investigation of this matter, Mr. Falvey provided false information about the test firings to the Licensee's Security Director for the Kewaunee Nuclear Power Plant. In a written statement to the Security Director, Mr. Falvey wrote that he had completed the test firings on the shotguns. However, review of Kewaunee Plant security access records during the licensee's investigation for May 1997 and May and June 1998, on the dates that Mr. Falvey indicated that the shotguns were tested, showed both that Mr. Falvey had, in some instances, not entered areas where shotguns were stored and, in other instances, that Mr. Falvey had not stayed in an area long enough to retrieve a shotgun for testing and replace it with another. Security personnel were interviewed and none could recall retrieving or firing a shotgun at Mr. Falvey's request. Furthermore, Mr. Falvey could not provide the name of any individual who may have retrieved or test fired a shotgun at the direction of Mr. Falvey. Other records indicated that none of these firearms were taken to the firing range or cleaned after test firing.

Condition No. 2.C.(4) of the NRC operating license for the Kewaunee Nuclear Power Plant requires the Licensee to maintain in effect and fully implement all provisions of the Commission-approved Kewaunee Nuclear Power Plant Security Manual and the Licensee's Security Implementing Procedure (SIP) 30.02-10, "Testing, Inspection, and Maintenance of Security Equipment." The annual testing of site-assigned weapons,

including shotguns, and the creation and maintenance of records of those tests are required by the NRC-approved Kewaunee Nuclear Power Plant Security Manual and the procedures implementing that manual. 10 CFR 50.9(a), "Completeness and Accuracy of Information," provides, in part, that information required by a condition of a Commission license to be maintained by a licensee must be complete and accurate in all material respects. 10 CFR 50.5(a)(2), "Deliberate Misconduct," provides in part that a contractor employee of a Commission licensee may not deliberately submit to a licensee or a licensee's contractor information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. The records of the shotgun tests are material to the NRC because each record helps to demonstrate the Licensee's compliance with the requirements of the NRC-approved Kewaunee Nuclear Power Plant Security Manual. Based on the Licensee's and OI's investigations, it appears that Randall G. Falvey deliberately provided information to the Licensee that he knew to be incomplete or inaccurate in some respect material to the NRC, in violation of 10 CFR 50.5. In particular, on October 12, 1998, Mr. Falvey created false records indicating that a number of shotguns had been tested during May 1997 and May-June 1998, and on October 14, 1998, Mr. Falvey told the Licensee's Security Director that the shotguns had been tested as required.

The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirements to provide information and maintain records that are complete and accurate in all material respects and to refrain from deliberate misconduct. The actions of Randall G. Falvey in causing the Licensee to violate 10 CFR 50.9 and his violation of 10 CFR 50.5 have raised serious doubt as to whether Mr. Falvey can be relied upon to comply with NRC requirements and to provide complete and accurate information to NRC licensees.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Randall G. Falvey were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Randall G. Falvey be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of this Order. Additionally, Randall G.

Falvey is required to notify the NRC of his first employment in NRC-licensed activities for the three years following the prohibition period.

#### IV

Accordingly, pursuant to sections 103, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 150.20, *It is hereby ordered that:*

1. Randall G. Falvey is prohibited for three years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Randall G. Falvey is currently involved with a licensee in NRC-licensed activities, he must cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer.

3. For a period of three years after the three year period of prohibition has expired, Randall G. Falvey shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in NRC-licensed activities. In the first notification Randall G. Falvey shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Randall G. Falvey of good cause.

#### V

In accordance with 10 CFR 2.202, Randall G. Falvey must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of

Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Randall G. Falvey or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemaking and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532-4351, and to Randall G. Falvey if the answer or hearing request is by a person other than Mr. Falvey. If a person other than Randall G. Falvey requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Randall G. Falvey or a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be effective and final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

For the Nuclear Regulatory Commission.

Dated this 19th day of October 1999  
Rockville, Maryland.

**Frank J. Miraglia, Jr.,**

*Deputy Executive Director for Reactor Programs.*

[FR Doc. 99-28414 Filed 10-28-99; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-315 and 50-316]

### Indiana Michigan Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-58 and DPR-74 issued to Indiana Michigan Power Company (the licensee) for operation of the Donald C. Cook Nuclear Power Plant, Units 1 and 2, located in Berrien County, Michigan.

The proposed amendments involve the resolution of an unreviewed safety question (USQ) related to certain small-break loss-of-coolant accident scenarios for which there may not be sufficient containment recirculation sump water inventory to support continued operation of the emergency core cooling system and containment spray system pumps during and following switchover to cold leg recirculation. Resolution of this issue consists of a combination of physical plant modifications, new analyses of containment recirculation sump inventory, and resultant changes to the accident analyses to ensure sufficient water inventory in the containment recirculation sump. In addition, the licensee proposes to change the Technical Specifications (T/S) dealing with the refueling water storage tank (RWST) inventory and temperature, the required amount of ice in each ice basket in the containment, and the delay to start the containment air recirculation/hydrogen skimmer fans.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its

analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed T/S changes are a result of the planned modifications being performed to ensure the original design basis functional capability of the containment recirculation sump. These planned modifications, and the associated changes to input assumptions of related safety analyses, do not result in a condition where the material and construction standards that were applicable prior to the changes are altered. The integrity of safety-related systems, structures, and components is maintained within the limits previously approved. The planned modifications to the facility do not create any new initiators for any accident, nor do they create any new credible limiting single failure, nor do they result in any event previously deemed incredible being made credible. The existing separation of the control and protection functions for the reactor core and fuel, reactor coolant system, and the containment and containment systems are not adversely affected. In addition, the functional requirements of safety-related systems, structures, and components, which are related to accident mitigation, have not been altered.

The proposed T/S changes increasing the minimum RWST contained inventory have no impact on the initiation of an accident. The RWST is used to mitigate the consequences of an accident. There are no new failure modes involving the RWST that could differently initiate any of the previously evaluated accidents. This is because the RWST is located outside containment in an area where it is not credible for a failure of the RWST to affect the reactor core and fuel, reactor coolant system, and the containment and containment systems.

The proposed T/S changes reflect planned modifications to the ESFAS [engineered safety features actuation system] actuation logic and to the time delay for starting of the CEQ [containment air recirculation/hydrogen skimmer] fans, and opening of the component cooling water supply and return valves and hydrogen skimmer valves to the CEQ fans. The proposed changes have no impact on the initiation of an accident. The planned modifications do not introduce any new failure modes for the CEQ fans or associated valves.

The proposed T/S changes reflect the minimum ice weight used in the existing analyses of containment recirculation sump inventory and the associated analyses, plus an allowance for weighing uncertainty. The proposed changes have no impact on the initiation of an accident.

Therefore, the probability of an accident previously evaluated will not be increased by these changes.

The proposed T/S changes, and the associated modifications being performed, will ensure the capability of the containment recirculation sump, and the containment

structures, systems, and components, to meet the original design basis requirements for the facility. The proposed changes will ensure that the minimum required water inventory is maintained in the containment recirculation sump at levels sufficient to prevent vortexing in the sump. Therefore, the original evaluation of the consequences of previously evaluated accidents as described in the Donald C. Cook Nuclear Plant (CNP) Updated Final Safety Analysis Report (UFSAR) will not be affected.

The proposed T/S changes do not affect the integrity of the fuel assembly or reactor internals, or any fission product barrier, such that their function in the control of radiological consequences is affected. In addition, the response of safety-related systems to mitigate previously evaluated accidents as described in the CNP UFSAR, will not be adversely affected or prevented. There is no effect on the assumptions previously made in the radiological consequence evaluations, and mitigation of the radiological consequences of the accidents described in the CNP UFSAR is not affected as further described below. The accident analyses performed to determine the effects of a LOCA demonstrate that decay heat is removed, and long-term core cooling is assured with these changes. As a result, design basis accident analyses affected by these T/S changes remain valid with the incorporation of the revised accident analyses input assumptions. Therefore, the consequences of an accident previously evaluated will not be increased by these changes.

The proposed T/S changes for the RWST do not increase the consequences of any previously evaluated accident. Increasing the minimum deliverable RWST volume of water provides assurance that the ECCS and CTS are capable of performing their design basis functions to mitigate the consequences of a LOCA or main steam line break (MSLB) by ensuring adequate containment recirculation sump inventory.

The proposed T/S changes for the CEQ fans and valves do not increase the consequences of any previously evaluated accident. The design basis functions of the CEQ fans and valves in maintaining containment integrity following a LOCA or MSLB continue to be met. In addition, the proposed change provides additional assurance that the ECCS and CTS remain capable of performing their design basis functions in mitigating the consequences of a LOCA or MSLB by ensuring adequate containment recirculation sump inventory. The planned modification to shorten the time delay for the CEQ fans and valves will delay initiation of CTS for a small break LOCA. Delaying CTS initiation results in a period when any fission products released from the reactor core due to possible fuel damage are not absorbed by CTS and held in solution in the containment recirculation sump. However, a small break LOCA does not result in reactor fuel damage of the magnitude that would increase offsite dose because of the lack of fission product removal by CTS. For a large break LOCA involving the possibility of more significant fuel damage, there will be no discernable delay in CTS initiation because of the

proposed T/S changes. Therefore, the consequences of a LOCA will not be increased by the proposed T/S changes.

The proposed T/S changes for the ice condenser ice weight do not increase the consequences of a LOCA or MSLB. The minimum end-of-cycle ice weight is consistent with the assumptions in the accident analyses. Additional ice is loaded into the ice baskets based on sublimation of 10% over an eighteen-month period so that the minimum ice weight of 1132 pounds is available at the end of each operating cycle. At other times throughout the cycle, there is additional margin because the ice that is assumed to sublime later in the cycle is still in the ice basket. The 1% weighing allowance provides additional assurance that the actual weight of ice meets the analyses requirement of 1132 pounds.

Therefore, the probability of occurrence or the consequences of accidents previously evaluated are not increased.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Sufficient containment recirculation sump inventory is necessary during the mitigation of both MSLB and LOCA events. The proposed T/S changes do not create the possibility of any other type of accident. The proposed T/S changes are a result of the planned modifications being performed to ensure the original design basis functional capability of the containment recirculation sump. These planned modifications, and the associated changes to input assumptions of related safety analyses, do not result in a condition where the material and construction standards that were applicable prior to the changes are altered. The integrity of safety-related systems, structures, and components is maintained within the limits previously approved.

The planned modifications to the facility do not create any new initiators for any accident, nor do they create any new credible limiting single failure, nor do they result in any event previously deemed incredible being made credible. The existing separation of the control and protection functions for the reactor core and fuel, reactor coolant system, and the containment and containment systems are not adversely impacted. In addition, the functional requirements of safety-related systems, structures, and components, which are related to accident mitigation, have not been altered.

The proposed T/S changes for the RWST cannot create the possibility of an accident. There are no failure modes involving the RWST that could initiate an accident. This is because the RWST is located outside containment in an area where it is not credible for a failure of the RWST to affect the reactor core and fuel, reactor coolant system, and the containment and containment systems.

The proposed T/S changes for the CEQ fans and valves cannot create the possibility of an accident. The changes do not introduce any new failure modes for the CEQ fans or associated valves. Operation of the CEQ fans and valves cannot initiate an accident.

The proposed T/S changes for the ice condenser ice weight cannot create the

possibility of an accident. The ice condenser has no function during normal operation. It is a passive system that functions after an accident has already occurred. The proposed T/S changes to the ice weight do not alter any other physical characteristics of the ice condenser, nor does it change the function of the ice condenser. The proposed ice weights are less than the maximum weight supported by the structural analyses for the ice baskets. No new failure mechanisms are introduced by this change.

Therefore, it is concluded that the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The margin of safety pertinent to the proposed T/S changes includes providing assurance that emergency core cooling, containment cooling and pressure suppression, and containment spray functional requirements will be met following a design basis accident, specifically for LOCA or MSLB events. Assurance of minimum required containment recirculation sump inventory during and following switchover of suction for the ECCS and CTS pumps from the RWST to the containment recirculation sump provides this assurance.

The planned modifications have no adverse effect on the availability, operability, or functional performance of the safety-related systems, structures, and components required for mitigating the effects of design basis accidents. In fact, these planned modifications are intended to ensure the original design basis functional capabilities of the containment recirculation sump, and other containment systems, structures, and components, to support ECCS, ice condenser, and CTS operation, and to ensure that the containment structure and systems provide an effective fission product barrier. However, the planned modifications do require changes to the T/S, but they do not prevent the performance of any surveillance requirement currently specified in the CNP T/S.

The proposed T/S changes for the RWST provide assurance that sufficient water is available to support the ECCS and CTS in performance of their design basis functions to mitigate the consequences of a LOCA or MSLB. Therefore, the margin of safety provided by the ECCS and CTS associated with containment integrity and with assurance of post-LOCA long-term core cooling is preserved by these proposed changes.

The proposed T/S changes for the CEQ fans and valves provide assurance that the original design basis functional capabilities of the containment are preserved. In addition, by increasing ice melt rate in the early stages of a small break LOCA, the design basis functions of the ECCS and CTS during and after switchover to cold leg recirculation are preserved. Finally, the changes to containment pressure response resulting from starting the CEQ fans and opening the associated valves earlier in a LOCA than in previous analyses do not result in a reduction in the capability of ECCS during the reactor vessel reflood period.

Therefore, the margin to safety provided by the CEQ fans and valves associated with containment integrity, assurance of post-LOCA long-term core cooling, and ECCS performance is preserved by these proposed changes.

The proposed T/S changes for the ice condenser ice weight provides assurance that the ice condenser will provide sufficient pressure suppression capability to limit the containment peak pressure transient to less than the design limit and will contain sufficient heat removal capability to condense the RCS volume released during a LOCA. The proposed T/S changes maintain the appropriate distribution of ice through the containment bays. The required concentration of sodium tetraborate in the ice bed is not changed. There is sufficient boron in the ice bed to ensure adequate boron concentration in the containment recirculation sump following a LOCA when combined with the water inventory from the RWST, RCS leakage, and safety injection accumulators. The increase in the allowance for ice sublimation does not reduce the margin of safety. The original allowance was conservatively estimated to be 10% over an eighteen-month period. There was no operating ice condenser plant data for determining actual sublimation at the time that allowance was made. Since that time, actual data obtained has demonstrated that 10% is a reasonable, bounding value. Stating the ice weight requirement as an end-of-cycle value does not impact the margin of safety because the allowance for sublimation will be verified during the as-found weighing of the ice baskets.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92 are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public

and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 29, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons

why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no

significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to Jeremy J. Euto, Esquire, 500 Circle Drive, Buchanan, MI 49107, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 1, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

Dated at Rockville, Maryland, this 25th day of October 1999.

For the Nuclear Regulatory Commission.

**Carl F. Lyon,**

*Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 99-28415 Filed 10-28-99; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Draft Regulatory Guide; Availability

The Nuclear Regulatory Commission has issued for public comment a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG-1094 (which should be mentioned in all correspondence concerning this draft guide) has been developed to provide a comprehensive fire protection guidance document, and to identify the scope and depth of fire protection that the staff has determined to be acceptable for operating nuclear plants. This guide may be used for licensee self-assessments and as the deterministic basis for future rulemaking. This guide has been developed from a compilation of fire protection regulations, generic communications, Branch Technical Positions, and other NRC guidance. In addition, as appropriate, new guidance is provided where the existing guidance is weak or non-existent. The specific NRC fire protection requirements applicable to any given operating reactor are a function of licensing dates, specific license conditions, rule applicability statements, approved exemptions/deviations, and individual plant Safety Evaluation Reports (SERs). It is not possible to capture in a single guide all the compliance alternatives that have been previously accepted by the NRC for a given plant. This guide presents the best available methods for meeting fire protection requirements and objectives that are acceptable to the Commission, and will be used in the evaluation of fire protection programs for operating nuclear power plants. Nothing in this guide prohibits a licensee from proposing an alternative method(s) for complying with specified portions of the Commission's regulations.

The draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to David L. Meyers, Chief, Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory

Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC 20555-0001. Comments will be most helpful if received by January 7, 2000.

You may also provide comments via the NRC's Technical Conference website (<http://techconf.llnl.gov/cgi-bin/topics>). For information contact Ms. Carol Gallagher, (301) 415-5905; e-mail [CAG@nrc.gov](mailto:CAG@nrc.gov). For information about the draft guide and the related documents, contact Mr. E.A. Connell, (301) 415-2838; e-mail [EAC@nrc.gov](mailto:EAC@nrc.gov).

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC, and at <http://techconf.llnl.gov/cgi-bin/topics>. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Reproduction and Distribution Services Section; or by fax to (301) 415-2289, or by e-mail to [Distribution@nrc.gov](mailto:Distribution@nrc.gov). Telephone requests cannot be accommodated. Regulatory Guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 25th day of October 1999.

For the Nuclear Regulatory Commission.

**John N. Hannon,**

*Chief, Plant Systems Branch, Division of System Safety and Analysis, Office of Nuclear Reactor Regulation.*

[FR Doc. 99-28413 Filed 10-28-99; 8:45 am]

BILLING CODE 7590-01-P

## OFFICE OF MANAGEMENT AND BUDGET

### Public Availability of Agency Inventories Under the Federal Activities Inventory Reform Act of 1998 (Public Law 105-270) ("FAIR Act")

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Notice of Public Availability of Commercial Activities Inventories.

**SUMMARY:** The Office of Management and Budget (OMB) hereby announces that the FAIR Act Commercial Activities Inventories are now available to the public from the agencies listed below.

The "Federal Activities Inventory Reform Act of 1998" (Public Law 105-270) ("FAIR Act") requires that OMB publish an announcement of public availability of agency Commercial Activities Inventories upon completion of OMB's review and consultation process concerning the agencies' inventory submissions. OMB has completed this process for the agencies listed below. Further announcements will be published as OMB completes the review process for additional agencies. Commercial Activities Inventories are now available from the following agencies:

#### Agency and Contact

Advisory Council on Historic Preservation—Carol McLain, 202-606-8511  
 Armed Forces Retirement Home—Richard Conoboy, 202-722-3228.  
 Broadcasting Board of Governors—Dennis Sokol, 202-619-3988.  
 Commission on Fine Arts—Jeff Carson, 202-504-2200  
 Commodity Futures Trading Commission—Emory Beville, 202-418-5187  
 Consumer Product Safety Commission—Edward E. Quist, 301-504-0029 ext. 2240  
 Defense Nuclear Facilities Safety Board—Andrew Thibadeau at 202-694-7000  
 Department of Energy—Mark R. Hively, 202-586-5655, e-mail: [mark.hively@hq.doe.gov](mailto:mark.hively@hq.doe.gov), web site:  
 Department of the Interior—Jennings Wong, 202-208-6704; web site: [www.ios.doi.gov/pam/pamhome.html](http://www.ios.doi.gov/pam/pamhome.html)  
 Department of Labor—Al Stewart, 202-693-4021  
 Equal Employment Opportunity Commission—Allan Fisher, 202-663-4201  
 Federal Election Commission—John O'Brien, 202-694-1215  
 Federal Energy Regulatory Commission—Paul McKee, 202-208-1088  
 Federal Housing Finance Board—David A. Lee, 202-408-2514  
 Federal Financial Institutions Examination Council Appraisal Subcommittee—Marc L. Weinberg, General Counsel, 202-872-7520  
 Federal Mediation and Conciliation Service—Jame Lorber, 202-606-5444  
 Federal Trade Commission—Elliot Davis, 202-326-2022

Holocaust Memorial Council and Museum—Jay Gaglione, 202-314-0336

International Trade Commission—Charles W. Sole, Jr., 202-205-2746

Japan-United States Friendship Commission—Margaret Mihori, 202-418-9800

Kennedy Center for the Performing Arts—Jared Barlage, 202-416-8721

National Credit Union Administration—Michael J. McNeill, 703-518-6570

National Gallery of Art—Bill Roache, 202-842-6329

National Science Foundation—Mitch Crawford 703-306-1101

Nuclear Regulatory Commission—Ronald D. Thompson, 301-415-7305

Offices of Inspector General:  
Agency for International Development—Wayne Watson, 202-712-1207 or 712-0010

Department of Housing and Urban Development—Stanley J. McLeod, 202-708-3444 ext. 156

Environmental Protection Agency—John C. Jones, 202-260-3137

Farm Credit Administration—Elizabeth Dean, 703-883-4036

Federal Communications Commission—Charles Willoughby, 202-418-0472

National Labor Relations Board—Emil George, 202-273-1960

National Aeronautics and Space Administration—Frank LaRocca, 202-358-2575

National Archives and Records Administration—James Springs, 301-713-7300, ext. 224 or Kat Grillo, 301-713-7300, ext. 221

Nuclear Regulatory Commission—David C. Lee, 301-415-5930

Securities and Exchange Commission—Walter Stachnik, Inspector General, 202-942-4461

Social Security Administration—John Byrnes, 410-966-9136

Office of Personnel Management—Kenneth McMahill, 202-606-2494

Railroad Retirement Board—Henry M. Valiulis, 312-751-4520

Small Business Administration—James Van Wert, 202-205-6610

Securities and Exchange Commission—Donald Sherman, 202-942-4000

U.S. Commission on Civil Rights—George Harbison, 202-376-8356

Woodrow Wilson Center—Ronnie Dempsey, 202-691-4216

**Clarence C. Crawford,**  
*Associate Director for Administration.*  
[FR Doc. 99-28423 Filed 10-28-99; 8:45 am]

BILLING CODE 3110-01-P

## RAILROAD RETIREMENT BOARD

### Proposed Data Collection Available for Public Comment and Recommendations

**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

Employer's Quarterly Report of Contributions Under the Railroad Unemployment Insurance Act; OMB 3220-0012.

Under Section 8 of the Railroad Unemployment Insurance Act (RUIA), as amended by the Railroad Unemployment Improvement Act of 1988 (Public Law 100-647), the amount of each employer's contribution is determined by the RRB, primarily on the basis of RUIA benefit payments made to the employees of that employer. These experienced based contributions take into account the frequency, volume and duration of RUIA benefits, both unemployment and sickness, attributable to a railroad's employees. Each employer's contribution rate includes a component for administrative expenses and a component to cover costs shared by all employers. The regulations prescribing the manner and conditions for remitting the contributions and for adjusting overpayments or underpayments of contributions are contained in 20 CFR 345.

RRB Form DC-1, Employer's Quarterly Report of Contributions Under the Railroad Insurance Act, is utilized by the RRB for the reporting and remitting of quarterly contributions by railroad employers. One response is requested quarterly of each respondent.

Completion is mandatory. The RRB proposes minor non-burden impacting editorial changes to Form DC-1.

#### Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form No.(s)	Annual response	Time (min)	Burden (mrs)
DC-1 .....	2,200	25	917

**FOR FURTHER INFORMATION CONTACT:** 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 H. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092. Written comments should be received within 60 days of this notice.

**Chuck Mierzwa,**  
*Clearance Officer.*

[FR Doc. 99-28287 Filed 10-28-99; 8:45 am]

BILLING CODE 7905-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-24110, 812-11754]

### AIM Advisors, Inc., et al., Notice of Application

October 25, 1999.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 18(c) and 18(i) of the Act, under sections 6(c) and 23(c)(3) of the Act for an exemption from rule 23c-3 under the Act, and pursuant to section 17(d) of the Act and rule 17d-1 under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares, and impose asset-based distribution fees and early withdrawal charges.

**APPLICANTS:** AIM Advisors, Inc. ("Advisers"), GT Global Floating Rate Fund, Inc., d/b/a/ AIM Floating Rate Fund ("Fund"), and AIM Distributors, Inc. ("Distributor").

**FILING DATES:** The application was filed on August 19, 1999. Applicants have agreed to file an amendment during the

notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 19, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549-0609; Applicants, 11 Greenway Plaza, Suite 100, Houston, TX, 77046.

**FOR FURTHER INFORMATION CONTACT:** Paula L. Kashtan, Senior Counsel, at (202) 942-0615, or Mary Kay Frech, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, DC 20549-0102 (telephone (202) 942-8090).

### Applicants' Representations

1. The Fund is a closed-end management investment company registered under the Act and organized as a Maryland corporation. The Adviser is registered under the Investment Advisers Act of 1940 and will serve as investment adviser to the Fund. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934, will distribute the Fund's shares. Applicants request that the order also apply to any other registered closed-end investment company established in the future for which the Adviser, or any entity controlling, controlled by, or under common control (as the term "control" is defined in section 2(a)(9) of the Act) with the Adviser, acts as principal underwriter, investment adviser, or administrator.<sup>1</sup>

2. The Fund's investment objective is to provide a high level of current

income and preservation of capital. The Fund invests primarily in senior secured floating and adjustable rate loans made by commercial banks, investment banks, finance companies and other lenders to commercial and industrial borrowers ("Loans"). Under normal circumstances, at least 80% of the Fund's total assets are invested in Loans. Up to 20% of the Fund's assets may be held in cash or cash equivalents, or invested grade, short-term debt obligations, or invested in unsecured loans.

3. The Fund continuously offers its shares to the public at net asset value. The Fund's shares are not offered or traded in the secondary market and are not listed on any exchange or quoted on any quotation medium. The Fund intends to operate as an "interval fund" pursuant to rule 23c-3 under the Act and make periodic repurchase offers to its shareholders.<sup>2</sup>

4. The Fund seeks the flexibility to be structured as multiple-class fund and currently intends to offer two classes of shares. The Fund will offer Class B shares with no front-end sales charge but subject to an early withdrawal charge ("EWC") on shares that are repurchased by the Fund within four years from when they were purchased. The Fund will offer Class C shares with no front-end sales charge but subject to an EWC on shares that are repurchased by the Fund within one year from when they were purchased. Class B and Class C shares will be subject to an annual asset-based distribution fee of up to .25% and .75%, respectively, of average daily net assets. The Fund may in the future offer other classes of shares with different distribution structures, including Class A shares with a front-end sales charge but with no EWC.

Applicants represent that the distribution fees will comply with the provisions of rule 2830(d) of the Conduct Rules of the National Association of Securities Dealers, Inc. ("NASD") as if the Fund was an open-end investment company. Applicants also represent that the Fund will disclose in its prospectus the fees, expenses and other characteristics of each class of shares offered for sale by the prospectus, as is required for open-

end multi-class funds under Form N-1A.

5. All expenses incurred by the Fund will be allocated among the various classes of shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect distribution fees, service fees, and any other incremental expenses of that class. Expenses of the Fund allocated to a particular class of shares will be borne on a pro rata basis by each outstanding share of that class. The Fund may create additional classes of shares in the future that may have different terms from Class B and Class C shares. Applicants state that the Fund will comply with the provisions of rule 18f-3 under the Act as if it were an open-end investment company.

6. The Fund may waive the EWC for certain categories of shareholders or transactions to be established from time to time. With respect to any waiver of, scheduled variation in, or elimination of the EWC, the Fund will comply with rule 22d-1 under the Act as if it were an open-end investment company.

7. The Fund will offer its shareholders an exchange feature under which shareholders of the Fund may, during the Fund's quarterly repurchase periods, exchange their shares for shares of the same class of other funds in the AIM group of investment companies. Fund shares so exchanged will be counted as part of the repurchase offer amount as specified in rule 23c-3 under the Act. Any exchange option will comply with rule 11a-3 under the Act as if the Fund were an open-end investment company subject to that rule. In complying with rule 11a-3, the Fund will treat the EWC as if it were a contingent deferred sales charge ("CDSC").

### Applicants' Legal Analysis

#### *Multiple Classes of Shares*

1. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of shares of the Fund may be prohibited by section 18(c).

2. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple classes of shares of the Fund may violate section 18(i) of the Act because each class would be entitled to exclusive voting

<sup>1</sup> Any registered closed-end investment company relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application.

<sup>2</sup> Since it commenced operations in May, 1997, the Fund has been the sole feeder fund in a master-feeder structure and has invested all of its investable assets in the Floating Rate Portfolio, a master fund with the same investment objective as the Fund. Pursuant to a planned restructuring of the Fund, the master feeder structure will be collapsed and the Fund will own its portfolio securities directly. As part of the restructuring, the Fund intends to operate as an "interval fund," following receipt of shareholder approval.

rights with respect to matters solely related to that class.

3. Section 6(c) of the Act provides that the SEC may exempt any person, security or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) of the Act from sections 18(c) and 18(i) of the Act to permit the Fund to issue multiple classes of shares.

4. Applicants submit that the proposed allocation of expenses and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit the Fund to facilitate the distribution of its securities and provide investors with a broader choice of shareholder services. Applicants assert that their proposal does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f-3 under the Act. Applicants state the Fund will comply with the provisions of rule 18f-3 as if it were an open-end investment company.

#### *Early Withdrawal Charges*

5. Section 23(c) of the Act provides, in relevant part, that no registered closed-end investment company will purchase any securities of which it is the issuer, except: (i) on a securities exchange or other open market; (ii) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (iii) under other circumstances as the SEC may permit by rules and regulations or orders for the protection of investors.

6. Rule 23c-3 under the Act permits a registered closed-end investment company (an "interval fund") to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c-3(b)(1) under the Act provides that an interval fund may deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is reasonably intended to compensate the fund for expenses directly related to the repurchase.

7. Section 23(c)(3) provides that the SEC may issue an order that would permit a closed-end investment

company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis which does not unfairly discriminate against any holders of the class or classes of securities to be purchased. As noted above, section 6(c) provides that the SEC may exempt any person, security or transaction from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request relief under sections 6(c) and 23(c) from rule 23c-3 to permit them to impose EWCs on shares submitted for repurchase that have been held for less than a specified period.

8. Applicants believe that the requested relief meets the standards of sections 6(c) and 23(c)(3). Rule 6c-10 under the Act permits open-end investment companies to impose CDSCs, subject to certain conditions. Applicants state that EWCs are functionally similar to CDSCs imposed by open-end investment companies under rule 6c-10 under the Act. Applicants state that EWCs may be necessary for the Distributor to recover distribution costs and that EWCs may discourage investors from moving their money quickly in and out of the Fund, a practice that applicants submit imposes costs on all shareholders. Applicants will comply with rule 6c-10 under the Act as if that rule applied to closed-end investment companies. The Fund also will disclose EWCs in accordance with the requirements of form N-1A concerning CDSCs. Applicants further state that the Fund will apply the EWC (and any waivers or scheduled variations of the EWC) uniformly to all shareholders in a given class and consistent with the requirements of rule 22d-1 under the Act.

#### *Asset-Based Distribution Fees*

9. Section 17(d) of the Act and rule 17d-1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the SEC issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d-1, the SEC considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the

provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

10. Rule 17d-3 under the Act provides an exemption from section 17(d) and rule 17d-1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b-1 under the Act. Applicants request an order under section 17(d) and rule 17d-1 to permit the Fund to impose asset-based distribution fees. Applicants have agreed to comply with rules 12b-1 and 17d-3 as if those rules applied to closed-end investment companies.

#### **Applicants' Condition**

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of rules 6c-10, 11a-3, 12b-1, 17d-3, and 22d-1 under the Act and NASD conduct Rule 2830(d), as amended from time to time, as if those rules applied to closed-end investment companies.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99-28356 Filed 10-28-99; 8:45 am]

BILLING CODE 8010-01-M

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## **SOCIAL SECURITY ADMINISTRATION**

### **Agency Information Collection Activities: Proposed Request and Comment Request**

In compliance with Public Law 104-13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end

of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965-4145, or by writing to him at the address listed at the end of this publication.

1. Partnership Questionnaire—0960-0025. Form SSA-7104 is used to establish several aspects of eligibility for benefits, including accuracy of reported partnership earnings, the veracity of a retirement, and lag earnings where they are needed for insured status. The respondents are applicants for old age and disability benefits.

*Number of Respondents:* 12,350.

*Frequency of Response:* 1.

*Average Burden Per Response:* 30 minutes.

*Estimated Annual Burden:* 6,175 hours.

2. Report of New Information in Disability Cases—0960-0071. The information collected on Form SSA-612 is used to update the disability records of respondents, based on changes reported. The respondents are applicants for and recipients of Title II Disability Benefits.

*Number of Respondents:* 27,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 6 minutes.

*Estimated Annual Burden:* 2,700 hours.

3. Claimant's Recent Medical Treatment—0960-0292. The information collected on Form HA-4631 is used to provide an updated medical history for a disability claimant who requests a hearing and to afford claimants their statutory right to a hearing and decision under the Social Security Act. The respondents are claimants requesting hearings on entitlement to benefits based on disability under title II (Old-Age, Survivors and Disability Insurance) and/or title XVI (Supplemental Security Income) of the Social Security Act.

*Number of Respondents:* 309,490.

*Frequency of Response:* 1.

*Average Burden Per Response:* 10 minutes.

*Estimated Annual Burden:* 51,582 hours.

4. Supplemental Security Income (SSI)—Quality Review Case Analysis—0960-0133. Form SSA-8508-BK is used with a sample of SSI recipients in a personal interview and covers all elements of SSI eligibility. The information obtained is used to assess the effectiveness of SSI policies and procedures and to establish payment accuracy rates. The respondents are SSI Recipients.

*Number of Respondents:* 15,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 60 minutes.

*Estimated Annual Burden:* 15,000 hours.

5. Psychiatric Review Technique—0960-0413. The information collected on Form SSA-2506 is needed by the Social Security Administration to facilitate in the adjudication of claims involving mental impairments. The information is used to identify the need for additional evidence for the determination of impairment severity; to consider aspects of mental impairment relevant to the individual's ability to work; and to organize and present the findings in a clear, concise manner. The respondents are State Disability Determination Services administering titles II and XVI disability programs.

*Number of Respondents:* 1,005,804.

*Frequency of Response:* 1.

*Average Burden Per Response:* 15 minutes.

*Estimated Annual Burden:* 251,451 hours.

6. Instructions for Completion of Federal Assistance Application Form SSA-96 for SSA Research and Demonstration Grant Programs—0960-0184. The information collected on Form SSA-96 is needed by the SSA to evaluate and select grant proposals for funding. The respondents are applicants for Federal assistance, including State and Local governments, educational institutions and other nonprofit and for-profit organizations.

*Number of Respondents:* 150.

*Frequency of Response:* 1.

*Average Burden Per Response:* 14 hours.

*Estimated Annual Burden:* 2,100 hours.

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965-4145, or by writing to him.

1. Statement of Living Arrangements, In-Kind Support and Maintenance—0960-0174. Form SSA-8006 provides a nationally-uniform vehicle for collecting information from SSI applicants and recipients about whether they receive income from in-kind support and maintenance. Responses are used to determine eligibility for SSI benefits payable. The respondents are

individuals applying for SSI or whose eligibility is being reevaluated.

*Number of Respondents:* 438,400.

*Frequency of Response:* 1.

*Average Burden Per Response:* 7 minutes.

*Estimated Annual Burden:* 51,147 hours.

2. Quickstart Enrollment Form—0960-0564. The information collected on this form is needed by SSA to facilitate electronic transmission of data for direct deposit of funds to a payee's account. The respondents are Social Security and SSI recipients requesting direct deposit to their financial institutions.

*Number of Respondents:* 3,950,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 3 minutes.

*Estimated Annual Burden:* 197,500 hours.

3. Supplemental Security Income Claim Information Notice—0960-0324. The information collected on Form SSA-L8050-U3 will be used by SSA to ensure that all sources of potential income which can be used to provide for an individual's own support and maintenance are utilized. The respondents are applicants for SSI and recipients who are potentially eligible for benefits from other public or private programs.

*Number of Respondents:* 7,500.

*Frequency of Response:* 1.

*Average Burden Per Response:* 10 minutes.

*Estimated Annual Burden:* 1,250 hours.

4. Marital Relationship Questionnaire—0960-0460. The information collected on Form SSA-4178 is needed by SSA to determine whether unrelated individuals of the opposite sex who are living together, and present themselves to the public as husband and wife, should be paid as a couple or two eligible individuals. The information is used to determine whether correct payment is being made to SSI couples and individuals. The respondents are applicants for and recipients of SSI who are living together in a questionable relationship.

*Number of Respondents:* 5,100.

*Frequency of Response:* 1.

*Average Burden Per Response:* 5 minutes.

*Estimated Annual Burden:* 425 hours.

5. Letter to Employer Requesting Information About Wages Earned by Beneficiary—0960-0034. The information on Form SSA-L725 is used by SSA to establish the exact amount of wages earned by a beneficiary and to determine the amount of benefit payment, should one be due. The

respondents are employers of the beneficiaries.

*Number of Respondents:* 150,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 40 minutes.

*Estimated Annual Burden:* 100,000 hours.

(SSA Address)

Social Security Administration,  
DCFAM, Attn: Frederick W.  
Brickenkamp, 1-A-21 Operations  
Bldg., 6401 Security Blvd.,  
Baltimore, MD 21235

(OMB Address)

Office of Management and Budget,  
OIRA, Attn: Lori Schack, New  
Executive Office Building, Room  
10230, 725 17th St., NW,  
Washington, DC 20503.

Dated: October 22, 1999.

**Frederick W. Brickenkamp,**

*Reports Clearance Officer, Social Security  
Administration.*

[FR Doc. 99-28434 Filed 10-28-99; 8:45 am]

BILLING CODE 4191-02-U

## DEPARTMENT OF STATE

[Public Notice No. 3146]

### Shipping Coordinating Committee Assembly and Council; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:30 AM on Tuesday, November 2, in Room 6103, at U. S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593-0001. The purpose of the meeting is to finalize preparations for the 20th session of the Extraordinary Council, 83rd Session of Council and 21st Session of the Assembly of the International Maritime Organization (IMO) which is scheduled for 12-26 November 1999, at the IMO Headquarters in London. Discussions will focus on papers received and draft U.S. positions.

Among other things, the items of particular interest are:

- Reports of Committees;
- Reports on Diplomatic Conferences;
- Work Program and Budget for 1998-1999;
- Election of Members of the Council.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Director, International Affairs, U.S. Coast Guard Headquarters, Commandant (G-CI), Room 2114, 2100 Second Street, SW, Washington, DC

20593-0001 or by calling: (202) 267-2280.

**Susan K. Bennett,**

*Director, Office of Transportation Policy, U.S.  
Department of State.*

[FR Doc. 99-28518 Filed 10-28-99; 8:45 am]

BILLING CODE 4710-07-P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket Number FRA-1999-5895]

#### Burlington Northern Santa Fe Railway; Public Hearing

On July 29, 1999, FRA published a notice in the **Federal Register** announcing Burlington Northern Santa Fe Railway's (BNSF) request to obtain a permanent waiver of compliance from certain provisions of the Safety Appliance Standards, Title 49, Code of Federal Regulations (CFR), part 231, and the Power Brakes and Drawbars regulations, 49 CFR part 232, concerning RoadRailer<sup>®</sup> train operations over their railroad system. Specifically, BNSF requests relief from the requirements of 49 CFR part 231, which specifies the number, location and dimensional specifications for handholds, ladders, sill steps, uncoupling levers and handbrakes; and Section § 232.2, which regulates drawbar height.

As a result of comments received by the Federal Railroad Administration (FRA) concerning this waiver petition, FRA has determined that a public hearing is necessary before a final decision is made on this petition. Accordingly, a public hearing is hereby set for 10 a.m. on November 23, 1999, in the Minnesota/Michigan Conference Room at the FAA Building, 2300 E. Devon Avenue, Des Plaines, Illinois 60018. Interested parties are invited to present oral statements at this hearing. The hearing will be informal and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25) by a representative designated by FRA. The FRA representative will make an opening statement outlining the scope of the hearing, as well as any additional procedures for the conduct of the hearing. The hearing will be a non-adversarial proceeding in which all interested parties will be given the opportunity to express their views regarding this waiver petition without cross-examination. After all initial statements have been completed, those persons wishing to make a brief rebuttal will be given an opportunity to do so in

the same order in which initial statements were made.

Issued in Washington, DC on October 25, 1999.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety  
Standards and Program Development.*

[FR Doc. 99-28349 Filed 10-28-99; 8:45 am]

BILLING CODE 4910-06-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 33809]

#### RailTex, Inc., North Carolina & Virginia Railroad Company, Inc., Chesapeake and Albemarle Railroad Company, Inc., Dallas, Garland & Northeastern Railroad, Inc., Mid-Michigan Railroad, Inc., and Indiana Southern Railroad, Inc.—Corporate Family Transaction; Exemption

RailTex, Inc. (RailTex),<sup>1</sup> North Carolina & Virginia Railroad Company, Inc. (NCVA), Chesapeake and Albemarle Railroad Company, Inc. (CA), Dallas, Garland & Northeastern Railroad, Inc., a Texas corporation (DGNO), Mid-Michigan Railroad, Inc. (MMRR), and Indiana Southern Railroad, Inc. (ISRR), have jointly filed a verified notice of exemption. As part of the proposed corporate restructuring: (1) the assets of DGNO and MMRR, including the assets of the Texas Northeastern Division, a division of MMRR, will be merged into Dallas, Garland & Northeastern Railroad, Inc., a Delaware Division (DGNO Delaware), with DGNO Delaware as the surviving entity; (2) the assets of NCVA and CA will be merged into North Carolina & Virginia Railroad Company, Inc., a Delaware corporation (NCVA Delaware), with NCVA Delaware as the surviving entity; and (3) ISRR will be reincorporated in the State of Delaware. After the transaction is consummated, RailTex will control 16 Class III railroads in the United States.

The transaction was scheduled to be consummated on or shortly after October 15, 1999.

The purpose of the transaction is to simplify RailTex's corporate structure and eliminate costs associated with separate accounting, tax, bookkeeping and reporting functions. The proposed transaction will also allow for the reincorporation of additional RailTex subsidiaries in the State of Delaware

<sup>1</sup> RailTex is a noncarrier, which at the time of filing, directly controlled 18 Class III railroads operating in 20 states, as well as 3 rail carriers that operate in Canada.

thereby simplifying RailTex's corporate governance.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33809, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Karl Morell, P.C., Ball Janik LLP, Suite 225, 1455 F Street, NW, Washington, DC 20005.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: October 25, 1999.

By the Board, David M. Konschnik,  
Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 99-28412 Filed 10-28-99; 8:45 am]

BILLING CODE 4915-00-P

## DEPARTMENT OF THE TREASURY

### Fiscal Service

#### Treasury Current Value of Funds Rate

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Notice of rate for use in Federal debt collection and discount evaluation.

**SUMMARY:** Pursuant to section 11 of the Debt Collection Act of 1982 (31 U.S.C. 3717), the Secretary of the Treasury is

responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts on claims owed the Government. Treasury's Cash Management Regulations (I TFM 6-8000) also prescribe use of this rate by agencies as a comparison point in evaluating the cost-effectiveness of a cash discount. Notice is hereby given that the applicable rate is 5 percent for calendar year 2000.

**DATES:** The rate will be in effect for the period beginning on January 1, 2000 and ending on December 31, 2000.

**FOR FURTHER INFORMATION CONTACT:** Inquiries should be directed to the Program Compliance Division, Financial Management Service, Department of the Treasury, 401 14th Street, SW., Washington, DC. 20227 (Telephone: (202) 874-6630).

**SUPPLEMENTARY INFORMATION:** The rate reflects the current value of funds to the Treasury for use in connection with Federal Cash Management systems and is based on investment rates set for purposes of Pub. L. 95-147, 91 Stat. 1227. Computed each year by averaging investment rates for the 12-month period ending every September 30 for applicability effective January 1, the rate is subject to quarterly revisions if the annual average, on the moving basis, changes by 2 per centum. The rate in effect for calendar year 2000 reflects the average investment rates for the 12-month period that ended September 30, 1999.

Dated: October 25, 1999.

**Betty H. Lane,**

*Assistant Commissioner, Federal Finance.*

[FR Doc. 99-28317 Filed 10-28-99; 8:45 am]

BILLING CODE 4810-35-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

[FI-189-84]

#### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**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 IRS is soliciting comments concerning an existing final regulation, FI-189-84 (TD 8517), Debt Instruments With Original Issue Discount; Imputed Interest on Deferred Payment Sales or Exchanges of Property (§§ 1.1272-3, 1.1273-2(h), 1.1274-3(d), 1.1274-5(b), 1.1274A-1(c), and 1.1275-3(b)).

**DATES:** Written comments should be received on or before December 28, 1999 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Debt Instruments With Original Issue Discount; Imputed Interest on Deferred Payment Sales or Exchanges of Property.

*OMB Number:* 1545-1353.

*Regulation Project Number:* FI-189-84.

*Abstract:* This regulation provides definitions, reporting requirements, elections, and general rules relating to the tax treatment of debt instruments with original issue discount and the imputation of, and accounting for, interest on certain sales or exchanges of property.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, business or other for-profit organizations, farms and state, local or tribal governments.

*Estimated Number of Respondents:* 525,000.

*Estimated Time Per Respondent:* 21 minutes.

*Estimated Total Annual Burden Hours:* 185,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information

are confidential, as required by 26 U.S.C. 6103.

### 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.

Approved: October 21, 1999.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 99-28276 Filed 10-28-99; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

[EE-63-84; EE-96-85]

#### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**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 IRS is soliciting comments concerning an existing temporary regulation, EE-63-84 (TD 8073), and notice of proposed rulemaking, EE-96-85, Effective Dates and Other Issues Arising Under the Employee Benefit Provisions of the Tax Reform Act of 1984 (§§ 1.505(c)-1T, 1.1042-1T and 1.463-1T).

**DATES:** Written comments should be received on or before December 28, 1999 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulations should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

#### SUPPLEMENTARY INFORMATION:

**Title:** Effective Dates and Other Issues Arising Under the Employee Benefit Provisions of the Tax Reform Act of 1984.

**OMB Number:** 1545-0916.

**Regulation Project Number:** EE-63-84 (temporary regulation), and EE-96-85 (notice of proposed rulemaking).

**Abstract:** These regulations provide rules relating to effective dates and certain other issues arising under sections 91, 223 and 511-561 of the Tax Reform Act of 1984. The regulations affect qualified employee benefit plans, welfare benefit funds, and employees receiving benefits through such plans.

**Current Actions:** There is no change to these existing regulations.

**Type of Review:** Extension of a currently approved collection.

**Affected Public:** Business or other for-profit organizations, not-for-profit institutions, and individuals.

**Estimated Number of Respondents:** 12,800.

**Estimated Time Per Respondent:** 31 minutes.

**Estimated Total Annual Burden Hours:** 6,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### 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.

Approved: October 20, 1999.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 99-28277 Filed 10-28-99; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

[PS-102-86]

#### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**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 IRS is soliciting comments concerning an existing final regulation, PS-102-86 (TD 8316) Cooperative Housing Corporations (§ 1.216-1(d)(2)).

**DATES:** Written comments should be received on or before December 28, 1999 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**  
**Title:** Cooperative Housing Corporations.

**OMB Number:** 1545-1041.

*Regulation Project Number:* PS-102-86.

*Abstract:* Section 1.216-1(d)(2) of this regulation allows cooperative housing corporations to make an election whereby the amounts of mortgage interest and/or real estate taxes allocated to tenant-stockholders of the corporation will be based on a reasonable estimate of the actual costs attributable to each tenant-stockholder's dwelling unit. In the absence of such a one-time election, such costs are allocated proportionally among the tenant-stockholders based on the number of shares held in the corporation.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, and business or other for-profit organizations.

*Estimated Number of Respondents:* 2,500.

*Estimated Time Per Respondent:* 15 minutes.

*Estimated Total Annual Burden Hours:* 625.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### 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.

Approved: October 20, 1999.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 99-28278 Filed 10-28-99; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

[IA-7-88]

#### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**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 IRS is soliciting comments concerning an existing final regulation, IA-7-88(TD 8379), Excise Tax Relating to Gain or Other Income Realized By Any Person on Receipt of Greenmail (§§ 155.6011-1, 155.6001-1, 155.6081-1, and 155.6161-1).

**DATES:** Written comments should be received on or before December 28, 1999 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

#### SUPPLEMENTARY INFORMATION:

*Title:* Excise Tax Relating to Gain or Other Income Realized By Any Person on Receipt of Greenmail.

*OMB Number:* 1545-1049.

*Regulation Project Number:* IA-7-88.

*Abstract:* The regulations provide rules relating to the manner and method of reporting and paying the nondeductible 50 percent excise tax imposed by section 5881 of the Internal Revenue Code with respect to the receipt of greenmail. The reporting requirements will be used to verify that

the excise tax imposed under section 5881 is properly reported and timely paid.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals and business or other for-profit organizations.

*Estimated Number of Respondents:* 4.

*Estimated Time Per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 2.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### 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.

Approved: October 20, 1999.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 99-28279 Filed 10-28-99; 8:45 am]

BILLING CODE 4830-01-P

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Proposed Collection; Comment Request for Tip Reporting, Alternative Commitment (Hairstyling Industry)**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**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 IRS is soliciting comments concerning the Tip Reporting Alternative Commitment (Hairstyling Industry).

**DATES:** Written comments should be received on or before December 28, 1999 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection

should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Tip Reporting Alternative Commitment (Hairstyling Industry).

*OMB Number:* 1545-1529.

*Abstract:* Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code section 6053(a), which requires employees to report all their tips monthly to their employers.

*Current Actions:* There is no change to this existing information collection.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 3,200.

*Estimated Average Time Per Respondent:* 15 hours.

*Estimated Total Annual Burden Hours:* 47,733.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection

of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**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.

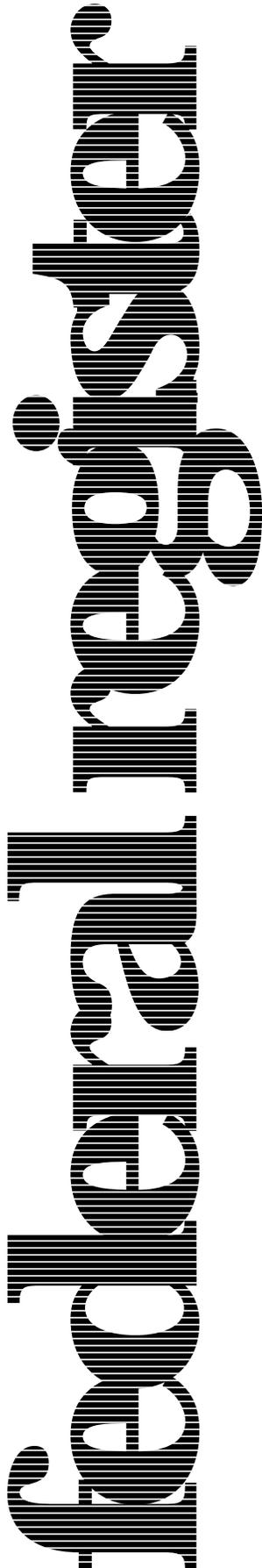
Approved: October 20, 1999.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 99-28280 Filed 10-28-99; 8:45 am]

BILLING CODE 4830-01-P



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Friday  
October 29, 1999

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**Part II**

**Environmental  
Protection Agency**

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**40 CFR Parts 85 and 86  
Control of Emissions of Air Pollution  
From 2004 and Later Model Year Heavy-  
Duty Highway Engines and Vehicles;  
Revision of Light-Duty Truck Definition;  
Proposed Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 85 and 86**

[AMS-FRL-6456-3]

RIN 2060-A112, 2060-A123

**Control of Emissions of Air Pollution From 2004 and Later Model Year Heavy-Duty Highway Engines and Vehicles; Revision of Light-Duty Truck Definition**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We are proposing to take several actions relating to emission standards and test procedures for heavy-duty engines and vehicles intended for operation on roads and highways. The proposed provisions are for the 2004 and later model years. First, we are proposing new more stringent emissions standards and related provisions for all heavy-duty Otto-cycle (e.g., gasoline-fueled) engines and vehicles. Vehicles in this category include large full size pick-up trucks, full size cargo and passenger vans, and the largest sport utility vehicles. For heavy-duty Otto-cycle engines and vehicles, today's proposal would reduce the standards for oxides of nitrogen and hydrocarbons by approximately 75 percent from current standards. Second, we propose to reaffirm that the NMHC+NO<sub>x</sub> standard promulgated in October, 1997 for diesel heavy-duty engines is both necessary and feasible. This standard represents about a 50 percent reduction in emissions of nitrogen oxides, as well as reductions in hydrocarbons, from diesel trucks and buses. Third, we are proposing to require on-board diagnostics systems for all heavy-duty vehicles and engines at or below 14,000 lbs gross vehicle weight rating (GVWR), and to revise the on-board diagnostics requirements for diesel light-duty vehicles and trucks. These systems will identify the failure of components of the emissions control system. Fourth, we are proposing the addition of new test procedures and associated standards for heavy-duty diesel engines and vehicles. Fifth, we are proposing to include heavy models of gasoline and diesel-fueled sport-utility vehicles and similar heavy-duty vehicles used primarily for personal transportation in the Tier 2 program that EPA proposed earlier this year. Today's proposal would result in lower emissions of oxides of nitrogen and hydrocarbons, as well as lower particulate matter due to reductions in

secondary particulate formation (secondary particulate matter is not emitted directly from the engine, but is formed when emissions of oxides of nitrogen react with ammonia in the atmosphere to produce ammonium nitrate particulates), and would assist states and regions facing ozone air quality problems that are causing a range of adverse health effects, particularly respiratory impairment and related illnesses.

**DATES:** We must receive your comments on this NPRM by December 2, 1999. A public hearing will be held on November 2, 1999 (EPA has published notice of this hearing on October 22, 1999 (64 FR 56985)). EPA requests that parties who want to testify notify the contact person listed in the **ADDRESSES** section of this document one week before the date of the hearing. More information about commenting on this action and on the public hearing may be found in section XI What are the Opportunities for Public Participation?

**ADDRESSES:** Written comments should be submitted (in duplicate, if possible) to: EPA Air and Radiation Docket, Attn: Docket No. A-98-32, Room M-1500 (Mail Code 6102), 401 M Street SW, Washington, DC 20460. EPA requests that a copy of the comments also be sent to the contact person listed below. Materials relevant to this proposal have been placed in Docket Nos. A-98-32 and A-95-27 and may be viewed in Room M-1500 between 8:00 a.m. and 5:30 p.m., Monday through Friday. The telephone number is (202) 260-7548 and the facsimile number is (202) 260-4400. A reasonable fee may be charged by EPA for copying docket materials.

The public hearing will be held at Top of the Tower, 1717 Arch Street, 51st Floor, Philadelphia, PA 19103, telephone: 215-567-8787, fax: 215-557-5171.

**FOR FURTHER INFORMATION CONTACT:** Margaret Borushko, U.S. Environmental Protection Agency, Engine Programs and Compliance Division, 2000 Traverwood Drive, Ann Arbor, MI 48105-2498. Telephone (734) 214-4334; Fax (734) 214-4816; e-mail borushko.margaret@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**Regulated Entities**

Entities potentially regulated by this action are those that manufacture and sell new heavy-duty motor vehicles, new heavy-duty engines, and new diesel light-duty motor vehicles in the United States. Regulated categories and entities include:

Category	Examples of regulated entities
Industry .....	Manufacturers of new heavy-duty motor vehicles and engines. Manufacturers of new diesel light-duty motor vehicles and engines.

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. To determine whether your activities are regulated by this action, you should carefully examine the applicability criteria in §§ 86.001-1 and 86.1801-01. 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.

**Obtaining Rulemaking Documents Through the Internet**

The preamble, regulatory language, regulatory impact analysis, and other related documents are also available electronically from the EPA Internet Web site. This service is free of charge, except for any cost you already incur for Internet connectivity. The electronic version is made available on the day of publication on the primary Web site listed below. The EPA Office of Mobile Sources also publishes **Federal Register** notices and related documents on the secondary Web site listed below.

1. <http://www.epa.gov/docs/fedrgstr/EPA-AIR/> (either select desired date or use Search feature)
2. <http://www.epa.gov/OMSWWW/> (Look in What's New or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

**TABLE OF ACRONYMS AND ABBREVIATIONS**

ABT	Averaging, Banking, and Trading
AECD	Auxiliary Emission Control Device
ALVW	Adjusted Loaded Vehicle Weight
ANPRM	Advance Notice of Proposed Rule-making
BSFC	Brake-Specific Fuel Consumption
CAA	Clean Air Act
CAP	Compliance Assurance Program
2000	for the 2000 and later model years
CARB	California Air Resources Board

## TABLE OF ACRONYMS AND ABBREVIATIONS—Continued

CASAC	Clean Air Scientific Advisory Committee
CFF	Clean Fuel Fleet
CO	Carbon Monoxide
DF	Deterioration Factor
DOC	Diesel Oxidation Catalyst
DRI	Desert Research Institute
EGR	Exhaust Gas Recirculation
EMA	Engine Manufacturers Association
EPA	Environmental Protection Agency
FEL	Family Emission Limit
g/bhp-hr	grams per brake-horsepower hour
g/mi	grams per mile
GVWR	Gross Vehicle Weight Rating
HC	Hydrocarbons
HD	Heavy-Duty
HDDE	Heavy-Duty Diesel Engine
HDE	Heavy-Duty Engine
HDEWG	Heavy-Duty Engine Working Group
HDV	Heavy-Duty Vehicle
HEUI	Hydraulically Actuated Electronic Unit Injection
HLDT	Heavy Light-Duty Truck
LDT	Light-Duty Truck
LDV	Light-Duty Vehicle
LEV	Low Emission Vehicle
LLDT	Light Light-Duty Truck
LRT	Load Response Test
MDV	Medium-Duty Vehicle
MEUI	Mechanically Actuated Electronic Unit Injection
MIL	Malfunction Indicator Light
MY	Model Year
NAAQS	National Ambient Air Quality Standards
NCP	Non-Conformance Penalty
NMHC	Non-Methane Hydrocarbon
NMOG	Non-Methane Organic Gas
NO <sub>x</sub>	Nitrogen Oxides
NPRM	Notice of Proposed Rulemaking
OBD	On-Board Diagnostics
OEM	Original Equipment Manufacturer
ORVR	Onboard Refueling Vapor Recovery
PM	Particulate Matter
PM <sub>10</sub>	Particulate Matter of 10 microns or less in diameter
PM <sub>2.5</sub>	Particulate Matter of 2.5 microns or less in diameter
RIA	Regulatory Impact Analysis
SIP	State Implementation Plan
SOP	Statement of Principles
TW	Test Weight
UDDS	Urban Dynamometer Driving Schedule
ULEV	Ultra Low Emission Vehicle
VGT	Variable Geometry Turbocharger
VMT	Vehicle Miles Traveled
VNT	Variable Nozzle Turbocharger
VOC	Volatile Organic Compound

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XIII. What is EPA's Statutory Authority for this Proposal?

**I. What Is EPA Proposing To Do?**

EPA (or, "the Agency") is proposing to take several actions relating to emission standards and test procedures for heavy-duty engines (HDEs) and heavy-duty vehicles (HDVs) intended for highway operation.<sup>1</sup> The proposed provisions would become effective starting with the 2004 model year (MY). These actions supplement a June 1996 proposed rule (61 FR 33421, June 27, 1996), in which we proposed new emission standards for heavy-duty diesel engines (HDDE) and heavy-duty Otto-cycle engines and vehicles, and a subsequent October 1997 final rule (62 FR 54694, October 21, 1997), in which we finalized new emission standards for heavy-duty diesel engines.<sup>2</sup>

<sup>1</sup> Light-duty vehicles and light-duty trucks are defined as vehicles with a gross vehicle weight rating (GVWR) below 8,500 pounds. Heavy-duty vehicles are vehicles with a GVWR greater than or equal to 8,500 pounds. Heavy-duty engines are engines used in heavy-duty vehicles.

<sup>2</sup> The terms "diesel" and "Otto-cycle" generally refer to the type of combustion cycle employed by an engine. In a diesel-cycle engine combustion is brought about by the compression of the fuel

Currently, EPA has a chassis-based regulatory program for light-duty vehicles (LDVs) and light-duty trucks (LDTs), meaning that the vehicle itself is subject to emission standards and testing. For all heavy-duty vehicles the engine alone is tested and must currently meet engine-based standards.<sup>3</sup> Engine testing currently applies to all diesel-cycle and Otto-cycle heavy-duty vehicles. One of the key elements of today's action is a proposal to begin regulating a subset of heavy-duty vehicles using chassis-based requirements. The heavy-duty vehicles that are proposed to be subject to chassis-based requirements are complete Otto-cycle heavy-duty vehicles with a gross vehicle weight rating (GVWR) below 14,000 pounds.<sup>4,5</sup> In addition, some complete gasoline and diesel-fueled heavy-duty vehicles between 8,500 and 10,000 pounds GVWR are proposed to be incorporated into the Tier 2 program proposed by EPA earlier this year (64 FR 26004, May 13, 1999). Today's proposal can generally be separated into those elements relating to the new chassis-based requirements and those elements that affect the engine-based requirements. The proposals listed below are explained in greater detail in the remainder of this document.

Some of these proposals would harmonize EPA's regulatory programs with California's current medium-duty vehicle (MDV) program (e.g., vehicle-based standards for complete Otto-cycle heavy-duty vehicles below 14,000 pounds GVWR), while others may differ from California's current requirements. These similarities and differences are outlined in the detailed discussion that

mixture (compression ignition), whereas in an Otto-cycle engine combustion is achieved by providing a spark to the fuel mixture (spark ignition). Although a generalization for which there are exceptions, diesel-cycle vehicles are generally fueled with diesel fuel and Otto-cycle vehicles are generally fueled with standard gasoline.

<sup>3</sup> Engine-based standards are expressed in terms of emissions per unit of work, whereas chassis-based (or vehicle-based) standards are expressed in terms of amount of emissions per mile driven by the vehicle.

<sup>4</sup> "Complete" vehicles are those that are manufactured with their primary cargo carrying container or device attached, whereas "incomplete" vehicles are those that are manufactured without the primary cargo carrying container or device attached. Incomplete vehicles (basically the engine plus a chassis) are then manufactured into a variety of vehicles, such as recreational vehicles, panel trucks, dump trucks, fire trucks, and tow trucks.

<sup>5</sup> Gross Vehicle Weight Rating (GVWR) is defined by federal regulation in 40 CFR 86.082-2 as "The value specified by the manufacturer as the maximum design loaded weight of a single vehicle." In other words, it is the weight of the vehicle completely loaded with the maximum load that the manufacturer states the vehicle is capable of carrying.

follows. We request comments on the proposals described below, and encourage commenters to supply relevant data that would help us further assess the proposals.<sup>6</sup>

*A. Changes to the Engine-Based Program*

The first sections of this proposal describe the proposed revisions to the engine-based program. Some of these proposals would apply to both diesel and Otto-cycle engines, and others would apply uniquely to either diesel or Otto-cycle engines. Proposed requirements that affect the engine-based program include:

- Reaffirmation of the existing 2004 and later model year NMHC+NO<sub>x</sub> standard for heavy-duty diesel engines.
- New more stringent emission standards for 2004 and later model year Otto-cycle heavy-duty engines.
- A revised averaging, banking, and trading (ABT) program for Otto-cycle heavy-duty engines.
- Revised deterioration factor (DF) requirements for heavy-duty engines.
- New emission standards for heavy-duty diesel engines to improve the assurance that vehicles are emitting low levels of pollutants over a wide range of operation experienced in actual use.
- New supplemental test procedures for heavy-duty diesel engines associated with the proposed new emission standards.<sup>7</sup>

*B. Expanding the Otto-Cycle Vehicle-Based Program to Certain Heavy-Duty Vehicles*

Additional sections of this proposal describe the proposed chassis-based (or vehicle-based) program for certain heavy-duty vehicles. Many of these proposals result in harmonization with the California Air Resources Board (CARB) Medium-duty Vehicle (MDV)

<sup>6</sup> The current federal standards for Clean Fuel Vehicles are less stringent than the proposed Otto-cycle standards and the existing diesel standards for the 2004 and later model years. See 40 CFR 88.105-94. The 2004 and later model year standards proposed today would supercede the current Clean Fuel Vehicle standards, and, if EPA adopts the Otto-cycle standards proposed today and maintains the diesel standards for the 2004 and later model years, the Agency intends to undertake a rulemaking to revise the Clean Fuel Vehicle standards accordingly.

<sup>7</sup> We believe that our compliance program is fundamentally incomplete until a similar form of additional assurance that Otto-cycle engines will meet applicable emission standards in-use can be added to the compliance requirements, but such provisions are not specifically proposed today. Section V of today's proposal describes several important compliance program elements that are not included in today's proposal, but that we intend to finalize such that they can take effect in conjunction with those elements in today's proposal. See section V for more information.

Program. For the vehicle-based program, we are proposing the following elements:

- New standards for 2004 and later model year complete Otto-cycle heavy-duty vehicles with a GVWR below 14,000 pounds.
- The incorporation of certain complete Otto-cycle and diesel vehicles between 8,500 and 10,000 pounds GVWR into the Tier 2 light-duty program. These provisions would be limited to those vehicles designed primarily for personal transportation.
- Vehicle-based testing of all complete heavy-duty Otto-cycle vehicles below 14,000 pounds GVWR for these new standards.
- An averaging, banking, and trading program.
- On-board refueling vapor recovery (ORVR) requirements.
- CAP 2000 provisions.<sup>8</sup>
- Revised useful life requirements.

#### C. Additional Changes Affecting Heavy-Duty Vehicle and Heavy-Duty Engine Programs

Additional sections describe provisions or issues that apply to both heavy-duty vehicle and engine programs. These proposals include:

- On-board Diagnostics (OBD) requirements for heavy-duty diesel and Otto-cycle vehicles and engines up to 14,000 pounds GVWR.
- Non-Conformance Penalties (NCPs).

#### D. Heavy-Duty Lead Time Issues and Voluntary Federal Standards

One of the important concepts contained in the rulemaking record, is the need for harmonized, 50-state emission standards for the heavy-duty industry. Consistent national standards provide the states with the emission reductions they need, while providing manufacturers with the knowledge they can design and market one engine design regardless of what state the engine is sold to. Our proposal today would implement nationwide standards which would harmonize with California for the majority HD engines and vehicle in 2004 (the exception being incomplete HD Otto-cycle engines.)

Since the finalization of the 1997 rule for 2004 HD diesels, state and local air quality agencies have been counting on

<sup>8</sup>The new compliance assurance program for light-duty vehicles and light-duty trucks, known as CAP 2000 (since manufacturers may opt-in for model year 2000), streamlines the existing vehicle certification program, enabling manufacturers to save significant time and money. In addition, it requires manufacturers to test customer-owned in-use vehicles for model year 2001 and beyond. The CAP 2000 program was proposed on July 23, 1998 (63 FR 36954), and finalized on May 4, 1999 (64 FR 23906).

the emission reductions from the 2004 standards in order to meet their long-term air quality needs. In addition, as discussed previously in this proposal, the 2004 standards for HD Otto-cycle engines and vehicles will also provide state and local air quality agencies additional needed emission reductions. However, Section 202 of the Clean Air Act requires EPA to provide manufacturers of heavy-duty engines and vehicles four years of lead time between standards. This would require EPA to issue a final rule by the end of 1999 in order to implement new standards in 2004. We are concerned due to the short amount of time between today's proposal and the end of the calendar year that the final rule for today's proposal may not be final until after December 31, 1999, which may prevent a model year 2004 implementation of the standards proposed today. This concern does not apply for the 2004 model year heavy-duty diesel engine standards which were promulgated in 1997 and meet the lead time requirements.

This four year lead time issue for the 2004 standards contained in today's proposal reflects a statutory requirement, not a technological feasibility issue. As demonstrated elsewhere in this proposal, technology is clearly available which will allow manufacturers to meet the proposed HD diesel and HD gasoline standards by 2004.

The lack of more stringent federal 49-state HD standards in 2004 may lead some states with incentive to exercise their rights under Section 177 of the Clean Air Act to adopt the California HD diesel and Otto-cycle standards in order to realize the emission reductions associated with covering vehicles produced in 2004. This could result in a patchwork of emission standards across the country and could present the manufacturers with significant difficulties.

In the event the Agency is unable to finalize the new standards contained in today's proposal by the end of calendar year 1999, we request comment on the appropriateness of EPA's efforts to manage the implementation of these standards and in particular, of establishing a program for those manufacturers willing to cooperate in meeting the requirements in today's proposal. We would expect that manufacturers participating in this program would merely certify their 2004 model year engines to meet all of the emission standards and requirements included in today's proposal. If the proposed standards are not finalized by the end of 1999, mandatory federal

standards would apply in model year 2005, with the goal of putting in place all requirements contained in today's proposal. We request comment on whether manufacturers would need to opt-in to such a program, and how such opt-in would take place. In addition, EPA requests comment on incentives to encourage manufacturers to opt into the voluntary program.

## II. What Is the Environmental Need for This Proposal?

This section presents information on the negative health and environmental impacts from air pollution from heavy-duty (HD) engines and vehicles, as well as EPA's assessment of the need for additional emission reductions from HD engines and vehicles in order to meet the air quality needs of the U.S. A detailed analysis and explanation of the health impacts and air quality needs was presented in the advanced notice of proposed rulemaking, as well as the preamble and the Regulatory Impact Analysis (RIA) for the proposal and final rule of the 1997 rulemaking for the 2004 standards.<sup>9</sup> The reader should refer to those documents for additional information on this topic.

### A. Need for Additional NO<sub>x</sub> and NMHC Reductions

#### 1. Health and Welfare Effects From NMHC and NO<sub>x</sub>

Oxides of Nitrogen (NO<sub>x</sub>) and volatile organic compounds (VOC) are precursors in the photochemical reaction which forms tropospheric ozone. VOC emissions from mobile sources consist mostly of nonmethane hydrocarbons (NMHC). There is a large body of evidence showing that ozone can cause harmful respiratory effects including chest pain, coughing, and shortness of breath, affecting people with compromised respiratory systems and children most severely. In addition, NO<sub>x</sub> itself can directly harm human health. Beyond their human health effects, other negative environmental effects are also associated with ozone

<sup>9</sup>See "Control of Air Pollution for Heavy-Duty Engines, Advanced Notice of Proposed Rulemaking", Available in EPA Air Docket A-95-27, Docket Item # AMS-FRL, and "Draft Regulatory Impact Analysis: Control of Emissions of Air Pollution from Highway Heavy-Duty Engines", available in EPA Air Docket A-95-27, Docket Item # III-B-01, and "Control of Emissions of Air Pollution from Highway Heavy-Duty Engines; Notice of Proposed Rulemaking" available in EPA Air Docket A-95-27, Docket Item # III-A-01, and "Final Regulatory Impact Analysis: Control of Emissions of Air Pollution from Highway Heavy-Duty Engines", available in EPA Air Docket A-95-27, Docket Item # V-B-01, and "Control of Emissions of Air Pollution from Highway Heavy-Duty Engines; Final Rule," available in EPA Air Docket A-95-27, Docket Item # V-A-01.

and NO<sub>x</sub>. Ozone has been shown to injure plants and materials; NO<sub>x</sub> contributes to the secondary formation of particulate matter (PM) (nitrates), acid deposition, and the overgrowth of algae in coastal estuaries. These environmental effects, as well as the health effects noted above, are described in the Regulatory Impact Analysis, and additional information may be found in EPA's "staff papers" and "air quality criteria" documents for ozone and nitrogen oxides.<sup>10, 11, 12, 13</sup>

## 2. Current Compliance With the Ozone NAAQS

Today, many states are finding it difficult to show how they can meet or maintain compliance with the current National Ambient Air Quality Standard (NAAQS) for ozone by the deadlines established in the Clean Air Act (CAA, or "the Act").<sup>14</sup> As of August, 1998, 72 million people outside of California lived in 36 metropolitan areas and two counties designated nonattainment under the 1-hour ozone NAAQS.

In July 1997, EPA established a new 8-hour ozone NAAQS to better protect against longer exposure periods at lower concentrations than the current 1-hour standard. Under the July 1997 rule, the 1-hour NAAQS would still be applicable in certain areas during the transition to the 8-hour standard (62 FR 38856; July 17, 1997). EPA reviewed ambient ozone monitoring data for the period 1993 through 1995 to determine which counties violated either the 1-hour or 8-hour NAAQS for ozone during this time period.<sup>15, 16</sup> Eighty-four counties violated the 1-hour NAAQS during this 3-year period, while 248 counties violated the 8-hour NAAQS. The 84 counties had a 1990 population of 47 million, while the 248 counties had a 1990 population of 83 million. EPA is reviewing more recent air quality

data for 1996 and 1997. A preliminary assessment of 1994 through 1996 ozone monitoring data reveals only marginal changes in the number of counties experiencing a nonattainment problem with the 8-hour NAAQS, and essentially no change in the population levels impacted by nonattainment.

On May 14, 1999, a panel of the U.S. Court of Appeals for the District of Columbia Circuit found, by a 2-1 vote, that Clean Air Act sections 108 and 109, as interpreted by EPA in establishing the 8-hour ozone NAAQS (as well as the new NAAQS for PM<sub>2.5</sub> and PM<sub>10</sub>), effect an unconstitutional delegation of Congressional power. *American Trucking Ass'n, Inc., et al., v. Environmental Protection Agency*, Nos. 97-1440, 1441 (D.C. Cir. May 14, 1999). The Court remanded the record to EPA. One judge dissented, finding that the majority's opinion "ignores the last half-century of Supreme Court nondelegation jurisprudence." *Id.*, slip op. at 31. The Court also ruled, regarding the 8-hour ozone NAAQS, that the statute permits EPA to promulgate a revised ozone NAAQS and to designate the attainment status of areas. However, the Court curtailed EPA's ability to require states to comply with the revised ozone NAAQS. Further the Court directed the Agency to determine whether tropospheric ozone has a beneficent effect, and if so, assess ozone's net adverse health effect. In general, the Court did not find fault with the scientific basis for EPA's determinations regarding adverse health effects from ozone. On June 28, 1999, EPA filed a petition for rehearing and petition for rehearing en banc seeking review of the panel's decision.

The Court's decision does not address the provisions of section 202(a), and does not change EPA's belief that the standards in today's proposal are lawful and appropriate under these criteria. We believe that the information provided in this proposal and the draft Regulatory Impact Analysis, as well as the information that EPA relied on in setting the NAAQS for ozone, support a conclusion that ozone can be reasonably anticipated to endanger the public health or welfare. EPA's belief that it is appropriate to seek reductions of NO<sub>x</sub> and NMHCs from heavy duty vehicles and engines to protect public health or welfare is not changed by the decision of the court.

## 3. Future Compliance With the Ozone NAAQS

Local, state and federal organizations charged with delivering cleaner air have mounted significant efforts in recent years to reduce air quality problems

associated with ground-level ozone, and there are signs of partial success. NO<sub>x</sub> and VOCs appear to have been reduced, and average levels of ozone seem to have begun gradually decreasing. However, this progress is in jeopardy. EPA projects that reductions in ozone precursors that will result from the full implementation of current emission control programs will fall far short of what would be needed to offset the normal emission increases that accompany economic expansion. By the middle of the next decade, the Agency expects that the downward trends will have reversed, primarily due to increasing numbers of emission sources. By around 2020, EPA expects that NO<sub>x</sub> levels will have returned to current levels in the absence of significant new reductions.<sup>17</sup> To the extent that some areas are seeing a gradual decrease in ozone levels in recent years, EPA believes that the expected increase in NO<sub>x</sub> will likely result in an increase in ozone problems in the future.

The Agency has recently finalized a rulemaking requiring 22 States and the District of Columbia to submit State Implementation Plan (SIP) revisions to reduce specified amounts of emissions of NO<sub>x</sub> for the purpose of reducing NO<sub>x</sub> and ozone transport across State boundaries in the eastern half of the United States.<sup>18</sup> The specified NO<sub>x</sub> reduction for each State varies. In making this decision EPA relied upon, among other items, ozone modeling studies for the eastern U.S. In the baseline scenario for these modeling runs EPA included the emission reductions expected from the 2004 HDDE standards. These modeling runs concluded that significant additional NO<sub>x</sub> reductions beyond the baseline case were necessary from 22 eastern States in order to meet the ozone NAAQS standards. The NO<sub>x</sub> emission reductions from the 2004 HDDE standards are assumed by these models to be part of the reductions that will be needed to meet the ozone NAAQS in these areas. The Agency did not analyze the specified reductions that would be required by the rule if the baseline did not include the 2004 HDDE standards.

The deadline for submission of SIPs was recently stayed by a panel of the Court of Appeals for the D.C. Circuit pending further review. EPA believes that the October 27, 1998 rule is fully consistent with the Clean Air Act and

<sup>17</sup> See Chapter 2 of the draft Regulatory Impact Analysis for this proposal.

<sup>18</sup> See 63 FR 57356, October 27, 1998, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone."

<sup>10</sup> U.S. EPA, 1996, Review of National Ambient Air Quality Standards for Ozone, Assessment of Scientific and Technical Information, OAQPS Staff Paper, EPA-452/R-96-007.

<sup>11</sup> U.S. EPA, 1996, Air Quality Criteria for Ozone and Related Photochemical Oxidants, EPA/600/P-93/004aF.

<sup>12</sup> U.S. EPA, 1995, Review of National Ambient Air Quality Standards for Nitrogen Dioxide, Assessment of Scientific and Technical Information, OAQPS Staff Paper, EPA-452/R-95-005.

<sup>13</sup> U.S. EPA, 1993, Air Quality Criteria for Oxides of Nitrogen, EPA/600/8-91/049aF.

<sup>14</sup> See 42 U.S.C. 7401 *et seq.*

<sup>15</sup> This use of the term "nonattainment" in reference to a specific area is not meant as an official designation or future determination as to the attainment status of the area.

<sup>16</sup> See 63 FR 57356, October 27, 1998, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone."

should be upheld. However, it should be noted that if the emission reductions sought by the SIP call are not achieved, it would be more difficult to attain the NAAQS for ozone.

In addition, many states (including western states) have also included the emission reductions projected from the 2004 HDDE standards in their State

Implementation Plans. This demonstrates that these states are relying on these emission reductions to meet the ozone NAAQS.

4. Contribution of HD Diesel and Gasoline Engines to Total VOC and NO<sub>x</sub> Inventories

HD engines and vehicles are important contributors to the national

inventories of NO<sub>x</sub> emissions, and they contribute moderately to national VOC pollution. The draft RIA for this proposal describes in detail recent emission inventory modeling completed by EPA for this proposal. Table 1 summarizes EPA's current estimates for national NO<sub>x</sub> and VOC contributions from major source categories.

TABLE 1.—2000 NATIONAL NO<sub>x</sub> AND VOC EMISSIONS  
[thousand short tons per year]

Emission source	NO <sub>x</sub>	NO <sub>x</sub> %	VOC	VOC %
Light-Duty Vehicles .....	4,420	19	4,098	25
Heavy-Duty Diesel Vehicles .....	2,274	10	246	1
Heavy-Duty Gasoline Vehicles .....	318	1	198	1
Nonroad Engines and Vehicles .....	5,343	23	2,485	15
Other (Stationary Point and Area Sources) .....	10,656	47	9,567	58
Total Nationwide Emissions .....	22,831	.....	16,594	.....

It should be noted that Table 1 does not include estimated NO<sub>x</sub> emission impacts associated with the previously produced HD diesel engines at issue in the recent enforcement action involving the government and several HD diesel engine manufacturers. The relationship of these consent decrees to today's proposed rule is described in section III.D. The excess NO<sub>x</sub> emissions from these engines are substantial, and would significantly increase the estimated contribution from HD diesel vehicles presented in Table 1. However, as discussed in section VI.A of this preamble, we did not update our emission inventory model to include the impact on these previously produced engines for this proposal.

Notwithstanding these excess emissions, Table 1 indicates that HD gasoline and diesel vehicles will represent approximately 11 percent of national NO<sub>x</sub> emissions and two percent of national VOC emissions in the year 2000. The Regulatory Impact Analysis document for this proposal contains updated emission inventory modeling for HD vehicles. The results show that without additional HD NO<sub>x</sub> control beyond the 1998 standards, national NO<sub>x</sub> emissions from HD vehicles would decline between 2000 and 2005, but this trend would stop in 2005. After 2005, NO<sub>x</sub> emissions from the HD vehicle fleet would increase as a result of future growth in the HD vehicle market without additional emission controls. A similar trend is seen for national NMHC emissions from HD vehicles; however, NMHC emissions are projected to decrease until approximately 2010, after which changes in the make-up of the fleet

result in an increase in the NMHC emissions from HD vehicles (see Chapter 5 of the draft RIA).

We estimate that the HD diesel and gasoline standards contained in this proposal will result in a combined reduction by the year 2020 of 1,629,000 tons of NO<sub>x</sub> per year and 54,000 tons of hydrocarbons (HC) per year. Section VI of this preamble ("What are the Environmental Benefits of this Proposal?") as well as the draft RIA for this proposal contain more detailed information on the Agency's projected benefits from today's proposal.

B. Need for Additional PM Reductions

1. Health and Welfare Effects From PM

Particulate matter is the general term for the mixture of solid particles and liquid droplets found in the air. Particulate matter includes dust, dirt, soot, smoke, and liquid droplets that are directly emitted into the air from natural and manmade sources, such as windblown dust, motor vehicles, construction sites, factories, and fires. Particles are also formed in the atmosphere by condensation or the transformation of emitted gases such as sulfur dioxide, nitrogen oxides, and volatile organic compounds. Particulate matter, like ozone, has been linked to a range of serious respiratory health problems. Scientific studies suggest a likely causal role of ambient particulate matter in contributing to a series of health effects. The key health effects categories associated with particulate matter include premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency room visits, school absences,

work loss days, and restricted activity days), changes in lung function and increased respiratory symptoms, changes to lung tissues and structure, and altered respiratory defense mechanisms. PM also causes damage to materials and soiling. It is a major cause of substantial visibility impairment in many parts of the U.S.

Motor vehicle particle emissions and the particles formed by the transformation of motor vehicle gaseous emissions (secondary particulates) tend to be in the fine particle range. Fine particles (those less than 2.5 micrometers in diameter) are a health concern because they easily reach the deepest recesses of the lungs. Scientific studies have linked fine particles (alone or in combination with other air pollutants), with a series of significant health problems, including premature death; respiratory related hospital admissions and emergency room visits; aggravated asthma; acute respiratory symptoms, including aggravated coughing and difficult or painful breathing; chronic bronchitis; and decreased lung function that can be experienced as shortness of breath.

These effects are discussed further in the RIA for this proposal, as well as the RIA for the 1997 final rule for the 2004 standards, and additional information may be found in EPA's "staff paper" and "air quality criteria document" for particulate matter.<sup>19</sup>

2. Current and Future Compliance With the PM<sub>10</sub> NAAQS

The first NAAQS for particulate matter regulated total suspended

<sup>19</sup> U.S. EPA, 1996, Air Quality Criteria for Particulate Matter, EPA/600/P-95/001aF.

particulate in the atmosphere. In 1987, EPA replaced that standard with one for inhalable PM (PM<sub>10</sub>—particles less than ten microns in size), because the smaller particles, due to their ability to reach the lower regions of the respiratory tract, are more likely responsible for the adverse health effects. The major source of PM<sub>10</sub> is fugitive emissions from agricultural tilling, construction, fires, and unpaved roads. Some revisions to the PM<sub>10</sub> standards were made in 1997. EPA has also recently added new fine particle standards for particles less than 2.5 microns in size (PM<sub>2.5</sub>). Most of the particulate due to motor vehicles falls in the fine particle category. These standards have both an annual and a daily component. The annual component is set to protect against long-term exposures, while the daily component protects against more extreme short-term events.

As noted above, on May 14, 1999, a panel of the U.S. Court of Appeals for the District of Columbia Circuit found, by a 2–1 vote, that Clean Air Act sections 108 and 109, as interpreted by EPA in establishing the new NAAQS for PM<sub>2.5</sub> and PM<sub>10</sub>, effect an unconstitutional delegation of Congressional power. *American Trucking Ass'ns, Inc., et al., v. Environmental Protection Agency*, Nos. 97–1440, 1441 (D.C. Cir. May 14, 1999). The Court remanded the record to EPA. The court vacated the new PM<sub>10</sub> standard, but has not vacated the PM<sub>2.5</sub> standard. See *American Trucking Ass'ns, Inc., et al., v. Environmental Protection Agency*, No. 97–1440 (D.C. Cir. June 18, 1999).

Compliance with the current PM<sub>10</sub> standard continues to be a problem. According to the 1996 EPA Air Quality and Emissions Trends report, there were 7 million people living in 15 counties across the U.S. which exceeded the PM<sub>10</sub> NAAQS in 1996.<sup>20</sup>

EPA recently projected ambient PM<sub>10</sub> levels and the number of U.S. counties expected to be in violation of the revised PM<sub>10</sub> NAAQS in 2010.<sup>21</sup> Based on the 1990 census, about 10 million people live in the 11 counties projected to be in nonattainment of the revised PM<sub>10</sub> NAAQS.

<sup>20</sup> U.S. EPA, January 1998, "National Air Quality and Emissions Trends Report, 1996", EPA 454/R-97-0013.

<sup>21</sup> Regulatory Impact Analyses for the Particulate Matter and Ozone National Ambient Air Quality Standards and Proposed Regional Haze Rule, Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, N.C., July 16, 1997.

### 3. Contribution of HD Diesel and Gasoline Vehicles to PM Inventories

#### a. Contribution to National PM<sub>10</sub> Inventories

The national inventory of PM<sub>10</sub> is dominated by natural sources (wind erosion) and so-called miscellaneous sources, which include paved and unpaved road dust, agricultural crops, fugitive dust, and dust from construction activities. Together natural and miscellaneous sources represented approximately 90 percent of national PM<sub>10</sub> emissions in 1996. Since these sources are not readily amenable to regulatory standards and controls, it is appropriate to focus on more traditional "controllable" portions of the particulate pollution problem when considering the need for PM controls. Excluding natural and miscellaneous sources, HD vehicles (gasoline and diesel) represent approximately five percent of the remaining man-made sources of PM<sub>10</sub> in 1996, virtually all (95 percent) of which is from diesel vehicles.<sup>22</sup>

In the proposal for the 1997 final rule for the 2004 standards, EPA presented data on future projections of mobile and stationary source PM<sub>10</sub> national emission inventories out to the year 2010, as well as a break-down of mobile sources into on-highway light-duty, on-highway heavy-duty, and nonroad categories (see 61 FR 33432–33440, June 27, 1996). These projections showed that without additional future controls on PM or NO<sub>x</sub> emissions, annual PM emissions (tons/year) for all mobile sources would begin to rise after the year 2000. The Regulatory Impact Analysis document for this proposal presents the results of updated emission modeling specifically for HD vehicles. These results show that the annual national PM<sub>10</sub> emissions from HD vehicles (tons/year) are expected to decline between now and approximately the year 2010, after which increases in the size of the fleet will result in a steady increase into the future (see Chapter 5 of the draft RIA).

#### b. Source-apportionment Studies for Diesel PM

Discussion of PM inventories from HD vehicles, and in particular HD diesel vehicles which represent the vast majority of the HD PM emissions, can be discussed in terms other than just contributions to national yearly emission inventories. In recent years several research groups have been

<sup>22</sup> U.S. EPA, December 1997, "National Air Pollutant Emission Trends, 1900–1996", EPA-454/R-97-011.

looking at the contribution of diesel PM in selected urban and rural areas. In several cases these studies indicate that the contribution from diesels in certain urban areas to PM emissions is much larger than is indicated by national PM inventories. Several studies have been performed in the past several years which have attempted to apportion particulate matter collected at specific sites to individual source categories, *i.e.*, source apportionment studies. These studies collect particulate matter samples in the ambient air which are subsequently analyzed using various chemical techniques in order to estimate what sources contributed to the sample.

There have been a number of source apportionment studies for mobile source particulate emissions. Among the most recent and thorough are studies by the state of Colorado (the Northern Front Range Air Quality Study [NFRAQS]) for the Denver area and the California Institute of Technology for the Los Angeles area. These studies emphasize particulate smaller than 2.5 microns. Also, EPA has a cooperative agreement with the Desert Research Institute (DRI); under this agreement, DRI is completing a detailed report on mobile source particulates; a major portion of this report summarizes source apportionment studies for particulates that include those from mobile sources.<sup>23</sup>

Source apportionment work involves collecting and analyzing a number of ambient particulate samples from a number of specific sources such as gasoline and diesel vehicles. Some samples of high molecular weight hydrocarbons are frequently also collected and analyzed, these hydrocarbons can be transformed to particulates in the ambient air; such compounds include polycyclic organic matter. These samples are analyzed in detail to determine what specific compounds are present including those in trace amounts that are more common from one source type than from others, these traces are called source signatures. From these analyses, a number of source signatures are developed including those for gasoline and diesel vehicles. Source apportionment work also involves collecting and analyzing a larger number of ambient particulate and, frequently, high molecular weight hydrocarbon. The compounds found in these samples can be compared to the source signatures to determine what and how much individual sources contribute to the ambient particulate.

<sup>23</sup> Draft report for EPA from the Desert Research Institute, June 30, 1998, Available in EPA Air Docket A-98-32, Item # II-A-01.

Source apportionment work is subject to complications and uncertainty. Thus, no single study should be considered definitive. Additional information on source apportionment techniques, and the uncertainties associated with the techniques, can be found in Chapter 2 of the RIA for this proposal.

The NFRAQS study analyzed ambient particulate samples in the Colorado area including Denver using data it collected on the chemical speciation from specific source types to determine how much various mobile and stationary source types contribute to PM<sub>2.5</sub>. Authorized by Colorado state legislation, the total study was funded by 37 government, industry, and trade association groups. The many outputs and conclusions from the NFRAQS will not be discussed here, only source apportionment results for diesel engines are summarized. Complete copies of the NFRAQS are available from the following World Wide Web site, <http://charon.cira.colostate.edu/>. The NFRAQS included several time periods and several locations in and around Denver. Two locations, Brighton and Welby, during the winter of 1997 included the most detailed sampling and analysis, which allowed the researchers to estimate very detailed source specific contributions, including the contributions to PM<sub>2.5</sub> from diesel exhaust (all diesel, nonroad and on-highway sources were not differentiated). Based on this work, it was estimated that diesel exhaust sources contributed 10 percent of the total mass of PM<sub>2.5</sub> in the areas of Brighton and Welby in the winter of 1997.

Similar work has been done for the Los Angeles area by a group of researchers at the California Institute of Technology. This work concluded that direct emissions from diesel exhaust represented approximately 30 percent of fine PM mass on an annual basis in downtown Los Angeles in 1982.<sup>24</sup> In follow-on work looking at the city of Claremont, California in 1987, direct diesel exhaust was found to represent approximately 13 percent of PM<sub>2.5</sub> mass, and 9 percent of PM<sub>10</sub> mass.<sup>25</sup>

The California Institute of Technology has also collected ambient particulate in the Boston, MA and Rochester, NY areas. These samples, especially those

for Boston, show that carbonaceous particulate is the largest single constituent in PM<sub>2.5</sub> for these areas. Mobile source particulate, including diesels, is an important contributor to carbonaceous particulate. The Boston and Rochester samples have not yet been used for source apportionment work.

Other ambient samples collected in the eastern U.S. such as Washington, DC show carbonaceous particulate to be an important constituent of PM<sub>2.5</sub>, although sulfates is a somewhat larger constituent and nitrates a much smaller constituent. Particulate samples collected in the western U.S. such as in Spokane, WA, Phoenix, AZ and the San Joaquin Valley of California show that carbonaceous particulate is the major constituent with sulfates/nitrates being lesser constituents although nitrates are more important in southern California than elsewhere in the United States. This work is summarized in the EPA report "National Air Pollutant Emission Trends, 1900-1996."<sup>26</sup>

The reports on source apportionment summarized in this section indicate that the contribution of diesel engines to PM inventories in several local areas around the U.S. are much higher than what would be assumed from looking only at the estimates presented in national PM emission inventories. One possible explanation for this is the concentrated use of diesel engines in certain local or regional areas which is not well represented by the national, yearly average presented in national PM emission inventories.

### C. Air Toxics From HD Engines and Vehicles

In addition to contributing to the health and welfare problems associated with exceedances of the National Ambient Air Quality Standards for ozone and PM<sub>10</sub>, emissions from HD diesel and Otto-cycle vehicles include a number of air pollutants that increase the risk of cancer or have other negative health effects. These air pollutants include benzene, formaldehyde, acetaldehyde, 1,3-butadiene, and diesel particulate matter. For several of these pollutants, motor vehicle emissions are believed to account for a significant proportion of total nation-wide emissions. All of these compounds are products of combustion; benzene is also found in nonexhaust emissions from gasoline-fueled vehicles. These reductions in hydrocarbon emissions from HD vehicles resulting from today's

proposal will further reduce the potential cancer risk and other health risks from these air toxics (other than diesel PM) because many of these pollutants are themselves VOCs. Diesel engine particulate matter is also a potential concern because of its possible carcinogenic and mutagenic effects on people. Diesel PM is made of hundreds of chemical species, including many organic and metallic compounds. Researchers have been investigating the potential health hazards associated with exposure to diesel PM for many years.<sup>27</sup> EPA's Office of Research and Development is currently updating the EPA's diesel emission health assessment document. However, the document has only been released as a preliminary draft, and is currently undergoing review by the Clean Air Scientific Advisory Committee. A final version is not expected to be available until late 1999.<sup>28</sup>

The California Air Resources Board and the California Office of Environmental Health Hazard Assessment (COEHHA) have undertaken an assessment of the cancer and non-cancer effects from exposure to diesel exhaust, including the particulate matter component of diesel exhaust, to determine whether diesel exhaust should be classified as a Toxic Air Contaminant (TAC) under California law. The evaluation of diesel exhaust by CARB and COEHHA began in 1989, in June of 1998 a Staff Report was published which recommended that diesel exhaust be classified as a TAC.<sup>29</sup> In a CARB Board hearing held in August, the Board decided to identify diesel exhaust particulate matter as a TAC.<sup>30</sup>

EPA will be addressing the issues raised by air toxics from motor vehicles and their fuels in a separate rulemaking that EPA is initiating in the near future under section 202(l)(2) of the Act. That rulemaking will address the emissions of hazardous air pollutants from motor vehicles and fuels, and the appropriate level of control of hazardous air pollutants from these sources.

### III. What Is the Important Background Information for This Proposal?

Under EPA's classification system, heavy-duty vehicles are those with a

<sup>24</sup> "Source Apportionment of Airborne Particulate Matter Using Organic Compounds as Tracers", J.J. Schauer, W.F. Rogge, L.M. Hildemann, M.A. Mazurek, and G.R. Cass, Atmospheric Environment, Vol. 30, No. 22, 1996.

<sup>25</sup> "Source Contributions to the Size and Composition Distribution of Urban Particulate Air Pollution", M.J. Kleeman and G.R. Cass, Atmospheric Environment, Vol. 32, No. 16, 1998.

<sup>26</sup> "National Air Pollutant Emission Trends, 1900-1996", EPA Report 454/R-97-011, December 1997.

<sup>27</sup> "Diesel Exhaust: A Critical Analysis of Emissions, Exposure, and Health Effects", Health Effects Institute, April, 1995.

<sup>28</sup> "Preliminary Draft—Health Assessment Document for Diesel Emissions", U.S. EPA, February 1998, EPA 600/8-90/057C.

<sup>29</sup> California Air Resources Board—Staff Report—"Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant", June 1998.

<sup>30</sup> California Air Resources Board, Resolution 98-35, August 27, 1998.

GVWR of 8,500 pounds or more.<sup>31</sup> The State of California classifies the lighter end of this class—up to 14,000 pounds GVWR—as “medium-duty vehicles.” Heavy-duty engines are engines used in heavy-duty vehicles. Heavy-duty engines and vehicles are used in a wide range of applications, from large full size pick-up trucks to the largest commercial trucks. Because one type of heavy-duty engine may be used in many different applications, EPA emission standards for the heavy-duty class of vehicles have historically been based on the emissions performance of the engine (and any associated aftertreatment devices) as tested separately from the vehicle chassis.

Highway HDEs are categorized into diesel-cycle (compression-ignited) and Otto-cycle (spark-ignited) engines. Most diesel-cycle engines are fueled by diesel fuel, but heavy-duty diesel-cycle engines can also be fueled by methanol or natural gas. The heavy-duty diesel engine class is further subdivided by EPA into three subclassifications or “primary intended service classes”; light, medium, and heavy HDDEs (see 40 CFR 86.090–2). HDDEs are categorized into one of the three subclasses depending on the GVWR of the vehicles for which they are intended, the usage of the vehicles, the engine horsepower rating, and other factors. The subclassifications allow EPA to more effectively set requirements that are appropriate for the wide range of sizes and uses of HDDEs.

Most highway heavy-duty Otto-cycle vehicles and engines are gasoline-fueled, but may also be fueled with alternative fuels including methanol and gaseous fuels such as natural gas. Heavy-duty Otto-cycle vehicles and engines include large full size pick-up trucks, full size cargo and passenger vans, and the largest sport utility vehicles. Approximately 75 percent of heavy-duty Otto-cycle vehicles are in the 8,500–10,000 pound GVWR range, and the vast majority of these are sold as “complete” vehicles. The majority of heavy-duty Otto-cycle vehicles above 10,000 pounds GVWR are sold as “incomplete” vehicles, meaning that they are manufactured without their primary cargo carrying container or device attached. These incomplete vehicles (basically the engine plus a chassis) are then manufactured into a

variety of vehicles, including recreational vehicles, panel trucks, tow trucks, and dump trucks.

EPA's NO<sub>x</sub> standard for 1998 and later model year diesel and Otto-cycle heavy-duty engines is 4.0 grams per brake horsepower-hour (g/bhp-hr). The hydrocarbon standards for 1998 and later model year Otto-cycle engines are 1.1 g/bhp-hr for engines used in lighter vehicles (8500 to 14,000 pounds GVWR) and 1.9 g/bhp-hr for engines used in heavier vehicles (greater than 14,000 pounds GVWR), and the 1998 and later model year hydrocarbon standard for HDDEs is 1.3 g/bhp-hr. EPA currently requires testing of the engine (with emissions control systems in place) rather than the entire vehicle. Thus, the standards are in units of g/bhp-hr (i.e., grams of emissions per unit of work the engine performs over the test cycle), rather than the grams-per-mile unit currently used for testing passenger cars and light-duty trucks.

This proposed rulemaking is the continuation of a rulemaking process for heavy-duty engines which began in 1995 with an Advanced Notice of Proposed Rulemaking (ANPRM) (60 FR 45580, August 31, 1995). As discussed below, a 1996 Notice of Proposed Rulemaking proposed the same NMHC+NO<sub>x</sub> standards for both Otto-cycle and diesel engines (61 FR 33421, June 27, 1996). However, EPA did not finalize the proposed NMHC+NO<sub>x</sub> standard for Otto-cycle engines in the final rule published in October 1997 (62 FR 54694, October 21, 1997). EPA did finalize a new NMHC+NO<sub>x</sub> emission standard for HDDEs, starting with the 2004 model year, but committed to review the appropriateness of this standard in 1999. This NPRM thus addresses two broad issues that remain from earlier rulemaking efforts—a review of the NMHC+NO<sub>x</sub> standard for diesel engines and a supplemental proposal addressing new NMHC+NO<sub>x</sub> standards for heavy-duty Otto-cycle engines and vehicles. The previous rulemaking documents, and the documents referenced therein (see EPA Air Docket No. A-95-27), contain extensive background on the engines and vehicles, the affected industry, and the need for lower emissions standards.

#### *A. Statement of Principles and Rulemaking History*

In July of 1995, EPA, the California Air Resources Board, and heavy-duty engine manufacturers representing over 90 percent of annual nationwide engine sales signed a Statement of Principles (SOP) that established a framework for a proposed rulemaking to address concerns regarding the growing

contribution of heavy-duty engines to air pollution problems. The SOP contained levels for a new proposed standard for NMHC+NO<sub>x</sub> that would become effective in model year 2004. The SOP also contained several key provisions in addition to the standards. The SOP discusses the need to review in 1999 the technological feasibility of the NMHC+NO<sub>x</sub> standard and its appropriateness under the Clean Air Act. Also, the SOP outlines a plan for developing technology with the goal of reducing NO<sub>x</sub> emissions to 1.0 g/bhp-hr and particulate matter to 0.05 g/bhp-hr while maintaining performance, reliability, and efficiency of the engines. EPA sought early comment on the general regulatory framework laid out in the SOP in an ANPRM on August 31, 1995 (60 FR 45580), then subsequently issued an NPRM on June 27, 1996 (61 FR 33421).

On October 21, 1997, EPA issued a final rule (62 FR 54694). The centerpiece of the final rule was the new NO<sub>x</sub> + NMHC standard of 2.4 g/bhp-hr (or 2.5 g/bhp-hr with a 0.5 g/bhp-hr NMHC cap) for 2004 and later model year heavy-duty diesel-cycle engines. The rule also adopted other related compliance provisions for diesel-cycle heavy-duty engines beginning with the 2004 model year, as well as revisions to the useful life for the heavy heavy-duty diesel engine service class. As explained in the following section, no new standards were finalized for on-highway heavy-duty Otto-cycle engines.

The final rule also contained modified ABT provisions for heavy-duty diesel engines, allowing EPA to finalize a more stringent engine standard than might otherwise be appropriate under the CAA, since ABT reduces the cost and improves the technological feasibility of achieving the NMHC+NO<sub>x</sub> standard. The changes to the ABT program provide the manufacturers with additional product planning flexibility and the opportunity for a more cost-effective introduction of product lines meeting the new standard. We also believe that the ABT program can create an incentive for the early introduction of new emission control technology. EPA did not finalize new ABT provisions for Otto-cycle engines because EPA did not take action at that time on new standards for those engines. In summary, engine manufacturers will be able to generate credits under the new program beginning with the 1998 model year for use only in 2004 and later model years. The credits in the modified program will have unlimited life, as opposed to the three year credit life contained in the current HD program. Also, engines

<sup>31</sup> The Clean Air Act defines heavy-duty vehicles as those with a GVWR of 6,000 pounds. However, EPA has classified vehicles between 6,000 and 8,500 pounds GVWR as light-duty vehicles, while treating them as heavy-duty for statutory purposes. Vehicles weighing between 6,000 and 8,500 pounds GVWR are not addressed generally in this proposed rulemaking.

with certification levels at or below a certain cut point are able to generate undiscounted credits. Credits generated by engine families certified above the specified cut point are discounted by 10 percent for purposes of banking and trading. The pre-existing ABT program was retained for engine families using credits before 2004, and for Otto-cycle engines which cannot earn credits in the modified program, as noted above. In 2004, the certification level cut-point is adjusted to reflect the implementation of the new standard.

EPA also finalized several provisions to help ensure in-use durability. First, EPA increased the useful life period for heavy heavy-duty diesel engines to 435,000 miles. This new useful life represents a 50 percent increase and is more representative of the durability of current and future heavy heavy-duty diesel engines. In addition, longer allowable maintenance intervals were finalized for some critical emission-control components, including exhaust gas recirculation (EGR) systems, catalysts, and other add-on emissions control components. Generally, the maintenance intervals for the components are set at 100,000 miles for light heavy-duty diesel engines and 150,000 miles for medium and heavy heavy-duty diesel engines. Warranty regulations were also revised to better reflect current industry practices.

Other provisions of the October, 1997 final rule address the period after the manufacturer's responsibility for emission control ends, including engine rebuilding. One of those provisions requires engine manufacturers to establish a section in the owner's manual for add-on components that includes recommendations for maintenance and diagnosing malfunction. In addition, all on-board monitoring used to satisfy the engine's allowable maintenance must not be designed to turn off after the end of the useful life. Finally, EPA established provisions to address engine rebuilding which specify what actions are needed to ensure proper operation of emissions control components and ensure that rebuilding does not result in loss of emissions control. Removal or disabling of emissions related components, resulting in a higher emitting vehicle, are considered tampering.

#### *B. 1999 Review of Heavy-Duty Diesel Engine NMHC+NO<sub>x</sub> Standards*

In addition to the elements of the final rule described above, EPA finalized a regulatory provision providing for a 1999 review of the new NMHC+NO<sub>x</sub> emission standard for HDDEs. EPA committed to "reassess the

appropriateness of the standards under the Clean Air Act, including the need for and technical and economic feasibility of the standards based on information available in 1999" (See 62 FR 54699, October 21, 1997). This provision was put in place because the technologies required to meet the 2004 NMHC+NO<sub>x</sub> standard for HDDEs were, at the time the standard was finalized, not yet fully developed and proven. This commitment was spelled out in regulatory language in the final rule in 40 CFR 86.004-11, paragraph (a)(1)(i)(E), which reads:

No later than December 31, 1999, the Administrator shall review the emissions standards set forth in paragraph (a)(1)(i) of this section and determine whether these standards continue to be appropriate under the Act.

In the preamble to the 1997 final rule EPA outlined the three potential outcomes of the 1999 review: further tightening of the NMHC+NO<sub>x</sub> standard, no change to the standard, or a relaxation of the standard. The preamble noted that if EPA determined through the 1999 review process that a tighter standard was feasible and appropriate under the Clean Air Act, such tighter standard would be proposed. Conversely, if EPA's 1999 review process concluded that the 2004 NMHC+NO<sub>x</sub> standard was not technologically feasible, the 1997 preamble outlined alternative less stringent sets of standards that EPA would propose. These alternative less stringent standards would depend on EPA's conclusions regarding the necessity for diesel fuel changes and, if changes were found to be needed, whether or not EPA took action to require such changes. Specifically, the preamble stated that if EPA finds through the 1999 review process that the existing 2004 NMHC+NO<sub>x</sub> standard is not feasible, a standard no higher than 2.9 g/bhp-hr NMHC+NO<sub>x</sub> (or 3.0 g/bhp-hr NMHC+NO<sub>x</sub> with a limit of 0.6 g/bhp-hr NMHC) would be proposed. If EPA were to find that changes to diesel fuel would be necessary to meet the 2004 NMHC+NO<sub>x</sub> standards, and if EPA did not engage in a rulemaking to make such changes, then standards no higher than 3.4 g/bhp-hr NMHC+NO<sub>x</sub> (or 3.5 g/bhp-hr NMHC+NO<sub>x</sub> with a limit of 0.6 g/bhp-hr NMHC) would be proposed.

While the specific regulatory provision is limited to the NMHC+NO<sub>x</sub> standard for review in 1999, in the preamble to the final rule EPA committed to investigating or seeking comment on several other issues in the context of the 1999 review. These additional issues include:

- An evaluation of whether the appropriateness and technical feasibility of the 2004 standards depend upon changes to diesel fuel.
- A reassessment of the appropriateness of the 2004 NMHC+NO<sub>x</sub> standard in the context of the current PM standard.
- Non-conformance penalty provisions for the 2004 HDDE standards.

#### *C. Proposal for Heavy-Duty Gasoline Engine Standards*

##### *1. Summary of Comments on 1996 NPRM*

As was noted above, EPA proposed the same NMHC+NO<sub>x</sub> standard for diesel and Otto-cycle heavy-duty engines in the 1996 NPRM. In the comment period following the NPRM, several commenters urged the Agency to reconsider its proposal for Otto-cycle engines. The commenters argued that the proposal ignored the true low emissions capability of gasoline-powered vehicles equipped with advanced three way catalysts. Environmental groups provided comments highlighting manufacturers' certification data for the 1996 model year, which included some engine families with emission levels considerably below the standards proposed for the 2004 model year. One commenter recommended that the proposed standard be phased in earlier than 2004 for Otto-cycle engines since the emissions control technology capable of meeting the NMHC+NO<sub>x</sub> standard was more advanced for Otto-cycle engines than for diesel engines.

Manufacturers commented that the proposed standard was appropriate for Otto-cycle engines and that EPA should not use certification data as a basis for determining the feasibility of a lower standard. Manufacturers noted that due to the potential for in-use deterioration of catalysts and oxygen sensors, they must design to emissions targets and certification levels well below the standards. Catalysts experience wide variations in exhaust temperature due to the wide and varied usage of vehicles in the field. Some vehicles may experience more severe in-use operation than is represented by the durability testing conducted for engine certification. Manufacturers argued that this variation in in-use operation has an impact on emission system durability not represented by engine certification data and deterioration factors. They argued that it is necessary to certify engines to levels well below the standards to ensure in-use compliance of all engines. One manufacturer presented light-duty

vehicle and light-duty truck data to demonstrate that certification levels were about half the standard while some vehicles' in-use emissions levels were higher although not above the standard.<sup>32</sup>

2. Analysis Leading to Decision To Not Finalize Otto-Cycle Standards

EPA, in deciding whether to finalize the NMHC+NO<sub>x</sub> standard as originally proposed, had to determine if the proposed standards met the requirements of section 202(a)(3)(A) of the Clean Air Act.<sup>33</sup> For Otto-cycle engines, EPA examined 1997 model

year certification data and found some engines certified to very low emissions levels. The certification data for 1997 showed a large number of engine families emitting at or below the 2004 levels as they were proposed, with some engines certified at emission levels only ten to twenty percent of the proposed 2004 emission standards. Examples of these engines are listed in Table 2.<sup>34</sup>

TABLE 2.—1997 MY HEAVY-DUTY OTTO-CYCLE ENGINE CERTIFICATION DATA

Engine size (liter)	NO <sub>x</sub> certification level (g/bhp-hr)	HC certification level (g/bhp-hr)	NO <sub>x</sub> + HC (g/bhp-hr)
4.3	1.2	0.3	1.5
5.4	0.2	0.1	0.4
5.7	1.4	0.1	1.5
6.8	0.1	0.1	0.2
7.4	1.2	0.4	1.6
8.0	2.2	0.1	2.3
Emission Standards	5.0	*1.3	N/A

\*(1.9 above 14,000 pounds GVWR)

EPA also examined certification data for California vehicles. California's MDV program requires all complete heavy-duty vehicles (i.e., all vehicles that exit the manufacturer's assembly line with their cargo carrying device or container attached) up to 14,000 pounds GVWR to be certified on the chassis-based

(vehicle) federal test procedure (EPA currently requires engine-based testing of vehicles in this class). Table 3 lists examples of model year 1997 California vehicle certification results for vehicles above 8,500 pounds GVWR.<sup>35</sup> These vehicles were required to meet the California Tier 1 standards which are

listed on the table. Starting with the 1998 MY, California is requiring manufacturers to begin phase-in of vehicles meeting more stringent Low Emission Vehicle (LEV) standards which are also listed in Table 3 for these vehicles.

TABLE 3.—1997 MY CALIFORNIA MEDIUM-DUTY VEHICLE CERTIFICATION DATA [120,000 mile]

Engine size (liter)	NO <sub>x</sub> level (g/mile)	HC level (g/mile)	NO <sub>x</sub> +HC (g/mile)
5.4	0.20	0.220	0.42
5.7	0.88	0.160	1.04
6.8	0.42	0.300	0.72
7.4	0.48	0.210	0.69
7.5	0.24	0.190	0.43
8.0	0.51	0.234	0.74
Tier 1 standards	1.53	0.560	N/A
LEV standards	0.90	0.280	N/A

EPA understands that manufacturers have established certification levels which represent typical vehicle usage and that manufacturers have given themselves a significant margin between the certification levels and the standards to account for variability including more severe usage and deterioration. However, EPA found that some 1997 model year engines were certified to very low levels even taking the need for

a compliance margin into consideration. At the time, however, EPA did not believe it was appropriate, given the lack of a full opportunity for notice and comment, and the need for more thorough data and analyses, to proceed directly to finalizing standards tighter than those originally proposed for heavy-duty Otto-cycle engines. For these reasons, EPA did not finalize the proposed standards for Otto-cycle

engines and asserted that more stringent standards might be reasonably achievable in the 2004 model year time frame. With the lead time available for the 2004 time frame and in the context of EPA's emission control program at the time, EPA concluded in 1997 that final action establishing an appropriate standard for Otto-cycle heavy-duty engines should be the subject of a future action that more thoroughly assessed

<sup>32</sup> Comments from Kelly Brown, Ford Motor Company, to Margo Oge, Director OMS, U.S. EPA, September 9, 1996, Docket A-95-27, IV-D-26.

<sup>33</sup> Section 202(a)(3)(A) of the Clean Air Act specifies that regulations "shall contain standards which reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines

will be available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology."

<sup>34</sup> Note that the text here is a brief assessment of the information EPA had available at the time a decision was made to refrain from finalizing heavy-duty Otto-cycle standards. However, today's

proposal, and the accompanying analysis of feasibility in the RIA, uses more recent data.

<sup>35</sup> All of the vehicles and standards listed are categorized MDV3 in the medium duty vehicle program which includes vehicles with test weights between 5,751-8,500. Test weight is the average of the curb weight and gross vehicle weight.

whether a more stringent standard might be achievable and appropriate for some or all categories of Otto-cycle heavy-duty engines.

#### *D. Consent Decrees With Heavy-Duty Diesel Engine Manufacturers*

The Department of Justice and EPA recently filed proposed consent decrees with seven of the largest heavy-duty diesel engine manufacturers in the U.S. in order to resolve the problems uncovered from current and past heavy-duty diesel engines which the government does not believe meet existing standards and defeat device rules. (See 63 FR 59330–59334; November 3, 1998). In these consent decrees with the Federal Government these manufacturers have agreed, among other things, to meet a 2.5g/bhp-hr limit on NMHC+NO<sub>x</sub> no later than October 1, 2002. The majority of these engine manufacturers have also agreed to produce engines by October 1, 2002 which meet a 1.25 not-to-exceed limit, a 1.0 Euro III limit (on which the Agency's proposed supplemental steady-state cycle is based), and to test engines over and eventually comply with a load response test and limit.<sup>36</sup> The fact that these engine manufacturers have agreed to meet the 2004 standards in 2002 gives the Agency additional confidence that the NMHC+NO<sub>x</sub> standard being reaffirmed in today's proposal is appropriate for the 2004 model year. Other elements of these consent decrees that are carried over to today's proposed rule include the addition of a new steady state certification test and a new "not-to-exceed" (NTE) approach to in-use testing. In addition, under the consent decrees the manufacturers are required to invest considerable resources to evaluate instrumentation and methodologies for on-road testing, providing an additional basis for EPA's expectations regarding the advancement of technology in this area.

The Agency believes these consent decrees will partially address the emission problems from these previously produced engines. However, we do not believe that relying on the

<sup>36</sup> The Consent Decrees establish target limits for a load response test of 1.3 times the federal test procedure (FTP) standard for NMHC+NO<sub>x</sub> and 1.7 times the FTP standard for PM. These limits would take effect for affected manufacturers after October 1, 2002. However, the Consent Decrees establish a process to determine whether these limits should be modified to ensure that they are the lowest achievable given the technology available at the time. Under this process, manufacturers would submit load response test data with their certification applications starting with the 1999 model year, and by October 1, 2000, the parties to the Consent Decrees would review these data to determine appropriate emission limits.

current compliance program and the use of enforcement actions in the future is the most appropriate method to assure in-use compliance of heavy-duty engines under all operating conditions. We estimate that the more than 1,000,000 engines at issue in these consent decrees produced since 1988 will have resulted in excess NO<sub>x</sub> emissions of more than 15 million tons over the lifetime of the engines, with an estimated 1.3 million excess tons of NO<sub>x</sub> being emitted in 1998 alone. This level of NO<sub>x</sub> emissions is enormous. To put this in perspective, the Agency's National Air Pollutant Emission Trends report for 1900–1996 estimates the total U.S. emission inventory for annual NO<sub>x</sub> emissions was 23.3 million tons. These estimates do not include the previously unknown excess NO<sub>x</sub> emissions from on-highway heavy-duty diesels. Assuming the total 1998 national NO<sub>x</sub> emissions are similar to 1996, the 1.3 million tons excess NO<sub>x</sub> emissions from heavy-duty diesels in 1998 represent approximately five percent of the national total. We believe the new compliance requirements proposed in this NPRM must be put in place in order to assure that the public's health and welfare are protected from these types of excess emissions in the future.

#### **IV. What Are the Details of This Proposal?**

##### *A. Reaffirmation of 2004 NMHC + NO<sub>x</sub> Standard for Heavy-Duty Diesel Engines*

In today's proposal, the Agency is reaffirming the technological feasibility, cost-effectiveness, and appropriateness under the Clean Air Act of the 2004 NMHC+NO<sub>x</sub> standard for HDDEs, including the appropriateness of the current 0.1g/bhp-hr PM standard. In 1997, the Agency finalized on-highway heavy-duty diesel standards for model year 2004 of:

2.4 g/bhp-hr NMHC + NO<sub>x</sub>  
or

2.5 g/bhp NMHC + NO<sub>x</sub> with a limit of  
0.5 g/bhp-hr on NMHC

For today's proposal, the Agency has conducted a thorough analysis of information and data which has become available since the finalization of these standards in October of 1997. As discussed elsewhere in this preamble and in the RIA for this proposal, manufacturers have made significant progress toward meeting the 2004 standards, and in fact, the Agency believes a large number of manufacturers will be meeting the 2004 model year standards by the end of 2002. Manufacturers have made significant progress in several key

technologies for HD diesels which will allow them to meet the 2004 NMHC+NO<sub>x</sub> standards. These areas included advanced fuel injection systems, EGR, advanced turbocharger systems, and advanced electronic controls. In the relatively short time frame since the finalization of the 1997 rule, manufacturers have either announced or begun to introduce second generation electronically controlled fuel injection systems, such as the Cummins Accumulator Pump system (CAPS), and the Navistar/Caterpillar second generation hydraulically actuated electronic unit injections (HEUI) and mechanically actuated electronic unit injection (MEUI) systems.<sup>37 38 39 40 41</sup> These newer systems provide manufacturers with enormous capabilities to tailor-fit engine injection pressures, injection rate shaping, and pilot injection (or multiple pilot injections) to lower NO<sub>x</sub> emissions while still complying with the current PM standard, and maintaining or improving upon the fuel efficiency, performance, and durability expected by HDDE users. These advanced fuel systems will be coupled with new, sophisticated EGR systems. As discussed in the RIA, considerable research has been done in the last few years on the application of EGR to heavy-duty diesels in order to meet the 2004 standards. Based on this relatively recent information, it now appears manufacturers will use a combination of hot and cooled EGR, sometimes at relatively high EGR flow rates, on the order of 40–50 percent under certain operating conditions, to achieve the 2004 NMHC+NO<sub>x</sub> standards. The Agency believes EGR is perhaps the single most significant advance in emission control technology for HD diesels which will enable the approximately 50 percent reduction in NO<sub>x</sub> emissions required by the 2004 standards. As discussed in the draft RIA, cooled EGR is very effective at reducing NO<sub>x</sub> emissions. Laboratory studies have shown that EGR can reduce NO<sub>x</sub> emissions by up to 90 percent at

<sup>37</sup> SAE paper 973182, "Advanced Technology Fuel System for Heavy-duty Diesel Engines".

<sup>38</sup> *Diesel Progress*, August 1998, "CAT Gears Up Next Generation Fuel Systems", available in EPA Air Docket A-98-32, Docket Item #II-D-03.

<sup>39</sup> *Diesel Progress*, August 1998, "Next Generation MEUI-B to Debut in 2001", available in EPA Air Docket A-98-32, Docket Item #II-D-03.

<sup>40</sup> *Diesel Progress*, October 1998, "No Mistaking New Cummins ISL Engine", available in EPA Air Docket A-98-32, Docket Item #II-D-04.

<sup>41</sup> "Cummins New Midrange Fuel System", presented by John Youngblood, Cummins Engine Company, at the SAE Diesel Technology TOPTEC, April 22, 1998, available in EPA Air Docket A-98-32, Docket Item #II-D-01.

light load and up to 60 percent at full load near rated speed.<sup>42</sup> Other studies have shown similar reductions at other speeds and loads.<sup>43</sup> In addition to fuel system changes and EGR, turbocharger manufacturers and engine manufacturers are in the process of developing new variable nozzle turbochargers (VNT, sometimes referred to as variable geometry turbochargers), as well as more advanced, electronically controlled wastegated turbochargers, for both performance and emission reasons. The new VNT systems will allow manufacturers more flexibility in how they design their EGR systems, and provide improved performance for engine users. Finally, engine manufacturers continue to develop and introduce highly sophisticated electronic control management systems based on the latest microprocessor technology available.<sup>44</sup> These next generation control systems integrate the complete engine/powertrain system, including the injection system, EGR, and turbocharger, which allows the manufacturer to maximize the engine performance as well as emission control system. The RIA for this proposal provides additional detail on these technologies, as well as the Agency's cost analysis for the combination of technologies which EPA expects will be used to meet the 2004 NMHC+NO<sub>x</sub> standards. Based on the most recent information available, the Agency is confident that engine manufacturers are making sufficient progress in the development of technologies which will allow them to meet the 2004 NMHC+NO<sub>x</sub> standards. As discussed below, the Agency does not believe changes in diesel fuel quality are needed for engines to meet these standards.

In addition, as noted in section III.D, the fact that several heavy-duty diesel engine manufacturers have agreed to meet the 2004 standards in 2002 gives the Agency additional confidence that

<sup>42</sup> Dickey D.W., T.W. Ryan III, A.C. Matheaus: "NO<sub>x</sub> Control in Heavy-Duty Engines-What is the Limit?", SAE paper 980174, 1998. Dickey; and, Zelenka P., H. Aufinger, W. Reczek, W. Cartellieri: "Cooled EGR-A Key Technology for Future Efficient HD Diesels," SAE paper 980190, 1998.

<sup>43</sup> Kohketsu S., K. Mori, K. Sakai, T. Hakozaiki: "EGR Technologies for a Turbocharged and Intercooled Heavy-Duty Diesel Engine," SAE paper 970340, 1997; Baert R., D.E. Beckman, A.W.M.J. Veen: "EGR Technology for Lowest Emissions," SAE paper 964112, 1996; and, Heavy-duty Engine Working Group, Mobile Source Technical Advisory Subcommittee of the Clean Air Act Advisory Committee, "Phase 2 of the EPA HDEWG Program—Summary Document", available in EPA Air Docket A-98-32.

<sup>44</sup> See for example SAE paper 981035, "The Cummins Signature 600 Heavy-Duty Diesel Engine" T.R. Stover, D.H. Reichenbach, and E.K. Liffirth, Cummins Engine Co., Inc., Feb., 1998.

the NMHC+NO<sub>x</sub> standard being reaffirmed in today's proposal is appropriate for the 2004 model year.

As discussed in section IX, and in the draft RIA, EPA does not believe more stringent standards for the 2004 model year are technologically feasible, giving appropriate consideration to cost, energy, and safety factors. Technologies which could reduce emissions significantly below the 2004 standards, such as NO<sub>x</sub> absorber catalysts, are still in the research and development stage, and do not appear to be ready for the 2004 model year. The Agency has also examined technologies to reduce PM from HD diesel engines, including diesel oxidation catalysts and particulate traps. As discussed in the draft RIA, we believe the current PM standard of 0.1 g/bhp-hr (0.05 for urban buses) continues to be the appropriate standard for the 2004 time frame. However, in section X of today's proposal we discuss the possible feasibility of more stringent standards in later model years, although no specific proposals are made today.

#### *B. Are Changes in Diesel Fuel Quality Necessary To Meet the 2004 Standards?*

The purpose of this section is to assess the current understanding of the role diesel fuel quality plays in the ability of diesel engines to meet the 2004 NMHC+NO<sub>x</sub> emission standards and to determine whether these standards can be met using currently available fuel. It has long been realized that diesel engine technology alone is not the only mechanism to lower NO<sub>x</sub> emissions. Diesel fuel quality also plays an important role in emission formation, as well as engine performance. In addition, diesel fuel quality can play a role in the effectiveness of certain emission control technologies, and in some cases can be considered a technology enabler, i.e., some emission control devices may not function because of certain diesel fuel properties, such as sulfur content. In EPA's 1997 final rulemaking for the 2004 standards, we stated that we believed the 2004 standards were appropriate and technologically feasible through diesel engine technology modifications alone, without changes to diesel fuel quality (see 62 FR 54700, Oct. 21, 1997). However, we also stated that this issue would be revisited in the 1999 technology review rulemaking. "EPA will evaluate in light of any new information whether diesel fuel improvements are needed for the standards to be appropriate for 2004." (See 62 FR 54700, Oct. 21, 1997).

Section V.A. of this preamble ("2004 Emission Standards for Heavy-duty

Diesel Engines") and Chapter 3 of the draft RIA for this proposal ("Technological Feasibility of HD Diesel and Otto-cycle Standards") discuss in detail the technologies we believe will enable HD diesel engines to meet the 2004 standards, on existing U.S. HD diesel fuel. These technologies include cooled EGR, advanced fuel injection systems with rate-shaping ability, advanced turbocharger designs (such as variable nozzle turbochargers), and electronic engine management. These technologies have been demonstrated to produce significant emission reduction, independent of changes in current U.S. diesel fuel quality. Based on the information discussed in section V.A. of this preamble and Chapter 3 of the draft RIA, and based on the fact that these emission control technologies can produce substantial emission reductions using current diesel fuel, we conclude no change in diesel fuel quality is necessary to meet the 2004 NMHC+NO<sub>x</sub> standard. We request comment on this conclusion, and encourage commenters to supply any data and information that may support their comments.

Engine manufacturers have recently raised concerns to EPA regarding the potential negative effects of current diesel fuel sulfur levels on engine durability for 2004 technology engines for the full useful life of the engines. As discussed in Chapter 3 of the draft RIA for this rule, the use of cooled EGR systems to meet the 2004 standards can give rise to potentially significant concentrations of sulfuric acid formation in the recirculated exhaust if the EGR system cools the exhaust below the water vapor dew point. In addition, some HD diesel engine manufacturers have expressed specific concern regarding the extended useful life for the heavy-heavy duty diesel service class which goes into effect in 2004. In the 1997 final rulemaking for on-highway heavy-duty diesel engines, EPA revised and extended the useful life for the heavy-heavy service class from 290,000 miles to 435,000 miles (see 62 FR 54700, October 21, 1997). Several manufacturers have suggested EPA should reconsider this useful life extension due to their concerns with engine durability, diesel fuel sulfur, and cooled EGR systems. These manufacturers have suggested EPA implement the extended useful life contingent upon federal diesel fuel standards meeting some threshold maximum fuel sulfur content. However, the Agency believes manufacturers will design cooled EGR systems to limit sulfuric acid formation and to prevent in-use durability problems. As

discussed in the RIA (section 3.II.B), EPA expects engine manufacturers to maintain EGR cooler systems slightly above the water vapor dew point, particularly at high load. In addition, EPA expects manufacturers to utilize EGR systems made of sulfuric acid corrosive resistant materials (such as specially treated stainless steel) to prevent deterioration of the EGR system. We request additional information and supporting data on the manufacturers' concerns regarding durability issues associated with the 2004 standards. We request specific comment and supporting data on the manufacturers' concerns, including any in-use or laboratory durability data, and any data which would support or refute the manufacturers' contentions regarding the need for a shorter useful life for the heavy-heavy service class.

In the remainder of this section, we review the new information which has become available since the 1997 rulemaking through a study performed by the Heavy-duty Engine Working Group.

In anticipation of the need for new information regarding the influence of diesel fuel quality on future emission technologies and achievable levels, in December of 1995 a new Working Group called the Heavy-duty Engine Working Group (HDEWG) was formed under the Mobile Source Technical Advisory Subcommittee of the Clean Air Act Advisory Committee. The HDEWG consists of approximately 30 members, including representatives from EPA, heavy-duty engine original equipment manufacturers (OEMs), the oil industry, state air quality agencies, private consultants and members of academic institutions. The HDEWG formed a steering committee which consisted of representatives from EPA, Cummins, Caterpillar, Navistar, Ford, British Petroleum, Equilon, Mobil Oil, Phillips, the Engine Manufacturers Association, the American Petroleum Institute, and the National Petroleum Refinery Association. The HDEWG set as their research objective to contribute to EPA's 1999 technology review of the NMHC+NO<sub>x</sub> emission standards for model year 2004 heavy-duty diesel engines by assessing relative merits of achieving 2.5 g/bhp-hr NMHC+NO<sub>x</sub> level either through engine system modifications alone, or a combination of engine system and fuel modifications.

The HDEWG established a three phase process in order to meet their objective. In Phase 1, the goal was to determine whether the combined effects of diesel fuel properties on exhaust emissions of

"black box",<sup>45</sup> advanced prototype engines being developed by engine manufacturers were large enough to warrant a Phase 2. However, the details of each black box engine would not be shared with the HDEWG. In addition, the HDEWG agreed to use one "transparent" engine at an independent test facility, Southwest Research Institute (SwRI). During Phase 1, testing was to be performed on the transparent engine at SwRI, as well as the black box engines at manufacturers' own testing facilities, to determine if the transparent engine was representative of the black box engines with respect to diesel fuel effects on NO<sub>x</sub> emissions. Phase 2 of the program, which would occur upon successful completion of Phase 1, would be used to test a range of relevant fuel properties on the transparent engine at SwRI, in order to determine the effects of various fuel properties on emissions. Finally, Phase 3 of the test program would determine whether or not the results seen during Phase 2 on the transparent engine was in fact representative of black box engines, i.e., advanced prototype engines being developed by engine manufacturers to meet the 2004 standards. Phase 3 would be performed at engine manufacturers' laboratories using a subset of the fuel matrix from Phase 2.

At the time of the publication of this proposal, Phase 1 and Phase 2 of the program have been completed. Phase 3 is expected to be completed by the end of 1999. The RIA for this proposal contains a detailed discussion of the Phase 1 and Phase 2 portions of the HDEWG test program. The reader should see Chapter 3 of the draft RIA for this proposal for a detailed description.

The HDEWG's primary focus was on the effects of diesel fuel properties on HC and NO<sub>x</sub> emissions, not on PM emissions, and therefore fuel sulfur level was not investigated. A significant amount of data exists on the effects of diesel fuel sulfur on engine emissions, and in fact this data was summarized recently in a paper published by members of the HDEWG.<sup>46</sup> Existing data on recent model year HD engines indicates diesel fuel sulfur level does have a statistically significant effect on PM emissions, but no statistically significant effect on HC, carbon monoxide (CO), or NO<sub>x</sub> emissions for engines with no exhaust aftertreatment. For this reason, and because of the focus

on NMHC and NO<sub>x</sub> emissions, as well as the limitations of the prototype SwRI transparent engine, the HDEWG did not include fuel sulfur level as a variable in Phase 1, 2 or 3 of their test program, nor were PM emissions measured during Phase 1 or 2. The Phase 3 test program, done at individual engine manufacturers' facilities, will include PM measurement.

The HDEWG concluded two points based on the results of the Phase 1 testing. First, initial testing on a limited set of diesel fuel formulations (fuel batches with high cetane number and low aromatics) on advanced prototype engines by the engine manufacturers showed a change in NO<sub>x</sub> emissions which warranted additional testing under Phase 2. Second, the "transparent" engine at SwRI performed in a way that was representative of engine manufacturers' advanced prototypes, and was therefore an adequate test engine for Phase 2.

The purpose of the Phase 2 component of the test program was to test a range of relevant fuel properties on the transparent engine at SwRI in order to determine the effects of various fuel properties on emissions. All testing during Phase 2 of the test program was done at SwRI on the transparent engine. Based on the results of the Phase 1 testing, as well as the literature review performed under Phase 1, the HDEWG selected four fuel properties for investigation under Phase 2: density, cetane (natural and "boosted"<sup>47</sup>), monoaromatic content and polyaromatic content. As mentioned previously, fuel sulfur level was not investigated. A test matrix was designed to decouple these fuel properties from each other. The design matrix included two levels of density, monoaromatic hydrocarbons, polyaromatic hydrocarbons, and three levels of cetane, with duplicate test points for both natural and "boosted" cetane. The final matrix included eighteen test fuels, with density varying from 830 to 860 kg/m<sup>3</sup>, cetane numbers from 42 to 48 to 53, monoaromatic content from 10 to 25 percent, and polyaromatic content from 2.5 to 10 percent. The test cycle used by SwRI was the AVL 8-mode test. This steady-state test cycle, with associated weighting factors, has been shown in the past to correlate very well with NO<sub>x</sub> emissions measured over the U.S. heavy-duty federal test procedure (FTP). All emission tests were performed at least in duplicate. The transparent engine used at SwRI is a modern, heavy-heavy duty diesel engine with

<sup>45</sup> "Black box" engines are advanced engines being designed by engine manufacturers to meet the 2004 standards.

<sup>46</sup> See Lee, R., Pedley, J., and Hobbs, C., "Fuel Quality Impact On Heavy-Duty Diesel Emissions:—A Literature Review", Society of Automotive Engineers paper number 982649, 1998.

<sup>47</sup> Boosted cetane is achieved by the addition of a fuel additive, in this case ethylhexyl nitrate.

electronically controlled unit injectors capable of meeting the U.S. 1998 model year emission standards. This engine was modified by SwRI with the addition of a prototype, low-pressure loop, cooled EGR system with manual control of EGR flow rates. For the Phase 2 test program, SwRI selected EGR rates necessary to approach an AVL 8-mode composite NO<sub>x</sub> level of 2.5g/hp-hr.

The large quantity of test data generated by the test program was evaluated using statistical techniques in order to develop exhaust emission and fuel consumption prediction models based on the four fuel properties. All properties were evaluated using a significance level of five percent. The data generated during Phase 2 indicates that for engines utilizing advanced fuel injection and a cooled EGR system operating at emissions levels near the 2004 standards the effects of large changes in individual fuel properties on HC+NO<sub>x</sub> emissions are rather small, and for cetane number not statistically significant. A large decrease in fuel density, from 860 to 830 kg/m<sup>3</sup>, or in monoaromatic content, from 25 to 10 percent, is predicted to result in a 4.3 percent decrease in HC+NO<sub>x</sub> emissions. A large decrease in polyaromatics content, from 10 to 2.5 percent, is predicted to result in a 2.3 percent decrease in HC+NO<sub>x</sub> emissions.

The Phase 2 data was also analyzed to predict the combined effects from diesel fuel changes on emissions, not just single property changes. The Phase 2 model was used to predict the effect of fuel modifications from current, average U.S. on-highway diesel fuel to a "cleaner", reformulated diesel fuel, one with low density (830 kg/m<sup>3</sup>), high cetane (52), low monoaromatics (10 percent), and low polyaromatics (2.5 percent). The Phase 2 model predicts this significant change in U.S. diesel fuel formulation would result in a 8.4 percent decrease in HC+NO<sub>x</sub> emissions.

The Phase 3 results are currently not available. However, based on what has been seen in the Phase 1 and Phase 2 portions of this test program, we do not believe a change in diesel fuel formulation is required to make the 2004 model year NMHC+NO<sub>x</sub> standards technologically feasible and appropriate under the CAA. The data from the Phase 1 and 2 portions of the HDEWG does indicate that a change in diesel fuel formulation could provide for a small reduction in HC+NO<sub>x</sub> emissions from HD diesels, on the order of an 8 percent reduction. An assessment of the appropriateness of such a diesel fuel reformulation, beyond the 2004 standards with existing HD diesel fuel, is outside the scope of this rulemaking.

### C. Otto-Cycle Engine-Based Program

We are proposing an NMHC+NO<sub>x</sub> standard for Otto-cycle engines for 2004 and later model years, but are limiting the applicability of this new standard to engines used in vehicles over 14,000 pounds GVWR and in incomplete vehicles.<sup>48</sup> (We are also proposing new vehicle standards for the remaining engines, as discussed in later sections.) We are not proposing to apply the vehicle standards to these engines at this time. Engines used in incomplete vehicles are manufactured for use in many different kinds of heavy-duty vehicles by many different manufacturers. Vehicles in the weight categories above 14,000 pounds GVWR tend to be quite large and varied compared to pick-up trucks and full-size vans, and most dynamometer test facilities are currently not equipped to accommodate vehicles in this size range. Additionally, this approach is consistent with California which allows engine-based testing for these vehicles in its Medium-duty Vehicle program.

#### 1. Engine Exhaust Emissions Standards

We propose a NMHC+NO<sub>x</sub> standard of 1.0 g/bhp-hr for MY 2004 and later for those Otto-cycle engines in the engine-based program. The proposed standard represents a reduction in the NO<sub>x</sub> and HC standards of over 75 percent. EPA believes that this standard represents the most stringent standard reasonably achievable for these engines, in keeping with the requirements of the CAA. EPA's analysis of the technological feasibility of a 1.0 g/bhp-hr NMHC+NO<sub>x</sub> standard is contained in Technological Feasibility section below. We also believe that the ABT program proposed for engines provides manufacturers with the needed flexibility to meet the new standard as their product lines become subject to the new engine standards. The ABT provisions are also described below. In their assessment of the feasibility of new engine-based standards, engine manufacturers recommended a standard of 2.0 g/bhp-hr NMHC+NO<sub>x</sub>. The Technological Feasibility section also contains a discussion of the manufacturer's recommendations. EPA requests specific comment on a range of possible standards, from the proposed standard of 1.0 g/bhp-hr to 1.5 g/bhp-hr, and on the standard of 2.0 g/bhp-hr proposed by engine manufacturers.

<sup>48</sup>Incomplete vehicles less than 14,000 lbs GVWR could optionally certify to the proposed new vehicle standards, as discussed in a later section.

#### 2. Averaging, Banking, and Trading for Otto-Cycle Engines

As part of proposing more stringent engine-based standards, EPA is proposing a modified ABT program for these engines. The program is similar in design to the program adopted for diesel engines. EPA is proposing ABT modifications to allow more flexibility within the ABT framework to help meet the more stringent standards. ABT credits can help manufacturers with engine configurations that are more difficult to modify, where more time would help reduce costs. Credits can also allow manufacturers to continue with product plans that might call for the retirement of an engine family at some point shortly after 2004. By banking credits manufacturers can also reduce their uncertainty or risk associated with the new standards. In the Summary and Analysis of Comments for the Diesel Final Rule, EPA explained why the modified ABT program adopted in that rulemaking will not decrease emissions reductions associated with the new standards.<sup>49</sup> Similarly, EPA believes that the modified ABT program proposed in this rulemaking also will not decrease emissions reductions associated with the new standards.

The ABT program has been used for only one Otto-cycle engine family to meet the current 4.0 g/bhp-hr NO<sub>x</sub> standard which went into effect in the 1998 model year. In other cases, advances in catalyst technology and engine/fuel system improvements have allowed manufacturers to meet the standard across their product line. Most engine families have certification levels of less than half the standard. However, with the proposed standard for 2004, EPA expects ABT to become a more important tool for Otto-cycle engine manufacturers.

An ABT program allows the Agency to propose and finalize a more stringent engine standard than might otherwise be appropriate under the CAA, since ABT reduces the cost and improves the technological feasibility of achieving the standard. EPA is proposing changes to the ABT program with the intent that the changes would enhance the technological feasibility and cost-effectiveness of the new standard, and thereby help to ensure the new standard would be attainable earlier than would otherwise be possible. The changes would provide manufacturers with additional product planning flexibility and the opportunity for a more cost effective introduction of product lines

<sup>49</sup>See EPA Air Docket No. A-95-27.

meeting the new standard. Also, EPA believes that ABT creates an incentive for early introduction of new technology which allows certain engine families to act as trail blazers for new technology. This can help provide valuable information to manufacturers on the technology prior to manufacturers needing to apply the technology throughout their product line. This further improves the feasibility of achieving the standard. This early introduction can also provide valuable information for use in other regulatory programs that may benefit from similar technologies (e.g., nonroad programs). EPA views the effect of the ABT program itself as environmentally neutral because the use of credits by some engines is offset by the generation of credits by other engines. However, when coupled with the new standards, the ABT program would be environmentally beneficial because it would allow the new standards to be implemented earlier than would otherwise be appropriate under the Act.

EPA proposes the following provisions for the modified ABT program for Otto-cycle engines:

- Manufacturers could bank NO<sub>x</sub> credits beginning in MY 2000 for MYs 2004 and later.
  - Credits would be earned up to a NO<sub>x</sub> level of 2.0 g/bhp-hr.
  - Credits would be discounted by 10 percent for engine families with FELs above the 1.0 g/bhp-hr NMHC+NO<sub>x</sub> level (i.e., the proposed standard) and undiscounted for engine families with FELs at or below the 1.0 g cut point.
    - For model year 2004 and later, engine families with FELs above 0.5 g/bhp-hr NMHC+NO<sub>x</sub> (i.e., one-half of the proposed standard) would be discounted by 10 percent. Engine families with FELs at or below 0.5 g/bhp-hr would earn undiscounted credits.
      - As with the diesel program, NO<sub>x</sub> credits banked prior to 2004 would be used to meet the combined NMHC+NO<sub>x</sub> standard in 2004 and later.
      - Credits banked under the modified program would have unlimited credit life.
        - Engine families using credits after MY 2004 may not exceed the previous NO<sub>x</sub> standard of 4.0 g/bhp-hr.
        - Engine families generating credits prior to 2004 must meet the revised requirements for deterioration factors noted above.

Prior to 2004, manufacturers could continue to use the current ABT program. EPA proposes that the current program would end in 2004 and the modified program would remain. Only credits banked under the modified

program could be used in 2004 and later. EPA is proposing to end the current program with the 2003 model year because of concern that manufacturers could generate enough credits under the current program to significantly delay the 2004 standards. The current program allows manufacturers to earn credits up to the current NO<sub>x</sub> standard of 4.0 g/bhp-hr. With most engines currently certified with NO<sub>x</sub> levels below 2.0 g/bhp-hr, there is potential for substantial credit generation without the application of improved technology under the current ABT program. If manufacturers were to bank these credits, they could potentially use them to delay the introduction of engines meeting the 2004 standards for a large majority of their sales for up to three years. The proposed 2.0 g/bhp-hr ceiling for credit generation in the modified program provides opportunity for manufacturers to earn credits through the use of emissions controls that are superior to the average controls currently being used. EPA believes this approach is consistent with the goals of ABT. EPA requests comment on the proposed 2.0 g/bhp-hr ceiling and on other alternatives for transitioning from the current 4.0 g/bhp-hr NO<sub>x</sub> standard to the 1.0 g/bhp-hr NO<sub>x</sub> standard proposed for 2004. One such alternative could be a phase down of the credit generation trigger value during the model years prior to 2004, rather than a single trigger point of 2.0 g/bhp-hr.

The changes to credit life and discounting being proposed for Otto-cycle engines are conceptually consistent with the modifications finalized for diesel engines. EPA is proposing to discount credits by 10 percent if the engine has an FEL above a certain value or cut-point. EPA adopted cut points in the diesel program in order to identify the introduction of new technology as opposed to recalibrating or enhancing existing technology. EPA believes that adoption of cutpoints in the HD Otto-cycle engine program will provide similar technology forcing incentives. EPA selected cut-point levels which represent a clear step in emissions control rather than a marginal emissions reduction. The 10 percent discount selected for the HD Otto-cycle engine ABT program is consistent with the program finalized for diesel engines. In that final rule, EPA noted that a 10 percent discount strikes a balance between zero (which significantly reduces the incentive to develop and implement significantly cleaner technology) and 20 percent (which manufacturers indicated in

comments was far too large and would create a disincentive for the introduction of cleaner technology). (See 62 FR 54708, October 21, 1997.) EPA requests comment on the selected levels of the cut-points and discount adjustment, including comments on whether a phased-in approach with a decreasing cut-point would be appropriate for this category of engines.

For diesels, EPA removed the three year credit life limit which allows manufacturers to earn credits to be used in 2004 and later as early as the 1998 model year. For Otto-cycle engines, MY 2000 will be the earliest model year in which the rule would be effective due to the timing of the rulemaking. Removing the credit life limit will provide an additional year of potential credit banking and allows manufacturers to retain credits after 2004 rather than having them expire after a certain year. We believe that having credits expire would simply encourage manufacturers to use the credits rather than save them; thus, removing the credit life limit should provide a net environmental benefit.<sup>50</sup>

We believe that our proposals detailed above for a modified ABT program will encourage the early use of cleaner technologies and provide manufacturers with valuable flexibility in transitioning to more stringent standards. EPA is proposing the modification to the ABT program in conjunction with the 1.0 g/bhp-hr NMHC+NO<sub>x</sub> engine-based standards to provide the flexibility necessary to enable manufacturers to meet the standard across their product line. This flexibility may not be necessary in the context of a less stringent standard, in which case the proposed modifications to the ABT program might not be supportable. EPA requests comments on all aspects of the proposed ABT program.

#### *D. Supplemental Exhaust Emission Standards and Test Procedures for HD Diesel Engines*

##### 1. Introduction/Background

EPA's goal is to ensure real-world emissions control over the broad range of in-use speed and load combinations that can occur, rather than just controlling emissions under certain laboratory conditions. EPA's 1997 HD diesel rule was based on the expectation that this would be the case. The 1997 rule's projected emissions benefit, expected control technology, cost, and cost-effectiveness were derived with the

<sup>50</sup> EPA presented a detailed analysis of its ABT program in the Summary and Analysis of Comments for the Diesel Final Rule, Docket A-95-27, document No. V-C-01.

belief that the engines would be meeting the standards in-use under typical operating conditions. The supplemental provisions we are proposing today for HD diesel engines are intended to help ensure this is the case. Today's proposal includes a new set of supplemental emission standards and associated test procedures to more closely represent the range of real world driving conditions.

EPA believes that an important tool for achieving an effective compliance program is an in-use program with an objective standard and easily implemented test procedure. Today's action does not include a proposal for a manufacturer in-use testing program for HD diesels and HD Otto-cycle engines. However, as discussed in section V, EPA believes a manufacturer in-use testing program is a critical component of a comprehensive compliance program, and EPA intends to work with interested parties towards the development of a proposal for an in-use testing program in the near future. We believe that the combination of supplemental standards and an effective in-use testing program will ensure that the environmental benefits resulting from the emission standards for model year 2004 and beyond will be achieved in-use.

Historically, EPA's approach to emission standard setting has been to set a numerical emission standard on a specified test procedure and rely on the prohibition of defeat devices to ensure in-use control over the range of operation not included in the test procedure. No single test procedure can cover all real world operation or conditions, particularly where certification is an engine-based test procedure rather than a vehicle-based procedure (i.e., heavy-duty diesel engines, heavy-duty Otto-cycle engines used in incomplete vehicles, and heavy-duty Otto-cycle engines used in vehicles with a GVWR greater than 14,000 pounds). For example, the same engine used in both a 9,000 pound and a 15,000 pound vehicle would likely see much higher speeds and loads, on average, in the 15,000 pound vehicle. The defeat device prohibition is designed to ensure that emissions controls are employed during real world operation and not just under laboratory or test procedure conditions. However, the defeat device prohibition is not a quantified numerical standard and does not have an associated test procedure. As a result, the current focus on a standardized test procedure makes it harder to ensure that engines will operate with the same level of control in the real world as in the test cell. To ensure that emission standards are providing the intended benefits in

use, the Agency must have a reasonable expectation that emissions under real world conditions reflect those measured on the test procedure. The supplemental exhaust emission standards and test procedures for HD diesel engines are designed to supplement the current FTP standards and defeat device prohibition, and help ensure that the standards are providing the intended benefits in actual use.

The Agency also believes a supplemental standard and test procedure or an alternative mechanism is needed for HD Otto-cycle engines used in incomplete vehicles, and heavy-duty Otto-cycle engines used in vehicles with a GVWR greater than 14,000 pounds, in order to assure in-use compliance over a broad range of operating conditions. Today's proposal does not include supplemental standards for test procedures for this class of engines because more information is needed to allow determination of appropriate emission levels and resolution of other specific technical issues. As discussed in section V, the Agency intends to gather further information related to the appropriate levels and scope of such standards over the next several months and to release a subsequent proposal within the next year which would include supplemental standards and test procedures for HD Otto-cycle engines.

In the Statement of Principles,<sup>51</sup> signed by EPA, the California Air Resources Board and engine manufacturers, the signatories agreed to develop appropriate measures which ensure that emission controls are maintained throughout the engine's life. During the public comment period for the proposed 2004 standards for diesel heavy duty engines, several state and environmental organizations advocated establishing an in-use compliance program. (See 62 FR 54707-54708; October 21, 1997). Commenters urged EPA to develop an effective in-use compliance program to ensure that heavy-duty engines comply with emission standards over their useful lives. We also received comment that the current federal test procedure (FTP) does not reflect realistic driving conditions (for example, high speeds and loads), and that a more representative test cycle is needed. We acknowledged that it was essential to further understand in-use emissions and establish a comprehensive in-use compliance presence.

In the October 1997 final rule, EPA adopted a number of measures designed

to improve in-use compliance for heavy-duty diesel engines. (See 62 FR 54700-54702; October 21, 1997). In summary, these measures included: (1) Extending the engines' useful life; (2) increasing the maintenance intervals for emissions-related components; (3) strengthening the warranty provisions for emissions defects and emission performance; (4) requiring that manufacturers provide owners with guidance on maintenance for emissions-related components and on responding to emission-related codes from on-board diagnostic systems; and (5) strengthening "anti-tampering" requirements for engine rebuilding. We also committed to further review and revise the compliance programs if needed to ensure that the emission reductions from more stringent standards are realized in-use. Since then, we have learned that many heavy-duty engines currently are not meeting emission standards in-use. EPA recently issued enforcement policy guidance to partially address this problem.<sup>52</sup>

## 2. Proposed Supplemental Test Procedures and Standards

We propose to add two supplemental sets of standards and test requirements for HD diesel engines: (1) A supplemental steady-state test and accompanying standards; and (2) Not-To-Exceed Limits. Like current standards, these new standards would apply to certification, production line testing, and vehicles in actual use. All existing provisions regarding standards (e.g., warranty, certification, recall) would be applicable to these new standards as well. The steady-state test is proposed because it represents a significant portion of in-use operation of heavy-duty diesel engines that is not adequately represented by the FTP. In addition, we are proposing a third supplemental test procedure for heavy-duty diesel engines—a Load Response Test—as a data submittal requirement only; we do not propose emission limits for this test procedure at this time. The proposed Load Response Test also represents operation not adequately represented by the current FTP (harder accelerations), and could eventually be used to ensure effective control of NO<sub>x</sub> and PM during this type of operation. The combination of these supplemental test requirements and emission standards would provide assurance that engine emissions are designed to achieve the expected level of in-use emissions control over all expected operating regimes in-use. These test procedures and emission limits are

<sup>51</sup> For more background on the Statement of Principles, see section III.A. of this preamble.

<sup>52</sup> Available in the public docket for review.

described in greater detail in the following sections.

We believe that to ensure that emission standards actually achieve their intended environmental benefits, the emissions measured during engine test procedures must be indicative of emissions released during real world operation. Recent advances in engine technology have created the opportunity for a broader gap to exist between typical real world operating conditions and those conditions represented by the current EPA test cycle. The inconsistencies between lab and real world emissions reduce the certainty that emission standards will achieve their intended benefits. One approach to address this is enforcing compliance with the current regulations, including the defeat device prohibition, on a case-by-case basis. However, as discussed previously, given the potential magnitude of the emission impact, we believe it is more appropriate to address this concern through expanding the test procedures and related emission standards.

As discussed in more detail in the following sections, each of these supplemental proposed emission standards is expressed as a multiple of the existing FTP emission standards, or Family Emission Limit (FEL) if the engine is certified under the ABT program, whichever is applicable. For example, the diesel engine NTE limit for  $\text{NO}_x + \text{NMHC}$  is 1.25 times the current FTP emission standard, or 1.25 times the applicable FEL. When certifying engines under the ABT program, manufacturers must ensure that the FEL is set sufficiently high so that all of the new proposed emission standards will be met in-use. For example, there may be cases where the FTP and supplemental steady-state emission result is well below the standard, but setting the FEL is constrained by the Not-To-Exceed emission result.

For purposes of certification, actual test data for the steady state test and the Load Response Test would have to be submitted as part of the certification application (although only the steady state test data would require comparison to proposed emission limits). The Not-to-Exceed test limits would require only a statement of compliance at certification (with supporting details). The compliance statement would need to state explicitly that the engine will comply with the applicable NTE limits when operated under all conditions which may reasonably be expected to be encountered in normal vehicle operation and use. However, this statement must be founded upon emission test data, additional technical

information, and good engineering judgement. The manufacturer's basis for making the compliance statement would be explained within the certificate application documentation, and the supporting information would be available for review by the Agency.

#### a. Supplemental Steady-State Test

We propose to add a steady-state test cycle to the current Federal test procedures for HD diesel engines. The proposed steady-state test cycle is consistent with the test cycle found in the European's "EURO III ESC Test"; however not all aspects of the proposed supplemental steady-state test are identical to the EURO III ESC Test.<sup>53</sup> Manufacturers would be required to meet the standards under this test cycle as well as continuing to meet the standards using the current test procedure (including the current transient test cycle) in 40 CFR part 86, subpart N.<sup>54</sup> The proposed supplemental steady-state test cycle is needed so that the FTP reflects a greater range of driving conditions experienced on the road. The current FTP does not fully represent the driving patterns of today's heavy-duty diesel vehicles, nor does it fully take into account the increased use of electronic engine management systems. These electronic systems have the ability to optimize fuel economy during real-world driving, but often at the expense of emissions. The proposed steady-state test cycle represents an important type of modern engine operation, in power and speed ranges that are typically used in practice. The mid-speeds and mid-to-high loads represented by the proposed steady-state test are the speeds and loads that these engines are designed to operate at for maximum efficiency and durability. Specifically, highway cruise speeds and loads fall into the operation represented by the proposed steady-state test.

The proposed supplemental steady-state test cycle consists of 13 modes of speed and power, covering the typical operating range of heavy-duty diesel engines. The cycle concentrates on the engine speed range bounded by 50

percent and 70 percent of rated power, which is the range most utilized by heavy-duty diesel engines. This speed range is then divided into bands (engine speeds A, B and C, as defined in proposed § 86.1360-2004(c)). The "control area" is defined by the area between engine speeds A and C, and between 25 to 100 percent load. During the test cycle, the engine is initially run at idle speed, then through a defined sequence of 12 modes at various speeds and engine loads of 25, 50, 75 and 100 percent. Each mode (except idle) is run for two minutes. During each mode of operation, the concentration of the gaseous pollutants is measured and weighted (according to the weighting factors in proposed § 86.1360-2004(b)(1)). The weighted average emissions for each pollutant, as calculated according to this steady-state test procedure, must not be greater than 1.0 times the applicable 2004 emission standards. (See proposed § 86.004-11(a)(3).)

Manufacturers would perform the supplemental steady-state test in the laboratory following all applicable test procedures in 40 CFR part 86, subpart N (e.g., procedures for engine warm-up and exhaust emissions measurement). The test must be conducted with all emission-related engine control variables in the maximum  $\text{NO}_x$  producing condition which could be encountered for a 30 second or longer averaging period at the given test point.

In addition to the 13 modes of the test cycle, EPA would have the opportunity to select an additional three test points as a check to ensure the effectiveness of the engine's emission controls within the control area (e.g., ensuring that emissions do not "peak" outside of the 13-mode test points). This requirement would ensure that an engine achieves emissions control throughout the typical operating range. EPA would notify the manufacturer of these three additional test points prior to the test. During the test, the regulated pollutants would be measured at each of these EPA-selected test points. The manufacturer also would determine an interpolated value of pollutant emissions at each EPA-selected test point, using the measured emissions of the closest four adjacent test points. See the illustration in Figure 2 of proposed § 86.1360-2004(g). EPA proposes a four-point linear interpolation procedure that is consistent with that of the European's "EURO III", referenced above. (See proposed § 86.1360-2004(g)(2).) The measured emissions value would then be compared to the interpolated emissions value. The measured pollutant value must not exceed the

<sup>53</sup> "Draft Proposal for a Directive of the European Parliament and the Council Amending Directive 88/77/EEC of 3 December 1987 on the Approximation of the Laws of the Member States Relating to the Measures to be Taken Against the Emission of Gaseous and Particulate Pollutants from Diesel Engines for Use in Vehicles", a proposal adopted by the Commission of the European Union on 3 December 1997, for presentation to the European Council and Parliament.

<sup>54</sup> These requirements are consistent with those in the Consent Decrees recently signed with several heavy-duty diesel engine manufacturers. (See 63 FR 59330-59334; November 3, 1998).

interpolated pollutant value by more than five percent. We request comment on the proposed interpolation methodology and on whether five percent is the appropriate value to use for comparison of interpolated values and measured emissions.

The emission levels at the 12 non-idle test points and the calculated emissions values from the four-point interpolation procedure for intermediate test points would establish an emissions "surface" of Maximum Allowable Emission Limits (MAELs), as illustrated in Figure 1 of proposed § 86.1360-2004(f). This surface would limit emissions levels during all normal operations, including transient operation, that occur within the control area defined above. Each point on this surface will have a MAEL associated with it for all engines in that engine family.<sup>55</sup> The MAEL for each point is calculated using the same four-point linear interpolation procedure used to determine the emission value for the EPA test points discussed above. For certification, production line and in-use engines, emissions generated within the control area may not exceed the MAEL for the corresponding speed and load point over a thirty second averaging period.

At certification, manufacturers would be responsible for testing the MAELs by performing the "check" described above for the three EPA-selected test points. Under its authorities in the Act, EPA could determine compliance with the MAELs under any conditions that may reasonably be expected to be encountered in normal vehicle operation and use, either in the laboratory or in actual use ("on-road"), under steady-state or transient conditions, and under varying ambient conditions. (See section IV.D.3 for a discussion of on-road testing). To determine compliance, test results from operation within the control area must comply with the MAEL established for that engine family at the same engine speed and load.

#### b. Not-To-Exceed Limits

To help ensure that heavy-duty engine emissions are controlled over the full range of speed and load combinations commonly experienced in-use, EPA is proposing to apply Not-To-Exceed (NTE) limits to HDDEs. The NTE approach establishes an area (the "NTE zone") under the torque curve of an engine where emissions must not exceed a specified value for any of the

regulated pollutants.<sup>56</sup> The NTE standard would apply under any conditions that could reasonably be expected to be seen by that engine in normal vehicle operation and use. In addition, we propose that the whole range of real ambient conditions be included in NTE testing. The proposed NTE zones, limits, and ambient conditions and test procedures for HDDEs and HDGEs are described below. These requirements would take effect starting in the 2004 model year and would apply to new engines as well as in use throughout the useful life of the engine. We request comment on expanding the range of ambient conditions in this manner and on whether this expanded range is appropriate to begin with the 2004 model year, or whether a phased in approach is more appropriate.

In addition to helping to ensure emission benefits over the full range of in-use operating conditions, the NTE requirements are also expected to be an effective element of an in-use testing program. At the time of certification manufacturers would have to submit a statement that its engines will comply with these requirements under all conditions which may reasonably be expected to occur in normal vehicle operation and use. The manufacturer must provide a detailed description of all testing, engineering analysis, and other information that forms the basis for the statement. This certification statement must be based on testing and/or research reasonably necessary to support such a statement and on good engineering judgement. This supporting information would have to be submitted to EPA at certification upon request; manufacturers would not necessarily be required to submit NTE test data for compliance during certification.

EPA believes that there are significant advantages to taking this sort of approach for heavy-duty engines. The test procedure is very flexible so it can represent most in-use operation and ambient conditions. Therefore, the NTE approach takes all of the benefits of a numerical standard and test procedure and expands it to cover a broad range of conditions. Also, with the NTE approach, in-use testing and compliance become much easier since emissions may be sampled during normal vehicle use. A standard that relies on laboratory

testing over a very specific driving schedule makes it harder to perform in-use testing, especially for engines, since the engines would have to be removed from the vehicle. Testing during normal vehicle use, using an objective numerical standard, makes enforcement easier and provides more certainty of what is occurring in use versus a fixed laboratory procedure.

Even with NTE requirements, EPA believes that it is still important to retain standards based on the current heavy-duty engine test procedure. This is the standard that EPA expects the certified engines to meet on average in use. The NTE testing is more focused on maximum limits on emissions for segments of operation or engines used in certain applications or geographic regions and should not require additional technology beyond what is used to meet the applicable FTP standards. EPA believes that basing the emissions standards on a distinct cycle and using the NTE zone to help ensure in-use control creates a comprehensive program. The existing duty cycle includes low speed and low torque operation that are not included in the NTE zone. In addition, the standardized test cycle gives a basis for calculating credits for use in the averaging, banking, and trading program.

The NTE requirements for heavy-duty diesel engines are proposed to include other provisions including ambient temperature and humidity ranges and corrections (discussed below). Start up conditions are excluded from NTE testing because start-up is sufficiently covered by the cold start in the FTP and would be expected to be significantly higher than the proposed NTE limits for a short period of time.

The NTE test procedure could be run in a vehicle on the road or in an emissions testing laboratory using an appropriate dynamometer.<sup>57</sup> The test itself does not involve a specific driving cycle of any specific length (mileage or time), rather it involves driving of any type that could occur within the bounds of the NTE control area. The vehicle (or engine) would be operated under conditions that may reasonably be expected to be encountered in normal vehicle operation and use, including operation under steady-state or transient conditions and under varying ambient conditions. Emissions would be averaged over a minimum time of thirty seconds and then compared to the applicable NTE emission limits. The

<sup>55</sup> The emissions surface would include all points in the Supplemental Steady-State control area, as defined above.

<sup>56</sup> Torque is a measure of rotational force. The torque curve for an engine is determined by an engine "mapping" procedure specified in the Code of Federal Regulations. The intent of the mapping procedure is to determine the maximum available torque at all engine speeds. The torque curve is merely a graphical representation of the maximum torque across all engine speeds.

<sup>57</sup> Likewise, testing to determine compliance with the Maximum Allowable Emission Limits could be conducted in the laboratory or in a vehicle on the road.

applicable ambient conditions and the methodology for correcting emissions results for temperature and/or humidity are described in the following section. The proposed test procedure can be found in § 86.1370–2004 of the proposed regulations. We request comment on this test procedure and its applicability to HD diesel engines, particularly with respect to whether 30 seconds is an appropriate time over which to average emissions for comparison to the emission limits for HD diesel engines.

The definition of defeat device is being modified slightly to account for the NTE limits. Under the previous definition of defeat device, an auxiliary emission control device would not be considered a defeat device if it reduced the effectiveness of the emission control system under conditions that are substantially included in the federal test procedure.

This definition is less appropriate for the NTE requirements. The potential testing surface for the NTE encompasses much of the operating range of the vehicle. Therefore, a definition of defeat device that would exclude this testing surface would leave little area in which a defeat device could be found. This, however, is not the intent of the NTE. The NTE is not intended to be the primary emission limit on an engine, but is intended instead as a “no worse than this” requirement that puts an absolute high limit on emissions under most operating conditions. It is not supposed to supplant the continuing obligation of manufacturers to design their engines without defeat devices. Nor is it supposed to provide a cushion for manufacturers to meet a less stringent standard off the testing cycles. Therefore, EPA has revised the definition of defeat device such that substantial inclusion in the federal test procedure does not extend to the NTE zone.

The proposed NTE zone is illustrated in Figures 1 and 2. With the exception of two limited regions under the torque curve (described below), the NTE zone

for diesels includes all engine operation at or above 30 percent of the maximum torque value of the engine and all engine operation at or above a specific engine speed calculated based on the maximum power of the engine.<sup>58</sup> This zone covers the areas of operation that are of most concern to the Agency from an environmental perspective. Because engines do not operate frequently at speeds that occur below the maximum torque peak (heavy-duty diesel engines generally operate at speeds near or above their maximum torque), the emissions generated from operation at lower speeds are relatively insignificant. The same is generally true of operation at below 30 percent of maximum torque—heavy-duty diesel engines do not spend much time in this region and the emissions generated in this region of operation tend to be less of a concern for the Agency. Manufacturers are still forbidden from using defeat devices both inside and outside the NTE zone, however.

For the reasons described below, two small regions are excluded (or “carved out”) from the NTE zone defined above. First, we propose to exclude from the NTE zone the area under the torque curve that falls below the curve representing 30 percent of the maximum power value of the engine (as distinguished from maximum torque). This excluded region contains low engine speed and torque operation for which we believe current heavy-duty engines spend an insignificant portion of their operating lives. In addition, at low loads and low-to-mid speeds (low total power), the measurement of grams per brake-horsepower emissions tends to balloon, even while emissions go down. This region is proposed to be carved out for all pollutants.

Second, a PM-specific region is “carved out” of the NTE control area. The PM-specific area of exclusion is generally in the area under the torque

<sup>58</sup> The maximum torque value and maximum power of the engine are derived as part of the engine mapping procedures specified in 40 CFR 86.1332.

curve where engine speeds are high and engine torque is low, and can vary in shape depending upon several speed-related criteria and calculations detailed in the regulations. Controlling PM in this range of operation presents fundamental technical challenges which we believe cannot be overcome in the 2004 time frame. Specifically, the cylinder pressures created under these high speed and low load conditions are often insufficient to prevent lube oil from being ingested into the combustion chamber. High levels of PM emissions are the result. Furthermore, we do not believe that these engines spend a significant portion of their operating time in this limited speed and torque range.

The definition of the proposed NTE zone and the carve-out areas strives to place an effective cap on emissions over a broad area of in-use operation that includes the types of operation that are of the greatest environmental concern. The definition of the control area, the carve-outs, and the emissions limit must all be balanced to achieve the Agency's goals. We believe that the combination of the proposed zone and the proposed emission limits within the zone effectively accomplish the Agency's goals of ensuring that emissions are controlled over a wide range of in-use operation. We request comment on the proposed zone and emission limits.

Examples of the NTE zone, including the areas excluded from the zone, are shown below in Figures 1 and 2. The A, B, and C engine speeds are the same as those defined for the advanced steady state test and described above and in the proposed regulations. Note that there are two possible constructions of the PM “carve-out” detailed in the draft regulatory language. The example in Figure 1 shows the PM carve-out as it would look if the C speed is below 2400 revolutions per minute (rpm), while Figure 2 shows the construct of the PM carve-out if the C speed is above 2400 rpm.

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Figure 1 -- Proposed NTE Zone for Heavy-Duty Diesel Engines -- C Speed < 2400 rpm

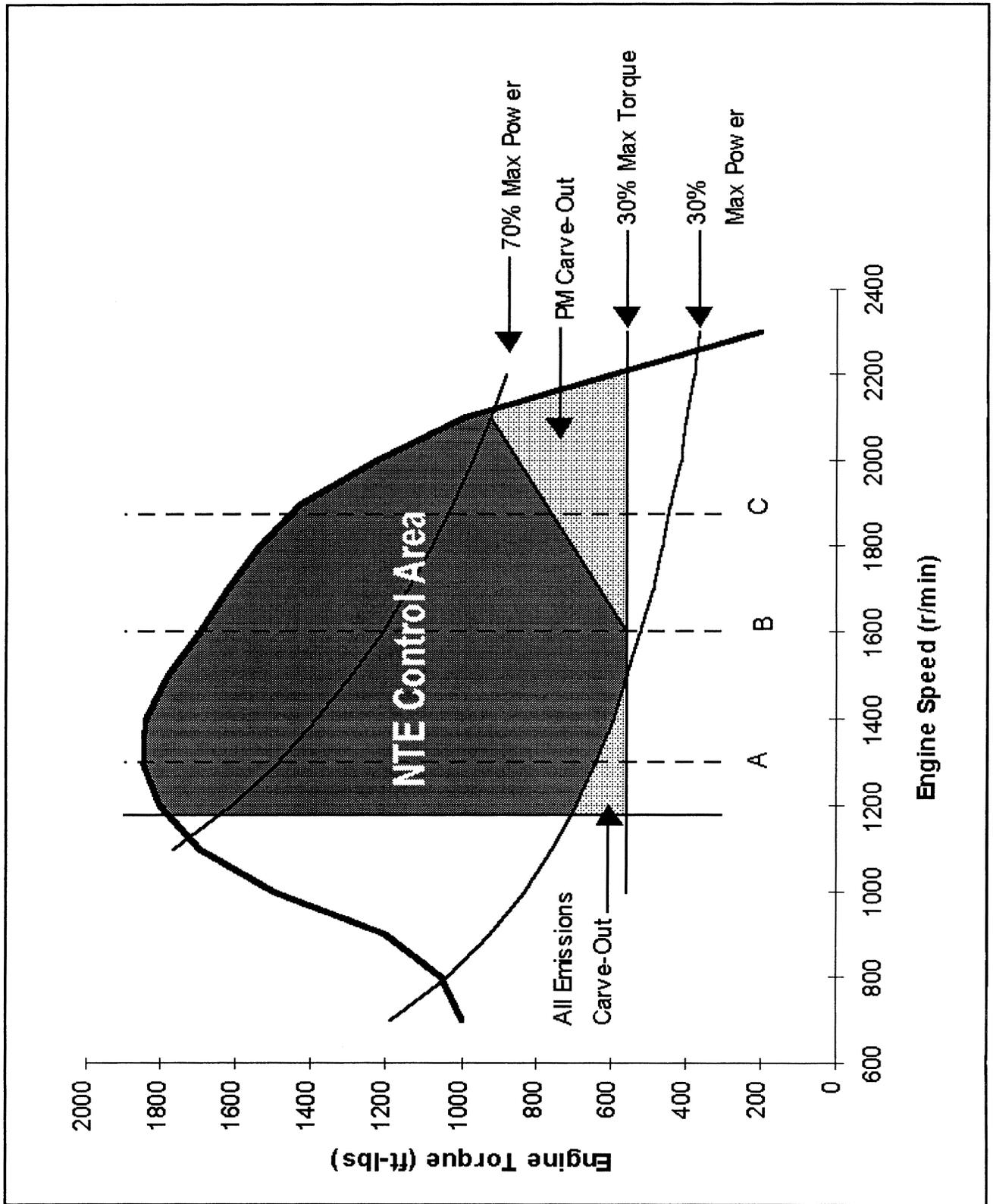
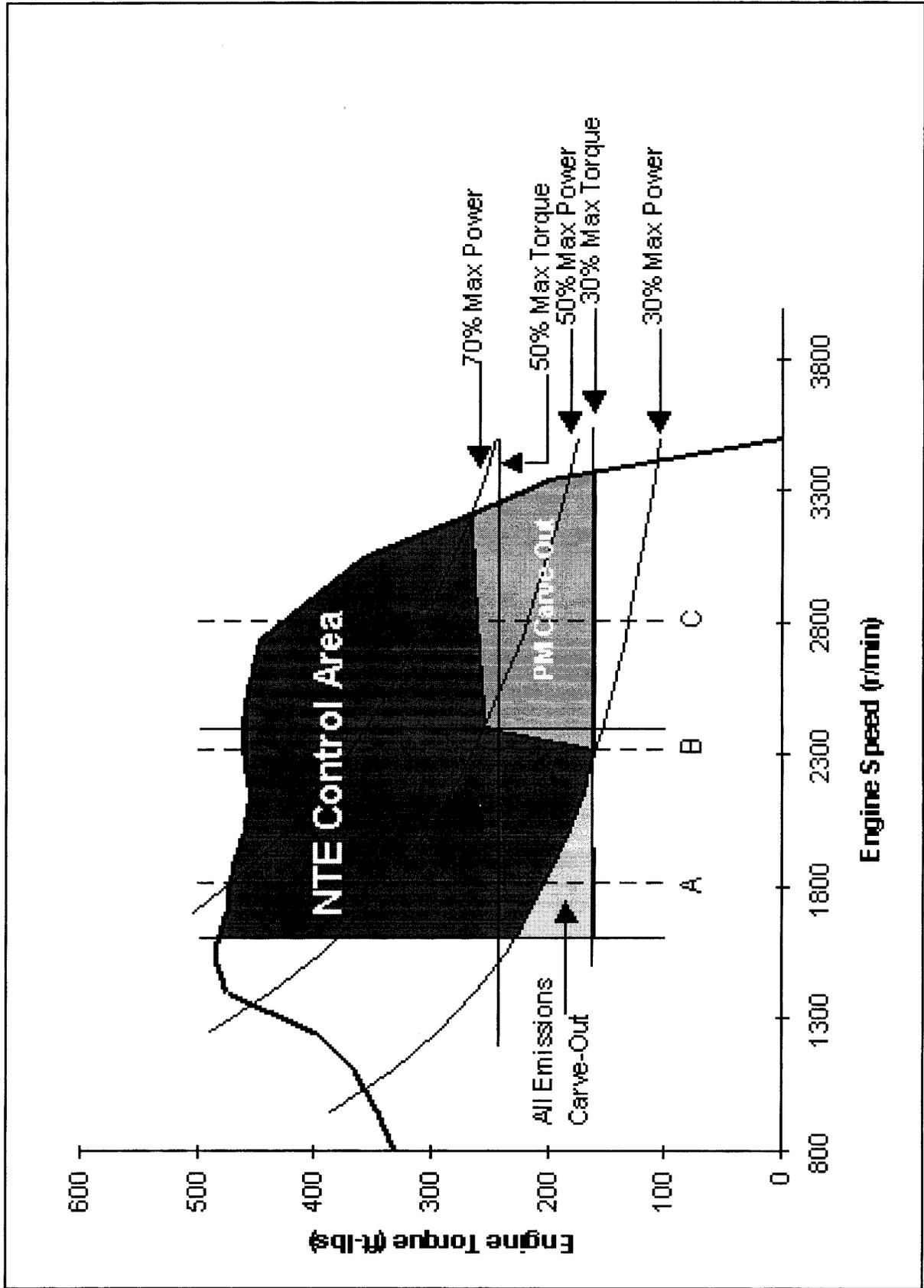


Figure 2 -- Proposed NTE Zone for Heavy-Duty Diesel Engines -- C Speed > 2400 rpm



Within the NTE zone, EPA proposes that emissions of each of the regulated pollutants (NMHC+NO<sub>x</sub>, CO, PM), when averaged over a minimum time of 30 seconds, must not exceed 1.25 times the applicable FTP standards (or FEL if ABT is used). A minimum 30 second average is proposed to ensure that a short transient does not produce high results. This 30 second sampling period should be long enough to allow an emissions spike to be averaged out while still retaining a short enough period to look at a specific type of operation. In addition, EPA proposes that within the NTE zone smoke and opacity must not exceed either a filter smoke limit of 1.0 (on the Bosch smoke number scale) or a thirty second average smoke opacity of four percent for a five inch path for transient testing and a ten second average smoke opacity of four percent for a five inch path for steady state testing.

#### c. Diesel Supplemental Load Response Test

Today we are also proposing a Supplemental Load Response Test (LRT) for heavy-duty diesel engines. This supplemental test is intended to represent a specific type of engine operation—rapid transient acceleration—that is not adequately represented in the current transient test procedure. Although the current transient test cycle does contain numerous transient operations, these transients are limited to the engine operating range exercised during the current FTP, not the broader range of operation which is covered by the Supplemental Load Response Test. Specifically, the Supplemental Load Response Test is intended to address diesel engine emissions performance during rapid transient accelerations from any speed within the NTE zone. As proposed, the test focuses on quantifying PM and NO<sub>x</sub> emissions during the portion of a truck's operation where it accelerates rapidly and where certain engine emission controls can be inadequate. In addition, this type of operation can often produce visible smoke, which is frequently noticed by the public and can influence their opinions about the cleanliness of diesel engines.

We are not proposing specific emission limits for this test procedure at this time. Rather, we are proposing that manufacturers of heavy-duty diesel engines submit test results as part of their application for EPA certification. The test results to be submitted at certification would include testing, at a minimum, at a several engine speeds specified in the proposed regulations.

As noted in section III.D, the Consent Decrees with most of the heavy-duty diesel engine manufacturers establish target limits for the Load Response Test of 1.3 times the FTP standard for NMHC+NO<sub>x</sub> and 1.7 times the FTP standard for PM. We believe that these limits may be appropriate and technologically feasible, but we also recognize that under the Consent Decrees there is a process of data collection and evaluation that could result in modifications to these limits sometime in the latter half of the year 2000. The data submittal requirements proposed today are consistent with the requirements in the Consent Decrees.

We believe that establishing a future Load Response Test with appropriate emission limits may be a valuable addition to EPA's compliance program, particularly for in-use on-road testing using the equipment specified in a later section of this document, and when the process of evaluating the available data is complete we intend to evaluate the addition of specific Load Response Test emission limits to EPA's compliance program in a future supplemental proposal. The proposed data submittal requirement would enable a better understanding of the emissions that occur under this type of operation and would ensure that EPA establishes robust standards in a future action. Such a future action would consider including a requirement that manufacturers submit a statement of compliance at certification (similar to the approach proposed today for the NTE emission limits). We request comment on the proposed approach to a Load Response Test, as well as on the possibility of adding appropriate emission limits and certification requirements with a later action.

The test procedure as proposed is relatively straightforward. The engine fuel control is moved rapidly to the full fuel position and held at that point for a minimum of two seconds. As proposed, this sequence would be carried out in a laboratory environment at a constant speed setting, but in the future testing could be conducted using on-road equipment specified in a following section, in which case the vehicle speed would depend upon the characteristics and response of the vehicle being tested. The proposed regulations specify six different speeds, ranging from the lowest speed in the NTE control area to a high speed defined according to a calculation specified in the proposed regulations. The test sequence could be repeated if necessary to obtain an adequate sample for analysis (e.g., in the event that one cycle is inadequate for collecting

enough particulate mass for gravimetric analysis). Although this could conceivably be carried out in several different ways, we encourage the use of methodologies that adequately represent the transient operation that is the true emphasis of this test procedure. The proposed test procedure can be found in proposed § 86.1380-2004.

#### d. Ambient Conditions, Temperature and Humidity, Laboratory and In-Use Testing

As stated above, our goal is to create a program that will ensure emission control over a wide range of in-use conditions, including ambient temperature and humidity. The FTP and Supplemental Steady State tests are laboratory-based test procedures that would be conducted under standard laboratory ambient conditions defined in the regulations, with emission results corrected according to existing regulations regarding laboratory testing procedures.<sup>59</sup> The NTE and verification of compliance with the Maximum Allowable Emission Limits could be conducted in the laboratory or during on-the-road driving, and the standards associated with these tests, where applicable, are proposed to apply under any ambient conditions. Within proposed temperature and humidity ranges, emissions from heavy-duty diesel engines must meet the requirements described above, without corrections for temperature and humidity. For situations in which the ambient conditions are outside these ranges, EPA proposes that NO<sub>x</sub> be corrected for humidity and both NO<sub>x</sub> and PM be corrected for temperature. Corrections would be to the end of the specified temperature or humidity range nearest the actual ambient conditions. We request comment on applying this expanded range of ambient conditions to the new supplemental test procedures, and on whether implementation of an expanded range should apply starting with the 2004 model year or some later model year.

For emission results to be compared to the NTE emission limits, we propose that the temperature range be from 55 to 95 degrees Fahrenheit (12.8 to 35.0 degrees Celsius) and that the humidity range be from 50 to 75 grains of water per pound of dry air (7.14 to 10.71 grams of water per kilogram of dry air). The proposed temperature range encompasses the conditions exhibited by most days on which an exceedance

<sup>59</sup>The acceptable temperature range for FTP testing is defined by regulation as 68-86 degrees Fahrenheit. There is no specified humidity range, but NO<sub>x</sub> emission results are to be corrected to 75 grains of water per pound of dry air.

of the ozone NAAQS is observed.<sup>60</sup> In addition, EPA analyses pertaining to a recent rulemaking effort concluded that the "typical" ozone nonattainment day exhibits a maximum temperature between 90 and 95 degrees Fahrenheit. (See 61 FR 54852, October 22, 1996). The relative humidity range being proposed today reflects the current understanding of humidity corrections, in that higher humidity typically results in lower NO<sub>x</sub> levels. Therefore, NO<sub>x</sub> test results from a truly hot and humid day (e.g., a "typical" ozone exceedance day where the maximum temperature is in the 90's and the humidity is about 100 grains of water per pound of dry air, or 40 percent relative humidity) would be adjusted upward by the correction factor when correcting back to the drier conditions of the specified range, thus providing environmental protection during hot and humid conditions typical of ozone exceedance days. For emission results to be compared to the Maximum Allowable Emission Limits we propose that NO<sub>x</sub> emissions be corrected to a standard level of 75 grains of water per pound of dry air and that NO<sub>x</sub> and PM emissions be corrected to the nearest endpoint of the range from 68 to 86 degrees Fahrenheit if tested outside this range. The proposed corrections for verifying compliance with the Maximum Allowable Emission Limits would correct emission results to standard laboratory conditions used for FTP testing because these emission limits are derived from testing under the standard laboratory conditions. We request comment on these proposed ranges.

At this time, EPA is working with HD diesel engine manufacturers on developing humidity and temperature correction factors. In the future, it is EPA's intent to adopt the correction factors that are developed through this effort. Because the correction factors are not yet developed, EPA proposes only that good engineering judgement be used when correcting for humidity and temperature outside of the proposed ranges.

### 3. Access to On-Board Computer Information

Modern HD diesel and gasoline engines make extensive use of electronics for engine control and management. HD engines make extensive use of on-board computers for fuel system control, and other emission-related component control, which in the

future will likely include cooled EGR systems on HD diesel engines. Many of these newer systems make use of Controller Area Networks as a means of communicating information from the on-board electronic control module (ECM) to other on-board sensors and control devices (such as fuel injectors, rail pressure for common rail systems, boost-pressure sensors, coolant level sensors, coolant temperature sensors). These on-board systems control many aspects of emission related components, including fuel and air management components. EPA is concerned that electronic controls (or any other Auxiliary Emission Control Devices) not be used in such a way as to result in higher emissions from HD engines in use than would be seen during certification or laboratory testing. Therefore, EPA must have access to this information. We are proposing that, upon request from EPA, engine manufacturers must provide to EPA hardware and/or documentation necessary to read and easily interpret (in engineering units if applicable) any information broadcast by on-board computers and ECM's which relate in anyway to emission control devices and auxiliary emission control devices (AECD). This proposed requirement includes access to proprietary code information which could not otherwise be interpreted by parties other than the engine manufacturer. EPA would retain any legitimate confidential business information as such. This requirement could include the delivery, upon request from EPA, from the manufacturer to EPA the most up to date scantool hardware used by the engine manufacturer for monitoring, interpreting, and recording all emission related electronic input and output data broadcast on an engine's on-board controller network. The requirement could also include access to passwords which would enable a generic scan tool or personal computer to read and interpret proprietary codes, if such passwords exist. EPA requests comment on these requirements.

#### *E. Otto-Cycle Vehicle-Based Program*

Heavy-duty Otto-cycle vehicles can be split into two groupings, complete and incomplete vehicles. Complete vehicles are those that are manufactured with their cargo carrying container attached. Complete vehicles consist almost entirely of pick-up trucks, vans, and sport utility vehicles and account for about 75 percent of all Otto-cycle heavy-duty vehicle sales. All complete vehicles are currently below 14,000 pounds GVWR. Incomplete vehicles are those chassis that are manufactured

without their cargo carrying container attached. These chassis may or may not have a cab attached. The incomplete chassis are then manufactured into a variety of vehicles such as recreational vehicles, tow trucks, dump trucks, and delivery vehicles. Currently, there are three original equipment manufacturers (GM, Ford, and Daimler Chrysler) of heavy-duty Otto-cycle engines and they also manufacture all of the complete vehicles in which those engines are used.<sup>61</sup> These manufacturers also manufacture most incomplete chassis equipped with Otto-cycle engines.

Currently, EPA requires heavy-duty engines to be tested to engine-based standards. Light-duty vehicles and light-duty trucks are required to be tested over a vehicle-based test commonly known as the light-duty federal test procedure, or FTP. Heavy-duty vehicle manufacturers have the option of testing heavy-duty vehicles up to 14,000 pounds GVWR over the light-duty FTP to light-duty truck standards (EPA "heavy-as-light" testing provisions), rather than to EPA engine-based standards.

As part of their medium-duty vehicle program, California requires complete Otto-cycle vehicles between 8,500 and 14,000 pounds to be certified to vehicle-based standards rather than engine-based standards. Manufacturers test the vehicles in essentially the same manner light-duty trucks are tested. California has established Low Emission Vehicle (LEV and LEV-II) standards for these vehicles. In the MDV program, engines used in incomplete vehicles and vehicles above 14,000 pounds may be certified to engine-based standards rather than vehicle standards. Diesel powered vehicles are also allowed to be certified to engine-based standards as an alternative to the vehicle standards, and in fact, most if not all manufacturers choose the engine-based standards for their diesels.

Today's proposal recognizes that manufacturers have found the option to certify diesel vehicles to the California chassis-based standards not particularly useful, and as a result the ability to certify diesels to the chassis-based standards proposed below is not included in the proposal. However, we request comment on this issue, and if this option is indeed a desirable one, we would add the California MDV PM standard of 0.12 grams/mile to the regulations for manufacturers that select this option. In addition, we request comment on the possibility of *requiring*

<sup>60</sup>Memorandum, Mark Wolcott, EPA, to Charles L. Gray, EPA, "Ambient Temperatures Associated With High Ozone Concentrations," September 6, 1984. Available in the public docket for review.

<sup>61</sup>There are also aftermarket alternative fuels conversion manufacturers, as discussed in section E.7, below.

complete diesel heavy-duty vehicles under 14,000 pounds GVWR to be subject to chassis-based standards, and if so, whether the standards proposed for complete Otto-cycle vehicles or some other set of standards (perhaps the proposed Otto-cycle standards adjusted by an appropriate factor) would be appropriate for chassis-certified heavy-duty diesel vehicles.

1. Moving to a Vehicle-Based Test Procedure and Standards

EPA proposes to adopt vehicle-based standards and test procedures for complete Otto-cycle vehicles between 8,500 and 14,000 pounds GVWR. As in the California MDV program, these complete vehicles would be tested on the federal light-duty vehicle and light-duty truck test procedure.<sup>62</sup> EPA believes this approach is reasonable and offers several advantages over engine-based testing. In addition, EPA is proposing to refine the program further by incorporating some complete Otto-cycle vehicles between 8,500 and 10,000 pounds GVWR into the Tier 2 program

proposed earlier this year (see Section IV.F for details regarding this aspect of the proposal). Many of the full size pick-up trucks, vans, and sport-utility vehicles which have a GVWR above 8,500 pounds are often used by owners for personal transportation, and a chassis-based test procedure incorporating the light-duty FTP cycle is representative of this type of transportation and operation. The harmonization of test procedures with California allows for certification data to be used for both federal and California certification requirements, reducing the testing burden for manufacturers. In addition, because vehicle testing is less resource intensive than engine testing, EPA and manufacturers will be better able to conduct in-use testing to verify emissions compliance.

In developing the proposal, EPA met with a number of stakeholders and during these discussions several stakeholders supported EPA's consideration of a chassis-based program, similar to California's MDV program.<sup>63</sup> Manufacturers presented

EPA with a proposal for a chassis-based program after EPA expressed its substantial interest in moving to chassis-based testing. Manufacturers expressed interest in EPA's adoption of a program that would allow them to use one set of certification information for both California and EPA. Other stakeholders were also supportive of the move to a chassis-based requirement due to the benefits noted above.

2. Vehicle Exhaust Emissions Standards

EPA proposes to adopt the chassis-based standards contained in Table 4 below for model years 2004 and later. The numeric levels were selected to match the full life emissions standards in place for California's MDV program for LEV vehicles above 8,500 pounds GVWR. The standards would apply to complete vehicles in the weight categories shown. The standards are for emissions over the FTP and vehicles would be tested at adjusted loaded vehicle weight (ALVW), also known as test weight (TW).<sup>64</sup>

TABLE 4.—EPA PROPOSED FULL-LIFE EMISSION STANDARDS MODEL YEARS 2004 AND LATER  
[Grams per mile]

Vehicle weight category (GVWR)	Nonmethane organic gas (NMOG)	NO <sub>x</sub>	CO
8,500–10,000 lbs* .....	0.28	0.9	7.3
10,001–14,000 lbs .....	0.33	1.0	8.1

\*Excluding those vehicles covered by the proposed Tier 2 program, as described in Section IV.F of this proposal.

We believe that these proposed standards reflect the most stringent standards achievable for the 2004 model year, considering cost and other appropriate factors, and are therefore consistent with the requirements of the CAA. As discussed in the Technological Feasibility section below, LEV technologies are being required in California beginning in 1998 and will be fully phased in beginning in 2004. By harmonizing the federal and California standards, this proposal would allow manufacturers to take advantage of the research and development that they have undertaken to meet the California requirements. While it is true that a small percentage of vehicles that have not been offered for sale in California would, under the proposal, be required to meet lower vehicle standard, EPA believes that the decision not to market

such vehicles in California was typically related more to their very small sales volumes rather than for technological reasons. Manufacturers would have some flexibility in meeting the standards, and therefore some capability to deal with issues such as this, by today's proposal to apply an ABT program to heavy-duty Otto-cycle vehicles.

In a recent NPRM, we proposed to reduce the sulfur in federal test fuel to reflect the reductions in sulfur we proposed for commercial gasoline.<sup>65</sup> Currently, federal test gasoline is subject to a limit of 0.10 percent sulfur by weight. We proposed to amend that to an allowable range of 30 to 80 ppm (0.003 to 0.008 percent by weight). We also proposed that vehicles be certified and in-use tested using federal test fuel. However, where vehicles are certified

for 50 state sale, and where other testing issues do not arise, we proposed to accept for purposes of certification the results of testing done for California certification on California Phase II fuel, but we would reserve the right to perform or require in-use testing on federal fuel. Where vehicles are only certified for non-California sale, we proposed to require certification and in-use testing on federal fuel. These provisions, if finalized as proposed, would apply to heavy-duty vehicles certified to the chassis-based provisions in this proposal.

EPA is proposing a hydrocarbon standard in the form of nonmethane organic gas (NMOG) in order to be consistent with California's MDV standards. EPA proposes to also accept hydrocarbon emissions in the form of NMHC or total hydrocarbons (THC) in

<sup>62</sup> Test procedures contained in 40 CFR Part 86 subpart B, excluding the Supplemental FTP.

<sup>63</sup> Stakeholders involved in these discussions included representatives from states, environmental groups, emission control equipment manufacturers,

and engine manufacturers. See Docket A-95-27, IV-E, for more information on these discussions.

<sup>64</sup> ALVW or TW is the actual weight of the vehicle, known as curb weight, plus half pay load. Its also the average of the curb weight and GVWR, which is curb weight plus full pay load.

<sup>65</sup> 64 FR 26003, May 13, 1999, "Control of Air Pollution From New Motor Vehicles: Proposed Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements".

lieu of NMOG, These are forms of hydrocarbon standards which are the standards typically used by EPA under the heavy-duty Otto-cycle control program. Accepting emissions in these various forms provides manufacturers with additional flexibility since establishing NMOG levels can be more complex than NMHC or total hydrocarbon levels. Manufacturers submitting California certification data would submit NMOG emissions data due to California requirements.

The vehicle manufacturer would be responsible for determining whether a vehicle is a complete vehicle and subject to the vehicle-based standards or an incomplete vehicle and subject to engine-based standards. The manufacturer would make this determination based on the definition of incomplete vehicle described above. The vehicle manufacturer may request a determination from EPA when the status of a specific vehicle model is unclear. Manufacturers of complete vehicles are responsible for vehicle emissions certification, as is the case currently in EPA light-duty vehicle programs. More details on vehicle compliance are provided in section E.5 below. Although currently uncommon in this segment of the market, a vehicle manufacturer may purchase engines from another manufacturer to place in incomplete vehicles. In such cases, the vehicle manufacturer would be responsible for ensuring that the engines they purchase have been emissions certified to EPA's engine-based standards by the engine manufacturer. The engine manufacturer would be responsible for the engine certification and emissions performance of the engines, as is the case currently in EPA's engine programs.

The approach EPA is proposing is based on the technological feasibility of extending the use of LEV technologies from California to nationwide use in the 2004 MY time frame. The standards selected are based on the capabilities of technologies designed to meet the LEV standards. The approach of allowing the option of using California certification data is intended to avoid duplication of effort for the manufacturers. EPA requests comments on the proposed approach for chassis-based testing and the proposed standards.

### 3. Heavy-Duty Vehicle Averaging, Banking and Trading

#### a. Background

Averaging, Banking, and Trading is a long-established mechanism allowing the Agency to propose and finalize a more stringent standard than might

otherwise be appropriate under the CAA, since ABT reduces the cost and improves the technological feasibility of achieving the standard. Manufacturers are able to bank credits by certifying some engine families to emissions levels lower than applicable standards. The credits may be banked and then used to certify other engine families to levels higher than the emissions standards. For HD Otto-cycle engines, ABT is available for meeting NO<sub>x</sub> standards. Under the current ABT program, banked credits are discounted by 20 percent and have a three year life, after which they expire.<sup>66</sup>

In the final rule for diesel engine standards for MY 2004 and later, EPA modified the ABT program for diesel engines with the intent that the changes would enhance the technological feasibility and cost-effectiveness of the new standard, and thereby to help to ensure that the new standard would be attainable earlier than would otherwise be possible.<sup>67</sup> EPA reduced the discount rate to 10 percent and established a cut point under which an engine family would earn undiscounted credits. Also, EPA removed the three year credit life limit which allows manufacturers to earn credits to be used in 2004 and later as early as the 1998 model year. EPA modified the HD diesel ABT program, among other reasons, because the Agency believes that the 2004 and later standards are stringent technology-forcing standards and the additional flexibility would improve the manufacturer's ability to comply with the standards cost effectively and in a manner that would not disrupt product planning.<sup>68</sup> EPA did not adopt the modified program for Otto-cycle engines at that time, however, because the Agency did not finalize the proposed standards for Otto-cycle engines.

The CAA requires that EPA set emission standards with appropriate consideration to feasibility and cost. We believe that the ABT programs in today's proposal are appropriate in the context of the technical feasibility and the cost of the proposed emission standards. For all of these reasons, we

<sup>66</sup> With ABT, manufacturers are able to establish a Family Emissions Limit (FEL) for an engine family which becomes the standard for that family. Manufacturers earn or use credits based on the difference between the FEL and the applicable standard. A full overview of the ABT program is contained in EPA's 1996 NPRM, 61 FR 33451.

<sup>67</sup> 62 FR 54694, October 21, 1997.

<sup>68</sup> For a more complete discussion of the ABT provisions relating to the 2004 model year heavy-duty diesel engine standards, see Summary and Analysis of Comments: Control of Emissions of Air Pollution from Highway Heavy-Duty Engines, September 16, 1997, EPA Air Docket A-95-27, Doc. No. V-C-01.

are proposing an ABT program for the vehicle-based standards.

#### b. Proposal

EPA is proposing separate averaging, banking, and trading programs for vehicles certified to the vehicle-based standards and engines certified to the engine-based standards. This section addresses the proposed ABT program for the vehicle-based standards. The proposed engine-based ABT program is discussed above in section IV.C. EPA is also requesting comment on the possibility of allowing credit exchanges between the engine and vehicle ABT programs. This issue is discussed below in the following section.

For vehicles, EPA proposes an ABT program structured similar to the modified ABT program described above for engines. EPA proposes the following provisions:

- Beginning in 2000, manufacturers could bank vehicle-based credits by choosing to certify vehicles rather than engines
- Manufacturers would earn NO<sub>x</sub> credits up to the applicable 2004 NO<sub>x</sub> standard by establishing an FEL below the 2004 standard
  - Vehicles with FELs at or below 0.6 g/mile NO<sub>x</sub> would earn undiscounted credits, engines with FELs above 0.6 g/mile would earn credits discounted by 10 percent
  - 2004 and later model year vehicles using credits may not exceed a NO<sub>x</sub> level 1.53 g/mile
  - Heavy-duty Otto-cycle vehicles would be a single grouping or averaging set.

EPA recognizes that manufacturers would be required to achieve NO<sub>x</sub> levels lower than the proposed 2004 NO<sub>x</sub> standards in order to generate credits prior to 2004, and that this aspect of the program differs from the proposed program for engines. Based on current vehicle certification data from the California LEV program, some vehicle models have demonstrated the potential for very low NO<sub>x</sub> emissions in the 0.2 to 0.5 g/mi range. We believe there would be the potential for credit generation in the proposed program if similar technologies were used nationwide prior to 2004. In addition, manufacturers are required to meet the proposed standards in California prior to 2004 and therefore will be well on their way to transitioning to the standards. They are already designing vehicles to meet the standards in California. Therefore, the importance of banked credits is likely to be diminished for vehicles compared to engines.

The ABT program can help manufacturers certify especially difficult or low volume applications and help manufacturers comply across their full product line without having to restrict vehicle offerings. The Agency believes the proposed program offers sufficient flexibility in light of the technology and cost requirements associated with the proposed standards. Based on current certification data and technological capabilities we believe manufacturers will have opportunities to generate credits to help with meeting the proposed 2004 standards. Moreover, because these standards are required in California for several model years prior to 2004, EPA does not expect feasibility issues with the vast majority of vehicle models.

#### c. Credit Exchanges Between the Engine and Chassis-Based Programs

We believe that credit exchanges between the separate engine and chassis-based ABT programs might be appropriate, as well as desirable for manufacturers, but unresolved concerns and issues (described below) prevent a proposal to allow such exchanges at this time. If these concerns can be addressed prior to the final rulemaking we will consider finalizing provisions allowing credit exchanges between the two ABT programs. Specific concerns include derivation of engine and vehicle-specific conversion factors, the possibility of large quantities of credits effectively delaying the introduction of cleaner vehicles and/or engines, and the method for exchanging vehicle-based NO<sub>x</sub> credits with engine-based NMHC+NO<sub>x</sub> credits (or vice versa), and whether the emissions standards would continue to be appropriate if such a broader credit exchange program was allowed.

The chassis-based ABT program is based on emissions in units of grams per mile (g/mi) and the engine ABT program is based on emissions in units of grams per brake horsepower-hour (g/bhp-hr). Consequently, trading credits between the two programs would require a conversion factor. Although the Agency uses conversion factors to estimate g/mi emissions based on g/bhp-hr emissions rates for purposes of emissions inventory modeling, these conversion factors are estimates of a fleet average, not an engine- or vehicle-specific conversion factor. There is considerable variation in the conversion factors from vehicle to vehicle. Also, conversion factors that have been previously derived don't necessarily predict emissions over the specific test cycles. Both the emission standards and the ABT credits are based on emissions over

specific test cycles. Conversion factors developed for specific engines and vehicles on specific test cycles could vary widely from an "average" conversion factor. EPA believes that vehicle and engine test cycle specific conversion factors would be needed in order to allow transfers of credits between the two Otto-cycle ABT programs.

In general, EPA believes that provisions allowing the exchange of credits between the two Otto-cycle ABT programs should include a conversion factor for each engine family for which the manufacturer intends to develop transferable credits. Each conversion factor would likely have to be based upon a number of engine and vehicle tests, and would have to be approved by EPA prior to use. To ensure adequate emissions control, EPA would consider requiring the conversion factors to be developed by testing engines and vehicles expected to generate "worst-case" emissions. EPA requests comment on how to structure a program that manufacturers would be required to use to develop appropriate conversion factors for each engine family.

The ability to trade credits between the engine and chassis-based ABT programs is not needed prior to the 2004 model year and would unnecessarily complicate the ABT programs, for the following reasons. Prior to the 2004 model year, EPA emission standards for heavy-duty Otto-cycle vehicles are engine-based standards. Absent any credit exchange provisions, manufacturers could still generate vehicle-based credits by voluntarily certifying engines to the vehicle-based program. These provisions already provide the flexibility for manufacturers to decide how many engine-based and vehicle-based credits to generate.

Manufacturers will have the opportunity to generate Otto-cycle engine-based credits prior to the 2004 model year due to the structure of the proposed Otto-cycle engine-based ABT program. These engine credits could be used by manufacturers to facilitate meeting the proposed engine standard. However, EPA is concerned that significant quantities of engine-based credits could flow to the chassis-based program, thus potentially having the effect of significantly postponing the introduction of vehicles with emission levels below the proposed vehicle standards. EPA would likely want to structure provisions for exchanging credits such that the exchanges would be limited for use in averaging and trading within a given model year, but banked credits could not be exchanged.

EPA requests comment on structuring credit exchanges in this manner.

For the 2004 and later model years, the proposal would require manufacturers to certify a large portion of their Otto-cycle heavy-duty vehicles to the vehicle-based provisions (via chassis testing), thus reducing the opportunity to generate Otto-cycle engine-based credits. In addition, the proposed engine-based emission standards would be significantly more stringent starting with the 2004 model year, thus making generation of engine-based credits more difficult. For these reasons, exchanging credits earned starting in the 2004 model year between the chassis-based and engine-based ABT programs may be a desirable option for manufacturers.

Another issue for credit exchanges in 2004 and later model years is that vehicle credits would be based on NO<sub>x</sub> only emissions and the engine credits would be based on NMHC+NO<sub>x</sub> emissions. EPA believes that the NMHC portion of engine emissions compared to NO<sub>x</sub> emissions is about 15 percent of total emissions, or between 0.1 and 0.2 g/bhp-hr. EPA requests comment on allowing credit exchanges without regard to this difference in the standards, or alternatively, requiring the use of an appropriate factor (e.g., the 15 percent factor noted above) to apply to exchanges of NO<sub>x</sub>-only and NMHC+NO<sub>x</sub> credits.

To summarize, EPA is not proposing allowing exchanges between the two Otto-cycle ABT programs at this time, but will consider finalizing provisions that would allow such exchanges if our concerns can be addressed. Specifically, EPA requests comments on the following issues:

- Allowing manufacturers to transfer credits between the Otto-cycle engine and vehicle ABT programs;
- Restricting the transfers of credits between the two ABT programs to credits earned in the 2004 and later model years;
  - The derivation of conversion factors that would make transfers of credits appropriate, including the test methodology and appropriate engine and vehicle parameters used to derive the factors (horsepower, vehicle weight, etc.);
  - Ensuring that credit exchanges do not effectively delay introduction of cleaner vehicles;
  - How to address exchanging NMHC credits with NMHC+NO<sub>x</sub> credits and vice versa;
  - Limiting the exchange of credits to engines and vehicles below 14,000 pounds GVWR because engines rated for vehicles above this would not have any

counterparts certified to chassis-based provisions.

- Limiting the exchanges between the two Otto-cycle ABT programs to averaging and trading only.
- What impact the broader exchange program would have on the degree of the emission reduction of the standards and the appropriateness of such an approach.

#### 4. Evaporative Standards/Onboard Refueling Vapor Recovery

Consistent with the proposal to move all complete vehicles 8,500 to 14,000 lbs GVWR from the current engine-based program to a chassis-based program, EPA is proposing that such vehicles also be certified according to the chassis-based enhanced evaporative test procedures. In addition, the Agency is proposing to require complete HDVs to meet an ORVR standard in a manner similar to that required of heavy light-duty trucks. Each of these provisions is discussed in depth in the following sections. The Agency is not proposing any changes to the current evaporative emission standards or test procedures for the engine-based program at this time.

##### a. Enhanced Evaporative Emissions

In 1993, EPA adopted enhanced evaporative test procedures for LDVs, LDTs and HDVs to be phased in beginning with the 1996 model year, with full compliance required by the 1999 model year (see 55 FR 16002, March 24, 1993). Under the enhanced evaporative requirements adopted in 1993 the provisions for LDVs and LDTs are essentially the same as those for HDVs with two main differences. The first difference is that the actual levels of the emission limits are higher for HDVs due to their typically larger fuel tanks. EPA is not proposing any changes to the HDV numerical evaporative limits in this proposed rule. The second difference is in the driving cycles used in the test sequence, as described in the next paragraph.

The urban dynamometer driving schedule (UDDS) used for HDVs is somewhat shorter than that used for light-duty, both in terms of mileage covered and minutes. What this means in practical terms is that, while the light-duty and heavy-duty procedures generally parallel each other, under the heavy-duty procedure there is considerably less driving time than under the light-duty procedure. This results in considerably less time for canister purge under the heavy-duty procedure than under the light-duty procedure.

EPA recognizes this discrepancy between its light-duty and heavy-duty programs, and has routinely provided waivers under the enhanced evaporative program which allow the use of the light-duty procedures for heavy-duty certification testing. The Agency does not believe that this approach impacts the stringency of the standards. Further, it is consistent with CARB's treatment of medium-duty vehicles. EPA is proposing that this approach be formally adopted for all complete vehicles which are certified according to the provisions of the chassis-based program discussed elsewhere in this notice. The Agency requests comment on this approach to evaporative emissions testing for complete HDVs, and also requests comment on whether it should be extended to those HDVs which will remain in the engine-based program.

##### b. Onboard Refueling Vapor Recovery

Onboard refueling vapor recovery systems prevent the fuel vapors which are displaced from a vehicle's fuel tank during refueling from entering the atmosphere. Typically, the displaced fuel vapors are routed to a charcoal canister where they are subsequently routed to the engine to be burned as fuel. EPA adopted ORVR requirements applicable to light-duty vehicles and light-duty trucks (see 59 FR 16262, April 6, 1994). These requirements are being phased in beginning with the 1998 model year for LDVs, the 2001 model year for light LDTs (6,000 lb and under GVWR), and 2004 for heavy LDTs (6,001 through 8,500 lb GVWR).

During the original ORVR rulemaking, EPA chose not to apply ORVR to HDVs for several reasons. First, a sizeable percentage of HDVs are sold as incomplete vehicles. In such cases EPA is concerned that secondary manufacturers may improperly modify or incorrectly complete the vehicle fuel system (which is usually not fully installed for incomplete vehicles). In such cases the primary manufacturer may have legal liability for potential problems. Second, the application of ORVR to HDVs could be more difficult than to LDVs and LDTs. This is because HDV fuel systems are sometimes configured differently than their LDV/LDT counterparts. This is especially true of the larger HDVs which tend to have large fuel tanks with short or almost nonexistent fillnecks. Finally, under the current HDV regulatory scheme, the engine would be certified separately from the ORVR system. This would result in additional challenges in matching the canister purge provided by

the engine with the needs of each ORVR system.

EPA still believes that the above mentioned concerns are valid for some HDVs. However, the Agency also believes that, in light of the proposal to move to a chassis-based compliance program for complete vehicles, they are only valid for the larger, incomplete vehicles. The majority of HDVs are simply heavy-duty configurations of LDTs, with fuel systems similar to or the same as their light-duty counterparts. With this in mind EPA is proposing to require ORVR controls on all complete HDVs up to 10,000 GVWR in the same manner and on the same schedule as heavy LDTs. Thus, complete HDVs will be required to meet a refueling emission standard of 0.20 grams per gallon of fuel dispensed. For purposes of ORVR applicability, EPA is proposing that complete vehicle means a vehicle that leaves the primary manufacturer's control with its primary load carrying device or container attached.

The proposed ORVR standard would be phased in with 40 percent compliance required in the 2004 model year, 80 percent compliance in the 2005 model year, and 100 percent compliance in the 2006 model year. This phase-in is the same as that currently in place for heavy LDTs. EPA believes that using the same phase in schedule for heavy LDTs and HDVs will allow for a lower cost and easier phase in, since many HDVs are simply heavy duty versions of light duty configurations. Further, EPA is proposing that heavy LDTs and HDVs be considered a single category for the purposes of the phase in. In other words, the percent compliance requirements for a given model year would apply to heavy LDTs and HDVs as a single group, rather than to each group separately. EPA recognizes that combining these two categories into one may have the effect of modifying the stringency of the existing LDT requirements. However, EPA believes that this is appropriate because it will allow for additional flexibility in the implementation of ORVR systems that may be the same for heavy LDTs and HDVs. Also, given the proposed phase-in requirements, if less than the required percentage of heavy LDTs are certified to the ORVR requirement, it follows that greater than the required percentage of the heavy-duty vehicles would have to be certified to the ORVR requirements.

As was previously mentioned, EPA is proposing to phase in ORVR to HDVs in the same way as it is being phased in for heavy LDTs. This is because most covered HDVs are simply heavy-duty versions of light-duty configurations,

and the ORVR systems developed for the light-duty configurations can be readily applied to their heavy-duty counterparts. However, EPA is aware that not all covered HDVs have light-duty counterparts. Given the number of other emission requirements taking effect in 2004, EPA believes that the manufacturers' development resources may be spread thin prior to 2004, making development of ORVR systems for HDVs which do not have a light-duty counterpart excessively burdensome in that time frame. Thus, EPA is considering alternative timing options for the application of ORVR to HDVs that do not have light-duty counterparts. One alternative is to simply require ORVR on these vehicles (those that do not have light-duty counterparts) in 2006, with no phase in prior to 2006. EPA requests comment on this option, as well as other alternatives. EPA also requests comment on how to best define which HDVs do not have light-duty counterparts for the purposes of determining which vehicles may be subject to the alternative implementation date. Finally, EPA requests comment on whether such a delay of ORVR for HDVs without light-duty counterparts is appropriate or needed.

EPA is proposing to limit the application of ORVR to HDVs of 10,000 lb GVWR and under because the vast majority of HDVs which have light-duty counterparts fall into this category. For the most part application to HDVs of 10,000 lbs GVWR and under should not present any new technological challenges. The technology applied for light-duty configurations should be readily transferrable to their heavy-duty counterparts. The Agency does not believe that limiting the ORVR provisions to vehicles 10,000 lbs and under results in any significant compromise in environmental benefits since almost all HD Otto-cycle complete vehicle sales are of vehicles 10,000 lb or less GVWR.

Currently, in the review of certification applications for ORVR-equipped LDVs and LDTs, EPA studies the design of the vehicle's ORVR system, its on-vehicle configuration and operation, and consults directly with the National Highway Traffic Safety Administration on these applications. EPA expects to extend this practice of consulting with NHTSA in the review of certification applications for ORVR-equipped HDVs as well.

EPA requests comment on all aspects of today's ORVR proposal. Specifically, the Agency requests comment on whether the proposed definition of complete vehicle for ORVR purposes

adequately covers those vehicles for which ORVR application will present no substantial new challenges, while exempting those vehicles for which concerns expressed by EPA in the original ORVR rulemaking remain valid.

#### 5. Compliance Assurance Program

On July 23, 1998, EPA proposed a new compliance assurance program for light-duty vehicles and light-duty trucks known as "CAP 2000" (see 63 FR 36954, July 23, 1998). The light-duty CAP 2000 program final rule was published on May 4, 1999 (see 64 FR 23906, May 4, 1999), with only minor changes from the proposed program. In brief, as compared with EPA's traditional chassis-based compliance program, CAP 2000 is designed to redirect manufacturer and Agency efforts towards in-use compliance and give manufacturers more control of certification timing, and yet maintain the integrity of the compliance assurance program. Aspects of the CAP 2000 program include streamlined certification, manufacturer in-use testing.

In today's action, EPA proposes that the CAP 2000 program would be the compliance assurance program for heavy-duty vehicles certified to chassis-based standards (hereafter referred to as "chassis-based HDVs").<sup>69</sup> EPA has proposed modifications to Part 86, Subpart S, that would extend the applicability of CAP 2000 to chassis-based HDVs. Key aspects of the proposed CAP 2000 program as it would apply to chassis-based HDVs are described below, followed by a discussion of issues and possible modifications to the light-duty CAP 2000 program considered by the Agency in the development of the proposal to extend the CAP 2000 program to chassis-based HDVs.

EPA believes that it is appropriate to extend the CAP 2000 program to chassis-based HDVs for the following reasons. First, CAP 2000 for HDVs would provide pre-production certification flexibilities, while providing an emphasis on checking real in-use emissions, as compared with the traditional light-duty chassis-based compliance program. As with light-duty vehicles, EPA believes that it is appropriate to improve pre-production compliance procedures, to reduce the manufacturer's certification burden, and to shift the focus of compliance assessment towards in-use testing, which is expected to generate

significant amounts of in-use data that are currently not available. Second, applying CAP 2000 to chassis-based HDVs would align EPA's chassis-based compliance programs for light-duty vehicles, light-duty trucks, and heavy-duty vehicles. Third, EPA's proposal to extend CAP 2000 to chassis-based HDVs would further harmonize the EPA and ARB programs for this industry. The California Air Resources Board is adopting the CAP 2000 program for chassis-certified medium-duty vehicles in the 8,500 to 10,000 gross vehicle weight range, beginning in the 2001 model year.

#### a. CAP 2000 for HDVs

For the certification process, manufacturers would divide their product lines into new units called "durability groups", determined according to common emission deterioration elements. A vehicle with the "worst case" durability would be chosen from the durability group to establish the rate of emission deterioration expected from that group. The procedures used to determine durability would be developed by the manufacturer, with EPA approval. Durability groups would then be subdivided into "test groups", and a vehicle representative of each test group would be tested to show emission compliance. Once compliance has been demonstrated, certification could proceed. The CAP 2000 program provisions for information collection are streamlined from the traditional light-duty chassis-based compliance regulations. The timing of information submittal has been optimized to provide some flexibility for manufacturers, and the amount of information has been reduced, without compromising the Agency's information needs for future compliance or enforcement issues.

A second element of the proposed chassis-based HDV CAP 2000 requirements is manufacturer in-use testing. There are two parts to the program. Part one requires manufacturers to perform in-use emission testing on privately owned vehicles in an "as-received" state. This "in-use verification testing" would occur on low mileage and high mileage test fleets. The size of the low and high mileage fleets would be dictated by sales categories. Small volume manufacturers and small volume test groups would have little or no testing, depending on sales limits. In-use verification testing data would be used by the manufacturer to improve the predictive quality of its durability program, and by the Agency to target vehicle testing for a recall program. Part

<sup>69</sup>The compliance assurance program for heavy-duty engines subject to engine-based standards is discussed in section II.C.2 of this preamble.

two requires manufacturers to conduct additional testing of a test group when the in-use verification program data for the test group equals or exceeds a mean of 1.3 times the standard, with a 50 percent or greater failure rate for the test group sample at either the low or high mileage test point. The second level of in-use testing, known as "in-use confirmatory testing", would be performed on "properly maintained and used" vehicles and could be used to determine the need for recall. The preambles of the July 23, 1998, CAP 2000 proposed rule and the May 4, 1999, CAP 2000 final rule provide further discussion of these and other aspects of the CAP 2000 program.

**b. Proposed Modifications to the CAP 2000 Program for Chassis-Based HDVs**

In the development of the CAP 2000 proposal for chassis-based HDVs, EPA considered several issues and possible modifications to the light-duty vehicle CAP 2000 program. These issues are discussed below.

First, EPA proposes that the "heavy-as-light" provision in the current regulations (see 40 CFR 86.001-01(b) and 40 CFR 86.1801(c)(1)) would be available through the 2003 model year; starting with the 2004 model year, the "heavy-as-light" provision would no longer be available. EPA's "heavy-as-light" provision permits a manufacturer to certify a HDV of 14,000 pounds GVWR or less in accordance with the light-duty truck provisions. In effect, this provision allows manufacturers to certify these HDVs on a chassis dynamometer rather than on an engine dynamometer, as long as the HDVs comply with the more stringent light-duty truck standards. Today's action obviates the "heavy-as-light" provision after the 2003 model year. EPA is also proposing new provisions that would allow manufacturers flexibilities in grouping vehicles into test groups, as well as provisions allowing manufacturers to certify incomplete HDVs under the chassis-based HDV program.

Second, manufacturers have requested the ability to group vehicles from different test weight categories into the same test group for compliance purposes. For example, manufacturers would like the flexibility to group HDVs with LDT3s or LDT4s, or to group HDVs above and below 10,000 pounds GVWR together, for compliance purposes. In the light-duty CAP 2000 program, vehicles must be subject to the same emission standards to be grouped into the same test group (see 40 CFR 86.1827(a)(5)). However, EPA believes it is reasonable to allow manufacturers to

voluntarily certify to more stringent standards. EPA is today proposing to allow manufacturers to request that vehicles from different weight categories be grouped together in the same test group, as long as the vehicles are then subject to the most stringent standards that would be applicable to any vehicles within that grouping. Voluntary certification to the more stringent emission standards means that the manufacturer would be subject to enforcement against the more stringent standards. EPA requests comment on the proposal to remove the "heavy-as-light" provision after the 2003 model year, the proposal to allow manufacturers to request to certify incomplete HDVs under the chassis-based HDV program, and the proposal that manufacturers be allowed to request that vehicles from different weight categories, which might be subject to different standards, be grouped together in one test group meeting the most stringent set of standards.

Third, in discussions about the application of CAP 2000 to chassis-based HDVs, manufacturers have questioned whether the light-duty "AMA" cycle would be allowed for durability testing.<sup>70</sup> In response, EPA is proposing that the AMA cycle would not be available as a durability procedure for chassis-based HDVs. (The CAP 2000 program likewise disallows the AMA durability procedure, but does allow for the carryover of AMA-based deterioration factors.) This proposal differs from the light-duty CAP 2000 program, in which under certain conditions the AMA cycle would be accepted during a transition period of three years, until the 2004 model year.<sup>71</sup> This transition period is reasonable for the light-duty CAP 2000 program, given that the light-duty compliance program had traditionally rested on use of the AMA cycle for durability demonstrations, and also that the use of the AMA cycle data is limited to the use of existing data generated for a 2000 model year or earlier certification (CAP 2000 requires that all new exhaust durability data be generated according to a manufacturer durability procedure approved by EPA). Manufacturers have

<sup>70</sup> See Item # IV-E-24 in EPA Air Docket #A-95-27. The "AMA cycle" is a part of EPA's standard light-duty durability process prior to CAP 2000, which requires manufacturers to accumulate mileage on a pre-production vehicle over a prescribed mileage accumulation driving cycle, specified in 40 CFR Part 86 (commonly referred to as the "AMA cycle"), for 100,000 miles to simulate deterioration over the useful life of the vehicle.

<sup>71</sup> This is limited to only those products which qualify for carryover. New engine designs may not use the AMA carryover option.

long identified the AMA durability process as very costly and requiring extensive lead time for completion. EPA has been concerned about the ability of any fixed cycle, including the AMA cycle, to accurately predict in-use deterioration for all vehicles. In fact, EPA has particular concerns that the AMA does not represent the driving patterns of today and does not appropriately age current design vehicles. As a result, EPA believes that the AMA may have become outdated.<sup>72</sup>

Based on these concerns and also the fact that today's proposal includes provisions for averaging, banking and trading credits across test groups (in which FELs would be set based on durability procedures that would need to be comparable across test groups), EPA is proposing that the AMA cycle would not be automatically available as a durability procedure for chassis-based HDVs, unless a manufacturer were able to obtain approval for it. As in the light-duty CAP 2000 program, to obtain approval for a durability process, EPA is proposing to require that manufacturers provide data showing that the aging procedures would predict the deterioration of the significant majority of in-use vehicles over the breadth of their product line which would ultimately be covered by this procedure. This demonstration would be more than simply matching the average in-use deterioration; manufacturers would need to demonstrate to EPA's satisfaction that their durability processes would result in the same or more deterioration than is reflected by the in-use data for a significant majority of their vehicles. This approval process is the same as that already established for EPA's first phase of the light-duty revised durability program (RDP-I).<sup>73</sup> EPA requests comment on the proposal to not automatically allow the use of the AMA cycle for chassis-based HDVs.

Fourth, manufacturers have expressed several concerns about in-use testing for chassis-based HDVs, including potential difficulties in procuring vehicles for testing given the commercial use of many of these vehicles, and the appropriateness of in-use confirmatory testing for HDVs.<sup>74</sup> EPA believes that the provisions of the light-duty CAP 2000 program, when extended to chassis-

<sup>72</sup> See the CAP 2000 NPRM (63 FR 39659, July 23, 1998) and Final Rule (64 FR 23913).

<sup>73</sup> In RDP-I manufacturers have typically shown that their durability programs cover ninety percent or higher of the distribution of deterioration rates experienced by vehicles in actual use. See EPA's guidance letter CD-94-13 dated July 29, 1994, available for review in the public docket.

<sup>74</sup> See Item #IV-E-24 in EPA Air Docket #A-95-27.

based HDVs, are sufficient to address manufacturer concerns about possible difficulties in procuring vehicles for in-use testing. If a manufacturer or a manufacturer's test group qualifies for in-use testing under a small volume sampling plan, there may be no in-use testing requirements (for volumes up to 5000), or as few as two tests per test group (for volumes up to 15,000); also, vehicles for testing may be owned by or under the control of the manufacturer (as opposed to being procured from customers) (see 40 CFR 86.1838-01(c)). In addition, if any manufacturer believes it is unable to procure the test vehicles necessary to test the required number of vehicles in a test group, the manufacturer may request a smaller sample size for any test group, subject to advance EPA approval (see 40 CFR 86.1845-01(c)(3)). EPA requests comment on the proposed provisions of the HDV CAP 2000 program regarding procuring vehicles for in-use testing.

Manufacturers have also suggested that it would be desirable to have a transition to the in-use confirmatory testing requirements over a period of years, as was available in the light-duty vehicle CAP 2000 program, rather than requiring this testing in the same year that the chassis-based certification and in-use verification testing requirements go into effect.<sup>75</sup> EPA is proposing that in-use confirmatory testing would be required for chassis-based HDVs. However, EPA believes that a delay in the in-use confirmatory testing requirements is appropriate in order to allow manufacturers to gain experience with chassis-based certification and in-use verification testing for chassis-based HDVs. Thus, EPA is proposing that the in-use confirmatory requirements would be applicable to vehicles produced starting with the 2007 model year. While manufacturers would not be required to conduct in-use confirmatory testing for vehicles produced prior to the 2007 model year, EPA would be fully prepared to investigate any high emissions indicated through manufacturer in-use verification testing or any other means. EPA requests comment on this proposal to require in-use confirmatory testing starting with the 2007 model year.

Finally, certain aspects of the light-duty CAP 2000 program, as contained in 40 CFR part 86, subpart S, would not apply to chassis-based HDVs, since EPA is not proposing requirements for HDVs in these areas at this time. These areas

include provisions relating to intermediate useful lives, certification short test, cold temperature CO requirements, fuel economy programs, and supplemental FTP requirements.

In summary, EPA is proposing to extend the light-duty CAP 2000 program to chassis-based HDVs, with the following minor modifications. First, the option to certify HDVs under "heavy-as-light" provisions would no longer be available after the 2003 model year; instead, manufacturers could request to certify incomplete HDVs under the chassis-based HDV program. Second, manufacturers could request to group vehicles from different weight categories or subject to different standards into the same test group, provided that they meet the most stringent standards applicable to vehicles within that test group. Third, the AMA cycle would not automatically be available for HDVs as a durability procedure. Fourth, the in-use confirmatory testing requirement would be delayed for HDVs until the 2007 model year. Fifth, certain elements of the CAP 2000 program would not apply to chassis-based HDVs.

EPA requests comment on all aspects of this proposal for a chassis-based HDV compliance assurance program.

#### 6. Useful Life

Currently, the useful life mileage interval for Otto-cycle HD engines is 8 years or 110,000 miles, whichever occurs first. The useful life for these vehicles in the California MDV program is 120,000 miles, which is also the useful life of heavy light-duty trucks. EPA proposes to adopt the useful life mileage interval of 120,000 miles for the HD Otto-cycle vehicles program. This approach allows consistency across the programs and is consistent with the use of the vehicles.

#### 7. Aftermarket Alternative Fuels Conversions

There are companies that convert heavy-duty engines originally designed to run on conventional fuel to run on an alternative fuel. These engines are subject to EPA standards and the conversion manufacturers certify the converted engines. It is possible that some of these vehicles could be considered incomplete by the original manufacturer and certified to engine-based standards. However, when they reach the aftermarket conversion manufacturer, they may have the cargo carrying container attached and could be considered complete vehicles. In discussions with the conversion manufacturers they expressed a general preference for vehicle-based testing due

to the greater availability of test facilities and lower costs. However, the conversion manufacturers raised concerns that it may be infeasible or unreasonable for them to test very large vehicles, those well over 10,000 pounds GVWR, on a chassis dynamometer due to lack of available test facilities designed to handle these very large vehicles.

EPA proposes the following two provisions for vehicles over 10,000 pounds GVWR. EPA proposes that aftermarket conversion manufacturers can choose to test vehicles that are originally designed and considered by the original manufacturer to be incomplete vehicles to either the engine or vehicle-based standards. In addition, aftermarket conversion manufacturers may certify complete vehicles to the engine-based standards due to the lack of available test facilities upon pre-approval from EPA. EPA requests comments on these proposed provisions.

#### F. Proposal To Revise the Definition of Light-Duty Truck

##### 1. Background

In May of 1999, EPA proposed stringent new Tier 2 standards for passenger cars and light-duty trucks beginning in the 2004 model year (64 FR 26004, May 13, 1999). We are now in the process of analyzing the many public comments we received on the Tier 2 proposal. The proposed Tier 2 program would require all passenger cars and light-duty trucks to meet the same Tier 2 exhaust emissions standards by model year 2009. The phase-in of the standards would begin in 2004 with passenger cars and lighter light-duty trucks and end in 2009 when all light-duty trucks would be required to meet the standards. We proposed the same emissions standards for both cars and light-duty trucks because of the increased use of light-duty trucks primarily for personal transportation. The Tier 2 proposal did not contain any specific regulatory proposals for heavy-duty vehicles. We did, however, request comment on several options discussed in the proposal to prevent manufacturers from redesigning LDT4s so that they would fall into the heavy-duty vehicle category in order to avoid Tier 2 standards.<sup>76</sup>

We received several comments strongly supporting including all passenger vehicles in the Tier 2

<sup>75</sup> See Item # IV-E-24 in EPA Air Docket #A-95-27. On the light-duty side, some manufacturers had experience with in-use testing through the RDP-I in-use verification testing, starting as early as the 1994 model year.

<sup>76</sup> The LDT4 category contains the largest of the LDTs. The category includes LDTs with a gross vehicle weight greater than 6,000 pounds and an adjusted loaded vehicle weight of greater than 5,750 pounds.

program, regardless of vehicle weight. These commenters were very concerned that the Tier 2 standards would not apply to any vehicles above 8,500 pounds GVWR. Commenters believe that a number of these vehicles categorized by EPA as heavy-duty are primarily used as personal transportation much like their light-duty counterparts. Many commenters cited the new Ford Excursion sport-utility vehicle (SUV) as an example of a vehicle designed primarily for passenger transportation that would currently be classified as heavy-duty. Commenters also expressed concern that a significant difference in the standards for light-duty trucks and heavy-duty vehicles would encourage manufacturers to redesign vehicles to make them fit the definition of heavy-duty vehicles.

EPA also received comment stating that no heavy-duty vehicles should be included in the Tier 2 program. The Alliance of Automobile Manufacturers commented that full product line manufacturers currently offer light-duty and heavy-duty versions of vehicles such as pickups and vans and would not want to create a product void in the LDT4 market segment. They further commented that manufacturers would refrain from changing their vehicles in ways that would increase cost and decrease performance and marketability. Commenters also noted that heavy-duty vehicles are designed for a broad range of purposes. They are designed to be heavier, stronger, and more durable and it would be impossible for such vehicles to meet light-duty emissions standards, claimed some commenters.

After carefully considering all of the comments, we believe both general perspectives have merit depending on the type of vehicle being considered. A small minority of sales in the complete heavy-duty vehicle category consist of vehicles that are more clearly designed for personal use, such as SUVs and passenger vans. All of these vehicles are below 10,000 pounds GVWR. In addition, we are concerned that there

will be an increase in new vehicle offerings marketed primarily for passenger transportation in this market segment in the future. As personal use passenger vehicles, they would be more likely to be used as personal transportation and operated under lightly loaded conditions more of the time. We propose that these passenger vehicles (both gasoline and diesel fueled) be included in the Tier 2 program, tested as light-duty trucks, and held to Tier 2 standards. The following sections provide our detailed proposal to capture these vehicles in the Tier 2 framework and provides an overview of the Tier 2 emissions standards that would apply.

For the remaining vehicles in the heavy-duty category (primarily traditional large pickup trucks, cargo vans, and incomplete vehicles), we continue to believe the heavy-duty standards and test procedures proposed in this rulemaking are most appropriate. Heavy-duty vehicles would be tested under more heavily loaded conditions compared with light-duty trucks in Tier 2. Considering this difference in test conditions, we believe that the heavy-duty vehicle standards we are proposing in this rule for 2004 would be similar in stringency to the Tier 2 standards that have been proposed for light-duty trucks in this time frame.

In addition, we are considering the need for more stringent heavy-duty vehicle standards for 2007 and later model years, as discussed in section X.C of this preamble.

2. Proposal

As noted above, we believe it is appropriate to consider including certain vehicles currently classified as heavy-duty vehicles in the proposed light-duty Tier 2 program. In order to accomplish this objective, the proposed regulations include a revised definition of "light-duty truck" designed to bring large models of SUVs and passenger vans into the proposed Tier 2 program. The proposed regulations also contain a

parallel revision to the definition of "heavy-duty vehicle" in order to prevent an overlap in the vehicles covered by the two definitions.

Specifically, the proposed definition of light-duty trucks seeks to include the targeted vehicles by stating that a light-duty truck, in addition to those vehicles that meet the current definition, is also any complete vehicle between 8,500 and 10,000 pounds GVWR that is designed primarily for personal transportation and has a capacity of up to 12 persons. We expect that the proposed definition would exclude vehicles that have been designed for a legitimate work function as their primary use, such as the largest pick-up truck, the largest passenger vans, and cargo vans; these vehicles would continue to be categorized as heavy-duty and would be subject to applicable heavy-duty standards. However, we request comment on whether the proposed definition adequately excludes these vehicles, or whether additional criteria may be needed. If additional criteria are believed to be needed, we request comment on how such criteria might be used (i.e., what are appropriate cut points). For example, the definition could include the use of factors such as whether the vehicle's body is fully or almost fully enclosed (i.e., there is no significant exterior cargo space such as there is on a pick-up truck), the portion of the total payload that might be consumed by vehicle passengers, the portion of available chassis space consumed by passenger seating, the percent of the total GVWR comprised of the vehicle's curb weight, or other relevant factors. We believe that this definition will capture SUVs, such as the Chevrolet Suburban and the Ford Excursion, and bring them into the proposed Tier 2 program. Table 5 identifies the currently produced vehicles that we believe would be subject to the Tier 2 program according to the revised definition of light-duty truck.

TABLE 5.—PASSENGER VEHICLES BETWEEN 8,500 AND 10,000 POUNDS GVWR

Vehicle	Vehicle type	Manufacturer
Suburban .....	SUV .....	GM.
Excursion .....	SUV .....	Ford.
Express Wagon (G2500 and G3500) .....	Passenger van .....	GM.
Dodge Ram Wagon 3500 .....	Passenger van .....	Daimler Chrysler.
Econoline Super-duty Wagon (E250 and E350) .....	Passenger van .....	Ford.

Vehicles meeting the proposed additional element to the light-duty truck definition would be classified as heavy light-duty trucks (HLDTs)

according to definitions that already exist in the regulations, and therefore would be subject to the standards in

EPA's proposed Tier 2 program.<sup>77</sup> The

<sup>77</sup> LDT3 and LDT4s are considered heavy light-duty trucks (HLDTs).

specifics of how these vehicles would be folded into the Tier 2 program are described below.

### 3. Integration Into Proposed Tier 2 Program

#### a. Tier 2 Standards for New HLDTs

We propose that for 8,500–10,000 pound GVWR vehicles covered under the revised definition of light-duty trucks discussed above, these vehicles would meet the same standards as the

LDT3 and LDT4 vehicles in Tier 2, that is, this new category of vehicles would be part of the Tier 2 heavy-light duty truck program. That program is discussed in detail in the Tier 2 proposal, and will only be summarized here. The reader should review the entire Tier 2 proposal to gain a full understanding of the Tier 2 program for HLDTs. The new HLDTs covered by the proposed change in definition would be averaged in with a manufacturers'

LDT3s and LDT4s so that 50 percent of the HLDTs would meet Tier 2 standards in 2008, and 100 percent would have to meet Tier 2 standards in 2009. As Tier 2 vehicles, these large SUVs and passenger vans would be included with other HLDTs in meeting the 0.07 g/mi average NO<sub>x</sub> standard in 2008. In 2009, they would be included with all Tier 2 LDVs and LDTs in meeting the 0.07 g/mi NO<sub>x</sub> average standard (see Table 6).

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**Table 6.—Tier 2 and Interim Non-Tier 2 Phase-in and Exhaust Averaging Sets (Bold lines around shaded areas indicate averaging sets)**

	2001	2002	2003	2004	2005	2006	2007	2008	2009 & later	NO <sub>x</sub> STD. (g/mi)
<b>LDV/LLDT (INTERIM)</b>	NLEV	NLEV	NLEV	75% max.	50% max.	25% max.				0.30 avg
<b>LDV/LLDT (TIER 2 +evap)</b>	<i>early banking</i> b b b			25%	50%	75%	100%	100%	100%	0.07 avg
<b>HLDT (TIER 2 +evap)</b>	b, c	b, c	b, c	<i>early banking</i> b b b b				50%	100%	0.07 avg
<b>HLDT (INTERIM)</b>	<b>TIER 1</b> b, c	<b>TIER 1</b> b, c	<b>TIER 1</b> b, c	25%	50%	75%	100%	50% max.		0.20 <sup>a</sup> avg

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<sup>a</sup>0.60 NO<sub>x</sub> cap applies to balance of vehicles during the 2004-2006 phase-in years.

<sup>b</sup>Alternative phase-in provisions permit manufacturers to deviate from the 25/50/75% 2004-2006 and 50% 2008 phase-in requirements and provide credit for phasing in some vehicles during one or more of these model years.

<sup>c</sup>HLDT vehicles between 8,500 and 10,000 pound GVWR will be meeting the 1998 Heavy-duty standards during this time frame.

As described in the Tier 2 proposal, manufacturers would meet the Tier 2 NO<sub>x</sub> standard by certifying to one of

seven emission bins, and using averaging to meet the corporate average NO<sub>x</sub> standard of 0.07 g/mi. The

proposed Tier 2 exhaust emission standards for all bins are shown in Table 7 and Table 8.

**TABLE 7.—TIER 2 LIGHT-DUTY FULL USEFUL LIFE (120,000 MILE) EXHAUST EMISSION STANDARDS**  
[Grams per mile]

Bin No.	NO <sub>x</sub>	NMOG	CO	HCHO	PM
7	0.20	0.125	4.2	0.018	0.02
6	0.15	0.090	4.2	0.018	0.02
5	0.07	0.090	4.2	0.018	0.01
4	0.07	0.055	2.1	0.011	0.01
3	0.04	0.070	2.1	0.011	0.01
2	0.02	0.010	2.1	0.004	0.01
1	0.00	0.000	0.0	0.000	0.00

**TABLE 8.—TIER 2 LIGHT-DUTY INTERMEDIATE USEFUL LIFE (50,000 MILE) EXHAUST EMISSION STANDARDS**  
[Grams per mile]

Bin No.	NO <sub>x</sub>	NMOG	CO	HCHO	PM
7	0.14	0.100	3.4	0.015	.....
6	0.11	0.075	3.4	0.015	.....
5	0.05	0.075	3.4	0.015	.....
4	0.05	0.040	1.7	0.008	.....

b. Interim Standards for New HLDTs

Between 2004 and 2007, these new HLDT vehicles would have two options; to participate in early banking for the Tier 2 program, or be part of the Tier 2 HLDT Interim program along with LDT3 and LDT4 vehicles. The early banking option is described in detail for HLDT in the Tier 2 proposal.

The Interim program proposed in Tier 2 phases in between 2004 and 2007 (see Table 6). Our interim standards for

HLDTs would begin in 2004. The Interim Program for HLDTs would set a corporate average NO<sub>x</sub> standard of 0.20 g/mi that would be phased in between 2004 and 2007. The interim HLDT standards, like those for Tier 2 LDV/LLDTs would be built around a set of bins (see Tables 9 and 10). As shown in Table 6, the phase-in would be 25 percent in the 2004 model year, 50 percent in 2005, 75 percent in 2006, and 100 percent in 2007. The program would remain in effect through 2008 to

cover those HLDTs not yet phased into the Tier 2 standards (a maximum of 50%). Vehicles not subject to the interim corporate average NO<sub>x</sub> standard during the 2004–2006 phase-in years would be subject to the least stringent bin (Bin 5) so their NO<sub>x</sub> emissions would be effectively capped at 0.60 lg/mi. These vehicles would be excluded from the calculation to determine compliance with the interim 0.20 g/mi average NO<sub>x</sub> standard.

TABLE 9.—FULL USEFUL LIFE (120,000 MILE) INTERIM EXHAUST EMISSION STANDARDS FOR HLDTs  
[Grams per mile]

Bin No.	NO <sub>x</sub>	NMOG	CO	HCHO	PM
5	0.60	0.230	4.2	0.018	0.06
4	0.30	0.180	4.2	0.018	0.06
3	0.20	0.156	4.2	0.018	0.02
2	0.07	0.090	4.2	0.018	0.01
1	0.0	0.00	0.0	0.000	0.0

TABLE 10.—INTERMEDIATE USEFUL LIFE (50,000 MILE) INTERIM EXHAUST EMISSION STANDARDS FOR HLDTs  
[Grams per mile]

Bin No.	NO <sub>x</sub>	NMOG	CO	HCHO	PM
5	0.40	0.160	3.4	0.015	.....
4	0.20	0.140	3.4	0.015	.....
3	0.14	0.125	3.4	0.015	.....
2	0.05	0.075	3.4	0.015	.....

All other aspects of the Tier 2 proposal which covers HLDT vehicles would apply to those 8,500–10,000 pound GVWR vehicles classified as HLDTs according to the proposed definition described above. The reader is encouraged to examine the Tier 2 proposal for a full description of these provisions.

c. Technological Feasibility of Tier 2 Standards for New HLDTs

As discussed above, we believe this new definition of HLDTs between 8,500 and 10,000 pounds will capture vehicles designed for personal transportation purposes, principally sport-utility vehicles and passenger vans. Cargo vans and traditional pickups would not be

classified as HLDTs by this new definition. Table 11 represents our estimates of the number of 8,500–10,000 pound GVWR vehicles which would be covered by the proposed revision to the light-duty truck definition, as well as sales estimates for the LDT3s and LDT4s which currently comprise the HLDT category.

TABLE 11.—EPA'S ESTIMATED 1998 SALES OF LDT3, LDT4, AND NEW HLDT VEHICLES BETWEEN 8,500 AND 10,000 POUNDS GVWR

	LDT3 and LDT4	New HLDTs between 8,500 and 10,000 pound GVWR
Gasoline Vehicle Sales	1.5 million	<70,000
Diesel Vehicle Sales	<1 percent of gasoline LDT3 and LDT4 sales	<5,000

As can be seen in Table 11, the revision of the LDT definition proposed today would increase the total number of HLDT vehicles by less than 5 percent. The proposed change in the definition of light-duty trucks would result in the diesel fraction being less than 0.5 percent of all HLDTs.

These new HLDT vehicles are similar in engine design to existing LDT4 vehicles, and we believe the technological feasibility arguments contained in the Tier 2 proposal apply to these vehicles as well. In addition to these arguments, Tables 3–9 in the draft RIA for this proposal contains a list of 1998 and 1999 model year gasoline

vehicles certified to the California Medium Duty Vehicle program (using low sulfur California fuel). In the 8,500 to 10,000 pound GVWR range, a number of engine families have full useful life (120,000 miles) NO<sub>x</sub> emissions in the 0.2 to 0.6 g/mile range, and a few families are certified in the 0.1 to 0.3 g/mile NO<sub>x</sub> range. These vehicles are all

tested at curb weight plus half-payload, while those captured by the new definition would be tested at curb weight plus 300 pounds, a less stringent test condition. Therefore, a large number of gasoline engine families between 8,500 and 10,000 are already capable of meeting the highest bin under the Tier 2 Interim program (0.6 g/mile), and a few are approaching the Tier 2 NO<sub>x</sub> standard of 0.07 g/mile, and are within the highest NO<sub>x</sub> bin under Tier 2 (0.2 g/mile NO<sub>x</sub>). In addition, compared to the number of existing LDT3 and LDT4 vehicles, the number of vehicles captured by the new HLDT definition are relatively small (< 5 percent), and the averaging program proposed for Tier 2 will provide manufacturers with considerable lead time for applying control technology to these vehicles.

As noted above, these new HLDTs are similar in their engine types and designs to existing LDT4 vehicles, and because of this we expect that these new HLDTs will employ essentially the same types of technologies as existing LDT4 vehicles to meet EPA's proposed Tier 2 standards. Similarly, the costs EPA projected for bringing existing LDT4 vehicles into compliance with the Tier 2 standards can also be carried over to these new HLDTs. These costs are discussed in detail in EPA's proposal for Tier 2 standards, and the reader is urged to refer to that discussion for more information (see 64 FR 26070, May 13, 1999). EPA estimates that bringing these new HLDTs under the Tier 2 program would cost \$270 per vehicle, i.e., the same as for other LDT4s. Based on an estimate of approximately 75,000 vehicles affected, annual costs would equal about \$20 million when the program is fully phased-in by 2009. Per vehicle NO<sub>x</sub> emission reductions of 4.3 g/mi would be expected from the current standards. This is a significantly larger per vehicle reduction than expected for current LDT4s, so EPA anticipates the near term cost effectiveness would be more cost effective. We request comment on the application of these cost estimates to the vehicles that would be covered by the proposed change to the LDT definition. This issue will be analyzed more carefully as part of the final rulemaking.

As outlined above, Tier 2 standards are intended to be "fuel neutral." Under the principle of fuel neutrality, all cars and light trucks, including those using diesel engines, would be required to meet the proposed Tier 2 standards. EPA believes that the proposed program, including the phase-in periods, would facilitate the advancement of clean diesel engine

technologies. EPA further believes that in the long term the standards would be within reach for diesel-fueled vehicles in combination with appropriate changes to diesel fuel to facilitate aftertreatment technologies.

As discussed in the Tier 2 proposal, the emission reduction technology needed to meet these levels for a diesel HLDT would likely require advanced diesel aftertreatment devices, such as NO<sub>x</sub> absorbers and PM traps. These technologies have the potential to provide emission reductions approaching 90 percent or greater. Considering the long lead time available to manufacturers, we believe these standards may be feasible for diesel HLDTs, including the vehicles that would be captured by the proposed change to the definition. In addition, the number of diesel powered vehicles between 8,500 and 10,000 pounds GVWR which would be classified as HLDTs by the proposed new definition is very small, as shown in Table 11. The total number of diesel HLDTs (including LDT3 and LDT4) would be less than 0.5 percent of all HLDTs. Averaging will likely provide the manufacturer with additional flexibility to meet both the interim and final Tier 2 standards.<sup>78</sup>

Considering all of these factors (long lead time, averaging program, similarity to LDT3s and LDT4s, and existing certification data), we believe that these new HLDT vehicles will be able to meet the Tier 2 interim standards and the Tier 2 final standards. As discussed above, the number of these vehicles, compared to the existing LDT3 and LDT4 fleet, is relatively small, and averaging will likely provide the manufacturer with the needed flexibility to meet both the interim and final Tier 2 standards. The conclusion of all of our analyses is that the proposed Tier 2 standards for this new category of HLDT vehicles would be feasible for gasoline-fueled vehicles operated on low-sulfur gasoline. As gasoline-fueled vehicles represent the overwhelming majority of

<sup>78</sup> We generally expect that manufacturers would take advantage of the flexibilities in the Tier 2 proposal to delay the need for diesel vehicles to meet the final Tier 2 levels until late in the phase-in period. Because diesel vehicles represent a very small percentage of the LDT market, diesel LDTs would not fall under the final Tier 2 standards until 2009, giving manufacturers a relatively large amount of leadtime. As noted in the Tier 2 proposal, some new diesel aftertreatment options may require lower sulfur diesel fuel than is currently available. We have issued an Advance Notice of Proposed Rulemaking intended to solicit comment on the need for reduced sulfur in diesel fuel in order to meet these standards. We also believe that the proposed interim standards would be feasible for diesels by 2004, with or without the fuel change, given the flexibilities associated with those standards.

the HLDT population (>99.5 percent), including those covered by the proposed change in the HLDT definition, EPA proposes to find that the proposed standards would be feasible overall for HLDT vehicles.

The Agency is considering adding a bin for HLDTs greater than 8,500 pounds GVWR for the 2004 thru 2008 model year time frame. This interim bin would not be available in 2009 and beyond once the Tier 2 standards are fully phased-in. This approach would create an appropriate opportunity for flexibility during the phase-in years. We believe that appropriate standards for an interim bin for HLDTs above 8,500 pounds GVWR are the existing California Medium Duty Vehicle LEV-I standards for this category of vehicles (0.9 and 0.12 g/mile for NO<sub>x</sub> and PM, respectively). Under this proposal, these chassis-based standards would already be in place for the heavy-duty vehicles between 8,500 and 10,000 pounds GVWR that would not be classified as HLDTs (see section IV.E). In addition, manufacturers would already be meeting these standards in California, and could carry over California vehicles to the federal program. We request comment on whether such an approach should be pursued in the final rule.

We request comment on all aspects of this proposed change in the definition of HLDTs, and the inclusion of these HLDTs in the Tier 2 program. We specifically seek comments on the appropriateness of the 10,000 pound GVWR limit as the upper cap for this program and on the technological feasibility of the standards being proposed for these passenger vehicles. After considering all comments received on this proposed change in the definition of HLDTs, it is our intention to finalize a change in the definition of LDTs in the Tier 2 final rule, if timing permits. If this is deemed infeasible, we would likely finalize this provision in the final rule for the heavy-duty 2004 standards. The Agency requests that any comments on this specific issue be sent to the dockets for both this rulemaking and the Tier 2 rulemaking, A-97-10 (See Section XI for information on how to provide written comments on this rule).

#### G. On-Board Diagnostics

Today's notice also contains proposed requirements for on-board diagnostic systems on heavy-duty vehicles and engines up to 14,000 pounds GVWR, both Otto-cycle and diesel. The proposed OBD requirements are essentially equivalent to those already in place for light-duty vehicles and

trucks,<sup>79</sup> including the optional provision that allows demonstration of compliance with California OBDII requirements<sup>80</sup> as a means of satisfying today's federal OBD requirements. The Agency is proposing to include OBD requirements in today's notice because OBD systems help ensure continued compliance with emission standards during in-use operation, and they help mechanics to properly diagnose and repair malfunctioning vehicles while minimizing the associated time and effort. The codification of OBD system requirements would also allow for potential inclusion of heavy-duty vehicles and engines in inspection/maintenance programs via a simple check of the OBD system.

### 1. Background on OBD

Section 202(m) of the CAA, 42 U.S.C. 7521(m), directs EPA to promulgate regulations requiring 1994 and later model year LDVs and LDTs to contain an OBD system that monitors emission-related components for malfunctions or deterioration "which could cause or result in failure of the vehicles to comply with emission standards established" for such vehicles. Section 202(m) also states that EPA may require such OBD systems for heavy-duty vehicles and engines.

On February 19, 1993, EPA published a final rule requiring manufacturers of light-duty applications to install such OBD systems on their vehicles beginning with the 1994 model year (see 58 FR 9468, February 19, 1993). The OBD systems must monitor emission control components for any malfunction or deterioration that could cause exceedance of certain emission thresholds. The regulation also requires that the driver be notified of any need for repair via a dashboard light, or malfunction indicator light (MIL), when the diagnostic system detects a problem. EPA also allows optional compliance with California's second phase OBD requirements, referred to as OBDII (13 CCR 1968.1), for purposes of satisfying the EPA OBD requirements.

Since publishing the 1993 OBD final rule, EPA has made several revisions to the OBD requirements. On March 23, 1995, EPA published a direct final rule that served largely to create more consistency between the California OBDII requirements and the EPA OBD requirements (see 60 FR 15242, March 23, 1995). The March 1995 rule also put into place deficiency provisions for EPA

OBD systems that allowed for certification despite the presence of minor noncompliances that could not be resolved within the time constraints of production schedules. On August 30, 1996, EPA published another final rule to allow optional compliance with California's newly revised OBDII requirements (61 FR 45898). On December 22, 1998, EPA published a final rulemaking that achieved even further consistency with the California OBDII requirements (see 63 FR 70681, December 22, 1998). This recent final rulemaking results in essentially identical emission malfunction thresholds and identical component monitoring requirements as required by the California OBDII regulation.

However, none of these federal rules extended OBD requirements to heavy-duty vehicles and engines. Today's action proposes that the existing light-duty OBD provisions be broadened to include both Otto-cycle and diesel heavy-duty vehicles and engines up to 14,000 pounds GVWR. EPA is also proposing some revisions to existing light-duty OBD requirements applicable to diesel vehicles and trucks. These light-duty revisions are being proposed to maintain consistency across the existing light-duty diesel OBD requirements and today's proposed heavy-duty diesel OBD requirements.

The Agency believes it is appropriate to extend OBD requirements to include heavy-duty vehicles and engines for many reasons. In the past, heavy-duty diesel engines have relied primarily on in-cylinder modifications to meet emission standards. For example, emission standards have been met through changes in injection timing, piston design, combustion chamber design, use of four valves per cylinder rather than two valves, and piston ring pack design and location improvements. In contrast, the 2004 standards represent a significant technological challenge, and while manufacturers may make engine design changes to comply with those standards, EPA expects the 2004 standards will require EGR. Such "add on" devices can experience deterioration and malfunction that, unlike the engine design elements listed earlier, may go unnoticed by the driver. Because deterioration and malfunction of these "add-on" devices can go unnoticed by the driver, and because their sole purpose is emissions control, some form of detection is crucial. The Agency believes that such detection can be effectively achieved by employing a well designed OBD system.

The same argument is true for Otto-cycle heavy-duty vehicles and engines. While emission control is managed both

with engine design elements and "add-on" devices, the "add-on" devices, particularly the catalytic converter, are the primary emission control features. The Agency believes it is critical that the emission control system, particularly the "add-on" type systems, be monitored for proper operation to ensure that new vehicles and engines certified to the standards proposed today continue to meet those standards throughout their full useful life.

Further, the industry trend is clearly toward increasing use of computer and electronic controls for both engine and powertrain management, and for emission control. In fact, the heavy-duty industry has already gone a long way, absent any government regulation, to standardize computer communication protocols.<sup>81</sup> Computer and electronic control systems, as opposed to mechanical systems, provide improvements in many areas including, but not limited to, improved precision and control, reduced weight, and lower cost. However, electronic and computer controls also create increased difficulty in diagnosing and repairing the malfunctions that inevitably occur in any engine or powertrain system. Today's proposed OBD requirements would build on the efforts already undertaken by the industry to ensure that key emission related components will be monitored in future heavy-duty vehicles and engines and that the diagnosis and repair of those components will be as efficient and cost effective as possible.

For these reasons, most manufacturers of vehicles, trucks, and engines have incorporated OBD systems that are capable of identifying when malfunctions occur, and in what systems. In the heavy-duty industry, those OBD systems traditionally have been geared toward detecting malfunctions causing driveability and/or fuel economy related problems. Without specific requirements for manufacturers to include OBD mechanisms to detect emission-related problems, those types of malfunctions that could result in high emissions without a corresponding adverse driveability or fuel economy impact could go unnoticed by both the driver and the repair technician. The resulting increase in emissions and detrimental impact on air quality could be avoided by incorporating an OBD system capable of detecting emission control system malfunctions.

<sup>81</sup> See "On-Board Diagnostics, A Heavy Duty Perspective," SAE 951947, and, "Recommended Practice for a Serial Control and Communications Vehicle Network," SAE J1939.

<sup>79</sup> See 40 CFR 86.099-17; 40 CFR 86.1806-01.

<sup>80</sup> See, e.g., Title 13, California Code of Regulations (CCR) §1968.1, as modified pursuant to California Mail Out #97-24 (December 9, 1997).

## 2. CARB OBDII Requirements

Current EPA OBD requirements apply only to light-duty vehicle and light-duty truck categories (less than 8500 pounds GVWR). In contrast, the CARB OBDII requirements include all light-duty categories and the CARB medium-duty category (vehicles/engines up to 14,000 pounds GVWR). As a result, while manufacturers of trucks and engines in the 8500 to 14,000 pound GVWR category have not certified federally to OBD regulations, they have certified to the CARB OBDII requirements on all their California applications beginning with the 1996 model year.<sup>82</sup>

Furthermore, while these manufacturer's federal certification applications have not covered OBD requirements, the trucks and engines nonetheless contain OBD systems with varying levels of sophistication. This appears to be particularly true for diesel applications.<sup>83</sup> While the sophistication of some of the OBD systems on existing federally certified heavy-duty vehicles and engines may be less than that required by today's proposal, EPA believes that the development work and lessons learned during implementation of CARB OBDII systems in California can be readily transferred to federal applications. With today's action, EPA proposes to implement OBD requirements for heavy-duty vehicles nationwide so that the benefits of OBD can be realized not only in California, but in the remaining 49 states as well.

## 3. Proposed Federal OBD Requirements

Today's proposed OBD requirements are discussed in detail below. The requirements for heavy-duty Otto-cycle vehicles and engines are identical to those already in place for light-duty Otto-cycle vehicles and trucks. However, the proposed OBD requirements for heavy-duty diesel vehicles and engines differ somewhat from the current light-duty diesel requirements, specifically with regard to engine misfire and aftertreatment monitoring requirements. As a result, and because the Agency believes that the diesel provisions proposed today are more appropriate for diesel applications, today's notice also proposes that the light-duty diesel

requirements be revised to be consistent with today's proposed heavy-duty diesel requirements.

In general, the OBD system must monitor emission-related powertrain components for deterioration or malfunction causing emissions to exceed 1.5 times the applicable standards. Upon detecting a malfunction, a dashboard MIL must be illuminated informing the driver of the need for repair. To assist the repair technician in diagnosing and repairing the malfunction, the OBD system must also incorporate standardization features (e.g., the diagnostic data link connector; computer communication protocols; etc.) the intent of which is to allow the technician to diagnose and repair any OBD compliant truck or engine through the use of a "generic" hand-held OBD scan tool.

## 4. Federal OBD Malfunction Thresholds and Monitoring Requirements

EPA proposes that, beginning in the 2004 model year, heavy-duty vehicles and engines must be equipped with an OBD system capable of detecting and alerting the driver of the following emission-related malfunctions or deterioration as evaluated over the appropriate certification test procedure:<sup>84</sup>

(a) Catalyst or particulate trap deterioration or malfunction:

*Otto-cycle*—before it results in an increase in NMHC<sup>85</sup> emissions equal to or greater than 1.5 times the NMHC standard or FEL, as compared to the NMHC emission level measured using a representative 4000 mile catalyst system; for engine certified systems, NMHC+NO<sub>x</sub> would be used in place of NMHC.

*Diesel-cycle*—before it results in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NO<sub>x</sub> or PM. This monitoring would not need to be done if the manufacturer can demonstrate that deterioration or malfunction of the system will not result in exceedance of the threshold; however, the presence of the catalyst or

particulate trap must still be verified. For engine certified systems, NMHC+NO<sub>x</sub> would be used in place of NO<sub>x</sub>.

(b) Engine misfire:

*Otto-cycle*—before it results in an exhaust emission exceedance of 1.5 times the applicable standard or FEL for NMHC, CO or NO<sub>x</sub>; for engine certified systems, this would be 1.5 times NMHC+NO<sub>x</sub> or CO.

*Diesel-cycle*—when lack of combustion occurs.

(c) If the vehicle or engine contains an oxygen sensor, then oxygen sensor deterioration or malfunction before it results in an exhaust emission exceedance of 1.5 times the applicable standard or FEL for NMHC, CO or NO<sub>x</sub>; for engine certified systems, this would be 1.5 times NMHC+NO<sub>x</sub> or CO.

(d) If the vehicle or engine contains an evaporative emission control system, then any vapor leak in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice; an absence of evaporative purge air flow from the complete evaporative emission control system. On vehicles with fuel tank capacity greater than 25 gallons, the Administrator would be required to revise the size of the orifice to the feasibility limit, based on test data, if the most reliable monitoring method available was unable to reliably detect a system leak equal to a 0.040 inch diameter orifice.

(e) Any deterioration or malfunction occurring in a powertrain system or component directly intended to control emissions, including but not necessarily limited to, the EGR system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard or FEL for NMHC, CO, NO<sub>x</sub>, or diesel PM. For vehicles equipped with a secondary air system, a functional check, as described in paragraph (f) below, may satisfy the proposed requirements of this paragraph provided the manufacturer can demonstrate that deterioration of the flow distribution system is unlikely. This demonstration would be subject to Administrator approval and, if the demonstration and associated functional check are approved, the diagnostic system would be required to indicate a malfunction when some degree of secondary airflow is not detectable in the exhaust system during the check.

(f) Any other deterioration or malfunction occurring in an electronic emission-related powertrain system or

<sup>82</sup> This includes heavy-duty diesel and Otto-cycle applications which fall into EPA's light heavy-duty category.

<sup>83</sup> See "On-Board Diagnostics, A Heavy Duty Perspective," SAE 951947; memo from T. Sherwood to Air Docket No. A-98-32, "Documentation of Sophisticated On-board Diagnostic (OBD) Systems on Current Heavy-duty Diesel Engines, dated March 17, 1999; and Internet websites for various heavy-duty diesel engine manufacturers: www.cummins.com; www.detroitdiesel.com; www.navistar.com.

<sup>84</sup> The FTP minus the Supplemental FTP for chassis certified systems; the engine certification test procedure minus any supplemental test procedures for engine certified systems. While malfunction thresholds are based on certification test procedure emissions, this does not mean that OBD monitors need operate only during the test procedure. All OBD monitors that operate continuously during the test procedure should operate in a similar manner during non-test procedure conditions. The prohibition against defeat devices in §86.004-16 applies to these OBD requirements.

<sup>85</sup> As a point of clarification, federal emissions standards are expressed in terms of NMHC. Therefore, in order to remain consistent, all references to HC will be referred to as NMHC.

component not otherwise described above that either provides input to or receives commands from the on-board computer and has a measurable impact on emissions; monitoring of components required by this paragraph would be satisfied by employing electrical circuit continuity checks and, wherever feasible, rationality checks for computer input components (input values within manufacturer specified ranges based on other available operating parameters), and functionality checks for computer output components (proper functional response to computer commands); malfunctions would be defined as a failure of the system or component to meet the electrical circuit continuity checks or the rationality or functionality checks.

Upon detection of a malfunction, the MIL would be required to illuminate and a fault code stored no later than the end of the next driving cycle during which monitoring occurs provided the malfunction is again detected. Alternatively, upon Administrator approval, a manufacturer would be allowed to use a diagnostic strategy that employs statistical algorithms for malfunction determination (e.g., Exponentially Weighted Moving Averages (EWMA)). The Administrator considers such strategies beneficial for some monitors because they reduce the danger of illuminating the MIL falsely since more monitoring events are used in making pass/fail decisions. However, the Administrator would only approve such strategies provided the number of trips required for a valid malfunction determination is not excessive (e.g., six or seven monitoring events). Manufacturers would be required to determine the appropriate operating conditions for diagnostic system monitoring with the limitation that monitoring conditions are encountered at least once during the applicable

certification test procedure or a similar test cycle as approved by the Administrator. This is not meant to suggest that monitors be designed to operate only under test procedure conditions, as such a design would not encompass the complete operating range required for OBD malfunction detection.

As an option to the above requirements, EPA proposes to allow compliance demonstration according to the California OBDII requirements. This option has been available to light-duty vehicles and trucks since the implementation of the federal OBD program. This option allows manufacturers to concentrate on one set of OBD requirements for nationwide implementation (although federal OBD emission malfunction thresholds and monitoring requirements are essentially equivalent to those of the California OBDII regulation) and provides the highest level of OBD system effectiveness toward meeting nationwide clean air goals.

However, there are differences between the California OBDII requirements and today's proposed EPA OBD requirements. The California OBDII regulation does not require catalyst or particulate trap monitoring for diesel-cycle vehicles and engines. Today's notice proposes such monitoring for EPA OBD systems. Therefore, if a manufacturer chooses the California OBDII compliance option for a diesel vehicle or engine, that manufacturer would still be required to satisfy the catalyst or particulate trap OBD monitoring requirements of today's proposal.

The Agency requests comment on the above proposed OBD system requirements, the emission threshold levels, and the California OBDII compliance option. The Agency also wants to highlight and request comment on a very minor change meant to clarify

and define the meaning behind rationality checks on applicable monitors. With this proposal, reflected in paragraph (f) above, and sections 86.004-17(b)(6) and 86.1806-04(b)(6) of the proposed regulatory language, this definition would be changed from "rationality checks for computer input components (input values within manufacturer specified ranges)," to read, "rationality checks for computer input components (input values within manufacturer specified ranges based on other available operating parameters)." This proposed change would apply to all OBD systems—light-duty, heavy-duty, chassis certified, engine certified, Otto-cycle, diesel—and only serves to clarify; it would not constitute a new OBD requirement.

5. Proposed Standardization Requirements

The light-duty OBD regulations contain requirements for standardization of certain critical aspects of the OBD system. These critical aspects include the design of the data link connector, protocols for on-board to off-board computer communication, formats for diagnostic trouble codes, and types of test modes the on-board system and the off-board scan tool must be capable of supporting. Today's action proposes that these standards, tabulated below, also be required for heavy-duty OBD systems. Today's action also proposes that, as an alternative, manufacturers have the option of standardizing their systems according to SAE J1939, "Recommended Practice for a Serial Controlled Communications Vehicle Network." This alternative standard, SAE J1939, is a standard developed by the Society of Automotive Engineers (SAE) specifically for heavy-duty applications.

PROPOSED STANDARDS FOR HEAVY-DUTY OBD SYSTEMS

Proposed standards <sup>a</sup>	Alternative proposed standards
SAE J1850: communications protocol .....	SAE J1939: communications protocol; data link connector; test modes and downloading protocols; format for diagnostics trouble codes.
ISO 9141-2: communications protocol .....	
SAE J1962: data link connector .....	
SAE J1979: test modes and downloading protocols .....	
SAE J2012: format for diagnostics trouble codes .....	

<sup>a</sup>SAE refers to the Society of Automotive Engineers; ISO refers to the International Organization of Standardization.

The Agency requests comment on the appropriateness of the above standards and the need to incorporate other standards not mentioned above.

6. Deficiency Provisions

Today's action proposes to apply the same deficiency provisions to heavy-duty OBD systems as currently apply to light-duty OBD systems. This would allow the Administrator to accept an

OBD system as compliant even though specific requirements are not fully met. The deficiency provisions were first introduced on March 23, 1995 (60 FR 15242), and were recently revised on December 22, 1998 (63 FR 70681).

The Agency is proposing these deficiency provisions because, despite the best efforts of manufacturers, many will likely need to certify vehicles with some sort of deficiency when unanticipated problems arise that can not be remedied in time to meet production schedules. Given the considerable complexity of designing, producing, and installing the components and systems that make up the OBD system, manufacturers of light-duty vehicles and trucks have expressed and demonstrated difficulty in complying with every aspect of the OBD requirements. The same difficulty is expected for heavy-duty vehicles and engines. While we believe that 100 percent compliance can be achieved, we also believe that some sort of relief should be provided to allow for certification of engines that, despite the best efforts of the manufacturers, have deficient OBD systems.

The EPA "deficiency allowance" should only be seen as an allowance for minor deviations from the OBD requirements. In fact, EPA expects to implement this deficiency allowance primarily for software or calibration type problems, as opposed to cases where necessary hardware is at fault or is not present. EPA expects that manufacturers should have the necessary functioning OBD hardware in place, especially given the lead time afforded to OBD in this proposal, the extensive implementation of OBD that has already occurred on heavy-duty vehicles and engines absent any federal

regulation, and the experience gained by those industry members affected by this proposal during several years of light-duty and California medium-duty OBD implementation.

Furthermore, EPA does not intend to certify vehicles with federal OBD systems that have more than one OBD system deficiency, and EPA would not allow carryover of any deficiency to the following model year unless it can be demonstrated that correction of the deficiency requires hardware modifications that absolutely cannot be accomplished in the time available, as determined by the Administrator. These limitations are intended to prevent a manufacturer from using the deficiency allowance as a means to avoid compliance or delay implementation of any OBD monitors or to compromise the overall effectiveness of the OBD program. The Agency proposes that the "deficiency allowance" be provided indefinitely, and requests comment on this proposal.

7. Applicability and Waivers

Today's proposed federal OBD requirements would be implemented beginning with the 2004 model year, as described below for all heavy-duty vehicles and engines for which emission standards are in place or are subsequently developed and promulgated by EPA. EPA proposes that there be a phase-in of the OBD requirements for heavy-duty vehicles up to 14,000 pounds GVWR, and for heavy-duty engines up to 14,000 pounds

GVWR. The percentage phase-in schedule for such vehicles and engines will be 40/60/80/100 for the 2004/05/06/07 model years, respectively, based on projected sales. The phase-in percentages are determined separately for vehicles and for engines, but are not dependent on fuel.

Specific to Otto-cycle OBD, during model years 2004 through 2006, EPA believes that any non-California Otto-cycle vehicles and engines having essentially equivalent counterparts certified for sale in California as compliant with the LEV emission standards and the CARB OBDII requirements could be readily certified for sale in the remaining 49 states. That belief is based upon engineering judgement that such vehicles and engines will have essentially equivalent emission standards and OBD requirements. The sales mix of LEVs and ultra low emission vehicles (ULEVs) in California is 40 percent and 60 percent, respectively, with 100 percent of those in the less than 14,000 pound GVWR category in compliance with California's OBDII requirements. EPA considers the 40 percent LEV portion as easily certified for 49-state sales. The phased implementation of OBD compliance during the subsequent model years should provide sufficient lead time and flexibility to manufacturers.

In summary, the proposed applicability and phase-ins for heavy-duty OBD compliance are as follows:

COMPLIANCE PHASE-IN FOR TODAY'S PROPOSED OBD PROVISIONS

Model year	Heavy-duty up to 14,000 pounds GVWR	Diesel light duty
2004 MY .....	—40% compliance —deficiencies available —alternative fuel waivers available —CARB OBDII option available*	—100% compliance. —deficiencies available. —alternative fuel waivers available. —CARB OBDII option available.*
2005 MY .....	—60% compliance —deficiencies available —alternative fuel waivers available —CARB OBDII option available*	—100% compliance. —deficiencies available. —CARB OBDII option available.*
2006 MY .....	—80% compliance —deficiencies available —alternative fuel waivers available —CARB OBDII option available*	—same as 2005 MY.
2007+ MY .....	—100% compliance —deficiencies available —CARB OBDII option available*	—same as 2005 MY.

\*But diesels must meet EPA aftertreatment monitoring requirements.

For heavy-duty vehicles and engines up to 14,000 pounds GVWR operating on alternative fuel, EPA would grant OBD waivers during alternative fuel operation through the 2006 model year to the extent that manufacturers can

justify the inability to fully comply with any of today's proposed OBD requirements.<sup>86</sup> Such inability would

<sup>86</sup>Note that this provision currently exists for light-duty vehicles and trucks operating on alternative fuel through the 2004 model year; that

have to be based upon technological infeasibility, not resource reasons. Further, any heavy-duty vehicles and

existing provision does not change with today's proposal.

engines that are subsequently converted for operation on alternative fuel would not be expected to comply with today's proposed OBD requirements if the non-converted vehicle or engine does not comply. In other words, if the vehicle or engine never completes any assembly stage in OBD compliance, it need not comply with today's proposed OBD requirements while operating on the alternative fuel. If the vehicle or engine does complete any assembly stage with a compliant OBD system, it would have to comply with today's OBD requirements while operating on the fuel of original intent and, to the extent feasible, while operating on the alternative fuel. For these latter situations, EPA could grant waivers through the 2006 model year if the manufacturer can show it is infeasible to meet the requirements. Beginning in the 2007 model year, all heavy-duty alternative fueled vehicles and engines up to 14,000 pounds GVWR would have to be fully compliant during both operation on the fuel of original intent and alternative fuel.

EPA requests comments on all aspects of these OBD implementation and phase-in provisions. In particular, EPA requests comments on the phase-in percentages and their application to vehicles and engines separately. The phase-in is proposed in this way because the regulatory structure contains engine based OBD requirements in 40 CFR subpart A and chassis based OBD requirements in 40 CFR subpart S. Therefore, the phase-in percentages would have to be determined independently as they apply to the OBD systems certified according to the provisions of the specific subpart. If this creates unexpected burdens, or eliminates intended flexibilities, comments should explain how and suggest alternate phase-in language.

#### 8. Certification Provisions

The OBD certification information requirements of today's proposal are consistent with the Compliance Assurance Programs 2000 (CAP 2000) rulemaking discussed above. The Part 1 Application must include, for each OBD system: A description of the functional operating characteristics of the diagnostic system; the method of detecting malfunctions for each emission-related powertrain component; and a description of any deficiencies including resolution plans and schedules. Anything certified to the California OBDII regulations would be required to comply with California ARB information requirements. EPA may consider abbreviating the OBD information requirements through

rulemaking if it gains confidence that manufacturers are designing OBD systems that are fully compliant with all applicable regulations.

During EPA certification of vehicles optionally certified to the California OBDII regulation, EPA may conduct audit and confirmatory testing consistent with the provisions of the California OBDII requirements. Therefore, while the Agency will consider California certification in determining whether to grant a federal certificate, EPA may also elect to conduct its own evaluation of that OBDII system. While it is unlikely, EPA may make a compliance determination that is not identical to that of the California Air Resources Board.

Further, the Agency fully intends to allow a chassis certified and chassis demonstrated OBD system to fulfill any demonstration requirements of an engine certified OBD system (i.e., "drop-in" demonstration). Likewise, we fully intend to allow an engine certified and engine demonstrated OBD system to fulfill the demonstration requirements of a chassis certified OBD system. However, any chassis certified system would have to incorporate transmission diagnostics even though the "dropped-in" engine system may not have been certified with them.

In other words, if a manufacturer demonstrates OBD compliance using a chassis certified system, then wishes to employ engineering judgement in demonstrating compliance of an engine certified OBD system, the Agency would accept such a demonstration provided sound engineering judgement is employed. The same would be true for an engine to chassis situation (note the transmission diagnostic stipulation stated above). This allowance is perhaps most applicable to Otto-cycle OBD systems, but it would also apply for diesel systems. The Agency intends to make this allowance because OBD systems tend to be essentially identical in concept and approach across the product line of any given manufacturer, even though specific calibrations may change from engine to engine or model to model. The compliance allowance discussed here requires the manufacturer to rigorously demonstrate its OBD concept and approach on one engine or model, but allows the manufacturer to apply that demonstration via engineering judgement to the different engine and powertrain calibrations used across its fleet.

#### H. Durability Procedures

Under the current certification regulations, manufacturers develop

deterioration factors based on testing of development engines and emissions control systems. Because emissions control efficiency generally decreases with the accumulation of service on the engine, the regulations require that a DF be used in conjunction with engine test results as the basis for determining compliance with the standards. The regulations require that the manufacturer develop an appropriate DF, which is then subject to review by EPA in the certification process. These deterioration factors are applied to low mileage emissions levels of certification engines in order to predict emissions at the end of the engines' useful life. The emissions level after the deterioration factor is applied is the engine certification level, which must be below the standard for the engine to be certified. For engines equipped with aftertreatment (e.g., catalysts), the DF must be "multiplicative" (i.e., a factor that can be multiplied by the low mileage emissions level of the certification engine to project emissions at the end of the engine useful life). For engines lacking aftertreatment (e.g., most current diesels), the DF must be "additive" (i.e., a factor that can be added to the low mileage emissions level of the certification engine to project emissions at the end of the engine useful life).

Manufacturers have argued that EPA should not propose a standard on the basis of current low engine certification levels, even though these levels are supposed to reflect anticipated emissions levels over the life of the engine. Manufacturers also noted that the deterioration factors capture deterioration for vehicles under typical use and not severe use. Thus, the manufacturers stated that they account for severe deterioration by targeting certification levels at half the standard. EPA has given full consideration to each of these concerns in developing the proposed standards.

EPA believes that the manufacturer's durability process should result in the same or greater level of deterioration than is observed in-use for a significant majority of their vehicles, rather than simply matching the average in-use deterioration. This is especially important considering that incomplete vehicles and vehicles over 14,000 pounds GVWR are more likely to be work vehicles and operated under more severe conditions a greater percentage of their useful lives. In recent certification applications (for the 1998 and 1999 model years, for example), manufacturers have reported NO<sub>x</sub> DFs on the order of 1.2 to 1.6 for heavy-duty Otto-cycle engines. Manufacturers have

indicated on several occasions that they certify at levels of half the standard to address more severe in-use operation than is represented by their deterioration factors. Based on manufacturer comments, if a durability process is designed to represent the deterioration of a significant majority of engines within an engine family, EPA would expect manufacturers to calculate a multiplicative deterioration factor which is higher than current DFs, on the order of 2.0 or more. Manufacturers also presented EPA with an analysis of engine emissions standards, which is discussed in detail in the Technological Feasibility section below. The catalyst deterioration rates used in that analysis indicate that the deterioration factor could be higher than two in some cases.

EPA believes that it is important for certification levels (emissions tests adjusted by the DF) to represent anticipated in-use emissions levels of a significant majority of in-use engines. This will continue to be a key aspect of EPA's compliance programs. Deterioration factors are also used during production line testing to verify the emissions performance of production engines. Finally, the ABT program relies on certification data as the basis for determining credits. Although Otto-cycle engine manufacturers have not made wide use of the ABT program to date, EPA expects more use of the program in future years due to the new more stringent emissions standards and new ABT flexibilities.

EPA is proposing today that the compliance provisions for heavy-duty engines contained in 40 CFR part 86, subpart A would continue to apply to HDVs subject to the engine-based standards, with modifications designed to ensure that the durability demonstration procedures used by manufacturers in the certification process, and deterioration factors calculated by means of these procedures, predict the emission deterioration of a significant majority of in-use engines to be covered by the procedure.

The deterioration factor determination procedures in the regulations are proposed to be modified to specify that emission control component aging procedures will predict the deterioration of the significant majority of in-use engines over the breadth of their product line which would ultimately be covered by this procedure (manufacturers would be expected to show that their durability programs cover on the order of ninety percent or higher of the distribution of deterioration rates experienced by

vehicles in actual use). In addition, manufacturers would be required to calculate multiplicative DFs by dividing high mileage exhaust emissions by the low mileage exhaust emissions (*e.g.*, emissions at the useful life mileage by exhaust emissions at 4,000 miles).<sup>87</sup> This change only adds specificity to the regulations so that DFs are calculated using a consistent and credible methodology. These proposed modifications to the engine-based HDV compliance procedures would be effective for any engine family generating ABT credits prior to the 2004 model year. EPA requests comment on the proposed modifications to the engine-based compliance program durability procedures.

#### *I. Non-Conformance Penalties*

Non-conformance penalties are monetary penalties that manufacturers can pay instead of complying with an emission standard. (See CAA section 206(g) and 40 CFR part 86, subpart L.) In the final rule for the 2004 standards for diesel heavy-duty engines, we stated that provisions related to NCPs would be addressed in the 1999 Review. (See 62 FR 54700; October 21, 1997.) In order to establish NCPs for a specific standard, EPA must find that: (1) Substantial work will be required to meet the standard for which the NCP is offered; and (2) there is likely to be a "technological laggard" (*i.e.*, a manufacturer that cannot meet the standard because of technological (not economic) difficulties and, without NCPs, might be forced from the marketplace). We also must determine compliance costs so that appropriate penalties can be established.

For diesel heavy-duty engines, the most recent NCPs established were for the 1994 particulate standard (0.10 g/bhp-hr) and the 1998 NO<sub>x</sub> standard (4.0 g/bhp-hr). NCPs have not been established to date for Otto-cycle heavy-duty engines. NCPs were used extensively by manufacturers of highway heavy-duty engines in the late 1980s, prior to the implementation of our averaging, banking and trading program. Since that time, however, their use has been rare. We believe manufacturers have taken advantage of the averaging, banking and trading program as a preferred alternative to incurring monetary losses.

<sup>87</sup> Manufacturers are not required to accumulate actual mileage on vehicles or engines in order to determine a deterioration rate. In many cases, the accumulation of mileage (or "service") is simulated by various "bench aging" techniques that allow the process to consume less time and resources than accumulating actual mileage.

At this time, EPA has insufficient information indicating that both of the criteria described above are met for diesel or Otto-cycle heavy-duty engines. While we believe that substantial work will be required to meet the 2004 standards, we have no information indicating that a technological laggard is likely to exist. We also believe that the existing NO<sub>x</sub> and particulate averaging, banking and trading program already provides considerable flexibility to meet the emission standards. Therefore, we are not proposing NCPs as part of today's proposed program, but we request comment on whether NCPs are necessary for the 2004 standards for diesel or Otto-cycle heavy-duty engines. Particularly, commenters should address the two criteria described above for establishing NCPs ("substantial work" and "technological laggard"). We recognize that it may be premature for manufacturers to comment on these criteria, since implementation of the 2004 standards is still five years away. It may be more prudent to consider addressing NCPs in a future action as we approach implementation of the 2004 standards.

#### **V. Additional Heavy-Duty Engine Provisions Under Consideration**

In addition to the provisions proposed in this notice, EPA is currently reviewing several related regulatory issues concerning control of emissions from heavy-duty vehicles and engines. As discussed in section X below, EPA is reviewing the feasibility of more stringent standards for heavy-duty vehicles and engines in the future, and the impact of fuel quality on that question. In addition, EPA believes that there are several provisions related to the need for an effective emissions control program that will benefit from further evaluation and development prior to proposal. EPA intends to explore these provisions further in the coming months and publish a notice of proposed rulemaking dealing with these issues in a separate regulatory process within the next 12 months. We would expect to follow this with a final rule in early 2001.

In particular, there are four issues—a revised definition of rated speed, OBD requirements for engines used in vehicles above 14,000 GVWR, a manufacturer-based in-use test program, and application of the NTE approach to heavy-duty Otto-cycle engines—that we intend to deal with in the separate process. As explained below, EPA believes that there are several open issues and/or informational gaps that need to be reviewed regarding these issues prior to proposal of regulations.

As EPA wishes to complete the current rulemaking process as quickly as possible, EPA believes that it is appropriate to proceed with the current rulemaking without addressing these four issues at this time. This will allow us to gather information and work with interested parties in a separate process regarding these issues.

In a letter to EPA dated July 1, 1999, the Engine Manufacturers Association (EMA) committed to "work diligently and cooperatively" with EPA and CARB to resolve the open questions in a timely fashion.<sup>88</sup> EMA's letter outlined a process that does not preclude implementation of these programs in the 2004 model year, and in fact, highlights model year 2004 implementation as a stated goal of this cooperative effort. A cooperative approach to data-collecting, analysis, and problem-solving can help in developing the proposals for these issues. EPA will work with all parties involved, including states and environmental organizations, to develop robust, creative, environmentally protective and cost-effective proposals addressing these issues.

#### *A. Revision to the Definition of Rated Speed*

The definition of rated speed, where speed is the angular velocity of an engine's crankshaft (usually expressed in revolutions per minute, or rpm) is an important aspect of the existing FTP for on-highway HD diesel engines. The rated speed definition is important to the FTP because it is used to define the range of engine speeds over which the engine will be exercised during the test. The regulations require engine manufacturers to declare rated speeds consistent with the regulation for their engines for the purpose of testing on the FTP cycle; however, past experience has raised our concern that selection of rated speed for the purpose of FTP testing is not being performed consistently across the entire HD industry. We are concerned that some manufacturers have declared rated speeds which result in the FTP test being run over a speed and torque range which are not representative of the operating characteristics of a particular engine family, in order to influence the parameters under which the engine family is certified. Under the existing transient HD FTP, manufacturers could receive a NO<sub>x</sub> emission benefit if they declared a rated speed that was higher

than that envisioned under the regulations.

The on-highway HD diesel regulation defines rated speed as the speed at which the manufacturer specifies the maximum rated horsepower from the engine. The torque and rpm points used on the FTP are determined in part from the measured rated rpm, which in turn is determined using the rated speed or the calculated speed, whichever yields the higher speed (see 40 CFR 1330-90(g)). The calculated rated speed is determined by averaging the minimum and maximum speeds at which 98 percent of maximum power is generated. This definition was sufficient when it was developed in the late 1970's for engines with mechanical fuel injection and mechanical speed governors. For these engines, the slope of the power vs. speed lug curve remained monotonic and positive as speed increased until the mechanical governor engaged. At this point of governor control, the slope of the curve rapidly became sharply negative as speed increased toward the maximum governed speed. Therefore, maximum power occurred at nearly only one speed, and this speed was clearly identifiable by the breakpoint in the lug curve where the governor caused a rapid change in slope from positive to sharply negative. Engine manufacturers typically reported this speed as rated speed for sales and service literature as well as for FTP testing. Furthermore, the calculated rated speed calculation returned nearly the same speed, because of the nature of these lug curves with respect to the calculation.

With the advent of electronically fuel injected and governed engines, manufacturers began to design engines with high torque rises to meet customer demands. High torque rise engines often have lug curves in which the maximum power-speed point occurs at a much lower speed than mechanical engines. This power point is often at the maximum, where to the left and right of the maxima, the slope is slightly positive and negative, respectively. As speed increases beyond this maximum, the power does not taper off sharply, as in the case of mechanical engines. The electronic engines, on the other hand, have gradually negative slopes, and sometimes they even have a slight inflection to zero slope before the electronic speed governor engages. These characteristics render the rated speed calculation less meaningful because the two 98 percent speed points are often at very different speeds along the gradual positive and negative slopes around the actual maximum power-speed. Because of these characteristics

of electronic engines, EPA believes there now exists a need for an objective and singular definition of rated speed for the purposes of FTP testing.

We believe a new definition of rated speed is warranted, and that a new definition should be both objective and representative of in-use operation. The rated speed definition should be objective and should result in a single value for a given engine family. This would avoid inequitable testing. The rated speed definition should also result in an FTP test cycle which exercises the engine's emission control system over a range of engine speeds and loads that are representative of in-use operation.

The Agency is not proposing a new definition of HD rated speed in today's action. While the Agency believes there are issues associated with the current definition with rated speed, there are a number of issues with developing a new definition which have not yet been resolved. We intend to include a proposal for a new definition in a forthcoming proposal, and we intend to work with the industry, the California Air Resources Board, and other interested parties in the upcoming months to develop such a proposal. The Agency recently proposed a definition of rated speed for nonroad diesel marine engines which may be an appropriate blueprint for the on-highway industry (see 63 FR 68528, October 21, 1998). The reader is encouraged to examine the proposed nonroad diesel marine definition as one possible approach for the on-highway HD diesel industry.

#### *B. A Manufacturer-Based In-Use Testing Program for Heavy-Duty Engines*

To help ensure that heavy-duty engines meet applicable emission standards throughout their useful lives, the Agency must have reasonable certainty that the emissions measured in the laboratory during certification of prototype engines reflect those experienced during real world operation of actual in-use engines. We believe that a manufacturer-run in-use testing program is an important way to ensure that the 2004 emission standards for heavy-duty engines are achieved in actual use throughout their useful lives, as required by the Act. We believe that manufacturers are best suited to run such an in-use testing program for several reasons. First, we understand that manufacturers commonly evaluate in-use engines on the road to support their engine development process and troubleshoot customer concerns. For manufacturers already conducting such in-use engine performance testing, we see an in-use testing program as adding an emissions measurement component.

<sup>88</sup> Letter from Mr. Jed R. Mandel, Neal Gerber & Eisenberg, to Margo Oge, Office of Mobile Sources, July 1, 1999. Available in the public docket for review.

Second, we also understand that, through these product development and customer service/product warranty activities, manufacturers maintain a close relationship with the purchasers of their engines. We believe that this close customer relationship makes engine manufacturers best suited to locate and obtain in-use vehicles for emissions testing. For anyone other than the manufacturer, it would be difficult to locate in-use vehicles powered by a particular engine family, because heavy-duty trucks travel throughout the country. Since these trucks often are integral to business operations, owners may be unwilling to part with them for testing by entities other than the manufacturer. However, we expect that some owners, especially those of larger fleets, will view participation of their vehicles in an in-use testing program as an opportunity to establish an even stronger relationship with the manufacturer. This arrangement with the manufacturer could lead to other benefits to the owner, such as an opportunity to better communicate product needs.

Such a program would require manufacturers to measure emissions from a sample of in-use vehicles. Several issues need to be reviewed prior to proposal. These include the test procedures used for the in-use testing, the number of vehicles or engines that would be required for testing, and whether such testing will be done on engines (or vehicles) run in a laboratory or vehicles tested on the road. In the past, the laboratory testing of HD engines has been difficult for a number of reasons, with cost being one of the most significant barriers. In recent years, important advancements have been made in a number of emission measurement technologies as well as on-board engine management technologies which could allow for the development of a new and innovative in-use testing program for HD engines.

Today's action does not contain a proposal for manufacturer in-use testing of HD engines, with the exception of those HD Otto-cycle chassis certified engines which would be covered by the CAP 2000 provisions of today's proposal (see section IV.E.5—Compliance Assurance Program). The Agency does not believe that it currently has enough information to determine the most appropriate parameters of a manufacturer-run in-use testing program. However, the Agency intends to work with the engine manufacturers, CARB, the emissions measurement industry, and other interested parties over the next several months to explore these issues in order to achieve the goal

of a meaningful in-use testing program which would be run by the engine manufacturers.

#### *C. On-Board Diagnostics for Heavy-Duty Engines and Vehicles Above 14,000 Pounds GVWR*

Similar to the expected benefits of having OBD requirements on light-duty vehicles and trucks, and heavy-duty vehicles and engines up to 14,000 pounds GVWR, we believe that there are similar benefits to having OBD requirements for applications over 14,000 pounds GVWR. However, there are many potential issues associated with applying OBD requirements to applications above 14,000 pounds GVWR that have not been of similar concern regarding smaller vehicles. For example, trucks this large tend to be equipped with power take-off units that are operable a substantial portion of the time. Examples are refrigerator trucks, garbage trucks, or cement mixers. Such vehicles often use engine power to operate the refrigeration unit, the compactor, or the cement mixer, in addition to powering the vehicle as it drives down the road. Such devices, powered off the engine, are referred to as "power take-off units." Both CARB and EPA regulations currently allow disablement of most OBD monitors during power take-off unit operation. This has been of little concern for smaller vehicles, because of the very small percentage of vehicles in the 14,000 lb. GVWR and under weight range that use such units for a substantial portion of their operation. However, this approach to OBD monitoring during power take-off unit operation is difficult for larger engines that use power take-off units during substantial portions of their operation. It makes little sense to require a sophisticated OBD system on a vehicle if it's allowed to remain disabled during essentially its entire operation due to the power take-off unit.

This represents just one issue which, while it can be dealt with effectively, requires more time and cooperative efforts with industry and others to develop a meaningful and effective set of OBD regulations. Another such issue is the lack of vertical integration in the heavy-duty industry, particularly in the classes above 14,000 pounds GVWR. This lack of vertical integration creates increased difficulty associated with bringing together engine, transmission, chassis, and safety related diagnostics because so many different manufacturers are involved in creating the end product. For that reason, we are not proposing OBD requirements for engines above 14,000 pounds GVWR at

this time. We will gather further information and work closely with interested parties during the coming months to develop proposed OBD requirements for such engines.

#### *D. Applying the Not-To-Exceed Approach and Emission Limits to Heavy-Duty Otto-Cycle Engines*

Though today's action contains supplemental standards for HD diesel engines (Not-to-Exceed test and associated standards, Supplemental Steady State Test and associated standards, and the Load Response Test) today's action does not include similar provisions for HD Otto-cycle engines. As noted earlier, EPA's primary interest is developing an effective means of controlling actual in-use emissions across a broad range of in-use operation, a concern that extends to Otto-cycle engines as much as it does diesel engines. We believe that the same concerns which necessitate supplemental standards and test procedures for HD diesel engines may also exist for HD Otto-cycle engines, and that measures similar to those proposed for diesels to assure effective in-use control may also be warranted for Otto-cycle engines. We believe that the NTE approach is a valuable concept for accomplishing this goal for heavy-duty Otto-cycle engines, just as it is for diesels. However, we have not had as much time to consider such an approach for Otto-cycle engines, and data collection enabling appropriate setting of an NTE emission limit and definition of an Otto-cycle NTE zone is still underway as of today's proposal. Like other issues described in this section, we intend to work with the engine manufacturers, CARB, and other interested parties over the next several months to develop an NTE or similar approach to achieve the goal of assuring effective in-use control of HD Otto-cycle engines over a broad range of in-use operation.

### **VI. Are the Proposed Requirements Technologically Feasible?**

#### *A. 2004 Emission Standards for Heavy-Duty Diesel Engines*

Today's proposal contains a reaffirmation of the 2004 NMHC+NO<sub>x</sub> standards as well as several supplemental standards and test cycles for 2004 model year HDDE;

- 2.4 g/bhp-hr NMHC + NO<sub>x</sub> or 2.5 g/bhp NMHC + NO<sub>x</sub> with a limit of 0.5 g/bhp-hr on NMHC on the existing Federal Test Procedure
- Emission standards of 1.0 times the FTP standards on the new Supplemental Steady-state Test Cycle

—Emission standards of 1.25 times the FTP standards under the new Not-to-Exceed test zone

Based on the information currently available to EPA, we believe manufacturers are making significant progress towards meeting the 2004 standards contained in today's proposal, and we believe the standards are technologically feasible. Chapter 3 of the draft RIA for this proposal contains a detailed description of the technologies we expect engine manufacturers to utilize to meet the proposed 2004 standards. The discussion here is a summary of the draft RIA discussion; the reader should refer to the RIA for a more detailed discussion. We request comment on this discussion and on our proposed feasibility assessment.

HD diesel engines being certified to the 1998 U.S. standards are already utilizing several advanced technologies, including high-pressure fuel injection systems, redesigned combustion chambers, air-to-air aftercoolers, wastegated turbochargers and electronic controls. These technologies have allowed engine manufacturers to meet the emission standards which went into effect in 1998, while continuing to provide end users with improved fuel economy, improved durability, and improved driveability. The Agency expects to see incremental improvements in some of these strategies between now and 2004, but these improvements alone will not lower NMHC+NO<sub>x</sub> emissions to the levels needed to meet the 2004 standards, and also comply with the current PM standard. To meet the 2004 standards, EPA expects that, in addition to the aforementioned strategies, manufacturers will utilize EGR, variable geometry turbo-chargers, fuel injection rate shaping, and possibly exhaust aftertreatment.

#### 1. Probable Emission Control Strategies

**Exhaust Gas Recirculation.** EGR is the recirculation of exhaust gas from a point in an engine's exhaust system to a point in the intake system. EGR is used to decrease nitric oxide (NO) emissions, the primary species in diesel oxides of nitrogen. EGR dilutes intake air with combustion products, namely carbon dioxide (CO<sub>2</sub>) and water vapor. These diluents decrease the adiabatic stoichiometric flame temperature for a given mass of fuel and oxygen burned.<sup>89</sup> This decrease in temperature exponentially decreases the oxidation

rate of dissociated nitrogen (N) to NO.<sup>90</sup> EGR also decreases the mole fraction of oxygen, which proportionally decreases the oxidation rate of N to NO.<sup>91</sup>

EGR is very effective at decreasing NO<sub>x</sub>. Laboratory studies have shown that EGR can reduce NO<sub>x</sub> emissions by up to 90 percent at light load and up to 60 percent at full load near rated speed.<sup>92</sup> Additional studies have shown similar reductions at other speeds and loads.<sup>93</sup> However, because EGR decreases the overall rate of combustion in the cylinder, EGR tends to increase PM emissions and brake specific fuel consumption (BSFC). Furthermore, if EGR is not cooled before it is introduced to the intake system, it will reduce the density of the intake charge, and thus decrease the volumetric efficiency of the engine, which will decrease maximum power and increase BSFC. Hot EGR also offsets EGR's beneficial effect on combustion temperature because hot EGR increases the initial temperature of the air charge. Finally, EGR without additional boost air can result in incomplete combustion and an increase in PM emissions. Through proper EGR system design, however, researchers have demonstrated that these undesirable effects of EGR can be minimized so that the 2004 emission standards can be met, including fully offsetting the potential increase in PM to enable engines to continue to comply with the 0.1 g/bhp-hr standard.<sup>94</sup> The draft RIA contains additional discussion of how these issues are being addressed.

From a design perspective, EGR poses several challenges for it to be technologically feasible. First, a sufficient positive pressure difference must exist between the point in the exhaust system where the exhaust gas is extracted and the point in the intake system where it is introduced. Second,

under most conditions, EGR should be cooled for best performance. Third, the rate of EGR must be controlled accurately, and the control system must respond quickly to changes in engine operation.<sup>95</sup> As discussed in more detail in the draft RIA, the Agency believes engine and component manufacturers have either resolved these design challenges, or have made significant progress towards a resolution. EPA believes the remaining challenges can be resolved considering the lead time remaining to engine manufacturers, and the use of ABT to introduce the technology across the product line over a period of time.

**Fuel Injection Rate-shaping.** Another key emission control strategy that EPA expects heavy-duty diesel engine manufacturers to use to meet the 2004 emission standards is fuel injection rate shaping. Injection rate shaping has been shown to simultaneously reduce NO<sub>x</sub> by 20 percent and PM by 50 percent under some conditions.<sup>96</sup> It has also been shown to reduce BSFC by up to 10 percent without increasing NO<sub>x</sub> emissions.<sup>97</sup> However, it can also lead to increases in smoke emissions and may not be as effective on low-NO<sub>x</sub> engines equipped with EGR. Fuel injection rate shaping refers to precisely controlling the rate of fuel injected into the cylinder on a crank-angle by crank-angle resolution. Specific rate-shaping methods include pilot injection where a pilot quantity of fuel, typically less than two percent of the total fuel charge, is injected at some crank angle before the main injection event.<sup>98</sup> Split fuel injection refers to splitting, more or less evenly, the main injection into two or more separate injections (split injection is also referred to as pilot injection). Other methods include ramping the main injection event so that it resembles a triangular profile, rather than a conventional, square-shaped profile. Effective injection rate-shaping systems modulate the fuel injection timing, pressure, rate, and duration independent of engine speed and load. This characteristic of the fuel system

<sup>90</sup>Dodge L.G., D.M. Leone, D.W. Naegeli, D.W. Dickey, K.R. Swenson: "A PC-Based Model for Predicting NO<sub>x</sub> Reductions in Diesel Engines," SAE paper 962060, p.149, 1996.

<sup>91</sup>*Ibid.*

<sup>92</sup>Dickey D.W., T.W. Ryan III, A.C. Matheaus: "NO<sub>x</sub> Control in Heavy-Duty Engines—What is the Limit?," SAE paper 980174, 1998. Dickey; and, Zelenka P., H. Aufinger, W. Reczek, W. Cartellieri: "Cooled EGR—A Key Technology for Future Efficient HD Diesels," SAE paper 980190, 1998.

<sup>93</sup>Kohketsu S., K. Mori, K. Sakai, T. Hakozaiki: "EGR Technologies for a Turbocharged and Intercooled Heavy-Duty Diesel Engine," SAE paper 970340, 1997; Baert R., D.E. Beckman, A.W.M.J. Veen: "EGR Technology for Lowest Emissions," SAE paper 964112, 1996; and, Heavy-duty Engine Working Group, Mobile Source Technical Advisory Subcommittee of the Clean Air Act Advisory Committee, "Phase 2 of the EPA HDEWG Program—Summary Document", available in EPA Air Docket A-98-32.

<sup>94</sup>Dickey D.W., T.W. Ryan III, A.C. Matheaus: "NO<sub>x</sub> Control in Heavy-Duty Engines—What is the Limit?," SAE paper 980174, 1998.

<sup>95</sup>Zelenka P., H. Aufinger, W. Reczek, W. Cartellieri: "Cooled EGR—A Key Technology for Future Efficient HD Diesels," SAE paper 980190, 1998.

<sup>96</sup>Dickey D.W., T.W. Ryan III, A.C. Matheaus: "NO<sub>x</sub> Control in Heavy-Duty Engines—What is the Limit?," SAE paper 980174, 1998.

<sup>97</sup>Boehner W., K. Hummel: "Common Rail Injection System for Commercial Diesel Vehicles", SAE paper 970345, 1997; and Uchida N, K. Shimokawa, Y. Kudo, M. Shimoda: "Combustion Optimization by Means of Common Rail Injection System for Heavy-Duty Diesel Engines", SAE paper 982679, 1998.

<sup>98</sup>Boehner W., K. Hummel, "Common Rail Injection System for Commercial Diesel Vehicles", SAE 970345, 1997.

<sup>89</sup>Heywood J.B.: Internal Combustion Engine Fundamentals, McGraw-Hill, Inc, New York, p. 590, 1988.

implies that it should be mechanically de-coupled from the engine. Timing is then achieved, presumably, by electronic control.

Rate shaping is used to control the rate of combustion within the cylinder. By controlling combustion rate, the rate of pressure and temperature rise is controlled. Therefore, rate shaping controls NO<sub>x</sub> formation by one of the same mechanisms as EGR; it is used to lower peak combustion temperatures. Rate shaping can affect the time and temperature at which combustion ends, therefore it can also lower PM emissions by enhancing the mechanisms of in-cylinder soot oxidation.<sup>99</sup>

Several manufacturers and fuel system suppliers have demonstrated fuel injection systems that can achieve effective rate shaping. The three most common systems are the common rail; the mechanically actuated electronically controlled unit injector (MEUI); and the hydraulically actuated, electronically controlled unit injector (HEUI). These systems are described in more detail in the draft RIA (see Chapter 3).

Several studies have suggested rate-shaping methods to achieve emissions benefits. Researchers have reported decreased NO<sub>x</sub> and PM emissions at intermediate speeds and loads by optimizing reduced-rate pilot injection with a high-pressure main injection, and one report suggested a strategy at high loads.<sup>100 101 102</sup> At intermediate loads, burnt pilot fuel is used as a torch to decrease ignition delay of the main injection event. This lowers peak flame temperatures and, thus, NO<sub>x</sub> formation. At high loads the ignition delay is not as significant, but a very early pilot event (>20° before top-dead center) can be used to distribute low-temperature burnt gas in the cylinder, similar to EGR. This method can be optimized to decrease NO<sub>x</sub>, PM, and BSFC simultaneously. Other reports have suggested ramped main injection at high loads and high speeds to decrease NO<sub>x</sub>, square main injection at peak torque to decrease PM, and split injection at idle

to decrease volatile PM (*i.e.* white smoke).

EPA expects manufacturers to utilize fuel injection rate shaping to meet 2004 emission standards. EPA believes the strategy is technologically feasible because fuel injection rate shaping is used to a limited extent today to meet 1998 emissions standards, and several manufacturers have announced the introduction in the next few years of next-generation fuel injection systems with rate shaping ability. Furthermore, EPA expects even greater emission control through rate shaping as manufacturers continue to develop advanced fuel systems and control algorithms. We request comment on the feasibility of rate shaping and EGR in the 2004 time frame.

## 2. Feasibility of 2004 HD Diesel Standards

EPA expects manufacturers to utilize a combination of technologies in order to meet the proposed 2004 standards, such as cooled EGR systems with VNT and advanced fuel injection with rate shaping capability. The draft RIA for this rule, as well as the final RIA for the 1997 rule, contains a summary of the emission performance of a number of technology combinations which have been published in the referred literature in the past several years. These published results are on a variety of laboratory test cycles, including the U.S. transient heavy-duty FTP, the old European ECE-R49 13 mode steady-state cycle, and the new European Euro III steady-state cycle (which the U.S. EPA new supplemental steady-state cycle in this proposal is based on).

The published results referenced in the draft RIA show a waste-gated turbocharged engine with a high-pressure loop EGR system and a MEUI fuel system achieving NO<sub>x</sub> levels on the new Euro III cycle at levels between 1.83 and 3.24 g/bhp-hr (the 1.83 level resulted in a 2.4 percent increase in fuel consumption), with corresponding PM levels between 0.15 and 0.06 g/bhp-hr. Results on a HD diesel engine equipped with a VNT, high-pressure loop EGR system, and high pressure fuel injection system achieved results on the older European ECE-R49 cycle for NO<sub>x</sub> between 1.80 and 2.24 g/bhp-hr (the 1.80 level resulted in a 2.3 percent increase in fuel consumption). For both tests a PM level of 0.08g/bhp-hr was reported. Results referenced in the final RIA for the 1997 rule include a study which resulted in HC+NO<sub>x</sub> levels of 2.54 g/bhp-hr on the U.S. HD transient FTP, this engine was equipped with an EGR system, a rate-shaping fuel injection system, and an oxidation

catalyst and was run on a low sulfur fuel.

The Agency believes the technologies described above and in the draft RIA will provide the emission reductions necessary to allow engine manufacturers to meet the proposed 2004 standards. These control technologies have been demonstrated to provide significant emission reductions under both transient and steady-state test conditions. Steady-state and transient operation are represented in this proposal by the existing FTP, and the new NTE, LRT, and supplemental steady-state cycle.

In order to meet the proposed NTE standards, manufacturers will need to perform emission mapping of each engine family in order to insure that over the NTE control zone, optimization of the emission control system provides sufficient control of the emission map for each pollutants which will maintain levels below the 1.25 times the FTP standard over a 30 second interval. EPA believes the emission control technologies discussed previously as well as in the RIA are capable of providing this level of emission control. The emission control capacities of these technologies are applicable to NTE and LRT test conditions in the same manner as they apply to the transient and steady-state test conditions. The less stringent levels for NTE should also provide a level of assurance to manufacturers.

As discussed, several publicly available studies have shown results which approach or surpass the proposed standards, though several indicate fuel economy penalties on the order of two percent. Significant development and demonstration of cooled EGR, VNT, and fuel injection systems has been performed in the past two years. Engine manufacturers have four years of lead time available in which to continue to fully develop and optimize these control technologies in order to meet the proposed standards, as well as to minimize or eliminate the fuel economy penalty associated with some technologies. Finally, the 1997 rulemaking put in place ABT provisions for HD diesel engines for the 2004 standards. These ABT provisions provide engine manufacturers with considerable flexibility in determining how they will meet the proposed standards on a corporate average, and thus provides the manufacturers with some level of flexibility in determining how to apply the range of technologies available across their product line.

Technology combinations of cooled EGR systems, VNTs, and advanced fuel injection systems have been

<sup>99</sup> Heywood, J.B., Internal Combustion Engine Fundamentals, McGraw-Hill, Inc., New York, p. 643-644, 1988.

<sup>100</sup> Ikegami, M., K. Nakatani, S. Tanaka, K. Yamane: "Fuel Injection Rate Shaping and Its Effect on Exhaust Emissions in a Direct-Injection Diesel Engine Using a Spool Acceleration Type Injection System", SAE paper 970347, 1997.

<sup>101</sup> Uchida N, K. Shimokawa, Y. Kudo, M. Shimoda: "Combustion Optimization by Means of Common Rail Injection System for Heavy-Duty Diesel Engines", SAE paper 982679, 1998.

<sup>102</sup> Dickey D.W., T.W. Ryan III, A.C. Matheaus: "NO<sub>x</sub> Control in Heavy-Duty Engines—What is the Limit?", SAE paper 980174, 1998.

demonstrated in the past several years which are capable of meeting the proposed 2004 standards. Engine manufacturers have an additional four years of lead time to develop and optimize these control systems. EPA has considered the well known inverse relationship between NO<sub>x</sub> and PM. As discussed previously, integrated emission control technology packages (cooled EGR, VNT, and advanced fuel injection system) have been demonstrated to significantly reduce NO<sub>x</sub> with a minimal increase in PM. Considering the several years of additional lead time available to manufacturers, achievement of the 2004 standards is clearly feasible. In addition, as discussed in the draft RIA, other control methods, such as aftertreatment, though unnecessary to meet the 2004 standards, could be used to further reduce emissions. The ABT provisions provide engine manufacturers some flexibility in determining the appropriate mix of technologies across their product line. For these reasons, EPA fully anticipates that engine manufacturers will meet the 2004 standards contained in today's proposal.

#### *B. 2004 Emission Standards for Heavy-Duty Otto-Cycle Vehicles and Engines*

This section discusses the current technologies being used by manufacturers and the key technology changes we believe would be available to meet the proposed 2004 vehicle and engine standards. Technological feasibility of the exhaust emissions standards is presented first, followed by analyses for ORVR controls. Manufacturers would ultimately decide what is best for their individual product lines. Further information on the various available technologies and EPA's technological feasibility assessment is contained in the Technological Feasibility section of the Regulatory Impact Analysis. We request comment on the following discussion and on our feasibility assessment for heavy-duty Otto-cycle vehicles and engines.

##### 1. Current Technologies

Gasoline engine manufacturers are already producing heavy-duty engines that achieve a level of emission control better than the control required by current standards. Table 12 provides a list of some key technologies currently being used for HD engine emissions control. Manufacturers have introduced improved systems as they have introduced new or revised engine models. These systems can provide very good emissions control and many engines are being certified to levels of

less than half the current standards. Many of the technologies have been carried over from light-duty applications.

#### Table 12.—Key Technologies for Current Heavy-Duty Otto-Cycle Engines

Sequential Fuel Injection/electronic control  
3 way catalyst  
Pre and post catalyst heated oxygen sensors  
Electronic EGR  
Secondary air injection  
Improved electronic control modules

Improving fuel injection has been proven to be an effective and durable strategy for controlling emissions and reducing fuel consumption from gasoline engines. Improved fuel injection will result in better fuel atomization and a more homogeneous charge with less cylinder-to-cylinder and cycle-to-cycle variation of the air-fuel ratio. These engine performance benefits will increase as technology advances allow fuel to be injected with better atomization. Increased atomization of fuel promotes more rapid evaporation by increasing the surface area to mass ratio of the injected fuel. This results in a more homogeneous charge to the combustion chamber and more complete combustion. Currently, sequential multi-port fuel injection (SFI) is used in most, if not all, applications under the proposed standards because of its proven effectiveness.

One of the most effective means of reducing engine-out NO<sub>x</sub> emissions is EGR. By recirculating spent exhaust gases into the combustion chamber, the overall air-fuel mixture is diluted, lowering peak combustion temperatures and reducing NO<sub>x</sub>. Exhaust gas recirculation is currently used on heavy-duty Otto-cycle engines as a NO<sub>x</sub> control strategy. Many manufacturers now use electronic EGR in place of mechanical back-pressure designs. By using electronic solenoids to open and close the EGR valve, the flow of EGR can be more precisely controlled.

EPA believes that the most promising overall emission control strategy for heavy-duty Otto-cycle engines is the combination of a three-way catalyst and closed loop electronic control of the air-fuel ratio. Control of the air-fuel ratio is important because the three-way catalyst is effective only if the air-fuel ratio is at a narrow band near stoichiometry. For example, for an 80 percent conversion efficiency of HC, CO, and NO<sub>x</sub> with a typical three-way catalyst, the air-fuel ratio must be maintained within a fraction of one percent of stoichiometry. During transient operation, this minimal

variation cannot be maintained with open-loop control. For closed-loop control, the air-fuel ratio in the exhaust is measured by an oxygen sensor and used in a feedback loop. The throttle position, fuel injection, and spark timing can then be adjusted for given operating conditions to result in the proper air-fuel ratio in the exhaust. Most if not all engines have already been equipped with closed loop controls. Some engines have been equipped with catalysts that achieve efficiencies in excess of 90 percent. This is one key reason engine and vehicle certification levels are very low. In addition, electronic control can be used to adjust the air-fuel ratio and spark timing to adapt to lower engine temperatures, therefore controlling HC emissions during cold start operation.

All HD Otto-cycle engines are already equipped with three-way catalysts. Engines may be equipped with a variety of different catalyst sizes and configurations. Manufacturers choose catalysts to fit their needs for particular vehicles. Typically, catalyst systems are a single converter or two converters in series or in parallel. A converter is constructed of a substrate, washcoat, and catalytic material. The substrate may be metallic or ceramic with a flow-through design similar to a honeycomb. A high surface area coating, or washcoat, is used to provide a suitable surface for the catalytic material. Under high temperatures, the catalytic material will increase the rate of chemical reaction of the exhaust gas constituents.

Significant changes in catalyst formulation have been made in recent years and additional advances in these areas are still possible. Platinum, Palladium and Rhodium (Pt, Pd, and Rh) are the precious metals typically used in catalysts. Historically, platinum has been widely used. Today, palladium is being used much more widely due to its ability to withstand very high exhaust temperatures. In fact, some HD vehicles currently are equipped with palladium-only catalysts. Other catalysts contain all three metals or contain both palladium and rhodium. Some manufacturers have suggested that they will use Pd/Rh in lieu of tri-metal or conventional Pt/Rh catalysts for underfloor applications. Improvements in substrate and washcoat materials and technology have also significantly improved catalyst performance.

##### 2. Chassis-Based Standards

EPA is proposing to extend the California LEV-I MDV standards nationwide. California began requiring some vehicles to meet LEV standards in 1998 and the phase-in will be complete

in 2001. The technological feasibility assessment and technology projections are based primarily on the mix of technologies being used to achieve California LEV emissions levels.

Of the anticipated changes, enhancements to the catalyst systems are expected to be most critical. Catalyst configurations are likely to continue to vary widely among the manufacturers because manufacturers must design the catalyst configurations to fit the vehicles. One potential change is that manufacturers may move the catalyst closer to the engine (close-coupled) or may place a small catalyst close to the engine followed by a larger underfloor catalyst. These designs provide lower cold start emissions because the catalyst is closer to the engine and warms up more quickly. Typically, the catalyst systems used in HD applications have a large total volume but with lower precious metal content per liter compared to light-duty catalyst systems. For 2004, EPA projects an increase in overall precious metal loading of about 50 percent. EPA does not expect significant increases in total catalyst volume.

Calibration changes will also be important. The engine and catalyst systems must be calibrated to optimize the performance of the systems as a whole. Post catalyst oxygen sensors will allow further air fuel control. Manufacturers are moving to more powerful computer systems and EPA expects this trend to continue. Other technologies such as insulated exhaust systems may also be used in some cases to reduce cold start emissions.

HD vehicles in California have typically been certified with full life emissions levels in the 0.3–0.5 g/mile range for NO<sub>x</sub> and the 0.1–0.3 g/mile range for NMOG. These levels are well within the LEV standards and provide manufacturers with a compliance cushion. EPA expects manufacturers to sell these vehicles or very similar vehicles nationwide to meet the proposed EPA standards.

### 3. Engine-Based Standards

Currently, most engine families are certified with emissions levels of less than half the standard. Only one engine family is certified with NO<sub>x</sub> emissions levels within 10 percent of the current 4.0 g/bhp-hr NO<sub>x</sub> standards. Manufacturers have begun to apply advanced system designs to their heavy-duty applications. Recently introduced engine families have been certified with emissions levels of 0.5 g/bhp-hr

combined NMHC+NO<sub>x</sub>.<sup>103</sup> These engines and systems feature precise air/fuel control and superior catalyst designs comparable to the catalyst systems being used in the California LEV program. Based on industry input, we believe that manufacturers will continue the process of replacing their old engine families with advanced engines over the next several years. As new and more advanced engines are introduced, EPA anticipates that they will be capable of achieving the proposed standards.

Manufacturers have stated on several occasions that they target emissions certification levels of about half the standard, due to the potential for in-use deterioration of catalysts and oxygen sensors. Catalysts experience wide variations in exhaust temperature due to the wide and varied usage of vehicles in the field. Some vehicles may experience more severe in-use operation than is represented by the durability testing currently conducted for engine certification. Manufacturers have argued that EPA should not set new standards based on certification data because certification levels do not account for severe in-use deterioration. Based upon these comments EPA would expect that manufacturers would certify engines at about 0.5 g/bhp-hr NMHC+NO<sub>x</sub> in order to ensure compliance with the 1.0 g/bhp-hr standard.

Catalyst systems with increased precious metal loading will be a critical hardware change for meeting the proposed engine standards. Optimizing and calibrating the catalyst and engine systems as a whole will also be important in achieving the proposed standards. Increased use of air injection to control cold start emissions may also be needed, especially to reduce NMHC emissions during cold start operation. Also, improved EGR systems and retarded spark timing may be needed to reduce engine out NO<sub>x</sub> emissions levels.

Catalyst system durability is a key issue in the feasibility of the standards. Historically, catalysts have deteriorated when exposed to very high temperatures and this has long been a concern for heavy-duty work vehicles. Manufacturers have often taken steps to protect catalysts by ensuring exhaust temperatures remain in an acceptable range. Catalyst technologies in use currently are much improved over the catalysts used only a few years ago. The improvements have come with the use of palladium, which has superior

thermal stability, and through much improved washcoat technology. The catalysts have been shown to withstand temperatures typically experienced in HD applications. Manufacturers also continue to limit exhaust temperature extremes not only to protect catalyst systems but also to protect the engine.

In addition to general comments noted above regarding the need for compliance cushion, manufacturers presented EPA with an analysis of the Otto-cycle engine emissions standards for 2004.<sup>104</sup> The analysis assumed:

- Worst-case NO<sub>x</sub> catalyst efficiency of 90.9 percent at the end of the engine's useful life
- Worst-case engine-out NO<sub>x</sub> level of 12 g/bhp-hr
- A cushion of .3 g/bhp-hr for engine variability and a safety margin of 20 percent of the standard
- Tailpipe NMHC levels of 15 percent of the NO<sub>x</sub> level (.26 g/bhp-hr)

Based on these assumptions, manufacturers recommended a 2.0 g/bhp-hr NMHC plus NO<sub>x</sub> standard, according to the following methodology.

Variability=0.3 g/bhp-hr (eq. 1)  
Safety Margin=20% (NO<sub>x</sub> level)

(eq. 2)  
NMHC Level=14.8 % (NO<sub>x</sub> Level)  
(eq. 3)

Combined NMHC+NO<sub>x</sub> Standard=NO<sub>x</sub> Level+NMHC Level (eq. 4)

NO<sub>x</sub> Level=Post-catalyst NO<sub>x</sub> rate+Variability+Safety Margin  
(eq. 5)

(Step 1) Post-catalyst NO<sub>x</sub> rate=(1 – conversion efficiency)×Engine-Out NO<sub>x</sub> level=(1–0.91)×12 g/bhp-hr=1.09 g/bhp-hr (eq. 6)

(Step 2) Putting eq. (1), (2), and (6) into equation (5)—NO<sub>x</sub> Level=1.09 g/bhp-hr+0.3 g/bhp-hr+0.2×NO<sub>x</sub> Level (eq. 5b)

(Step 3) Solving Equation (5b) for NO<sub>x</sub> Level gives—NO<sub>x</sub> Level=(1.09 g/bhp-hr+0.3 g/bhp-hr)/(1–0.2)=1.74 g/bhp-hr

(Step 4) Placing the results from (Step 3) into Equation 5 gives—NMHC Level=14.8% NO<sub>x</sub> Level=0.148×1.74 g/bhp-hr=0.26 g/bhp-hr

(Step 5) Placing the results from (Step 3) and (Step 4) into equation (1) gives: Combined NMHC+NO<sub>x</sub> Standard=0.26 g/bhp-hr+1.74 g/bhp-hr=2 g/bhp-hr

Manufacturers noted that a catalyst efficiency of about 97 percent would be

<sup>103</sup> EPA is not proposing to set the standard at this level because EPA recognizes that a manufacturer needs to design their technology to build in sufficient compliance margin, based on the technology and standards at issue here.

<sup>104</sup> "September 15, 1998 Meeting with Engine Manufacturers Association (EMA)", EPA Memorandum from John W. Mueller, Mechanical Engineer, to docket A-95-27, November 4, 1998. Docket A-95-27, Docket # IV-E-26.

<sup>105</sup> [Reserved]

needed to meet a 1.0 g/bhp-hr standard and that their assessments of post-2000 catalysts indicate worst case performance well below this level. The 2.0 g/bhp-hr standard recommended by manufacturers seems to indicate that compliance cushions greater than half the standard are needed.

The deterioration factor for the engine and catalyst system in the above analysis would be on the order of four or five.<sup>106</sup> This is extremely high compared to the deterioration factors currently used for certification which are typically between one and two. While EPA understands that current deterioration factors may represent typical deterioration and not severe deterioration, EPA believes that deterioration factors of four or five are unreasonably high and unlikely. EPA would expect a deterioration factor representing more severe operation to be closer to two, which is consistent with manufacturers' previous statements of certifying with certification levels of half the standard to allow for needed compliance margin.

Manufacturers state that their catalyst assumptions represented catalyst deterioration based on worst case vehicle operation (highly loaded operation, high exhaust temperatures). Details of the catalyst were not available except that manufacturers stated that the catalyst represented post-2000 catalyst technology. Due to the lack of detail, it is difficult to evaluate the assumption. However, EPA believes that this assumption is somewhat conservative given the recent developments in catalyst technology, the lead time available, and methods available to protect catalysts under worst case vehicle operation.

Engine-out NO<sub>x</sub> levels are also critical to the analysis. In their analysis, manufacturers assumed engine-out NO<sub>x</sub> levels of 12 g/bhp-hr, based on manufacturer development data for one engine. EPA does not believe that the engine-out NO<sub>x</sub> level of 12 g/bhp-hr is a reasonable or representative assumption. Other available data indicates that several engines have engine-out NO<sub>x</sub> emissions well below this level in the 6 to 10 g/bhp-hr range. Also, a previous assessment of engine standards presented to EPA by one manufacturer assumed much lower

engine-out NO<sub>x</sub> levels.<sup>107</sup> EPA does not believe that the current standards have encouraged manufacturers to place a high priority on engine-out emissions levels. In fact, one manufacturer has removed EGR systems from its engines. For recent engines, catalysts have provided the majority of needed emissions control.

EPA also further considered the engine variability factor of 0.3 g/bhp-hr built into the manufacturers' analysis. The analysis as presented assumes a 12 g/bhp-hr engine-out NO<sub>x</sub> level. Manufacturer data for the developmental engine suggests that 12 g/bhp-hr is the worst case engine-out level anticipated (the actual highest test point recorded was 12.65). It appears to EPA that manufacturers double counted engine variability by using the worst case engine data and an engine variability factor. Using engine-out NO<sub>x</sub> levels of 12 g in the analysis but without the engine variability factor yields a NO<sub>x</sub> + NMHC level of 1.6 g/bhp-hr. Without including a safety margin, which may be appropriate considering the analysis is already based on worst case engine and catalyst assumptions, the level would be 1.3 g/bhp-hr. To reach the 1.0 g/bhp-hr level with this engine and a 20 percent safety margin, a catalyst efficiency of 94 percent would be needed, according to the following assumptions and methodology.

$$\text{Combined NMHC + NO}_x \text{ Standard} = 1.0 \text{ g/bhp-hr}$$

$$\text{Engine-Out NO}_x \text{ level (worse-case)} = 12 \text{ g/bhp-hr}$$

$$\text{Safety Margin} = 20 \% \text{ (NO}_x \text{ level) (eq. 1)}$$

$$\text{NMHC Level} = 14.8 \% \text{ (NO}_x \text{ Level) (eq. 2)}$$

$$\text{Combined NMHC + NO}_x \text{ Standard} = \text{NO}_x \text{ Level} + \text{NMHC Level (eq. 3)}$$

$$\text{NO}_x \text{ Level} = \text{Post-catalyst NO}_x \text{ rate} + \text{Safety Margin (eq. 4)}$$

$$\text{Post-catalyst NO}_x \text{ rate} = (1 - \text{Conversion Efficiency}) \times \text{Engine-Out NO}_x \text{ level (eq. 5)}$$

$$\text{(Step 1) Equation (3) can be solved for NO}_x \text{ Level—Combined NMHC + NO}_x \text{ Standard} = \text{NO}_x \text{ Level} + \text{NMHC Level } 1.0 \text{ g/bhp-hr} = \text{NO}_x \text{ Level} + 0.148 \text{ NO}_x \text{ Level } \text{NO}_x \text{ Level} = 0.871 \text{ g/bhp-hr}$$

$$\text{(Step 3) Placing the results from Step (1) and Equation (1) into Equation (4), and solving for Post-catalyst NO}_x \text{ rate gives—NO}_x \text{ Level} = \text{Post-catalyst NO}_x \text{ rate} + \text{Safety Margin } 0.871 \text{ g/bhp-hr} = \text{Post-catalyst NO}_x \text{ rate} + 0.2 \times 0.871 \text{ g/bhp-hr } \text{Post-catalyst NO}_x \text{ rate} = 0.697 \text{ g/bhp-hr}$$

$$\text{(Step 4) Placing the results from Step (3) into Equation 5 and solving for Conversion Efficiency gives: } \\ \text{Post-catalyst NO}_x \text{ rate} = (1 - \text{Conversion Efficiency}) \times \text{Engine-Out NO}_x \text{ level} \\ 0.697 \text{ g/bhp-hr} = (1 - \text{Conversion Efficiency}) \times 12 \text{ g/bhp-hr} \\ \text{Conversion Efficiency} = 0.94 = 94\%$$

EPA believes that the proposed standards would require manufacturers to focus some effort on engine-out emissions control and that engine-out NO<sub>x</sub> levels in the 6 to 8 g/bhp-hr range are reasonably achievable. Some engines are already in this range. For other engines, some recalibration of engine systems including the EGR system and perhaps some modest hardware changes to those systems would be necessary. EGR plays a key role in reducing engine-out NO<sub>x</sub>, and system redesign may allow more effective use of this technology.

When coupled with a catalyst with worst case efficiencies in the 91 to 93 percent range, these engines could achieve the proposed standards. Of course with higher catalyst efficiencies, manufacturers would not have to achieve lower NO<sub>x</sub> engine-out levels. Catalyst efficiencies of about 93 percent would allow manufacturers to maintain compliance margins in the range of 25 and 45 percent of the standard. EPA believes these margins are sufficient considering the analysis is also based on worst case catalyst efficiencies.

To help address phase in concerns that could arise for manufacturers, EPA is proposing a modified ABT program for engines, as described above. The ABT program can be an important tool for manufacturers in implementing a new standard. The program allows manufacturers to comply with the more stringent standards by introducing emissions controls over a longer period of time, as opposed to during a single model year. Manufacturers plan their product introductions well in advance. With ABT, manufacturers can better manage their product lines so that the new standards don't interrupt their product introduction plans. Also, the program also allows manufacturers to focus on higher sales volume vehicles first and use credits for low sales volume vehicles. EPA believes manufacturers have significant opportunity to earn credits in the pre-2004 time frame.

Considering all of these factors, EPA believes that the 1.0 g/bhp-hr NMHC+NO<sub>x</sub> standard is an appropriate standard for HD Otto-cycle engines in the 2004 time frame; however, we are requesting comment on a standard in

<sup>106</sup> During developmental testing the deterioration factor is determined by dividing the full life emissions level for an engine by the low mileage emissions level. The low mileage level of the certification engine is then multiplied by the deterioration factor to predict full life emissions.

<sup>107</sup> The engine-out data and the details of this analysis are considered Confidential Business Information.

<sup>108</sup> [Reserved]

the range of 1.0 to 1.5 g/bhp-hr. Certification levels of 0.5 g/bhp-hr NMHC+NO<sub>x</sub> have been achieved on recently introduced engines of varied sizes. EPA believes that the proposed standard provides sufficient opportunity for manufacturers to maintain a reasonable compliance margin. As manufacturers continue with normal product plans between now and 2004, improved engines will continue to replace older models. The ABT program is available for manufacturers who have not completely changed over to new engine models by 2004. ABT provides manufacturers with the opportunity to earn credits prior to 2004 and use the credits to continue to offer older engine models that have not yet been redesigned or retired by 2004.

EPA requests comments on the above analyses and directs the reader to the Regulatory Impact Analysis for further detail on technological feasibility. EPA continues to seek further information on emissions control and engine system capability and durability. EPA requests comment on the feasibility of the proposed standards and requests data which would help the Agency further evaluate advanced system durability.

#### 4. Onboard Refueling Vapor Recovery

EPA believes that today's proposed ORVR requirements are technologically feasible. In its previous ORVR rulemaking, EPA elected to apply ORVR requirements only to LDVs and LDTs (see 59 FR 16262, April 6, 1994). As previously discussed in the section on the proposed ORVR standards, EPA chose at the time of the original rulemaking not to apply ORVR to HDVs because of concerns over secondary manufacturers, different fuel tank designs for larger HDVs than for LDVs and LDTs, and the fact that HDVs are certified under an engine-based testing program. These three issues are addressed in section IV.E.4.b) of this preamble. In the original ORVR rule, however, EPA analyzed the potential application of ORVR to all HDVs. In that analysis EPA concluded that ORVR is technologically feasible for application to HDVs. EPA concluded that the systems which would be required for the covered subset of HDVs would be essentially the same as those for LDVs and LDTs. Such systems have already been successfully implemented on a portion of the LDV fleet. The Agency is aware of no information on fundamental changes to HDV fuel system design which would cause it to believe that the original analysis is no longer valid. EPA requests comment on this view.

ORVR systems must meet certain basic requirements in order to be

effective at controlling refueling emissions. In general, they must provide for the routing of displaced vapors from the fuel tank to the engine rather than allowing them to escape uncontrolled to the atmosphere. This will likely be accomplished through the use of 1) a fillneck seal which prevents the vapors from escaping out the fillneck, 2) a fuel tank vent mechanism, to allow for the controlled routing of the vapors from the fuel tank, 3) vapor lines for transporting vapors, 4) a canister containing activated carbon to temporarily store the vapors, and 5) a purge system to regenerate the canister and route the vapors to the engine.

The major components of an ORVR system are already in place on HDVs in response to EPA's enhanced evaporative emission requirements (see 58 FR 16002, March 24, 1993). The primary differences between an enhanced evaporative control system and an ORVR system lie in the need to prevent vapors from escaping via the fillneck during a refueling event, and the fact that the vapor flow rates out of the fuel tank are much higher during refueling than during vehicle operation and diurnal events that enhanced evaporative systems are designed to control. A complete discussion of the major components of an ORVR system and how they differ from those in a system designed to comply with the enhanced evaporative requirements is contained in the Regulatory Impact Analysis.

#### C. On-Board Diagnostics

For Otto-cycle vehicles and engines, the most difficult monitors to implement are those for the catalyst system, the evaporative emission control system, and engine misfire. While each of these monitors poses technological challenges, none of them pose technological feasibility concerns. Rather than concerns over technological feasibility, EPA expects concerns, where today's proposal applies to Otto-cycle vehicles and engines, over resource constraints for OBD calibration and associated verification testing.

EPA does not consider resource constraints a feasibility issue, nor does EPA believe the manufacturers will be constrained by today's OBD provisions. EPA believes this is true for both the Otto-cycle and the diesel OBD requirements. Since the 1996 model year, manufacturers have been equipping their vehicles and engines with OBD systems essentially identical to those being proposed today. This is true federally for all vehicles above 8500 pounds GVWR, and in California for all vehicles and engines above 14,000

pounds GVWR. The Agency believes that the four year lead time within today's proposal matched with the OBD phase-in of 40/60/80/100 percent provides adequate lead time to apply the real world tested OBD system technology to their new sales fleet above 14,000 pounds GVWR without resource difficulties.

The transmission represents an area of potential concern for engine certified as opposed to chassis certified Otto-cycle and diesel engines. Typically, the engine manufacturer certifies and sells its engine, without an associated transmission, to a chassis manufacturer. The chassis manufacturer then "mates" the engine to a transmission purchased from a transmission manufacturer representing a third industry party. The regulations proposed today require that chassis certified systems employ transmission diagnostics, but would not require that engine certified systems employ transmission diagnostics.

EPA believes that it is reasonable to expect that electronically controlled transmissions will be designed with some level of diagnostics to ensure proper operation. In addition, the Agency expects that those transmissions will utilize industry standard communication protocols allowing the transmission and the engine control computers to communicate, and allowing any transmission-related OBD codes to be downloaded via the standard diagnostic data link connector without engine manufacturer involvement. If either of these expectations is inaccurate, EPA requests information concerning the likely operational characteristics of electronic transmissions. If EPA's expectations are accurate, we request comment on the appropriateness of the engine certified OBD requirements, Otto-cycle and diesel, being limited to engine diagnostics, and simply requiring that transmissions comply with industry standard communication protocols.

Specific to diesel vehicles and engines, the Agency believes there are three areas of concern associated with technological feasibility: EGR monitoring; misfire monitoring; and, aftertreatment monitoring. With respect to EGR monitoring, the primary concern is expected to be the cooling componentry of a cooled EGR system. Other aspects of the EGR system, such as activation of the EGR valve, verification of proper flow, etc., can be accomplished as is already being done on Otto-cycle and diesel vehicles and

engines under 14,000 pounds GVWR.<sup>109</sup> However, the cooling system presents a new challenge. The Agency believes monitoring of the cooling system is feasible by employing temperature sensors to ensure proper EGR cooling (heat transfer) given existing engine conditions, and coolant flow. If the cooling system becomes fouled, its ability to transfer heat from the exhaust gases to the coolant will be diminished and a resultant temperature inconsistency should be observed. Likewise, if coolant ceases to flow through the cooling system, a resultant temperature inconsistency should be observed. In fact, EPA believes that manufacturers will monitor EGR cooling system performance absent a requirement to do so. As discussed in Chapter 3 of the Draft Regulatory Impact Analysis for today's proposal, manufacturers will be designing their EGR systems to cool the EGR to specific design targets to optimize engine performance and to minimize condensation of sulfuric acid. The only way to ensure that engine performance is being optimized is to monitor the performance of the EGR system and compare it to the specific design targets.

As for diesel misfire monitoring, the Agency believes that the proposed requirement is technologically feasible. In fact, manufacturers are certifying compliant diesel misfire monitors for sale in California on vehicles and engines under 14,000 pounds GVWR. We believe, like CARB, that diesel misfire is an air quality concern. Also, we believe that most users of diesel vehicles and engines under 14,000 pounds GVWR, particularly vehicles and engines less than 10,000 pounds GVWR, will not notice or may ignore diesel misfires. In contrast, we believe that most users of engines above 14,000 pounds GVWR will notice and not ignore misfires. We believe this is true because most of these engines are driven by professionals for whom minimizing fuel consumption and maximizing engine performance is a primary business concern. Conversely, most vehicles and engines under 14,000 pounds GVWR, particularly vehicles and engines under 10,000 pounds GVWR, are driven by individuals as personal transportation or for small business use. Such drivers are probably less familiar with the day-to-day operating characteristics of their engines and are probably less concerned with

fuel consumption and engine performance. Nonetheless, we are interested in comments on the misfire monitoring requirements of today's proposal. In addition, we request data, such as warranty data, showing misfire rates and possible differences between engines above and below 14,000 pounds GVWR.

With respect to diesel catalyst monitoring, the Agency expects such monitoring to be conducted using temperature sensing devices to detect an exotherm within the aftertreatment device. The Agency requests comment on this expectation and on the probable magnitude of the exotherm. Comments should consider whether limiting the operating modes during which the exotherm is measured (for example, during steady-state operation at a specific engine load, etc.) might increase the accuracy of the monitoring method. Comments should also consider whether, given the provision for back pressure monitoring in lieu of performance monitoring provided test data demonstrate that emissions will not exceed today's proposed malfunction threshold, manufacturers will even have to employ diesel catalyst emission performance monitors. The Agency expects manufacturers to demonstrate that emissions will not exceed the malfunction thresholds, even with the aftertreatment device removed, and then employ the more basic back pressure sensor. This back pressure sensor is intended to indicate the presence of the aftertreatment device. While the back pressure sensor cannot directly detect the performance characteristics of the aftertreatment device, it nonetheless provides some level of assurance that emissions are being controlled due to the presence of the device. The Agency requests comment on the diesel aftertreatment monitoring requirements and data on feasibility, and comment on the appropriateness of the diesel aftertreatment presence detection requirement. The Agency also requests comments and supporting data on the durability of diesel aftertreatment devices.

Note that, for diesel vehicles and engines, the Agency considers the EGR system to be the primary emission control system that will be used to meet the 2004 standards. This makes the EGR system somewhat analogous to the catalyst in an Otto-cycle emission control system. Because the Otto-cycle catalyst is responsible for roughly 90 percent of emission control, the Agency considers it imperative that the catalyst be monitored via OBD to ensure its continued performance. Likewise, the diesel EGR system is expected to

account for roughly 50 percent of the emission control, making it perhaps the single largest contributor to emission control on a diesel engine. Therefore, the Agency considers it imperative that the EGR system be monitored on a diesel vehicle or engine. This is especially true given what the Agency considers to be a rather low cost associated with today's proposed requirement for monitoring this critical emission control system.<sup>110</sup> The Agency fully expects that manufacturers will employ OBD techniques on their diesel EGR systems to ensure satisfactory engine performance for their customers. Today's proposal simply ensures that the monitoring will occur, and it ensures that the monitoring will consider not only engine performance, but also emission performance.

## VII. What Are the Environmental Benefits of This Proposal?

### A. 2004 Emission Standards for Heavy-Duty Diesel Engines

In Chapter 6 of the draft Regulatory Impact Analysis, EPA provides a detailed explanation of the methodology used to determine the environmental benefits from heavy-duty diesel engines associated with this proposal. EPA requests comment on all aspects of the emissions inventory analysis. The following discussion gives a general overview of the methodology and results.

In the 1997 rulemaking, EPA's emission inventory modeling assumed that all HDDE's which would certify to the future 2004 standards would be meeting those standards in-use, under all operating conditions, i.e., EPA was not aware of the high NO<sub>x</sub> emissions being emitted by certain HDDE's under certain operating conditions. The supplemental standards and testing provisions will help assure that assumptions used for the 1997 rulemaking are realized. Therefore, the emission inventory modeling discussed below and in the draft RIA for today's rule uses the same methodology as the 1997 rule, including the same emission factors. For this reason, the emission benefits are similar in magnitude to the estimates from the 1997 rulemaking. In addition, the emission estimates presented here do not include the large, previously unknown, excess emissions from engines manufactured from 1988 to 1998.

<sup>109</sup> Current EGR monitoring systems may use the existing intake air temperature sensor—opening the EGR valve should result in an increased intake air temperature. Systems may also use an intake air pressure sensor—opening the EGR valve will change the intake air pressure.

<sup>110</sup> The Agency estimates \$3 to \$7 per vehicle/engine for today's proposed OBD requirements, primarily for development and demonstration testing given that most of the diesel monitoring will be done by the manufacturer absent any requirement to do so.

We did not include the excess emissions in the modeling for this proposal. While the impact from these previously produced engines would affect the total estimate of the emission impact from the in-use fleet of HDDE in 2004 and beyond, it would not impact the predicted emission benefit resulting from the lowering of the 1998 standard to the 2004 standards, because the predictions for both standards properly do not include these excess emissions. It is this emission reduction which is important for this rulemaking. In the future, the Agency will be making the necessary changes to future versions of the official EPA mobile source emission factor model (currently known as MOBILE 5) to reflect the increased NO<sub>x</sub> emission factors from the engines affected by the consent decrees.

The inventory analysis performed for this proposal builds on the inventory analysis associated with the 1997 FRM for heavy-duty diesel engines.<sup>111</sup>

However, EPA made some modifications to the 1997 inventory analysis due to recent studies that have been performed with the intent of improving the understanding of the emissions impact of mobile sources. These modifications included new estimates for conversion factors (bhp-hr/mile), scrappage rates, and vehicle miles traveled. The Draft RIA discusses the recent studies and their effects on the calculated HDDE emissions inventories.

To determine total emissions by calendar year, EPA multiplied the emission factor times the total vehicle miles traveled (VMT) in that year. The emission factors were determined using EPA's emission factor model (MOBILE5) for NMHC and NO<sub>x</sub> with adjustments for the new scrappage rates, conversion factors, and VMT distribution. Although NMHC and NO<sub>x</sub> are proposed to be combined as a single standard, EPA believes that it is useful to model NMHC and NO<sub>x</sub> separately. Given the

technologies that are expected to be used on heavy-duty diesel engines to comply with the proposed standards, we believe it is reasonable to model the fleet-average impact of the proposed standards as being equivalent to a 2.0 g/bhp-hr NO<sub>x</sub> standard and a 0.4 g/bhp-hr NMHC standard.

Table 13 shows the national projections of total NMHC and NO<sub>x</sub> emissions and the estimated NO<sub>x</sub> benefits for selected years. The emissions are projected to decline over the next several years, due to implementation of stricter controls, but then begin to increase due to growth in the number of vehicle miles traveled, unless there are additional controls. By the year 2015, without these additional controls, total national NO<sub>x</sub> emissions are projected to exceed current levels. Figure 5 presents the national projections of total NMHC plus NO<sub>x</sub> with and without the proposed engine controls.

TABLE 13.—ESTIMATED NATIONAL NMHC AND NO<sub>x</sub> EMISSIONS AND PROPOSED BENEFITS FROM HEAVY-DUTY DIESEL VEHICLES

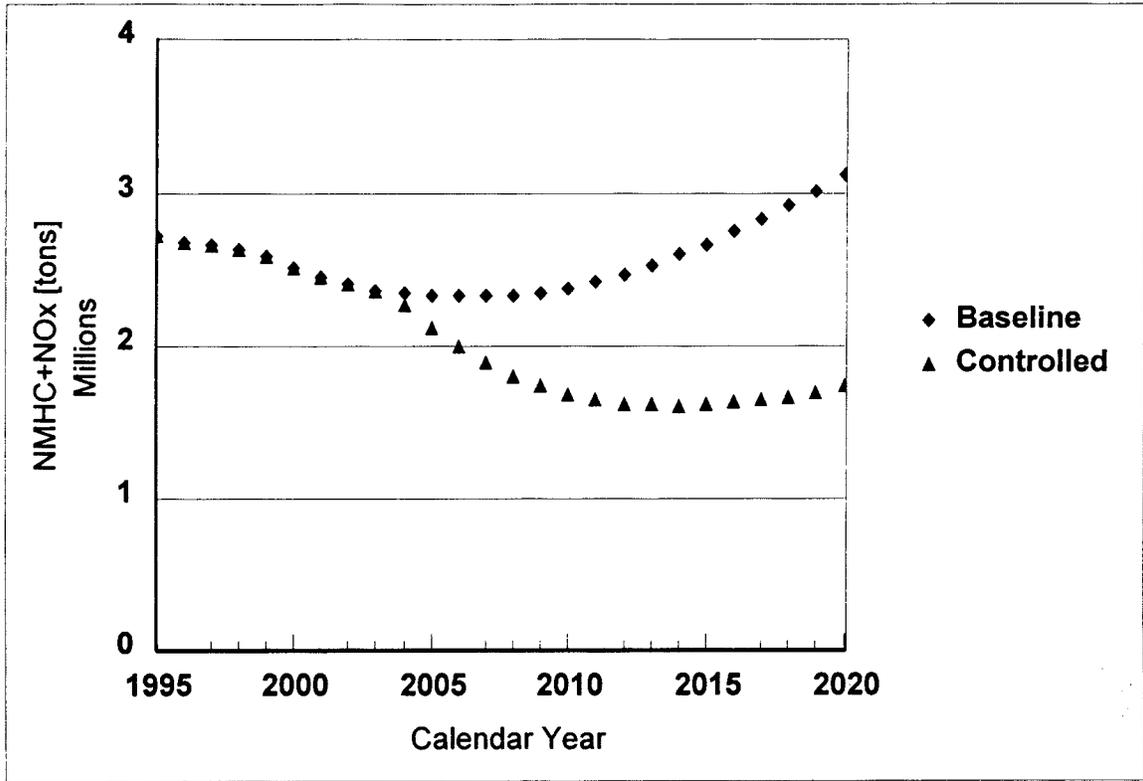
[Thousand short tons per year]

Year	NMHC			NO <sub>x</sub>		
	Baseline	With controls	Benefit	Baseline	With controls	Benefit
2005 .....	198	196	3	2,136	1,933	203
2010 .....	184	174	10	2,191	1,504	686
2015 .....	197	182	15	2,479	1,433	1,046
2020 .....	225	205	20	2,900	1,535	1,365

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<sup>111</sup> "Control of Emissions of Air Pollution from Highway Heavy-Duty Engines; Final Rule," 62 FR 54694-54730, October 21, 1997.

Figure 5 - Projected National NMHC Plus NOx Emission Inventory for HDDEs



Although this proposal does not require reductions in direct PM emissions, the proposed standards are expected to reduce the concentrations of secondary PM. Secondary PM is formed when NO<sub>x</sub> reacts with ammonia in the atmosphere to yield ammonium nitrate particulate. EPA estimates that the 1.4 million tons per year total NO<sub>x</sub> reduction projected for HDDEs in 2020 would result in about a 56,000 tons per year reduction in secondary PM. This calculation is described in the Draft RIA, Chapter 6, Section V.B. It should be noted that these estimates include a calculation involving weighting of the southern California conversion rate by VMT, but the Federal standards do not regulate new vehicles sold in California. Therefore, these nationwide estimates are somewhat over estimated. We intend to address this issue in the final rule.

The term "hydrocarbons" includes many different molecules. Speciation of the hydrocarbons would show that many of the molecules are those which are considered to be air toxics including benzene, formaldehyde, acetaldehyde, and 1,3-butadiene. Hydrocarbons from a HDDE include approximately 1.1 percent benzene, 7.8 percent formaldehyde, 2.9 percent acetaldehyde, and 0.6 percent 1,3-butadiene.

Therefore, the 20,000 tons per year reduction in NMHC projected for 2020 would result in about a 2,400 tons per year reduction in air toxics. This is discussed in more detail in the Draft RIA.

EPA also believes the proposed regulations will tend to reduce noise. One important source of noise in diesel combustion is the sound associated with the combustion event itself. When a premixed charge of air and fuel ignites, the very rapid combustion leads to a sharp increase in pressure, which is easily heard and recognized as the characteristic sound of a diesel engine. The conditions that lead to high noise levels also cause high levels of NO<sub>x</sub> formation. Fuel injection changes and other NO<sub>x</sub> control strategies therefore typically reduce engine noise.

*B. 2004 Emission Standards for Heavy-Duty Otto-Cycle Vehicles and Engines*

In evaluating the environmental impact of the proposed heavy-duty gasoline engine and vehicle standards, EPA developed estimates of exhaust NO<sub>x</sub> and NMHC inventories from HDGVs (excluding California, Alaska, and Hawaii) both with and without the effect of the proposed standards. Full details of the environmental impact

analysis can be found in Chapter 7 of the draft RIA for today's proposal. The following paragraphs summarize the key results. The public is encouraged to read the full analysis and to comment on all aspects of the work.

Figure 6 shows the projections of nationwide exhaust NMHC+NO<sub>x</sub> emissions from HDGVs both with and without the proposed controls. Table 14 contains the estimated NO<sub>x</sub> and NMHC exhaust emission inventories and reductions due to the proposed heavy-duty gasoline engine and vehicle standards. The NO<sub>x</sub> inventory for HDGVs is projected to increase from current levels without further controls. With implementation of the proposed standards, the exhaust NO<sub>x</sub> emissions from HDGVs are expected to decrease from the baseline by 38 percent by the year 2010 and 61 percent by the year 2020. Exhaust NMHC emissions are projected to decline over the next several years, but then begin to increase beginning around 2010. With implementation of the proposed standards, the exhaust NMHC emissions from HDGVs are expected to decrease from the baseline by 8 percent by the year 2010 and 13 percent by the year 2020.

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Figure 6 – Projected NMHC plus NO<sub>x</sub> Emission Inventory for HDGVs

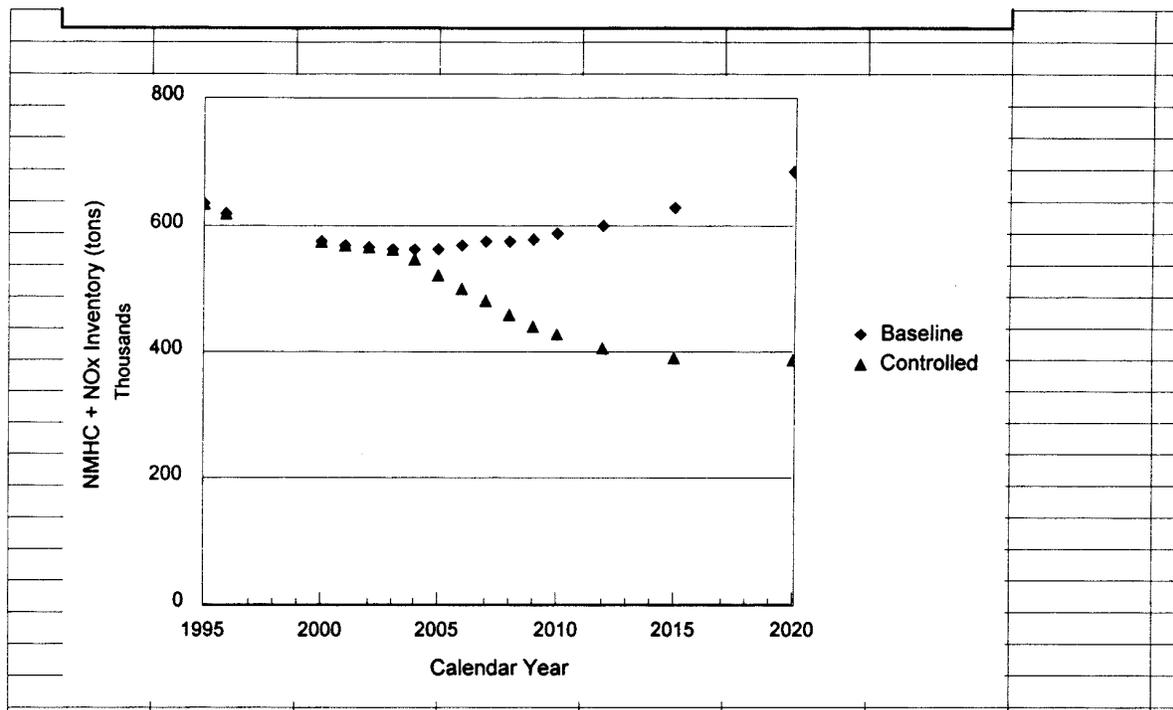


TABLE 14.—ESTIMATED NO<sub>x</sub> AND NMHC INVENTORIES AND REDUCTIONS FROM THE PROPOSED EXHAUST STANDARDS FOR HEAVY-DUTY GASOLINE ENGINES AND VEHICLES

[Thousand tons per year]

Year	NMHC			NO <sub>x</sub>		
	Baseline	With controls	Reduction	Baseline	With controls	Reduction
2005 .....	236	232	4	329	290	38
2010 .....	225	208	17	365	223	142
2015 .....	236	209	27	394	183	212
2020 .....	255	221	34	432	168	264

In a similar fashion to that noted for the heavy-duty diesel engine standards, the NO<sub>x</sub> reductions from HDGVs are expected to result in reduced secondary PM concentrations. EPA estimates that the 264,000 tons of NO<sub>x</sub> reduction in 2020 would result in approximately a 10,000 tons per year reduction in secondary PM. This calculation is described in the draft RIA, Chapter 6, Section V(B), and Chapter 7, Section IV. As noted above, these estimates include a calculation involving weighting of the southern California conversion rate by VMT, but the Federal standards do not regulate new vehicles sold in California. Therefore, these nationwide estimates are somewhat over estimated. We intend to address this issue in the final rule.

### C. Benefits of the Supplemental Standards and In-Use Control Measures of Today's Proposal

The supplemental standards and in-use control measures of today's proposal are expected to play an integral role in achieving the emission reductions expected from the 2004 diesel and Otto-cycle standards. These measures include the new supplemental standards and test procedure requirements for diesel engines, the OBD requirements for vehicles and engines below 14,000 lbs GVWR, and the in-use testing requirements for Otto-cycle vehicles below 14,000 lbs GVWR.

These measures are considered vital, as a whole, to assuring that the full benefits of the 2004 standards are being achieved. The new supplemental standards and test procedure requirements will ensure that engines are designed to meet the appropriate standards under a broad range of operating conditions. The in-use testing requirements will ensure that engines meet the appropriate standards throughout their useful lives. Finally, the OBD requirements will help ensure that engines in-use continue to operate according to design intent and that designs are durable and robust in the field. If vehicles and engines malfunction or deteriorate in ways that

are not noticed by the driver, emissions may be far above the design intent of the engine or vehicle for thousands, if not tens of thousands of miles. On-board diagnostic systems are uniquely suited to identify such malfunctions. Such identification serves to ensure that the engines and vehicles continue to operate as designed, thereby ensuring they continue to provide the air quality benefits expected by the new standards.

For example, we expect widespread use of EGR to comply with the 2004 diesel standards. The emission reduction from the EGR system will likely be as high as 50 percent, that is, the engine out emissions will be cut in half as a result of the EGR system. Should the EGR system malfunction, the emissions could essentially double, and the driver would probably not be aware of the malfunction without an OBD detection. The same could be true for Otto-cycle vehicles and engines, in which case the primary emission control technology will be the catalyst, which is responsible for as much as 90 percent of the emission control. Should the catalyst deteriorate or fail, emissions could increase from 150 percent to 900 percent.<sup>112</sup> Similar statements can be made in regards to evaporative leak detection monitors. We know that emissions from leaking evaporative systems can be very large. In their most recent Staff Report on the OBDII program, the California Air Resources Board states that data from current evaporative system designs show that leaks approaching a 0.020 inch hole begin to rapidly generate excess evaporative emissions (up to 15 times the standard, which equates to 30 grams per test).<sup>113</sup> The emissions from a

<sup>112</sup> Assuming a properly operating catalyst conversion efficiency of 90 percent, and a deteriorated conversion efficiency of anywhere from 75 percent down to 0 percent, which would lead to a 150 percent to 900 percent emission increase, respectively.

<sup>113</sup> Staff Report: Initial Statement of Reasons for Rulemaking—Technical Status and Proposed Revisions to Malfunction and Diagnostic System Requirements for 1994 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, and Medium-

heavy-duty Otto-cycle vehicle, having a fuel tank well over 15 gallons, would likely be even higher. Without the OBD system, those emissions would probably never be identified and the malfunctions would probably never be repaired.

Further, the primary goal of OBD is to provide the industry with an additional incentive to improve emission control system durability. OBD serves that goal by encouraging durable components and systems in order to avoid the OBD detection and MIL illumination that will result upon their malfunction. Indeed, the light-duty industry has expressed on numerous occasions that their primary goal with respect to OBD is to avoid MIL illumination because of the adverse way they expect their customers to react.<sup>114</sup> Therefore, the presence of the OBD system is expected not only to identify malfunctions and deterioration, but also to minimize their occurrence.

Benefits such as those described above are not easily quantified, but are critical to the success of our program as a whole. Without any one of these compliance and in-use control measures, the benefits of today's proposal could be diminished.

## VIII. What Are the Economic Impacts of the Proposal?

### A. 2004 Emission Standards for Heavy-Duty Diesel Engines

#### 1. Expected Technologies

In assessing the economic impact of the 2004 emission standards (including the standards finalized in 1997 and the standards proposed today), EPA has used a current best judgement of the combination of technologies that an engine manufacturer might use to meet the new standards at an acceptable cost. Full details of EPA's cost analysis, including information not presented here, can be found in the Draft

Duty Vehicles and Engines (OBD II); October 25, 1996.

<sup>114</sup> Stated more appropriately, their primary goal is to avoid MIL illumination while still complying with the OBD requirements.

Regulatory Impact Analysis in the public docket. The costs presented here were developed assuming that heavy-duty diesel engines would need high-flow cooled EGR, combustion chamber optimization, improved electronic fuel injection, and variable geometry turbochargers (except for light heavy-duty engines). The costs also include testing costs necessary to comply with the OBD and not-to-exceed requirements.

The analysis also assumes that manufacturers would introduce the improved electronic fuel injection systems and variable geometry turbochargers for some engine models even without the more stringent standard in 2004. Both of these technologies will provide significant performance benefits both directly, and by allowing manufacturers to reduce the use of injection timing retard to comply with the current 4.0 g/bhp-hr NO<sub>x</sub> standard. The Agency believes that manufacturers may draw similar conclusions for using EGR on some of these same engines, however, as a conservative assumption, EPA is assuming that no EGR would be used to comply with the current 4.0 g/bhp-hr NO<sub>x</sub> standard. For this analysis EPA is also assuming that only 50 percent of the costs for the improved electronic fuel injection and the use of variable geometry turbochargers are attributable to emission control. This is because EPA believes that manufacturers would make these improvements for many of their engines, even in the absence of these emission standards, to reduce fuel consumption and improve engine performance, a similar approach was used in the 1997 final rule. The docket for this rulemaking contains additional information on this aspect of the Agency's cost analysis, including a cost sensitivity analysis regarding the fifty percent assumption.<sup>115</sup> The Agency requests comment on this approach which we intend to revisit in the final rule if appropriate. In addition, Chapter 8, Section IV of the draft RIA for this proposal contains an estimate of the impact this 50 percent assumption has on the HD diesel cost-effectiveness. We recognize this 50 percent assumption is not a precise approach to characterizing the costs which could otherwise be attributed to our baseline assumptions. However, developing a more precise estimate is problematic due to the complexity of market demand as well as other uncertainties. Nevertheless, we intend to consider developing a more

precise estimate of the baseline for the final rule analysis. In addition, it may be more appropriate to consider performance benefits (improved fuel economy, drive-ability) with the other secondary benefits rather than with costs, and we intend to reconsider this issue for the final rule. EPA also requests comment regarding how the early introduction of these technologies would affect compliance costs. EPA also requests comment on whether variable geometry turbochargers can serve the function of exhaust braking for heavy heavy-duty engines, and what cost savings this would provide for manufacturers.

## 2. Per Engine Costs

Estimated per engine cost increases are broken into purchase price and total life-cycle operating costs. The incremental purchase price for new engines is comprised of variable costs (for hardware and assembly time) and fixed costs (for R&D, retooling, and certification). Total operating costs include expected increases in maintenance. Cost estimates based on these projected technology packages represent an expected incremental cost of engines in the 2004 model year. Costs in subsequent years would be reduced by several factors, as described below. Separate projected costs were derived for engines used in three service classes of heavy-duty diesel engines. All costs are presented in 1995 dollars. Life-cycle costs have been discounted to the year of sale.

The costs of the technologies necessary for meeting the 2004 model year standards are itemized in the Draft Regulatory Impact Analysis and summarized in Table 8. These estimated costs are higher than those estimated for the previous FRM because they include costs for variable geometry turbochargers and full use of high-flow cooled EGR, as well as small additional costs for the new OBD and compliance testing requirements. For light heavy-duty vehicles, the cost of a new 2004 model year engine is estimated to increase by \$428 (compared to the previous estimate of \$258). For medium heavy duty vehicles the purchase price of a new engine is estimated to increase by \$593 (compared to the previous estimate of \$397). Similarly, for heavy heavy-duty engines, the initial purchase price is expected to increase by \$707 (compared to the previous estimate of \$406).

For the long term, EPA has identified various factors that would cause cost impacts to decrease over time. First, the analysis incorporates the expectation that manufacturers will apply ongoing research to making emission controls more effective and less costly over time. This expectation is similar to manufacturers' stated goal of decreasing their reliance on catalysts to meet emission standards in the future. Second, research in the costs of manufacturing has consistently shown that as manufacturers gain experience in production, they are able to apply innovations to simplify machining and assembly operations, use lower cost materials, and reduce the number or complexity of component parts. The analysis incorporates the effects of this learning curve by projecting that the variable costs of producing the low-emitting engines decreases by 20 percent starting with the third year of production (2006 model year) and by reducing variable costs again by 20 percent starting with the sixth year of production. Chapter 4, Section III in the draft RIA for this proposal, as well as Chapter V, Section IV of the final RIA for the 1997 final rulemaking (see Docket A-95-27, Docket Item 35#V-B-01) contain additional discussion of the application of this learning curve. The 2004 HD diesel standards will require a fundamental change in technology for the engine manufacturers. Considering this change, we believe the learning curve concept is appropriate for this rulemaking. The Agency requests comments and data regarding the application of this learning curve approach to the heavy-duty diesel industry, including information regarding any observed reduction in manufacturer costs for the past application of similar technology changes for the heavy-duty on-highway industry, or other technology changes to the diesel engine industry as a whole. We also request comment on the learning curve theory. Specifically, we request comment and supporting data regarding the theory that manufacturing costs continues to decrease over time, possibly ad infinitum, albeit at a slower rate as time progresses.

Finally, since fixed costs (excluding in-use testing costs) are assumed to be recovered over a five-year period, these costs are not included in the analysis after the first five model years. Table 15 lists the projected schedule of costs for each category of vehicle over time.

<sup>115</sup> See EPA Air Docket A-98-32, "Analysis of Costs and Benefits of VGT and Improved Fuel Injection", EPA Memorandum from Charles Moulis.

TABLE 15.—PROJECTED DIESEL ENGINE COST AND PRICE INCREASES  
[1995 Dollars Discounted to Year of Sale]

Vehicle class	Model year	Purchase price increase	Life-cycle operating cost
Light heavy-duty .....	2004 .....	\$428	\$7
	2009 and later .....	221	7
Medium heavy-duty .....	2004 .....	593	45
	2009 and later .....	252	45
Heavy heavy-duty .....	2004 .....	707	96
	2009 and later .....	324	96

3. Aggregate Costs to Society

The above analysis develops per-vehicle cost estimates for each vehicle class. Using current data for the size and characteristics of the heavy-duty vehicle fleet and making projections for the future, these costs can be used to estimate the total cost to the nation for the new emission standards in any year. The result of this analysis is a projected total cost starting at \$424 million (1995 dollars) in 2004. Per-vehicle costs savings over time reduce projected costs to a minimum value of \$223 million in 2009, after which the growth in truck

population leads to an increase in costs to \$285 million in 2020. Total costs for these years are presented by vehicle class in Table 16. The calculated total costs represent a combined estimate of fixed costs as they are allocated over fleet sales, variable costs assessed at the point of sale, and operating costs as they are incurred in each calendar year. Future sales are projected for years beyond 1995, sales are projected to increase each year by a constant value equal to 2 percent of the number of engines sold in 1995. EPA used a similar 2 percent growth estimate for the 1997 rulemaking for HD engines, we

request comment and supporting data which would refine this estimate.<sup>116</sup> EPA also requests comment and supporting data on what impact, if any, costs associated with these new standards might have on the sales rate of HD diesel engines in the future. In addition, EPA requests comment on whether or not a 2 percent per year increase specifically for the light-heavy heavy duty diesel market is an appropriate estimate for future growth, considering the recent trend of increasing sales of sport-utility vehicles weighing over 8,500 pounds.

TABLE 16.—ESTIMATED ANNUAL COSTS FOR IMPROVED HEAVY-DUTY VEHICLES  
[Millions of dollars]

Category	2004	2009	2020
Light heavy-duty .....	142	81	95
Medium heavy-duty .....	198	46	59
Heavy heavy-duty .....	185	97	130
Total .....	424	159	97

B. 2004 Emission Standards for Heavy-Duty Otto-Cycle Vehicles and Engines

This section contains a summary of the Agency's comprehensive analyses of the economic impacts of today's proposed regulations for heavy-duty Otto-cycle vehicles and engines. The following separate factors are analyzed: (1) The technologies expected to be used and their projected rates of application; (2) the costs of these technology packages incremental to today's vehicle designs (presented on a per-vehicle basis separately for chassis and engine certified configurations) and; (3) the aggregate cost to society of the proposed requirements. More information on these analyses can be found in the

Regulatory Impact Analysis contained in the docket for this rule.

1. Expected Technologies

The various technologies that could be used to comply with today's proposed regulations were previously discussed in the section on technological feasibility. In developing costs for the associated technologies EPA looked at the current technology used on HDVs and compared that to the technology expected to be used to meet the proposed regulations. The incremental costs difference was then calculated based on the differences between the current (*i.e.*, baseline) technology packages and those expected to be used in 2004. Table 17 shows both the current baseline and expected

technologies for complete vehicles. Table 18 shows the current baseline and expected technologies for the engine-based standards. These tables only show the technologies which are expected to change in some way from their current design or be applied to different percentages of the fleet than they are currently. Technologies such as sequential multi-port fuel injection and EGR, while important to meeting the proposed standards, are not expected to be fundamentally changed in their design, or be utilized in different percentages of the fleet than they currently are. Thus, such technologies are not included in these tables. However, in some cases the cost of optimizing such technologies is included in the cost estimates.

<sup>116</sup> "Draft Regulatory Impact Analysis: Control of Emissions of Air Pollution from Highway Heavy-

Duty Engines", Chapter 7, Section II, Available in EPA Air Docket A-95-27, Item # III-B-01

TABLE 17.—CURRENT AND EXPECTED TECHNOLOGY PACKAGES FOR COMPLETE VEHICLE STANDARDS

Technology	Baseline Federal	Estimated 2004
Catalysts .....	60% single underfloor 40% dual underfloor	13% single enhanced underfloor. 50% dual enhanced underfloor. 37% dual close-coupled and dual enhanced underfloor.
Oxygen sensors .....	70% dual heated 10% triple heated 20% quadruple heated	13% dual heated. 87% quadruple heated.
ECM .....	50% 32 bit computers 50% 16 bit computers	100% 32 bit computers.
Adaptive learning .....	0%	80%
Individual cylinder A/F control .....	0%	10%
Leak free exhaust .....	90%	100%
Insulated exhaust .....	0%	40%
Secondary air injection .....	20%	30%
ORVR .....	0%	100% <sup>A</sup>

<sup>A</sup> ORVR is only proposed to apply to complete vehicles 10,000 lbs GVWR and under, and is proposed to be phased in over three years, with 100% application to those vehicles in 2006.

TABLE 18.—CURRENT AND EXPECTED TECHNOLOGY PACKAGES FOR ENGINE-BASED STANDARDS

Technology	Baseline Federal	Estimated 2004
Catalysts .....	60% single underfloor 40% dual underfloor	13% single enhanced underfloor. 87% dual enhanced underfloor.
Oxygen sensors <sup>A</sup> .....	70% dual heated 10% triple heated 20% four heated	13% triple heated. 87% quadruple heated.
ECM .....	50% 32 bit computers 50% 16 bit computers	100% 32 bit computers.
Improved fuel control .....	50%	100%
Secondary air injection .....	20%	50%

<sup>A</sup> The estimated breakdown for 2004 reflects OBD requirements for all HDGEs. However, at this time OBD is only proposed to apply to HDGEs under 14,000 lbs GVWR (approximately 60 percent of HDGEs).

2. Per Vehicle Costs

The costs of the projected technologies presented in the previous section are itemized and discussed in detail in the RIA. On a per-vehicle basis these costs are summarized in Table 14. They are presented in two components: purchase price and operating cost. The operating costs only apply to ORVR-equipped vehicles and include the

combined effects of a small fuel economy penalty due to the increased weight of the ORVR hardware, and a larger fuel economy benefit resulting from the vehicle being able to utilize fuel vapors that would otherwise escape to the atmosphere in the absence of ORVR.

EPA believes that the manufacturers will recover the fixed costs associated with research and development, tooling

and certification over the first five years of production. Thus, these fixed costs are not included in the analysis after the first five model years. We request comment on whether a five-years amortization period is a reasonable estimate. The fixed costs associated with the proposed in-use testing programs will continue indefinitely. The projected per vehicle costs impacts are summarized in Table 19.

TABLE 19.—PROJECTED HDV PRICE AND OPERATING COST INCREASES

Class	Model year	Purchase price increase	Lifetime operating cost
Complete Vehicles .....	2004 <sup>a</sup> .....	\$302	-\$6
	2009 and later .....	297	-6
Engines .....	2004 <sup>b</sup> .....	287	
	2009 and later .....	248	

<sup>a</sup> This cost includes both ORVR and OBD, which are phased in beginning with the 2004 model year, but which are not proposed to be required on all complete vehicles until the 2006 model year for ORVR and the 2007 model year for OBD.

<sup>b</sup> This cost includes an OBD hardware cost. OBD requirements are phased in beginning with the 2004 model year, but are not proposed to be required on all engines under 14,000 lbs GVWR until the 2007 model year.

3. Aggregate Cost to Society

In addition to the per vehicle costs just described, EPA also calculated the aggregate cost to society. This was done

by combining the per vehicle costs with assumed future sales of HDVs. The results of this analysis are summarized in Table 20. The recovery of most fixed

costs results in slightly reduced costs beginning in 2009, after which costs begin to rise in accordance with projected increased sales. The aggregate

costs represent a combined estimate of the fixed costs for research and development, tolling and certification as they are allocated over the first five years of sales, variable costs assessed at the point of sale, and operating costs (primarily in the form of fuel cost savings) for ORVR-equipped vehicles (calculated to net present value and applied at the point of sale). Future sales are projected for years beyond 1996, sales are projected to increase each year by a constant value equal to 2 percent of the number of engines sold in 1996. EPA used a similar 2 percent growth estimate for the 1997 rulemaking for HD engines, we request comment and supporting data which would refine this estimate.<sup>117</sup> EPA requests comment and supporting data on what impact, if any, costs associated with these proposed standards might have on the sales rate of HD Otto-cycle engines in the future. We also request comment on whether or not a 2 percent per year

increase specifically for the light-heavy heavy duty Otto-cycle market is an appropriate estimate for future growth, considering the recent trend of increasing sales of sport-utility vehicles weighing over 8,500 pounds GVWR.

TABLE 20.—AGGREGATE COST TO SOCIETY OF THE PROPOSED HEAVY-DUTY OTTO-CYCLE REQUIREMENTS

Year	Cost (\$million)
2004 .....	\$124
2009 .....	151
2020 .....	177

**IX. What is the Cost-Effectiveness of the Proposal?**

*A. 2004 Emission Standards for Heavy-Duty Diesel Engines*

EPA has estimated the per-vehicle cost-effectiveness (i.e., the cost per ton

of emission reduction) of the model year 2004 NMHC+NO<sub>x</sub> standards over the typical lifetime of heavy-duty diesel vehicles covered by today's rule. The RIA contains a more detailed discussion of the cost-effectiveness analyses. As described above in the cost section, the cost of complying with the standards will vary by model year. Therefore, the cost-effectiveness will also vary from model year to model year. For comparison purposes, the discounted costs, emission reductions and cost-effectiveness of the standards are shown in Table 21 for the same model years discussed above in the cost section. The cost-effectiveness results contained in Table 21 present the range in cost-effectiveness resulting from the two cost-effectiveness scenarios described above.

TABLE 21.—DISCOUNTED PER-VEHICLE COSTS, EMISSION REDUCTIONS AND COST-EFFECTIVENESS OF THE NMHC+NO<sub>x</sub> Standard

Vehicle class	Model year	Discounted lifecycle costs	Discounted lifetime reductions (tons)		Discounted cost-effectiveness (\$/ton)
			NO <sub>x</sub>	NMHC	
Light Heavy-Duty Diesel vehicles .....	2004 .....	\$435	0.310	0.004	\$1380
	2009 and later .....	228			725
Medium Heavy-Duty Diesel vehicles	2004 .....	638	0.872	0.012	720
	2009 and later .....	296			335
Heavy-Duty Diesel Vehicles .....	2004 .....	803	3.401	0.048	230
	2009 and later .....	420			120
Overall (For All Heavy-Duty .....	2004 .....	.....	.....	.....	400
	2009 and later .....	.....	.....	.....	200

In addition to the benefits of reducing ozone within and transported into urban ozone nonattainment areas, the NO<sub>x</sub> reductions from the new engine standards are expected to have beneficial impacts with respect to crop damage, secondary particulate, acid deposition, eutrophication, visibility, and forest health. Due to the difficulty in accurately quantifying the monetary value of these societal benefits, the cost-effectiveness values presented do not assign any numerical value to these additional benefits. EPA requests comments on all aspects of the cost-effectiveness analysis for heavy-duty diesel engines.

*B. 2004 Emission Standards for Heavy-Duty Otto-Cycle Vehicles and Engines*

EPA has estimated the per-vehicle cost-effectiveness (i.e., the cost per ton of emission reduction) of the proposed NMHC plus NO<sub>x</sub> emission standards over the lifetime of typical heavy-duty gasoline vehicles. The RIA contains a more detailed discussion of the cost-effectiveness analysis. EPA requests comments on all aspects of the cost-effectiveness analysis for heavy-duty gasoline engines and vehicles. EPA plans to conduct cost-effectiveness analyses of alternatives to the proposed Otto-cycle standards in the final rule

based on comments received as appropriate.

As described above, the cost of complying with the proposed standards will vary by vehicle category (i.e., a complete Class 2b heavy-duty gasoline vehicle, a complete Class 3 heavy-duty gasoline vehicle, or an incomplete heavy-duty gasoline vehicle) and model year. Therefore, the lifetime cost-effectiveness of the proposed standards will vary by model year. For comparison purposes, the discounted lifetime costs, emission reductions (in short tons), and cost-effectiveness of the proposed standards are shown in Table 22 for the same model years discussed in the Economic Impact section.

<sup>117</sup> "Draft Regulatory Impact Analysis: Control of Emissions of Air Pollution from Highway Heavy-

Duty Engines", Chapter 7, Section II, Available in EPA Air Docket A-95-27, Item # III-B-01.

TABLE 22.—COST-EFFECTIVENESS OF THE PROPOSED STANDARDS FOR HEAVY-DUTY GASOLINE VEHICLES

HDGV category	Year of production	Discounted lifetime cost	Discounted lifetime NMHC+NO <sub>x</sub> Reduction (tons)	Discounted lifetime cost-effectiveness (\$/ton)
Class 2B Complete	1	\$296	0.56 tons	\$530
	6 and later	291		520
Class 3 Complete	1	296	0.55	530
	6 and later	291		520
Incomplete HDGV	1	287	0.61	480
	6 and later	248		410
All HDGVs	1	294	0.57	520
	6 and later	281		490

EPA has also estimated the cost-effectiveness of the proposed ORVR for Class 2B heavy-duty gasoline vehicles. Table 23 contains the discounted lifetime cost-effectiveness of the proposed ORVR requirements.

TABLE 23.—DISCOUNTED, LIFETIME COST-EFFECTIVENESS OF THE PROPOSED ORVR REQUIREMENTS FOR CLASS 2B HEAVY-DUTY GASOLINE VEHICLES

Year of production	Discounted lifetime cost	Discounted lifetime NMHC NO <sub>x</sub> Emission Reductions (tons)	Discounted lifetime cost-effectiveness (\$/ton)
1	\$5	0.035	\$130
6	2	0.035	50

In addition to the benefits of reducing ozone within and transported into urban ozone nonattainment areas, the NO<sub>x</sub> emission reductions from the proposed heavy-duty gasoline vehicle and engine standards are expected to have beneficial impacts with respect to crop damage, secondary particulate, acid deposition, eutrophication, visibility, and forest health. The cost-effectiveness values presented above do not assign any numerical value to these additional benefits. Based on existing studies that have estimated the value of such benefits in the past, EPA believes that the actual monetary value of the multiple environmental and public health benefits that would be produced by the NO<sub>x</sub> reductions under this proposal will be greater than the estimated compliance costs.

**X. Are Future Reductions in HD Emissions Possible?**

*A. Potential Future Standards for Heavy-Duty Diesel Vehicles and Engines*

**1. Possible Future Reductions in Heavy-Duty Diesel NO<sub>x</sub> and NMHC**

As discussed in section II (What is the Environmental Need for this Proposal?), heavy-duty vehicles are a major source of national NO<sub>x</sub> emissions and a source of NMHC emissions in the U.S., both of which are precursors for tropospheric ozone. Despite the important reductions

in NO<sub>x</sub> and NMHC which will occur from HD diesel 2004 standards, it is possible that additional reductions in NO<sub>x</sub> and NMHC from heavy-duty diesels will be necessary in the future in order for air quality goals to be achieved across the country.

The Agency received written comments from local and state air quality agencies and from several environmental organizations in response to the 2004 NMHC+NO<sub>x</sub> proposal in the June 27, 1996 NPRM urging the Agency to finalize more stringent NO<sub>x</sub> standards for the 2004 model year, or to consider standards resulting in the largest NO<sub>x</sub> reduction possible from HD engines. These organizations cited future air quality concerns which would require additional NO<sub>x</sub> and NMHC reductions from HD engines and vehicles in the future.<sup>116</sup> Though the Agency did not finalize more stringent standards, the stakeholders' air quality concerns remain.

The HD SOP signed in July, 1995 included a discussion of future research goals for further reductions in NO<sub>x</sub> and PM from on-highway HD diesel engines. As described in the SOP, these research goals suggested a target value of 1.0 g/bhp-hr NO<sub>x</sub>. In addition, the Agency is

aware that the European Union is currently considering a range of HD engine NO<sub>x</sub> levels for potential Euro IV emission limits in 2005. At present, the European Union is considering Euro IV NO<sub>x</sub> limits ranging from 1.5 to 2.6 g/bhp-hr.

The RIA for this proposal includes a discussion of several promising emission control technologies which may offer the potential for NO<sub>x</sub> reductions down to, or even beyond the research goals identified in the SOP. These emission control technologies include lean NO<sub>x</sub> adsorption catalysts and urea-based selective catalytic reduction systems (SCR). Each of these technologies have demonstrated significant NO<sub>x</sub> reduction capability (up to 75 percent and some projections range up to 90 percent). However, each technology is still under development, and each has its own set of potential difficulties for wide-spread HD application in the U.S. For example, current generation NO<sub>x</sub> adsorber catalysts have been shown to be susceptible to fuel sulfur poisoning, and urea-based SCR systems would likely require a national distribution system for urea. In addition, costs, durability, tamper resistance, and in-use emission performance associated with each technology have not been well defined. For this reason, EPA does not believe more stringent standards based on such

<sup>116</sup> See EPA Air Docket A-95-27, Docket Item's IV-D-08, IV-D-15, and IV-D-16.

technology is achievable for the 2004 model year, taking into consideration cost, energy, and safety factors. However, such more stringent standards may be appropriate in later model years, once these technologies are further developed. Furthermore improvement in diesel fuel quality, particularly lower sulfur levels, would likely be needed to enable these technologies. These issues were the subject of the Advance Notice of Proposed Rulemaking on "Control of Diesel Fuel Quality" that EPA published in May (64 FR 26142, May 13, 1999).

The Agency requests comment on the need for future reductions in NO<sub>x</sub> and NMHC emissions from HD diesel engines, the time frame in which future standards should be considered, and what standards should be considered. In addition, the Agency requests comment and supporting data, including emission testing data, durability data, cost data, and other relevant information, on what technologies may be available for meeting more stringent HD diesel NO<sub>x</sub> and/or NMHC levels. The Agency requests comment specifically on the feasibility of these advanced aftertreatment technologies to attain reductions cited above in the 2007 time frame. Finally, the Agency requests comment on what role, if any, diesel fuel quality plays in enabling additional reductions from HD diesel engines.

## 2. Potential Future Reductions in Heavy-Duty Diesel Engine PM

Section II of this preamble ("What is the Environmental Need for this Proposal?"), includes: a discussion of the adverse health consequences associated with particulate matter; a discussion of the contribution of HD diesel engine PM to national emission inventories; a discussion of several recent source apportionment studies for PM; and a discussion of the negative health impacts associated specifically with diesel exhaust PM, including the potential carcinogenicity of diesel PM. The Agency requests comment on whether additional control of HD diesel PM beyond the current 0.1g/bhp-hr level may be needed in the future to protect the public's health.

EPA received written comments from several state and local air quality agencies as well as several environmental organizations regarding the HDDE PM standard in response to the June 27, 1996 NPRM for on-highway heavy-duty engines.<sup>119</sup> In general, these organizations felt that maintaining the current PM standard of 0.1 g/bhp-hr in model year 2004 was not adequate for

protection of human health. The commentors stressed the particularly harmful nature of diesel PM, and they believed technology was available to justify a lower PM standard in 2004.

The HD SOP signed in 1995 included a discussion of a HD diesel PM research goal of 0.05 g/bhp-hr. The Agency is also aware that the European Union is currently considering a range of PM levels for potential Euro IV emission limits for HD diesel in 2005. At present, the European Union is considering Euro IV PM limits ranging from 0.015 to 0.04 g/bhp-hr.

The RIA for this proposal includes a discussion of the current state of the art for HDDE control technologies for both NO<sub>x</sub> and PM control, as well as the technologies the Agency expects manufacturers to use to meet the 2004 NMHC+NO<sub>x</sub> standards. The inverse relationship between in-cylinder<sup>120</sup> NO<sub>x</sub> and PM emissions is a well documented phenomenon; in-cylinder modifications which result in lower NO<sub>x</sub> tend to result in an increase in PM. As discussed in the RIA, there are technologies available to minimize this inverse relationship, but there are limits to what can be done in-cylinder. Data available to date indicate the 2004 NMHC+NO<sub>x</sub> standard and the 0.1g/hp-hr PM standard is near the limit of what can be done utilizing only known in-cylinder technologies (including EGR as an in-cylinder control technology). However, a number of promising aftertreatment technologies may be available for wide spread HD application which could allow manufacturers to meet a PM standard lower than 0.1g/bhp-hr while not negatively impacting NO<sub>x</sub> emissions. As discussed in the RIA, these technologies include diesel oxidation catalysts (DOCs) and particulate traps. DOCs have the potential to offer modest levels of PM control (approximately 10–30 percent), and the level of control is dependent on the amount of volatile organic component present in the engine's exhaust PM. Particulate traps have the potential to achieve large reductions in exhaust PM, approaching 80–90 percent reduction. However, dependable regeneration techniques, in-use durability and reasonable cost are some of the important issues which still need to be addressed. In addition, NO<sub>x</sub> control technologies such as NO<sub>x</sub> adsorber catalysts and SCR systems could potentially allow manufacturers to favor the in-cylinder trade-offs

between NO<sub>x</sub> and PM for stringent in-cylinder PM control, and rely on aftertreatment to provide NO<sub>x</sub> control.

As discussed in section IV.B ("Are Changes in Diesel Fuel Quality Necessary to Meet the 2004 Standards?"), and in more detail in the RIA for this proposal, diesel fuel quality, and in particular, diesel fuel sulfur level, can play an important role in enabling certain PM and NO<sub>x</sub> control technologies. Some DOCs and continuously regenerable PM traps, as well as current generation lean NO<sub>x</sub> adsorber catalysts can be poisoned by high sulfur levels. Some versions of passively regenerated catalyzed traps and DOCs are not poisoned at current fuel sulfur levels, but can produce large amounts of sulfate PM at current sulfur levels, decreasing their effectiveness. Given this information, EPA has not included more stringent PM standards for the 2004 model year or later in today's proposal. However, the Agency requests comment and supporting data on the air quality need, technical feasibility, and costs associated with implementing more stringent PM standards as early as the 2004 model year. The Agency requests comment specifically on the feasibility of the application of PM traps to achieve up to 90 percent reductions from today's levels. In addition, the Agency requests comment on the range of PM limits currently being considered by the European Union, namely 0.015 to 0.04 g/hp-hr. Finally, the Agency requests comment on what role, if any, diesel fuel quality plays in meeting a more stringent PM standard.

## 3. Potential Structure of Future Diesel Emission Standards

EPA regulations for heavy-duty vehicles (*i.e.*, vehicles with a GVWR greater than 8500 pounds) have historically been "fuel-neutral," meaning that the same standard applied to both gasoline and diesel vehicles. Today's proposal moves away from that historical approach because we believe there is a case to be made that heavy-duty Otto-cycle engines may be capable of significantly lower emissions than heavy-duty diesel engines given current technology and fuels. In addition to proposing tighter standards for heavy-duty Otto-cycle engines, however, we have also proposed to change the fundamental structure of the compliance program by requiring complete heavy-duty Otto-cycle vehicles up to 14,000 pounds GVWR to be certified to chassis-based standards, rather than the engine-based standards used historically for the entire heavy-duty category. We request comment on

<sup>119</sup> See EPA Air Docket A-95-27, Item's IV-D-03, IV-D-08, IV-D-15, IV-D-19

<sup>120</sup> In-cylinder—an engineering term which refers to engine design changes which affect emissions in the combustion chamber, as compared to aftertreatment device.

these changes to the structure of the EPA emission control program for heavy-duty vehicles and engines and on the desirability of fuel-neutral standards.

There are several structural options that we are likely to consider when we propose future tighter standards for heavy-duty vehicles. Having already taken the step of proposing to move complete heavy-duty Otto-cycle vehicles up to 14,000 pounds GVWR into a chassis-based program with chassis-based standards, we request comment on whether we should consider requiring complete diesel vehicles in the same weight range to meet chassis-based standards, and if so, what appropriate standards might be. Alternatively, the standards could be structured such that complete diesel vehicles up to 10,000 pounds GVWR might be subject to chassis-based standards, while those between 10,000 and 14,000 pounds GVWR could be subject to engine-based standards, as they are today. We request comment on limiting chassis-based standards to diesel vehicles in this manner.

In addition to the type of standards (vehicle- or engine-based) that we might consider in the future for diesel vehicles up to 14,000 pounds GVWR, another key issue is the level of the standards

relative to those that apply to Otto-cycle vehicles. This issue is equally applicable to heavy-duty vehicles above and below 14,000 pounds GVWR. In addition to requesting comment on a chassis-based program for some heavy-duty diesel vehicles, we request comment on applying equivalent chassis-based standards to diesel and Otto-cycle vehicles, and on the role that diesel fuel quality might play in meeting such standards. In the context of possible future changes to diesel fuel quality, we believe that it may indeed be appropriate and technically feasible to require some heavy-duty diesel vehicles up to 14,000 pounds GVWR to be subject to the same standards as their Otto-cycle counterparts. In addition to the specific issues raised above, we request comment on general issues of fuel neutrality and structure of emission standards as they might apply to heavy-duty vehicles.

*B. Potential Future Standards for Heavy-Duty Otto-Cycle Vehicles*

1. Exhaust Emission Standards

California has adopted a new generation of standards for light-duty and medium-duty vehicles, referred to as the LEV-II standards. The new California standards for vehicles above

8,500 pounds GVWR are shown in Table 24. The light-duty standards are phased in beginning in 2004 according to an established phase-in schedule. For heavy-duty vehicles, there is no set phase-in schedule. California requires that 100 percent of HD vehicles comply with the standards shown in Table 24 beginning in MY 2007. While the focus of today's notice is on 2004 standards, EPA is exploring the appropriateness of adopting standards equivalent to those in Table 24 in a future rulemaking. Doing so would allow federal and California standards for heavy-duty Otto-cycle vehicles to continue to be harmonized beyond the 2007 model year. Thus, today EPA requests comment on the feasibility of, cost-effectiveness, and the need for standards such as those shown in Table 24, and on the issues noted above regarding the fuel-neutrality of future emission standards and the possibility of applying equivalent standards to diesel and Otto-cycle vehicles. In addition, any future rulemaking action would likely assess SFTP standards that would apply in conjunction with FTP standards. EPA requests comment on the application of SFTP standards to heavy-duty Otto-cycle vehicles under 14,000 pounds GVWR.

TABLE 24.—CALIFORNIA LEV II FULL-LIFE EMISSION STANDARDS FOR 2007 AND LATER MODEL YEAR VEHICLES OVER 8,500 POUNDS GVWR  
[Grams per mile]

Vehicle weight category (GVWR)	Nonmethane organic gas	Oxides of nitrogen	Carbon monoxide
8,500—10,000 lbs .....	0.195	0.2	6.4
10,001—14,000 lbs .....	0.23	0.4	7.3

2. Evaporative standards

EPA is not proposing any changes to the Otto-cycle evaporative numerical emission standards in today's notice. However, the 1998 certification results show that, in general, heavy-duty Otto-cycle vehicles are meeting the current evaporative standards with a substantial safety margin. EPA is concerned that, in the absence of more stringent evaporative standards, manufacturers will reduce the safety margins they currently use in order to cut costs, resulting in rising evaporative emissions. The 1999 certification results

appear to show this beginning to happen.

The California Air Resources Board recently proposed and adopted new evaporative emission standards applicable to all categories of Otto cycle vehicles and engines in the context of the LEV II standards discussed in the previous section. Those new evaporative standards call for dramatic reductions in the levels of emissions for both the three day diurnal plus hot soak and the supplemental two day diurnal plus hot soak measurements. In response to CARB's recent LEV II proposal, the vehicle manufacturers

presented CARB with an alternate proposal for revised evaporative emission standards.<sup>121</sup> These proposed levels, while not as stringent as the standards CARB proposed and subsequently adopted, are significantly more stringent than the current federal standards. However, most 1998 model year HDVs were certified at levels below the manufacturers proposed standards, including comfortable safety margins. The current federal standards, CARB's new standards, and the manufacturers' proposed standards are all presented in the Table 25.

<sup>121</sup> A copy of the handouts presented to CARB on October 8, 1998 are in the docket for this rule.

TABLE 25.—“Existing Federal and CARB, and Manufacturer-Proposed Evaporative Emission Standards

	Three day diurnal plus hot soak (g/test)	Two day diurnal plus hot soak (g/test)
8,500 lbs <GVWR≤14,000 lbs:		
Current federal standards .....	3.0	3.5
New CARB standards .....	1.0	1.25
Manufacturer-proposed standards .....	1.5	1.7
GVWR ≤ 14,000 lbs:		
Current federal standards .....	4.0	4.5
New CARB standards ^	1.0	1.25
Manufacturer-proposed standards ^	1.5	2.25

^ Note—These standards would be phased in as a % of sales at a rate of 25, 50, 75, and 100 percent beginning with the 2004 model year.

EPA requests comment whether more stringent evaporative emission standards for HDVs may be appropriate, especially considering the current certification levels. The Agency also requests comment on our belief that the manufacturer-proposed standards are feasible at little or no cost. EPA also requests comment on the feasibility and cost of other more stringent standards than those proposed by the manufacturers, including the standards recently adopted by CARB.

**XI. What Are the Opportunities for Public Participation?**

*A. Comments and the Public Docket*

EPA today opens a formal comment period for this NPRM and will accept comments through 30 days after the date of the public hearing. The Agency encourages all parties that have an interest in this proposal to offer comment on various topics. Of particular interest to the Agency are detailed comments in the following areas:

- The technical feasibility, cost-effectiveness, and appropriateness under the Clean Air Act of the 2004 NMHC+NO<sub>x</sub> emission standard for heavy-duty diesel engines.
- The feasibility of the 2004 NMHC+NO<sub>x</sub> standards with current diesel fuel, and the specific issue of full useful life durability and the impact of sulfuric acid formation on EGR systems.
- The technical feasibility, cost-effectiveness, and appropriateness under the Clean Air Act of the proposed 1.0 g/bhp-hr NMHC+NO<sub>x</sub> standard for heavy-duty Otto-cycle engines.
- The appropriateness and design of the proposed ABT program for heavy-duty Otto-cycle engines.
- The technical feasibility, cost-effectiveness, and appropriateness of the proposed supplemental tests and associated emission limits for diesel-cycle heavy-duty engines.
- The technical feasibility, cost-effectiveness, and appropriateness of the proposed chassis-based emission

standards for Otto-cycle heavy-duty vehicles under 14,000 pounds GVWR.

- The proposed ABT program for Otto-cycle heavy-duty vehicles under 14,000 pounds GVWR.
- The technical feasibility, cost-effectiveness, and appropriateness of the proposed ORVR requirements for complete Otto-cycle heavy-duty vehicles under 10,000 pounds GVWR.
- The technical feasibility, cost-effectiveness, and appropriateness of the proposed OBD requirements for heavy-duty engines and vehicles at or below 14,000 lbs GVWR.
- Fuel neutrality of emission standards for diesel and Otto-cycle heavy-duty vehicles and engines.

Although the Agency specifically requests comments on the identified topics, the Agency welcomes comments on any aspect of the proposal. The most useful comments are those supported by appropriate and detailed rationales, data, and analyses. The Agency also encourages commenters that disagree with elements of the proposal to suggest and analyze alternate approaches to meeting the air quality goals of this proposal. All comments, with the exception of proprietary information, should be directed to the EPA Air Docket Section, Docket No. A-98-32 before the date specified above. Information related to this rulemaking is also found in dockets A-95-27 and A-97-10.

Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by (1) labeling proprietary information “Confidential Business Information” and (2) sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket. This will help ensure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission of confidential information as part of the basis for the final rule, then a non-confidential version of the document that summarizes the key data

or information should be sent to the docket. Any information or data that constitutes, in whole or in part, a basis of EPA’s regulatory actions will be made public.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and in accordance with the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it will be made available to the public without further notice to the commenter.

*B. Public Hearing*

The Agency will hold a public hearing as noted in the **DATES** section above. Any person desiring to present testimony at the public hearing is asked to notify the contact person listed above at least one week prior to the date of the hearing. This notification should include an estimate of the time required for the presentation of the testimony and any need for audio/visual equipment. EPA suggests that sufficient copies of the statement or material to be presented be available to the audience. In addition, it is helpful if the contact person receives a copy of the testimony or material prior to the hearing.

The hearing will be conducted informally, and technical rules of evidence will not apply. A sign-up sheet will be available at the hearing for scheduling the order of testimony. A written transcript of the hearing will be prepared. The official record of the hearing will be kept open for 30 days after the hearing to allow submittal of supplementary information.

**XII. What Administrative Requirements Apply to This Proposal?**

*A. Compliance With Executive Order 12866*

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether this regulatory action is “significant” and therefore subject to review by the Office of Management and

Budget (OMB) and the requirements of the Executive Order. The Order defines a "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 obligations of recipients thereof; or

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

Pursuant to the terms of Executive Order 12866, EPA has determined that this proposed rule is a "significant regulatory action" because the proposed regulatory provisions, if implemented, would have an annual effect on the economy in excess of \$100 million. A Regulatory Impact Analysis has been prepared and is available in the docket associated with this rulemaking. This action was submitted to OMB for review as required by Executive Order 12866. Any written comments from OMB and any EPA response to OMB comments are in the public docket for this rule.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act (5 U.S.C. 601) requires federal agencies to consider potential impacts of federal regulations upon small entities. If a preliminary analysis indicates that a regulation would have a significant adverse economic impact on a substantial number of small entities, then EPA must prepare a regulatory flexibility analysis.

The Agency has determined that this action would not have a significant adverse impact on a substantial number of small entities, and thus it is not necessary to prepare a regulatory flexibility analysis in connection with this rule. Only two small entities are known to be affected by this rule. The entities are small businesses that certify alternative fuel engines or vehicles, either newly manufactured or modified from previously certified gasoline versions. EPA contacted these businesses and discussed the proposed rule with them, identifying their concerns. The concerns they expressed prompted revisions to the proposal, which are addressed elsewhere in the preamble. Rule revisions proposed by

EPA are intended to minimize adverse impacts on the small entities affected by the proposed rule.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*, as amended, I hereby certify that this regulation will not have a significant adverse impact on a substantial number of small entities.

#### *C. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 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 sections 202 and 205 of the UMRA, EPA generally must prepare a written statement to accompany any proposed and final rule that includes a federal mandate that may result in expenditures by state, local, and tribal governments in the aggregate, or by the private sector, of \$100 million or more for any one year. Before promulgating 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 objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective, or least burdensome alternative if the Administrator 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 agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposal contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the program would significantly or uniquely affect small governments. EPA has determined that

this rule contains federal mandates that may result in expenditures of \$100 million or more in any one year for the private sector.

As explained in section III.B of this preamble ("1999 Review of Heavy-duty Diesel Engine NMHC+NO<sub>x</sub> Standards"), the 2004 heavy-duty diesel standards reaffirmed in this rulemaking were established in the Agency's 1997 final rulemaking for heavy-duty diesels, and the 1997 rulemaking laid the ground work for this proposal. Today's proposal for HD diesel engines is simply a review of the appropriateness under the Clean Air Act of the standard finalized in 1997, including the need for and technical and economic feasibility of the standard based on information available in 1999. Therefore, today's proposal does not contain any further analysis of other, alternative standards for heavy-duty diesel engines. The reader is directed to the rulemaking record for the 1997 rule, contained in EPA Air Docket A-95-27, for information on alternatives the Agency considered during that rulemaking.

Today's proposal includes an analysis of an alternative standard for HD Otto-cycle engines. Section VI.B of this preamble, and Chapter 3, Section III(H) of the draft RIA, contain a detailed description of the alternative standard proposed by the engine manufacturers. Section 202(a)(3) of the Clean Air Act requires that EPA must set emission standards for heavy-duty engines to reflect the greatest degree of emission reduction achievable through the application of technology which EPA determines will be available for the model year to which the standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology.

As indicated above, EPA believes the standards proposed reflect the greatest degree of emission reduction achievable by HD Otto-cycle engines in the 2004 model year and have a reasonable cost-effectiveness level. EPA is requesting comment on the proposed standard and alternatives. Based on comments received and information available at the time of the final rulemaking, EPA will make a final determination under § 202(a)(3) of the CAA. EPA will address the requirements of UMRA § 205 in connection with the final rule.

#### *D. Reporting and Recordkeeping Requirements*

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction

Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2060-0104) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260-2740. A copy may also be downloaded off the internet at <http://www.epa.gov/icr>. The following ICR document has been prepared by EPA:

EPA ICR #	Title
0783.38 .....	Heavy Duty Engine Emission Certification.

The Agency proposes to collect information related to certification results. This information will be used to ensure compliance with and enforce the provisions in this rule. Responses will be mandatory in order to complete the certification process. Section 208(a) of the Clean Air Act requires that manufacturers provide information the Administrator may reasonably require to determine compliance with the regulations; submission of the information is therefore mandatory. EPA will consider confidential all information meeting the requirements of § 208(c) of the Clean Air Act.

This collection of information affects an estimated 66 respondents with a total of 459 responses per year and a total hour burden of 65,859 hours, for an estimated 143 hours per response, with estimated total annualized costs of \$1,599,684 per year. The hours and annual cost of information collection activities by a given manufacturer depends on manufacturer-specific variables, such as the number of engine families, production changes, emissions defects, and so forth. 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.

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.

Comments are requested 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. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after October 29, 1999, a comment to OMB is best assured of having its full effect if OMB receives it by November 29, 1999. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

#### *E. Compliance With Executive Order 13045*

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. Today's proposal falls into that category only in part: risk considerations may be taken into account only to the extent the Agency may consider the inherent toxicity of a regulated pollutant, and any differential impacts such a pollutant may have on children's health, in

deciding how to take cost and other relevant factors into consideration.

This rulemaking will achieve important reductions of various emissions from heavy-duty trucks, primarily emissions of NO<sub>x</sub>. The rulemaking also addresses NMHC and PM. These pollutants raise concerns about a disproportionately greater effect on children's health, such as impacts from ozone, PM, and certain toxic air pollutants. See section II of this proposal and the RIA for a further discussion of these issues. The effects of ozone and PM on children's health was addressed in detail in EPA's rulemaking to establish these NAAQS, and EPA is not revisiting those issues here. EPA also believes the emissions reductions from the proposed strategies will reduce air toxics and the related impacts on children's health. EPA will be addressing the issues raised by air toxics from motor vehicles and their fuels in a separate rulemaking that EPA is initiating in the near future under section 202(l)(2) of the Act. That rulemaking will address the emissions of hazardous air pollutants from motor vehicles and fuels, and the appropriate level of control of hazardous air pollutants from these sources.

In this proposal EPA has evaluated several regulatory strategies for reductions in these emissions from heavy-duty engines. For the reasons described in this preamble, EPA believes that the strategies proposed are preferable under the Clean Air Act to other potentially effective and reasonably feasible alternatives considered by the Agency, for purposes of reducing emissions from these sources as a way of helping areas achieve and maintain the NAAQS for ozone and PM. Moreover, consistent with the Clean Air Act, the proposed levels of control are designed to achieve the greatest degree of reduction of emissions of these pollutants achievable through technology that will be available, taking cost and other factors into consideration.

#### *F. Enhancing Intergovernmental Partnerships*

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior

consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. The rule will be implemented at the Federal level and imposes compliance obligations only on private industry. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

#### *G. Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The rule will be implemented at the Federal level and imposes compliance obligations only on private industry. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### *H. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or would be otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule involves technical standards. The Agency is incorporating by reference applicable standards previously finalized by the Society of Automotive Engineers and the International Standards Organization. For a complete listing of the SAE and ISO standards incorporated by reference in this final rule, please see § 86.1, "Reference Materials" in the regulatory language immediately following this preamble.

#### *I. Compliance With Executive Order on Federalism*

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, which will go into effect on November 2, 1999. In the interim, the current Executive Order 12612 on federalism is still applicable. Under this order, this rule does not have a substantial direct effect upon States, upon the relationship between the national government and the States, or upon the distribution of power and responsibilities among the various levels of government. This rule directly regulates manufacturers of heavy duty vehicles and engines, and does not impose any duties or obligations on, or restrict the powers of, any state.

#### **XIII. What Is EPA's Statutory Authority for This Proposal?**

Section 202(a)(3) authorizes EPA to establish emission standards for heavy duty vehicles and engines.<sup>122</sup> These standards are to reflect the greatest degree of emission reduction achievable through the application of technology which EPA determines will be available for the model year to which the standards apply. EPA is to give appropriate consideration to cost,

<sup>122</sup> U.S.C. 7521(a)(3).

energy, and safety factors associated with the application of such technology. Section 202(a)(3)(C) requires that promulgated standards apply for no less than three years and go into effect no less than 4 years after promulgation. Section 202(m) authorizes regulations requiring installation of on-board diagnostics systems for light-duty and heavy-duty vehicles and engines. Pursuant to sections 202(a)(1) and 202(d), these emission standards must be met throughout the entire useful life of the engine or vehicle as determined by EPA's regulations. If the Administrator determines that a substantial number of vehicles do not conform to emission standards when in actual use throughout their useful lives, section 207(c) of the Act requires EPA to make a determination of nonconformity. Section 208 of the Act requires manufacturers to perform tests (where not otherwise reasonably available), make reports and provide information the Administrator may reasonably require to determine whether the manufacturer is acting in compliance with the Act and regulations thereunder. The remainder of section 202, as well as sections 203, 206, 207, 208, and 301, provide additional authority for promulgation of these regulations.

#### **List of Subjects**

##### *40 CFR Part 85*

Confidential business information, Imports, Incorporation by reference, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

##### *40 CFR Part 86*

Administrative practice and procedure, Confidential business information, incorporation by reference, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: October 6, 1999.

**Carol M. Browner,**  
*Administrator.*

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

#### **PART 85—CONTROL OF AIR POLLUTION FROM MOBILE SOURCES**

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

**Authority:** 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7543, 7547, and 7601(a).

Subpart F—[Amended]

2. Section 85.501 is revised to read as follows:

§ 85.501 General applicability.

(a) Sections 85.502 through 85.505 are applicable to aftermarket conversion systems for which an enforcement exemption is sought from the tampering prohibitions contained in section 203 of the Act.

(b) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle complete heavy-duty vehicles under the provisions of 40 CFR part 86, subpart S.

Subpart P—[Amended]

3. Section 85.1501 is amended by revising paragraph (c), to read as follows:

§ 85.1501 Applicability.

\* \* \* \* \*

(c) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle complete heavy-duty vehicles under the provisions of 40 CFR part 86, subpart S.

Subpart R—[Amended]

4. Section 85.1701 is amended by revising paragraph (c), to read as follows:

§ 85.1701 General applicability.

\* \* \* \* \*

(c) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty

trucks, and Otto-cycle complete heavy-duty vehicles under the provisions of 40 CFR part 86, subpart S.

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

5. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

6. Section 86.1 is amended by adding an entry to the table in alphanumeric order in paragraphs (b)(2) and (b)(5), to read as follows:

§ 86.1 Reference materials.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

Document No. and name

40 CFR part 86 reference

SAE J1939, Recommended Practice for a Serial Control and Communications Vehicle Network ..... 86.004–17; 86.1806–04

\* \* \* \* \* (5) \* \* \*

Document No. and name

40 CFR part 86 reference

ISO 14230–4 April 1996, Road Vehicles—Diagnostic systems—KWP 2000 requirements for Emission-related systems. 86.004–17; 86.1806–04

Subpart A—[Amended]

7. A new § 86.000–15 is added to subpart A to read as follows:

§ 86.000–15 NOx and particulate averaging, trading, and banking for heavy-duty engines.

Section 86.000–15 includes text that specifies requirements that differ from § 86.094–15 or § 86.098–15. Where a paragraph in § 86.094–15 or § 86.098–15 is identical and applicable to § 86.000–15, this may be indicated by specifying the corresponding paragraph and the statement “[Reserved]. For guidance see § 86.094–15.” or “[Reserved]. For guidance see § 86.098–15.”

(a) through (b) [Reserved] For guidance see § 86.094–15.

(c) [Reserved] For guidance see § 86.098–15.

(d) through (i) [Reserved] For guidance see § 86.094–15.

(j) Optional program for early banking for diesel engines. Provisions set forth in §§ 86.094–15 (a), (b), (d) through (i), and 86.098–15 (c) apply except as specifically stated otherwise in § 86.098–15 (j)(1) through (j)(3)(iii).

(j)(1) through (j)(3)(iii) [Reserved] For guidance see § 86.098–15.

(k) Optional program for early banking for Otto-cycle engines. Provisions set forth in §§ 86.094–15(a), (b), (d) through (i), and 86.098–15(c) apply except as specifically stated otherwise in this paragraph (k).

(1) To be eligible for the optional program described in this paragraph (k), the following must apply:

(i) Credits are generated from Otto-cycle heavy-duty engines.

(ii) During certification, the manufacturer shall declare its intent to include specific engine families in the program described in this paragraph. Separate declarations are required for

each program and no engine families may be included in both programs in the same model year.

(2) Credit generation and use. (i) Credits shall only be generated by 2000 and later model year engine families.

(ii) Credits may only be used for 2004 and later model year heavy-duty Otto-cycle engines. When used with 2004 and later model year engines, NOx credits may be used to meet the NOx plus NMHC standard, except as otherwise provided in § 86.004–11(a)(1)(i)(D).

(iii) If a manufacturer chooses to use credits generated under this paragraph (k) prior to model year 2004, the averaging, trading, and banking of such credits shall be governed by the program provided in §§ 86.094–15(a), (b), (d) through (i) and 86.098–15(c) and shall be subject to all discounting, credit life limits and all other provisions contained therein. In the case where the

manufacturer can demonstrate that the credits were discounted under the program provided in this paragraph (k), that discount may be accounted for in the calculation of credits described in § 86.098–15(c).

(3) *Program flexibilities.* (i) NO<sub>x</sub> credits that are banked until model year 2004 under this paragraph (k) may be used in 2004 or any model year thereafter without being forfeited due to credit age. The requirement in this paragraph (k)(3) applies instead of the requirements in § 86.094–15(f)(2)(i).

(ii) There are no regional category restraints for averaging, trading, and banking of credits generated under the program described in this paragraph (k). This applies instead of the regional category provisions described in the introductory text of § 86.094–15 (d) and (e).

(iii) *Credit discounting.* (A) For NO<sub>x</sub> credits generated under this paragraph (k) from engine families with NO<sub>x</sub> FELs greater than 1.0 grams per brake horsepower-hour for oxides of nitrogen, a Discount value of 0.9 shall be used instead of 0.8 in the credit availability equation in § 86.098–15(c)(1).

(B) For NO<sub>x</sub> credits generated under this paragraph (k) from engine families with NO<sub>x</sub> FELs less than or equal to 1.0 grams per brake horsepower-hour for oxides of nitrogen, a Discount value of 1.0 shall be used in place of 0.8 in the credit availability equation in § 86.098–15 (c)(1).

(iv) *Credit calculation.* For NO<sub>x</sub> credits generated under this paragraph (k), a Std value of 2.0 grams per brake horsepower-hour shall be used in place of the current and applicable NO<sub>x</sub> standard in the credit availability equation in § 86.098–15(c)(1).

(l) *Credit apportionment.* At the manufacturer's option, credits generated under the provisions described in this section may be sold to or otherwise provided to another party for use in programs other than the averaging, trading and banking program described in this section.

(1) The manufacturer shall pre-identify two emission levels per engine family for the purposes of credit apportionment. One emission level shall be the FEL and the other shall be the level of the standard that the engine family is required to certify to under § 86.098–10 or § 86.098–11, as applicable. For each engine family, the manufacturer may report engine sales in two categories, "ABT-only credits" and "non-manufacturer-owned credits".

(i) For engine sales reported as "ABT-only credits", the credits generated must be used solely in the ABT program described in this section.

(ii) The engine manufacturer may declare a portion of engine sales "non-manufacturer-owned credits" and this portion of the credits generated between the standard and the FEL, based on the calculation in § 86.098–15(c)(1), would belong to another party. For ABT, the manufacturer may not generate any credits for the engine sales reported as "nonmanufacturer-owned credits". Engines reported as "non-manufacturer-owned credits" shall comply with the FEL and the requirements of the ABT program in all other respects.

(2) Only manufacturer-owned credits reported as "ABT-only credits" shall be used in the averaging, trading, and banking provisions described in this section.

(3) Credits shall not be double-counted. Credits used in the ABT program may not be provided to an engine purchaser for use in another program.

(4) Manufacturers shall determine and state the number of engines sold as "ABT-only credits" and "non-manufacturer-owned credits" in the end-of-model year reports required under § 86.098–23.

8. Section 86.000–16 is amended by removing paragraphs (a) through (d) introductory text, adding paragraphs (a), (b), (c), and (d) introductory text, and revising paragraph (d)(1), to read as follows:

**§ 86.000–16 Prohibition of defeat devices.**

\* \* \* \* \*

(a) No new light-duty vehicle, light-duty truck, heavy-duty vehicle, or heavy-duty engine shall be equipped with a defeat device.

(b) The Administrator may test or require testing on any vehicle or engine at a designated location, using driving cycles and conditions which may reasonably be expected to be encountered in normal operation and use, for the purpose of investigating a potential defeat device.

(c) [Reserved]. For guidance see § 86.094–16.

(d) For vehicle and engine designs designated by the Administrator to be investigated for possible defeat devices:

(1) The manufacturer must show to the satisfaction of the Administrator that the vehicle or engine design does not incorporate strategies that unnecessarily reduce emission control effectiveness exhibited during the Federal emissions test procedure when the vehicle or engine is operated under conditions which may reasonably be expected to be encountered in normal operation and use.

\* \* \* \* \*

9. Section 86.001–1 is amended by revising paragraph (b) to read as follows:

**§ 86.001–1 General applicability.**

\* \* \* \* \*

(b) *Optional applicability.* (1) A manufacturer may request to certify any heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less in accordance with the light-duty truck provisions located in subpart S of this part through the 2003 model year. Heavy-duty engine or vehicle provisions of this subpart A do not apply to such a vehicle.

(2) Beginning with the 2001 model year, a manufacturer may certify any Otto-cycle heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less in accordance with the provisions for complete Otto-cycle heavy-duty vehicles located in subpart S of this part for purposes of generating credits in the heavy-duty vehicle averaging, banking, and trading program contained in § 86.1817–04. Heavy-duty engine or heavy-duty vehicle provisions of this subpart A do not apply to such a vehicle.

\* \* \* \* \*

10. A new § 86.004–1 is added to subpart A to read as follows:

**§ 86.004–1 General applicability.**

Section 86.004–1 includes text that specifies requirements that differ from § 86.001–1. Where a paragraph in § 86.001–1 is identical and applicable to § 86.004–1, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.001–1."

(a) The provisions of this subpart generally apply to 2004 and later model year new Otto-cycle heavy-duty engines used in incomplete vehicles and vehicles above 14,000 pounds GVWR and new diesel-cycle heavy-duty engines. In cases where a provision applies only to a certain vehicle group based on its model year, vehicle class, motor fuel, engine type, or other distinguishing characteristics, the limited applicability is cited in the appropriate section or paragraph. The provisions of this subpart continue to generally apply to 2000 and earlier model year new Otto-cycle and diesel-cycle light-duty vehicles, 2000 and earlier model year new Otto-cycle and diesel-cycle light-duty trucks, and 2003 and earlier model year new Otto-cycle complete heavy-duty vehicles at or below 14,000 pounds GVWR. Provisions generally applicable to 2001 and later model year new Otto-cycle and diesel-cycle light-duty vehicles, 2001 and later model year new Otto-cycle and diesel-cycle light-duty trucks, and 2004 and

later model year Otto-cycle complete heavy-duty vehicles at or below 14,000 pounds GVWR are located in subpart S of this part.

(b) *Optional applicability.* For 2004 and later model years, a manufacturer may request to certify any incomplete heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less in accordance with the provisions for complete heavy-duty vehicles located in subpart S of this part. Heavy-duty engine or heavy-duty vehicle provisions of this subpart A do not apply to such a vehicle.

(c) [Reserved]

(d) [Reserved]

(e) through (f) [Reserved]. For guidance see § 86.001-1.

11. Section 86.004-2 is amended by adding definitions in alphabetical order for "defeat device," "heavy-duty vehicle," and "light-duty truck" to read as follows:

**§ 86.004-2 Definitions.**

\* \* \* \* \*

*Defeat device* means an auxiliary emission control device (AEC) that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use, unless:

(1) Such conditions are substantially included in the applicable Federal emission test procedure for heavy-duty vehicles and heavy-duty engines described in subpart N of this part, excluding the test procedure referred to as the "Not-To-Exceed Test Procedure" contained in § 86.1370, and excluding the Maximum Allowable Emission Limits contained in § 86.1370(f);

(2) The need for the AEC is justified in terms of protecting the vehicle against damage or accident; or

(3) The AEC does not go beyond the requirements of engine starting.

*Heavy-duty vehicle* means any motor vehicle rated at more than 8,500 pounds GVWR or that has a vehicle curb weight of more than 6,000 pounds or that has a basic vehicle frontal area in excess of 45 square feet, excluding vehicles with a GVWR greater than 8,500 pounds and less than or equal to 10,000 pounds that are defined as light-duty trucks.

*Light-duty truck means:* (1) Any motor vehicle rated at 8,500 pounds GVWR or less which has a curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less, which is:

(i) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle; or

(ii) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or

(iii) Available with special features enabling off-street or off-highway operation and use; or

(2) Any motor vehicle rated at greater than 8,500 pounds GVWR and less than or equal to 10,000 pounds GVWR which is a complete vehicle designed primarily for transportation of persons and has a capacity of not more than 12 persons.

\* \* \* \* \*

12. A new § 86.004-10 is added to subpart A to read as follows:

**§ 86.004-10 Emission standards for 2004 and later model year Otto-cycle heavy-duty engines and vehicles.**

Section 86.004-10 includes text that specifies requirements that differ from § 86.099-10. Where a paragraph in § 86.099-10 is identical and applicable to § 86.004-10, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.099-10."

(a)(1) Exhaust emissions from new 2004 and later model year Otto-cycle HDEs shall not exceed:

(i)(A) *Oxides of Nitrogen plus Non-methane Hydrocarbons (NO<sub>x</sub> + NMHC)* for engines fueled with either gasoline, natural gas, or liquefied petroleum gas. 1.0 grams per brake horsepower-hour (0.37 gram per megajoule), as measured under transient operating conditions.

(B) *Oxides of Nitrogen plus Non-methane Hydrocarbon Equivalent (NO<sub>x</sub> + NMHCE)* for engines fueled with methanol. 1.0 grams per brake horsepower-hour (0.37 gram per megajoule), as measured under transient operating conditions.

(C) A manufacturer may elect to include any or all of its Otto-cycle HDE families in any or all of the emissions ABT programs for HDEs, within the restrictions described in § 86.098-15. If the manufacturer elects to include engine families in any of these programs, the NO<sub>x</sub> plus NMHC (or NO<sub>x</sub> plus NMHCE for methanol-fueled engines) FELs may not exceed 4.5 grams per brake horsepower-hour (1.7 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, banking, or trading programs.

(ii)(A) *Carbon monoxide for engines intended for use in all vehicles, except as provided in paragraph (a)(1)(ii)(B) of this section.* 14.4 grams per brake horsepower-hour (5.36 grams per megajoule), as measured under transient operating conditions.

(B) *Carbon monoxide for engines intended for use only in vehicles with a Gross Vehicle Weight Rating of greater than 14,000 pounds.* 37.1 grams per brake horsepower-hour (13.8 grams per

megajoule), as measured under transient operating conditions.

(C) *Idle carbon monoxide. For all Otto-cycle HDEs utilizing aftertreatment technology: 0.50 percent of exhaust gas flow at curb idle.*

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over the operating schedule set forth in paragraph (f)(1) of appendix I to this part, and measured and calculated in accordance with the procedures set forth in subpart N or P of this part.

(3)(i) A manufacturer may certify one or more Otto-cycle HDE configurations intended for use in all vehicles to the emission standard set forth in paragraphs (a)(1)(ii)(B) of this section: Provided, that the total model year sales of such configuration(s), segregated by fuel type, being certified to the emission standard in paragraph (a)(1)(ii)(B) of this section represent no more than five percent of total model year sales of each fuel type Otto-cycle HDE intended for use in vehicles with a Gross Vehicle Weight Rating of up to 14,000 pounds by the manufacturer.

(ii) The configurations certified to the emission standards of paragraphs (a)(1)(ii)(B) of this section under the provisions of paragraph (a)(3)(i) of this section shall still be required to meet the evaporative emission standards set forth in § 86.099-10(b)(1)(i), (b)(2)(i) and (b)(3)(i).

(4) [Reserved]

(b) [Reserved]. For guidance see § 86.099-10.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 1998 or later model year Otto-cycle HDE.

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in subpart N or P of this part to ascertain that such test engines meet the requirements of this section.

13. Section 86.004-11 is amended by adding paragraphs (a)(3) and (a)(4) and (b)(1)(iv), and by revising paragraph (b)(2), to read as follows:

**§ 86.004-11 Emission standards for 2004 and later model year diesel heavy-duty engines and vehicles.**

(a) \* \* \*

(3)(i) The weighted average exhaust emissions, as determined under § 86.1360-2004(e)(5) pertaining to the supplemental steady-state test cycle, for each regulated pollutant shall not exceed 1.0 times the applicable

emission standards or FELs specified in paragraph (a)(1) of this section.

(ii) Exhaust emissions shall not exceed the Maximum Allowable Emission Limits (for the corresponding speed and load), as determined under § 86.1360-2004(f), when the engine is operated in the steady-state control area defined under § 86.1360-2004(d).

(4)(i) The weighted average emissions, as determined under § 86.1370 pertaining to the not-to-exceed test procedures, for each regulated pollutant shall not exceed 1.25 times the applicable emission standards or FELs specified in paragraph (a)(1) of this section, except as noted in paragraph (a)(4)(ii) of this section.

Exhaust emissions shall not exceed either the Maximum Allowable Emission Limits (for the corresponding speed and load), as determined under § 86.1360(f) or the exhaust emissions specified in paragraph (a)(4)(i) of this section, whichever is numerically lower, when the engine is operated in the steady-state control area defined under § 86.1360(d).

(b) \* \* \*

(1) \* \* \*

(iv) A filter smoke number of 1.0, or the following alternate opacity limits:

(A) A 30 second transient test average opacity limit of 4% for a 5 inch path; and

(B) A 10 second steady state test average opacity limit of 4% for a 5 inch path.

(2)(i) The standards set forth in paragraphs (b)(1)(i) through (iii) of this section refer to exhaust smoke emissions generated under the conditions set forth in subpart I of this part and measured and calculated in accordance with those procedures.

(ii) The standards set forth in paragraph (b)(1)(iv) of this section refer to exhaust smoke emissions generated under the conditions set forth in § 86.1380 and calculated in accordance with the procedures set forth in § 86.1372.

\* \* \* \* \*

14. Section 86.004-15 is amended by revising the section heading and paragraphs (a)(1), (b) introductory text, (b)(1)(i), (b)(1)(ii), (c)(1) introductory text, (c)(1)(iii), (d) introductory text, (d)(1)(i), (d)(1)(ii), (f) heading, (f)(1)(i), (f)(2)(i), (f)(2)(ii), (f)(3)(ii), (f)(3)(iii), (g)(1), (g)(2) introductory text, (g)(2)(i), (g)(2)(ii), (g)(4), (j) introductory text, (j)(1) introductory text, (k) heading and introductory text, removing paragraphs (a)(2)(iii) and (d)(1)(iii), and adding paragraph (l), to read as follows:

**§ 86.004-15 NO<sub>x</sub> plus NMHC and particulate averaging, trading, and banking for heavy-duty engines.**

(a)(1) Heavy-duty engines eligible for NO<sub>x</sub> plus NMHC and particulate averaging, trading and banking programs are described in the applicable emission standards sections in this subpart. All heavy-duty engine families which include any engines labeled for use in clean-fuel vehicles as specified in 40 CFR part 88 are not eligible for these programs. Participation in these programs is voluntary.

\* \* \* \* \*

(b) Participation in the NO<sub>x</sub> plus NMHC and/or particulate averaging, trading, and banking programs shall be done as follows:

(1) \* \* \*

(i) Declare its intent to include specific engine families in the averaging, trading and/or banking programs. Separate declarations are required for each program and for each pollutant (i.e., NO<sub>x</sub> plus NMHC, and particulate).

(ii) Declare an FEL for each engine family participating in one or more of these two programs.

(A) The FEL must be to the same level of significant digits as the emission standard (one-tenth of a gram per brake horsepower-hour for NO<sub>x</sub> plus NMHC emissions and one-hundredth of a gram per brake horsepower-hour for particulate emissions).

(B) In no case may the FEL exceed the upper limit prescribed in the section concerning the applicable heavy-duty engine NO<sub>x</sub> plus NMHC and particulate emission standards.

\* \* \* \* \*

(c)(1) For each participating engine family, NO<sub>x</sub> plus NMHC, and particulate emission credits (positive or negative) are to be calculated according to one of the following equations and rounded, in accordance with ASTM E29-93a, to the nearest one-tenth of a Megagram (Mg). Consistent units are to be used throughout the equation.

\* \* \* \* \*

(iii) For purposes of the equation in paragraphs (c)(1)(i) and (ii) of this section:

Std = the current and applicable heavy-duty engine NO<sub>x</sub> plus NMHC or particulate emission standard in grams per brake horsepower hour or grams per Megajoule.

FEL = the NO<sub>x</sub> plus NMHC, or particulate family emission limit for the engine family in grams per brake horsepower hour or grams per Megajoule.

CF = a transient cycle conversion factor in BHP-hr/mi or MJ/mi, as given in paragraph (c)(2) of this section.

UL = the useful life described in § 86.004-2, or alternative life as described in § 86.004-21(f), for the given engine family in miles.

Production = the number of engines produced for U.S. sales within the given engine family during the model year. Quarterly production projections are used for initial certification. Actual production is used for end-of-year compliance determination.

Discount = a one-time discount applied to all credits to be banked or traded within the model year generated. Except as otherwise allowed in paragraphs (k) and (l) of this section, the discount applied here is 0.9. Banked credits traded in a subsequent model year will not be subject to an additional discount. Banked credits used in a subsequent model year's averaging program will not have the discount restored.

\* \* \* \* \*

(d) *Averaging sets for NO<sub>x</sub> plus NMHC emission credits.* The averaging and trading of NO<sub>x</sub> plus NMHC emission credits will only be allowed between heavy-duty engine families in the same averaging set. The averaging sets for the averaging and trading of NO<sub>x</sub> plus NMHC emission credits for heavy-duty engines are defined as follows:

(1) For NO<sub>x</sub>+NMHC credits from Otto-cycle heavy-duty engines:

(i) Otto-cycle heavy-duty engines constitute an averaging set. Averaging and trading among all Otto-cycle heavy-duty engine families is allowed. There are no subclass restrictions.

(ii) Otto-cycle heavy-duty vehicles certified under the chassis-based provisions of Subpart S of this Part may not average or trade with heavy-duty Otto-cycle engines.

\* \* \* \* \*

(f) *Banking of NO<sub>x</sub> plus NMHC, and particulate emission credits.* (1) \* \* \* (i) NO<sub>x</sub> plus NMHC, and particulate emission credits may be banked from engine families produced in any model year.

\* \* \* \* \*

(2) \* \* \* (i) NO<sub>x</sub> plus NMHC and particulate credits generated in 2004 and later model years do not expire.

(ii) Manufacturers withdrawing banked NO<sub>x</sub> plus NMHC, and/or particulate credits shall indicate so during certification and in their credit reports, as described in § 86.091-23.

(3) \* \* \*

(ii) Banked credits may not be used for NO<sub>x</sub> plus NMHC or particulate averaging and trading to offset emissions that exceed an FEL. Banked credits may not be used to remedy an in-use nonconformity determined by a Selective Enforcement Audit or by recall testing. However, banked credits may be

used for subsequent production of the engine family if the manufacturer elects to recertify to a higher FEL.

(iii) Banked NO<sub>x</sub> credits from 2003 and earlier model years may be used in place of NO<sub>x</sub> plus NMHC credits after 2003 provided that they are used in the correct averaging set and the NO<sub>x</sub> credits have not expired.

(g)(1) This paragraph (g) assumes NO<sub>x</sub> plus NMHC, and particulate nonconformance penalties (NCPs) will be available for the 2004 and later model year HDEs.

(2) Engine families using NO<sub>x</sub> plus NMHC and/or particulate NCPs but not involved in averaging:

(i) May not generate NO<sub>x</sub> plus NMHC or particulate credits for banking and trading.

(ii) May not use NO<sub>x</sub> plus NMHC or particulate credits from banking and trading.

\* \* \* \* \*

(4) If a manufacturer has any engine family in a given averaging set which is using NO<sub>x</sub> plus NMHC and/or particulate NCPs, none of that manufacturer's engine families in that averaging set may generate credits for banking and trading.

\* \* \* \* \*

(j) *Credit apportionment.* At the manufacturer's option, credits generated under the provisions described in this section may be sold to or otherwise provided to another party for use in programs other than the averaging, trading and banking program described in this section.

(1) The manufacturer shall pre-identify two emission levels per engine family for the purposes of credit apportionment. One emission level shall be the FEL and the other shall be the level of the standard that the engine family is required to certify to under § 86.004-10 or § 86.004-11. For each engine family, the manufacturer may report engine sales in two categories, "ABT-only credits" and "nonmanufacturer-owned credits".

\* \* \* \* \*

(k) *Additional flexibility for diesel-cycle engines.* If a diesel-cycle engine family meets the conditions of either paragraph (k)(1) or (2) of this section, a Discount of 1.0 may be used in the trading and banking calculation, for both NO<sub>x</sub> plus NMHC and for particulate, described in paragraph (c)(1) of this section.

\* \* \* \* \*

(l) *Additional flexibility for Otto-cycle engines.* If an Otto-cycle engine family meets the conditions of paragraph (l)(1) or (2) of this section, a discount of 1.0 may be used in the trading and banking

credits calculation for NO<sub>x</sub> plus NMHC described in paragraph (c)(1) of this section.

(1) The engine family has a FEL of 0.5 g/bhp-hr NO<sub>x</sub> plus NMHC or lower;

(2) All of the following conditions are met:

(i) For model years 2004, 2005, and 2006 only;

(ii) An engine family is certified using carry-over certification data from a 2003 or earlier model year where the sum of the NO<sub>x</sub> FEL plus the HC (or hydrocarbon equivalent where applicable) certification level is below 1.0 g/bhp-hr.

15. Section 86.004-16 is added to subpart A to read as follows:

**§ 86.004-16 Prohibition of defeat devices.**

(a) No new heavy-duty vehicle or heavy-duty engine shall be equipped with a defeat device.

(b) The Administrator may test or require testing on any vehicle or engine at a designated location, using driving cycles and conditions which may reasonably be expected to be encountered in normal operation and use, for the purpose of investigating a potential defeat device.

(c) [Reserved]

(d) For vehicle and engine designs designated by the Administrator to be investigated for possible defeat devices:

(1) *General.* The manufacturer must show to the satisfaction of the Administrator that the vehicle or engine design does not incorporate strategies that unnecessarily reduce emission control effectiveness exhibited during the Federal emissions test procedures, described in subpart N of this part, excluding the test procedure referred to as the "Not-To-Exceed Test Procedure" contained in § 86.1370, and the Maximum Allowable Emission Limits contained in § 86.1360(f), when the vehicle or engine is operated under conditions which may reasonably be expected to be encountered in normal operation and use.

(2) *Information submissions required.* The manufacturer will provide an explanation containing detailed information (including information which the Administrator may request to be submitted) regarding test programs, engineering evaluations, design specifications, calibrations, on-board computer algorithms, and design strategies incorporated for operation both during and outside of the Federal emission test procedure described in subpart N of this part, excluding the test procedure referred to as the "Not-To-Exceed Test Procedure" contained in § 86.1370.

16. Section 86.004-17 is added to subpart A, to read as follows:

**§ 86.004-17 On-board diagnostics.**

(a) *General.* All heavy-duty engines intended for use in a heavy-duty vehicle weighing 14,000 pounds GVWR or less must be equipped with an on-board diagnostic (OBD) system capable of monitoring all emission-related engine systems or components during the applicable useful life. Heavy-duty engines intended for use in a heavy-duty vehicle weighing 14,000 pounds GVWR or less must meet the OBD requirements of this section according to the phase-in schedule in paragraph (k) of this section. All monitored systems and components must be evaluated periodically, but no less frequently than once per applicable certification test cycle as defined in Appendix I, paragraph (f), of this part, or similar trip as approved by the Administrator.

(b) *Malfunction descriptions.* The OBD system must detect and identify malfunctions in all monitored emission-related engine systems or components according to the following malfunction definitions as measured and calculated in accordance with test procedures set forth in subpart N of this part (engine-based test procedures) excluding the test procedure referred to as the "Not-To-Exceed Test Procedure" contained in § 86.1370, and excluding the test procedure referred to as the "Load Response Test" contained in § 86.1380.

(1) *Catalysts and particulate traps.* (i) *Otto-cycle.* Catalyst deterioration or malfunction before it results in an increase in NMHC emissions 1.5 times the NMHC+NO<sub>x</sub> standard or FEL, as compared to the NMHC+NO<sub>x</sub> emission level measured using a representative 4000 mile catalyst system.

(ii) *Diesel.* If equipped, catalyst or particulate trap deterioration or malfunction before it results in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC+NO<sub>x</sub> or PM. This monitoring need not be done if the manufacturer can demonstrate that deterioration or malfunction of the system will not result in exceedance of the threshold; however, the presence of the catalyst or particulate trap must still be monitored.

(2) *Engine Misfire.* (i) *Otto-cycle.* Engine misfire resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC+NO<sub>x</sub> or CO; and any misfire capable of damaging the catalytic converter.

(ii) *Diesel.* Lack of cylinder combustion must be detected.

(3) *Oxygen sensors.* If equipped, oxygen sensor deterioration or malfunction resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC+NO<sub>x</sub> or CO.

(4) *Evaporative leaks.* If equipped, any vapor leak in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice; an absence of evaporative purge air flow from the complete evaporative emission control system. Where fuel tank capacity is greater than 25 gallons, the Administrator may, following a request from the manufacturer, revise the size of the orifice to the smallest orifice feasible, based on test data, if the most reliable monitoring method available cannot reliably detect a system leak equal to a 0.040 inch diameter orifice.

(5) *Other emission control systems.* Any deterioration or malfunction occurring in an engine system or component directly intended to control emissions, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard or FEL for NMHC+NO<sub>x</sub>, CO or diesel PM. For engines equipped with a secondary air system, a functional check, as described in paragraph (b)(6) of this section, may satisfy the requirements of this paragraph (b)(5) provided the manufacturer can demonstrate that deterioration of the flow distribution system is unlikely. This demonstration is subject to Administrator approval and, if the demonstration and associated functional check are approved, the diagnostic system must indicate a malfunction when some degree of secondary airflow is not detectable in the exhaust system during the check. For engines equipped with positive crankcase ventilation (PCV), monitoring of the PCV system is not necessary provided the manufacturer can demonstrate to the Administrator's satisfaction that the PCV system is unlikely to fail.

(6) *Other emission-related engine components.* Any other deterioration or malfunction occurring in an electronic emission-related engine system or component not otherwise described above that either provides input to or receives commands from the on-board computer and has a measurable impact on emissions; monitoring of components required by this paragraph

(b)(6) must be satisfied by employing electrical circuit continuity checks and rationality checks for computer input components (input values within manufacturer specified ranges based on other available operating parameters), and functionality checks for computer output components (proper functional response to computer commands) except that the Administrator may waive such a rationality or functionality check where the manufacturer has demonstrated infeasibility.

Malfunctions are defined as a failure of the system or component to meet the electrical circuit continuity checks or the rationality or functionality checks.

(7) *Performance of OBD functions.* Oxygen sensor or any other component deterioration or malfunction which renders that sensor or component incapable of performing its function as part of the OBD system must be detected and identified on vehicles so equipped.

(c) *Malfunction indicator light (MIL).* The OBD system must incorporate a malfunction indicator light (MIL) readily visible to the vehicle operator. When illuminated, the MIL must display "Check Engine," "Service Engine Soon," a universally recognizable engine symbol, or a similar phrase or symbol approved by the Administrator. More than one general purpose malfunction indicator light for emission-related problems should not be used; separate specific purpose warning lights (e.g. brake system, fasten seat belt, oil pressure, etc.) are permitted. The use of red for the OBD-related malfunction indicator light is prohibited.

(d) *MIL illumination.* The MIL must illuminate and remain illuminated when any of the conditions specified in paragraph (b) of this section are detected and verified, or whenever the engine control enters a default or secondary mode of operation considered abnormal for the given engine operating conditions. The MIL must blink once per second under any period of operation during which engine misfire is occurring and catalyst damage is imminent. If such misfire is detected again during the following driving cycle (i.e., operation consisting of, at a minimum, engine start-up and engine shut-off) or the next driving cycle in which similar conditions are encountered, the MIL must maintain a steady illumination when the misfire is not occurring and then remain illuminated until the MIL extinguishing criteria of this section are satisfied. The MIL must also illuminate when the vehicle's ignition is in the "key-on" position before engine starting or cranking and extinguish after engine

starting if no malfunction has previously been detected. If a fuel system or engine misfire malfunction has previously been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which similar conditions are encountered and no new malfunctions have been detected. Similar conditions are defined as engine speed within 375 rpm, engine load within 20 percent, and engine warm-up status equivalent to that under which the malfunction was first detected. If any malfunction other than a fuel system or engine misfire malfunction has been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which the monitoring system responsible for illuminating the MIL functions without detecting the malfunction, and no new malfunctions have been detected. Upon Administrator approval, statistical MIL illumination protocols may be employed, provided they result in comparable timeliness in detecting a malfunction and evaluating system performance, i.e., three to six driving cycles would be considered acceptable.

(e) *Storing of Computer Codes.* The OBD system shall record and store in computer memory diagnostic trouble codes and diagnostic readiness codes indicating the status of the emission control system. These codes shall be available through the standardized data link connector per specifications as referenced in paragraph (h) of this section.

(1) A diagnostic trouble code must be stored for any detected and verified malfunction causing MIL illumination. The stored diagnostic trouble code must identify the malfunctioning system or component as uniquely as possible. At the manufacturer's discretion, a diagnostic trouble code may be stored for conditions not causing MIL illumination. Regardless, a separate code should be stored indicating the expected MIL illumination status (i.e., MIL commanded "ON," MIL commanded "OFF").

(2) For a single misfiring cylinder, the diagnostic trouble code(s) must uniquely identify the cylinder, unless the manufacturer submits data and/or engineering evaluations which adequately demonstrate that the misfiring cylinder cannot be reliably identified under certain operating conditions. For diesel engines only, the specific cylinder for which combustion cannot be detected need not be identified if new hardware would be required to do so. The diagnostic trouble

code must identify multiple misfiring cylinder conditions; under multiple misfire conditions, the misfiring cylinders need not be uniquely identified if a distinct multiple misfire diagnostic trouble code is stored.

(3) The diagnostic system may erase a diagnostic trouble code if the same code is not re-registered in at least 40 engine warm-up cycles, and the malfunction indicator light is not illuminated for that code.

(4) Separate status codes, or readiness codes, must be stored in computer memory to identify correctly functioning emission control systems and those emission control systems which require further engine operation to complete proper diagnostic evaluation. A readiness code need not be stored for those monitors that can be considered continuously operating monitors (e.g., misfire monitor, fuel system monitor, etc.). Readiness codes should never be set to "not ready" status upon key-on or key-off; intentional setting of readiness codes to "not ready" status via service procedures must apply to all such codes, rather than applying to individual codes. Subject to Administrator approval, if monitoring is disabled for a multiple number of driving cycles (i.e., more than one) due to the continued presence of extreme operating conditions (e.g., ambient temperatures below 40°F, or altitudes above 8000 feet), readiness for the subject monitoring system may be set to "ready" status without monitoring having been completed. Administrator approval shall be based on the conditions for monitoring system disablement, and the number of driving cycles specified without completion of monitoring before readiness is indicated.

(f) *Available diagnostic data.* (1) Upon determination of the first malfunction of any component or system, "freeze frame" engine conditions present at the time must be stored in computer memory. Should a subsequent fuel system or misfire malfunction occur, any previously stored freeze frame conditions must be replaced by the fuel system or misfire conditions (whichever occurs first). Stored engine conditions must include, but are not limited to: engine speed, open or closed loop operation, fuel system commands, coolant temperature, calculated load value, fuel pressure, vehicle speed, air flow rate, and intake manifold pressure if the information needed to determine these conditions is available to the computer. For freeze frame storage, the manufacturer must include the most appropriate set of conditions to facilitate

effective repairs. If the diagnostic trouble code causing the conditions to be stored is erased in accordance with paragraph (d) of this section, the stored engine conditions may also be erased.

(2) The following data in addition to the required freeze frame information must be made available on demand through the serial port on the standardized data link connector, if the information is available to the on-board computer or can be determined using information available to the on-board computer: Diagnostic trouble codes, engine coolant temperature, fuel control system status (closed loop, open loop, other), fuel trim, ignition timing advance, intake air temperature, manifold air pressure, air flow rate, engine RPM, throttle position sensor output value, secondary air status (upstream, downstream, or atmosphere), calculated load value, vehicle speed, and fuel pressure. The signals must be provided in standard units based on SAE specifications incorporated by reference in paragraph (h) of this section. Actual signals must be clearly identified separately from default value or limp home signals.

(3) For all OBD systems for which specific on-board evaluation tests are conducted (catalyst, oxygen sensor, etc.), the results of the most recent test performed by the vehicle, and the limits to which the system is compared must be available through the standardized data link connector per the appropriate standardized specifications as referenced in paragraph (h) of this section.

(4) Access to the data required to be made available under this section shall be unrestricted and shall not require any access codes or devices that are only available from the manufacturer.

(g) *Exceptions.* The OBD system is not required to evaluate systems or components during malfunction conditions if such evaluation would result in a risk to safety or failure of systems or components. Additionally, the OBD system is not required to evaluate systems or components during operation of a power take-off unit such as a dump bed, snow plow blade, or aerial bucket, etc.

(h) *Reference materials.* The OBD system shall provide for standardized access and conform with the following Society of Automotive Engineers (SAE) standards and/or the following International Standards Organization (ISO) standards. The following documents are incorporated by reference (see § 86.1):

(1) *SAE material.* Copies of these materials may be obtained from the Society of Automotive Engineers, Inc.,

400 Commonwealth Drive, Warrendale, PA 15096-0001.

(i) SAE J1850 "Class B Data Communication Network Interface," (July 1995) shall be used as the on-board to off-board communications protocol. All emission related messages sent to the scan tool over a J1850 data link shall use the Cyclic Redundancy Check and the three byte header, and shall not use inter-byte separation or checksums.

(ii) Basic diagnostic data (as specified in §§ 86.094-17(e) and (f)) shall be provided in the format and units in SAE J1979 E/E Diagnostic Test Modes," (July 1996).

(iii) Diagnostic trouble codes shall be consistent with SAE J2012 "Recommended Practices for Diagnostic Trouble Code Definitions," (July 1996).

(iv) The connection interface between the OBD system and test equipment and diagnostic tools shall meet the functional requirements of SAE J1962 "Diagnostic Connector," (January 1995).

(v) As an alternative to the above standards, heavy-duty engines may conform to the specifications of SAE J1939 "Recommended Practice for a Serial Control and Communications Vehicle Network."

(2) *ISO materials.* Copies of these materials may be obtained from the International Organization for Standardization, Case Postale 56, CH-1211 Geneva 20, Switzerland.

(i) ISO 9141-2 "Road vehicles—Diagnostic systems—Part 2: CARB requirements for interchange of digital information," (February 1994) may be used as an alternative to SAE J1850 as the on-board to off-board communications protocol.

(ii) ISO 14230-4 "Road vehicles—Diagnostic systems—KWP 2000 requirements for Emission-related systems" may also be used as an alternative to SAE J1850.

(i) *Deficiencies and Alternate Fueled Engines.* Upon application by the manufacturer, the Administrator may accept an OBD system as compliant even though specific requirements are not fully met. Such compliances without meeting specific requirements, or deficiencies, will be granted only if compliance would be infeasible or unreasonable considering such factors as, but not limited to: technical feasibility of the given monitor and lead time and production cycles including phase-in or phase-out of engines or vehicle designs and programmed upgrades of computers. Unmet requirements should not be carried over from the previous model year except where unreasonable hardware or software modifications would be necessary to correct the deficiency, and

the manufacturer has demonstrated an acceptable level of effort toward compliance as determined by the Administrator. Furthermore, EPA will not accept any deficiency requests that include the complete lack of a major diagnostic monitor ("major" diagnostic monitors being those for exhaust aftertreatment devices, oxygen sensor, engine misfire, evaporative leaks, and diesel EGR, if equipped), with the possible exception of the special provisions for alternate fueled engines. For alternate fueled heavy-duty engines (e.g. natural gas, liquefied petroleum gas, methanol, ethanol), beginning with the model year for which alternate fuel emission standards are applicable and extending through the 2006 model year, manufacturers may request the Administrator to waive specific monitoring requirements of this section for which monitoring may not be reliable with respect to the use of the alternate fuel. At a minimum, alternate fuel engines must be equipped with an OBD system meeting OBD requirements to the extent feasible as approved by the Administrator.

(j) *California OBDII Compliance Option.* For heavy-duty engines at or below 14,000 pounds GVWR, demonstration of compliance with California OBD II requirements (Title 13 California Code Sec. 1968.1), as modified pursuant to California Mail Out #97-24 (December 9, 1997), shall satisfy the requirements of this section, except that the exemption to the catalyst monitoring provisions of California Code Sec. 1968.1(b)(1.1.2) for diesel engines does not apply, and compliance with California Code Secs. 1968.1(b)(4.2.2), pertaining to 0.02 inch evaporative leak detection, and 1968.1(d), pertaining to tampering protection, are not required to satisfy the requirements of this section. Also, the deficiency fine provisions of California Code Secs. 1968.1(m)(6.1) and (6.2) do not apply.

(k) *Phase-in for Heavy-Duty Engines.* Manufacturers of heavy-duty engines must comply with the OBD requirements in this section according to the following phase-in schedule, based on the percentage of projected engine sales within each category:

**OBD COMPLIANCE PHASE-IN HEAVY-DUTY ENGINES**

[Intended for use in a heavy-duty vehicle weighing 14,000 pounds GVWR or less]

Model year	Phase-in based on projected sales
2004 MY .....	—40% compliance. —alternative fuel waivers available.
2005 MY .....	—60% compliance. —alternative fuel waivers available.
2006 MY .....	—80% compliance. —alternative fuel waivers available.
2007+ MY .....	—100% compliance.

17. Section 86.004-21 is amended by adding paragraphs (m) through (p), to read as follows:

**§ 86.004-21 Application for certification.**

\* \* \* \* \*

(m) For diesel heavy-duty engines, the manufacturer must provide the following additional information pertaining to the supplemental steady-state test conducted under § 86.1360-2004:

(1) Weighted average emissions data, calculated according to § 86.1360-2004(e)(5), for all pollutants for which an emission standard is established in § 86.004-11(a);

(2) Brake specific gaseous emission data for each of the 13 test points (identified under § 86.1360-2004(b)(1)) and the 3 EPA-selected test points (identified under § 86.1360-2004(b)(2));

(3) Concentrations and mass flow rates of all regulated gaseous emissions plus carbon dioxide;

(4) Exhaust smoke opacity ("k" value);

(5) Values of all emission-related engine control variables at each test point;

(6) Weighted average particulate matter;

(7) A statement that the test results correspond to the maximum NO<sub>x</sub> producing condition for a 30 second or longer averaging period reasonably expected to be encountered at each test point during normal engine operation and use. This statement corresponds to the test requirement under § 86.1360-2004(e)(3). The manufacturer also must provide a detailed description of all testing, engineering analyses, and other information which provides the basis for this statement;

(8) A statement that the engines will comply with the weighted average emissions standard and Maximum Allowable Emission Limits specified in § 86.004-11(a)(3) during all normal engine operation and use. The

manufacturer also must provide a detailed description of all testing, engineering analyses, and other information which provides the basis for this statement.

(n) The manufacturer must provide a statement in the application for certification that the diesel heavy-duty engine for which certification is being requested will comply with the applicable Not-To-Exceed Limits specified in § 86.004-11(a)(4) when operated under all conditions which may reasonably be expected to be encountered in normal vehicle operation and use. The manufacturer also must provide a detailed description of all testing, engineering analyses, and other information which provides the basis for this statement.

(o) The manufacturer must provide in each application for certification of a heavy-duty diesel engine emission test results from the Load Response Test conducted according to § 86.1380, including at a minimum test results conducted at each of the speeds identified in § 86.1380.

(p) Upon request from EPA, a manufacturer must provide to EPA hardware (including scan tools), passwords, and/or documentation necessary for EPA to read and interpret (in engineering units if applicable) any information broadcast by an engine's on-board computers and electronic control modules which relates in anyway to emission control devices and auxiliary emission control devices. Passwords include any information necessary to enable generic scan tools or personal computers access to proprietary emission related information broadcast by an engine's on-board computer, if such passwords exist. This requirement includes access by EPA to any proprietary code information which may be broadcast by an engine's on-board computer and electronic control modules. Information which is confidential business information must be marked as such. Engineering units refers to the ability to read and interpret information in commonly understood engineering units, for example, engine speed in revolutions per minute or per second, injection timing parameters such as start of injection in degree's before top-dead center, fueling rates in cubic centimeters per stroke, vehicle speed in milers per hour or per kilometer.

18. Section 86.004-30 is amended by revising paragraph (f), to read as follows:

**§ 86.004-30 Certification.**

\* \* \* \* \*

(f) For engine families required to have an OBD system, certification will not be granted if, for any test vehicle approved by the Administrator in consultation with the manufacturer, the malfunction indicator light does not illuminate under any of the following circumstances, unless the manufacturer can demonstrate that any identified OBD problems discovered during the Administrator's evaluation will be corrected on production vehicles.

(1)(i) *Otto-cycle*. A catalyst is replaced with a deteriorated or defective catalyst, or an electronic simulation of such, resulting in an increase of 1.5 times the NMHC+NO<sub>x</sub> standard or FEL above the NMHC+NO<sub>x</sub> emission level measured using a representative 4000 mile catalyst system.

(ii) *Diesel*. If monitored for emissions performance—a catalyst or particulate trap is replaced with a deteriorated or defective catalyst or trap, or an electronic simulation of such, resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC+NO<sub>x</sub> or PM. If not monitored for emissions performance—removal of the catalyst or particulate trap is not detected and identified.

(2)(i) *Otto-cycle*. An engine misfire condition is induced resulting in exhaust emissions exceeding 1.5 times the applicable standards or FEL for NMHC+NO<sub>x</sub> or CO.

(ii) *Diesel*. An engine misfire condition is induced and is not detected.

(3) If so equipped, any oxygen sensor is replaced with a deteriorated or defective oxygen sensor, or an electronic simulation of such, resulting in exhaust emissions exceeding 1.5 times the

applicable standard or FEL for NMHC+NO<sub>x</sub> or CO.

(4) If so equipped, a vapor leak is introduced in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice, or the evaporative purge air flow is blocked or otherwise eliminated from the complete evaporative emission control system.

(5) A malfunction condition is induced in any emission-related engine system or component, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard or FEL for NMHC+NO<sub>x</sub>, CO or PM.

(6) A malfunction condition is induced in an electronic emission-related engine system or component not otherwise described above that either provides input to or receives commands from the on-board computer resulting in a measurable impact on emissions.

20. Subpart B is amended by revising the heading of the subpart, to read as follows:

**Subpart B—Emission Regulations for 1977 and Later Model Year New Light-Duty Vehicles and New Light-Duty Trucks and New Otto-Cycle Complete Heavy-Duty Vehicles; Test Procedures**

21. Section 86.101 is amended by revising paragraphs (a) introductory text and (d), and by adding paragraph (e) to read as follows:

**§ 86.101 General applicability.**

(a) The provisions of this subpart are applicable to 1997 and later model year new light-duty vehicles and light duty trucks, and 2004 and later model year new Otto-cycle complete heavy-duty vehicles.

\* \* \* \* \*

(d) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle complete heavy-duty vehicles under the provisions of Subpart S of this part.

(e) References in this subpart to light-duty vehicles or light-duty trucks shall be deemed to apply to light-duty vehicles, light-duty trucks, or Otto-cycle complete heavy-duty vehicles as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle complete heavy-duty vehicles under the provisions of Subpart S of this part.

22. Section 86.129–94 is amended by revising paragraph (a) to read as follows:

**§ 86.129–94 Road load power, test weight, inertia weight class determination, and fuel temperature profile.**

\* \* \* \* \*

(a) Flywheels, electrical, or other means of simulating test weight as shown in the following table shall be used. If the equivalent test weight specified is not available on the dynamometer being used, the next higher equivalent test weight (not to exceed 250 pounds) available shall be used:

Test weight basis <sup>4,5</sup>	Equivalent test weight (pounds)	Inertia weight class (pounds)
<b>Road load power at 50 mi/hour—light-duty trucks<sup>1,2,3</sup></b>		
Up to 1062 .....	1,000	1,000
1063 to 1187 .....	1,125	1,000
1188 to 1312 .....	1,250	1,250
1313 to 1437 .....	1,375	1,250
1438 to 1562 .....	1,500	1,500
1563 to 1687 .....	1,625	1,500
1688 to 1812 .....	1,750	1,750
1813 to 1937 .....	1,875	1,750
1938 to 2062 .....	2,000	2,000
2063 to 2187 .....	2,125	2,000
2188 to 2312 .....	2,250	2,250
2313 to 2437 .....	2,375	2,250
2438 to 2562 .....	2,500	2,500
2563 to 2687 .....	2,625	2,500
2688 to 2812 .....	2,750	2,750
2813 to 2937 .....	2,875	2,750
2938 to 3062 .....	3,000	3,000
3063 to 3187 .....	3,125	3,000
3188 to 3312 .....	3,250	3,000
3313 to 3437 .....	3,375	3,500

Test weight basis <sup>4,5</sup>	Equivalent test weight (pounds)	Inertia weight class (pounds)
3438 to 3562	3,500	3,500
3563 to 3687	3,625	3,500
3688 to 3812	3,750	3,500
3813 to 3937	3,875	4,000
3938 to 4125	4,000	4,000
4126 to 4375	4,250	4,000
4376 to 4625	4,500	4,500
4626 to 4875	4,750	4,500
4876 to 5125	5,000	5,000
5126 to 5375	5,250	5,000
5376 to 5750	5,500	5,500
5751 to 6250	6,000	6,000
6251 to 6750	6,500	6,500
6751 to 7250	7,000	7,000
7251 to 7750	7,500	7,500
7751 to 8250	8,000	8,000
8251 to 8750	8,500	8,500
8751 to 9250	9,000	9,000
9251 to 9750	9,500	9,500
9751 to 10250	10,000	10,000
10251 to 10750	10,500	10,500
10751 to 11250	11,000	11,000
11251 to 11750	11,500	11,500
11751 to 12250	12,000	12,000
12251 to 12750	12,500	12,500
12751 to 13250	13,000	13,000
13251 to 13750	13,500	13,500
13751 to 14000	14,000	14,000

<sup>1</sup> For all light-duty trucks except vans, and for heavy-duty vehicles optionally certified as light-duty trucks, and for complete heavy-duty vehicles, the road load power (horsepower) at 50 mi/h shall be 0.58 times B (defined in footnote 3 of this table) rounded to the nearest 1/2 horsepower.

<sup>2</sup> For vans, the road load power at 50 mi/h (horsepower) shall be 0.50 times B (defined in footnote 3 of this table) rounded to the nearest 1/2 horsepower.

<sup>3</sup> B is the basic vehicle frontal area (square foot) plus the additional frontal area (square foot) of mirrors and optional equipment exceeding 0.1 ft<sup>2</sup> which are anticipated to be sold on more than 33 percent of the car line. Frontal area measurements shall be computed to the nearest 10<sup>th</sup> of a square foot using a method approved in advance by the Administrator.

<sup>4</sup> For model year 1994 and later heavy light-duty trucks not subject to the Tier 0 standards of § 86.094-9, test weight basis is as follows: for emissions tests, the basis shall be adjusted loaded vehicle weight, as defined in § 86.094-2; and for fuel economy tests, the basis shall be loaded vehicle weight, as defined in § 86.082-2, or, at the manufacturer's option, adjusted loaded vehicle weight as defined in § 86.094-2. For all other vehicles, test weight basis shall be loaded vehicle weight, as defined in § 86.082-2.

<sup>5</sup> Light-duty vehicles over 5,750 lb. loaded vehicle weight shall be tested at a 5,500 lb. equivalent test weight.

\* \* \* \* \*

**Subpart H—[Amended]**

23. Section 86.701-94 is revised to read as follows:

**§ 86.701-94 General applicability.**

(a) The provisions of this subpart apply to: 1994 and later model year Otto-cycle and diesel light-duty vehicles; 1994 and later model year Otto-cycle and diesel light-duty trucks; and 1994 and later model year Otto-cycle and diesel heavy-duty engines; and 2004 and later model year Otto-cycle complete heavy-duty vehicles. The provisions of subpart B of this part apply to this subpart.

(b) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle complete heavy-duty vehicles under the provisions of subpart S of this part.

**Subpart K—[Amended]**

24. Section 86.1001-84 is amended by revising paragraph (b), to read as follows:

**§ 86.1001-84 Applicability.**

\* \* \* \* \*

(b) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle complete heavy-duty vehicles under the provisions of subpart S of this part.

**Subpart L—[Amended]**

25. Section 86.1101-87 is revised to read as follows:

**§ 86.1101-87 Applicability.**

(a) The provisions of this subpart are applicable for 1987 and later model year gasoline-fueled and diesel heavy-duty engines and heavy-duty vehicles. These vehicles include light-duty trucks rated

in excess of 6,000 pounds gross vehicle weight.

(b) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty trucks and Otto-cycle complete heavy-duty vehicles under the provisions of subpart S of this part.

**Subpart N—[Amended]**

26. Section 86.1304-90 is revised to read as follows:

**§ 86.1304-90 Section numbering; construction.**

(a) *Section numbering.* The model year of initial applicability is indicated by the section number. The two digits following the hyphen designate the first model year for which a section is applicable. The section continues to apply to subsequent model years unless a later model year section is adopted.

**Example:** Section 86.18xx-01 applies to the 2001 and subsequent model years. If a

Sec. 86.18xx-03 is promulgated it would apply beginning with the 2003 model year; Sec. 86.18xx-01 would apply to model years 2001 through 2002.

(b) A section reference without a model year suffix refers to the section applicable for the appropriate model year.

27. A new § 86.1305-2004 is added to subpart N, to read as follows:

**§ 86.1305-2004 Introduction; structure of subpart.**

(a) This subpart describes the equipment required and the procedures

to follow in order to perform exhaust emissions test on Otto-cycle and diesel heavy duty engines. Subpart A of this part sets forth the emission standards and general testing requirements to comply with EPA certification procedures.

(b) This subpart contains five key sets of requirements, as follows: specifications and equipment needs (§§ 86.1306 through 86.1314); calibration methods and frequencies (§§ 86.1316 through 86.1326); test procedures (§§ 86.1327 through 86.1341

and §§ 86.1360 through 86.1380); calculation formulas (§§ 86.1342 and 86.1343); and data requirements (§ 86.1344).

29. A new § 86.1360-2004 is added to subpart N to read as follows:

**§ 86.1360-2004 Supplemental steady-state test; test cycle and procedures.**

(a) *Applicability.* This section applies to diesel heavy duty engines.

(b) *Test cycle.* (1) The following 13-mode cycle must be followed in dynamometer operation on the test engine:

Mode No.	Engine speed	Percent load	Weighting factor	Mode length (minutes)
1	Idle	.....	0.15	4
2	A	100	0.08	2
3	B	50	0.10	2
4	B	75	0.10	2
5	A	50	0.05	2
6	A	75	0.05	2
7	A	25	0.05	2
8	B	100	0.09	2
9	B	25	0.10	2
10	C	100	0.08	2
11	C	25	0.05	2
12	C	75	0.05	2
13	C	50	0.05	2

(2) In addition to the 13 test points identified in paragraph (b)(1) of this section, EPA may select, and require the manufacturer to conduct the test using, up to 3 additional test points within the control area (as defined in paragraph (d) of this section). EPA will notify the manufacturer of these supplemental test points in writing in a timely manner before the test.

(c) *Determining Engine Speeds.* (1) The engine speeds A, B and C, referenced in the table in paragraph (b)(1) of this section, and speeds D and E, referenced in § 86.1380, must be determined as follows:

- Speed A =  $n_{lo} + 25\% (n_{hi} - n_{lo})$
- Speed B =  $n_{lo} + 50\% (n_{hi} - n_{lo})$
- Speed C =  $n_{lo} + 75\% (n_{hi} - n_{lo})$
- Speed D =  $n_{lo} + 100\% (n_{hi} - n_{lo})$
- Speed E =  $n_{lo} + 15\% (n_{hi} - n_{lo})$

Where:

$n_{hi}$  = High speed as determined by calculating 70% of the maximum power. The highest engine speed where this power value occurs on the power curve is defined as  $n_{hi}$ .

$n_{lo}$  = Low speed as determined by calculating 50% of the maximum power. The lowest engine speed where this power value occurs on the power curve is defined as  $n_{lo}$ .

Maximum power = the maximum observed power calculated from the torque/speed ratios determined according to the engine mapping

procedures defined in § 86.1332. Power = (speed × torque)/5252, where speed is in revolutions per minute and torque is in foot-pounds.

(2) If the measured engine speeds A, B, and C are within 3 % of the engine speeds as declared by the manufacturer, the declared engine speeds shall be used for the emissions test. If the tolerance is exceeded for any of the engine speeds, the measured engine speeds shall be used for the emissions test.

(d) *Determining the control area.* The control area is the area between the engine speeds A and C, as defined in paragraph (c) of this section, and between 25 to 100 percent load.

(e) *Test requirements.* (1) *Engine warm-up.* Prior to beginning the test sequence, the engine must be warmed-up according to the procedures in § 86.1332-90(d)(3).

(2) *Test sequence.* The test must be performed in the order of the mode numbers in paragraph (b)(1) of this section. The EPA-selected test points identified under paragraph (b)(2) of this section must be performed immediately upon completion of mode 13. The engine must be operated for the prescribed time in each mode, completing engine speed and load changes in the first 20 seconds of each mode. The specified speed must be held to within ±50 rpm and the specified

torque must be held to within ±2 percent of the maximum torque at the test speed.

(3) The test must be conducted with all emission-related engine control variables in the highest brake-specific NO<sub>x</sub> emissions state which could be encountered for a 30 second or longer averaging period at the given test point.

(4) *Exhaust emissions measurements and calculations.* (i) Manufacturers must follow the exhaust emissions sample analysis procedures under § 86.1340, and the calculation formulas and procedures under § 86.1342, for the 13-mode cycle and the 3 EPA-selected test points.

(ii) Prior to starting the measurements for the EPA-selected test points, the engine must be conditioned at mode 13 for a period of three minutes.

(5) *Calculating the weighted average emissions.* For each regulated gaseous pollutant, the weighted average emissions must be calculated as follows:

$$A_{WA} = \sum_{i=1}^n [A_{WMi} \times WF_i]$$

Where:

$A_{WA}$  = Weighted average emissions for each regulated gaseous pollutant, in grams per brake horse-power hour.

$A_{WM}$  = Weighted mass emissions level, in grams per brake horse-power hour, as defined in § 86.1342.

$W_F$  = Weighting factor corresponding to each mode of the steady-state test cycle, as defined in paragraph (b)(1) of this section.

$i$  = The modes of the steady-state test cycle, as defined in paragraph (b)(1) of this section.

$n$  = 13, corresponding to the 13 modes of the steady-state test cycle, as

defined in paragraph (b)(1) of this section.

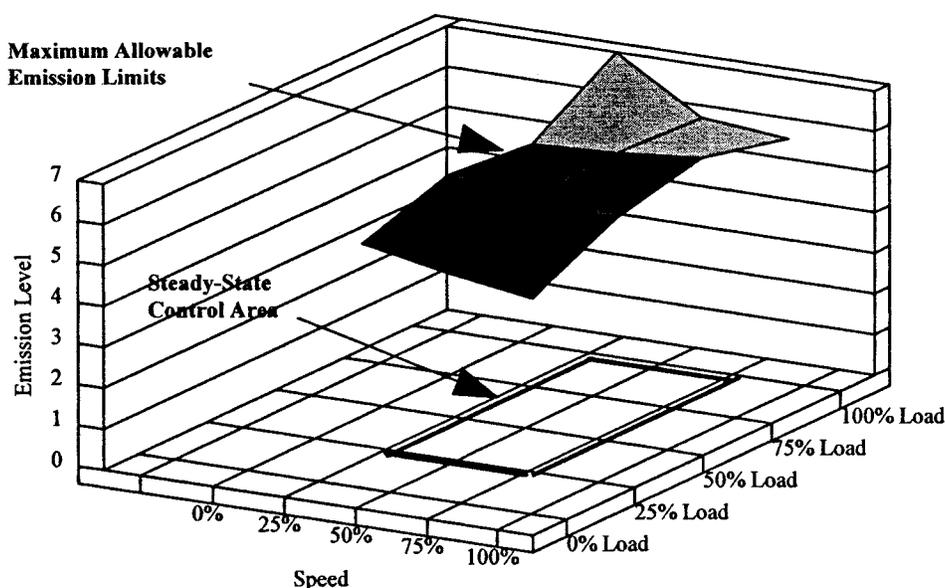
(f) *Maximum Allowable Emission Limits.* (1) For gaseous emissions, the 12 non-idle test point results and the four-point linear interpolation procedure specified in paragraph (g) of this section for intermediate conditions, shall define Maximum Allowable Emission Limits for purposes of § 86.004-11(a)(3). The

control area extends from the 25% to the 75% engine speeds, at engine loads of 25% to 100%, as defined in paragraph (d) of this section. Figure 1 of this paragraph (f)(1) depicts a sample Maximum Allowable Emission Limit curve, for illustration purposes only, as follows:

BILLING CODE 6560-50-P

**Figure 1**

**Maximum Allowable Emission Limits**  
Sample - For Illustration Only



BILLING CODE 6560-50-C

(2) If the weighted average emissions, calculated according to paragraph (e)(5) of this section, for any gaseous pollutant is lower than required by § 86.004-11(a)(3), each of the 13 test values for that pollutant shall first be multiplied by the ratio of the applicable emission standard (under § 86.004-11(a)(3)) to the weighted average emissions value, and then by 1.05 for interpolation allowance, before determining the Maximum Allowable Emission Limits under paragraph (f)(1) of this section.

(3) If the Maximum Allowable Emission Limit for any point, as calculated under paragraphs (f)(1) and (2) of this section, is greater than the applicable Not-to-Exceed limit (if within the Not-to-Exceed control area defined in § 86.1370-2004(b)), then the Maximum Allowable Emission Limit for

that point shall be defined as the applicable Not-to-Exceed limit.

(g) *Calculating intermediate test points.* (1) For the three test points selected by EPA under paragraph (b)(2) of this section, the emissions must be measured and calculated according to § 86.1342 and also determined by interpolation from the modes of the test cycle closest to the respective test point according to paragraph (g)(2) of this section. The measured values then must be compared to the interpolated values according to paragraph (g)(3) of this section.

(2) *Interpolating emission values from the test cycle.* The gaseous emissions for each regulated pollutant for each of the control points (Z) must be interpolated from the four closest modes of the test cycle that envelop the selected control point Z as shown in Figure 2 of this paragraph (g)(2).

(i) For these modes (R, S, T, U), the following definitions apply:

$$\text{Speed (R)} = \text{Speed (T)} = n_{RT}$$

$$\text{Speed (S)} = \text{Speed (U)} = n_{SU}$$

$$\text{Per cent load (R)} = \text{Per cent load (S)}$$

$$\text{Per cent load (T)} = \text{Per cent load (U)}$$

(ii) The gaseous emissions of the selected control point (Z) must be calculated as follows:

$$E_Z = E_{RS} + (E_{TU} - E_{RS}) * (M_Z - M_{RS}) / (M_{TU} - M_{RS})$$

$$E_{TU} = E_T + (E_U - E_T) * (n_Z - n_{RT}) / (n_{SU} - n_{RT})$$

$$E_{RS} = E_R + (E_S - E_R) * (n_Z - n_{RT}) / (n_{SU} - n_{RT})$$

$$M_{TU} = M_T + (M_U - M_T) * (n_Z - n_{RT}) / (n_{SU} - n_{RT})$$

$$(E) M_{RS} = M_R + (M_S - M_R) * (n_Z - n_{RT}) / (n_{SU} - n_{RT})$$

Where:

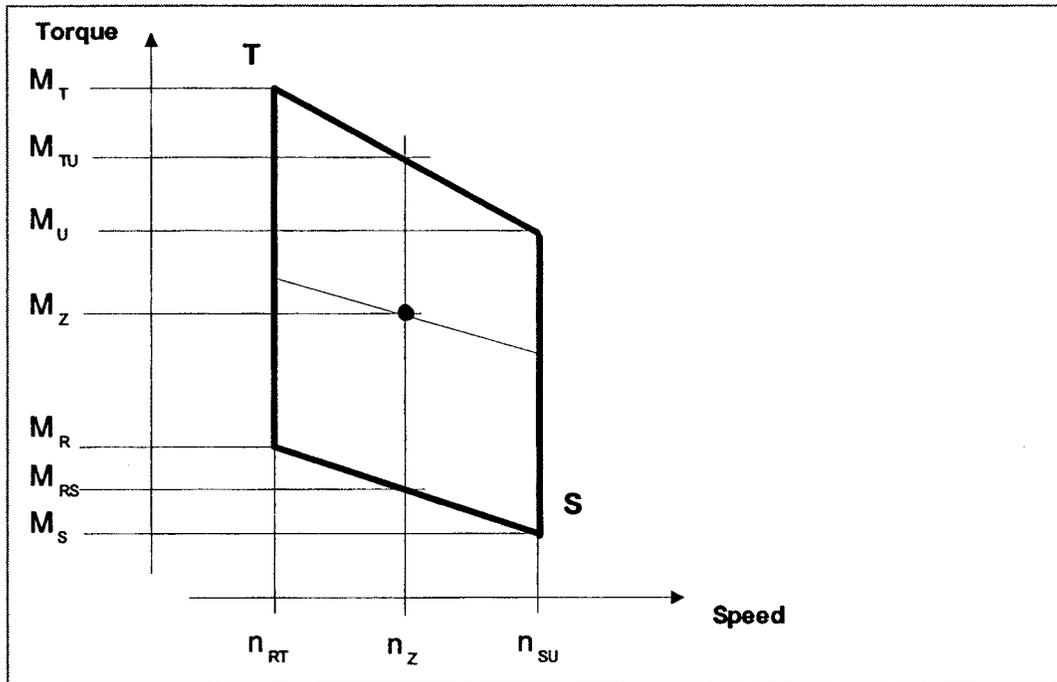
$E_R, E_S, E_T, E_U$  = for each regulated pollutant, specific gaseous emissions of the enveloping modes

calculated in accordance with § 86.1342.

$M_R$ ,  $M_S$ ,  $M_T$ ,  $M_U$  = engine torque of the enveloping modes.

(iii) Figure 2 follows:  
BILLING CODE 6560-50-P

**Figure 2**  
**Four-Point Linear Interpolation**



BILLING CODE 6560-50-C

(3) *Comparing calculated and interpolated emission values.* The measured specific gaseous emissions of the control point Z ( $X_Z$ ) must be compared to the interpolated value ( $E_Z$ ) as follows:

$$X_{\text{diff}} = 100 * (X_Z - E_Z) / E_Z$$

30. A new § 86.1361-2004 is added to subpart N, to read as follows:

**§ 86.1361-2004 Maximum allowable emission limits; compliance in actual operation.**

(a) *Applicability.* This section applies to diesel heavy-duty engines.

(b) *General.* Compliance with the Maximum Allowable Emission Limits under § 86.004-11(a)(3)(ii) may be determined under any conditions that may reasonably be expected to be encountered in normal vehicle operation and use. The engine may be tested in a vehicle in actual use or on a dynamometer, under steady state or transient conditions, and under varying ambient conditions. To determine compliance, test results within the control area, defined in § 86.1360-2004(d), shall be compared to the Maximum Allowable Emission Limits, as determined in § 86.1360-2004(f), for the same engine speed and load. The engine, when operated within the

control area, must comply with the Maximum Allowable Emission Limits.

(c) *Test conditions.* Where the test conditions identified in paragraph (b) of this section require departure from specific provisions of this subpart (e.g., sampling time), testing shall be conducted using good engineering practices. The manufacturer shall submit a detailed description of any departures from the specific testing provisions of this subpart and the justification for modifying the test procedures, along with any test results submitted to EPA.

(1) If EPA requires engine dynamometer testing by the manufacturer outside of FTP conditions, such testing may be done at the manufacturer's facility on existing equipment, and must be carried out only within the limits of operation of the manufacturer's available test equipment with regard to ambient temperature, humidity and altitude. EPA may conduct its own testing at any ambient temperature, humidity or altitude.

(2) When tested under transient conditions, emission values to be compared to the Maximum Allowable Emission Limits shall represent an average of at least 30 seconds.

(3)  $\text{NO}_x$  emissions shall be corrected for humidity to a standard level of 75 grains of water per pound of dry air. Outside the temperature range of 68-86 degrees F,  $\text{NO}_x$  and PM emissions shall be corrected to 68 degrees F if below 68 degrees F, or to 86 degrees F if above 86 degrees F. Where a manufacturer test requires such correction factors, the manufacturer must use good engineering judgement and generally accepted engineering practice to determine the appropriate correction factors, subject to EPA review.

31. A new § 86.1370-2004 is added to subpart N, to read as follows:

**§ 86.1370-2004 Not-To-Exceed test procedures.**

(a) *General.* The purpose of this test procedure is to measure in-use emissions of heavy-duty diesel engines while operating within a broad range of speed and load points (the Not-To-Exceed Control Area) and under conditions which can reasonably be expected to be encountered in normal vehicle operation and use. Emission results from this test procedure are to be compared to the Not-To-Exceed Limits specified in § 86.004-11 (a)(4).

(b) *Not-To-Exceed Control Area for diesel heavy-duty engines.* The Not-To-Exceed Control Area for diesel heavy-

duty engines consists of the following engine speed and load points:

(1) All operating speeds greater than the speed calculated using the following formula, where  $n_{hi}$  and  $n_{lo}$  are determined according to the provisions in § 86.1360(c):

$$n_{lo} + 0.15n_{hi}(n_{hi} - n_{lo})$$

(2) All engine load points greater than or equal to 30% or more of the maximum torque value produced by the engine.

(3) Notwithstanding the provisions of paragraphs (b)(1) and (b)(2) of this section, all operating speed and load points with brake specific fuel consumption (BSFC) values within 5% of the minimum BSFC value of the engine. The manufacturer may petition the Administrator at certification to exclude such points if the manufacturer can demonstrate that the engine is not expected to operate at such points in normal vehicle operation and use. Engines equipped with drivelines with multi-speed manual transmissions or automatic transmissions with a finite number of gears are not subject to the requirements of this paragraph (b)(3).

(4) Notwithstanding the provisions of paragraphs (b)(1) through (b)(3) of this section, speed and load points below 30% of the maximum power value produced by the engine shall be excluded from the Not-To-Exceed Control Area for all emissions.

(5) For particulate matter only, speed and load points determined by one of the following methods, whichever is applicable, shall be excluded from the Not-To-Exceed Control Area. B and C engine speeds shall be determined according to the provisions of § 86.1350 (c):

(i) If the C speed is below 2400 rpm, the speed and load points to the right of or below the line formed by connecting the following two points:

(A) 30% of maximum torque or 30% of maximum power, whichever is greater, at the B speed;

(B) 70% of maximum power at 100% speed ( $n_{hi}$ );

(ii) If the C speed is above 2400 rpm, the speed and load points to the right of the line formed by connecting the two points in paragraphs (b)(5)(i)(A) and (B) of this section and below the line formed by connecting the two points in paragraphs (b)(5)(ii)(B) and (C) of this section:

(A) 30% of maximum torque or 30% of maximum power, whichever is greater, at the B speed;

(B) 50% of maximum power at 2400 rpm;

(C) 70% of maximum power at 100% speed ( $n_{hi}$ ).

(c) [Reserved]

(d) *Not-To-Exceed Control Area*

*Limits.* (1) When operated within the Not-To-Exceed Control Area defined in paragraph (b) of this section, diesel engine emissions shall not exceed the applicable Not-To-Exceed Limits specified in § 86.004–11 (a)(4) when averaged over any period of time greater than or equal to 30 seconds.

(2) [Reserved]

(e) *Ambient Corrections.* The measured data shall be corrected based on the ambient conditions under which it was taken. The temperature and humidity correction factors will be based on good engineering practice.

(1)  $NO_x$  emissions shall be corrected for humidity to a standard humidity level of 50 grains (7.14 g/kg) if the humidity of the intake air was below 50 grains, or to 75 grains (10.71 g/kg) if above 75 grains.

(2)  $NO_x$  and PM emissions shall be corrected for temperature to a temperature of 55 degrees F (12.8 degrees C) for intake air temperatures below 55 degrees F or to 95 degrees F (35.0 degrees C) if the intake air is above 95 degrees F.

(3) No temperature or humidity correction factors shall be used within the ranges of 50–75 grains or 55–95 degrees F.

33. A new § 86.1372–2004 is added to subpart N, to read as follows:

**§ 86.1372–2004 Measuring smoke emissions.**

This section contains the measurement techniques to be used for determining compliance with the filter smoke limit or opacity limits in § 86.004–11(b)(1)(iv).

(a) For steady-state or transient smoke testing using full-flow opacimeters, equipment meeting the requirements of subpart I of this part or ISO/DIS–11614 “Reciprocating internal combustion compression-ignition engines—Apparatus for measurement of the opacity and for determination of the light absorption coefficient of exhaust gas” is required. This document is incorporated by reference (see § 86.1).

(1) All full-flow opacimeter measurements shall be reported as the equivalent percent opacity for a five inch effective optical path length using the Beer-Lambert relationship.

(2) Zero and full-scale (100 percent opacity) span shall be adjusted prior to testing.

(3) Post test zero and full scale span checks shall be performed. For valid tests, zero and span drift between the pre-test and post-test checks shall be less than two percent of full-scale.

(4) Opacimeter calibration and linearity checks shall be performed

using manufacturer's recommendations or good engineering practice.

(b) For steady-state testing using a filter-type smokemeter, equipment meeting the requirements of ISO/FDIS–10054 “Internal combustion compression-ignition engines—Measurement apparatus for smoke from engines operating under steady-state conditions—Filter-type smokemeter” is recommended.

(1) All filter-type smokemeter results shall be reported as a filter smoke number (FSN) that is similar to the Bosch smoke number (BSN) scale.

(2) Filter-type smokemeters shall be calibrated every 90 days using manufacturer's recommended practices or good engineering practice.

(c) For steady-state testing using a partial-flow opacimeter, equipment meeting the requirements of ISO–8178–3 and ISO/DIS–11614 is recommended.

(1) All partial-flow opacimeter measurements shall be reported as the equivalent percent opacity for a five inch effective optical path length using the Beer-Lambert relationship.

(2) Zero and full scale (100 percent opacity) span shall be adjusted prior to testing.

(3) Post-test zero and full scale span checks shall be performed. For valid tests, zero and span drift between the pre-test and post-test checks shall be less than two percent of full scale.

(4) Opacimeter calibration and linearity checks shall be performed using manufacturer's recommendations or good engineering practice.

(d) Replicate smoke tests may be run to improve confidence in a single test or stabilization. If replicate tests are run, three additional valid tests shall be run, and the final reported test results must be the average of all the valid tests.

(e) A minimum of thirty seconds sampling time shall be used for average transient smoke measurements.

34. A new § 86.1380–2004 is added to subpart N, to read as follows:

**§ 86.1380–2004 Load response test.**

(a) *General.* The purpose of this test procedure is to measure the gaseous and particulate emissions from an engine as it is suddenly loaded, with its fueling lever, at a given engine operating speed. This procedure shall be conducted on a dynamometer.

(b) *Test sequence.* (1) At each of the following speeds, the engine fuel control shall be moved suddenly to the full fuel position and held at that point for a minimum of two seconds, while the specified speed is maintained constant:

(i) The lowest speed in the Not-To-Exceed Control area determined according to the provisions of § 86.1370;

- (ii) Speed A as determined in § 86.1360(c);
- (iii) Speed B as determined in § 86.1360(c);
- (iv) Speed C as determined in § 86.1360(c);
- (v) Speed D as determined in § 86.1360(c);
- (vi) Speed E as determined in § 86.1360(c).

(2) This test sequence may be repeated if it is necessary to obtain sufficient sample amount for analysis.

(3) The exhaust emissions sample shall be analyzed according to the procedures under § 86.1340, and the exhaust emission shall be calculated according to the procedures under § 86.1342.

**Subpart P—[Amended]**

35. Section 86.1501–94 is revised to read as follows:

**§ 86.1501–94 Scope; applicability.**

(a) This subpart contains gaseous emission idle test procedures for light-duty trucks and heavy-duty engines for which idle CO standards apply. It applies to 1994 and later model years. The idle test procedures are optionally applicable to 1994 through 1996 model year natural gas-fueled and liquified petroleum gas-fueled light-duty trucks and heavy-duty engines.

(b) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty trucks and Otto-cycle complete heavy-duty vehicles under the provisions of Subpart S of this part.

**Subpart Q—[Amended]**

36. Section 86.1601 is amended by revising paragraph (d), to read as follows:

**§ 86.1601 General applicability.**

\* \* \* \* \*

(d) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle complete heavy-duty vehicles under the provisions of Subpart S of this part.

37. Subpart S is amended by revising the subpart heading to read as follows:

**Subpart S—General Compliance Provisions for Control of Air Pollution From New and In-Use Light-Duty Vehicles, Light-Duty Trucks, and Complete Otto-Cycle Heavy-Duty Vehicles**

38. Section 86.1801–01 is amended by revising paragraphs (a), (b), (c), and the last sentence of paragraph (d), to read as follows:

**§ 86.1801–01 Applicability.**

(a) *Applicability.* The provisions of this subpart apply to 2001 and later model year new Otto-cycle and diesel-cycle light-duty vehicles, 2001 and later model year new Otto-cycle and diesel-cycle light-duty trucks, and 2004 and later model year Otto-cycle complete heavy-duty vehicles. These provisions also apply to 2001 model year and later new incomplete light-duty trucks below 8,500 Gross Vehicle Weight Rating, and to 2000 and later model year Otto-cycle complete heavy-duty vehicles participating in the early banking provisions of the averaging, trading, and banking program under the provisions of § 86.1817–04(n). In cases where a provision applies only to a certain vehicle group based on its model year, vehicle class, motor fuel, engine type, or other distinguishing characteristics, the limited applicability is cited in the appropriate section of this subpart.

(b) *Aftermarket conversions.* The provisions of this subpart apply to aftermarket conversions of all model year Otto-cycle and diesel-cycle light-duty vehicles, light-duty trucks, and complete Otto-cycle heavy-duty vehicles as defined in 40 CFR 85.502.

(c) *Optional applicability.* (1) A manufacturer may request to certify any Otto-cycle heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less in accordance with the light-duty truck provisions through the 2003 model year. Heavy-duty engine or heavy-duty vehicle provisions of subpart A of this part do not apply to such a vehicle.

(2) Beginning with the 2001 model year, a manufacturer may request to certify any incomplete Otto-cycle heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less in accordance with the provisions for complete heavy-duty vehicles. Heavy-duty engine or heavy-duty vehicle provisions of subpart A of this part do not apply to such a vehicle.

(3) A manufacturer may optionally use the provisions of this subpart in lieu of the provisions of subpart A beginning with the 2000 model year for light-duty vehicles and light-duty trucks. Manufacturers choosing this option

must comply with all provisions of this subpart. Manufacturers may elect this provision for either all or a portion of their product line.

(4) Upon preapproval by the Administrator, a manufacturer may optionally certify an aftermarket conversion of a complete heavy-duty vehicle greater than 10,000 pounds Gross Vehicle Weight Rating and of 14,000 pounds Gross Vehicle Weight Rating or less under the heavy-duty engine or heavy-duty vehicle provisions of subpart A of this part. Such preapproval will be granted only upon demonstration that chassis-based certification would be infeasible or unreasonable for the manufacturer to perform.

(5) A manufacturer may optionally certify an aftermarket conversion of a complete heavy-duty vehicle greater than 10,000 pounds Gross Vehicle Weight Rating and of 14,000 pounds Gross Vehicle Weight Rating or less under the heavy-duty engine or heavy-duty vehicle provisions of subpart A of this part without advance approval from the Administrator if the vehicle was originally certified to the heavy-duty engine or heavy-duty vehicle provisions of subpart A of this part.

(d) \* \* \* The small volume manufacturer's light-duty vehicle, light-duty truck and complete heavy-duty vehicle certification procedures are described in § 86.1838–01.

\* \* \* \* \*

39. Section 86.1803–01 is amended by revising the definitions for "Car line," "Curb idle," "Durability useful life," and "Van," and by adding new definitions in alphabetical order, to read as follows:

**§ 86.1803–01 Definitions.**

\* \* \* \* \*

*Averaging for chassis-bases heavy-duty vehicles* means the exchange of NO<sub>x</sub> emission credits among test groups within a given manufacturer's product line.

*Averaging set* means a subcategory of complete heavy-duty vehicles within which test groups can average and trade emission credits with one another.

\* \* \* \* \*

*Banking* means the retention of NO<sub>x</sub> emission credits for complete heavy-duty vehicles by the manufacturer generating the emission credits, for use in future model year certification programs as permitted by regulation.

\* \* \* \* \*

*Car line* means a name denoting a group of vehicles within a make or car division which has a degree of commonality in construction (e.g., body,

chassis). Car line does not consider any level of decor or opulence and is not generally distinguished by characteristics as roofline, number of doors, seats, or windows except for station wagons or light-duty trucks. Station wagons, light-duty trucks, and complete heavy-duty vehicles are considered to be different car lines than passenger cars.

\* \* \* \* \*

*Complete heavy-duty vehicle* means any Otto-cycle heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less that is not an incomplete heavy-duty vehicle.

\* \* \* \* \*

*Curb-idle* means, for manual transmission code motor vehicles, the engine speed with the transmission in neutral or with the clutch disengaged and with the air conditioning system, if present, turned off. For automatic transmission code motor vehicles, *curb-idle* means the engine speed with the automatic transmission in the park position (or neutral position if there is no park position), and with the air conditioning system, if present, turned off.

\* \* \* \* \*

*Durability useful life* means the highest useful life mileage out of the set of all useful life mileages that apply to a given vehicle. The durability useful life determines the duration of service accumulation on a durability data vehicle. The determination of durability useful life shall reflect any light-duty truck or complete heavy-duty vehicle alternative useful life periods approved by the Administrator under § 86.1805-01(c). The determination of durability useful life shall exclude any standard and related useful life mileage for which the manufacturer has obtained a waiver of emission data submission requirements under § 86.1829-01.

\* \* \* \* \*

*Emission credits* mean the amount of emission reductions or exceedances, by a complete heavy-duty vehicle test group, below or above the emission standard, respectively. Emission credits below the standard are considered as "positive credits," while emission credits above the standard are considered as "negative credits." In addition, "projected credits" refer to emission credits based on the projected U.S. production volume of the test group. "Reserved credits" are emission credits generated within a model year waiting to be reported to EPA at the end of the model year. "Actual credits" refer to emission credits based on actual U.S. production volumes as contained in the end-of-year reports submitted to EPA.

Some or all of these credits may be revoked if EPA review of the end of year reports or any subsequent audit actions uncover problems or errors.

\* \* \* \* \*

*Family emission limit (FEL)* means an emission level declared by the manufacturer which serves in lieu of an emission standard for certification purposes in the averaging, trading and banking program. FELs must be expressed to the same number of decimal places as the applicable emission standard.

\* \* \* \* \*

*Incomplete heavy-duty vehicle* means any heavy-duty vehicle which does not have the primary load carrying device or container attached.

\* \* \* \* \*

*Non-methane organic gas* means the sum of oxygenated and non-oxygenated hydrocarbons contained in a gas sample.

\* \* \* \* \*

*Trading* means the exchange of complete heavy-duty vehicle NO<sub>x</sub> emission credits between manufacturers.

\* \* \* \* \*

*Van* means a light-duty truck or complete heavy-duty vehicle having an integral enclosure, fully enclosing the driver compartment and load carrying device, and having no body sections protruding more than 30 inches ahead of the leading edge of the windshield.

\* \* \* \* \*

40. A new section 86.1803-04 is added to subpart S, to read as follows:

**§ 86.1803-04 Definitions.**

The definitions of § 86.1803-01 continue to apply to this subpart. The definitions listed in this section apply to this subpart beginning with the 2004 model year.

*Heavy-duty vehicle* means any motor vehicle rated at more than 8,500 pounds GVWR or that has a vehicle curb weight of more than 6,000 pounds or that has a basic vehicle frontal area in excess of 45 square feet, excluding vehicles with a GVWR greater than 8,500 pounds and less than or equal to 10,000 pounds that are defined as light-duty trucks.

*Light-duty truck* means:

(1) Any motor vehicle rated at 8,500 pounds GVWR or less which has a curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less, which is:

- (i) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle; or
- (ii) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or

(iii) Available with special features enabling off-street or off-highway operation and use; or

(2) Any motor vehicle rated at greater than 8,500 pounds GVWR and less than or equal to 10,000 pounds GVWR which is a complete vehicle designed primarily for transportation of persons and has a capacity of not more than 12 persons.

41. Section 86.1804-01 is amended by adding "FEL," "NMOG," and "HDV" as new abbreviations in alphabetical order, to read as follows:

**§ 86.1804-01 Acronyms and abbreviations.**

\* \* \* \* \*

FEL—Family Emission Limit

\* \* \* \* \*

HDV—Heavy-duty vehicle

\* \* \* \* \*

NMOG—Non-Methane Organic Gas

\* \* \* \* \*

42. Section 86.1805-01 is amended by revising paragraph (a) and the first and last sentences of paragraph (c), and adding paragraph (b)(3), to read as follows:

**§ 86.1805-01 Useful life.**

(a) For light-duty vehicles and light-duty trucks, intermediate useful life is a period of use of 5 years or 50,000 miles, which ever occurs first.

(b) \* \* \*

(3) For complete heavy-duty vehicles, the full useful life is a period of use of 11 years or 120,000 miles, which ever occurs first.

(c) Manufacturers may petition the Administrator to provide alternative useful life periods for light-duty trucks or complete heavy-duty vehicles when they believe that the useful life periods are significantly unrepresentative for one or more test groups (either too long or too short). \* \* \* For light-duty trucks, alternative useful life periods will be granted only for THC, THCE, and idle CO requirements.

43. A new § 86.1806-04 is added to subpart S, to read as follows:

**§ 86.1806-04 On-board diagnostics.**

(a) *General.* All light-duty vehicles, light-duty trucks, and heavy-duty vehicles intended for use in a heavy-duty vehicle weighing 14,000 pounds GVWR or less must be equipped with an on-board diagnostic (OBD) system capable of monitoring all emission-related powertrain systems or components during the applicable useful life. Heavy-duty vehicles intended for use in a heavy-duty vehicle weighing 14,000 pounds GVWR or less must meet the OBD requirements of this section according to the phase-in schedule in paragraph (l) of this section. All monitored systems and components

must be evaluated periodically, but no less frequently than once per applicable certification test cycle as defined in paragraphs (a) and (d) of Appendix I of this part.

(b) *Malfunction descriptions.* The OBD system must detect and identify malfunctions in all monitored emission-related powertrain systems or components according to the following malfunction definitions as measured and calculated in accordance with test procedures set forth in subpart B of this part (chassis-based test procedures), excluding those test procedures defined as "Supplemental" test procedures in § 86.004-2 and codified in §§ 86.158, 86.159, and 86.160.

(1) *Catalysts and particulate traps.* (i) *Otto-cycle.* Catalyst deterioration or malfunction before it results in an increase in NMHC emissions 1.5 times the NMHC standard or FEL, as compared to the NMHC emission level measured using a representative 4000 mile catalyst system.

(ii) *Diesel.* If equipped, catalyst or particulate trap deterioration or malfunction before it results in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NO<sub>x</sub> or PM. This monitoring need not be done if the manufacturer can demonstrate that deterioration or malfunction of the system will not result in exceedance of the threshold; however, the presence of the catalyst or particulate trap must still be monitored.

(2) *Engine misfire.* (i) *Otto-cycle.* Engine misfire resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC, CO or NO<sub>x</sub>; and any misfire capable of damaging the catalytic converter.

(ii) *Diesel.* Lack of cylinder combustion must be detected.

(3) *Oxygen sensors.* If equipped, oxygen sensor deterioration or malfunction resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC, CO or NO<sub>x</sub>.

(4) *Evaporative leaks.* If equipped, any vapor leak in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice; an absence of evaporative purge air flow from the complete evaporative emission control system. On vehicles with fuel tank capacity greater than 25 gallons, the Administrator may, following a request from the manufacturer, revise the size of the orifice to the smallest orifice feasible, based on test data, if the most reliable monitoring method available cannot reliably detect a system

leak equal to a 0.040 inch diameter orifice.

(5) *Other emission control systems.* Any deterioration or malfunction occurring in a powertrain system or component directly intended to control emissions, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard or FEL for NMHC, CO, NO<sub>x</sub>, or diesel PM. For vehicles equipped with a secondary air system, a functional check, as described in paragraph (b)(6) of this section, may satisfy the requirements of this paragraph provided the manufacturer can demonstrate that deterioration of the flow distribution system is unlikely. This demonstration is subject to Administrator approval and, if the demonstration and associated functional check are approved, the diagnostic system must indicate a malfunction when some degree of secondary airflow is not detectable in the exhaust system during the check. For vehicles equipped with positive crankcase ventilation (PCV), monitoring of the PCV system is not necessary provided the manufacturer can demonstrate to the Administrator's satisfaction that the PCV system is unlikely to fail.

(6) *Other emission-related powertrain components.* Any other deterioration or malfunction occurring in an electronic emission-related powertrain system or component not otherwise described above that either provides input to or receives commands from the on-board computer and has a measurable impact on emissions; monitoring of components required by this paragraph must be satisfied by employing electrical circuit continuity checks and rationality checks for computer input components (input values within manufacturer specified ranges based on other available operating parameters), and functionality checks for computer output components (proper functional response to computer commands) except that the Administrator may waive such a rationality or functionality check where the manufacturer has demonstrated infeasibility. Malfunctions are defined as a failure of the system or component to meet the electrical circuit continuity checks or the rationality or functionality checks.

(7) *Performance of OBD functions.* Oxygen sensor or any other component deterioration or malfunction which renders that sensor or component incapable of performing its function as

part of the OBD system must be detected and identified on vehicles so equipped.

(c) *Malfunction indicator light (MIL).* The OBD system must incorporate a malfunction indicator light (MIL) readily visible to the vehicle operator. When illuminated, the MIL must display "Check Engine," "Service Engine Soon," a universally recognizable engine symbol, or a similar phrase or symbol approved by the Administrator. A vehicle should not be equipped with more than one general purpose malfunction indicator light for emission-related problems; separate specific purpose warning lights (e.g. brake system, fasten seat belt, oil pressure, etc.) are permitted. The use of red for the OBD-related malfunction indicator light is prohibited.

(d) *MIL illumination.* The MIL must illuminate and remain illuminated when any of the conditions specified in paragraph (b) of this section are detected and verified, or whenever the engine control enters a default or secondary mode of operation considered abnormal for the given engine operating conditions. The MIL must blink once per second under any period of operation during which engine misfire is occurring and catalyst damage is imminent. If such misfire is detected again during the following driving cycle (i.e., operation consisting of, at a minimum, engine start-up and engine shut-off) or the next driving cycle in which similar conditions are encountered, the MIL must maintain a steady illumination when the misfire is not occurring and then remain illuminated until the MIL extinguishing criteria of this section are satisfied. The MIL must also illuminate when the vehicle's ignition is in the "key-on" position before engine starting or cranking and extinguish after engine starting if no malfunction has previously been detected. If a fuel system or engine misfire malfunction has previously been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which similar conditions are encountered and no new malfunctions have been detected. Similar conditions are defined as engine speed within 375 rpm, engine load within 20 percent, and engine warm-up status equivalent to that under which the malfunction was first detected. If any malfunction other than a fuel system or engine misfire malfunction has been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which the monitoring system responsible for illuminating the MIL

functions without detecting the malfunction, and no new malfunctions have been detected. Upon Administrator approval, statistical MIL illumination protocols may be employed, provided they result in comparable timeliness in detecting a malfunction and evaluating system performance, i.e., three to six driving cycles would be considered acceptable.

(e) *Storing of computer codes.* The OBD system shall record and store in computer memory diagnostic trouble codes and diagnostic readiness codes indicating the status of the emission control system. These codes shall be available through the standardized data link connector per specifications as referenced in paragraph (h) of this section.

(1) A diagnostic trouble code must be stored for any detected and verified malfunction causing MIL illumination. The stored diagnostic trouble code must identify the malfunctioning system or component as uniquely as possible. At the manufacturer's discretion, a diagnostic trouble code may be stored for conditions not causing MIL illumination. Regardless, a separate code should be stored indicating the expected MIL illumination status (i.e., MIL commanded "ON," MIL commanded "OFF").

(2) For a single misfiring cylinder, the diagnostic trouble code(s) must uniquely identify the cylinder, unless the manufacturer submits data and/or engineering evaluations which adequately demonstrate that the misfiring cylinder cannot be reliably identified under certain operating conditions. For diesel vehicles only, the specific cylinder for which combustion cannot be detected need not be identified if new hardware would be required to do so. The diagnostic trouble code must identify multiple misfiring cylinder conditions; under multiple misfire conditions, the misfiring cylinders need not be uniquely identified if a distinct multiple misfire diagnostic trouble code is stored.

(3) The diagnostic system may erase a diagnostic trouble code if the same code is not re-registered in at least 40 engine warm-up cycles, and the malfunction indicator light is not illuminated for that code.

(4) Separate status codes, or readiness codes, must be stored in computer memory to identify correctly functioning emission control systems and those emission control systems which require further vehicle operation to complete proper diagnostic evaluation. A readiness code need not be stored for those monitors that can be considered continuously operating

monitors (e.g., misfire monitor, fuel system monitor, etc.). Readiness codes should never be set to "not ready" status upon key-on or key-off; intentional setting of readiness codes to "not ready" status via service procedures must apply to all such codes, rather than applying to individual codes. Subject to Administrator approval, if monitoring is disabled for a multiple number of driving cycles (i.e., more than one) due to the continued presence of extreme operating conditions (e.g., ambient temperatures below 40°F, or altitudes above 8000 feet), readiness for the subject monitoring system may be set to "ready" status without monitoring having been completed. Administrator approval shall be based on the conditions for monitoring system disablement, and the number of driving cycles specified without completion of monitoring before readiness is indicated.

(f) *Available diagnostic data.* (1) Upon determination of the first malfunction of any component or system, "freeze frame" engine conditions present at the time must be stored in computer memory. Should a subsequent fuel system or misfire malfunction occur, any previously stored freeze frame conditions must be replaced by the fuel system or misfire conditions (whichever occurs first). Stored engine conditions must include, but are not limited to: engine speed, open or closed loop operation, fuel system commands, coolant temperature, calculated load value, fuel pressure, vehicle speed, air flow rate, and intake manifold pressure if the information needed to determine these conditions is available to the computer. For freeze frame storage, the manufacturer must include the most appropriate set of conditions to facilitate effective repairs. If the diagnostic trouble code causing the conditions to be stored is erased in accordance with paragraph (d) of this section, the stored engine conditions may also be erased.

(2) The following data in addition to the required freeze frame information must be made available on demand through the serial port on the standardized data link connector, if the information is available to the on-board computer or can be determined using information available to the on-board computer: Diagnostic trouble codes, engine coolant temperature, fuel control system status (closed loop, open loop, other), fuel trim, ignition timing advance, intake air temperature, manifold air pressure, air flow rate, engine RPM, throttle position sensor output value, secondary air status (upstream, downstream, or atmosphere),

calculated load value, vehicle speed, and fuel pressure. The signals must be provided in standard units based on SAE specifications incorporated by reference in paragraph (h) of this section. Actual signals must be clearly identified separately from default value or limp home signals.

(3) For all OBD systems for which specific on-board evaluation tests are conducted (catalyst, oxygen sensor, etc.), the results of the most recent test performed by the vehicle, and the limits to which the system is compared must be available through the standardized data link connector per the appropriate standardized specifications as referenced in paragraph (h) of this section.

(4) Access to the data required to be made available under this section shall be unrestricted and shall not require any access codes or devices that are only available from the manufacturer.

(g) *Exceptions.* The OBD system is not required to evaluate systems or components during malfunction conditions if such evaluation would result in a risk to safety or failure of systems or components. Additionally, the OBD system is not required to evaluate systems or components during operation of a power take-off unit such as a dump bed, snow plow blade, or aerial bucket, etc.

(h) *Reference materials.* The OBD system shall provide for standardized access and conform with the following Society of Automotive Engineers (SAE) standards and/or the following International Standards Organization (ISO) standards. The following documents are incorporated by reference (see § 86.1):

(1) *SAE material.* Copies of these materials may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001.

(i) SAE J1850 "Class B Data Communication Network Interface," (July 1995) shall be used as the on-board to off-board communications protocol. All emission related messages sent to the scan tool over a J1850 data link shall use the Cyclic Redundancy Check and the three byte header, and shall not use inter-byte separation or checksums.

(ii) Basic diagnostic data (as specified in §§ 86.094-17(e) and (f)) shall be provided in the format and units in SAE J1979 E/E Diagnostic Test Modes," (July 1996).

(iii) Diagnostic trouble codes shall be consistent with SAE J2012 "Recommended Practices for Diagnostic Trouble Code Definitions," (July 1996).

(iv) The connection interface between the OBD system and test equipment and

diagnostic tools shall meet the functional requirements of SAE J1962 "Diagnostic Connector," (January 1995).

(v) As an alternative to the above standards, heavy-duty vehicles may conform to the specifications of SAE J1939 "Recommended Practice for a Serial Control and Communications Vehicle Network."

(2) *ISO materials.* Copies of these materials may be obtained from the International Organization for Standardization, Case Postale 56, CH-1211 Geneva 20, Switzerland.

(i) ISO 9141-2 "Road vehicles—Diagnostic systems—Part 2: CARB requirements for interchange of digital information," (February 1994) may be used as an alternative to SAE J1850 as the on-board to off-board communications protocol.

(ii) ISO 14230-4 "Road vehicles—Diagnostic systems—KWP 2000 requirements for Emission-related systems" may also be used as an alternative to SAE J1850.

(i) *Deficiencies and alternate fueled vehicles.* Upon application by the manufacturer, the Administrator may accept an OBD system as compliant even though specific requirements are not fully met. Such compliances without meeting specific requirements, or deficiencies, will be granted only if compliance would be infeasible or unreasonable considering such factors as, but not limited to: technical feasibility of the given monitor and lead time and production cycles including phase-in or phase-out of engines or vehicle designs and programmed upgrades of computers. Unmet requirements should not be carried over from the previous model year except where unreasonable hardware or software modifications would be necessary to correct the deficiency, and the manufacturer has demonstrated an acceptable level of effort toward compliance as determined by the Administrator. Furthermore, EPA will not accept any deficiency requests that include the complete lack of a major diagnostic monitor ("major" diagnostic monitors being those for exhaust aftertreatment devices, oxygen sensor, engine misfire, evaporative leaks, and diesel EGR, if equipped), with the possible exception of the special provisions for alternate fueled vehicles. For alternate fueled vehicles (e.g. natural gas, liquefied petroleum gas, methanol, ethanol), beginning with the

model year for which alternate fuel emission standards are applicable and extending through the 2004 model year, manufacturers may request the Administrator to waive specific monitoring requirements of this section for which monitoring may not be reliable with respect to the use of the alternate fuel; manufacturers may request this alternate fuel waiver for heavy-duty vehicles through the 2006 model year. At a minimum, alternate fuel vehicles must be equipped with an OBD system meeting OBD requirements to the extent feasible as approved by the Administrator.

(j) *California OBDII Compliance Option.* For light-duty vehicles, light-duty trucks, and heavy-duty vehicles at or below 14,000 pounds GVWR, demonstration of compliance with California OBD II requirements (Title 13 California Code Sec. 1968.1), as modified pursuant to California Mail Out #97-24 (December 9, 1997), shall satisfy the requirements of this section, except that the exemption to the catalyst monitoring provisions of California Code Sec. 1968.1(b)(1.1.2) for diesel vehicles does not apply, and compliance with California Code Secs. 1968.1(b)(4.2.2), pertaining to 0.02 inch evaporative leak detection, and 1968.1(d), pertaining to tampering protection, are not required to satisfy the requirements of this section. Also, the deficiency fine provisions of California Code Sec. 1968.1(m)(6.1) and (6.2) do not apply.

(k) *Certification.* For test groups required to have an OBD system, certification will not be granted if, for any test vehicle approved by the Administrator in consultation with the manufacturer, the malfunction indicator light does not illuminate under any of the following circumstances, unless the manufacturer can demonstrate that any identified OBD problems discovered during the Administrator's evaluation will be corrected on production vehicles.

(1)(i) *Otto-cycle.* A catalyst is replaced with a deteriorated or defective catalyst, or an electronic simulation of such, resulting in an increase of 1.5 times the NMHC standard or FEL above the NMHC emission level measured using a representative 4000 mile catalyst system.

(ii) *Diesel.* If monitored for emissions performance—a catalyst or particulate trap is replaced with a deteriorated or

defective catalyst or trap, or an electronic simulation of such, resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NO<sub>x</sub> or PM. If not monitored for emissions performance—removal of the catalyst or particulate trap is not detected and identified.

(2)(i) *Otto-cycle.* An engine misfire condition is induced resulting in exhaust emissions exceeding 1.5 times the applicable standards or FEL for NMHC, CO or NO<sub>x</sub>.

(ii) *Diesel.* An engine misfire condition is induced and is not detected.

(3) If so equipped, any oxygen sensor is replaced with a deteriorated or defective oxygen sensor, or an electronic simulation of such, resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC, CO or NO<sub>x</sub>.

(4) If so equipped, a vapor leak is introduced in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice, or the evaporative purge air flow is blocked or otherwise eliminated from the complete evaporative emission control system.

(5) A malfunction condition is induced in any emission-related powertrain system or component, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard or FEL for NMHC, CO, NO<sub>x</sub> or PM.

(6) A malfunction condition is induced in an electronic emission-related powertrain system or component not otherwise described in this paragraph (k) that either provides input to or receives commands from the on-board computer resulting in a measurable impact on emissions.

(l) *Phase-in for Heavy-Duty Vehicles.* Manufacturers of heavy-duty vehicles intended for use in a heavy-duty vehicle weighing 14,000 pounds GVWR or less must comply with the OBD requirements in this section according to the following phase-in schedule, based on the percentage of projected vehicle sales within each category:

OBD COMPLIANCE PHASE-IN HEAVY-DUTY VEHICLES

[intended for use in a heavy-duty vehicle weighing 14,000 pounds GVWR or less]

Model year	Phase-in based on projected sales
2004 MY .....	—40% compliance
2005 MY .....	—60% compliance—alternative fuel waivers available
2006 MY .....	—80% compliance—alternative fuel waivers available
2007+ MY .....	—100% compliance—alternative fuel waivers available

44. Section 86.1807-01 is amended by adding paragraph (c)(3), and revising paragraphs (a)(3)(v), (d), (e), and (f), to read as follows:

**§ 86.1807-01 Vehicle labeling.**

(a) \* \* \*

(3) \* \* \*

(v) An unconditional statement of compliance with the appropriate model year U.S. EPA regulations which apply to light-duty vehicles, light-duty trucks, or complete heavy-duty vehicles;

\* \* \* \* \*

(c) \* \* \*

(3) The manufacturer of any complete heavy-duty vehicle subject to the emission standards of this subpart shall add the information required by paragraph (c)(1)(iii) of this section to the label required by paragraph (a) of this section. The required information will be set forth in the manner prescribed by paragraph (c)(1)(iii) of this section.

(d)(1) Incomplete light-duty trucks shall have the following prominent statement printed on the label required by paragraph (a)(3)(v) of this section: "This vehicle conforms to U.S. EPA regulations applicable to 20xx Model year Light-Duty Trucks under the special provisions of § 86.1801-01(c)(1) when it does not exceed XXX pounds in curb weight, XXX pounds in gross vehicle weight rating, and XXX square feet in frontal area."

(2) Incomplete heavy-duty vehicles optionally certified in accordance with the provisions for complete heavy-duty vehicles under the special provisions of § 86.1801-01(c)(2) shall have the following prominent statement printed on the label required by paragraph (a)(3)(v) of this section: "This vehicle conforms to U.S. EPA regulations applicable to 20xx Model year Complete Heavy-Duty Vehicles under the special provisions of § 86.1801-01(c)(2) when it does not exceed XXX pounds in curb weight, XXX pounds in gross vehicle weight rating, and XXX square feet in frontal area."

(e) The manufacturer of any incomplete light-duty vehicle, light-duty truck, or heavy-duty vehicle shall notify the purchaser of such vehicle of any curb weight, frontal area, or gross vehicle weight rating limitations

affecting the emission certificate applicable to that vehicle. This notification shall be transmitted in a manner consistent with National Highway Safety Administration safety notification requirements published in 49 CFR part 568.

(f) All light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles shall comply with SAE Recommended Practices J1877 "Recommended Practice for Bar-Coded Vehicle Identification Number Label," (July 1994), and J1892 "Recommended Practice for Bar-Coded Vehicle Emission Configuration Label (May 1988). SAE J1877 and J1892 are incorporated by reference (see § 86.1).

\* \* \* \* \*

45. Section 86.1809-01 is amended by revising paragraph (a), to read as follows:

**§ 86.1809-01 Prohibition of defeat devices.**

(a) No new light-duty vehicle, light-duty truck, or complete heavy-duty vehicle shall be equipped with a defeat device.

\* \* \* \* \*

46. A new § 86.1810-04 is added to subpart S, to read as follows:

**§ 86.1810-04 General standards; increase in emissions; unsafe conditions; waivers.**

This section applies to model year 2004 and later light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles fueled by gasoline, diesel, methanol, natural gas and liquefied petroleum gas fuels. Multi-fueled vehicles (including dual-fueled and flexible-fueled vehicles) shall comply with all requirements established for each consumed fuel (or blend of fuels in the case of flexible fueled vehicles). The standards of this subpart apply to both certification and in-use vehicles unless otherwise indicated. Section 86.1810-04 includes text that specifies requirements that differ from § 86.1810-01. Where a paragraph in § 86.1810-04 is identical and applicable to § 86.1810-01, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.1810-01."

(a) through (c) [Reserved] For guidance see § 86.1810-01.

(d) *Crankcase emissions prohibited.* No crankcase emissions shall be discharged into the ambient atmosphere from any 2004 and later model year light-duty vehicle, light-duty truck, or complete heavy-duty vehicle.

(e) *On-board diagnostics.* All light-duty vehicles, light-duty trucks and complete heavy-duty vehicles must have an on-board diagnostic system as described in § 86.1806-04.

(f) through (i) [Reserved] For guidance see § 86.1810-01.

(j) *Evaporative emissions general provisions.* (1) The evaporative standards in §§ 86.1811-01(d), 86.1812-01(d), 86.1813-01(d), 86.1814-04(d), 86.1815-04(d) and 86.1816-04(d) apply equally to certification and in-use vehicles and trucks. The spitback standard also applies to newly assembled vehicles.

(2) For certification testing only, manufacturers may conduct testing to quantify a level of nonfuel background emissions for an individual test vehicle. Such a demonstration must include a description of the source(s) of emissions and an estimated decay rate. The demonstrated level of nonfuel background emissions may be subtracted from evaporative emission test results from certification vehicles if approved in advance by the Administrator.

(3) All fuel vapor generated in a gasoline-or methanol-fueled light-duty vehicle, light-duty truck, or complete heavy-duty vehicle during in-use operation shall be routed exclusively to the evaporative control system (e.g., either canister or engine purge.) The only exception to this requirement shall be for emergencies.

(k) *Refueling emissions general provisions.* (1) *Implementation schedules.* Table S04-5 of this section gives the minimum percentage of a manufacturer's sales of the applicable model year's gasoline- and methanol-fueled Otto-cycle and petroleum-fueled and methanol-fueled diesel-cycle heavy light-duty trucks and complete heavy-duty vehicles which shall be tested under the applicable procedures in subpart B of this part, and shall not exceed the standards described in §§ 86.1813-04(e), 86.1814-04(e), and

86.1816-04(e). Vehicles waived from the emission standards under the provisions of paragraphs (m) and (n) of this section shall not be counted in the calculation of the percentage of compliance. Either manufacturer sales or actual production intended for sale in the United States may be used to determine combined volume, at the manufacturers option. Table S04-5 follows:

TABLE S04-5—HEAVY LIGHT-DUTY TRUCKS AND COMPLETE HEAVY-DUTY VEHICLES

Model year	Percentage
2004 .....	40
2005 .....	80
2006 .....	100

(2) *Determining sales percentages.* Sales percentages for the purposes of determining compliance with the applicable refueling emission standards for heavy light-duty trucks and complete heavy-duty vehicles shall be based on total actual U.S. sales of heavy light-duty trucks and complete heavy-duty vehicles of the applicable model year by a manufacturer to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale.

(3) *Refueling receptacle requirements.* Refueling receptacles on natural gas-fueled light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles shall comply with the receptacle provisions of the ANSI/AGA NGV1-1994 standard (as incorporated by reference in § 86.1(b)(3)). This requirement is subject to the phase-in schedules in Tables S01-3 and S01-4 in § 86.1810-01 (k)(1), and Table S04-5 in paragraph (k)(1) of this section.

(l) *Fuel dispensing spitback testing waiver.* (1) Vehicles certified to the refueling emission standards set forth in §§ 86.1811-01(e), 86.1812-01(e), 86.1813-01(e), 86.1814-04(e), 86.1815-04(e), and 86.1816-04(e) are not required to demonstrate compliance with the fuel dispensing spitback standard contained in that section provided that:

(i) The manufacturer certifies that the vehicle inherently meets the fuel dispensing spitback standard as part of compliance with the refueling emission standard; and

(ii) This certification is provided in writing and applies to the full useful life of the vehicle.

(2) EPA retains the authority to require testing to enforce compliance and to prevent noncompliance with the fuel dispensing spitback standard.

(m) *Inherently low refueling emission testing waiver.*

(1) Vehicles using fuels/fuel systems inherently low in refueling emissions are not required to conduct testing to demonstrate compliance with the refueling emission standards set forth in §§ 86.1811-01(e), 86.1812-01(e), 86.1813-01(e), 86.1814-04(e), and 86.1815-04(e), provided that:

(i) This provision is only available for petroleum diesel fuel. It is only available if the Reid Vapor Pressure of in-use diesel fuel is equal to or less than 1 psi (7 kPa) and for diesel vehicles whose fuel tank temperatures do not exceed 130 deg.F (54 deg. C); and

(ii) To certify using this provision the manufacturer must attest to the following evaluation: "Due to the low vapor pressure of diesel fuel and the vehicle tank temperatures, hydrocarbon vapor concentrations are low and the vehicle meets the 0.20 grams/gallon refueling emission standard without a control system."

(2) The certification required in paragraph (m)(1)(ii) of this section must be provided in writing and must apply for the full useful life of the vehicle.

(3) EPA reserves the authority to require testing to enforce compliance and to prevent noncompliance with the refueling emission standard.

(n) *Fixed liquid level gauge waiver.* Liquefied petroleum gas-fueled vehicles which contain fixed liquid level gauges or other gauges or valves which can be opened to release fuel or fuel vapor during refueling, and which are being tested for refueling emissions, are not required to be tested with such gauges or valves open, as outlined in § 86.157-98(d)(2), provided the manufacturer can demonstrate, to the satisfaction of the Administrator, that such gauges or valves would not be opened during refueling in-use due to inaccessibility or other design features that would prevent or make it very unlikely that such gauges or valves could be opened.

47. Section 86.1811-01 is amended by adding paragraph (h), to read as follows:

**§ 86.1811-01 Emission standards for light-duty vehicles.**

\* \* \* \* \*

(g) Manufacturers may request to group light-duty vehicles into the same test group as vehicles subject to more stringent standards, so long as those light-duty vehicles meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and (d)(4).

48. Section 86.1812-01 is amended by adding paragraph (h), to read as follows:

**§ 86.1812-01 Emission standards for light-duty trucks 1.**

\* \* \* \* \*

(h) Manufacturers may request to group light-duty truck 1's into the same test group as vehicles subject to more stringent standards, so long as those light-duty truck 1's meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and(d)(4).

49. Section 86.1813-01 is amended by adding paragraph (h), to read as follows:

**§ 86.1813-01 Emission standards for light-duty trucks 2.**

\* \* \* \* \*

(h) Manufacturers may request to group light-duty truck 2's into the same test group as vehicles subject to more stringent standards, so long as those light-duty truck 2's meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and (d)(4).

50. Section 86.1814-01 is amended by adding paragraph (h), to read as follows:

**§ 86.1814-01 Emission standards for light-duty trucks 3.**

\* \* \* \* \*

(h) Manufacturers may request to group light-duty truck 3's into the same test group as vehicles subject to more stringent standards, so long as those light-duty truck 3's meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and (d)(4).

51. Section 86.1814-02 is amended by adding paragraph (h), to read as follows:

**§ 86.1814-02 Emission standards for light-duty trucks 3.**

\* \* \* \* \*

(h) Manufacturers may request to group light-duty truck 3's into the same test group as vehicles subject to more stringent standards, so long as those light-duty truck 3's meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and (d)(4).

52. Section 86.1815-01 is amended by adding paragraph (h), to read as follows:

**§ 86.1815-01 Emission standards for light-duty trucks 4.**

\* \* \* \* \*

(h) Manufacturers may request to group light-duty truck 4's into the same test group as vehicles subject to more stringent standards, so long as those light-duty truck 4's meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and (d)(4).

53. Section 86.1815-02 is amended by adding paragraph (h), to read as follows:

**§ 86.1815-02 Emission standards for light-duty trucks 4.**

\* \* \* \* \*

(h) Manufacturers may request to group light-duty truck 4's into the same test group as vehicles subject to more stringent standards, so long as those light-duty truck 4's meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and (d)(4).

54. A new section 86.1816-04 is added to subpart S, to read as follows:

**§ 86.1816-04 Emission standards for complete heavy-duty vehicles**

This section applies to 2004 and later model year complete heavy-duty vehicles fueled by gasoline, methanol, natural gas and liquefied petroleum gas fuels except as noted. This section also applies to 2000 and later model year complete heavy duty vehicles participating in the early banking provisions of the averaging, trading and banking program as specified in § 86.1817-04(n). Multi-fueled vehicles shall comply with all requirements established for each consumed fuel. For methanol fueled vehicles, references in this section to hydrocarbons or total hydrocarbons shall mean total hydrocarbon equivalents and references to non-methane hydrocarbons shall mean non-methane hydrocarbon equivalents.

(a) *Exhaust emission standards.* (1) Exhaust emissions from 2004 and later model year complete heavy-duty vehicles at and above 8,500 pounds Gross Vehicle Weight Rating but equal to or less than 10,000 Gross Vehicle Weight Rating pounds shall not exceed the following standards at full useful life:

(i) [Reserved]

(ii) *Non-methane organic gas.* 0.280 grams per mile; this requirement may be satisfied by measurement of non-methane hydrocarbons or total hydrocarbons, at the manufacturer's option.

(iii) *Carbon monoxide.* 7.3 grams per mile.

(iv) *Oxides of nitrogen.* 0.9 grams per mile.

(v) [Reserved]

(2) Exhaust emissions from 2004 and later model year complete heavy-duty vehicles above 10,000 pounds Gross Vehicle Weight Rating but less than 14,000 pounds Gross Vehicle Weight Rating shall not exceed the following standards at full useful life:

(i) [Reserved]

(ii) *Non-methane organic gas.* 0.330 grams per mile; this requirement may be satisfied by measurement of non-methane hydrocarbons or total

hydrocarbons, at the manufacturer's option.

(iii) *Carbon monoxide.* 8.1 grams per mile.

(iv) *Oxides of nitrogen.* 1.0 grams per mile.

(v) [Reserved]

(b) [Reserved]

(c) [Reserved]

(d) *Evaporative emissions.*

Evaporative hydrocarbon emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, and methanol-fueled complete heavy-duty vehicles shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(1) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 3.0 grams per test.

(2) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 3.5 grams per test.

(3) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(4) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(e) *Refueling emissions.* (1) Refueling emissions from complete heavy-duty vehicles equal to or less than 10,000 pounds Gross Vehicle Weight Rating shall be phased in, in accordance with the schedule in Table S04-5 in § 1810-04 not to exceed the following emission standards:

(i) For gasoline-fueled and methanol-fueled vehicles: 0.20 grams hydrocarbon per gallon (0.053 gram per liter) of fuel dispensed.

(ii) For liquefied petroleum gas-fueled vehicles: 0.15 grams hydrocarbon per gallon (0.04 gram per liter) of fuel dispensed.

(2) The provisions of § 86.1816-04(e) do not apply to incomplete heavy-duty vehicles optionally certified to complete heavy duty vehicle standards under the provisions of § 86.1801-01(c)(2).

(f) [Reserved]

(g) *Idle exhaust emission standards, complete heavy-duty vehicles.* Exhaust emissions of carbon monoxide from 2004 and later model year gasoline, methanol, natural gas- and liquefied petroleum gas-fueled complete heavy-duty vehicles shall not exceed 0.50 percent of exhaust gas flow at curb idle for a useful life of 11 years or 120,000 miles, whichever occurs first.

(h) Manufacturers may request to group complete heavy-duty vehicles into the same test group as vehicles subject to more stringent standards, so long as those complete heavy-duty vehicles meet the most stringent

standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and (d)(4).

55. A new section 86.1817-04 is added to subpart S, to read as follows:

**§ 86.1817-04 Complete heavy-duty vehicle averaging, trading, and banking program.**

(a)(1) Complete heavy-duty vehicles eligible for the NO<sub>x</sub> averaging, trading and banking program are described in the applicable emission standards section of this subpart. All heavy-duty vehicles which include an engine labeled for use in clean-fuel vehicles as specified in 40 CFR part 88 are not eligible for this program. Participation in this averaging, trading, and banking program is voluntary.

(2)(i) Test groups with a family emission limit (FEL) as defined in § 86.1803-01 exceeding the applicable standard shall obtain emission credits as defined in § 86.1803-01 in a mass amount sufficient to address the shortfall. Credits may be obtained from averaging, trading, or banking, as defined in § 86.1803-01 within the averaging set restrictions described in paragraph (d) of this section.

(ii) Test groups with an FEL below the applicable standard will have emission credits available to average, trade, bank or a combination thereof. Credits may not be used for averaging or trading to offset emissions that exceed an FEL. Credits may not be used to remedy an in-use nonconformity determined by a Selective Enforcement Audit or by recall testing. However, credits may be used to allow subsequent production of vehicles for the test group in question if the manufacturer elects to recertify to a higher FEL.

(b) Participation in the NO<sub>x</sub> averaging, trading, and banking program shall be done as follows:

(1) During certification, the manufacturer shall:

(i) Declare its intent to include specific test groups in the averaging, trading and banking program.

(ii) Declare an FEL for each test group participating in the program.

(A) The FEL must be to the same level of significant digits as the emission standard (one-hundredth of a gram per mile for NO<sub>x</sub> emissions).

(B) In no case may the FEL exceed the upper limit prescribed in the section concerning the applicable complete heavy-duty vehicle chassis-based NO<sub>x</sub> emission standard.

(iii) Calculate the projected NO<sub>x</sub> emission credits (positive or negative) as defined in § 86.1803-01 based on quarterly production projections for each participating test group, using the applicable equation in paragraph (c) of

this section and the applicable factors for the specific test group.

(iv)(A) Determine and state the source of the needed credits according to quarterly projected production for test groups requiring credits for certification.

(B) State where the quarterly projected credits will be applied for test groups generating credits.

(C) Emission credits as defined in § 86.1803-01 may be obtained from or applied to only test groups within the same averaging set as defined in § 86.1803-01. Emission credits available for averaging, trading, or banking, may be applied exclusively to a given test group, or designated as reserved credits as defined in § 86.1803-01.

(2) Based on this information, each manufacturer's certification application must demonstrate:

(i) That at the end of model year production, each test group has a net emissions credit balance of zero or more using the methodology in paragraph (c) of this section with any credits obtained from averaging, trading or banking.

(ii) The source of the credits to be used to comply with the emission standard if the FEL exceeds the standard, or where credits will be applied if the FEL is less than the emission standard. In cases where credits are being obtained, each test group involved must state specifically the source (manufacturer/test group) of the credits being used. In cases where credits are being generated/supplied, each test group involved must state specifically the designated use (manufacturer/test group or reserved) of the credits involved. All such reports shall include all credits involved in averaging, trading or banking.

(3) During the model year, manufacturers must:

(i) Monitor projected versus actual production to be certain that compliance with the emission standards is achieved at the end of the model year.

(ii) Provide the end-of-year reports required under paragraph (i) of this section.

(iii) For manufacturers participating in emission credit trading, maintain the quarterly records required under paragraph (l) of this section.

(4) Projected credits based on information supplied in the certification application may be used to obtain a certificate of conformity. However, any such credits may be revoked based on review of end-of-model year reports, follow-up audits, and any other compliance measures deemed appropriate by the Administrator.

(5) Compliance under averaging, banking, and trading will be determined at the end of the model year. Test

groups without an adequate amount of NO<sub>x</sub> emission credits will violate the conditions of the certificate of conformity. The certificates of conformity may be voided ab initio for test groups exceeding the emission standard.

(6) If EPA or the manufacturer determines that a reporting error occurred on an end-of-year report previously submitted to EPA under this section, the manufacturer's credits and credit calculations will be recalculated. Erroneous positive credits will be void. Erroneous negative balances may be adjusted by EPA for retroactive use.

(i) If EPA review of a manufacturer's end-of-year report indicates a credit shortfall, the manufacturer will be permitted to purchase the necessary credits to bring the credit balance for that test group to zero, at the ratio of 1.2 credits purchased for every credit needed to bring the balance to zero. If sufficient credits are not available to bring the credit balance for the test group in question to zero, EPA may void the certificate for that test group ab initio.

(ii) If within 180 days of receipt of the manufacturer's end-of-year report, EPA review determines a reporting error in the manufacturer's favor (*i.e.* resulting in a positive credit balance) or if the manufacturer discovers such an error within 180 days of EPA receipt of the end-of-year report, the credits will be restored for use by the manufacturer.

(c) For each participating test group, NO<sub>x</sub> emission credits (positive or negative) are to be calculated according to one of the following equations and rounded, in accordance with ASTM E29-93a, to the nearest one-tenth of a Megagram (MG). Consistent units are to be used throughout the equation.

(1) For determining credit need for all test groups and credit availability for test groups generating credits for averaging only:

$$\text{Emission credits} = (\text{Std} - \text{FEL}) \times (\text{UL}) \times (\text{Production}) \times (10^{-6})$$

(2) For determining credit availability for test groups generating credits for trading or banking:

$$\text{Emission credits} = (\text{Std} - \text{FEL}) \times (\text{UL}) \times (\text{Production}) \times (10^{-6}) \times (\text{Discount})$$

(3) For purposes of the equations in paragraphs (c)(1) and (c)(2) of this section:

Std=the current and applicable complete heavy-duty vehicle NO<sub>x</sub> emission standard in grams per mile or grams per kilometer for model year 2004 and later vehicles. Std=0.9 grams per mile for model year 2001 through 2003 heavy-duty

vehicles at and above 8,500 pounds Gross Vehicle Weight Rating but equal to or less than 10,000 Gross Vehicle Weight Rating pounds and 1.0 grams per mile for heavy-duty vehicles above 10,000 pounds Gross Vehicle Weight Rating but less than 14,000 pounds Gross Vehicle Weight Rating.

FEL=the NO<sub>x</sub> family emission limit for the test group in grams per mile or grams per kilometer.

UL=the useful life, or alternative life as described in paragraph (c) of § 86.1805-01, for the given test group in miles or kilometers.

Production=the number of vehicles produced for U.S. sales within the given test group during the model year. Quarterly production projections are used for initial certification. Actual production is used for end-of-year compliance determination.

Discount=a one-time discount applied to all credits to be banked or traded within the model year generated. Except as otherwise allowed in paragraph (m) of this section, the discount applied here is 0.9. Banked credits traded in a subsequent model year will not be subject to an additional discount. Banked credits used in a subsequent model year's averaging program will not have the discount restored.

(d) *Averaging sets.* The averaging and trading of NO<sub>x</sub> emission credits will be allowed between all test groups of complete heavy-duty vehicle excluding those vehicles produced for sale in California. Averaging, banking, and trading are not applicable to vehicles sold in California.

(e) *Banking of NO<sub>x</sub> emission credits.*

(1) *Credit deposits.* (i) NO<sub>x</sub> emission credits may be banked from test groups produced in any model year.

(ii) Manufacturers may bank credits only after the end of the model year and after actual credits have been reported to EPA in the end-of-year report. During the model year and before submittal of the end-of-year report, credits originally designated in the certification process for banking will be considered reserved and may be redesignated for trading or averaging.

(2) *Credit withdrawals.* (i) NO<sub>x</sub> credits generated in 2004 and later model years do not expire.

(ii) Manufacturers withdrawing banked emission credits shall indicate so during certification and in their credit reports, as described in paragraph (i) of this section.

(3) *Use of banked emission credits.* The use of banked credits shall be

within the averaging set and geographic restrictions described in paragraph (d) of this section, and only for the following purposes:

(i) Banked credits may be used in averaging, or in trading, or in any combination thereof, during the certification period. Credits declared for banking from the previous model year but not reported to EPA may also be used. However, if EPA finds that the reported credits can not be proven, they will be revoked and unavailable for use.

(ii) Banked credits may not be used for averaging and trading to offset emissions that exceed an FEL. Banked credits may not be used to remedy an in-use nonconformity determined by a Selective Enforcement Audit or by recall testing. However, banked credits may be used for subsequent production of the test group if the manufacturer elects to recertify to a higher FEL.

(f) In the event of a negative credit balance in a trading situation, both the buyer and the seller would be liable.

(g) Certification fuel used for credit generation must be of a type that is both available in use and expected to be used by the vehicle purchaser. Therefore, upon request by the Administrator, the vehicle manufacturer must provide information acceptable to the Administrator that the designated fuel is readily available commercially and would be used in customer service.

(h) *Credit apportionment.* At the manufacturers option, credits generated from complete heavy-duty vehicles under the provisions described in this section may be sold to or otherwise provided to the another party for use in programs other than the averaging, trading and banking program described in this section.

(1) The manufacturer shall pre-identify two emission levels per test group for the purposes of credit apportionment. One emission level shall be the FEL and the other shall be the level of the standard that the test group is required to certify to under § 86.1816-04. For each test group, the manufacturer may report vehicle sales in two categories, "ABT-only credits" and "nonmanufacturer-owned credits".

(i) For vehicle sales reported as "ABT-only credits", the credits generated must be used solely in the averaging, trading and banking program described in this section.

(ii) The vehicle manufacturer may declare a portion of vehicle sales "nonmanufacturer-owned credits" and this portion of the credits generated between the standard and the FEL, based on the calculation in paragraph (c)(1) of this section, would belong to the vehicle purchaser. The manufacturer

may not generate any credits for the vehicle sales reported as "nonmanufacturer-owned credits" for this averaging, trading and banking program. Vehicles reported as "nonmanufacturer-owned credits" shall comply with the FEL and the requirements of this averaging, trading and banking program in all other respects.

(2) Only manufacturer-owned credits reported as "ABT-only credits" shall be used in the averaging, trading, and banking provisions described in this section.

(3) Credits shall not be double-counted. Credits used in this averaging, trading and banking program may not be provided to a vehicle purchaser for use in another program.

(4) Manufacturers shall determine and state the number of vehicles sold as "ABT-only credits" and "nonmanufacturer-owned credits" in the end-of-model year reports required under paragraph (i) of this section.

(i) Manufacturers participating in the emissions averaging, trading and banking program, shall submit for each participating test group the items listed in paragraphs (i)(1) through (3) of this section.

(1) *Application for certification.* (i) The application for certification will include a statement that the vehicles for which certification is requested will not, to the best of the manufacturer's belief, when included in the averaging, trading and banking program, cause the applicable NO<sub>x</sub> emissions standard to be exceeded.

(ii) The application for certification will also include identification of the section of this subpart under which the test group is participating in the averaging, trading and banking program (e.g., § 86.1817-04), the type (NO<sub>x</sub>), and the projected number of credits generated/needed for this test group, the applicable averaging set, the projected U.S. production volumes (excluding vehicles produced for sale in California), by quarter, and the values required to calculate credits as given in the applicable averaging, trading and banking section. Manufacturers shall also submit how and where credit surpluses are to be dispersed and how and through what means credit deficits are to be met, as explained in the applicable averaging, trading and banking section. The application must project that each test group will be in compliance with the applicable emission standards based on the vehicle mass emissions and credits from averaging, trading and banking.

(2) [Reserved].

(3) *End-of-year report.* The manufacturer shall submit end-of-year reports for each test group participating in the averaging, trading and banking program, as described in paragraphs (i)(3)(i) through (iv) of this section.

(i) These reports shall be submitted within 90 days of the end of the model year to: Director, Engine Programs and Compliance Division (6405J), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

(ii) These reports shall indicate the test group, the averaging set, the actual U.S. production volume (excluding vehicles produced for sale in California), the values required to calculate credits as given in the applicable averaging, trading and banking section, and the resulting type and number of credits generated/required. Manufacturers shall also submit how and where credit surpluses were dispersed (or are to be banked) and how and through what means credit deficits were met. Copies of contracts related to credit trading must also be included or supplied by the broker if applicable. The report shall also include a calculation of credit balances to show that net mass emissions balances are within those allowed by the emission standards (equal to or greater than a zero credit balance). Any credit discount factor described in the applicable averaging, trading and banking section must be included as required.

(iii) The production counts for end-of-year reports shall be based on the location of the first point of retail sale (e.g., customer, dealer, secondary manufacturer) by the manufacturer.

(iv) Errors discovered by EPA or the manufacturer in the end-of-year report, including changes in the production counts, may be corrected up to 180 days subsequent to submission of the end-of-year report. Errors discovered by EPA after 180 days shall be corrected if credits are reduced. Errors in the manufacturer's favor will not be corrected if discovered after the 180 day correction period allowed.

(j) Failure by a manufacturer participating in the averaging, trading and banking program to submit any quarterly or end-of-year report (as applicable) in the specified time for all vehicles that are part of an averaging set is a violation of section 203(a)(1) of the Clean Air Act (42 U.S.C. 7522(a)(1)) for such vehicles.

(k) Failure by a manufacturer generating credits for deposit only in the complete heavy-duty vehicle banking program to submit their end-of-year reports in the applicable specified time period (i.e., 90 days after the end of the model year) shall result in the credits

not being available for use until such reports are received and reviewed by EPA. Use of projected credits pending EPA review will not be permitted in these circumstances.

(l) Any manufacturer producing a test group participating in trading using reserved credits, shall maintain the following records on a quarterly basis for each test group in the trading subclass:

- (1) The test group;
- (2) The averaging set;
- (3) The actual quarterly and cumulative U.S. production volumes excluding vehicles produced for sale in California;
- (4) The values required to calculate credits as given in paragraph (c) of this section;
- (5) The resulting type and number of credits generated/required;
- (6) How and where credit surpluses are dispersed; and
- (7) How and through what means credit deficits are met.

(m) *Additional flexibility for complete heavy-duty vehicles.* If a complete heavy-duty vehicle has a NO<sub>x</sub> FEL of 0.6 grams per mile or lower, a discount of 1.0 may be used in the trading and banking credits calculation for NO<sub>x</sub> described in paragraph (c)(2) of this section.

(n) *Early banking for complete heavy-duty vehicles.* Provisions set forth in paragraphs (a) through (m) of this section apply except as specifically stated otherwise in paragraph (n) of this section.

(1) To be eligible for the early banking program described in this paragraph, the following must apply:

(i) Credits are generated from complete heavy-duty vehicles.

(ii) During certification, the manufacturer shall declare its intent to include specific test groups in the early banking program described in this paragraph.

(2) *Credit generation and use.* (i) Credits shall only be generated by model year 2000 through 2003 test groups.

(ii) Credits may only be used for 2004 and later model year complete heavy-duty vehicles and shall be subject to all discounting, credit life, and all other provisions contained in paragraphs (a) through (m) of this section.

56. Section 86.1821-01 is amended by revising the first sentence of paragraph (a), and the introductory text of paragraph (b), to read as follows:

**§ 86.1821-01 Evaporative/refueling family determination.**

(a) The gasoline-, methanol-, liquefied petroleum gas-, and natural gas-fueled

light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles described in a certification application will be divided into groupings which are expected to have similar evaporative and/or refueling emission characteristics (as applicable) throughout their useful life. \* \* \*

(b) For gasoline-fueled or methanol-fueled light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles to be classed in the same evaporative/refueling family, vehicles must be similar with respect to the items listed in paragraphs (b)(1) through (9) of this section.

57. Section 86.1823-01 is amended by revising the introductory text, paragraph (c)(2) introductory text, and the first sentence of paragraph (h), to read as follows:

**§ 86.1823-01 Durability demonstration procedures for exhaust emissions.**

This section applies to light-duty vehicles, light-duty trucks, complete heavy-duty vehicles, and heavy-duty vehicles certified under the provisions of § 86.1801-01(c). Eligible small volume manufacturers or small volume test groups may optionally meet the requirements of §§ 86.1838-01 and 86.1826-01 in lieu of the requirements of this section. For model years 2001, 2002, and 2003 all manufacturers may elect to meet the provisions of paragraph (c)(2) of this section in lieu of these requirements for light-duty vehicles or light-duty trucks.

(c) \* \* \*

(2) For the 2001, 2002, and 2003 model years, for light-duty vehicles and light-duty trucks the manufacturer may carry over exhaust emission DF's previously generated under the Standard AMA Durability Program described in § 86.094-13(c), the Alternate Service Accumulation Durability Program described in § 86.094-13(e) or the Standard Self-Approval Durability Program for light-duty trucks described in § 86.094-13(f) in lieu of complying with the durability provisions of paragraph (a)(1) of this section.

(h) The Administrator may withdraw approval to use a durability process or require modifications to a durability process based on the data collected under §§ 86.1845-01, 86.1846-01, and 86.1847-01 or other information if the Administrator determines that the durability processes have not been shown to accurately predict emission levels or compliance with the standards

(or FEL, as applicable) in use on candidate vehicles (provided the inaccuracy could result in a lack of compliance with the standards for a test group covered by this durability process). \* \* \*

58. Section 86.1824-01 is amended by revising the first sentence of the introductory text, redesignating paragraphs (d) through (f) as paragraphs (e) through (g), and by adding new paragraph (d), to read as follows:

**§ 86.1824-01 Durability demonstration procedures for evaporative emissions.**

This section applies to gasoline-, methanol-, liquefied petroleum gas-, and natural gas-fueled light-duty vehicles, light-duty trucks, complete heavy-duty vehicles, and heavy-duty vehicles certified under the provisions of § 86.1801-01(c). \* \* \*

(d) The durability process described in paragraph (a) of this section must be described in the application for certification under the provisions of § 86.1844-01.

59. Section 86.1825-01 is amended by revising the first two sentences of introductory text to read as follows:

**§ 86.1825-01 Durability demonstration procedures for refueling emissions.**

This section applies to light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles, and heavy-duty vehicles which are certified under light-duty rules as allowed under the provisions of § 86.1801-01(c) which are subject to refueling loss emission compliance. Refer to the provisions of §§ 86.1811-01, 86.1812-01, 86.1813-01, 86.1814-04, 86.1815-04, and 86.1816-04 to determine applicability of the refueling standards to different classes of vehicles for various model years.

60. Section 86.1826-01 is amended by revising paragraphs (b)(2) introductory text and (b)(3) introductory text, to read as follows:

**§ 86.1826-01 Assigned deterioration factors for small volume manufacturers and small volume test groups.**

(2) Manufacturers with aggregated sales from and including 301 through 14,999 motor vehicles and motor vehicle engines per year (determined under the provisions of § 86.1838-01(b)) certifying vehicles equipped with

proven emission control systems shall conform to the following provisions:

\* \* \* \* \*

(3) Manufacturers with aggregated sales from 301 through 14,999 motor vehicles and motor vehicle engines per year (determined under the provisions of § 86.1838-01(b)) certifying vehicles equipped with unproven emission control systems shall conform to the following provisions:

\* \* \* \* \*

61. Section 86.1827-01 is amended by revising paragraph (a)(5), removing "and" at the end of paragraph (d)(2), removing the period at the end of paragraph (d)(3) and adding "; and" in its place, and adding paragraph (d)(4), to read as follows:

**§ 86.1827-01 Test group determination.**

\* \* \* \* \*

(a) \* \* \*

(5) Subject to the same emission standards, except that a manufacturer may request to group vehicles into the same test group as vehicles subject to more stringent standards, so long as those all the vehicles within the test group are certified to the most stringent standards applicable to any vehicle within that test group. Light-duty trucks which are subject to the same emission standards as light-duty vehicles with the exception of the light-duty truck idle CO standard and/or total HC standard may be included in the same test group.

\* \* \* \* \*

(d) \* \* \*

(4) A statement that all vehicles within a test group are certified to the most stringent standards applicable to any vehicle within that test group.

62. Section 86.1829-01 is amended by revising paragraphs (b)(1)(ii)(B), (b)(2)(ii)(B), and (b)(5), to read as follows:

**§ 86.1829-01 Durability and emission testing requirements; waivers.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(B) In lieu of testing vehicles according to the provisions of paragraph (b)(1)(ii)(A) of this section, a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of appropriate high-altitude emission testing, all light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles comply with the emission standards at high altitude.

\* \* \* \* \*

(2) \* \* \*

(ii) \* \* \*

(B) In lieu of testing vehicles according to the provisions of paragraph (b)(2)(ii)(A) of this section, a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of such high-altitude emission testing as the manufacturer deems appropriate, all light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles comply with the emission standards at high altitude.

\* \* \* \* \*

(5) *Idle CO Testing.* To determine idle CO emission compliance for light-duty trucks and complete heavy-duty vehicles, the manufacturer shall follow one of the following two procedures:

(i) For test groups containing light-duty trucks and complete heavy-duty vehicles, each EDV shall be tested in accordance with the idle CO testing procedures of subpart B of this Part; or

(ii) In lieu of testing light trucks and complete heavy-duty vehicles for idle CO emissions, a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of such idle CO testing as the manufacturer deems appropriate, all light-duty trucks and complete heavy-duty vehicles comply with the idle CO emission standards.

\* \* \* \* \*

63. Section 86.1834-01 is amended by redesignating paragraphs (b)(3)(i), (b)(5) and (b)(6) as paragraphs (b)(3)(i)(A), (b)(6) and (b)(7), respectively, revising paragraphs (b)(3) introductory text, (b)(3)(ii) introductory text, (b)(3)(iii), (b)(3)(iv), the first sentence of newly redesignated paragraph (b)(6)(iii), the seventh sentence of newly redesignated paragraph (b)(7)(ii), the first sentence of newly redesignated paragraph (b)(7)(iii), and the heading of paragraph (d), adding paragraphs (b)(3)(i)(B), (b)(3)(v), (b)(3)(vi), and (b)(6)(i)(H), and adding and reserving paragraph (b)(5), to read as follows:

**§ 86.1834-01 Allowable maintenance.**

\* \* \* \* \*

(b) \* \* \*

(3) Emission-related maintenance in addition to, or at shorter intervals than, that listed in paragraphs (b)(3)(i) through (vi) of this section will not be accepted as technologically necessary, except as provided in paragraph (b)(7) of this section.

(i) \* \* \*

(B) The cleaning or replacement of complete heavy-duty vehicle spark plugs shall occur at 25,000 miles (or 750 hours) of use and at 30,000-mile (or 750

hour) intervals thereafter, for vehicles certified for use with unleaded fuel only.

(ii) For light-duty vehicles and light-duty trucks, the adjustment, cleaning, repair, or replacement of the following items shall occur at 50,000 miles of use and at 50,000-mile intervals thereafter:

\* \* \* \* \*

(iii) For complete heavy-duty vehicles, the adjustment, cleaning, repair, or replacement of the following items shall occur at 50,000 miles (or 1,500 hours) of use and at 50,000-mile (1,500 hour) intervals thereafter:

- (A) Positive crankcase ventilation valve.
- (B) Emission-related hoses and tubes.
- (C) Ignition wires.
- (D) Idle mixture.
- (E) Exhaust gas recirculation system related filters and coolers.

(iv) For light-duty trucks, light-duty vehicles, and complete heavy-duty vehicles, the adjustment, cleaning, repair, or replacement of the oxygen sensor shall occur at 80,000 miles (or 2,400 hours) of use and at 80,000-mile (or 2,400-hour) intervals thereafter.

(v) For light-duty trucks and light-duty vehicles, the adjustment, cleaning, repair, or replacement of the following items shall occur at 100,000 miles of use and at 100,000-mile intervals thereafter:

- (A) Catalytic converter.
- (B) Air injection system components.
- (C) Fuel injectors.
- (D) Electronic engine control unit and its associated sensors (except oxygen sensor) and actuators.
- (E) Evaporative and/or refueling emission canister(s).
- (F) Turbochargers.
- (G) Carburetors.
- (H) Superchargers.
- (I) Exhaust gas recirculation system including all related filters and control valves.

(vi) For complete heavy-duty vehicles, the adjustment, cleaning, repair, or replacement of the following items shall occur at 100,000 miles (or 3,000 hours) of use and at 100,000-mile (or 3,000 hour) intervals thereafter:

- (A) Catalytic converter.
- (B) Air injection system components.
- (C) Fuel injectors.
- (D) Electronic engine control unit and its associated sensors (except oxygen sensor) and actuators.
- (E) Evaporative and/or refueling emission canister(s).
- (F) Turbochargers.
- (G) Carburetors.
- (H) Exhaust gas recirculation system (including all related control valves and tubing) except as otherwise provided in paragraph (b)(3)(iii)(E) of this section.

\* \* \* \* \*

(5) [Reserved]

(6) \* \* \*

(i) \* \* \*

(H) Any other add-on emissions-related component (i.e., a component whose sole or primary purpose is to reduce emissions or whose failure will significantly degrade emissions control and whose function is not integral to the design and performance of the engine.)

(iii) Visible signal systems used under paragraph (b)(6)(ii)(C) of this section are considered an element of design of the emission control system. \* \* \*

(7) \* \* \*

(ii) \* \* \* For maintenance items established as emission-related, the Administrator will further designate the maintenance as critical if the component which receives the maintenance is a critical component under paragraph (b)(6) of this section. \* \* \*

(iii) Any manufacturer may request a hearing on the Administrator's determinations in this paragraph (b)(7). \* \* \*

(d) *Unscheduled maintenance on durability data vehicles.* \* \* \*

64. Section 86.1835-01 is amended by revising the third sentence of paragraph (a)(1)(i), paragraph (b)(1) introductory text, and paragraph (b)(3) introductory text, to read as follows:

**§ 86.1835-01 Confirmatory certification testing.**

(a) \* \* \*

(1) \* \* \*

(i) \* \* \* The Administrator, in making or specifying such adjustments, will consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use light-duty vehicles, light-duty trucks, or complete heavy-duty vehicles. \* \* \*

(b) \* \* \* (1) If the Administrator determines not to conduct a confirmatory test under the provisions of paragraph (a) of this section, light-duty vehicle and light-duty truck manufacturers will conduct a confirmatory test at their facility after submitting the original test data to the Administrator whenever any of the conditions listed in paragraph (b)(1)(i) through (v) of this section exist, and complete heavy-duty vehicles manufacturers will conduct a confirmatory test at their facility after submitting the original test data to the Administrator whenever the conditions listed in paragraph (b)(1)(i) or (b)(1)(ii) of this section exist.

\* \* \* \* \*

(3) For light-duty vehicles, and light-duty trucks, the manufacturer shall conduct a retest of the FTP or highway test if the difference between the fuel economy of the confirmatory test and the original manufacturer's test equals or exceeds three percent (or such lower percentage to be applied consistently to all manufacturer conducted confirmatory testing as requested by the manufacturer and approved by the Administrator).

\* \* \* \* \*

65. Section 86.1840-01 is revised to read as follows:

**§ 86.1840-01 Special test procedures.**

(a) The Administrator may, on the basis of written application by a manufacturer, prescribe test procedures, other than those set forth in this part, for any light-duty vehicle, light-duty truck, or complete heavy-duty vehicle which the Administrator determines is not susceptible to satisfactory testing by the procedures set forth in this part.

(b) If the manufacturer does not submit a written application for use of special test procedures but the Administrator determines that a light-duty vehicle, light-duty truck, or complete heavy-duty vehicle is not susceptible to satisfactory testing by the procedures set forth in this part, the Administrator shall notify the manufacturer in writing and set forth the reasons for such rejection in accordance with the provisions of § 86.1848(a)(2).

66. Section 86.1844-01 is amended by revising the fourth sentence of paragraph (d)(12), the fourth sentence of paragraph (e)(3), and paragraph (g)(5), and adding paragraph (g)(14) to read as follows:

**§ 86.1844-01 Information requirements: Application for certification and submittal of information upon request.**

\* \* \* \* \*

(d) \* \* \*

(12) \* \* \* The description shall include, but is not limited to, information such as model name, vehicle classification (light-duty vehicle, light-duty truck, or complete heavy-duty vehicle), sales area, engine displacement, engine code, transmission type, tire size and parameters necessary to conduct exhaust emission tests such as equivalent test weight, curb and gross vehicle weight, test horsepower (with and without air conditioning adjustment), coast down time, shift schedules, cooling fan configuration, etc. and evaporative tests such as canister working capacity, canister bed

volume and fuel temperature profile. \* \* \*

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \* The description shall include, but is not limited to, information such as model name, vehicle classification (light-duty vehicle, light-duty truck, or complete heavy-duty vehicle), sales area, engine displacement, engine code, transmission type, tire size and parameters necessary to conduct exhaust emission tests such as equivalent test weight, curb and gross vehicle weight, test horsepower (with and without air conditioning adjustment), coast down time, shift schedules, cooling fan configuration, etc and evaporative tests such as canister working capacity, canister bed volume and fuel temperature profile. \* \* \*

\* \* \* \* \*

(g) \* \* \*

(5) Any information necessary to demonstrate that no defeat devices are present on any vehicles covered by a certificate including, but not limited to, a description of the technology employed to control CO emissions at intermediate temperatures, as applicable.

\* \* \* \* \*

(14) For complete heavy-duty vehicles only, all hardware (including scan tools) and documentation necessary for EPA to read and interpret (in engineering units if applicable) any information broadcast by an engine's on-board computers and electronic control modules which relates in anyway to emission control devices and auxiliary emission control devices. This requirement includes access by EPA to any proprietary code information which may be broadcast by an engine's on-board computer and electronic control modules. Information which is confidential business information must be marked as such. Engineering units refers to the ability to read and interpret information in commonly understood engineering units, for example, engine speed in revolutions per minute or per second, injection timing parameters such as start of injection in degree's before top-dead center, fueling rates in cubic centimeters per stroke, vehicle speed in milers per hour or per kilometer.

\* \* \* \* \*

67. Section 86.1845-01 is amended by revising paragraph (a), to read as follows:

**§ 86.1845-01 Manufacturer in-use verification testing requirements.**

(a) *General requirements.* A manufacturer light-duty vehicles, light-duty trucks, and complete heavy-duty

vehicles shall test, or cause to have tested a specified number of light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles. Such testing shall be conducted in accordance with the provisions of this section. For purposes of this section, the term vehicle shall include light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles.

\* \* \* \* \*

68. Section 86.1845-04 is amended by revising paragraph (a), to read as follows:

**§ 86.1845-04 Manufacturer in-use verification testing requirements.**

(a) *General requirements.* A manufacturer light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles shall test, or cause to have tested a specified number of light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles. Such testing shall be conducted in accordance with the provisions of this section. For purposes of this section, the term vehicle shall include light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles.

\* \* \* \* \*

69. A new section 86.1846-07 is added to subpart S, to read as follows:

**§ 86.1846-07 Manufacturer in-use confirmatory testing.**

(a) *General requirements.* A manufacturer of light-duty vehicles, light-duty trucks, and/or complete heavy-duty vehicles shall test, or cause testing to be conducted, under this section when the emission levels shown by a test group sample from testing under § 86.1845-04 exceeds the criteria specified in paragraph (b) of this section. The testing required under this section applies separately to each test group and at each test point (low and high mileage) that meets the specified criteria. The testing requirements apply separately for each model year, starting with model year 2006.

(b) *Criteria for additional testing.* A manufacturer shall test a test group or a subset of a test group as described in paragraph (j) of this section when the results from testing conducted under § 86.1845-04 show mean emissions for that test group of any pollutant(s) to be equal to or greater than 1.30 times the applicable in-use standard and a failure rate, among the test group vehicles, for the corresponding pollutant(s) of fifty percent or greater.

(1) This requirement does not apply to Supplemental FTP testing conducted under § 86.1845-04(b)(5)(i) or evaporative/refueling testing conducted under § 86.1845-04. Testing conducted

at high altitude under the requirements of § 86.1845-04 will be included in determining if a test group meets the criteria triggering testing required under this section.

(2) The vehicle tested under the requirements of § 86.1845-04(c)(2)(i) with a minimum odometer miles of 75% of useful life will not be included in determining if a test group meets the triggering criteria.

(3) The SFTP composite emission levels shall include the IUVP FTP emissions, the IUVP US06 emissions, and the values from the SC03 Air Conditioning EDV certification test (without DFs applied). The calculations shall be made using the equations prescribed in § 86.164-01. If more than one set of certification SC03 data exists (due to running change testing or other reasons), the manufacturer shall choose the SC03 result to use in the calculation from among those data sets using good engineering judgment.

(c) *Useful life.* Vehicles tested under the provisions of this section must be within the useful life specified for the emission standards which were exceeded in the testing under § 86.1845-04. Testing should be within the useful life specified, subject to sections 207(c)(5) and (c)(6) of the Clean Air Act where applicable.

(d) *Number of test vehicles.* A manufacturer must test a minimum of ten vehicles of the test group or Agency-designated subset. A manufacturer may, at the manufacturer's discretion, test more than ten vehicles under this paragraph for a specific test group or Agency-designated subset. If a manufacturer chooses to test more than the required ten vehicles, all testing must be completed within the time designated in the testing completion requirements of paragraph (g) of this section. Any vehicles which are eliminated from the sample either prior to or subsequent to testing, or any vehicles for which test results are determined to be void, must be replaced in order that the final sample of vehicles for which test results acceptable to the Agency are available equals a minimum of ten vehicles. A manufacturer may cease testing with a sample of five vehicles if the results of the first five vehicles tested show mean emissions for each pollutant to be less than 75.0 percent of the applicable standard, with no vehicles exceeding the applicable standard for any pollutant.

(e) *Emission Testing.* Each test vehicle of a test group or Agency-designated subset shall be tested in accordance with the Federal Test Procedure and/or the Supplemental Federal Test Procedure (whichever of these tests

performed under § 86.1845-04 produces emission levels requiring testing under this section) as described in subpart B of this part, when such test vehicle is tested for compliance with applicable exhaust emission standards under this subpart.

(f) *Geographical limitations.* (1) Test groups or Agency-designated subsets certified to 50-state standards: For low altitude testing no more than 50 percent of the test vehicles may be procured from California. The test vehicles procured from the 49 state area must be procured from a location with a heating degree day 30 year annual average equal to or greater than 4000.

(2) Test groups or Agency-designated subsets certified to 49 state standards: For low-altitude testing all vehicles shall be procured from a location with a heating degree day 30 year annual average equal to or greater than 4000.

(3) Vehicles procured for high altitude testing may be procured from any area provided that the vehicle's primary area of operation was above 4000 feet.

(g) *Testing.* Testing required under this section must commence within three months of completion of the testing under § 86.1845-04 which triggered the confirmatory testing and must be completed within seven months of the completion of the testing which triggered the confirmatory testing. Any industry review of the results obtained under § 86.1845-04 and any additional vehicle procurement and/or testing which takes place under the provisions of § 86.1845-04 which the industry believes may affect the triggering of required confirmatory testing must take place within the three month period. The data and the manufacturers reasoning for reconsideration of the data must be provided to the Agency within the three month period.

(h) *Limit on manufacturer conducted testing.* For each manufacturer, the maximum number of test group(s) or Agency-designated subset(s) of each model year for which testing under this section shall be required is limited to 50 percent of the total number of test groups of each model year required to be tested by each manufacturer as prescribed in § 86.1845-04 rounded to the next highest whole number where appropriate. For each manufacturer with only one test group under § 86.1845-04, such manufacturer shall have a maximum potential testing requirement under this section of one test group (or Agency-designated subset) per model year.

(i) Prior to beginning in-use confirmatory testing the manufacturer must, after consultation with the Agency, submit a written plan

describing the details of the vehicle procurement, maintenance, and testing procedures (not otherwise specified by regulation) it intends to use.

(j) *Testing a subset.* EPA may designate a subset of the test group based on transmission type for testing under this section in lieu of testing the entire test group when the results for the entire test group from testing conducted under § 86.1845-04 show mean emissions and a failure rate which meet these criteria for additional testing.

70. Section 86.1848-01 is amended by revising paragraphs (c)(4) and the first

sentence of paragraph (e) introductory text to read as follows:

**§ 86.1848-01 Certification.**

\* \* \* \* \*

(c) \* \* \*

(4) For incomplete light-duty trucks and incomplete heavy-duty vehicles, a certificate covers only those new motor vehicles which, when completed by having the primary load-carrying device or container attached, conform to the maximum curb weight and frontal area limitations described in the application

for certification as required in § 86.1844-01.

\* \* \* \* \*

(e) A manufacturer of new light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles must obtain a certificate of conformity covering such vehicles from the Administrator prior to selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing into the United States the new vehicle. \* \* \*

\* \* \* \* \*

[FR Doc. 99-26795 Filed 10-28-99; 8:45 am]

BILLING CODE 6560-50-P

**REGISTRATION**

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Friday  
October 29, 1999

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**Part III**

**Nondiscrimination on the  
Basis of Sex in Education  
Programs and Activities  
Receiving Federal Financial  
Assistance; Proposed Rule**

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Nuclear Regulatory Commission  
Small Business Administration  
National Aeronautics and Space Administration  
Department of Commerce  
Tennessee Valley Authority  
Department of State  
Agency for International Development  
Department of Housing and Urban Development  
Department of Justice  
Department of Labor  
Department of the Treasury  
Department of Defense  
National Archives and Records Administration  
Department of Veterans Affairs  
Environmental Protection Agency  
General Services Administration  
Department of the Interior  
Federal Emergency Management Agency  
National Science Foundation  
National Foundation on the Arts and the Humanities  
National Endowment for the Arts  
National Endowment for the Humanities  
Institute for Museum and Library Services  
Corporation for National and Community Service  
Department of Transportation

**NUCLEAR REGULATORY COMMISSION**

10 CFR Part 5

**SMALL BUSINESS ADMINISTRATION**

13 CFR Part 113

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

14 CFR Part 1253

**DEPARTMENT OF COMMERCE**

15 CFR Part 8a

**TENNESSEE VALLEY AUTHORITY**

18 CFR Part 1317

**DEPARTMENT OF STATE**

22 CFR Part 146

**AGENCY FOR INTERNATIONAL DEVELOPMENT**

22 CFR Part 229

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

24 CFR Part 3

**DEPARTMENT OF JUSTICE**

28 CFR Part 54

**DEPARTMENT OF LABOR**

29 CFR Part 36

**DEPARTMENT OF THE TREASURY**

31 CFR Part 28

**DEPARTMENT OF DEFENSE**

32 CFR Part 196

**NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

36 CFR Part 1211

**DEPARTMENT OF VETERANS AFFAIRS**

38 CFR Part 23

**ENVIRONMENTAL PROTECTION AGENCY**

40 CFR Part 5

**GENERAL SERVICES ADMINISTRATION**

41 CFR Part 101-4

**DEPARTMENT OF THE INTERIOR**

43 CFR Part 41

**FEDERAL EMERGENCY MANAGEMENT AGENCY**

44 CFR Part 19

**NATIONAL SCIENCE FOUNDATION**

45 CFR Part 618

**NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**

National Endowment for the Arts

45 CFR Part 1155

**National Endowment for the Humanities**

45 CFR Part 1171

**Institute for Museum and Library Services**

45 CFR Part 1182

**CORPORATION FOR NATIONAL AND COMMUNITY SERVICE**

45 CFR Part 2555

**DEPARTMENT OF TRANSPORTATION**

49 CFR Part 25

**Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving Federal Financial Assistance**

**AGENCIES:** Nuclear Regulatory Commission; Small Business Administration; National Aeronautics and Space Administration; Department of Commerce; Tennessee Valley Authority; Department of State; Agency for International Development; Department of Housing and Urban Development; Department of Justice; Department of Labor; Department of the Treasury; Department of Defense; National Archives and Records Administration; Department of Veterans Affairs; Environmental Protection Agency; General Services Administration; Department of the Interior; Federal Emergency Management Agency; National Science Foundation; National Endowment for the Arts, National Endowment for the Humanities, Institute for Museum and Library Services, National Foundation on the Arts and the Humanities; Corporation for National and Community Service; Department of Transportation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed regulation, presented as a common rule, provides for the enforcement of Title IX of the Education Amendments of 1972, as amended ("Title IX"), by the agencies identified above. Title IX prohibits discrimination on the basis of sex in education programs or activities that receive Federal financial assistance. The promulgation of this proposed regulation will provide guidance to recipients of Federal financial assistance who administer education programs or activities. The provisions of this proposed regulation will also promote

consistent and adequate enforcement of Title IX by the agencies identified above.

**DATES:** Comments must be received on or before December 28, 1999.

**ADDRESSES:** Interested parties should submit written comments on this notice of proposed rulemaking to Merrily A. Friedlander, Chief, Coordination and Review Section, P.O. Box 65960, Washington, D.C. 20035-6560, facsimile (202) 307-0595. See Supplementary Information section for comments regarding the availability of this document in alternative formats.

**FOR FURTHER INFORMATION CONTACT:** Merrily A. Friedlander, Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, (202) 307-2222.

**SUPPLEMENTARY INFORMATION:****Background**

The purpose of this proposed common rule is to provide for the enforcement of Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681, *et seq.*) ("Title IX"), as it applies to educational programs and activities that receive Federal financial assistance from the agencies participating in this notice. Because the proposed standards to be established for the enforcement of Title IX are the same for all of the participating agencies, they are publishing this notice of proposed rulemaking jointly. The procedures for how an agency will enforce Title IX, including the conduct of investigations and compliance reviews, also follow the same structure; all agencies except the Department of the Treasury ("Treasury") and the National Archives and Records Administration ("NARA") are referencing their respective procedures under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, *et seq.*), which are virtually identical among the agencies. Title IX is modeled after Title VI and the statutes have the same statutory enforcement mechanisms. Although Treasury and NARA do not have Title VI regulations, both entities are establishing enforcement procedures, as set forth below, that are akin to other agencies' Title VI procedures for enforcement.

The final rule adopted by each agency will be codified in that agency's portion of the Code of Federal Regulations as indicated in this notice of proposed rulemaking.

In 1979 and 1980, two agencies published notices of proposed rulemaking for Title IX, but the proposed rules were never issued as final rules. On April 25, 1979, the Veteran's Administration published a

notice of proposed rulemaking. See 44 FR 24320 (1979). On June 17, 1980, the Department of Justice published a notice of proposed rulemaking. See 45 FR 41001 (1980). By participating in this notice of proposed rulemaking, these agencies are initiating a new rulemaking proceeding.

#### Additional Comment Information

Copies of this notice of proposed rulemaking are available, upon request, in large print and electronic file on computer disk. Other formats will be considered upon request.

#### Overview

As set forth in this proposed rule, the substantive nondiscrimination obligations of recipients, for the most part, are identical to those established by the Department of Education ("ED") under Title IX. See 34 CFR Part 106. ED's regulations are the model for this notice of proposed rulemaking for several reasons: the history of public participation in the development and congressional approval of ED's regulations, ED's leadership role in Title IX enforcement, judicial interpretations of ED's regulations, recipients' familiarity with the regulations, and an interest in maintaining consistency of interpretation of regulations enforcing Title IX. The regulations, initially issued by the former Department of Health, Education, and Welfare ("HEW") (and adopted by ED upon its establishment in 1980), are the result of an extensive public comment process and congressional review. HEW received and considered more than 9700 comments before drafting its final regulations. 40 FR 24128 (1975). Further, after the final regulations were issued, but before they became effective, Congress held six days of hearings to determine whether the regulations were consistent with the statute. Sex Discrimination Regulations: Hearings before the Subcomm. on Postsecondary Education of the House Comm. on Education and Labor, 94th Cong., 1st Sess. (1975).

In addition, under Executive Order 12250, the Department of Justice is responsible for the "consistent and effective implementation" of several civil rights laws, including Title IX. Using the ED regulation as the basis for this common rule promotes consistency and efficiency not only for agencies but for the recipient community. ED is the lead agency for enforcement of Title IX through its guidance, interpretations, technical assistance, investigative expertise, and resources committed. As the vast majority of recipients of Federal assistance from the identified agencies

also receive assistance from ED, recipients should be subject to a single set of obligations with respect to Title IX.

Further, both Congress and the courts have interpreted Title IX based on ED's regulations. For example, in 1974, Congress amended the statute after holding hearings on provisions in ED's proposed rule. See 20 U.S.C. 1681(a)(6). In 1982, the Supreme Court upheld that portion of ED's regulations that prohibits discrimination by a recipient on the basis of sex in its employment practices. See *North Haven Bd. of Educ. v. Bell*, 456 U.S. 512 (1982). As discussed below, Congress also passed the Civil Rights Restoration Act of 1987 ("CRRRA"), in large part, to overrule the Supreme Court's decision in *Grove City College v. Bell*, 465 U.S. 555 (1984), and thus to make Title IX consistent with ED's pre-*Grove City* interpretation of the statute. See S. Rep. No. 100-64, at 2 (1987), reprinted in 1988 U.S.C.C.A.N. 3, 3-4. The recipient community, Federal agencies, and the courts should have the benefit of continued reliance on past interpretations of Title IX and its regulations, and using the ED regulation as the model for other agencies promotes that consistency.

As mentioned, the proposed regulations are not identical to ED's regulations. This proposal addresses several statutory changes that are not reflected in the existing (but soon to be modified) ED regulation, one modification in order to be consistent with Supreme Court precedent, and a few minor changes. A detailed discussion of these changes is set forth below.

Upon the issuance of final regulations by the participating agencies, beneficiaries and affected parties will have more opportunities to file complaints or seek information regarding Title IX enforcement from various agencies. The agencies intend to develop a means of sharing enforcement responsibilities and information to ensure that the most effective action is pursued, at the same time avoiding both duplication of inquiries by the Federal government and any undue burden on recipients due to multiple inquiries.

#### Summary of Regulation

As stated, Title IX prohibits discrimination on the basis of sex in educational programs or activities that receive Federal financial assistance. Specifically, the statute states that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity

receiving Federal financial assistance," with specific exceptions for various entities, programs, and activities. 20 U.S.C. 1681(a). This statute was modeled after Title VI, which prohibits discrimination on the basis of race, color, and national origin in all programs or activities that receive Federal financial assistance. The goal of Title IX is to ensure that Federal funds are not utilized for and do not support sex-based discrimination, and that individuals have equal opportunities, without regard to sex, to pursue, engage or participate in, and benefit from academic, extracurricular, research, occupational training, employment, or other educational programs and activities. For example (and without limitation), subject to exceptions described in these Title IX regulations, Title IX prohibits a recipient from discriminating on the basis of sex in: student admissions, scholarship awards and tuition assistance, recruitment of students and employees, the provision of courses and other academic offerings, the provision of and participation in athletics and extracurricular activities, and all aspects of employment, including, but not limited to, selection, hiring, compensation, benefits, job assignments and classification, promotions, demotions, tenure, training, transfers, leave, layoffs, and termination. See *North Haven*, 456 U.S. at 521 (stating that Title IX "must [be] accord[ed] \* \* \* a sweep as broad as its language" to realize goals of eliminating discrimination and promoting equal opportunity); *Cannon v. University of Chicago*, 441 U.S. 677, 709 (1979) (concluding that an implied private right of action was necessary for Title IX's full enforcement); *Franklin v. Gwinnett County Pub. Schs.*, 503 U.S. 60 (1992) (concluding that sexual harassment violates Title IX's proscription against sex discrimination).<sup>1</sup> Of course, Title IX prohibits discrimination on the basis of sex in the operation of, and the provision or exclusion of benefits by, education and training programs conducted by noneducational institutions, including, but not limited to, prisons, museums, job training institutes, and for profit and nonprofit organizations.

Thus, for example, these proposed Title IX regulations will apply to such diverse activities as a forestry workshop run by a state park receiving funds from the Department of Interior; a boater

<sup>1</sup> See Office for Civil Rights, Dep't of Educ., *Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, 62 FR 12034 (1997).

education program sponsored by a county parks and recreation department receiving funding from the Coast Guard; a local course concerning how to start a small business, sponsored by the state department of labor that receives funding from the Small Business Administration; and, state and local courses funded by the Federal Emergency Management Agency in planning how to deal with disasters. It will also apply to a museum lecture series when the museum receives a grant from the Institute for Museum and Library Services, or a lecture series on the history of dance given at a local school of ballet receiving funding from the National Endowment for the Arts. Vocational training for inmates in prisons receiving assistance from the Department of Justice is another example of the type of program this proposed regulation will cover. In short, these proposed regulations will apply to the educational programs or activities of any entity receiving financial assistance from the agencies promulgating this proposed regulation.

It should be noted that we have retained sections from the ED regulation that impose deadlines for action by recipients. For example, section \_\_\_\_\_.110 includes a deadline for educational institutions to conduct a self-evaluation and section \_\_\_\_\_.225 includes a timetable for completion of transitions by an educational institution eliminating its single-sex status. We have included these and other provisions to allow for the possible but rare instance where such sections may continue to be relevant for certain recipients. If a recipient of assistance from a participating agency also receives funding from ED or another agency with an existing Title IX regulation, however, the deadlines, as interpreted by ED or the other agency's regulation, as applicable, continue to govern. Further, to the extent a recipient has conducted an evaluation or established procedures to conform to the ED or another agency's Title IX regulation, the recipient need not repeat such action in order to conform to the regulations adopted by the participating agencies. For example, if a recipient has established grievance procedures, it need not modify such procedures or establish other procedures to comply with these regulations in the absence of guidance or instructions from a participating agency that modification or other action is necessary. Similarly, if a recipient already has conducted a self-evaluation under Title IX, it need not conduct a new self-evaluation as a result of receiving funds from a participating

agency, but need only take action if such evaluation or implementation is found to be incomplete or not in compliance with the regulations.

Subpart A sets forth definitions as well as provisions concerning remedial action and affirmative action, required assurances, adoption of grievance procedures, and notification of nondiscrimination policies. The effect of State and other laws and other requirements is also explained.

The definition of "educational institution" refers to a "local educational agency." The term "local educational agency" has been recodified at 20 U.S.C. 8801(18), and this change has been made to the definition of "educational institution."

The reference in the definition of "Federal financial assistance" to "agreements" includes "cooperative agreements" by agencies.

Section \_\_\_\_\_.110, entitled "Remedial and affirmative action and self-evaluation," is modified slightly by adding the phrase "consistent with law." This entire regulation, of course, should be interpreted consistent with governing legal decisions. Given recent, numerous decisions by the Supreme Court and lower courts concerning affirmative action, agencies should consult with the Department of Justice regarding interpretations of this section.

A few matters should be noted with respect to assurances. First, the method or practice of awarding Federal financial assistance varies among the participating agencies. Some, but not all, agencies require a formal application for Federal assistance prior to any award, and such applications will contain the assurances required by section \_\_\_\_\_.115 of the proposed regulation. Other agencies award assistance through instruments where the formal agreement or contract of assistance is the only document executed by the recipient. In the latter instance, the agreement or contract will include, *as a condition of the award*, the required assurances of \_\_\_\_\_.115. The presence of an assurance in a contract, agreement, or document other than "application," wherein the execution of such document includes the assurance of compliance as a condition of the award, satisfies \_\_\_\_\_.115. Second, \_\_\_\_\_.115(b)'s reference to Federal financial assistance "extended to provide real property or structures thereon, \* \* \* or to provide personal property," should be understood to include the provision of assistance to aid in the acquisition and/or improvement of such property. Finally, in order to maintain consistency among agencies regarding the text of the

assurance for compliance with Title IX, we modified \_\_\_\_\_.115(c) to include the uniform text of the assurance. This text may be modified at the discretion of the Office of Management and Budget ("OMB"), or upon application by an agency and approval by OMB. In addition, the actual text may be included in, as mentioned, a final contract or agreement, or in a standard form that includes assurances relating to other obligations.

Subpart B addresses the scope or coverage of Title IX. Subject to specific exceptions for institutions or activities, any educational program or activity, any part of which receives Federal financial assistance, is subject to Title IX.

Modifications of ED's existing regulations to conform to the statutory amendments to Title IX are addressed in this subpart. Section \_\_\_\_\_.205 is amended to incorporate the expanded exemption for entities controlled by religious institutions. Under the CRRRA, the exemption is no longer limited to educational institutions that are controlled by religious organizations with tenets contrary to Title IX. Instead, any educational operation of an entity may be exempt from Title IX due to control by a religious organization with tenets that are not consistent with the provisions of Title IX. See 20 U.S.C. 1687. Further, the exemption would apply to a particular education program operated by a recipient if this separate program is subject to religious tenets that are not consistent with Title IX. If a recipient has obtained an exemption from ED, such exemption also may be submitted to another funding agency as a basis for an exemption from the second funding agency.

While it is not expected that many educational institutions will have a transition plan, we have retained the text of sections \_\_\_\_\_.225 and \_\_\_\_\_.230. In addition, the text of \_\_\_\_\_.225 has been slightly modified to require that any transition plans be submitted solely to the Department of Education.

A new section, \_\_\_\_\_.235, addresses all other statutory amendments. See 20 U.S.C. 1681(a)(7)-(9), 1687, 1688. Three exemptions to Title IX's coverage are identified in \_\_\_\_\_.235(b) based on amendments passed in 1976. 20 U.S.C. 1681(a)(7)-(9). Congress exempts activities undertaken by the American Legion to operate Boys State, Girls State, Boys Nation, and Girls Nation, and any promotional activity or selection of participants for such programs by educational institutions. 20 U.S.C. 1681(a)(7). In addition, father-son and mother-daughter activities that are sponsored by educational institutions are similarly exempt from coverage,

with the condition that if such activities are conducted, reasonably comparable activities must be provided for students of the opposite sex. 20 U.S.C. 1681(a)(8). Third, educational institutions may provide scholarships or other benefits to persons who participate in single-sex contests where personal appearance is a basis for reward, commonly referred to as "beauty pageants." 20 U.S.C. 1681(a)(9).

As part of the CRRRA, Congress also added a definition of "program or activity." See 20 U.S.C. 1687. Congress took this action in order to reverse the meaning and consequences of the Supreme Court's decision in *Grove City College*, which defined "program or activity" in restrictive terms. 465 U.S. at 572-74; S. Rep. No. 100-64, at 11-16, reprinted in 1988 U.S.C.C.A.N. at 13-18. The Court concluded in *Grove City College* that Federal student financial assistance provided to a college established Title IX jurisdiction only over the college's financial aid program, not the entire college. *Ibid*. This interpretation significantly narrowed the prohibitions of Title IX and its counterparts, Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.*, the Age Discrimination Act of 1975, 42 U.S.C. 6101, *et seq.*, and Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794. See S. Rep. No. 100-64, at 2-3, 11-16, reprinted in 1988 U.S.C.C.A.N. at 3-4, 13-18.

By statutory amendment, and as set forth in \_\_\_\_\_.235(c), Congress restored the broad interpretation accorded the phrase "program or activity" prior to *Grove City College*. The provision addresses the scope of coverage for four broad categories of recipients: State or local entities, educational institutions, private entities, and entities that are a combination of any of those groups. The scope of coverage is no longer limited to the exact purpose or nature of the Federal funding. If, for example, a State or local agency receives Federal assistance for one of many functions of the agency, all of the operations of the entire agency are subject to the nondiscrimination provisions of Title IX. 20 U.S.C. 1687(1)(A). Further, if the aid is distributed to an entity or unit of government that subsequently distributes the assistance to a second agency, the entire agency to which the assistance was initially allocated is subject to Title IX. See 20 U.S.C. 1687(1)(B); S. Rep. No. 100-64, at 16, reprinted in 1988 U.S.C.C.A.N. at 18. With respect to educational institutions, it is critical to remember that all of the operations of the institution, whether or not an operation is educational or

academic in nature, are subject to Title IX's prohibition on discrimination. Thus, for example, housing programs, a shuttle service, food service, and other commercial operations are covered by Title IX if any part of the entity is a recipient of Federal funds. The degree of coverage of private entities, such as private corporations and partnerships, will vary depending on how the funding is provided, the principal purpose or objective of the entity, and/or how the entity is structured (e.g., physically separate offices or plants). All of the operations of private businesses that are principally engaged in education, health care, housing, social services, or parks and recreation are considered a "program or activity" for purposes of Title IX. 20 U.S.C. 1687(3)(A)(ii). S. Rep. No. 100-64 provides numerous other examples of the scope of coverage with regard to each category of recipient, and readers are referred to this material. S. Rep. No. 100-64, at 16-20, reprinted in 1988 U.S.C.C.A.N. at 18-22.

Moreover, regulatory language made superfluous by the enactment of the CRRRA has been omitted in the proposed rule. The Department of Education's Title IX regulations, promulgated in 1975, defined "recipient" as an entity "to whom Federal financial assistance is extended directly or through another recipient and that operates an education program or activity that receives or benefits from such assistance." At that time, the words "or benefits from" were necessary to clarify that *all* of the operations of a university or other educational institution that receives Federal funds—not just the particular programs receiving financial assistance—are covered by Title IX's nondiscrimination requirements. As noted above, this interpretation was rejected by the Supreme Court in 1984 in *Grove City College v. Bell*, which held that Federal student aid established Title IX jurisdiction only over the financial aid program, and not the entire institution. However, Congress' 1988 enactment of the CRRRA counteracted this decision by defining "program or activity" to provide expressly that Title IX covers all educational programs of a recipient institution. Because of this statutory change, the words "or benefits from" are no longer necessary as a regulatory matter and have thus been omitted in the proposed common rule as superfluous. This deletion does not affect the reach of Title IX.

Finally, it is important to note that the restored, broad interpretation of "program or activity" does not in any way alter the requirement of 20 U.S.C. 1682 that a proposed or effectuated fund termination be limited to the particular

program(s) "or part thereof" that discriminate(s), or, as appropriate, to all of the programs that are infected by the discriminatory practices. See S. Rep. No. 100-64, at 20, reprinted in 1988 U.S.C.C.A.N. at 22 ("The bill defines 'program' in the same manner as 'program or activity,' and leaves intact the "or part thereof" pinpointing language.").

Section \_\_\_\_\_.235(d) reflects the "abortion neutrality" provision in the CRRRA, commonly referred to as the Danforth amendment, which provides: "Nothing in this chapter shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion." 20 U.S.C. 1688.

The first sentence of the Danforth amendment is incorporated in subsection \_\_\_\_\_.235(d)(1), which states that recipients are not required to provide or pay for any benefit or service related to an abortion. Consistent with congressional intent,<sup>2</sup> however, this provision does *not* allow recipients of Federal assistance to deny medical procedures, benefits, services, or the use of facilities if necessary to save the life of a pregnant woman, or for medical complications arising from or related to an abortion.

The second sentence of the Danforth amendment is incorporated in \_\_\_\_\_.235(d)(2). In addition, this subsection makes it clear that, consistent with the Danforth amendment, the regulations prohibit discrimination against, exclusion of, or denial of benefits to, a person because that person has obtained, sought, or will

<sup>2</sup> See 134 Cong. Rec. 353 (1988) (In response to Sen. Metzenbaum's charge that discriminatory treatment would follow adoption of the Danforth amendment, and criticism that the amendment failed to account for abortions that are necessary to save the life of the woman, Sen. Danforth replied that Sen. Metzenbaum's characterizations were "completely erroneous and totally without foundation at all."); 134 Cong. Rec. 2931 (1988) (statement of Rep. Hawkins); *id.* at 2935 (statement of Rep. Jeffords); *id.* at 2945 (statement of Rep. AuCoin) ("Equally important is the fact that the bill clearly prohibits denial of provision of services related to complications arising from abortion under the terms of title IX."); *id.* at 2948 (statement of Rep. Edwards) ("Under its provisions, a covered institution does not have to include the costs of an abortion procedure in insurance for its students or employees. But [it] does not mean that it can exclude, for example, medical complications related to an abortion. Under the Danforth Amendment, Title IX still requires those complications to be covered.").

seek an abortion. This prohibition applies to any service or benefit for an applicant (for enrollment or employment), student, or employee.<sup>3</sup>

Finally, in order to conform ED's existing text to that aspect of the Danforth amendment that does not require or prohibit a recipient from providing services or payment for an abortion, a specific reference to .235(d) is added to the following provisions: \_\_\_\_\_,300(c)(3), \_\_\_\_\_,440, \_\_\_\_\_,445(b)(4), and \_\_\_\_\_,530(c).

Subpart C addresses nondiscrimination on the basis of sex in admission and recruitment practices with respect to students. For example, recipients may not impose numerical limits on the number or proportion of persons of either sex who may be admitted. In addition, a recipient may not give preference to one sex by separately ranking applicants on the basis of sex, or otherwise treat individuals differently because of their

<sup>3</sup>This provision is consistent with the Danforth amendment and congressional intent. Statements of numerous senators and representatives, including Sen. Danforth and other sponsors, reiterate the plain meaning of the prohibition, and treat the imposition of penalties as one form of discriminatory treatment against women who have sought or will seek an abortion. See 134 Cong. Rec. 242 (1988) (statement of Sen. Danforth) ("In fact, it is prohibited—hospitals, colleges, universities—from discriminating against people who have had abortions or who are seeking abortions. So it does not intend to authorize, in fact, it prohibits, penalties against people who have made their own choice for abortion.") (emphasis added); *id.* at 353 (statement of Sen. Wilson) ("The second sentence of the Danforth amendment was language which I and others insisted be in there, precisely to ensure that there could not be discrimination against women who either are seeking or have received abortion-related services.") (emphasis added).

Other members of Congress agreed with the Danforth amendment because of the specific inclusion of language prohibiting discrimination. *E.g.*, 134 Cong. Rec. 2945 (1988) (statement of Rep. AuCoin) ("And with their statements [by Sen. Danforth and Wilson, as quoted above] clarifying that this legislation before us today expressly prohibits, and does not in any way permit, discrimination against women who have had or are seeking abortions, I can support this bill."); *id.* at 2948 (statement of Rep. Edwards). See also *id.* at 2935 (statement of Rep. Jeffords) ("The second sentence of the amendment will ensure that a woman is not denied scholarships, promotions, extracurricular activities, student employment or any other benefits because she has received or is seeking an abortion."); *id.* at 2945 (statement of Rep. AuCoin) ("With assurances from the authors of the Danforth amendment, and with the clarification provided by the floor leaders today, it is now clear that this legislation prohibits discrimination based on a person's decision regarding abortion—in scholarships, in housing, in extracurricular activities, in student or faculty hire and tenure, and in other benefits offered to students or employees under title IX."); *id.* at 2948 (statement of Rep. Edwards) ("Whether it be scholarships, promotions, extracurricular activities, student employment or any other benefits offered to students or employees, under title IX benefits cannot be withheld from a student or employees because she received or is seeking an abortion.").

sex. Additional prohibitions of discrimination on the basis of parental and marital status are also identified.

Subpart D addresses nondiscrimination on the basis of sex in education programs and activities. Specific areas covered in this subpart are housing, access to course offerings, access to schools operated by local education agencies, counseling, financial assistance, employment assistance to students, health and insurance benefits and services, consideration of marital and parental status, and athletics. The proposed regulations do not cover a recipient's use of particular textbooks or curricular materials. The time frames identified in section \_\_\_\_\_,450(d), which address athletic programs, apply only if the recipient also does not receive funding from the Department of Education; otherwise, such recipient is expected to have complied within the time frames established by the ED regulation.

Subpart E covers the prohibitions of discrimination on the basis of sex in employment in educational programs and activities. Specific aspects of employment that are addressed include hiring and employment criteria, recruitment, compensation, job classification and structure, promotion and termination, fringe benefits, consideration of marital or parental status, leave practices, advertising, and preemployment inquiries as to parental and marital status. The subpart also includes a provision to exempt actions where sex is a bona fide occupational qualification. Section \_\_\_\_\_,525(b)(2), which concerns the provision of fringe benefits, is modified slightly in order to conform to principles established by the Supreme Court under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, *et seq.* The Supreme Court has held that fringe benefit plans may not require higher contributions from women than from men to receive the same benefits. See *City of Los Angeles Dept. of Water and Power v. Manhart*, 435 U.S. 702 (1978). Further, benefit plans may not provide lower benefits to women who made the same contributions as men. See *Arizona Governing Comm. v. Norris*, 463 U.S. 1073 (1983).

Subpart F addresses the agencies' respective procedures for implementation and enforcement of Title IX. Within 60 days of the publication of these Title IX regulations as a final rule, each agency will publish a notice in the **Federal Register** that identifies its respective programs that are covered by these Title IX regulations. Each agency will supplement or modify its notice of

covered programs, as appropriate, to reflect changes in coverage.

For those agencies that have regulations to enforce Title VI, such procedures will be adopted and referenced. Titles VI and IX address discrimination in Federally assisted programs and have identical statutory enforcement schemes. The administrative enforcement procedures in Title VI regulations are virtually identical among the participating agencies, and differences are minor. For the Department of the Treasury and NARA, the specific text is set forth herein since neither has a Title VI regulation. The Corporation for Community and National Service, which is the successor to ACTION, is subject to the Title VI regulations promulgated by ACTION. See National and Community Service Trust Act of 1993, Public Law 103-82, section 203(c)(2), 107 Stat. 785, 892; 45 CFR Part 1203. It also should be noted that some agencies, based on other Federal laws, have promulgated regulations that similarly prohibit discrimination on the basis of sex in programs that receive Federal financial assistance. In the absence of a specific agency adoption, it should be understood that such existing regulations remain in force and are unaffected by this proposed regulation.

#### Applicable Executive Orders and Regulatory Certifications

This proposed Title IX regulation has been reviewed by the Equal Employment Opportunity Commission pursuant to Executive Order 12067.

This proposed Title IX regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The participating agencies have determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, yet it is not "economically significant" as defined in section 3(f)(1), and, therefore, the information enumerated in section 6(a)(3)(C) of the order is not required. Pursuant to Executive order 12866, this rule has been reviewed by OMB.

The participating agencies have determined that this Title IX regulation is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-

based companies in domestic and export markets. All of the entities that are subject to these regulations are already covered by Title IX. While these regulations address standards of liability and require that recipients establish grievance procedures and take other action, a substantial number of entities already are subject to other agencies' Title IX regulations that impose the same requirements. Accordingly, these regulations will not impose new obligations on many recipients.

These Title IX regulations enforce a statutory prohibition on discrimination on the basis of sex and, therefore, the participating agencies certify that no actions were deemed necessary under the Unfunded Mandates Reform Act of 1995. Furthermore, these regulations will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments.

The participating agencies, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), have reviewed these Title IX regulations and by approving certify that these regulations will not have a significant economic impact on a substantial number of small entities because all of the entities that are subject to these regulations are already subject to Title IX, and a substantial number of entities already are subject to the Title IX regulations of other agencies.

This is not a "major rule," nor will it have a significant economic impact on a substantial number of small entities, in large part because these regulations do not impose any new substantive obligations on Federal funding recipients. All recipients of Federal funding that operate educational programs or activities have been bound by Title IX's antidiscrimination provision since 1972. Individual participants in such programs have thus long had the right to be free from sex discrimination, and have enjoyed the corollary ability to file an administrative complaint and/or a private lawsuit when they believe their rights to have been violated. The common rule merely ensures that such individuals receive notice regarding their rights under Title IX and outlines a process for handling administrative complaints for those agencies that do not yet have such a process in place for Title IX. Indeed, by identifying a coherent scheme for resolving complaints administratively, this proposal may help prevent costly private litigation.

Entities receiving funding from one of the four Federal agencies that already

have Title IX regulations will face no new requirements under the common rule. Those entities receiving funding from an agency that does not currently have Title IX regulations will now be required to notify their students and employees that sex discrimination is prohibited and to adopt and publish grievance procedures outlining the process for filing an administrative complaint.

To the extent these requirements will be new for some entities, they are not burdensome. Indeed, Federal funding recipients are already required to have most of these procedures under other civil rights statutes, and would generally fulfill the requirements of the common rule by including Title IX within their existing processes. Similarly, the common rule also requires a covered recipient to designate an employee to coordinate Title IX compliance efforts. In many, if not most, cases, that person would be the same person currently responsible for handling complaints under the other antidiscrimination laws.

*Paperwork Reduction Act of 1995*

Sections \_\_\_\_\_,110, \_\_\_\_\_,115, and \_\_\_\_\_,230 contain information collection requirements. As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), the Department of Justice, on behalf of the participating agencies, has submitted a copy of these sections to OMB for its review.

*Collection of Information: Self-Evaluations*

A recipient educational institution is required within one year of the effective date of these regulations to evaluate its current services, policies, and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel in connection with the recipient's education program or activity to determine whether they meet the requirements of Title IX, and to the extent the requirements are not met, to make the required modifications. In addition, recipients are to maintain this self-evaluation on file for at least three years following completion of the evaluation, and to provide to the designated agency official upon request, a description of any modifications and remedial steps made under the self-evaluation requirements. These requirements are the most efficient means of self-evaluation and recordkeeping.

Nearly all educational institutions affected by this provision have already complied or are required to comply with

this provision under Title IX regulations promulgated by the U.S. Department of Education. The number of recipient educational institutions that have not previously complied or are required to comply is estimated as fewer than ten. The public reporting and recordkeeping burden for this collection of information for those remaining recipients is estimated to be thirty hours in order to conduct self-evaluations. This burden is incurred when a recipient is required to evaluate their current services, policies, and practices for compliance with Title IX. It should be noted that this calculation does not include the number of recipients which are already required to do self-evaluations under Title IX regulations promulgated by the U.S. Department of Education.

Based on data provided by all participating agencies, the estimated burden for reading and completing this form was calculated as follows:

Respondents .....	5
Responses (times) .....	1
Hours per respondent (times) .....	6
<hr/>	
Annual reporting burden (hours) .....	30

*Collection of Information: Assurances of Compliance*

These regulations require applications for Federal financial assistance for an education program or activity to be accompanied by an assurance from the applicant or recipient that each education program or activity operated by the applicant or recipient and to which these Title IX regulations apply will be operated in compliance with these regulations. Completing this form is the clearest, most effective, and least burdensome means of placing a recipient on notice of its obligations to comply with Title IX.

The public reporting and recordkeeping burden for this collection of information for all participating agencies is estimated to be 22,738 hours in order to read and complete the assurance form. This burden is incurred when an applicant or recipient completes an application for Federal financial assistance from a participating agency for the first time or if there is a break in continuity of assistance from such agency. It is estimated that approximately 25% of recipients seek assistance from more than one Federal agency; thus, the Department of Justice estimates that assurances would be required an average of 1.25 times rather than once, per recipient. It should be noted that this calculation does not include the number of recipients at agencies, including the Departments of Commerce, Interior, and Labor, which

already use OMB assurance forms or other assurance forms previously approved by OMB that include text regarding compliance with Title IX.

Based on data provided by all participating agencies, the estimated burden for reading and completing this form was calculated as follows:

Respondents .....	107,000
Responses (times) .....	1.25
Hours per respondent (times 10 minutes) .....	.17
Annual reporting burden (hours) ...	22,738

Collection of Information: Transition Plans

A recipient educational institution is required to submit a transition plan if it has admitted students of only one sex as regular students as of June 23, 1972, or admitted students of only one sex as regular students as of June 23, 1965, but thereafter admitted, as regular students, students of the sex not admitted prior to June 23, 1965. The transition plan requirements listed in this rule are the most efficient means of preparing transition plans and related recordkeeping.

All educational institutions affected by this provision have already complied or are required to comply with this provision under Title IX regulations promulgated by the U.S. Department of Education. There are no new educational institutions anticipated that would fall into this category. The public reporting and recordkeeping burden for this collection of information for recipient educational institutions is therefore estimated to be zero hours in order to develop transition plans. This burden is incurred when a recipient is required to develop and implement a transition plan. It should be noted that this calculation does not include the number of recipients which are already required to do transition plans under Title IX regulations promulgated by the U.S. Department of Education.

Based on data provided by all participating agencies, the estimated burden for reading and completing this form was calculated as follows:

Respondents .....	0
Responses (times) .....	1
Hours per respondent (times) .....	8
Annual reporting burden (times hour) .....	0

Organizations and individuals desiring to submit comments on these information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for U.S. Department of Justice.

The Department of Justice will consider comments by the public on

these proposed collections of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the participating agencies, including whether the information will have a practical use;
- Evaluating the accuracy of the participating agencies' collective estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department of Justice or participating agencies on the proposed regulation.

Text of the Proposed Common Rule

The text of this common rule as proposed in this document appears below:

[PART/Subpart] \_\_\_\_\_  
NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

- Sec.
- \_\_\_\_\_.100 Purpose and effective date
  - \_\_\_\_\_.105 Definitions
  - \_\_\_\_\_.110 Remedial and affirmative action and self-evaluation
  - \_\_\_\_\_.115 Assurance required
  - \_\_\_\_\_.120 Transfers of property
  - \_\_\_\_\_.125 Effect of other requirements
  - \_\_\_\_\_.130 Effect of employment opportunities
  - \_\_\_\_\_.135 Designation of responsible employee and adoption of grievance procedures
  - \_\_\_\_\_.140 Dissemination of policy

Subpart B—Coverage

- \_\_\_\_\_.200 Application
- \_\_\_\_\_.205 Educational institutions and other entities controlled by religious organizations
- \_\_\_\_\_.210 Military and merchant marine educational institutions

- \_\_\_\_\_.215 Membership practices of certain organizations
- \_\_\_\_\_.220 Admissions
- \_\_\_\_\_.225 Educational institutions eligible to submit transition plans
- \_\_\_\_\_.230 Transition plans
- \_\_\_\_\_.235 Statutory amendments

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

- \_\_\_\_\_.300 Admission
- \_\_\_\_\_.305 Preference in admission
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Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

- \_\_\_\_\_.400 Education programs and activities
- \_\_\_\_\_.405 Housing
- \_\_\_\_\_.410 Comparable facilities
- \_\_\_\_\_.415 Access to course offerings
- \_\_\_\_\_.420 Access to schools operated by LEAs
- \_\_\_\_\_.425 Counseling and use of appraisal and counseling materials
- \_\_\_\_\_.430 Financial assistance
- \_\_\_\_\_.435 Employment assistance to students
- \_\_\_\_\_.440 Health and insurance benefits and services
- \_\_\_\_\_.445 Marital or parental status
- \_\_\_\_\_.450 Athletics
- \_\_\_\_\_.455 Textbooks and curricular material

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

- \_\_\_\_\_.500 Employment
- \_\_\_\_\_.505 Employment criteria
- \_\_\_\_\_.510 Recruitment
- \_\_\_\_\_.515 Compensation
- \_\_\_\_\_.520 Job classification and structure
- \_\_\_\_\_.525 Fringe benefits
- \_\_\_\_\_.530 Marital or parental status
- \_\_\_\_\_.535 Effect of state or local law or other requirements
- \_\_\_\_\_.540 Advertising
- \_\_\_\_\_.545 Pre-employment inquiries
- \_\_\_\_\_.550 Sex as a bona fide occupational qualification

Subpart F—Procedures

- \_\_\_\_\_.600 Notice of covered programs
- Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

Subpart A—Introduction

Section \_\_\_\_\_ .100 Purpose and Effective Date

The purpose of these Title IX regulations is to effectuate Title IX of the Education Amendments of 1972, as amended (except sections 904 and 906 of those Amendments) (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688), which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or

sponsored by an educational institution as defined in these Title IX regulations. The effective date of these Title IX regulations shall be [30 days after publication of the final rule].

*Section \_\_\_\_\_.105 Definitions*

As used in these Title IX regulations, the term:

*Administratively separate unit* means a school, department, or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

*Admission* means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

*Applicant* means one who submits an application, request, or plan required to be approved by an official of the Federal agency that awards Federal financial assistance, or by a recipient, as a condition to becoming a recipient.

*Designated agency official* means [to be inserted by agency].

*Educational institution* means a local educational agency (LEA) as defined by 20 U.S.C. 8801(18), a preschool, a private elementary or secondary school, or an applicant or recipient that is an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, as defined in this section.

*Federal financial assistance* means any of the following, when authorized or extended under a law administered by the Federal agency that awards such assistance:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages, or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement that has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

*Institution of graduate higher education* means an institution that:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences;

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

*Institution of professional education* means an institution (except any institution of undergraduate higher education) that offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary of Education.

*Institution of undergraduate higher education* means:

(1) An institution offering at least two but less than four years of college-level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body that certifies credentials or offers degrees, but that may or may not offer academic study.

*Institution of vocational education* means a school or institution (except an institution of professional or graduate or undergraduate higher education) that has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical

field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers full-time study.

*Recipient* means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and that operates an education program or activity that receives such assistance, including any subunit, successor, assignee, or transferee thereof.

*Student* means a person who has gained admission.

*Title IX* means Title IX of the Education Amendments of 1972, Public Law 92-318, 86 Stat. 235, 373 (codified as amended at 20 U.S.C. 1681-1688) (except sections 904 and 906 thereof), as amended by section 3 of Public Law 93-568, 88 Stat. 1855, by section 412 of the Education Amendments of 1976, Public Law 94-482, 90 Stat. 2234, and by Section 3 of Pub. L. 100-259, 102 Stat. 28, 28-29 (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688).

*Title IX regulations* means the provisions set forth at [to be inserted by agency].

*Transition plan* means a plan subject to the approval of the Secretary of Education pursuant to section 901(a)(2) of the Education Amendments of 1972, 20 U.S.C. 1681(a)(2), under which an educational institution operates in making the transition from being an educational institution that admits only students of one sex to being one that admits students of both sexes without discrimination.

*Section \_\_\_\_\_.110 Remedial and Affirmative Action and Self-Evaluation*

(a) *Remedial action.* If the designated agency official finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the designated agency official deems necessary to overcome the effects of such discrimination.

(b) *Affirmative action.* In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action consistent with law to overcome the effects of conditions that resulted in limited participation therein by persons of a particular sex. Nothing in these Title IX regulations shall be interpreted to alter any affirmative action obligations that a recipient may have under Executive Order 11246, 3 CFR,

1964–1965 Comp., p. 339; as amended by Executive Order 11375, 3 CFR, 1966–1970 Comp., p. 684; as amended by Executive Order 11478, 3 CFR, 1966–1970 Comp., p. 803; as amended by Executive Order 12087, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264.

(c) *Self-evaluation.* Each recipient education institution shall, within one year of [the effective date of these Title IX regulations]:

(1) Evaluate, in terms of the requirements of these Title IX regulations, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

(2) Modify any of these policies and practices that do not or may not meet the requirements of these Title IX regulations; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination that resulted or may have resulted from adherence to these policies and practices.

(d) *Availability of self-evaluation and related materials.* Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the designated agency official upon request, a description of any modifications made pursuant to paragraph (c)(2) of this section and of any remedial steps taken pursuant to paragraph (c)(3) of this section.

#### Section \_\_\_\_\_.115 Assurance Required

(a) *General.* Every application for Federal financial assistance for any education program or activity shall as a condition of its approval contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the designated agency official, that each education program or activity operated by the applicant or recipient and to which these Title IX regulations apply will be operated in compliance with these Title IX regulations. An assurance of compliance with these Title IX regulations shall not be satisfactory to the designated agency official if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § \_\_\_\_\_.110(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past

discrimination whether occurring prior to or subsequent to the submission to the designated agency official of such assurance.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Form.* (1) The assurances required by paragraph (a) of this section, which may be included as part of a document that addresses other assurances or obligations, shall include that the applicant or recipient "will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: \* \* \* Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, 1685–1688)."

(2) The designated agency official will specify the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

#### Section \_\_\_\_\_.120 Transfers of Property

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee that operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government, both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of §§ \_\_\_\_\_.205 through \_\_\_\_\_.235(a).

#### Section \_\_\_\_\_.125 Effect of Other Requirements

(a) *Effect of other Federal provisions.* The obligations imposed by these Title IX regulations are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, 3 CFR, 1964–1965 Comp., p. 339; as amended by Executive Order 11375, 3 CFR, 1966–1970 Comp., p. 684; as amended by

Executive Order 11478, 3 CFR, 1966–1970 Comp., p. 803; as amended by Executive Order 12087, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264; sections 704 and 855 of the Public Health Service Act (42 U.S.C. 295m, 298b–2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*); the Equal Pay Act of 1963 (29 U.S.C. 206); and any other Act of Congress or Federal regulation.

(b) *Effect of State or local law or other requirements.* The obligation to comply with these Title IX regulations is not obviated or alleviated by any State or local law or other requirement that would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) *Effect of rules or regulations of private organizations.* The obligation to comply with these Title IX regulations is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association that would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and that receives Federal financial assistance.

#### Section \_\_\_\_\_.130 Effect of Employment Opportunities

The obligation to comply with these Title IX regulations is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

#### Section \_\_\_\_\_.135 Designation of Responsible Employee and Adoption of Grievance Procedures

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under these Title IX regulations, including any investigation of any complaint communicated to such recipient alleging its noncompliance with these Title IX regulations or alleging any actions that would be prohibited by these Title IX regulations. The recipient shall notify all its students and employees of the name, office address, and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of

student and employee complaints alleging any action that would be prohibited by these Title IX regulations.

*Section \_\_\_\_\_.140 Dissemination of Policy*

(a) *Notification of policy.* (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities that it operates, and that it is required by Title IX and these Title IX regulations not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the designated agency official finds necessary to apprise such persons of the protections against discrimination assured them by Title IX and these Title IX regulations, but shall state at least that the requirement not to discriminate in education programs and activities extends to employment therein, and to admission thereto unless §§ \_\_\_\_\_.300 through 310 do not apply to the recipient, and that inquiries concerning the application of Title IX and these Title IX regulations to such recipient may be referred to the employee designated pursuant to § \_\_\_\_\_.135, or to the designated agency official.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of [the effective date of these Title IX regulations] or of the date these Title IX regulations first apply to such recipient, whichever comes later, which notification shall include publication in:

- (i) Local newspapers;
- (ii) Newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and
- (iii) Memoranda or other written communications distributed to every student and employee of such recipient.

(b) *Publications.* (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form that it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in paragraph (b)(1) of this section that suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by these Title IX regulations.

(c) *Distribution.* Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b)(1) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and shall require such representatives to adhere to such policy.

**Subpart B—Coverage**

*Section \_\_\_\_\_.200 Application*

Except as provided in §§ \_\_\_\_\_.205 through \_\_\_\_\_.235(a) of this subpart, these Title IX regulations apply to every recipient and to each education program or activity operated by such recipient that receives Federal financial assistance.

*Section \_\_\_\_\_.205 Educational Institutions and Other Entities Controlled by Religious Organizations*

(a) *Exemption.* These Title IX regulations do not apply to any operation of an educational institution or other entity that is controlled by a religious organization to the extent that application of these Title IX regulations would not be consistent with the religious tenets of such organization.

(b) *Exemption claims.* An educational institution or other entity that wishes to claim the exemption set forth in paragraph (a) of this section shall do so by submitting in writing to the designated agency official a statement by the highest-ranking official of the institution, identifying the provisions of these Title IX regulations that conflict with a specific tenet of the religious organization.

*Section \_\_\_\_\_.210 Military and Merchant Marine Educational Institutions*

These Title IX regulations do not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.

*Section \_\_\_\_\_.215 Membership Practices of Certain Organizations.*

(a) *Social fraternities and sororities.* These Title IX regulations do not apply to the membership practices of social fraternities and sororities that are

exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) *YMCA, YWCA, Girl Scouts, Boy Scouts, and Camp Fire Girls.* These Title IX regulations do not apply to the membership practices of the Young Men's Christian Association (YMCA), the Young Women's Christian Association (YWCA), the Girl Scouts, the Boy Scouts, and Camp Fire Girls.

(c) *Voluntary youth service organizations.* These Title IX regulations do not apply to the membership practices of a voluntary youth service organization that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

*Section \_\_\_\_\_.220 Admissions*

(a) Admissions to educational institutions prior to June 24, 1973, are not covered by these Title IX regulations.

(b) *Administratively separate units.* For the purposes only of this section, §§ \_\_\_\_\_.225 and \_\_\_\_\_.230, and §§ \_\_\_\_\_.300 through \_\_\_\_\_.310, each administratively separate unit shall be deemed to be an educational institution.

(c) *Application of §§ \_\_\_\_\_.300 through \_\_\_\_\_.310.* Except as provided in paragraphs (d) and (e) of this section, §§ \_\_\_\_\_.300 through \_\_\_\_\_.310 apply to each recipient. A recipient to which §§ \_\_\_\_\_.300 through \_\_\_\_\_.310 apply shall not discriminate on the basis of sex in admission or recruitment in violation of §§ \_\_\_\_\_.300 through \_\_\_\_\_.310.

(d) *Educational institutions.* Except as provided in paragraph (e) of this section as to recipients that are educational institutions, §§ \_\_\_\_\_.300 through \_\_\_\_\_.310 apply only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) *Public institutions of undergraduate higher education.* §§ \_\_\_\_\_.300 through \_\_\_\_\_.310 do not apply to any public institution of undergraduate higher education that traditionally and continually from its establishment has had a policy of admitting students of only one sex.

*Section \_\_\_\_ .225 Educational Institutions Eligible To Submit Transition Plans*

(a) *Application.* This section applies to each educational institution to which §§ \_\_\_\_ .300 through \_\_\_\_ .310 apply that:

(1) Admitted students of only one sex as regular students as of June 23, 1972; or

(2) Admitted students of only one sex as regular students as of June 23, 1965, but thereafter admitted, as regular students, students of the sex not admitted prior to June 23, 1965.

(b) *Provision for transition plans.* An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of §§ \_\_\_\_ .300 through \_\_\_\_ .310.

*Section \_\_\_\_ .230 Transition Plans*

(a) *Submission of plans.* An institution to which § \_\_\_\_ .225 applies and that is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) *Content of plans.* In order to be approved by the Secretary of Education, a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which

§ \_\_\_\_ .225 applies shall result in treatment of applicants to or students of such recipient in violation of §§ \_\_\_\_ .300 through \_\_\_\_ .310 unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.

(d) *Effects of past exclusion.* To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which § \_\_\_\_ .225 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment programs that emphasize the institution's commitment to enrolling students of the sex previously excluded.

*Section \_\_\_\_ .235 Statutory Amendments*

(a) This section, which applies to all provisions of these Title IX regulations, addresses statutory amendments to Title IX.

(b) These Title IX regulations shall not apply to or preclude:

(1) Any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference;

(2) Any program or activity of a secondary school or educational institution specifically for:

(i) The promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or (ii) The selection of students to attend any such conference;

(3) Father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided to students of the other sex;

(4) Any scholarship or other financial assistance awarded by an institution of higher education to an individual because such individual has received such award in a single-sex pageant based upon a combination of factors related to the individual's personal appearance, poise, and talent. The pageant, however, must comply with other nondiscrimination provisions of Federal law.

(c) *Program or activity or program* means:

(1) All of the operations of any entity described in paragraphs (c)(1)(i) through

(iv) of this section, any part of which is extended Federal financial assistance:

(i)(A) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(ii)(A) A college, university, or other postsecondary institution, or a public system of higher education; or

(B) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(iii)(A) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(1) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(2) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(iv) Any other entity that is established by two or more of the entities described in paragraphs (c)(1)(i), (ii), or (iii) of this section.

(2)(i) *Program or activity* does not include any operation of an entity that is controlled by a religious organization if the application of 20 U.S.C. 1681 to such operation would not be consistent with the religious tenets of such organization.

(ii) For example, all of the operations of a college, university, or other postsecondary institution, including but not limited to traditional educational operations, faculty and student housing, campus shuttle bus service, campus restaurants, the bookstore, and other commercial activities are part of a "program or activity" subject to these Title IX regulations if the college, university, or other institution receives Federal financial assistance.

(d)(1) Nothing in these Title IX regulations shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Medical

procedures, benefits, services, and the use of facilities, necessary to save the life of a pregnant woman or to address complications related to an abortion are not subject to this section.

(2) Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion. Accordingly, subject to paragraph (d)(1) of this section, no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, employment, or other educational program or activity operated by a recipient that receives Federal financial assistance because such individual has sought or received, or is seeking, a legal abortion, or any benefit or service related to a legal abortion.

#### **Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited**

##### *Section \_\_\_\_\_.300 Admission*

(a) *General.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which §§ \_\_\_\_\_.300 through \_\_\_\_\_.310 apply, except as provided in §§ \_\_\_\_\_.225 and \_\_\_\_\_.230.

(b) *Specific prohibitions.* (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ \_\_\_\_\_.300 through \_\_\_\_\_.310 apply shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission that has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria that do not have such a disproportionately adverse effect are shown to be unavailable.

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of

admission, a recipient to which §§ \_\_\_\_\_.300 through \_\_\_\_\_.310 apply:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant that treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice that so discriminates or excludes;

(3) Subject to § \_\_\_\_\_.235(d), shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

##### *Section \_\_\_\_\_.305 Preference in Admission*

A recipient to which §§ \_\_\_\_\_.300 through \_\_\_\_\_.310 apply shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity that admits as students only or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of §§ \_\_\_\_\_.300 through \_\_\_\_\_.310.

##### *Section \_\_\_\_\_.310 Recruitment*

(a) *Nondiscriminatory recruitment.* A recipient to which §§ \_\_\_\_\_.300 through \_\_\_\_\_.310 apply shall not discriminate on the basis of sex in the recruitment and admission of students.

A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § \_\_\_\_\_.110(a), and may choose to undertake such efforts as affirmative action pursuant to § \_\_\_\_\_.110(b).

(b) *Recruitment at certain institutions.*

A recipient to which §§ \_\_\_\_\_.300 through \_\_\_\_\_.310 apply shall not recruit primarily or exclusively at educational institutions, schools, or entities that admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in

violation of §§ \_\_\_\_\_.300 through \_\_\_\_\_.310.

#### **Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited**

##### *Section \_\_\_\_\_.400 Education Programs and Activities*

(a) *General.* Except as provided elsewhere in these Title IX regulations, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient that receives Federal financial assistance. Sections \_\_\_\_\_.400 through \_\_\_\_\_.455 do not apply to actions of a recipient in connection with admission of its students to an education program or activity of a recipient to which §§ \_\_\_\_\_.300 through \_\_\_\_\_.310 do not apply, or an entity, not a recipient, to which §§ \_\_\_\_\_.300 through \_\_\_\_\_.310 would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in §§ \_\_\_\_\_.400 through \_\_\_\_\_.455, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person that discriminates on the basis of sex in providing any aid, benefit, or service to students or employees;

(7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or

similar legal instruments, or by acts of foreign governments and restricted to members of one sex, that are designed to provide opportunities to study abroad, and that are awarded to students who are already matriculating at or who are graduates of the recipient institution; *Provided*, that a recipient educational institution that administers or assists in the administration of such scholarships, fellowships, or other awards that are restricted to members of one sex provides, or otherwise makes available, reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) *Programs not operated by recipient.* (1) This paragraph (d) applies to any recipient that requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or that facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient:

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient that these Title IX regulations would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

#### Section \_\_\_\_\_.405 *Housing*

(a) *Generally.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) *Other housing.* (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of

housing other than that provided by such recipient.

(2)(i) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole:

(A) Proportionate in quantity; and

(B) Comparable in quality and cost to the student.

(ii) A recipient may render such assistance to any agency, organization, or person that provides all or part of such housing to students of only one sex.

#### Section \_\_\_\_\_.410 *Comparable Facilities*

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

#### Section \_\_\_\_\_.415 *Access to Course Offerings*

(a) A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(b)(1) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from [the effective date of these Title IX regulations]. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from [the effective date of these Title IX regulations].

(2) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(3) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling,

boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(4) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards that do not have such effect.

(5) Portions of classes in elementary and secondary schools that deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(6) Recipients may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

#### Section \_\_\_\_\_.420 *Access to Schools Operated By LEAs*

A recipient that is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

#### Section \_\_\_\_\_.425 *Counseling and Use of Appraisal and Counseling Materials*

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient that uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials that permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the

result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

*Section \_\_\_\_\_.430 Financial Assistance*

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:

(1) On the basis of sex, provide different amounts or types of such assistance, limit eligibility for such assistance that is of any particular type or source, apply different criteria, or otherwise discriminate;

(2) Through solicitation, listing, approval, provision of facilities, or other services, assist any foundation, trust, agency, organization, or person that provides assistance to any of such recipient's students in a manner that discriminates on the basis of sex; or

(3) Apply any rule or assist in application of any rule concerning eligibility for such assistance that treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.* (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government that require that awards be made to members of a particular sex specified therein; *Provided*, that the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each

student selected under paragraph (b)(2)(i) of this section; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) A recipient may provide separate athletic scholarships or grants-in-aid for members of each sex as part of separate athletic teams for members of each sex to the extent consistent with this paragraph (c) and § \_\_\_\_\_.450.

*Section \_\_\_\_\_.435 Employment Assistance to Students*

(a) *Assistance by recipient in making available outside employment.* A recipient that assists any agency, organization, or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person that discriminates on the basis of sex in its employment practices.

(b) *Employment of students by recipients.* A recipient that employs any of its students shall not do so in a manner that violates §§ \_\_\_\_\_.500 through \_\_\_\_\_.550.

*Section \_\_\_\_\_.440 Health and Insurance Benefits and Services*

Subject to § \_\_\_\_\_.235(d), in providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner that would violate §§ \_\_\_\_\_.500 through \_\_\_\_\_.550 if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service that may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient that provides full coverage health service shall provide gynecological care.

*Section \_\_\_\_\_.445 Marital or parental status*

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.* (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity as long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient that operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section, shall ensure that the instructional program in the separate program is comparable to that offered to non-pregnant students.

(4) Subject to § \_\_\_\_\_.235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan, or policy that such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient that does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence for as long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status that she held when the leave began.

*Section \_\_\_\_\_.450 Athletics*

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person, or otherwise be discriminated against in any interscholastic, intercollegiate, club, or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try out for the team offered unless the sport involved is a contact sport. For the purposes of these Title IX regulations, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(c) *Equal opportunity.* (1) A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available, the designated agency official will consider, among other factors:

- (i) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
- (ii) The provision of equipment and supplies;
- (iii) Scheduling of games and practice time;
- (iv) Travel and per diem allowance;
- (v) Opportunity to receive coaching and academic tutoring;
- (vi) Assignment and compensation of coaches and tutors;
- (vii) Provision of locker rooms, practice, and competitive facilities;
- (viii) Provision of medical and training facilities and services;
- (ix) Provision of housing and dining facilities and services;
- (x) Publicity.

(2) For purposes of paragraph (c)(1) of this section, unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not

constitute noncompliance with this section, but the designated agency official may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from [the effective date of these Title IX regulations]. A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the secondary or postsecondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from [the effective date of these Title IX regulations].

*Section \_\_\_\_\_.455 Textbooks and Curricular Material*

Nothing in these Title IX regulations shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

**Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited**

*Section \_\_\_\_\_.500 Employment*

(a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient that receives Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way that could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by §§\_\_\_\_.500 through \_\_\_\_\_.550, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for

employment on the basis of attendance at any educational institution or entity that admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of these Title IX regulations.

(b) *Application.* The provisions of §§\_\_\_\_.500 through \_\_\_\_\_.550 apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications, and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including social or recreational programs; and

(10) Any other term, condition, or privilege of employment.

*Section \_\_\_\_\_.505 Employment Criteria*

A recipient shall not administer or operate any test or other criterion for any employment opportunity that has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

*Section \_\_\_\_\_.510 Recruitment*

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be

presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have so discriminated in the past, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities that furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of §§ \_\_\_\_\_.500 through \_\_\_\_\_.550.

#### Section \_\_\_\_\_.515 Compensation

A recipient shall not make or enforce any policy or practice that, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and that are performed under similar working conditions.

#### Section \_\_\_\_\_.520 Job Classification and Structure

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements that classify persons on the basis of sex, unless sex is a bona fide occupational qualification for the positions in question as set forth in § \_\_\_\_\_.550.

#### Section \_\_\_\_\_.525 Fringe Benefits

(a) *"Fringe benefits" defined.* For purposes of these Title IX regulations, *fringe benefits* means: Any medical, hospital, accident, life insurance, or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of § \_\_\_\_\_.515.

(b) *Prohibitions.* A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan that

does not provide for equal periodic benefits for members of each sex and for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan that establishes different optional or compulsory retirement ages based on sex or that otherwise discriminates in benefits on the basis of sex.

#### Section \_\_\_\_\_.530 Marital or Parental Status

(a) *General.* A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment that treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability.* Subject to § \_\_\_\_\_.235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, recovery therefrom, and any temporary disability resulting therefrom as any other temporary disability for all job-related purposes, including commencement, duration, and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient that does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status that she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

#### Section \_\_\_\_\_.535 Effect of State or Local Law or Other Requirements

(a) *Prohibitory requirements.* The obligation to comply with §§ \_\_\_\_\_.500 through \_\_\_\_\_.550 is not obviated or alleviated by the existence of any State or local law or other requirement that imposes prohibitions or limits upon employment of members of one sex that are not imposed upon members of the other sex.

(b) *Benefits.* A recipient that provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

#### Section \_\_\_\_\_.540 Advertising

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job in question.

#### Section \_\_\_\_\_.545 Pre-employment Inquiries

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss" or "Mrs."

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

#### Section \_\_\_\_\_.550 Sex as a Bona Fide Occupational Qualification

A recipient may take action otherwise prohibited by §§ \_\_\_\_\_.500 through \_\_\_\_\_.550 provided it is shown that sex is a bona fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section that is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

**Subpart F—Procedures***Section \_\_\_\_ .600 Notice of Covered Programs*

Within 60 days of [the publication as a final rule of these Title IX regulations], each Federal agency that awards Federal financial assistance shall publish in the **Federal Register** a notice of the programs covered by these Title IX regulations. Each such Federal agency shall periodically republish the notice of covered programs to reflect changes in covered programs. Copies of this notice also shall be made available upon request to the Federal agency's office that enforces Title IX.

**Proposed Adoption of the Common Rule**

The proposed adoption of the common rule by the participating agencies, as modified by agency-specific text, is set forth below:

**NUCLEAR REGULATORY COMMISSION****10 CFR Part 5****FOR FURTHER INFORMATION CONTACT:**

Irene P. Little, Office of Small Business and Civil Rights, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, (301) 415-7380.

**List of Subjects in 10 CFR Part 5**

Administrative practice and procedure, Buildings and facilities, Civil rights, Colleges and universities, Education of individuals with disabilities, Education, Educational facilities, Educational research, Educational study programs, Equal educational opportunity, Equal employment opportunity, Graduate fellowship program, Grant programs—education, Individuals with disabilities, Investigations, Reporting and recordkeeping requirements, Sex discrimination, State agreement program, Student aid, Women.

Dated: January 8, 1999.

**William D. Travers,**

*Executive Director for Operations.*

For the reasons stated in the preamble, the Nuclear Regulatory Commission proposes to amend 10 CFR, chapter I, as follows:

1. Part 5 is added as set forth at the end of the common preamble to read as follows:

**PART 5—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE****Subpart A—Introduction**

Sec.

- 5.100 Purpose and effective date
- 5.105 Definitions
- 5.110 Remedial and affirmative action and self-evaluation
- 5.115 Assurance required
- 5.120 Transfers of property
- 5.125 Effect of other requirements
- 5.130 Effect of employment opportunities
- 5.135 Designation of responsible employee and adoption of grievance procedures
- 5.140 Dissemination of policy

**Subpart B—Coverage**

- 5.200 Application
- 5.205 Educational institutions and other entities controlled by religious organizations
- 5.210 Military and merchant marine educational institutions
- 5.215 Membership practices of certain organizations
- 5.220 Admissions
- 5.225 Educational institutions eligible to submit transition plans
- 5.230 Transition plans
- 5.235 Statutory amendments

**Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited**

- 5.300 Admission
- 5.305 Preference in admission
- 5.310 Recruitment

**Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited**

- 5.400 Education programs and activities
- 5.405 Housing
- 5.410 Comparable facilities
- 5.415 Access to course offerings
- 5.420 Access to schools operated by LEAs
- 5.425 Counseling and use of appraisal and counseling materials
- 5.430 Financial assistance
- 5.435 Employment assistance to students
- 5.440 Health and insurance benefits and services
- 5.445 Marital or parental status
- 5.450 Athletics
- 5.455 Textbooks and curricular material

**Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited**

- 5.500 Employment
- 5.505 Employment criteria
- 5.510 Recruitment
- 5.515 Compensation
- 5.520 Job classification and structure
- 5.525 Fringe benefits
- 5.530 Marital or parental status
- 5.535 Effect of state or local law or other requirements
- 5.540 Advertising
- 5.545 Pre-employment inquiries
- 5.550 Sex as a bona fide occupational qualification

**Subpart F—Procedures**

5.600 Notice of covered programs

5.605 Enforcement procedures

**Authority:** 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

**§ 5.105 [Amended]**

2. In § 5.105 in the definition of “designated agency official,” the brackets and text within brackets are removed and “Program Manager, Civil Rights Program” is added in its place.

3. In § 5.105 in the definition of “Title IX regulations,” the brackets and text within brackets are removed and “§§ 5.100 through 5.605” is added in its place.

4. Section 5.605 is added to read as follows:

**§ 5.605 Enforcement procedures.**

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (“Title VI”) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 10 CFR 4.21 through 4.75.

**SMALL BUSINESS ADMINISTRATION****13 CFR Part 113****FOR FURTHER INFORMATION CONTACT:**

Erline M. Patrick, Assistant Administrator for Equal Employment Opportunity and Civil Rights Compliance, U.S. Small Business Administration, 409 3rd Street, S.W., Washington, D.C. 20416, (202) 205-6750.

**List of Subjects in 13 CFR Part 113**

Administrative practice and procedure, Civil rights, Educational facilities, Grant programs—education, Loan programs—education, Sex discrimination, Women.

**Aida Alvarez,**  
*Administrator.*

For the reasons stated in the preamble, the Small Business Administration proposes to amend 13 CFR part 113 as follows:

**PART 113—NONDISCRIMINATION IN FINANCIAL ASSISTANCE PROGRAMS OF SBA—EFFECTUATION OF POLICIES OF FEDERAL GOVERNMENT AND SBA ADMINISTRATOR**

1. The authority for part 113 is revised to read as follows:

**Authority:** 15 U.S.C. 633, 634, 687, 1691; 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688; 29 U.S.C. 794; Sec. 5, Pub. L. 85-536, 72 Stat. 385, as amended; Sec. 308, Pub. L. 85-699, 72 Stat. 694, as amended.

**§§ 113.1 through 113.8 [Redesignated as Subpart A]**

2. Sections 113.1 through 113.8 are designated as subpart A and the subpart heading is added to read as follows:

**Subpart A—General Provisions****Appendix A to Part 113 [Redesignated as Appendix A to Subpart A of Part 113]**

3. Appendix A to part 113 is redesignated as Appendix A to subpart A of part 113 and the heading is revised to read as follows:

**Appendix A to Subpart A of Part 113**

4. Subpart B, consisting of §§ 113.100 through 113.605, is added to part 113 as set forth at the end of the common preamble to read as follows:

**Subpart B—Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving Federal Financial Assistance**

Sec.

**Introduction**

- 113.100 Purpose and effective date
- 113.105 Definitions
- 113.110 Remedial and affirmative action and self-evaluation
- 113.115 Assurance required
- 113.120 Transfers of property
- 113.125 Effect of other requirements
- 113.130 Effect of employment opportunities
- 113.135 Designation of responsible employee and adoption of grievance procedures
- 113.140 Dissemination of policy

**Coverage**

- 113.200 Application
- 113.205 Educational institutions and other entities controlled by religious organizations
- 113.210 Military and merchant marine educational institutions
- 113.215 Membership practices of certain organizations
- 113.220 Admissions
- 113.225 Educational institutions eligible to submit transition plans
- 113.230 Transition plans
- 113.235 Statutory amendments

**Discrimination on the Basis of Sex in Admission and Recruitment Prohibited**

- 113.300 Admission
- 113.305 Preference in admission
- 113.310 Recruitment

**Discrimination on the Basis of Sex in Education Programs and Activities Prohibited**

- 113.400 Education programs and activities.
- 113.405 Housing
- 113.410 Comparable facilities
- 113.415 Access to course offerings
- 113.420 Access to schools operated by LEAs
- 113.425 Counseling and use of appraisal and counseling materials
- 113.430 Financial assistance
- 113.435 Employment assistance to students

- 113.440 Health and insurance benefits and services
- 113.445 Marital or parental status
- 113.450 Athletics
- 113.455 Textbooks and curricular material

**Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited**

- 113.500 Employment
- 113.505 Employment criteria
- 113.510 Recruitment
- 113.515 Compensation
- 113.520 Job classification and structure
- 113.525 Fringe benefits
- 113.530 Marital or parental status
- 113.535 Effect of state or local law or other requirements
- 113.540 Advertising
- 113.545 Pre-employment inquiries
- 113.550 Sex as a bona fide occupational qualification

**Procedures**

- 113.600 Notice of covered programs
- 113.605 Enforcement procedures

**Subpart B—Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving Federal Financial Assistance**

**Authority:** 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

**Subparts A through F [Removed]**

5. The designations for Subparts A through F as set forth in the common rule are removed.

**§ 113.105 [Amended]**

6. In § 113.105 in the definition of “designated agency official,” the brackets and text within brackets are removed and “Assistant Administrator for Equal Employment and Civil Rights Compliance” is added in its place.

7. In § 113.105 in the definition of “Title IX regulations,” the brackets and text within brackets are removed and “§§ 113.100 through 113.605” is added in its place.

8. Section 113.605 is added to read as follows:

**§ 113.605 Enforcement procedures.**

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (“Title VI”) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 13 CFR part 112.

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****14 CFR Part 1253**

**FOR FURTHER INFORMATION CONTACT:** Fred Dalton, Office of Equal Opportunity Programs, NASA Headquarters (Code

ED), Washington, D.C. 20546, (202) 358-0941.

**List of Subjects in 14 CFR Part 1253**

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Education of individuals with disabilities, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Investigations, Marital status discrimination, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

**Daniel S. Goldin,**

*Administrator.*

For the reasons stated in the preamble, the National Aeronautics and Space Administration proposes to amend 14 CFR, chapter V, as follows:

1. Part 1253 is added as set forth at the end of the common preamble to read as follows:

**PART 1253—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE****Subpart A—Introduction**

Sec.

- 1253.100 Purpose and effective date
- 1253.105 Definitions
- 1253.110 Remedial and affirmative action and self-evaluation
- 1253.115 Assurance required
- 1253.120 Transfers of property
- 1253.125 Effect of other requirements
- 1253.130 Effect of employment opportunities
- 1253.135 Designation of responsible employee and adoption of grievance procedures
- 1253.140 Dissemination of policy

**Subpart B—Coverage**

- 1253.200 Application
- 1253.205 Educational institutions and other entities controlled by religious organizations
- 1253.210 Military and merchant marine educational institutions
- 1253.215 Membership practices of certain organizations
- 1253.220 Admissions
- 1253.225 Educational institutions eligible to submit transition plans
- 1253.230 Transition plans
- 1253.235 Statutory amendments

**Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited**

- 1253.300 Admission
- 1253.305 Preference in admission
- 1253.310 Recruitment

**Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited**

- 1253.400 Education programs and activities
- 1253.405 Housing
- 1253.410 Comparable facilities
- 1253.415 Access to course offerings
- 1253.420 Access to schools operated by LEAs
- 1253.425 Counseling and use of appraisal and counseling materials
- 1253.430 Financial assistance
- 1253.435 Employment assistance to students
- 1253.440 Health and insurance benefits and services
- 1253.445 Marital or parental status
- 1253.450 Athletics
- 1253.455 Textbooks and curricular material

**Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited**

- 1253.500 Employment
- 1253.505 Employment criteria
- 1253.510 Recruitment
- 1253.515 Compensation
- 1253.520 Job classification and structure
- 1253.525 Fringe benefits
- 1253.530 Marital or parental status
- 1253.535 Effect of state or local law or other requirements
- 1253.540 Advertising
- 1253.545 Pre-employment inquiries
- 1253.550 Sex as a bona fide occupational qualification

**Subpart F—Procedures**

- 1253.600 Notice of covered programs
- 1253.605 Enforcement procedures

**Authority:** 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

**§ 1253.105 [Amended]**

2. In § 1253.105 in the definition of “designated agency official,” the brackets and text within brackets are removed and “Associate Administrator for Equal Opportunity Programs” is added in its place.

3. In § 1253.105 in the definition of “Title IX regulations,” the brackets and text within brackets are removed and “§§ 1253.100 through 1253.605” is added in its place.

4. Section 1253.605 is added to read as follows:

**§ 1253.605 Enforcement procedures.**

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (“Title VI”) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 14 CFR 1250.105 through 1250.110.

**DEPARTMENT OF COMMERCE****15 CFR Part 8a**

**RIN 0690-AA28**

**FOR FURTHER INFORMATION CONTACT:**

Kimberly H. Walton, Director, Office of Civil Rights, Department of Commerce, Room 6010, Washington, D.C. 20230 (202) 482-0625.

**List of Subjects in 15 CFR Part 8a**

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Educational facilities, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Reporting and recordkeeping requirements, Sex discrimination, Women.

**Kimberly H. Walton,**

*Director, Office of Civil Rights, Department of Commerce.*

For the reasons stated in the preamble, the Department of Commerce proposes to amend 15 CFR, subtitle A, as follows:

1. Part 8a is added as set forth at the end of the common preamble to read as follows:

**PART 8a—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

**Subpart A—Introduction**

Sec.

- 8a.100 Purpose and effective date
- 8a.105 Definitions
- 8a.110 Remedial and affirmative action and self-evaluation
- 8a.115 Assurance required
- 8a.120 Transfers of property
- 8a.125 Effect of other requirements
- 8a.130 Effect of employment opportunities
- 8a.135 Designation of responsible employee and adoption of grievance procedures
- 8a.140 Dissemination of policy

**Subpart B—Coverage**

- 8a.200 Application
- 8a.205 Educational institutions and other entities controlled by religious organizations
- 8a.210 Military and merchant marine educational institutions
- 8a.215 Membership practices of certain organizations
- 8a.220 Admissions
- 8a.225 Educational institutions eligible to submit transition plans
- 8a.230 Transition plans
- 8a.235 Statutory amendments

**Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited**

- 8a.300 Admission
- 8a.305 Preference in admission
- 8a.310 Recruitment

**Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited**

- 8a.400 Education programs and activities
- 8a.405 Housing
- 8a.410 Comparable facilities
- 8a.415 Access to course offerings
- 8a.420 Access to schools operated by LEAs
- 8a.425 Counseling and use of appraisal and counseling materials
- 8a.430 Financial assistance
- 8a.435 Employment assistance to students
- 8a.440 Health and insurance benefits and services
- 8a.445 Marital or parental status
- 8a.450 Athletics
- 8a.455 Textbooks and curricular material

**Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited**

- 8a.500 Employment
- 8a.505 Employment criteria
- 8a.510 Recruitment
- 8a.515 Compensation
- 8a.520 Job classification and structure
- 8a.525 Fringe benefits
- 8a.530 Marital or parental status
- 8a.535 Effect of state or local law or other requirements
- 8a.540 Advertising
- 8a.545 Pre-employment inquiries
- 8a.550 Sex as a bona fide occupational qualification

**Subpart F—Procedures**

- 8a.600 Notice of covered programs
- 8a.605 Enforcement procedures.

**Authority:** 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

**§ 8a.105 [Amended]**

2. In § 8a.105 in the definition of “designated agency official,” the brackets and text within brackets are removed and the following text is added in its place: “with respect to any program receiving Federal financial assistance, the Secretary or other official of the Department who by law or by delegation has the principal authority within the Department for the administration of a law extending such assistance. *Designated agency official* also means any officials so designated by due delegation of authority within the Department to act in such capacity with regard to any program under these Title IX regulations”.

3. In § 8a.105 in the definition of “Title IX regulations,” the brackets and text within brackets are removed and “§§ 8a.100 through 8a.605” is added in its place.

4. Section 8a.605 is added to read as follows:

**§ 8a.605 Enforcement procedures.**

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (“Title VI”) are hereby adopted and applied to these Title IX

regulations. These procedures may be found at 15 CFR 8.7 through 8.15, and 13 CFR part 317.

#### TENNESSEE VALLEY AUTHORITY

##### 18 CFR Part 1317

**FOR FURTHER INFORMATION CONTACT:** Franklin E. Alford, Manager, Supplier and Diverse Business Relations, 1101 Market Street, WR 3J, Chattanooga, Tennessee 37402, (423) 751-7203.

##### List of Subjects in 18 CFR Part 1317

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Equal educational opportunity, Equal employment opportunity, Marital status discrimination, Reporting and recordkeeping requirements, Sex discrimination, Women.

##### Franklin E. Alford,

*Manager, Supplier and Diverse Business Relations.*

For the reasons stated in the preamble, the Tennessee Valley Authority proposes to amend 18 CFR, chapter XIII, as follows:

1. Part 1317 is added as set forth at the end of the common preamble to read as follows:

#### **PART 1317—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

##### **Subpart A—Introduction**

Sec.

- 1317.100 Purpose and effective date
- 1317.105 Definitions
- 1317.110 Remedial and affirmative action and self-evaluation
- 1317.115 Assurance required
- 1317.120 Transfers of property
- 1317.125 Effect of other requirements
- 1317.130 Effect of employment opportunities
- 1317.135 Designation of responsible employee and adoption of grievance procedures
- 1317.140 Dissemination of policy

##### **Subpart B—Coverage**

- 1317.200 Application
- 1317.205 Educational institutions and other entities controlled by religious organizations
- 1317.210 Military and merchant marine educational institutions
- 1317.215 Membership practices of certain organizations
- 1317.220 Admissions
- 1317.225 Educational institutions eligible to submit transition plans
- 1317.230 Transition plans
- 1317.235 Statutory amendments

##### **Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited**

- 1317.300 Admission
- 1317.305 Preference in admission
- 1317.310 Recruitment

##### **Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited**

- 1317.400 Education programs and activities
- 1317.405 Housing
- 1317.410 Comparable facilities
- 1317.415 Access to course offerings
- 1317.420 Access to schools operated by LEAs
- 1317.425 Counseling and use of appraisal and counseling materials
- 1317.430 Financial assistance
- 1317.435 Employment assistance to students
- 1317.440 Health and insurance benefits and services
- 1317.445 Marital or parental status
- 1317.450 Athletics
- 1317.455 Textbooks and curricular material

##### **Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited**

- 1317.500 Employment
- 1317.505 Employment criteria
- 1317.510 Recruitment
- 1317.515 Compensation
- 1317.520 Job classification and structure
- 1317.525 Fringe benefits
- 1317.530 Marital or parental status
- 1317.535 Effect of state or local law or other requirements
- 1317.540 Advertising
- 1317.545 Pre-employment inquiries
- 1317.550 Sex as a bona fide occupational qualification

##### **Subpart F—Procedures**

- 1317.600 Notice of covered programs
- 1317.605 Enforcement procedures

**Authority:** 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

##### **§ 1317.105 [Amended]**

2. In § 1317.105 in the definition of “designated agency official,” the brackets and text within brackets are removed and “Manager, Supplier and Diverse Business Relations” is added in its place.

3. In § 1317.105 in the definition of “Title IX regulations,” the brackets and text within brackets are removed and “§§ 1317.100 through 1317.605” is added in its place.

4. Section 1317.605 is added to read as follows:

##### **§ 1317.605 Enforcement procedures.**

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (“Title VI”) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 18 CFR part 1302.

#### DEPARTMENT OF STATE

##### 22 CFR Part 146

**FOR FURTHER INFORMATION CONTACT:** Paul M. Coran, Attorney Advisor, Office of Equal Employment Opportunity and Civil Rights, Department of State, Room 4216, Washington, D.C. 20520, (202) 647-9295.

##### List of Subjects in 22 CFR Part 146

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Educational research, Educational study programs, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Sex discrimination, Women.

Dated: December 8, 1997.

##### **Bonnie R. Cohen,**

*Under Secretary of State for Management.*

For the reasons stated in the preamble, the Department of State proposes to amend 22 CFR, chapter I, subchapter O, as follows:

1. Part 146 is added as set forth at the end of the common preamble to read as follows:

#### **PART 146—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

##### **Subpart A—Introduction**

Sec.

- 146.100 Purpose and effective date
- 146.105 Definitions
- 146.110 Remedial and affirmative action and self-evaluation
- 146.115 Assurance required
- 146.120 Transfers of property
- 146.125 Effect of other requirements
- 146.130 Effect of employment opportunities
- 146.135 Designation of responsible employee and adoption of grievance procedures
- 146.140 Dissemination of policy

##### **Subpart B—Coverage**

- 146.200 Application
- 146.205 Educational institutions and other entities controlled by religious organizations
- 146.210 Military and merchant marine educational institutions
- 146.215 Membership practices of certain organizations
- 146.220 Admissions
- 146.225 Educational institutions eligible to submit transition plans
- 146.230 Transition plans
- 146.235 Statutory amendments

**Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited**

- 146.300 Admission  
 146.305 Preference in admission  
 146.310 Recruitment

**Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited**

- 146.400 Education programs and activities  
 146.405 Housing  
 146.410 Comparable facilities  
 146.415 Access to course offerings  
 146.420 Access to schools operated by LEAs  
 146.425 Counseling and use of appraisal and counseling materials  
 146.430 Financial assistance  
 146.435 Employment assistance to students  
 146.440 Health and insurance benefits and services  
 146.445 Marital or parental status  
 146.450 Athletics  
 146.455 Textbooks and curricular material

**Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited**

- 146.500 Employment  
 146.505 Employment criteria  
 146.510 Recruitment  
 146.515 Compensation  
 146.520 Job classification and structure  
 146.525 Fringe benefits  
 146.530 Marital or parental status  
 146.535 Effect of state or local law or other requirements  
 146.540 Advertising  
 146.545 Pre-employment inquiries  
 146.550 Sex as a bona fide occupational qualification

**Subpart F—Procedures**

- 146.600 Notice of covered programs  
 146.605 Enforcement procedures  
**Authority:** 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

**§ 146.105 [Amended]**

2. In § 146.105 in the definition of “designated agency official,” the brackets and text within brackets are removed and “Deputy Assistant Secretary for the Office of Equal Employment Opportunity and Civil Rights” is added in its place.

3. In § 146.105 in the definition of “Title IX regulations,” the brackets and text within brackets are removed and “§§ 146.100 through 146.605” is added in its place.

4. Section 146.605 is added to read as follows:

**§ 146.605 Enforcement procedures.**

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (“Title VI”) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 22 CFR part 141.

**AGENCY FOR INTERNATIONAL DEVELOPMENT****22 CFR Part 229**

**FOR FURTHER INFORMATION CONTACT:** Jessalyn L. Pendarvis, Director, Office of Equal Opportunity Programs, Agency for International Development, Washington, D.C. 20523, (202) 712-1110.

**List of Subjects in 22 CFR Part 229**

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Investigations, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

**Jessalyn L. Pendarvis,**  
*Director, Office of Equal Opportunity Programs.*

For the reasons stated in the preamble, the Agency for International Development proposes to amend 22 CFR, chapter II, as follows:

1. Part 229 is added as set forth at the end of the common preamble to read as follows:

**PART 229—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE****Subpart A—Introduction**

- Sec.  
 229.100 Purpose and effective date  
 229.105 Definitions  
 229.110 Remedial and affirmative action and self-evaluation  
 229.115 Assurance required  
 229.120 Transfers of property  
 229.125 Effect of other requirements  
 229.130 Effect of employment opportunities  
 229.135 Designation of responsible employee and adoption of grievance procedures  
 229.140 Dissemination of policy

**Subpart B—Coverage**

- 229.200 Application  
 229.205 Educational institutions and other entities controlled by religious organizations  
 229.210 Military and merchant marine educational institutions  
 229.215 Membership practices of certain organizations  
 229.220 Admissions  
 229.225 Educational institutions eligible to submit transition plans  
 229.230 Transition plans  
 229.235 Statutory amendments

**Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited**

- 229.300 Admission  
 229.305 Preference in admission  
 229.310 Recruitment

**Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited**

- 229.400 Education programs and activities  
 229.405 Housing  
 229.410 Comparable facilities  
 229.415 Access to course offerings  
 229.420 Access to schools operated by LEAs  
 229.425 Counseling and use of appraisal and counseling materials  
 229.430 Financial assistance  
 229.435 Employment assistance to students  
 229.440 Health and insurance benefits and services  
 229.445 Marital or parental status  
 229.450 Athletics  
 229.455 Textbooks and curricular material

**Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited**

- 229.500 Employment  
 229.505 Employment criteria  
 229.510 Recruitment  
 229.515 Compensation  
 229.520 Job classification and structure  
 229.525 Fringe benefits  
 229.530 Marital or parental status  
 229.535 Effect of state or local law or other requirements  
 229.540 Advertising  
 229.545 Pre-employment inquiries  
 229.550 Sex as a bona fide occupational qualification

**Subpart F—Procedures**

- 229.600 Notice of covered programs  
 229.605 Enforcement procedures  
**Authority:** 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

**§ 229.105 [Amended]**

2. In § 229.105 in the definition of “designated agency official,” the brackets and text within brackets are removed and “Director, Office of Equal Opportunity Programs” is added in its place.

3. In § 229.105 in the definition of “Title IX regulations,” the brackets and text within brackets are removed and “§§ 229.100 through 229.605” is added in its place.

4. Section 229.605 is added to read as follows:

**§ 229.605 Enforcement procedures.**

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (“Title VI”) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 22 CFR part 209.

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****24 CFR Part 3**

[Agency Docket No. FR-4301-P-01]

RIN 2501-AC42

FOR FURTHER INFORMATION CONTACT: Juan E. Milanés, Acting Director, Office of Enforcement, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, Washington, D.C. 20410-0500, (202) 708-0836, ext. 6962. (This telephone number is not toll-free.) Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 800-877-8339.

**List of Subjects in 24 CFR Part 3**

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Educational facilities, Educational research, Educational study programs, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Investigations, Loan programs—education, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.  
**Andrew Cuomo,**  
*Secretary of Housing and Urban Development.*

For the reasons stated in the preamble, the Department of Housing and Urban Development proposes to amend 24 CFR, subtitle A, as follows:

1. Part 3 is added as set forth at the end of the common preamble to read as follows:

**PART 3—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

**Subpart A—Introduction**

Sec.

- 3.100 Purpose and effective date
- 3.105 Definitions
- 3.110 Remedial and affirmative action and self-evaluation
- 3.115 Assurance required
- 3.120 Transfers of property
- 3.125 Effect of other requirements
- 3.130 Effect of employment opportunities
- 3.135 Designation of responsible employee and adoption of grievance procedures
- 3.140 Dissemination of policy

**Subpart B—Coverage**

- 3.200 Application
- 3.205 Educational institutions and other entities controlled by religious organizations
- 3.210 Military and merchant marine educational institutions

- 3.215 Membership practices of certain organizations
- 3.220 Admissions
- 3.225 Educational institutions eligible to submit transition plans
- 3.230 Transition plans
- 3.235 Statutory amendments

**Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited**

- 3.300 Admission
- 3.305 Preference in admission
- 3.310 Recruitment

**Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited**

- 3.400 Education programs and activities
- 3.405 Housing
- 3.410 Comparable facilities
- 3.415 Access to course offerings
- 3.420 Access to schools operated by LEAs
- 3.425 Counseling and use of appraisal and counseling materials
- 3.430 Financial assistance
- 3.435 Employment assistance to students
- 3.440 Health and insurance benefits and services
- 3.445 Marital or parental status
- 3.450 Athletics
- 3.455 Textbooks and curricular material

**Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited**

- 3.500 Employment
- 3.505 Employment criteria
- 3.510 Recruitment
- 3.515 Compensation
- 3.520 Job classification and structure
- 3.525 Fringe benefits
- 3.530 Marital or parental status
- 3.535 Effect of state or local law or other requirements
- 3.540 Advertising
- 3.545 Pre-employment inquiries
- 3.550 Sex as a bona fide occupational qualification

**Subpart F—Procedures**

- 3.600 Notice of covered programs
  - 3.605 Enforcement procedures
- Authority:** 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

**§ 3.105 [Amended]**

2. In § 3.105 in the definition of “designated agency official,” the brackets and text within brackets are removed and “Assistant Secretary for Fair Housing and Equal Opportunity” is added in its place.

3. In § 3.105 in the definition of “Title IX regulations,” the brackets and text within brackets are removed and “§§ 3.100 through 3.605” is added in its place.

4. Section 3.605 is added to read as follows:

**§ 3.605 Enforcement procedures.**

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (“Title VI”) are hereby

adopted and applied to these Title IX regulations. These procedures may be found at 24 CFR part 1.

**DEPARTMENT OF JUSTICE****28 CFR Part 54**

[AG Order No. 2265-99]

RIN 1190-AA28

FOR FURTHER INFORMATION CONTACT: Merrily A. Friedlander, Chief, Coordination and Review Section, Civil Rights Division, Department of Justice, P.O. Box 66560, Washington, D.C. 20036-6560, (202) 307-2222.

**List of Subjects in 28 CFR Part 54**

Administrative practice and procedure, Buildings and facilities, Civil rights, Colleges and universities, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Individuals with disabilities, Investigations, Loan programs—education, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

Dated: October 4, 1999.

**Janet Reno,**  
*Attorney General.*

For the reasons stated in the preamble, the Department of Justice proposes to amend 28 CFR, chapter I, as follows:

1. Part 54 is added as set forth at the end of the common preamble to read as follows:

**PART 54—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

**Subpart A—Introduction**

Sec.

- 54.100 Purpose and effective date
- 54.105 Definitions
- 54.110 Remedial and affirmative action and self-evaluation
- 54.115 Assurance required
- 54.120 Transfers of property
- 54.125 Effect of other requirements
- 54.130 Effect of employment opportunities
- 54.135 Designation of responsible employee and adoption of grievance procedures
- 54.140 Dissemination of policy

**Subpart B—Coverage**

- 54.200 Application
- 54.205 Educational institutions and other entities controlled by religious organizations
- 54.210 Military and merchant marine educational institutions

- 54.215 Membership practices of certain organizations  
 54.220 Admissions  
 54.225 Educational institutions eligible to submit transition plans  
 54.230 Transition plans  
 54.235 Statutory amendments

**Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited**

- 54.300 Admission  
 54.305 Preference in admission  
 54.310 Recruitment

**Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited**

- 54.400 Education programs and activities  
 54.405 Housing  
 54.410 Comparable facilities  
 54.415 Access to course offerings  
 54.420 Access to schools operated by LEAs  
 54.425 Counseling and use of appraisal and counseling materials  
 54.430 Financial assistance  
 54.435 Employment assistance to students  
 54.440 Health and insurance benefits and services  
 54.445 Marital or parental status  
 54.450 Athletics  
 54.455 Textbooks and curricular material

**Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited**

- 54.500 Employment  
 54.505 Employment criteria  
 54.510 Recruitment  
 54.515 Compensation  
 54.520 Job classification and structure  
 54.525 Fringe benefits  
 54.530 Marital or parental status  
 54.535 Effect of state or local law or other requirements  
 54.540 Advertising  
 54.545 Pre-employment inquiries  
 54.550 Sex as a bona fide occupational qualification

**Subpart F—Procedures**

- 54.600 Notice of covered programs  
 54.605 Enforcement procedures

**Authority:** 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

**§ 54.105 [Amended]**

2. In § 54.105 in the definition of “designated agency official,” the brackets and text within brackets are removed and “the Assistant Attorney General, Civil Rights Division” is added in its place.

3. In § 54.105 in the definition of “Title IX regulations,” the brackets and text within brackets are removed and “§§ 54.100 through 54.605” is added in its place.

4. Section 54.605 is added to read as follows:

**§ 54.605 Enforcement procedures.**

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964

(42 U.S.C. 2000d) (“Title VI”) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 28 CFR 42.106 through 42.111.

**DEPARTMENT OF LABOR**

**29 CFR Part 36**

**FOR FURTHER INFORMATION CONTACT:** Bud West, Senior Policy Advisor, Civil Rights Center, Department of Labor, 200 Constitution Avenue, N.W., Room N-4123, Washington, D.C. 20210, (202) 219-8927 (voice), (202) 219-6118, or (202) 326-2577 (TTY/TTD).

**List of Subjects in 29 CFR Part 36**

Administrative practice and procedure, Civil rights, Equal educational opportunity, Equal employment opportunity, Grant programs—labor, Investigations, Reporting and recordkeeping requirements, Sex discrimination, Women.

Dated: January 14, 1999.

**Alexis M. Herman,**  
*Secretary of Labor.*

For the reasons stated in the preamble, the Department of Labor proposes to amend 29 CFR, subtitle A, as follows:

1. Part 36 is added as set forth at the end of the common preamble to read as follows:

**PART 36—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

**Subpart A—Introduction**

- Sec.  
 36.100 Purpose and effective date  
 36.105 Definitions  
 36.110 Remedial and affirmative action and self-evaluation  
 36.115 Assurance required  
 36.120 Transfers of property  
 36.125 Effect of other requirements  
 36.130 Effect of employment opportunities  
 36.135 Designation of responsible employee and adoption of grievance procedures  
 36.140 Dissemination of policy

**Subpart B—Coverage**

- 36.200 Application  
 36.205 Educational institutions and other entities controlled by religious organizations  
 36.210 Military and merchant marine educational institutions  
 36.215 Membership practices of certain organizations  
 36.220 Admissions  
 36.225 Educational institutions eligible to submit transition plans  
 36.230 Transition plans  
 36.235 Statutory amendments

**Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited**

- 36.300 Admission  
 36.305 Preference in admission  
 36.310 Recruitment

**Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited**

- 36.400 Education programs and activities  
 36.405 Housing  
 36.410 Comparable facilities  
 36.415 Access to course offerings  
 36.420 Access to schools operated by LEAs  
 36.425 Counseling and use of appraisal and counseling materials  
 36.430 Financial assistance  
 36.435 Employment assistance to students  
 36.440 Health and insurance benefits and services  
 36.445 Marital or parental status  
 36.450 Athletics  
 36.455 Textbooks and curricular material

**Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited**

- 36.500 Employment  
 36.505 Employment criteria  
 36.510 Recruitment  
 36.515 Compensation  
 36.520 Job classification and structure  
 36.525 Fringe benefits  
 36.530 Marital or parental status  
 36.535 Effect of state or local law or other requirements  
 36.540 Advertising  
 36.545 Pre-employment inquiries  
 36.550 Sex as a bona fide occupational qualification

**Subpart F—Procedures**

- 36.600 Notice of covered programs  
 36.605 Enforcement procedures  
 36.610 Compliance with 29 CFR part 34

**Authority:** 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

**§ 36.105 [Amended]**

2. In § 36.105 in the definition of “designated agency official,” the brackets and text within brackets are removed and “Director, Civil Rights Center” is added in its place.

3. In § 36.105 in the definition of “Title IX regulations,” the brackets and text within brackets are removed and “§§ 36.100 through 36.610” is added in its place.

4. Sections 36.605 and 36.610 are added to read as follows:

**§ 36.605 Enforcement procedures.**

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (“Title VI”) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 29 CFR 31.5, 31.7 through 31.11.

**§ 36.610 Compliance with 29 CFR Part 34.**

Compliance with section 167 of the Job Training Partnership Act, as amended (JTPA), 29 U.S.C. 1577, and implementing regulations at 29 CFR part 34 shall satisfy the obligation of recipients of Federal financial assistance from the Department of Labor under JTPA to comply with these Title IX regulations.

**DEPARTMENT OF THE TREASURY****31 CFR Part 28****FOR FURTHER INFORMATION CONTACT:**

Marcia H. Coates, Director, Office of Equal Opportunity Program, 1500 Pennsylvania Avenue, N.W., Room 5110 Annex, Washington, D.C. 20220, (202) 622-1160.

**List of Subjects in 31 CFR Part 28**

Administrative practice and procedure, Age discrimination, Civil rights, Colleges and universities, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Individuals with disabilities, Investigations, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

Dated: December 9, 1997.

**Nancy Killefer,**

*Assistant Secretary for Management and Chief Financial Officer.*

For the reasons stated in the preamble, the Department of the Treasury proposes to amend 31 CFR, Subtitle A, as follows:

1. Part 28 is added as set forth at the end of the common preamble to read as follows:

**PART 28—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

**Subpart A—Introduction**

Sec.

- 28.100 Purpose and effective date
- 28.105 Definitions
- 28.110 Remedial and affirmative action and self-evaluation
- 28.115 Assurance required
- 28.120 Transfers of property
- 28.125 Effect of other requirements
- 28.130 Effect of employment opportunities
- 28.135 Designation of responsible employee and adoption of grievance procedures
- 28.140 Dissemination of policy

**Subpart B—Coverage**

- 28.200 Application
- 28.205 Educational institutions and other entities controlled by religious organizations
- 28.210 Military and merchant marine educational institutions
- 28.215 Membership practices of certain organizations
- 28.220 Admissions
- 28.225 Educational institutions eligible to submit transition plans
- 28.230 Transition plans
- 28.235 Statutory amendments

**Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited**

- 28.300 Admission
- 28.305 Preference in admission
- 28.310 Recruitment

**Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited**

- 28.400 Education programs and activities
- 28.405 Housing
- 28.410 Comparable facilities
- 28.415 Access to course offerings
- 28.420 Access to schools operated by LEAs
- 28.425 Counseling and use of appraisal and counseling materials
- 28.430 Financial assistance
- 28.435 Employment assistance to students
- 28.440 Health and insurance benefits and services
- 28.445 Marital or parental status
- 28.450 Athletics
- 28.455 Textbooks and curricular material

**Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited**

- 28.500 Employment
- 28.505 Employment criteria
- 28.510 Recruitment
- 28.515 Compensation
- 28.520 Job classification and structure
- 28.525 Fringe benefits
- 28.530 Marital or parental status
- 28.535 Effect of state or local law or other requirement
- 28.540 Advertising
- 28.545 Pre-employment inquiries
- 28.550 Sex as a bona fide occupational qualification

**Subpart F—Procedures**

- 28.600 Notice of covered programs
- 28.605 Compliance information
- 28.610 Conduct of investigations
- 28.615 Procedure for effecting compliance
- 28.620 Hearings
- 28.625 Decisions and notices
- 28.630 Judicial review
- 28.635 Forms and instructions; coordination

**Authority:** 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

2. In § 28.105 in the definition of “designated agency official,” the brackets and text within brackets are removed and “Assistant Secretary for Management and Chief Financial Officer” is added in its place.

3. In § 28.105 in the definition of “Title IX regulations,” the brackets and text within brackets are removed and “§§ 28.100 through 28.635” is added in its place.

4. In § 28.105 add new definitions in alphabetical order to read as follows:

**§ 28.105 Definitions.**

\* \* \* \* \*

*Department* means Department of the Treasury.

\* \* \* \* \*

*Reviewing authority* means that component of the Department delegated authority to review the decisions of hearing officers in cases arising under these Title IX regulations.

*Secretary* means Secretary of the Treasury.

\* \* \* \* \*

5. Sections 28.605, 28.610, 28.615, 28.620, 28.625, 28.630, and 28.635 are added to read as follows:

**§ 28.605 Compliance information.**

(a) *Cooperation and assistance.* The designated agency official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with these Title IX regulations and shall provide assistance and guidance to recipients to help them comply voluntarily with these Title IX regulations.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the designated agency official (or designee) timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the designated agency official (or designee) may determine to be necessary to enable the official to ascertain whether the recipient has complied or is complying with these Title IX regulations. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under these Title IX regulations.

(c) *Access to sources of information.* Each recipient shall permit access by the designated agency official (or designee) during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with these Title IX regulations. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or

refuse to furnish this information the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information. Asserted considerations of privacy or confidentiality may not operate to bar the Department from evaluating or seeking to enforce compliance with these Title IX regulations. Information of a confidential nature obtained in connection with compliance evaluation or enforcement shall not be disclosed except where necessary in formal enforcement proceedings or where otherwise required by law.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of these Title IX regulations and their applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the designated agency official finds necessary to apprise such persons of the protections against discrimination assured them by Title IX and these Title IX regulations.

#### **§ 28.610 Conduct of investigations.**

(a) *Periodic compliance reviews.* The designated agency official (or designee) shall from time to time review the practices of recipients to determine whether they are complying with these Title IX regulations.

(b) *Complaints.* Any person who believes himself or herself or any specific class of individuals to be subjected to discrimination prohibited by these Title IX regulations may by himself or herself or by a representative file with the designated agency official (or designee) a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the designated agency official (or designee).

(c) *Investigations.* The designated agency official (or designee) will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with these Title IX regulations. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with these Title IX regulations occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with these Title IX regulations.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c)

of this section indicates a failure to comply with these Title IX regulations, the designated agency official (or designee) will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 28.615.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the designated agency official (or designee) will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or these Title IX regulations, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under these Title IX regulations. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of these Title IX regulations, including the conduct of any investigation, hearing, or judicial proceeding arising under these Title IX regulations.

#### **§ 28.615 Procedure for effecting compliance.**

(a) *General.* If there appears to be a failure or threatened failure to comply with these Title IX regulations, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with these Title IX regulations may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to:

(1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States, or any assurance or other contractual undertaking; and

(2) Any applicable proceeding under State or local law.

(b) *Noncompliance with § 28.115.* If an applicant fails or refuses to furnish an assurance or otherwise fails or refuses to comply with a requirement imposed by or pursuant to § 28.115, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a

case during the pendency of the administrative proceedings under paragraph (c) of this section except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to [the effective date of these Title IX regulations].

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* (1) No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until:

(i) The designated agency official has advised the applicant or recipient of its failure to comply and has determined that compliance cannot be secured by voluntary means;

(ii) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to these Title IX regulations; and

(iii) The expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action.

(2) Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.*

(1) No action to effect compliance by any other means authorized by law shall be taken until:

(i) The designated agency official has determined that compliance cannot be secured by voluntary means;

(ii) The recipient has been notified of its failure to comply and of the action to be taken to effect compliance; and

(iii) The expiration of at least 10 days from the mailing of such notice to the recipient.

(2) During this period of at least 10 days additional efforts shall be made to persuade the recipient to comply with these Title IX regulations and to take such corrective action as may be appropriate.

#### **§ 28.620 Hearings.**

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 28.615(c), reasonable notice shall

be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the designated agency official that the matter be scheduled for hearing; or

(2) Advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under 20 U.S.C. 1682 and § 28.615(c) and consent to the making of a decision on the basis of such information as may be filed as the record.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, DC, at a time fixed by the designated agency official unless the official determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before a hearing officer designated in accordance with 5 U.S.C. 556(b).

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554-557 (sections 5-8 of the Administrative Procedure Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the hearing officer at the outset of or

during the hearing. Any person (other than a Government employee considered to be on official business) who, having been invited or requested to appear and testify as a witness on the Government's behalf, attends at a time and place scheduled for a hearing provided for by these Title IX regulations, may be reimbursed for his or her travel and actual expenses of attendance in an amount not to exceed the amount payable under the standardized travel regulations to a Government employee traveling on official business.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to these Title IX regulations, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the hearing officer. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or Joint Hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with these Title IX regulations with respect to two or more programs to which these Title IX regulations apply, or noncompliance with these Title IX regulations and the regulations of one or more other Federal departments or agencies issued under Title IX, the designated agency official may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with these Title IX regulations. Final decisions in such cases, insofar as these Title IX regulations are concerned, shall be made in accordance with § 28.625.

#### § 28.625 Decisions and notices.

(a) *Decisions by hearing officers.* After a hearing is held by a hearing officer such hearing officer shall either make an initial decision, if so authorized, or certify the entire record including recommended findings and proposed decision to the reviewing authority for a final decision, and a copy of such

initial decision or certification shall be mailed to the applicant or recipient and to the complainant, if any. Where the initial decision referred to in this paragraph or in paragraph (c) of this section is made by the hearing officer, the applicant or recipient or the counsel for the Department may, within the period provided for in the rules of procedure issued by the designated agency official, file with the reviewing authority exceptions to the initial decision, with the reasons therefor. Upon the filing of such exceptions the reviewing authority shall review the initial decision and issue its own decision thereof including the reasons therefor. In the absence of exceptions the initial decision shall constitute the final decision, subject to the provisions of paragraph (e) of this section.

(b) *Decisions on record or review by the reviewing authority.* Whenever a record is certified to the reviewing authority for decision or it reviews the decision of a hearing officer pursuant to paragraph (a) or (c) of this section, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of its contentions, and a copy of the final decision of the reviewing authority shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 28.620, the reviewing authority shall make its final decision on the record or refer the matter to a hearing officer for an initial decision to be made on the record. A copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or reviewing authority shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to these Title IX regulations with which it is found that the applicant or recipient has failed to comply.

(e) *Review in certain cases by the Secretary of the Treasury.* If the Secretary has not personally made the final decision referred to in paragraph (a), (b), or (c) of this section, a recipient or applicant or the counsel for the Department may request the Secretary to review a decision of the reviewing authority in accordance with rules of procedure issued by the designated agency official. Such review is not a matter of right and shall be granted only where the Secretary determines there are special and important reasons therefor. The Secretary may grant or deny such request, in whole or in part.

The Secretary may also review such a decision upon his own motion in accordance with rules of procedure issued by the designated agency official. In the absence of a review under this paragraph, a final decision referred to in paragraph (a), (b), or (c) of this section shall become the final decision of the Department when the Secretary transmits it as such to Congressional committees with the report required under 20 U.S.C. 1682. Failure of an applicant or recipient to file an exception with the reviewing authority or to request review under this paragraph shall not be deemed a failure to exhaust administrative remedies for the purpose of obtaining judicial review.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which these Title IX regulations apply, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of Title IX and these Title IX regulations, including provisions designed to assure that no Federal financial assistance to which these Title IX regulations apply will thereafter be extended under such law or laws to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to these Title IX regulations, or to have otherwise failed to comply with these Title IX regulations unless and until it corrects its noncompliance and satisfies the designated agency official that it will fully comply with these Title IX regulations.

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with these Title IX regulations and provides reasonable assurance that it will fully comply with these Title IX regulations. An elementary or secondary school or school system which is unable to file an assurance of compliance shall be restored to full eligibility to receive Federal financial assistance if it files a court order or a plan for desegregation which meets the applicable requirements and provides reasonable assurance that it will comply with the court order or plan.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the designated

agency official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the designated agency official determines that those requirements have been satisfied, the official shall restore such eligibility.

(3) If the designated agency official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the designated agency official. The applicant or recipient will be restored to such eligibility if it proves at such hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph (g) are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

#### **§ 28.630 Judicial review.**

Action taken pursuant to 20 U.S.C. 1682 is subject to judicial review as provided in 20 U.S.C. 1683.

#### **§ 28.635 Forms and instructions; coordination.**

(a) *Forms and instructions.* The designated agency official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating these Title IX regulations.

(b) *Supervision and coordination.* The designated agency official may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title IX and these Title IX regulations (other than responsibility for review as provided in § 28.625(e)), including the achievements of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Title IX and these Title IX regulations to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this section shall have the same effect as though such action had been taken by the designated official of this Department.

## **DEPARTMENT OF DEFENSE**

### **32 CFR Part 196**

**FOR FURTHER INFORMATION CONTACT:** William E. Leftwich, III, Deputy Assistant Secretary of Defense (Equal Opportunity), Room 3A272, The Pentagon, Washington, D.C. 20301-4000, (703) 695-0105.

#### **List of Subjects in 32 CFR Part 196**

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Grant programs—education, Investigations, Loan programs—education, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

#### **L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

For the reasons stated in the preamble, the Department of Defense proposes to amend 32 CFR, chapter I, subchapter M, as follows:

1. Part 196 is added as set forth at the end of the common preamble to read as follows:

#### **PART 196—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

##### **Subpart A—Introduction**

Sec.

- 196.100 Purpose and effective date
- 196.105 Definitions
- 196.110 Remedial and affirmative action and self-evaluation
- 196.115 Assurance required
- 196.120 Transfers of property
- 196.125 Effect of other requirements
- 196.130 Effect of employment opportunities
- 196.135 Designation of responsible employee and adoption of grievance procedures
- 196.140 Dissemination of policy.

##### **Subpart B—Coverage**

- 196.200 Application
- 196.205 Educational institutions and other entities controlled by religious organizations
- 196.210 Military and merchant marine educational institutions
- 196.215 Membership practices of certain organizations
- 196.220 Admissions
- 196.225 Educational institutions eligible to submit transition plans
- 196.230 Transition plans
- 196.235 Statutory amendments.

**Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited**

- 196.300 Admission  
196.305 Preference in admission  
196.310 Recruitment.

**Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited**

- 196.400 Education programs and activities  
196.405 Housing  
196.410 Comparable facilities  
196.415 Access to course offerings  
196.420 Access to schools operated by LEAs  
196.425 Counseling and use of appraisal and counseling materials  
196.430 Financial assistance  
196.435 Employment assistance to students  
196.440 Health and insurance benefits and services  
196.445 Marital or parental status  
196.450 Athletics.  
196.455 Textbooks and curricular material.

**Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited**

- 196.500 Employment.  
196.505 Employment criteria  
196.510 Recruitment  
196.515 Compensation  
196.520 Job classification and structure  
196.525 Fringe benefits  
196.530 Marital or parental status  
196.535 Effect of state or local law or other requirements  
196.540 Advertising  
196.545 Pre-employment inquiries  
196.550 Sex as a bona fide occupational qualification

**Subpart F—Procedures**

- 196.600 Notice of covered programs  
196.605 Enforcement procedures

**Authority:** 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688

**§ 196.105 [Amended]**

2. In § 196.105 in the definition of “designated agency official,” the brackets and text within brackets are removed and “Assistant Secretary of Defense (Force Management Policy)” is added in its place.

3. In § 196.105 in the definition of “Title IX regulations,” the brackets and text within brackets are removed and “§§ 196.100 through 196.605” is added in its place.

4. Section 196.605 is added to read as follows:

**§ 196.605 Enforcement procedures.**

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (“Title VI”) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 32 CFR 195.7 through 195.12.

**NATIONAL ARCHIVES AND RECORDS ADMINISTRATION****36 CFR Part 1211****FOR FURTHER INFORMATION CONTACT:**

Nancy Allard, Policy and Communications Staff (NPOL), 8601 Adelphi Road, College Park, Maryland 20740-6001, (301) 713-7360 ext. 226

**List of Subjects in 36 CFR Part 1211**

Administrative practice and procedure, Civil rights, Colleges and universities, Discrimination, Discrimination in Education, Education, Educational study programs, Employment, Equal educational opportunity, Equal employment opportunity, Grant programs—archives and records, Grant programs—education, Nondiscrimination, Reporting and recordkeeping requirements, Sex discrimination.

Dated: February 5, 1999.

**John W. Carlin,**

*Archivist of the United States.*

For the reasons stated in the preamble, the National Archives and Records Administration proposes to amend 36 CFR, chapter XII, subchapter A, as follows:

1. Part 1211 is added as set forth at the end of the common preamble to read as follows:

**PART 1211—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE****Subpart A—Introduction****Sec**

- 1211.100 Purpose and effective date  
1211.105 Definitions  
1211.110 Remedial and affirmative action and self-evaluation  
1211.115 Assurance required  
1211.120 Transfers of property  
1211.125 Effect of other requirements  
1211.130 Effect of employment opportunities  
1211.135 Designation of responsible employee and adoption of grievance procedures  
1211.140 Dissemination of policy.

**Subpart B—Coverage**

- 1211.200 Application  
1211.205 Educational institutions and other entities controlled by religious organizations  
1211.210 Military and merchant marine educational institutions  
1211.215 Membership practices of certain organizations  
1211.220 Admissions  
1211.225 Educational institutions eligible to submit transition plans  
1211.230 Transition plans  
1211.235 Statutory amendments

**Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited**

- 1211.300 Admission  
1211.305 Preference in admission  
1211.310 Recruitment

**Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited**

- 1211.400 Education programs and activities  
1211.405 Housing  
1211.410 Comparable facilities  
1211.415 Access to course offerings  
1211.420 Access to schools operated by LEAs  
1211.425 Counseling and use of appraisal and counseling materials  
1211.430 Financial assistance  
1211.435 Employment assistance to students  
1211.440 Health and insurance benefits and services  
1211.445 Marital or parental status  
1211.450 Athletics  
1211.455 Textbooks and curricular material

**Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited**

- 1211.500 Employment  
1211.505 Employment criteria  
1211.510 Recruitment  
1211.515 Compensation  
1211.520 Job classification and structure  
1211.525 Fringe benefits  
1211.530 Marital or parental status  
1211.535 Effect of state or local law or other requirements  
1211.540 Advertising  
1211.545 Pre-employment inquiries  
1211.550 Sex as a bona fide occupational qualification

**Subpart F—Procedures**

- 1211.600 Notice of covered programs  
1211.605 Compliance information  
1211.610 Conduct of investigations  
1211.615 Procedure for effecting compliance  
1211.620 Hearings  
1211.625 Decisions and notices  
1211.630 Judicial review  
1211.635 Forms and instructions; coordination

**Authority:** 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

**§ 1211.105 [Amended]**

2. In § 1211.105 in the definition of “designated agency official,” the brackets and text within brackets are removed and “Executive Director, National Historical Publications and Records Commission” is added in its place.

3. In § 1211.105 in the definition of “Title IX regulations,” the brackets and text within brackets are removed and “36 CFR 1211.100 through 1211.635” is added in its place.

4. Sections 1211.605, 1211.610, 1211.615, 1211.620, 1211.625, 1211.630 and 1211.635 are added to read as follows:

**§ 1211.605 Compliance information.**

(a) *Cooperation and assistance* The designated agency official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with these Title IX regulations and shall provide assistance and guidance to recipients to help them comply voluntarily with these Title IX regulations.

(b) *Compliance reports* Each recipient shall keep such records and submit to the designated agency official (or designee) timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the designated agency official (or designee) may determine to be necessary to enable the official to ascertain whether the recipient has complied or is complying with these Title IX regulations. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under these Title IX regulations.

(c) *Access to sources of information.* Each recipient shall permit access by the designated agency official (or designee) during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with these Title IX regulations. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information. Asserted considerations of privacy or confidentiality may not operate to bar the agency from evaluating or seeking to enforce compliance with these Title IX regulations. Information of a confidential nature obtained in connection with compliance evaluation or enforcement shall not be disclosed except where necessary in formal enforcement proceedings or where otherwise required by law.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of these Title IX regulations and their applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the

designated agency official finds necessary to apprise such persons of the protections against discrimination assured them by Title IX and these Title IX regulations.

**§ 1211.610 Conduct of investigations.**

(a) *Periodic compliance reviews.* The designated agency official (or designee) shall from time to time review the practices of recipients to determine whether they are complying with these Title IX regulations.

(b) *Complaints.* Any person who believes himself or herself or any specific class of individuals to be subjected to discrimination prohibited by these Title IX regulations may by himself or herself or by a representative file with the designated agency official (or designee) a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the designated agency official (or designee).

(c) *Investigations.* The designated agency official (or designee) will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with these Title IX regulations. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with these Title IX regulations occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with these Title IX regulations.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with these Title IX regulations, the designated agency official (or designee) will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 1211.615.

(2) If an investigation does not warrant action pursuant to paragraph (d) (1) of this section the designated agency official (or designee) will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or these Title IX regulations, or because he or she has made a complaint, testified, assisted, or participated in any manner

in an investigation, proceeding or hearing under these Title IX regulations. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of these Title IX regulations, including the conduct of any investigation, hearing, or judicial proceeding arising under these Title IX regulations.

**§ 1211.615 Procedure for effecting compliance.**

(a) *General.* If there appears to be a failure or threatened failure to comply with these Title IX regulations, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with these Title IX regulations may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to,

(1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States, or any assurance or other contractual undertaking; and

(2) Any applicable proceeding under State or local law.

(b) *Noncompliance with § 1211.115.* If an applicant fails or refuses to furnish an assurance or otherwise fails or refuses to comply with a requirement imposed by or pursuant to § 1211.115, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The agency shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under paragraph (c) of this section except that the agency shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to [the effective date of these Title IX regulations].

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* (1) No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until:

(i) The designated agency official has advised the applicant or recipient of its failure to comply and has determined that compliance cannot be secured by voluntary means;

(ii) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement

imposed by or pursuant to these Title IX regulations; and

(iii) The expiration of 30 days after the Archivist has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action.

(2) Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.*

(1) No action to effect compliance by any other means authorized by law shall be taken until:

(i) The designated agency official has determined that compliance cannot be secured by voluntary means;

(ii) The recipient has been notified of its failure to comply and of the action to be taken to effect compliance; and

(iii) The expiration of at least 10 days from the mailing of such notice to the recipient.

(2) During this period of at least 10 days additional efforts shall be made to persuade the recipient to comply with these Title IX regulations and to take such corrective action as may be appropriate.

#### § 1211.620 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 1211.615(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the designated agency official that the matter be scheduled for hearing; or

(2) Advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and

argument for the record. The failure of an applicant or recipient to request a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under 20 U.S.C. 1682 and § 1211.615(c) and consent to the making of a decision on the basis of such information as may be filed as the record.

(b) *Time and place of hearing.*

Hearings shall be held at the offices of the agency in Washington, DC, at a time fixed by the designated agency official unless the official determines that the convenience of the applicant or recipient or of the agency requires that another place be selected. Hearings shall be held before a hearing officer designated in accordance with 5 U.S.C. 556(b).

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the agency shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.*

(1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554-557 (sections 5 through 8 of the Administrative Procedure Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the agency and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the hearing officer at the outset of or during the hearing. Any person (other than a Government employee considered to be on official business) who, having been invited or requested to appear and testify as a witness on the Government's behalf, attends at a time and place scheduled for a hearing provided for by these Title IX regulations, may be reimbursed for his or her travel and actual expenses of attendance in an amount not to exceed the amount payable under the standardized travel regulations to a Government employee traveling on official business.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to these Title IX regulations, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the hearing officer. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious

evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with these Title IX regulations with respect to two or more programs to which these Title IX regulations apply, or noncompliance with these Title IX regulations and the regulations of one or more other Federal departments or agencies issued under Title IX, the designated agency official may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with these Title IX regulations. Final decisions in such cases, insofar as these Title IX regulations are concerned, shall be made in accordance with § 1211.625.

#### § 1211.625 Decisions and notices.

(a) *Decisions by hearing officers.* After a hearing is held by a hearing officer such hearing officer shall either make an initial decision, if so authorized, or certify the entire record including recommended findings and proposed decision to the reviewing authority for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient and to the complainant, if any. Where the initial decision referred to in this paragraph or in paragraph (c) of this section is made by the hearing officer, the applicant or recipient or the counsel for the agency may, within the period provided for in the rules of procedure issued by the designated agency official, file with the reviewing authority exceptions to the initial decision, with the reasons therefor. Upon the filing of such exceptions the reviewing authority shall review the initial decision and issue its own decision thereof including the reasons therefor. In the absence of exceptions the initial decision shall constitute the final decision, subject to the provisions of paragraph (e) of this section.

(b) *Decisions on record or review by the reviewing authority.* Whenever a record is certified to the reviewing authority for decision or it reviews the decision of a hearing officer pursuant to

paragraph (a) or (c) of this section, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of its contentions, and a copy of the final decision of the reviewing authority shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 1211.620, the reviewing authority shall make its final decision on the record or refer the matter to a hearing officer for an initial decision to be made on the record. A copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or reviewing authority shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to these Title IX regulations with which it is found that the applicant or recipient has failed to comply.

(e) *Review in certain cases by the Archivist of the United States.* If the Archivist has not personally made the final decision referred to in paragraph (a), (b), or (c) of this section, a recipient or applicant or the counsel for the agency may request the Archivist to review a decision of the reviewing authority in accordance with rules of procedure issued by the designated agency official. Such review is not a matter of right and shall be granted only where the Archivist determines there are special and important reasons therefor. The Archivist may grant or deny such request, in whole or in part. The Archivist may also review such a decision upon his own motion in accordance with rules of procedure issued by the National Archives and Records Administration. In the absence of a review under this paragraph, a final decision referred to in paragraph (a), (b), or (c) of this section shall become the final decision of the agency when the Archivist transmits it as such to Congressional committees with the report required under 20 U.S.C. 1682. Failure of an applicant or recipient to file an exception with the reviewing authority or to request review under this paragraph shall not be deemed a failure to exhaust administrative remedies for the purpose of obtaining judicial review.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which these Title IX regulations apply, and may contain such terms, conditions, and other provisions as are consistent with and will

effectuate the purposes of Title IX and these Title IX regulations, including provisions designed to assure that no Federal financial assistance to which these Title IX regulations apply will thereafter be extended under such law or laws to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to these Title IX regulations, or to have otherwise failed to comply with these Title IX regulations unless and until it corrects its noncompliance and satisfies the designated agency official that it will fully comply with these Title IX regulations.

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with these Title IX regulations and provides reasonable assurance that it will fully comply with these Title IX regulations. An elementary or secondary school or school system which is unable to file an assurance of compliance shall be restored to full eligibility to receive Federal financial assistance if it files a court order or a plan for desegregation which meets the applicable requirements and provides reasonable assurance that it will comply with the court order or plan.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the designated agency official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the designated agency official determines that those requirements have been satisfied, the official shall restore such eligibility.

(3) If the designated agency official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the designated agency official. The applicant or recipient will be restored to such eligibility if it proves at such hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph (g) are pending, the sanctions imposed by the

order issued under paragraph (f) of this section shall remain in effect.

#### § 1211.630 Judicial review.

Action taken pursuant to 20 U.S.C. 1682 is subject to judicial review as provided in 20 U.S.C. 1683.

#### § 1211.635 Forms and instructions; coordination.

(a) *Forms and instructions.* The designated agency official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for implementing these Title IX regulations.

(b) *Supervision and coordination.* The Archivist or his designee may from time to time assign to officials of the agency, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title IX and these Title IX regulations (other than responsibility for review as provided in § 1211.625(e)), including the achievements of effective coordination and maximum uniformity within the agency and within the Executive Branch of the Government in the application of Title IX and these Title IX regulations to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this section shall have the same effect as though such action had been taken by the designated official of this agency.

### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Part 23

RIN 2900-AJ11

FOR FURTHER INFORMATION CONTACT: Ventris C. Gibson, Deputy Assistant Secretary for Resolution Management (08), Department of Veterans Affairs, 810 Vermont Avenue, N.W., Washington, D.C. 20420, (202) 273-9437.

#### List of Subjects in 38 CFR Part 23

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Investigations, Loan programs—education, Religious discrimination, Reporting and

recordkeeping requirements, Sex discrimination, Student aid, Women.

Approved: March 3, 1998.

**Togo D. West, Jr.,**  
*Acting Secretary.*

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR, chapter I, as follows:

1. Part 23 is added as set forth at the end of the common preamble to read as follows:

**PART 23—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

**Subpart A—Introduction**

- Sec.
- 23.100 Purpose and effective date
  - 23.105 Definitions
  - 23.110 Remedial and affirmative action and self-evaluation
  - 23.115 Assurance required
  - 23.120 Transfers of property
  - 23.125 Effect of other requirements
  - 23.130 Effect of employment opportunities
  - 23.135 Designation of responsible employee and adoption of grievance procedures
  - 23.140 Dissemination of policy

**Subpart B—Coverage**

- 23.200 Application
- 23.205 Educational institutions and other entities controlled by religious organizations
- 23.210 Military and merchant marine educational institutions
- 23.215 Membership practices of certain organizations
- 23.220 Admissions
- 23.225 Educational institutions eligible to submit transition plans
- 23.230 Transition plans
- 23.235 Statutory amendments

**Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited**

- 23.300 Admission
- 23.305 Preference in admission
- 23.310 Recruitment

**Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited**

- 23.400 Education programs and activities
- 23.405 Housing
- 23.410 Comparable facilities
- 23.415 Access to course offerings
- 23.420 Access to schools operated by LEAs
- 23.425 Counseling and use of appraisal and counseling materials
- 23.430 Financial assistance
- 23.435 Employment assistance to students
- 23.440 Health and insurance benefits and services
- 23.445 Marital or parental status
- 23.450 Athletics
- 23.455 Textbooks and curricular material

**Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited**

- 23.500 Employment
- 23.505 Employment criteria
- 23.510 Recruitment
- 23.515 Compensation
- 23.520 Job classification and structure
- 23.525 Fringe benefits
- 23.530 Marital or parental status
- 23.535 Effect of state or local law or other requirements
- 23.540 Advertising
- 23.545 Pre-employment inquiries
- 23.550 Sex as a bona fide occupational qualification

**Subpart F—Procedures**

- 23.600 Notice of covered programs
  - 23.605 Enforcement procedures
- Authority:** 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

**§ 23.105 [Amended]**

2. In § 23.105 in the definition of “designated agency official,” the brackets and text within brackets are removed and “Deputy Assistant Secretary for Equal Opportunity” is added in its place.

3. In § 23.105 in the definition of “Title IX regulations,” the brackets and text within brackets are removed and “§§ 23.100 through 23.605” is added in its place.

4. Section 23.605 is added to read as follows:

**§ 23.605 Enforcement procedures.**

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (“Title VI”) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 38 CFR 18.6 through 18.11.

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 5**

**FOR FURTHER INFORMATION CONTACT:** Ann Goode, Office of Civil Rights, Environmental Protection Agency, 401 M Street, S.W. (1201), Washington, D.C. 20460, (202) 260-4575.

**List of Subjects in 40 CFR Part 5**

Administrative practice and procedure, Buildings and facilities, Civil rights, Colleges and universities, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Environmental protection, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

Dated: January 15, 1998.

**Carol M. Browner,**  
*Administrator.*

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR, chapter I, subchapter A, as follows:

1. Part 5 is added as set forth at the end of the common preamble to read as follows:

**PART 5—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

**Subpart A—Introduction**

- Sec.
- 5.100 Purpose and effective date
  - 5.105 Definitions
  - 5.110 Remedial and affirmative action and self-evaluation
  - 5.115 Assurance required
  - 5.120 Transfers of property
  - 5.125 Effect of other requirements
  - 5.130 Effect of employment opportunities
  - 5.135 Designation of responsible employee and adoption of grievance procedures
  - 5.140 Dissemination of policy

**Subpart B—Coverage**

- 5.200 Application
- 5.205 Educational institutions and other entities controlled by religious organizations
- 5.210 Military and merchant marine educational institutions
- 5.215 Membership practices of certain organizations
- 5.220 Admissions
- 5.225 Educational institutions eligible to submit transition plans
- 5.230 Transition plans
- 5.235 Statutory amendments

**Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited**

- 5.300 Admission
- 5.305 Preference in admission
- 5.310 Recruitment

**Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited**

- 5.400 Education programs and activities
- 5.405 Housing
- 5.410 Comparable facilities
- 5.415 Access to course offerings
- 5.420 Access to schools operated by LEAs
- 5.425 Counseling and use of appraisal and counseling materials
- 5.430 Financial assistance
- 5.435 Employment assistance to students
- 5.440 Health and insurance benefits and services
- 5.445 Marital or parental status
- 5.450 Athletics
- 5.455 Textbooks and curricular material

### Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

- 5.500 Employment
- 5.505 Employment criteria
- 5.510 Recruitment
- 5.515 Compensation
- 5.520 Job classification and structure
- 5.525 Fringe benefits
- 5.530 Marital or parental status
- 5.535 Effect of state or local law or other requirements
- 5.540 Advertising
- 5.545 Pre-employment inquiries
- 5.550 Sex as a bona fide occupational qualification

### Subpart F—Procedures

- 5.600 Notice of covered programs
  - 5.605 Enforcement procedures
- Authority:** 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

#### § 5.105 [Amended]

2. In § 5.105 in the definition of “designated agency official,” the brackets and text within brackets are removed and “the Director, Office of Civil Rights” is added in its place.

3. In § 5.105 in the definition of “Title IX regulations,” the brackets and text within brackets are removed and “§§ 5.100 through 5.605” is added in its place.

4. Section 5.605 is added to read as follows:

#### § 5.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (“Title VI”) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 40 CFR 7.105 through 7.135.

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 101-4

RIN 3090-AG58

#### FOR FURTHER INFORMATION CONTACT:

James M. Taylor, Director, Office of Civil Rights, General Services Administration, 1800 F Street, N.W., Room 5127, Washington, D.C. 20405, (202) 501-0767.

#### List of Subjects in 41 CFR Part 101-4

Civil rights, Government property management, Sex discrimination, Women.

**James M. Taylor,**

*Director, Office of Civil Rights.*

For the reasons stated in the preamble, the General Services Administration proposes to amend 41 CFR, chapter 101, subchapter A, as follows:

1. Part 101-4 is added as set forth at the end of the common preamble to read as follows:

### PART 101-4—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

#### Subpart A—Introduction

Sec.

- 101-4.100 Purpose and effective date
- 101-4.105 Definitions
- 101-4.110 Remedial and affirmative action and self-evaluation
- 101-4.115 Assurance required
- 101-4.120 Transfers of property
- 101-4.125 Effect of other requirements
- 101-4.130 Effect of employment opportunities
- 101-4.135 Designation of responsible employee and adoption of grievance procedures
- 101-4.140 Dissemination of policy

#### Subpart B—Coverage

- 101-4.200 Application
- 101-4.205 Educational institutions and other entities controlled by religious organizations
- 101-4.210 Military and merchant marine educational institutions
- 101-4.215 Membership practices of certain organizations
- 101-4.220 Admissions
- 101-4.225 Educational institutions eligible to submit transition plans
- 101-4.230 Transition plans
- 101-4.235 Statutory amendments

#### Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

- 101-4.300 Admission
- 101-4.305 Preference in admission
- 101-4.310 Recruitment

#### Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

- 101-4.400 Education programs and activities
- 101-4.405 Housing
- 101-4.410 Comparable facilities
- 101-4.415 Access to course offerings
- 101-4.420 Access to schools operated by LEAs
- 101-4.425 Counseling and use of appraisal and counseling materials
- 101-4.430 Financial assistance
- 101-4.435 Employment assistance to students
- 101-4.440 Health and insurance benefits and services
- 101-4.445 Marital or parental status
- 101-4.450 Athletics
- 101-4.455 Textbooks and curricular material

#### Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

- 101-4.500 Employment
- 101-4.505 Employment criteria
- 101-4.510 Recruitment

- 101-4.515 Compensation
- 101-4.520 Job classification and structure
- 101-4.525 Fringe benefits
- 101-4.530 Marital or parental status
- 101-4.535 Effect of state or local law or other requirements
- 101-4.540 Advertising
- 101-4.545 Pre-employment inquiries
- 101-4.550 Sex as a bona fide occupational qualification

#### Subpart F—Procedures

- 101-4.600 Notice of covered programs
  - 101-4.605 Enforcement procedures
- Authority:** 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

#### § 101-4.105 [Amended]

2. In § 101-4.105 in the definition of “designated agency official,” the brackets and text within brackets are removed and “the Associate Administrator for Equal Employment Opportunity” is added in its place.

3. In § 101-4.105 in the definition of “Title IX regulations,” the brackets and text within brackets are removed and “§§ 101-4.100 through 101-4.605” is added in its place.

4. Section 101-4.605 is added to read as follows:

#### § 101-4.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (“Title VI”) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 41 CFR part 101-6, subpart 101-6.2.

## DEPARTMENT OF THE INTERIOR

### 43 CFR Part 41

RIN 1090-AA64

#### FOR FURTHER INFORMATION CONTACT:

Melvin C. Fowler, Office for Equal Opportunity, MS 5221, U.S. Department of the Interior, Washington, D.C. 20240, (202) 208-3455.

#### List of Subjects in 43 CFR Part 41

Adult education, Athletics, Civil rights, Colleges and universities, Counseling, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Investigations, Loan programs—education, Marital status discrimination, Religious discrimination, Reporting and recordkeeping requirements, Research, Sex discrimination, Scholarships, Student aid, Training, Vocational education, Vocational training, Women.

Dated: September 21, 1999.

**John Berry,**

*Assistant Secretary—Policy, Management, and Budget.*

For the reasons stated in the preamble, the Department of the Interior proposes to amend 43 CFR, subtitle A, as follows:

1. Part 41 is added as set forth at the end of the common preamble to read as follows:

**PART 41—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

**Subpart A—Introduction**

Sec.

- 41.100 Purpose and effective date
- 41.105 Definitions
- 41.110 Remedial and affirmative action and self-evaluation
- 41.115 Assurance required
- 41.120 Transfers of property
- 41.125 Effect of other requirements
- 41.130 Effect of employment opportunities
- 41.135 Designation of responsible employee and adoption of grievance procedures
- 41.140 Dissemination of policy

**Subpart B—Coverage**

- 41.200 Application
- 41.205 Educational institutions and other entities controlled by religious organizations
- 41.210 Military and merchant marine educational institutions
- 41.215 Membership practices of certain organizations
- 41.220 Admissions
- 41.225 Educational institutions eligible to submit transition plans
- 41.230 Transition plans
- 41.235 Statutory amendments

**Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited**

- 41.300 Admission
- 41.305 Preference in admission
- 41.310 Recruitment

**Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited**

- 41.400 Education programs and activities
- 41.405 Housing
- 41.410 Comparable facilities
- 41.415 Access to course offerings
- 41.420 Access to schools operated by LEAs
- 41.425 Counseling and use of appraisal and counseling materials
- 41.430 Financial assistance
- 41.435 Employment assistance to students
- 41.440 Health and insurance benefits and services
- 41.445 Marital or parental status
- 41.450 Athletics
- 41.455 Textbooks and curricular material

**Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited**

- 41.500 Employment
- 41.505 Employment criteria
- 41.510 Recruitment
- 41.515 Compensation
- 41.520 Job classification and structure
- 41.525 Fringe benefits
- 41.530 Marital or parental status
- 41.535 Effect of state or local law or other requirements
- 41.540 Advertising
- 41.545 Pre-employment inquiries
- 41.550 Sex as a bona fide occupational qualification

**Subpart F—Procedures**

- 41.600 Notice of covered programs
- 41.605 Enforcement procedures

**Authority:** 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

**§ 41.105 [Amended]**

2. In § 41.105 in the definition of “designated agency official,” the brackets and text within brackets are removed and “Deputy Assistant Secretary for Workforce Diversity” is added in its place.

3. In § 41.105 in the definition of “Title IX regulations,” the brackets and text within brackets are removed and “§§ 41.100 through 41.605” is added in its place.

4. Section 41.605 is added to read as follows:

**§ 41.605 Enforcement procedures.**

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (“Title VI”) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 43 CFR 17.5 through 17.11 and 43 CFR part 4, subpart I.

**FEDERAL EMERGENCY MANAGEMENT AGENCY**

**44 CFR Part 19**

**RIN 3067-AC71**

**FOR FURTHER INFORMATION CONTACT:**

Pauline C. Campbell, Federal Emergency Management Agency, 500 C Street, SW., Room 407, Washington, DC 20472, (202) 646-4122.

**List of Subjects in 44 CFR Part 19**

Administrative practice and procedure, Civil rights, Colleges and universities, Discrimination, Discrimination in education, Discrimination in employment, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Employment, Equal educational opportunity, Equal

employment opportunity, Federal aid programs, Grant programs—education, Investigations, Marital status discrimination, Nondiscrimination, Reporting and recordkeeping requirements, Schools, Secondary education, Sex discrimination, Student aid, Universities, Women.

**Pauline C. Campbell,**

*Director, Office of Equal Rights.*

For the reasons stated in the preamble, the Federal Emergency Management Agency proposes to amend 44 CFR, chapter I, subchapter A, as follows:

1. Part 19 is added as set forth at the end of the common preamble to read as follows:

**PART 19—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

**Subpart A—Introduction**

Sec.

- 19.100 Purpose and effective date
- 19.105 Definitions
- 19.110 Remedial and affirmative action and self-evaluation
- 19.115 Assurance required
- 19.120 Transfers of property
- 19.125 Effect of other requirements
- 19.130 Effect of employment opportunities
- 19.135 Designation of responsible employee and adoption of grievance procedures
- 19.140 Dissemination of policy

**Subpart B—Coverage**

- 19.200 Application
- 19.205 Educational institutions and other entities controlled by religious organizations
- 19.210 Military and merchant marine educational institutions
- 19.215 Membership practices of certain organizations
- 19.220 Admissions
- 19.225 Educational institutions eligible to submit transition plans
- 19.230 Transition plans
- 19.235 Statutory amendments

**Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited**

- 19.300 Admission
- 19.305 Preference in admission
- 19.310 Recruitment

**Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited**

- 19.400 Education programs and activities
- 19.405 Housing
- 19.410 Comparable facilities
- 19.415 Access to course offerings
- 19.420 Access to schools operated by LEAs
- 19.425 Counseling and use of appraisal and counseling materials
- 19.430 Financial assistance
- 19.435 Employment assistance to students

- 19.440 Health and insurance benefits and services  
 19.445 Marital or parental status  
 19.450 Athletics  
 19.455 Textbooks and curricular material

**Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited**

- 19.500 Employment  
 19.505 Employment criteria  
 19.510 Recruitment  
 19.515 Compensation  
 19.520 Job classification and structure  
 19.525 Fringe benefits  
 19.530 Marital or parental status  
 19.535 Effect of state or local law or other requirements  
 19.540 Advertising  
 19.545 Pre-employment inquiries  
 19.550 Sex as a bona fide occupational qualification

**Subpart F—Procedures**

- 19.600 Notice of covered programs.  
 19.605 Enforcement procedures

**Authority:** 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

**§ 19.105 [Amended]**

2. In § 19.105 in the definition of “designated agency official,” the brackets and text within brackets are removed and “Director, Office of Equal Rights” is added in its place.

3. In § 19.105 in the definition of “Title IX regulations,” the brackets and text within brackets are removed and “§§ 19.100 through 19.605” is added in its place.

4. Section 19.605 is added to read as follows:

**§ 19.605 Enforcement procedures.**

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (“Title VI”) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 44 CFR 7.10 through 7.15.

**NATIONAL SCIENCE FOUNDATION**

**45 CFR Part 618**

**FOR FURTHER INFORMATION CONTACT:**

Anita Eisenstadt, Assistant General Counsel, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia 22230, (703) 306-1060.

**List of Subjects in 45 CFR Part 618**

Civil rights, Colleges and universities, Education, Education of individuals with disabilities, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Equal employment opportunity, Grant programs—

education, Individuals with disabilities, Sex discrimination, Women.

**Lawrence Rudolph,**  
*General Counsel.*

For the reasons stated in the preamble, the National Science Foundation proposes to amend 45 CFR, chapter VI, as follows:

1. Part 618 is added as set forth at the end of the common preamble to read as follows:

**PART 618—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

**Subpart A—Introduction**

Sec.

- 618.100 Purpose and effective date  
 618.105 Definitions  
 618.110 Remedial and affirmative action and self-evaluation  
 618.115 Assurance required  
 618.120 Transfers of property  
 618.125 Effect of other requirements  
 618.130 Effect of employment opportunities  
 618.135 Designation of responsible employee and adoption of grievance procedures  
 618.140 Dissemination of policy

**Subpart B—Coverage**

- 618.200 Application  
 618.205 Educational institutions and other entities controlled by religious organizations  
 618.210 Military and merchant marine educational institutions  
 618.215 Membership practices of certain organizations  
 618.220 Admissions  
 618.225 Educational institutions eligible to submit transition plans  
 618.230 Transition plans  
 618.235 Statutory amendments

**Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited**

- 618.300 Admission  
 618.305 Preference in admission  
 618.310 Recruitment

**Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited**

- 618.400 Education programs and activities  
 618.405 Housing  
 618.410 Comparable facilities  
 618.415 Access to course offerings  
 618.420 Access to schools operated by LEAs  
 618.425 Counseling and use of appraisal and counseling materials  
 618.430 Financial assistance  
 618.435 Employment assistance to students  
 618.440 Health and insurance benefits and services  
 618.445 Marital or parental status  
 618.450 Athletics  
 618.455 Textbooks and curricular material

**Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited**

- 618.500 Employment  
 618.505 Employment criteria  
 618.510 Recruitment  
 618.515 Compensation  
 618.520 Job classification and structure  
 618.525 Fringe benefits  
 618.530 Marital or parental status  
 618.535 Effect of state or local law or other requirements  
 618.540 Advertising  
 618.545 Pre-employment inquiries  
 618.550 Sex as a bona fide occupational qualification

**Subpart F—Procedures**

- 618.600 Notice of covered programs  
 618.605 Enforcement procedures

**Authority:** 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

**§ 618.105 [Amended]**

2. In § 618.105 in the definition of “designated agency official,” the brackets and text within brackets are removed and “General Counsel and head of the policy office, Division of Contracts, Policy, and Oversight” is added in its place.

3. In § 618.105 in the definition of “Title IX regulations,” the brackets and text within brackets are removed and “§§ 618.100 through 618.605” is added in its place.

4. Section 618.605 is added to read as follows:

**§ 618.605 Enforcement procedures.**

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (“Title VI”) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 45 CFR part 611.

**NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**

**National Endowment for the Arts**

**45 CFR Part 1155**

**FOR FURTHER INFORMATION CONTACT:**

Hope O’Keeffe, Deputy General Counsel, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, (202) 682-5418 (voice), (202) 682-5496 (TDD), (202) 682-5572 (facsimile).

**List of Subjects in 45 CFR Part 1155**

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Educational facilities, Education of individuals with disabilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Equal

employment opportunity, Grant programs—education, Individuals with disabilities, Investigations, Marital status discrimination, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

**Hope O'Keeffe,**

*Deputy General Counsel.*

For the reasons stated in the preamble, the National Endowment for the Arts proposes to amend 45 CFR, chapter XI, subchapter B, as follows:

1. Part 1155 is added as set forth at the end of the common preamble to read as follows:

**PART 1155—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

**Subpart A—Introduction**

Sec.

- 1155.100 Purpose and effective date
- 1155.105 Definitions
- 1155.110 Remedial and affirmative action and self-evaluation
- 1155.115 Assurance required
- 1155.120 Transfers of property
- 1155.125 Effect of other requirements
- 1155.130 Effect of employment opportunities
- 1155.135 Designation of responsible employee and adoption of grievance procedures
- 1155.140 Dissemination of policy

**Subpart B—Coverage**

- 1155.200 Application
- 1155.205 Educational institutions and other entities controlled by religious organizations
- 1155.210 Military and merchant marine educational institutions
- 1155.215 Membership practices of certain organizations
- 1155.220 Admissions
- 1155.225 Educational institutions eligible to submit transition plans
- 1155.230 Transition plans
- 1155.235 Statutory amendments

**Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited**

- 1155.300 Admission
- 1155.305 Preference in admission
- 1155.310 Recruitment

**Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited**

- 1155.400 Education programs and activities
- 1155.405 Housing
- 1155.410 Comparable facilities
- 1155.415 Access to course offerings
- 1155.420 Access to schools operated by LEAs
- 1155.425 Counseling and use of appraisal and counseling materials
- 1155.430 Financial assistance

- 1155.435 Employment assistance to students
- 1155.440 Health and insurance benefits and services
- 1155.445 Marital or parental status
- 1155.450 Athletics
- 1155.455 Textbooks and curricular material

**Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited**

- 1155.500 Employment
- 1155.505 Employment criteria
- 1155.510 Recruitment
- 1155.515 Compensation
- 1155.520 Job classification and structure
- 1155.525 Fringe benefits
- 1155.530 Marital or parental status
- 1155.535 Effect of state or local law or other requirements
- 1155.540 Advertising
- 1155.545 Pre-employment inquiries
- 1155.550 Sex as a bona fide occupational qualification

**Subpart F—Procedures**

- 1155.600 Notice of covered programs
  - 1155.605 Enforcement procedures
- Authority:** 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

**§ 1155.105 [Amended]**

2. In § 1155.105 in the definition of “designated agency official,” the brackets and text within brackets are removed and “Director, Office of Civil Rights” is added in its place.

3. In § 1155.105 in the definition of “Title IX regulations,” the brackets and text within brackets are removed and “§§ 1155.100 through 1155.605” is added in its place.

4. Section 1155.605 is added to read as follows:

**§ 1155.605 Enforcement procedures.**

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (“Title VI”) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 45 CFR part 1110.

**NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**

**National Endowment for the Humanities**

**45 CFR Part 1171**

**RIN 3136-AA11**

**FOR FURTHER INFORMATION CONTACT:**

Virginia R. Canter, General Counsel, 1100 Pennsylvania Avenue, NW, Suite 530, Washington, DC 20506, (202) 606-8322.

**List of Subjects in 45 CFR Part 1171**

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Equal

educational opportunity, Grant programs—education, Investigations, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

**Virginia R. Canter,**  
*General Counsel.*

For the reasons stated in the preamble, the National Endowment for the Humanities proposes to amend 45 CFR, chapter XI, subchapter D as follows:

1. Part 1171 is added as set forth at the end of the common preamble to read as follows:

**PART 1171—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

**Subpart A—Introduction**

Sec.

- 1171.100 Purpose and effective date
- 1171.105 Definitions
- 1171.110 Remedial and affirmative action and self-evaluation
- 1171.115 Assurance required
- 1171.120 Transfers of property
- 1171.125 Effect of other requirements
- 1171.130 Effect of employment opportunities
- 1171.135 Designation of responsible employee and adoption of grievance procedures
- 1171.140 Dissemination of policy

**Subpart B—Coverage**

- 1171.200 Application
- 1171.205 Educational institutions and other entities controlled by religious organizations
- 1171.210 Military and merchant marine educational institutions
- 1171.215 Membership practices of certain organizations
- 1171.220 Admissions
- 1171.225 Educational institutions eligible to submit transition plans
- 1171.230 Transition plans
- 1171.235 Statutory amendments

**Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited**

- 1171.300 Admission
- 1171.305 Preference in admission
- 1171.310 Recruitment

**Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited**

- 1171.400 Education programs and activities
- 1171.405 Housing
- 1171.410 Comparable facilities
- 1171.415 Access to course offerings
- 1171.420 Access to schools operated by LEAs
- 1171.425 Counseling and use of appraisal and counseling materials
- 1171.430 Financial assistance
- 1171.435 Employment assistance to students

- 1171.440 Health and insurance benefits and services  
 1171.445 Marital or parental status  
 1171.450 Athletics  
 1171.455 Textbooks and curricular material

**Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited**

- 1171.500 Employment  
 1171.505 Employment criteria  
 1171.510 Recruitment  
 1171.515 Compensation  
 1171.520 Job classification and structure  
 1171.525 Fringe benefits  
 1171.530 Marital or parental status  
 1171.535 Effect of state or local law or other requirements  
 1171.540 Advertising  
 1171.545 Pre-employment inquiries  
 1171.550 Sex as a bona fide occupational qualification

**Subpart F—Procedures**

- 1171.600 Notice of covered programs  
 1171.605 Enforcement procedures

**Authority:** 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

**§ 1171.105 [Amended]**

2. In § 1171.105 in the definition of “designated agency official,” the brackets and text within brackets are removed and “General Counsel” is added in its place.

3. In § 1171.105 in the definition of “Title IX regulations,” the brackets and text within brackets are removed and “§§ 1171.100 through 1171.605” is added in its place.

4. Section 1171.605 is added to read as follows:

**§ 1171.605 Enforcement procedures.**

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (“Title VI”) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 45 CFR part 1110.

**NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**

**Institute of Museum and Library Services**

**45 CFR Part 1182**

RIN 3137-AA09

**FOR FURTHER INFORMATION CONTACT:**

Mary Ann Bittner, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, N.W., Room 510, Washington, D.C. 20506, (202) 606-8536.

**List of Subjects in 45 CFR Part 1182**

Administrative practice and procedure, Civil rights, Education, Equal educational opportunity, Grant programs—education, Investigations, Reporting and recordkeeping

requirements, Sex discrimination, Student aid, Women.

**Mary Ann Bittner,**

*Director of Legislative and Public Affairs.*

For the reasons stated in the preamble, the Institute of Museum and Library Services proposes to amend 45 CFR, chapter XI, subchapter E, as follows:

1. Part 1182 is added as set forth at the end of the common preamble to read as follows:

**PART 1182—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

**Subpart A—Introduction**

Sec.

- 1182.100 Purpose and effective date  
 1182.105 Definitions  
 1182.110 Remedial and affirmative action and self-evaluation  
 1182.115 Assurance required  
 1182.120 Transfers of property  
 1182.125 Effect of other requirements  
 1182.130 Effect of employment opportunities  
 1182.135 Designation of responsible employee and adoption of grievance procedures  
 1182.140 Dissemination of policy

**Subpart B—Coverage**

- 1182.200 Application  
 1182.205 Educational institutions and other entities controlled by religious organizations  
 1182.210 Military and merchant marine educational institutions  
 1182.215 Membership practices of certain organizations  
 1182.220 Admission  
 1182.225 Educational institutions eligible to submit transition plans  
 1182.230 Transition plans  
 1182.235 Statutory amendments

**Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited**

- 1182.300 Admission  
 1182.305 Preference in admission  
 1182.310 Recruitment

**Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited**

- 1182.400 Education programs and activities.  
 1182.405 Housing  
 1182.410 Comparable facilities  
 1182.415 Access to course offerings  
 1182.420 Access to schools operated by LEAs  
 1182.425 Counseling and use of appraisal and counseling materials  
 1182.430 Financial assistance  
 1182.435 Employment assistance to students

1182.440 Health and insurance benefits and services

- 1182.445 Marital or parental status  
 1182.450 Athletics  
 1182.455 Textbooks and curricular material

**Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited**

- 1182.500 Employment  
 1182.505 Employment criteria  
 1182.510 Recruitment  
 1182.515 Compensation  
 1182.520 Job classification and structure  
 1182.525 Fringe benefits  
 1182.530 Marital or parental status  
 1182.535 Effect of state or local law or other requirements  
 1182.540 Advertising  
 1182.545 Pre-employment inquiries  
 1182.550 Sex as a bona fide occupational qualification

**Subpart F—Procedures**

- 1182.600 Notice of covered programs  
 1182.605 Enforcement procedures

**Authority:** 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

**§ 1182.105 [Amended]**

2. In § 1182.105 in the definition of “designated agency official,” the brackets and text within brackets are removed and “Director, Policy, Planning and Budget” is added in its place.

3. In § 1182.105 in the definition of “Title IX regulations,” the brackets and text within brackets are removed and “§§ 1182.100 through 1182.605” is added in its place.

4. Section 1182.605 is added to read as follows:

**§ 1182.605 Enforcement procedures.**

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (“Title VI”) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 45 CFR part 1110.

**CORPORATION FOR NATIONAL AND COMMUNITY SERVICE**

**45 CFR Part 2555**

**FOR FURTHER INFORMATION CONTACT:**

Nancy B. Voss, Director, Equal Opportunity, Corporation for National and Community Service, 1201 New York Avenue, N.W., Washington, D.C. 20525, (202) 606-5000, extension 308.

**List of Subjects in 45 CFR Part 2555**

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Equal employment opportunity, Grant

programs—education, Investigations, Loan programs—education, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

**Thomasenia P. Duncan,**

*General Counsel.*

For the reasons stated in the preamble, the Corporation for National and Community Service proposes to amend 45 CFR, chapter XXV, as follows:

1. Part 2555 is added as set forth at the end of the common preamble to read as follows:

**PART 2555—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

**Subpart A—Introduction**

Sec.

- 2555.100 Purpose and effective date
- 2555.105 Definitions
- 2555.110 Remedial and affirmative action and self-evaluation
- 2555.115 Assurance required
- 2555.120 Transfers of property
- 2555.125 Effect of other requirements
- 2555.130 Effect of employment opportunities
- 2555.135 Designation of responsible employee and adoption of grievance procedures
- 2555.140 Dissemination of policy

**Subpart B—Coverage**

- 2555.200 Application
- 2555.205 Educational institutions and other entities controlled by religious organizations
- 2555.210 Military and merchant marine educational institutions
- 2555.215 Membership practices of certain organizations
- 2555.220 Admission
- 2555.225 Educational institutions eligible to submit transition plans
- 2555.230 Transition plans
- 2555.235 Statutory amendments

**Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited**

- 2555.300 Admission
- 2555.305 Preference in admission
- 2555.310 Recruitment

**Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited**

- 2555.400 Education programs and activities
- 2555.405 Housing
- 2555.410 Comparable facilities
- 2555.415 Access to course offerings
- 2555.420 Access to schools operated by LEAs
- 2555.425 Counseling and use of appraisal and counseling materials
- 2555.430 Financial assistance
- 2555.435 Employment assistance to students
- 2555.440 Health and insurance benefits and services

- 2555.445 Marital or parental status
- 2555.450 Athletics
- 2555.455 Textbooks and curricular material

**Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited**

- 2555.500 Employment.
- 2555.505 Employment criteria
- 2555.510 Recruitment
- 2555.515 Compensation
- 2555.520 Job classification and structure
- 2555.525 Fringe benefits
- 2555.530 Marital or parental status
- 2555.535 Effect of state or local law or other requirements
- 2555.540 Advertising
- 2555.545 Pre-employment inquiries
- 2555.550 Sex as a bona fide occupational qualification

**Subpart F—Procedures**

- 2555.600 Notice of covered programs
  - 2555.605 Enforcement procedures
- Authority:** 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

**§ 2555.105 [Amended]**

2. In § 2555.105 in the definition of “designated agency official,” the brackets and text within brackets are removed and “Director, Equal Opportunity” is added in its place.

3. In § 2555.105 in the definition of “Title IX regulations,” the brackets and text within brackets are removed and “§§ 2555.100 through 2555.605” is added in its place.

4. Section 2555.605 is added to read as follows:

**§ 2555.605 Enforcement procedures.**

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (“Title VI”) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 45 CFR 1203.6 through 1203.12.

**DEPARTMENT OF TRANSPORTATION**

**49 CFR Part 25**

**FOR FURTHER INFORMATION CONTACT:**

Marc Brenman, Department Office of Civil Rights, Room 10217, 400 7th Street, S.W., Washington, D.C. 20590, (202) 366-1119 or Nancy Dunham, Senior Attorney-Advisor; Civil Rights, Office of Environmental, Civil Rights, and General Law, Room 5432, 400 7th Street, S.W., Washington, D.C. 20590, (202) 366-8072.

**List of Subjects in 49 CFR Part 25**

Administrative practice and procedure, Civil rights, Colleges and universities, Discrimination, Education of individuals with disabilities, Education, Educational facilities, Educational research, Educational study

programs, Elementary and secondary education, Equal educational opportunity, Equal employment opportunity, Equal opportunity, Gender discrimination, Grant programs—education, Individuals with disabilities, Investigations, Loan Programs—education, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Training, Women.

**Rodney Slater,**

*Secretary of Transportation.*

For the reasons stated in the preamble, the Department of Transportation proposes to amend 49 CFR, subtitle A, as follows:

1. Part 25 is added as set forth at the end of the common preamble to read as follows:

**PART 25—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

**Subpart A—Introduction**

Sec.

- 25.100 Purpose and effective date
- 25.105 Definitions
- 25.110 Remedial and affirmative action and self-evaluation
- 25.115 Assurance required
- 25.120 Transfers of property
- 25.125 Effect of other requirements
- 25.130 Effect of employment opportunities
- 25.135 Designation of responsible employee and adoption of grievance procedures
- 25.140 Dissemination of policy

**Subpart B—Coverage**

- 25.200 Application
- 25.205 Educational institutions and other entities controlled by religious organizations
- 25.210 Military and merchant marine educational institutions
- 25.215 Membership practices of certain organizations
- 25.220 Admission
- 25.225 Educational institutions eligible to submit transition plans
- 25.230 Transition plans
- 25.235 Statutory amendments

**Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited**

- 25.300 Admission
- 25.305 Preference in admission
- 25.310 Recruitment

**Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited**

- 25.400 Education programs and activities
- 25.405 Housing
- 25.410 Comparable facilities
- 25.415 Access to course offerings
- 25.420 Access to schools operated by LEAs
- 25.425 Counseling and use of appraisal and counseling materials
- 25.430 Financial assistance

- 25.435 Employment assistance to students
- 25.440 Health and insurance benefits and services
- 25.445 Marital or parental status
- 25.450 Athletics
- 25.455 Textbooks and curricular material

**Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited**

- 25.500 Employment
- 25.505 Employment criteria
- 25.510 Recruitment
- 25.515 Compensation
- 25.520 Job classification and structure
- 25.525 Fringe benefits
- 25.530 Marital or parental status
- 5.535 Effect of state or local law or other requirements
- 25.540 Advertising
- 25.545 Pre-employment inquiries

- 25.550 Sex as a bona fide occupational qualification

**Subpart F—Procedures**

- 25.600 Notice of covered programs
- 25.605 Enforcement procedures

**Authority:** 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

**§ 25.105 [Amended]**

2. In § 25.105 in the definition of “designated agency official,” the brackets and text within brackets are removed and “Director, Departmental Office of Civil Rights” is added in its place.

3. In § 25.105 in the definition of “Title IX regulations,” the brackets and text within brackets are removed and

“§§ 25.100 through 25.605” is added in its place.

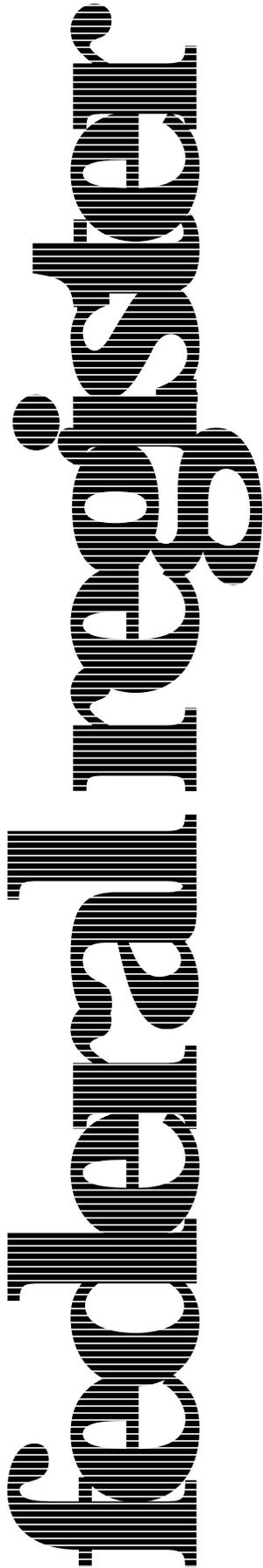
4. Section 25.605 is added to read as follows:

**§ 25.605 Enforcement procedures.**

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (“Title VI”) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 49 CFR part 21.

[FR Doc. 99-27372 Filed 10-28-99; 8:45 am]

**BILLING CODES** 7590-01-P, 8025-01-P, 7510-01-P, 3510-BP-P, 8120-08-P, 4710-10-P, 6116-01-P, 4210-28-P, 4410-13-P, 4510-23-P, 4810-25-P, 5000-04-P, 7515-01-P, 8320-01-P, 6560-50-P, 6820-34-P, 4310-RE-P, 6718-01-P, 7555-01-P, 7537-01-P, 7536-01-P, 7036-01-P, 6050-28-P, 4910-62-P



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Friday  
October 29, 1999

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**Part IV**

**Department of  
Education**

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**34 CFR Parts 600 and 668  
Institutional Eligibility Under the Higher  
Education Act of 1965, as Amended and  
Student Assistance General Provisions;  
Final Rule**

## DEPARTMENT OF EDUCATION

## 34 CFR Parts 600 and 668

RIN 1845-AA08

**Institutional Eligibility Under the Higher Education Act of 1965, as Amended and Student Assistance General Provisions**

AGENCY: Department of Education.

ACTION: Final regulations.

**SUMMARY:** We amend the regulations that govern institutional eligibility for and participation in the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (Title IV, HEA programs). These programs include the Federal Pell Grant Program, the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) Programs), the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) programs, and the Leveraging Educational Assistance Partnership (LEAP) Program (formerly known as the State Student Incentive Grant (SSIG) Program).

These final regulations implement statutory changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1998 (1998 Amendments). Many of the final regulatory changes merely conform current regulatory provisions to the statutory changes.

**DATES:** *Effective Date:* These final regulations are effective July 1, 2000.

*Implementation Date:* The Secretary has determined, in accordance with section 482(c)(2)(A) of the HEA (20 U.S.C. 1089(c)(2)(A)), at their discretion institutions can choose to implement the provisions of certain sections of these regulations on or after October 29, 1999. For further information see "Implementation Date of These Regulations" under the **SUPPLEMENTARY INFORMATION** section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Leibovitz, U.S. Department of Education, 400 Maryland Avenue, SW., ROB-3, room 3045, Washington, DC 20202-5344. Telephone: (202) 708-9900. If you use a telecommunications device for the deaf (TDD), you may call the Federal information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on

request to the contact person listed in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:****Background**

On July 15, 1999, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (64 FR 38272-38282) proposing to amend the regulations governing institutional eligibility for and participation in the Title IV, HEA Programs. In the preamble to the NPRM, we discussed the following proposed changes:

- Amending § 600.2, the definition of "State" to include the "Freely Associated States," which are the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

- Amending §§ 600.4(c), 600.5(h), and 600.6(d) to require an institution to agree to submit any dispute involving the final denial, withdrawal, or termination of accreditation to "initial" rather than "binding" arbitration.

- Amending § 600.5(a)(8) to conform the provisions previously referred to as the "85/15 rule" to the new "90/10 rule".

- Amending § 600.5(d) to make explicit that institutions must use the cash basis of accounting in determining whether they satisfy the 90/10 rule, and by clarifying how institutional loans and scholarships must be treated under the cash basis of accounting.

- Amending § 600.5(e) to provide that an institution could presume that a student's institutional charges were not paid with Title IV, HEA program funds if they were paid with funds received from a prepaid State tuition plan.

- Amending § 600.7(c) to expand the waiver provision for an institution whose enrollment of incarcerated students exceeds 25 percent to include a nonprofit institution that provides a two- or four-year program for which it awards a "postsecondary diploma."

- Amending § 600.8, as well as §§ 600.5(b)(3)(i) and 600.6(b)(3)(iii) to clarify that a branch campus must exist as a branch campus for at least two years after the Secretary certifies it as a branch campus before seeking to be certified as a main or free-standing campus.

- Amending §§ 600.31 and 668.12 to allow an institution undergoing a change in ownership that results in a change in control to continue to participate in the Title IV, HEA programs on a provisional basis if the institution meets certain requirements.

- Amending § 600.55(a)(5)(i)(A) to provide criteria for determining the comparability of foreign graduate

medical schools to domestic graduate medical schools.

- Amending § 600.56 to subject foreign veterinary schools to many, but not all, of the special eligibility requirements that the statute previously applied to foreign medical schools.

- Amending § 668.13 to expand the maximum period of time that an institution may be certified to participate in the Title IV, HEA programs from four years to six years.

- Amending § 668.14 to exempt an institution that has undergone a change in ownership/control from the requirement that it use a Default Management Plan during the first two years of its participation in the FFEL or Direct Loan programs if certain conditions are met.

- Amending § 668.14 by removing §§ 668.14(d) and (e), which govern collection and reporting of information concerning athletically-related aid, because those requirements will be revised and incorporated in § 668.47.

- Amending § 668.14(b)(24) to clarify that an institution agrees to comply with the requirements of § 668.22, which relates to refunds and the return of Title IV, HEA program funds.

- Amending § 668.14(d) to require that an institution make a good faith effort to distribute mail voter registration forms to its students. (The 1998 Amendments included this requirement but prohibited any officer of the Executive Branch from instructing an institution in the manner in which this provision is to be carried out. Therefore, proposed § 668.14(d) incorporated the provisions of section 487(a)(23) of the HEA *verbatim* into § 668.14(d) with minor changes to incorporate plain language requirements.)

- Amending § 668.27 to allow for a waiver for up to three years of the requirement that an institution submit annually, a compliance audit and audited financial statement if certain conditions are met.

- Amending § 668.92 to reflect that an individual who exercises substantial control over an institution and willfully fails to pay refunds on student loans is subject to the penalty established under section 6672(a) of the Internal Revenue Code of 1986 with respect to nonpayment of taxes.

- Amending §§ 668.95 and 668.113 to allow an institution to correct or cure an error that results from an administrative, accounting, or recordkeeping error, if that error was not part of a pattern of errors and there is no evidence of fraud or misconduct related to the error, and to clarify that the Secretary will not

limit, suspend, terminate, or fine the institution if such an error is cured.

There are no significant differences between the NPRM and these final regulations.

#### Implementation Date of These Regulations

Section 482(c) of the HEA, 20 U.S.C. 1089(c), provides that if we publish these regulations before November 1, 1999, the regulations will become effective on July 1, 2000. However, that section also permits us to designate any of these regulations as one that an entity subject to the regulation may choose to implement earlier. If we designate a regulation for early implementation, we may specify when and under what conditions the entity may implement it. Under this authority, we have designated the following regulations for early implementation:

Upon publication, institutions have the discretion to implement §§ 600.4(c), 600.5(h), 600.6(d), 600.55, and § 600.56.

Upon publication, institutions have the discretion to implement the provisions of §§ 600.5(d) and (e). However, if an institution chooses to implement any of the provisions in those sections, it must implement all of them.

Upon publication, institutions have the discretion to implement the provisions dealing with a change of ownership that results in a change in control in §§ 600.20, 600.31, and 668.12.

**Note:** The changes to §§ 600.2, 600.5(a), 600.5(b)(3)(i), 600.6(b)(3)(iii), 600.7(a)(1)(iii) and (iv), 600.7(c), 600.8, 668.13, 668.14(b)(24), 668.14(d), and 668.92 reflect statutory provisions that already are in effect. Institutions may use these regulations prior to July 1, 2000 as guidance in complying with those statutory provisions.

The changes to §§ 668.95 and 668.13 merely clarify our current practices with regard to initiating compliance actions and assessing liabilities.

Section 668.27 will not become effective until July 1, 2000. However, we will begin to accept applications for waivers from institutions as of January 3, 2000 so that we can begin to grant waivers on July 1, 2000.

#### Discussion of Student Financial Assistance Regulations Development Process

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and

recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on July 15, 1999. With the exception of provisions relating to the "90/10 rule" in the definition of "proprietary institution of higher education" at § 600.5, the proposed regulations reflected the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. The Secretary invited comments on the proposed regulations by September 13, 1999 and approximately 60 comments were received. An analysis of the comments and of the changes in the proposed regulations follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes in the proposed regulations, and we do not respond to comments suggesting changes that the Secretary is not authorized by law to make.

#### Analysis of Comments and Changes

##### *Part 600—Institutional Eligibility Under the Higher Education Act of 1965, as amended*

##### *Section 600.5 Proprietary Institution of Higher Education*

**Comments:** A number of commenters registered support of the Secretary's proposals for implementing the 90/10 rule as reasonable and compliant with the HEA.

**Discussion:** We appreciate the support for these changes.

**Changes:** None.

**Comments:** Several commenters disagreed with the requirement contained in proposed § 600.5(d)(2) that a proprietary institution of higher education must use the cash basis of accounting in determining whether it satisfies the 90/10 rule. These commenters believed that all revenue should be recognized when earned (accrual basis of accounting), and not when received (cash basis of accounting.)

**Discussion:** We set forth in the preamble to the proposed regulations at 64 FR 38272, 38275 the history and rationale for the decision to use the cash basis of accounting in reporting revenue

for the purpose of the 85/15 and now 90/10 rule. In summary an institution must report and account for its expenditure of Title IV, HEA program funds on the cash basis of accounting, and therefore, it must report all its revenues on that basis in order to make a meaningful determination of compliance with the 90/10 requirement.

**Changes:** None.

**Comments:** Two commenters requested clarification on the treatment of institutional loans in proposed § 600.5(d)(3)(i). That section provided that under the cash basis of accounting, when calculating the amount of revenue generated by the institution from institutional loans, an institution may include only loan repayments received during the relevant fiscal year.

**Discussion:** An institution may not count in the denominator of the fraction in § 600.5(d)(1) the loan proceeds from institutional loans that were disbursed to students; it may include only loan repayments it received during the relevant fiscal year for previously disbursed institutional loans.

**Changes:** None.

**Comments:** A number of commenters objected to the treatment of "institutional scholarships" as proposed in § 600.5(d)(3)(ii). That section provided that under the cash basis of accounting, when calculating the amount of revenue generated by the institution from institutional scholarships, an institution may include only the amount of funds it disbursed during the fiscal year from an established restricted account, and only to the extent that the funds in the account represent designated funds from an outside source or from fund earnings.

Commenters who objected to our treatment of institutional scholarships indicated that contributions to proprietary institutions are not tax deductible, and therefore proprietary institutions generally do not receive funds from outside sources for scholarship funds. Other commenters indicated that the tax laws preclude a proprietary institution from setting up a tax exempt entity for that purpose. Thus, the commenters noted that scholarship endowments are virtually non-existent in the proprietary sector.

The commenters noted that it would take years to amass the principal necessary to create a substantial endowment program. They also believed it would take even longer to earn enough interest to make tangible scholarship distributions to students. In addition, the commenters said that as a result of this proposed requirement, many institutions would have no choice

but to limit or forgo making scholarships to deserving students.

On the other hand, several other commenters supported our treatment of institutional scholarship funds under the cash basis of accounting.

*Discussion:* We understand that the tax laws preclude individuals and entities from making tax deductible contributions to proprietary institutions, and therefore it would be unlikely that these institutions would have restricted funds to make scholarship awards. However, this result is consistent with our view, as expressed in the NPRM preamble, that institutional scholarships are not revenue generated by the institution but are expenses of the institution, and should not be included, except in unusual circumstances, in the denominator of the fraction in § 600.5(d)(1).

We specified in the initial NPRM on this topic in 1994 (59 FR 6446, February 10, 1994) that we wished to encourage proprietary institutions to obtain support from sources outside of and independent of the institution. Accordingly, funds donated to the institution by related parties may not count for purposes of the 90/10 calculation. An institution could, however, use such donations to create restricted accounts for institutional scholarships. Those scholarships would count in the 90/10 calculation, but only to the extent of earnings on the restricted account.

We disagree with the commenter's assertion that proprietary institutions will reduce the funding of institutional scholarships to their students. We believe that institutions award these scholarships to benefit their students, not as an artifice to avoid the consequences of the 90/10 rule.

*Changes:* None.

*Comments:* Some commenters stated that Federal Work-Study (FWS) program funds that an institution uses to pay institutional charges should be included in the 90/10 formula.

*Discussion:* Prior the 1998 Amendments, we did not include FWS funds in the 90/10 formula because the institution was required to pay those funds directly to the student; the institution was not permitted to use those funds to pay the student's institutional charges. The 1998 Amendments now allow an institution to credit FWS funds against a student's institutional charges if the student gives his or her permission. As a result, we believe that FWS funds must now be included in the 90/10 formula to the extent that a student takes advantage of this new authority and authorizes FWS

funds to be used to pay his or her institutional charges.

*Changes:* Section 600.5(e)(1)(i) is revised to include FWS funds that an institution uses to pay a student's tuition, fees, and other institutional charges.

*Comments:* Several commenters requested that we address how credit balances should be treated with regard to the 90/10 rule.

*Discussion:* In general, funds held as credit balances in institutional accounts do not get counted in the 90/10 formula in § 600.5(d)(1). However, once funds held as credit balances are used to satisfy institutional charges, they would be counted in both the numerator and denominator of the formula. For example, an institution's fiscal year is a calendar year. On December 30, 1999, the institution disburses \$100,000 of Title IV, HEA program funds to students on their accounts, and credit balances occur because the institution has not yet charged those accounts with related tuition and fees. On January 3, 2000, the institution charges tuition and fees to the students' accounts, and uses all of those previously disbursed funds to pay the students' tuition and fee charges.

For purposes of the 90/10 formula in § 600.5(d)(1), none of the \$100,000 would be included in the institution's 90/10 calculation for its 1999 fiscal year because none of the funds had been used for tuition, fees, and other institutional charges; all of the \$100,000 would be included in the institution's 90/10 calculation for its 2000 fiscal year calculation, when the funds were used to satisfy tuition, fees, and other institutional charges.

A similar result would apply if the institution drew down \$100,000 of Title IV, HEA program funds from the Department on December 30, 1999 but did not pay those funds to students for institutional charges until January 3, 2000.

We note that under an extremely literal interpretation of the principles underlying the cash basis of accounting, it would be possible to determine that none of the \$100,000 in the above example would be included in the numerator or denominator for any year because the regulation applies to cash received used to satisfy tuition, fees and other institutional charges. Under this interpretation, an institution would count only the funds it received in a particular fiscal year used to satisfy institutional charges for that fiscal year's determination of the 90/10 rule. In the above example, the \$100,000 was received by the institution in fiscal year 1999. Therefore, when the institution used those funds to pay institutional

charges in fiscal year 2000, it did not use any funds it received in fiscal year 2000 to pay institutional charges in that fiscal year.

We believe that this extremely literal interpretation is an impermissible interpretation of the principles governing the cash basis of accounting because it ignores the context of the 90/10 rule and produces an absurd result where the funds would never be counted.

*Changes:* None.

*Comments:* One commenter asked how the Secretary would treat the sale of institutional loans for the purpose of the 90/10 calculation.

*Discussion:* Revenue generated from the sale of non-recourse institutional loans to unrelated parties would be counted as revenue in the denominator of the 90/10 calculation to the extent of actual proceeds.

The sale of institutional loan receivables is distinguishable from the sale of an institution's other assets because the receivables from institutional loans were produced by a transaction that generates tuition revenue. Tuition revenue represents income from the major service provided by an institution. That would not be true in the case of the sale of other institutional assets.

An institution may use the proceeds from the sale of other assets in the creation of a restricted account and awarding of institutional scholarships. However, for 90/10 purposes, only the portion of proceeds that represents a gain on the sale of the asset counts as institutional scholarships. An institution may use the amount of the proceeds that equal the historical cost of the asset to establish the restricted account.

*Changes:* None.

*Comments:* Several commenters expressed concern at the provision contained in proposed § 600.5(e)(2) that presumes that all Title IV, HEA program funds disbursed or delivered to students are used to pay tuition, fees, or other institutional charges, regardless of whether those funds are paid directly to students or credited to their institutional accounts. These commenters believed that this presumption ignored the cash contributions made by students and their families toward the student's educational costs. These commenters further indicated that the exceptions to the presumption in proposed § 600.5(e)(3) should be expanded to include certain savings vehicles, such as educational IRAs.

*Discussion:* From the very first attempts to develop regulations to

implement the 85/15 rule in 1993 and 1994, we and the regulation negotiators recognized the necessity of this presumption, in order, as stated by the Secretary in the preamble to the NPRM that was issued for the 85/15 rule, "[t]o avoid inappropriate manipulation of information under the 85 percent rule." 59 FR 6446, 6449 (Feb. 10, 1994). For example, without the presumption, an institution could disburse Title IV, HEA program funds directly to students and then have the students write checks to the institution for tuition, fees, and other institutional charges. Under this approach, an institution could contend that none of the Title IV, HEA program funds were used to pay institutional charges.

On the other hand, we agree with the commenters that in certain instances, the presumption would not take into account cash contributions made by students and their parents toward the student's educational costs. However, we believe that these instances are ameliorated by the fact that an institution can obtain up to 90 percent of its tuition and fee revenue from Title IV, HEA program funds, and by the exceptions provided in § 600.5(e)(3).

When we created the presumption, we also created exceptions. Thus, in the original 85/15 rule, we provided that the presumption should not apply to the extent that a student's tuition and fee charges were paid with grant funds provided by third parties, or to the extent that those charges were paid under contracts with governmental agencies. In the proposed rule for these final regulations, the Secretary added another exemption—tuition and fee charges that were paid from a State prepaid tuition plan.

These three exceptions are consistent in that funds come to the institution directly from an outside third party source and are easily accounted for. The commenter's suggestions for additional exceptions would satisfy neither condition, because the suggested additions would not come from an outside third party source, and an institution would not be able to document that a payment came from such a source. In addition, the proposed additional sources of funds, including education IRA funds, can be used to pay non-institutional charges as well as an institutional charges.

*Changes:* None.

#### *Section 600.7 Conditions of Institutional Ineligibility*

*Comments:* Several commenters requested that the Secretary define the term "postsecondary diploma" in proposed § 600.7(c)(1). That section

provides that an institution whose enrollment of incarcerated students exceeds 25 percent will not become ineligible for that reason if the institution offers a two or four-year program of study for which it awards a \* \* \* "postsecondary diploma."

*Discussion:* This change reflects a statutory change to the HEA that was enacted at the behest of institutions in the State of Louisiana. The term "postsecondary diploma" has a specific meaning in that State for those institutions, and as a result, we do not believe that it is useful to define that term for purposes of this section. Consequently, we recognize that if a nonprofit institution in another State offer a two or four year program that leads to a credential specifically called a "postsecondary diploma," that institution may be eligible for a waiver of the incarcerated student limitation.

*Changes:* None.

#### *Section 600.30 Institutional Notification Requirements*

*Comments:* One commenter asks that we change the 10 day notice requirement in § 600.30(a) to 10 business days because § 668.12(f) gives an institution undergoing a change in ownership/control 10 business days after the sale date to submit a "materially complete application."

*Discussion:* The 10 business day deadline date for submitting a "materially complete application is required by statute. The notice requirements in § 600.30 refer to calendar days and we see no need to change them merely because of the special statutory rule for the change of ownership situation.

For institutions undergoing a change in ownership/control that wish to continue participating in the Title IV, HEA programs, the critical deadline is, of course, the one requiring the submission of the materially complete application under § 668.12(f). The deadline in § 600.30 would be relevant only if the institution did not wish to continue participating in those programs.

*Changes:* None.

#### *Section 668.12 Application Procedures*

*Comments:* Several commenters asked whether the documents which are required as part of an institution's "materially complete application" must be submitted "promptly" (as indicated in the preamble to the NPRM) or prior to the expiration date of the provisional PPA as reflected in the proposed regulatory language.

*Discussion:* The commenters have confused our statement in the preamble

and the proposed regulations. As indicated in § 668.12(f)(1) in both its proposed and final form, documents that must be submitted as part of a "materially complete application" must be submitted to the Department no later than 10 business days after the change in ownership/control takes place. These documents are described in § 668.12(f)(2).

The preamble reference to "promptly" refers to the documents that are described in § 668.12(g)(3), which are, for example, "same day" balance sheets, that an institution must submit to have its provisional Program Participation Agreement (PPA) extended and its change of ownership/control application fully approved.

*Changes:* None.

*Comments:* Several commenters asked if a "materially complete application" has to be submitted before or after the change of ownership takes place.

*Discussion:* With the deletion of § 600.31(f), institutions now have the option of submitting materially complete applications before the date of sale. If an institution submits a materially complete application before the date of sale, the institution must then notify the Department of the date the sale actually took place. We need that date because, if the institution's materially complete application is approved, the sale date is used in determining the expiration date of the provisional PPA.

We will also allow an institution to submit an application for a change in ownership/control before the change occurs without the documents required to make the application an official "materially complete application." We will review these applications if they are submitted no later than 45 days before the expected sale date. We consider our review of this application to be a "preacquisition review".

As part of our preacquisition review, we will determine whether the institution has answered all the questions on the application completely and accurately, and will notify the institution of the results of that review. In this way, if some questions have not been answered or have not been adequately answered, the institution would have an opportunity to correct its application before the actual date of the change in ownership/control. Thus, our response in a preacquisition review will not be an official approval or denial of the application; it will notify the institution that its application is approvable, or it will alert the institution of any problems that need to be addressed before the application can be approvable.

*Changes:* None.

*Comments:* One commenter asked if all institutions undergoing a change of ownership/control must provide a same-day balance sheet to the Secretary, either to "continue" uninterrupted participation in Title IV, HEA programs by satisfying the requirements of §§ 668.12(f) and (g), or to "resume" participation in Title IV programs after a loss of eligibility resulting from the ownership change.

*Discussion:* Yes, it must.

*Changes:* None.

*Comments:* Several commenters asked exactly which audited financial statements would a new owner be required to provide. The commenters also asked for clarification as to what constitutes "equivalent information" for a new owner as a substitute for the audited financial statements. The commenters asked whether the new owner has the option of providing "equivalent information" or if that determination is up to the Department.

*Discussion:* One of the conditions that we have to evaluate when deciding whether to approve a materially complete application is whether the institution under its new ownership will be financially responsible. To make that determination, it is necessary to evaluate the financial condition of the purchaser.

Corporate purchasers will submit audited financial statements of their two most recently completed fiscal years. Similarly, if the new owner is a partnership or a single individual, the partnership and individual must submit those audited financial statements.

However, we realize that there may be situations where a new owner does not have two years of audited financial statements. For example, the new corporate owner may not have been in business for two years or a single individual or partnership may not have had these audits performed. Under these circumstances, we require the new ownership to provide equivalent documentation that would allow us to evaluate the new owners' financial strength.

This equivalent documentation could take the form of an audited personal financial status report that would show the new owners' net worth. It could include letters of reference or personal guarantees. In many instances, we will request the new owners to suggest the equivalent documentation.

Finally, as noted above, it is not the new owner's option to provide equivalent documentation. That option is available only if the two required audited financial statements are not available. Moreover, we make the final

determination as to whether equivalent documentation proposed by an owner is acceptable.

*Changes:* None.

*Comments:* One commenter suggested that we make conforming changes to §§ 600.20 and 600.31 to reflect the continued eligibility of an institution that changed ownership/control to participate in the Title IV, HEA programs.

*Discussion:* We concur with the commenters' suggestions.

*Changes:* We added § 600.20(c)(8) and amended § 600.31(a).

*Comments:* One commenter questioned if the Secretary considered the potential impact of the new institutional waiver provisions regarding annual audit submission requirements on the change of ownership provisional certification requirements.

*Discussion:* The audit waiver provisions in § 668.27 generally do not have an impact on the change of ownership/control certification requirements in § 668.12(f). Under the regulatory scheme of § 668.27, an institution may not receive a waiver if it has undergone a change in ownership/control within three years of its application for a waiver. Moreover, if an institution received a waiver, that waiver is rescinded if the institution undergoes that ownership/control change.

There is, however, a facial conflict between §§ 668.12(f) and 668.27 involving the submission of audited financial statements. Under the former provision, an applicant institution for a change of ownership must submit audited financial statements for its two most recently completed fiscal years even though the latter provision may have provided the institution with a waiver of that submission requirement. However, if the institution changes ownership/control and wants to keep participating in the Title IV, HEA programs, it must follow the requirements of § 668.12(f).

Consequently, if an institution received a waiver and is then sold, and the new owners wish to continue the institution's participation in the Title IV, HEA programs, the new owners must submit audited financial statements of the institution's last two completed fiscal years as part of a "materially complete application," even though the institution may not have had to submit those audited financial statements under § 668.27.

We believe that this requirement is consistent with normal business practice, because we believe that an institution's potential purchaser would

require the seller to provide such audits, as well as compliance audits of the institution's administration of the Title IV, HEA programs, before buying the institution.

*Changes:* None.

#### *Section 668.14 Program Participation Agreement.*

*Comments:* One commenter noted that an institution that has undergone a change in ownership/control does not have to implement an approved default management plan if "The owner of the institution does not, and has not, owned any other institution with a cohort default rate in excess of 10 percent." The commenter wanted to know when the Secretary makes this determination, which cohort default rate will be used for the institution that the owner just purchased and which will be used for any of the other institutions the owner owns or owned.

*Discussion:* For the institution being purchased, we will use the latest published cohort default rate. For any other institution that the new owner owns or owned, we will use all published cohort default rates for the period that coincides with the period that the institution was owned by that individual.

*Changes:* None.

*Comments:* Some institutions with cohort default rates under the FFEL or Direct Loan programs that exceed 25 percent are not subject to the default management plan requirements provided in appendix D of Part 668, but are subject to a separate set of the default management plans that will be contained in § 668.17(k). One commenter suggested that this section be expanded to reflect that fact.

*Discussion:* Section 668.14 generally includes all the provisions that section 487(a) of the HEA requires to be included in a program participation agreement, and does not include other requirements outside of section 487(a) that an institution may have to undertake.

*Changes:* None.

*Comments:* Several commenters opposed the requirement in proposed § 668.14(d) that institutions make a good faith effort to distribute mail voter registration forms to its students. These commenters indicated that this requirement would place a tremendous burden on institutions. Commenters also suggested that the Secretary provide guidance on acceptable methods for distributing the voter registration materials.

*Discussion:* The language provided in this section is copied from the statute. Moreover, the statute (section 487(b)(2))

of the HEA) specifically prohibits the Secretary from instructing institutions in the manner in which this provision is carried out.

*Changes:* None.

**Section 668.27 Waiver of Annual Audit Submission Requirement.**

*Comments:* Commenters generally supported our proposed rules dealing with waivers of the annual audit submission requirement. Some commenters indicated there was some confusion regarding the timelines involved in these procedures, particularly with regard to the fiscal years that may be included in a waiver.

*Discussion:* We recognize that the proposed regulation did not specifically identify which fiscal year could be included in a waiver request. We are rectifying that omission by providing that an institution's waiver request may include the fiscal year in which that request is made, plus the next two fiscal years. That request may not include an already completed fiscal year.

For example, if an institution's fiscal year is based upon an award year (July 1–June 30), and the institution requests a waiver on May 1, 2000, that waiver request may include its 1999–2000 fiscal year (July 1, 1999 through June 30, 2000) plus its 2000–2001 and 2001–2002 fiscal years. If that institution's fiscal year was a calendar year, the institution's waiver request could include its calendar 2000 fiscal year plus its 2001 and 2002 fiscal years. In the latter example, the waiver would not include the institution's 1999 fiscal year, and therefore, it would be required to submit its compliance audit and audited financial statement to the Department by June 30, 2000.

*Changes:* Section 668.27(a)(3) is added to provide that the first fiscal year that may be included in a waiver request is the fiscal year in which the institution submits that waiver.

*Comments:* One commenter asked about liabilities that might accrue to an institution for a fiscal year if that fiscal year was one of the fiscal years included in a waiver.

*Discussion:* An institution is liable to repay title IV, HEA program funds because it improperly expends those funds. A compliance audit is the vehicle for discovering that improper expenditure.

These regulations do not waive the requirement that an institution audit its administration of the title IV, HEA programs; they waive the requirement that these audits be performed and submitted on an annual basis. Thus, the institution will pay that liability when the institution eventually submits a

compliance audit for the fiscal year in which it made an improper expenditure, we resolve that audit, and request that payment.

*Changes:* None.

*Comments:* One commenter requested clarification of the reporting requirements for institutions granted a waiver of the requirement that an institution submit annually, a compliance audit and audited financial statement with regard to the 90/10 rule and the institutional ineligibility requirements of § 600.7.

*Discussion:* Under the 90/10 rule and § 600.7, at the end of each fiscal year, an institution must report to the Department if it fails to satisfy the 90/10 rule or if it fails one of the ineligibility provisions in § 600.7 for that year. An institution is still required to make these annual determinations even if it is not required to submit audits annually. This also means, of course, that if an institution fails to comply with the 90/10 rule or one of the ineligibility provisions in § 600.7 it immediately loses its eligibility. The institution would be liable for any funds it disbursed subsequent to the end of the fiscal year in which it failed to meet one of these requirements.

If an institution determines that it satisfies those requirements, its auditor is required to indicate agreement with that determination and report that agreement when the auditor submits that fiscal year's audited financial statement. The auditor may also indicate agreement with the institution's determination of eligibility under § 600.7 with the institution's compliance audit.

If an institution receives a waiver, it need not submit a statement from its auditor regarding its compliance with the 90/10 rule or the provisions of § 600.7 until its audited financial statement and compliance audit are submitted. When those audits are submitted, the auditor must note his or her agreement with the institution's determinations of eligibility for each of the fiscal years covered by the audits. For example, if the institution received a waiver and did not have to submit an audit for the 2000–2001 and 2001–2002 fiscal years, when the next audits are submitted on December 31, 2003, the auditor must indicate agreement with the institution's eligibility determinations for the 2000–2001 fiscal year, the 2001–2002 fiscal year, and the 2002–2003 fiscal year.

The auditor must indicate agreement with the institution's 90/10 determination for each of those three years even though the auditor need only

submit an audited financial statement for the 2002–2003 fiscal year.

*Changes:* None.

*Comment:* One commenter wondered whether the criteria for a waiver renewal were the same as the criteria for the initial waiver.

*Discussion:* The criteria we use to grant waivers applies equally to requests for initial and renewal waivers.

*Changes:* None.

*Comments:* Several commenters wanted clarification on whether the Secretary would base an action to grant or rescind a waiver on a limitation, suspension, fine, or termination action that had only been initiated and was not final.

*Discussion:* We will not grant a waiver and we will rescind a waiver based upon the initiation of a limitation, suspension, fine, or termination action. We initiate one of those actions because we receive information that the subject institution has not been properly administering the Title IV, HEA programs. We believe that an institution under those circumstances should not have its audit requirements waived. Moreover, under the procedures available to an institution, a final decision in such an action may take a long period of time, and a hearing official or the Secretary may decide not impose the sanction requested even though the institution has been improperly administering the Title IV, HEA programs.

*Changes:* None.

*Comments:* Two commenters noted a difference in wording on the monetary threshold for granting a waiver. At § 668.27(c)(2) the regulation states the institution "did not disburse \$200,000 or more of Title IV." At § 668.27(e)(1), the criteria for rescinding the waiver, the regulation states the institution "disburses more than \$200,000." The commenters recommended that the two sections be made parallel.

*Discussion:* We agree.

*Changes:* Section 668.27(e)(1) is changed to read "Disburses \$200,000 or more of Title IV, HEA program funds for an award year."

*Comments:* One commenter wanted to know if two waivers for three years each were granted one after the other whether this meant that the institution would only need one audit for the six-year period.

*Discussion:* No, the institution would need two sets of audits to cover the six-year period. However, since the institution has up to six months after the last fiscal year to be covered to submit the second set of audits, the second set of audits would not have to be received by the Department until six

months after the expiration of the six year period.

*Changes:* None.

*Comments:* One commenter wanted to know whether the requirement that "no individual audit disclosed liabilities in excess of \$10,000" referred to the final audit liability. The commenter based his comment on the new statutory provision that allows an institution to cure administrative, accounting, and recordkeeping errors, and the proposed regulations in § 668.113, that provides that the Department will not charge an institution a liability for such an error if it cures the error and the cure eliminates the basis of the liability.

*Discussion:* We will use the best information available to us when making a decision on whether to grant a waiver. Therefore, if the latest information is the audit report submitted by the institution's auditor, we will use that report in our waiver determination. However, if an institution requests a waiver and its request is denied because of audit findings that show a liability in excess of \$10,000, and those findings are subsequently revised to show liabilities of \$10,000 or less for any reason, including a cure of the error, the institution can reapply for the waiver.

*Changes:* None.

*Comments:* One commenter asked whether the commenter was correct in assuming that the Secretary was not going to consider an institution's administrative capability in determining whether to grant an audit waiver.

*Discussion:* We believe that the criteria we proposed for granting waivers is a proxy for administrative capability.

*Changes:* None.

*Discussion:* In the course of responding to the commenter's question, we realized that we did not provide any rules in the proposed regulations that address the situation when an institution's waiver is rescinded, *vis a vis* when the institution must submit audits, and what years must be covered by the audits. Accordingly, we have revised § 668.27 to provide that if an institution has its waiver rescinded in a fiscal year, the effective date of the rescission is the last day of that fiscal year.

Under this approach, the institution must submit compliance audits for the fiscal year(s) that were completed and unaudited, and an audited financial statement of the last completed fiscal year. The institution must submit these audits no later than six months after the end of the fiscal year in which its waiver was rescinded. We chose this approach to save the institution money,

because the institution will not have to enter into more than one engagement agreement with an auditor to perform all the required audit work.

To illustrate this new provision, we use the example given in the preamble of the NPRM for § 668.12(f). An institution's fiscal year coincides with an award year (July 1–June 30). It submits its compliance and financial statement audit for the 1999–2000 award year, applies for a waiver, and receives that waiver so that its next compliance audit and audited financial statement must be submitted six months after the end of its 2002–2003 fiscal year.

If the institution's waiver is rescinded during the 2000–2001 fiscal year, the first fiscal year of its waiver period, it has not completed any fiscal year for which the audit requirement was waived. Therefore, it must submit its compliance audit and audited financial statement for that fiscal year in the regular course, *i.e.*, no later than six months after the end of that fiscal year, December 31, 2001.

If the institution's waiver was rescinded during the 2001–2002 fiscal year, the waiver applied to its submission of audits for the 2000–2001 fiscal year. Therefore, it must submit a compliance audit for the 2000–2001 and 2001–2002 fiscal years, and must submit an audited financial statement only for the 2001–2002 fiscal year. These audits must be submitted no later than December 31, 2002, six months after the end of its 2001–2002 fiscal year.

If the institution's waiver was rescinded during the 2002–2003 fiscal year, the waiver applied to its submission of audits for the 2000–2001 and 2001–2002 fiscal years. Therefore, it must submit a compliance audit for the 2000–2001, 2001–2002, and 2002–2003 fiscal years, and an audited financial statement only for the 2002–2003 fiscal year. These audits must be submitted no later than December 31, 2003, six months after the end of its 2002–2003 fiscal year.

*Changes:* As indicated above, we have revised § 668.27 to provide that if an institution has its waiver rescinded in a fiscal year, the effective date of the rescission is the last day of that fiscal year.

#### **Executive Order 12866**

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of this order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting

from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM at 64 FR 38276–38277.

#### **Paperwork Reduction Act of 1995**

These regulations do not contain any information collection requirements.

#### **Assessment of Educational Impact**

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Consolidation Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program;

84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 LEAP; 84.268 William D. Ford Federal Direct Loan Programs; and 84.272 National Early Intervention Scholarship and Partnership Program.)

### List of Subjects

#### 34 CFR Part 600

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

#### 34 CFR 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Dated: October 21, 1999.

**Richard W. Riley,**  
Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends parts 600 and 668 of title 34 of the Code of Federal Regulations as follows:

### PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for part 600 is revised to read as follows:

**Authority:** 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099(c), unless otherwise noted.

2. In § 600.2, the definition of the term "State" is revised to read as follows:

#### § 600.2 Definitions.

\* \* \* \* \*

*State:* A State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. The latter three are also known as the Freely Associated States.

\* \* \* \* \*

3. In § 600.4, paragraph (c) is revised to read as follows:

#### § 600.4 Institution of higher education.

\* \* \* \* \*

(c) The Secretary does not recognize the accreditation or preaccreditation of an institution unless the institution agrees to submit any dispute involving the final denial, withdrawal, or

termination of accreditation to initial arbitration before initiating any other legal action.

\* \* \* \* \*

4. In § 600.5, paragraph (h) is removed; paragraph (i) is redesignated as paragraph (h); paragraph (e) is added; and paragraphs (a)(8), (b)(3)(i), (d), (f), (g), and redesignated paragraph (h) are revised to read as follows:

#### § 600.5 Proprietary institution of higher education.

(a) \* \* \*

(8) Has no more than 90 percent of its revenues derived from title IV, HEA program funds, as determined under paragraph (d) of this section.

(b) \* \* \*

(3) \* \* \*

(i) Counts any period during which the applicant institution has been certified as a branch campus; and

\* \* \* \* \*

(d)(1) An institution satisfies the requirement contained in paragraph (a)(8) of this section by examining its revenues under the following formula for its latest complete fiscal year:

Title IV, HEA program funds the institution used to satisfy its students' tuition, fees, and other institutional charges to students  
The sum of revenues including title IV, HEA program funds generated by the institution from: tuition, fees, and other institutional charges for students enrolled in eligible programs as defined in 34 CFR 668.8; and activities conducted by the institution, to the extent not included in tuition, fees, and other institutional charges, that are necessary for the education or training of its students who are enrolled in those eligible programs.

(2) An institution must use the cash basis of accounting when calculating the amount of title IV, HEA program funds in the numerator and the total amount of revenue generated by the institution in the denominator of the fraction contained in paragraph (d)(1) of this section.

(3) Under the cash basis of accounting—

(i) In calculating the amount of revenue generated by the institution from institutional loans, the institution must include only the amount of loan repayments received by the institution during the fiscal year; and

(ii) In calculating the amount of revenue generated by the institution from institutional scholarships, the institution must include only the amount of funds it disbursed during the fiscal year from an established restricted

account and only to the extent that the funds in that account represent designated funds from an outside source or income earned on those funds.

(e) With regard to the formula contained in paragraph(d)(1) of this section—

(1) The institution may not include as title IV, HEA program funds in the numerator nor as revenue generated by the institution in the denominator—

(i) The amount of funds it received under the Federal Work-Study (FWS) Program, unless the institution used those funds to pay a student's institutional charges in which case the FWS program funds used to pay those charges would be included in the numerator and denominator.

(ii) The amount of funds it received under the Leveraging Educational Assistance Partnership (LEAP) Program. (The LEAP Program was formerly called the State Student Incentive Grant or SSIG Program.);

(iii) The amount of institutional funds it used to match title IV, HEA program funds;

(iv) The amount of title IV, HEA program funds that must be refunded or returned under § 668.22; or

(v) The amount charged for books, supplies, and equipment unless the institution includes that amount as tuition, fees, or other institutional charges.

(2) In determining the amount of title IV, HEA program funds received by the institution under the cash basis of accounting, except as provided in paragraph (e)(3) of this section, the institution must presume that any title IV, HEA program funds disbursed or delivered to or on behalf of a student will be used to pay the student's tuition, fees, or other institutional charges, regardless of whether the institution credits those funds to the student's account or pays those funds directly to the student, and therefore must include those funds in the numerator and denominator.

(3) In paragraph (e)(2) of this section, the institution may not presume that title IV, HEA program funds were used to pay tuition, fees, and other institutional charges to the extent that those charges were satisfied by—

(i) Grant funds provided by non-Federal public agencies, or private sources independent of the institution;

(ii) Funds provided under a contractual arrangement described in § 600.7(d), or

(iii) Funds provided by State prepaid tuition plans.

(4) With regard to the denominator, revenue generated by the institution from activities it conducts, that are

necessary for its students' education or training, includes only revenue from those activities that—

(i) Are conducted on campus or at a facility under the control of the institution;

(ii) Are performed under the supervision of a member of the institution's faculty; and

(iii) Are required to be performed by all students in a specific educational program at the institution.

(f) An institution must notify the Secretary within 90 days following the end of the fiscal year used in paragraph (d)(1) of this section if it fails to satisfy the requirement contained in paragraph (a)(8) of this section.

(g) If an institution loses its eligibility because it failed to satisfy the requirement contained in paragraph (a)(8) of this section, to regain its eligibility it must demonstrate compliance with all eligibility requirements for at least the fiscal year following the fiscal year used in paragraph (d)(1) of this section.

(h) The Secretary does not recognize the accreditation of an institution unless the institution agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration before initiating any other legal action.

5. In § 600.6, paragraphs (b)(3)(iii) and (d) are revised to read as follows:

§ 600.6 Postsecondary vocational institution.

(b) \* \* \*

(3) \* \* \*

(iii) Counts any period during which the applicant institution has been certified as a branch campus; and

(d) \* \* \*

(d) The Secretary does not recognize the accreditation or preaccreditation of an institution unless the institution agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration before initiating any other legal action.

(e) \* \* \*

6. In § 600.7, paragraphs (a)(1)(iii), (a)(1)(iv), and (c) are revised to read as follows:

§ 600.7 Conditions of institutional ineligibility.

(a) \* \* \*

(1) \* \* \*

(iii) More than twenty-five percent of the institution's regular enrolled students were incarcerated;

(iv) More than fifty percent of its regular enrolled students had neither a

high school diploma nor the recognized equivalent of a high school diploma, and the institution does not provide a four-year or two-year educational program for which it awards a bachelor's degree or an associate degree, respectively;

\* \* \* \* \*

(c) Special provisions regarding incarcerated students—(1) Exception. The Secretary may waive the prohibition contained in paragraph (a)(1)(iii) of this section, upon the application of an institution, if the institution is a nonprofit institution that provides four-year or two-year educational programs for which it awards a bachelor's degree, an associate degree, or a postsecondary diploma.

(2) Waiver for entire institution. If the nonprofit institution that applies for a waiver consists solely of four-year or two-year educational programs for which it awards a bachelor's degree, an associate degree, or a postsecondary diploma, the Secretary waives the prohibition contained in paragraph (a)(1)(iii) of this section for the entire institution.

(3) Other waivers. If the nonprofit institution that applies for a waiver does not consist solely of four-year or two-year educational programs for which it awards a bachelor's degree, an associate degree, or a postsecondary diploma, the Secretary waives the prohibition contained in paragraph (a)(1)(iii) of this section—

(i) For the four-year and two-year programs for which it awards a bachelor's degree, an associate degree or a postsecondary diploma; and

(ii) For the other programs the institution provides, if the incarcerated regular students enrolled in those other programs have a completion rate of 50 percent or greater.

\* \* \* \* \*

7. Section 600.8 is revised to read as follows:

§ 600.8 Treatment of a branch campus.

A branch campus of an eligible institution must be in existence for at least two years as a branch campus after the branch is certified as a branch campus before seeking to be designated as a main campus or a free-standing institution.

(Authority: 20 U.S.C. 1099c)

8. Section 600.20 is amended by adding a new paragraph (c)(8) to read as follows:

§ 600.20 Application procedures.

\* \* \* \* \*

(c) \* \* \*

(8) Continue to be eligible following a change in ownership that results in a change in control according to the provisions of § 668.12(f).

\* \* \* \* \*

9. In § 600.31, paragraph (a)(1) is revised to read as follows:

§ 600.31 Change of ownership resulting in a change in control.

(a)(1) Except as provided in § 668.12(f), an institution that undergoes a change in ownership that results in a change of control ceases to qualify as an eligible institution upon the change in ownership and control. A change in ownership that results in a change in control includes any change by which a person who has or thereby acquires an ownership interest in the entity that owns this institution or the parent corporation of that entity, acquires or loses the ability to control the institution.

\* \* \* \* \*

§ 600.31 [Amended]

10. In § 600.31, paragraph (f) is removed.

11. In § 600.55, paragraph (a)(5)(i)(A) is revised to read as follows:

§ 600.55 Additional criteria for determining whether a foreign graduate medical school is eligible to apply to participate in the FFEL programs.

(a) \* \* \*

(5) \* \* \*

(i) \* \* \*

(A) During the academic year preceding the year for which any of the school's students seeks an FFEL program loan, at least 60 percent of those enrolled as full-time regular students in the school and at least 60 percent of the school's most recent graduating class were persons who did not meet the citizenship and residency criteria contained in section 484(a)(5) of the HEA, 20 U.S.C. 1091(a)(5); and

\* \* \* \* \*

§ 600.56 [Redesignated as § 600.57]

12. Section 600.56 is redesignated as § 600.57.

13. A new § 600.56 is added to read as follows—

§ 600.56 Additional criteria for determining whether a foreign veterinary school is eligible to apply to participate in the FFEL programs.

(a) The Secretary considers a foreign veterinary school to be eligible to apply to participate in the FFEL programs if, in addition to satisfying the criteria in § 600.54 (except the criterion that the institution be public or private nonprofit), the school satisfies all of the following criteria:

(1) The school provides, and in the normal course requires its students to complete, a program of clinical and classroom veterinary instruction that is supervised closely by members of the school's faculty, and that is provided either—

(i) Outside the United States, in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom veterinary instruction; or

(ii) In the United States, through a training program for foreign veterinary students that has been approved by all veterinary licensing boards and evaluating bodies whose views are considered relevant by the Secretary.

(2) The school has graduated classes during each of the two twelve-month periods immediately preceding the date the Secretary receives the school's request for an eligibility determination.

(3) The school employs for the program described in paragraph (a)(1) of this section only those faculty members whose academic credentials are the equivalent of credentials required of faculty members teaching the same or similar courses at veterinary schools in the United States.

(4) Either—

(i) The veterinary school's clinical training program was approved by a State as of January 1, 1992, and is currently approved by that State; or

(ii) The veterinary school's students complete their clinical training at an approved veterinary school located in the United States.

(b) [Reserved]

(Authority: 20 U.S.C. 1082 and 1088)

## PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

14. The authority citation for part 668 is revised to read as follows:

**Authority:** 20 U.S.C. 1001, 1002, 1003, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c-1, unless otherwise noted.

15. In § 668.12, paragraphs (f) and (g) are added and the authority citation is revised to read as follows:

### § 668.12 Application procedures.

\* \* \* \* \*

(f)(1) *Application for provisional extension of certification.* If an institution participating in the title IV, HEA programs undergoes a change in ownership that results in a change of control as described in § 600.31, the Secretary may continue the institution's participation in those programs on a provisional basis, if the institution under the new ownership submits a "materially complete application" that is received by the Secretary no later

than 10 business days after the day the change occurs.

(2) For purposes of this section, an institution submits a materially complete application if it submits a fully completed application form designated by the Secretary supported by—

(i) A copy of the institution's State license or equivalent document that—as of the day before the change in ownership—authorized or will authorize the institution to provide a program of postsecondary education in the State in which it is physically located;

(ii) A copy of the document from the institution's accrediting association that—as of the day before the change in ownership—granted or will grant the institution accreditation status, including approval of the non-degree programs it offers;

(iii) Audited financial statements of the institution's two most recently completed fiscal years that are prepared and audited in accordance with the requirements of § 668.23; and

(iv) Audited financial statements of the institution's new owner's two most recently completed fiscal years that are prepared and audited in accordance with the requirements of § 668.23, or equivalent information for that owner that is acceptable to the Secretary.

(g) *Terms of the extension.* (1) If the Secretary approves the institution's materially complete application, the Secretary provides the institution with a provisional Program Participation Agreement (PPA). The provisional PPA extends the terms and conditions of the program participation agreement that were in effect for the institution before its change of ownership.

(2) The provisional PPA expires on the earlier of—

(i) The date on which the Secretary signs a new program participation agreement;

(ii) The date on which the Secretary notifies the institution that its application is denied; or

(iii) The last day of the month following the month in which the change of ownership occurred, unless the provisions of paragraph (f)(3) of this section apply.

(3) If the provisional PPA will expire under the provisions of paragraph (f)(2)(iii) of this section, the Secretary extends the provisional PPA on a month-to-month basis after the expiration date described in paragraph (f)(2)(iii) of this section if, prior to that expiration date, the institution provides the Secretary with—

(i) A "same day" balance sheet showing the financial position of the

institution, as of the date of the ownership change, that is prepared in accordance with "GAAP" (Generally Accepted Accounting Principles published by the Financial Accounting Standards Board) and audited in accordance with "GAGAS" (Generally Accepted Government Auditing Standards published by the U.S. General Accounting Office);

(ii) If not already provided, approval of the change of ownership from the State in which the institution is located by the agency that authorizes the institution to legally provide postsecondary education in that State;

(iii) If not already provided, approval of the change of ownership from the institution's accrediting agency; and

(iv) A default management plan unless the institution is exempt from providing that plan under 34 CFR 668.14(b)(15).

\* \* \* \* \*

(Authority: 20 U.S.C. 1001, 1002, 1088, and 1099c)

### § 668.13 [Amended]

16. In § 668.13, paragraph (b)(1) is amended by removing "four years" in the second sentence, and adding, in its place, "six years".

17. Section 668.14 is amended by removing paragraphs (d) and (e); by redesignating paragraphs (f), (g), (h), and (i) as paragraphs (e), (f), (g), and (h), respectively; by removing and reserving paragraph (b)(16); by revising paragraphs (b)(15), (b)(20), and (b)(24); and by adding a new paragraph (d), to read as follows:

### § 668.14 Program participation agreement.

\* \* \* \* \*

(b) \* \* \*

(15)(i) Except as provided under paragraph (b)(15)(ii) of this section, the institution will use a default management plan approved by the Secretary with regard to its administration of the FFEL or Direct Loan programs, or both for at least the first two years of its participation in those programs, if the institution—

(A) Is participating in the FFEL or Direct Loan programs for the first time; or

(B) Is an institution that has undergone a change of ownership that results in a change in control and is participating in the FFEL or Direct Loan programs.

(ii) The institution does not have to use an approved default management plan if—

(A) The institution, including its main campus and any branch campus, does not have a cohort default rate in excess of 10 percent; and

(B) The owner of the institution does not own and has not owned any other institution that had a cohort default rate in excess of 10 percent while that owner owned the institution.

(iii) The Secretary approves any default management plan that incorporates the default reduction measures described in appendix D to this part

\* \* \* \* \*

(20) In the case of an institution that is co-educational and has an intercollegiate athletic program, it will comply with the provisions of § 668.48;

\* \* \* \* \*

(24) It will comply with the requirements of § 668.22;

\* \* \* \* \*

(d)(1) The institution, if located in a State to which section 4(b) of the National Voter Registration Act (42 U.S.C. 1973gg-2(b)) does not apply, will make a good faith effort to distribute a mail voter registration form, requested and received from the State, to each student enrolled in a degree or certificate program and physically in attendance at the institution, and to make those forms widely available to students at the institution.

(2) The institution must request the forms from the State 120 days prior to the deadline for registering to vote within the State. If an institution has not received a sufficient quantity of forms to fulfill this section from the State within 60 days prior to the deadline for registering to vote in the State, the institution is not liable for not meeting the requirements of this section during that election year.

(3) This paragraph applies to elections as defined in section 301(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(1)), and includes the election for Governor or other chief executive within such State.

\* \* \* \* \*

18. A new § 668.27 is added to subpart B to read as follows:

**§ 668.27 Waiver of annual audit submission requirement.**

(a) *General.* (1) At the request of an institution, the Secretary may waive the annual audit submission requirement for the period of time contained in paragraph (b) of this section if the institution satisfies the requirements contained in paragraph (c) of this section and posts a letter of credit in the amount determined in paragraph (d) of this section.

(2) An institution requesting a waiver must submit an application to the Secretary at such time and in such manner as the Secretary prescribes.

(3) The first fiscal year for which an institution may request a waiver is the fiscal year in which it submits its waiver request to the Secretary.

(b) *Waiver period.* (1) If the Secretary grants the waiver, the institution need not submit its compliance or audited financial statement until six months after—

(i) The end of the third fiscal year following the fiscal year for which the institution last submitted a compliance audit and audited financial statement; or

(ii) The end of the second fiscal year following the fiscal year for which the institution last submitted compliance and financial statement audits if the award year in which the institution will apply for recertification is part of the third fiscal year.

(2) The Secretary does not grant a waiver if the award year in which the institution will apply for recertification is part of the second fiscal year following the fiscal year for which the institution last submitted compliance and financial statement audits.

(3) When an institution must submit its next compliance and financial statement audits under paragraph (b)(1) of this section—

(i) The institution must submit a compliance audit that covers the institution's administration of the title IV, HEA programs for the period for each fiscal year for which an audit did not have to be submitted as a result of the waiver, and an audited financial statement for its last fiscal year; and

(ii) The auditor who conducts the audit must audit the institution's annual determinations for the period subject to the waiver that it satisfied the 90/10 rule in § 600.5 and the other conditions of institutional eligibility in § 600.7 and § 668.8(e)(2), and disclose the results of the audit of the 90/10 rule for each year in accordance with § 668.23(d)(4).

(c) *Criteria for granting the waiver.* The Secretary grants a waiver to an institution if the institution—

(1) Is not a foreign institution;

(2) Did not disburse \$200,000 or more of title IV, HEA program funds during each of the two completed award years preceding the institution's waiver request;

(3) Agrees to keep records relating to each award year in the unaudited period for two years after the end of the record retention period in § 668.24(e) for that award year;

(4) Has participated in the title IV, HEA programs under the same ownership for at least three award years preceding the institution's waiver request;

(5) Is financially responsible under § 668.171, and does not rely on the alternative standards of § 668.175 to participate in the title IV, HEA programs;

(6) Is not on the reimbursement or cash monitoring system of payment;

(7) Has not been the subject of a limitation, suspension, fine, or termination proceeding, or emergency action initiated by the Department or a guarantee agency in the three years preceding the institution's waiver request;

(8) Has submitted its compliance audits and audited financial statements for the previous two fiscal years in accordance with and subject to § 668.23, and no individual audit disclosed liabilities in excess of \$10,000; and

(9) Submits a letter of credit in the amount determined in paragraph (d) of this section, which must remain in effect until the Secretary has resolved the audit covering the award years subject to the waiver.

(d) *Letter of credit amount.* For purposes of this section, the letter of credit amount equals 10 percent of the amount of title IV, HEA program funds the institution disbursed to or on behalf of its students during the award year preceding the institution's waiver request.

(e) *Rescission of the waiver.* (1) The Secretary rescinds the waiver if the institution—

(i) Disburses \$200,000 or more of title IV, HEA program funds for an award year;

(ii) Undergoes a change in ownership that results in a change of control; or

(iii) Becomes the subject of an emergency action or a limitation, suspension, fine, or termination action initiated by the Department or a guarantee agency.

(2) If the Secretary rescinds a waiver, the rescission is effective on the last day of the fiscal year in which the rescission takes place.

(f) *Renewal.* An institution may request a renewal of its waiver when it submits its audits under paragraph (b) of this section. The Secretary grants the waiver if the audits and other information available to the Secretary show that the institution continues to satisfy the criteria for receiving that waiver.

(Authority: 20 U.S.C. 1094)

19. In § 668.92, a new paragraph (d) is added and the authority citation is revised to read as follows:

**§ 668.92 Fines.**

\* \* \* \* \*

(d)(1) Notwithstanding any other provision of statute or regulation, any

individual described in paragraph (d)(2) of this section, in addition to other penalties provided by law, is liable to the Secretary for amounts that should have been refunded or returned under § 668.22 of the title IV program funds not returned, to the same extent with respect to those funds that such an individual would be liable as a responsible person for a penalty under section 6672(a) of Internal Revenue Code of 1986 with respect to the nonpayment of taxes.

(2) The individual subject to the penalty described in paragraph (d)(1) is any individual who—

(i) The Secretary determines, in accordance with § 668.174(c), exercises substantial control over an institution participating in, or seeking to participate in, a program under this title;

(ii) Is required under § 668.22 to return title IV program funds to a lender or to the Secretary on behalf of a student or borrower, or was required under § 668.22 in effect on June 30, 2000 to return title IV program funds to a lender

or to the Secretary on behalf of a student or borrower; and

(iii) Willfully fails to return those funds or willfully attempts in any manner to evade that payment.

(Authority: 20 U.S.C. 1094 and 1099c)

20. In § 668.95, a new paragraph (d) is added and the authority citation is revised to read as follows:

**§ 668.95 Reimbursements, refunds and offsets.**

\* \* \* \* \*

(d) If an institution's violation in paragraph (a) of this section results from an administrative, accounting, or recordkeeping error, and that error was not part of a pattern of error, and there is no evidence of fraud or misconduct related to the error, the Secretary permits the institution to correct or cure the error. If the institution corrects or cures the error, the Secretary does not limit, suspend, terminate, or fine the institution for that error.

(Authority: 20 U.S.C. 1094 and 1099c-1)

21. In § 668.113, a new paragraph (d) is added and the authority citation is revised to read as follows:

**§ 668.113 Request for review.**

\* \* \* \* \*

(d)(1) If an institution's violation that resulted in the final audit determination or final program review determination in paragraph (a) of this section results from an administrative, accounting, or recordkeeping error, and that error was not part of a pattern of error, and there is no evidence of fraud or misconduct related to the error, the Secretary permits the institution to correct or cure the error.

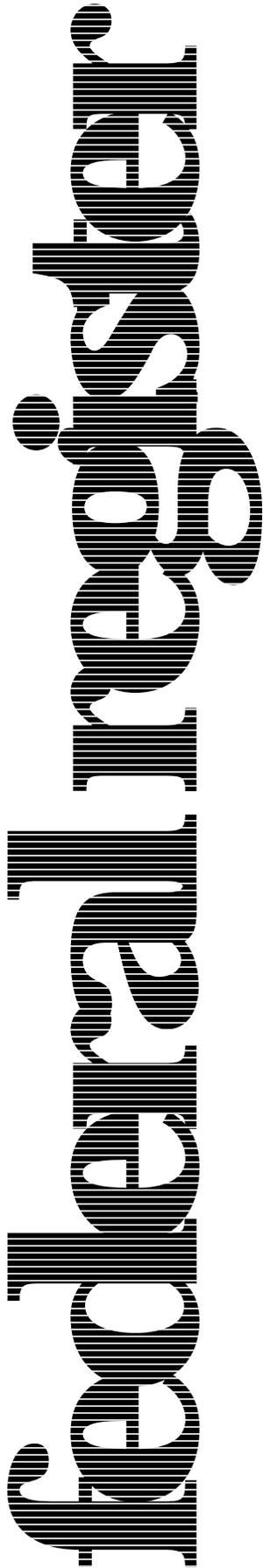
(2) If the institution is charged with a liability as a result of an error described in paragraph (d)(1) of this section, the institution cures or corrects that error with regard to that liability if the cure or correction eliminates the basis for the liability.

\* \* \* \* \*

(Authority: 20 U.S.C. 1094 and 1099c-1)

[FR Doc. 99-28171 Filed 10-28-99; 8:45 am]

BILLING CODE 4000-01-P



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Friday  
October 29, 1999

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**Part V**

**Department of  
Education**

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**34 CFR Part 682  
Federal Family Education Loan (FFEL)  
Program; Final Rules**

## DEPARTMENT OF EDUCATION

## 34 CFR Part 682

RIN 1845-AA06

## Federal Family Education Loan (FFEL) Program

AGENCY: Department of Education.

ACTION: Final regulations.

**SUMMARY:** The Secretary amends the Federal Family Education Loan (FFEL) Program regulations. These final regulations implement changes made to the Higher Education Act of 1965 by the Higher Education Amendments of 1998 (the 1998 Amendments). The regulations cover many areas of the FFEL Program, including changes to the financial structure of guaranty agencies. **DATES:** These regulations are effective July 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. George Harris, U.S. Department of Education, 400 Maryland Avenue, SW., room 3045, ROB-3, Washington, DC 20202-5449. Telephone: (202) 708-8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotope, or computer diskette) on request to the contact person listed in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:** These regulations implement changes to the Higher Education Act of 1965 (the HEA) made by the 1998 Amendments, Public Law 105-244, enacted October 7, 1998.

On August 3, 1999 the Secretary published a notice of proposed rulemaking (NPRM) for this part in the **Federal Register** (64 FR 42176). In the preamble to the NPRM, the Secretary discussed on pages 42177-42185 the major changes to the regulations resulting from the 1998 Amendments.

In addition to minor technical revisions, these regulations contain a few significant changes from the NPRM that we fully explain in the Analysis of Comments and Changes that follows.

**Analysis of Comments and Changes**

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the Higher Education Act requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking

process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on August 3, 1999 in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. The Secretary invited comments on the proposed regulations by September 15, 1999, and 26 parties submitted comments. An analysis of the comments and of the changes in the proposed regulations follows. We did not receive any substantive comments on the following sections: §§ 682.208, 682.215, 682.302, 682.400, 682.409, 682.410, 682.412, 682.413, 682.414, 682.417, 682.418, 682.420, 682.421, 682.422, 682.423, 682.800, and Appendix D.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make.

**Section 682.205 Disclosure Requirements for Lenders**

**Comments:** One commenter believed that lenders should not be required to provide a toll-free telephone number accessible within the United States for borrowers to use to obtain additional loan information. The commenter stated that a requirement to have a toll-free telephone number would impose significant burdens and costs on small lenders who do not have a toll-free telephone number. The commenter asked if, instead of having a toll-free telephone number, it would be permissible for the lender to allow borrowers to make collect calls to the lender.

**Discussion:** We agree with the commenter, but no changes to the regulation are necessary. For the purpose of meeting this requirement, a lender that discloses to borrowers the phone number at which it will accept collect calls will be considered to have complied with the regulatory requirement for a toll-free telephone number.

**Changes:** None.

**Comments:** Several commenters recommended that lenders be permitted to meet their disclosure requirements and obligations to notify borrowers of their rights and responsibilities by using

the plain language disclosure in § 682.205(g).

**Discussion:** We agree that the disclosure referred to in § 682.205(g) will satisfy the lender's disclosure requirements for subsequent loans made under a Master Promissory Note.

**Changes:** For subsequent loans made under a Master Promissory Note, § 682.205(a)(3) has been revised to permit a lender to use either the Borrower's Rights and Responsibilities statement approved by the Secretary or the plain language disclosure referred to in § 682.205(g).

**Section 682.207 Due Diligence in Disbursing a Loan**

**Comments:** Several commenters representing lenders recommended that schools not be required to request the second or subsequent disbursement of a loan when they return a borrower's unneeded first disbursement to a lender and the school knows that the borrower will need the subsequent loan disbursements. The commenters believed it is logical to assume that the school wanted the subsequent disbursements to be made unless it notifies the lender to the contrary. The commenters believed that if schools had to specifically request subsequent disbursements, that requirement would impose unnecessary and significant burdens and costs on schools and lenders. In addition, the commenters believed the authorization to disburse subsequent loan funds in these situations should not be limited to the Federal Stafford Loan Program, but should be expanded to include the Federal PLUS Loan Program. The commenters noted that PLUS disbursements are sent to schools, and like Stafford Loan borrowers, some PLUS borrowers also may not need the first disbursement, but may need the loan funds later in the school year. One commenter recommended that this provision of the regulations should not be limited to the first disbursement, but should apply to any disbursement returned to a lender by a school if there were future disbursements scheduled to be made.

**Discussion:** We agree with the commenters who recommended an expansion of this authority to include any disbursement of a Federal Stafford or Federal PLUS loan. We also agree that this provision should apply to any future disbursement following the return of a disbursement. We do not agree, however, to authorize lenders to make subsequent disbursements following the return of a previous disbursement without first receiving a

request from the school for the subsequent disbursement. We believe it is logical to assume that the school does not want the subsequent disbursements to be made unless it notifies the lender to the contrary.

*Changes:* We have revised § 682.207(b)(1)(vii) so that it includes any future disbursement of a Federal Stafford or Federal PLUS loan following the return of a disbursement.

#### *Section 682.210 Deferment*

*Comments:* One commenter who agreed with the removal of the 6-month limit for making in-school (student) deferments effective retroactively advocated a similar removal of the 6-month limit for other types of deferments.

*Discussion:* Removing the 6-month retroactive effective date limit for a student deferment was extensively discussed during the negotiated rulemaking sessions. During those discussions, it was generally agreed that the 6-month limit on establishing retroactive effective dates for deferments did not present a serious problem for other deferments. Aside from the student deferment, the two most common types of deferments are economic hardship and unemployment, both of which rely upon documentation that the borrower already has or can readily obtain. In those cases, the borrower has the ability to ensure the submission of the deferment application on a timely basis. In contrast, the documentation needed to support a student deferment requires another party (the school) to certify the borrower's in-school status. Many borrowers in school erroneously assume that they do not need to notify their lenders that they are in school, believing that their enrollment status automatically has been transmitted to the lender or loan servicer by some other party. By the time the borrower discovers that the lender is unaware that the borrower is in school, the loan may already be seriously delinquent, and a delay of just another month or two in obtaining and providing in-school documentation at that late point could result in a default claim being filed by the lender. To address this problem, we believe that the 6-month limit on the period of time by which a student deferment may be applied retroactively should be removed. Unlike many other deferments, the borrower's enrollment status and effective dates for a student deferment are readily determinable retroactively.

*Changes:* None.

#### *Section 682.211 Forbearance*

*Comments:* Several commenters recommended that lenders be allowed to grant administrative forbearances to eliminate borrower delinquencies that existed at the time the lender granted an optional natural disaster administrative forbearance under § 682.211(f)(10). The commenters noted that the NPRM proposed to allow this option only if the borrower received a mandatory administrative forbearance under § 682.211(i)(2). The commenters believed that lenders should be permitted to assist all borrowers who had pre-existing delinquencies when the natural disaster occurred, regardless of whether the disaster forbearance is mandatory or optional.

*Discussion:* We agree with the commenters.

*Changes:* We have revised § 682.211(f)(2) to include the administrative forbearances that lenders are authorized to grant under § 682.211(f)(10) to assist borrowers who have been harmed by natural disasters.

#### *Section 682.305 Procedures for Payment of Interest Benefits and Special Allowance and Collection of Origination and Loan Fees*

*Comments:* Some commenters believed that the restrictions in § 682.305(a)(4) have been rendered obsolete due to the changes made to § 682.305(a)(3). The commenters believed that the 1998 Amendments, and the changes made to § 682.305(a)(3), make it clear that the new holder of a loan will be responsible if the origination fees were not paid by the previous holder or holders.

*Discussion:* The commenters appear to have misunderstood the purpose of these changes. The changes to § 682.305(a)(3) do not eliminate the originating lender's liability to pay the fees owed on the loans. That liability still exists. The changes simply add another party who is liable for paying the fees and who may be required to pay them if the originating lender does not pay them on a timely basis.

*Changes:* None.

#### *Section 682.401 Basic Program Agreement*

*Comments:* One commenter recommended that a guaranty agency be permitted to receive Federal funds to operate as a lender-of-last-resort in another guaranty agency's designated area of service only if the designated guaranty agency has waived its right to provide lender-of-last-resort loans in its designated area, or was unable to provide those loans.

*Discussion:* The commenter's recommendation suggests a misunderstanding of a guaranty agency's statutory obligation. A guaranty agency has a statutory obligation to provide for lender-of-last-resort loans. This obligation is not a "right" that the guaranty agency can waive. If it is able to provide for lender-of-last-resort loans in its designated State, it must do so. If necessary, the Secretary may provide Federal funds in accordance with § 682.401(c)(5)(i) to assist the agency in providing those loans. The Secretary may provide Federal funds to another guaranty agency, to make lender-of-last-resort loans in the State, if the Secretary determines that the designated guaranty agency does not have the capacity to do so or the Secretary determines that providing the designated guaranty agency with Federal funds would not be cost effective.

*Changes:* None.

#### *Section 682.402 Death, Disability, Closed School, False Certification, and Bankruptcy Payments*

*Comments:* Some commenters stated their belief that the provisions of bankruptcy law require the immediate suspension of collection activities against all parties to a loan (borrower, co-maker, endorser) whenever any one of those parties files for a Chapter 12 or Chapter 13 bankruptcy. The commenters recommended that the regulations be revised accordingly.

*Discussion:* We agree with the commenters' interpretation of 11 U.S.C. 1201(a) and 1301(a).

*Changes:* The regulations have been revised to require the immediate suspension of collection activities against all parties to a loan (maker, co-maker, endorser) if the lender is informed that any of those individuals has filed for Chapter 12 or Chapter 13 bankruptcy. For a bankruptcy petition filed by a borrower, co-maker, or endorser on a loan under Chapters 7 or 11, lenders may suspend collection activities against all parties to the loan.

#### *Section 682.404 Federal Reinsurance Agreement*

*Comments:* Several commenters recommended that guaranty agencies be permitted to establish specific deadlines within the 60th to 120th day of delinquency during which lenders must submit requests for default aversion assistance. The commenters stated that many guaranty agencies have successful default prevention systems designed to initiate default prevention activities at a specific point in delinquency, e.g., on the 75th day. The commenters believed

that allowing lenders to submit default aversion assistance requests at any time from the 60th day through the 120th day of the borrower's delinquency would complicate the effective default prevention systems that guaranty agencies currently have in place.

*Discussion:* The lender has primary responsibility for curing delinquencies by borrowers. We believe lenders should have flexibility within the 60th–120th day of delinquency to determine when to seek assistance from the guaranty agency. Many guaranty agencies have informed us that having more than one party contacting a delinquent borrower may confuse the borrower and contribute to default. We have also been told that many delinquencies cure themselves during the early stages of delinquency. We believe a lender should be given the discretion to request assistance from a guaranty agency within the 60th–120th day of delinquency at the point that the lender believes the assistance will be most effective in complimenting the default aversion activities being pursued by the lender. If a lender believes that the guaranty agency can add value to its efforts early in the delinquency, it may request assistance as early as the 60th day of delinquency.

*Changes:* Section 682.404(k)(1) has been revised to clarify that guaranty agencies are prohibited from establishing specific deadlines within the 60th–120th day of delinquency by which lenders must request default aversion assistance.

#### *Section 682.406 Conditions For Claim Payments From the Federal Fund and for Reinsurance Coverage*

*Comments:* One commenter noted an inconsistency between the skip-tracing requirements in this section and in § 682.411(h)(1) with respect to contacting the schools the student attended.

*Discussion:* We agree with the commenter that the requirement to contact the schools the student attended should be the same in § 682.406(a)(14) and § 682.411(h)(1).

*Changes:* We have revised § 682.411(h)(1) to make it consistent with the guaranty agency's certification in § 682.406(a)(14) that diligent attempts were made to locate the borrower, including attempts to contact the schools the student attended.

#### *Section 682.411 Lender Due Diligence in Collecting Guaranty Agency Loans*

*Comments:* Some commenters noted an error in § 682.411(a) that had the effect of excluding the first 15 days of

delinquency from the 270-day period of required lender collection activities.

*Discussion:* The commenters are correct. The intention of the negotiators during the development of the NPRM was to apply the existing 45-day gap rule to the new 270-day delinquency period by simply extending the period covered by the rule to 270 days of delinquency.

*Changes:* We have revised § 682.411(a) so that the initial delinquency period (days 1–15) is included in the overall 270-day period of required lender collection activities. We have also made a conforming change in § 682.411(b)(2) so that the initial delinquency period is included in the determination of whether a gap of more than 45 days (or more than 60 days in the case of a transfer) in collection activity had occurred. The definition of "gap in collection activity" found in § 682.411(j) remains accurate and needs no modification.

#### *Section 682.419 Guaranty Agency Federal Fund*

*Comments:* A few commenters stated that they believe that a guaranty agency should be permitted to deposit default collections into the agency's Operating Fund for a reasonable period before transferring the Federal share of those collections to the Federal Fund. The commenters believed this would give the agency time to ensure that the borrower's payment does not need to be reversed because of insufficient funds or a stop payment order and that the collected funds are correctly posted to the borrower's account. One commenter stated that a reasonable delay in transferring funds to the Federal Fund would conform to sound accounting practices that recommend a clean cutoff period for reconciliation purposes.

*Discussion:* The Federal Government has a beneficial interest in loans that are held by guaranty agencies and on which claims have been paid using Federal funds. The guaranty agency's role in regard to these loans is that of a trustee. Accordingly, a guaranty agency that receives collections on those loans has a fiduciary obligation to the Secretary with respect to the Secretary's share of those collections. As a fiduciary, a guaranty agency may not use Federal funds or assets for any purpose not authorized by the HEA or the Secretary. To ensure that the Secretary's interest in those loans is protected, we have revised the regulations to require guaranty agencies to deposit the Federal share of collections into the Federal Fund within 48 hours of receipt of those funds. A guaranty agency may elect to comply with this requirement by

initially depositing all collections into the Federal Fund. If this option is selected by the guaranty agency, we will provide the guaranty agency with authorization to promptly withdraw its portion from the Federal Fund for deposit into its Operating Fund.

We believe that the requirements in these regulations are consistent with sound accounting practices as well as the guaranty agency's obligation to act as a fiduciary. We understand that the common business practices among lenders and servicers who collect on loans is to credit the amount of collections received to the appropriate accounts within 24 hours. In fact, the Department's own collection contractors for student loans are not permitted to hold funds for any period before depositing them directly to the appropriate Department account. We have been assured by some guaranty agencies, that they already meet the 24-hour standard. In light of these practices and standards, we believe the 48-hour period provided in these regulations will provide guaranty agencies with more than enough time to insure that the proper amount is deposited to the Federal Fund.

A guaranty agency can, if necessary, reverse a credit applied to the Federal Fund if a borrower's payment is rejected because of insufficient funds or a stop payment order. We do not believe that it will be any more difficult for a guaranty agency to make the needed changes to the Federal Fund than it would have been to the Operating Fund and, in the meantime, the Federal Government's interest in the funds is protected.

*Changes:* We have revised § 682.419(b)(6) of the regulations to require a guaranty agency to deposit the Federal share of all funds received on loans on which a claim has been paid, including default collections, into its Federal Fund within 48 hours of receipt of those funds.

#### *Section 682.420 Federal Nonliquid Assets*

*Comments:* Some commenters asked for clarification of the treatment of revenue derived from a Federal nonliquid asset.

*Discussion:* In reviewing the language referenced by the commenters, we determined that the proposed regulations did not fully reflect the details discussed in the preamble to the NPRM. This inconsistency may have contributed to the commenters' request for clarification.

*Changes:* We have revised the regulations to specify the requirements

that apply when a guaranty agency uses the Federal portion of a nonliquid asset.

#### Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

#### Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

#### Summary of Potential Costs and Benefits

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM under the following headings: Payment of Special Allowance on FFEL Loans (page 42185) and Federal Reinsurance Agreement (page 42186).

#### Assessment of Educational Impact

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and our own review, we have determined that these final regulations do not require transmission of information any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number 84.032 Federal Family Education Loan Program)

#### List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: October 22, 1999.

**Richard W. Riley,**  
*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary amends Part 682 of Title 34 of the Code of Federal Regulations as follows:

#### PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for part 682 continues to read as follows:

**Authority:** 20 U.S.C. 1071 to 1087-2, unless otherwise noted.

2. Section 682.205 is amended by:
- A. Revising paragraphs (a)(1) and (a)(2)(i).
  - B. Redesignating paragraphs (a)(2)(ii) through (a)(2)(xvii) as paragraphs (a)(2)(v) through (a)(2)(xx), respectively.
  - C. Adding new paragraphs (a)(2)(ii) through (a)(2)(iv).
  - D. Adding a new paragraph (a)(3).
  - E. Revising paragraphs (b), (c)(1), (c)(2)(i), (d), and (e).
  - F. Adding new paragraphs (f), (g), and (h).

#### § 682.205 Disclosure requirements for lenders.

- (a) \* \* \*
- (1) A lender must disclose the information described in paragraph (a)(2) of this section to a borrower, in simple and understandable terms,

before or at the time of the first disbursement on a Federal Stafford or Federal PLUS loan. The information given to the borrower must prominently and clearly display, in bold type, a clear and concise statement that the borrower is receiving a loan that must be repaid.

(2) \* \* \*

(i) The lender's name;

(ii) A toll-free telephone number accessible from within the United States that the borrower can use to obtain additional loan information;

(iii) The address to which correspondence with the lender and payments should be sent;

(iv) Notice that the lender may sell or transfer the loan to another party and, if it does, that the address and identity of the party to which correspondence and payments should be sent may change;

\* \* \* \* \*

(3) With the exception of paragraphs (a)(2)(i) through (a)(2)(iii), (a)(2)(v) through (a)(2)(vii), and (a)(2)(xx) of this section, a lender's disclosure requirements are met if it provides the borrower with either—

(i) The borrower's rights and responsibilities statement approved by the Secretary under paragraph (b) of this section; or

(ii) The plain language disclosure approved by the Secretary under paragraph (g) of this section for subsequent loans made under a Master Promissory Note.

(b) *Separate statement of borrower rights and responsibilities.* In addition to the disclosures required by paragraph (a) of this section, the lender must provide the borrower with a separate written statement, using simple and understandable terms, at or prior to the time of the first disbursement, that summarizes the rights and responsibilities of the borrower with respect to the loan. The statement must also warn the borrower about the consequences described in paragraph (a)(2)(xvi) of this section if the borrower defaults on the loan. The Borrower's Rights and Responsibilities statement approved by the Secretary satisfies this requirement.

(c) \* \* \*

(1) The lender must disclose the information described in paragraph (c)(2) of this section, in simple and understandable terms, in a statement provided to the borrower at or prior to the beginning of the repayment period. In the case of a Federal Stafford or Federal SLS loan, the disclosures required by this paragraph must be made not less than 30 days nor more than 240 days before the first payment

on the loan is due from the borrower. If the borrower enters the repayment period without the lender's knowledge, the lender must provide the required disclosures to the borrower immediately upon discovering that the borrower has entered the repayment period.

(2) \* \* \*

(i) The lender's name, a toll-free telephone number accessible from within the United States that the borrower can use to obtain additional loan information, and the address to which correspondence with the lender and payments should be sent;

\* \* \* \* \*

(d) *Exception to disclosure requirement.* In the case of a Federal PLUS loan, the lender is not required to provide the information in paragraph (c)(2)(viii) of this section if the lender, instead of that disclosure, provides the borrower with sample projections of the monthly repayment amounts assuming different levels of borrowing and interest accruals resulting from capitalization of interest while the student is in school. Sample projections must disclose the cost to the borrower of principal and interest, interest only, and capitalized interest. The lender may rely on the PLUS promissory note and associated materials approved by the Secretary for purposes of complying with this section.

(e) *Borrower may not be charged for disclosures.* The lender must provide the information required by this section at no cost to the borrower.

(f) *Method of disclosure.* Any disclosure of information by a lender under this section may be through written or electronic means.

(g) *Plain language disclosure.* The plain language disclosure text, as approved by the Secretary, must be provided to a borrower in conjunction with subsequent loans taken under a previously signed Master Promissory Note. The requirements of paragraphs (a) and (b) of this section are satisfied for subsequent loans if the borrower is sent the plain language disclosure text and an initial disclosure containing the information required by paragraphs (a)(2)(i) through (iii), (a)(2)(v), (a)(2)(vi), (a)(2)(vii), and (a)(2)(xx) of this section.

(h) *Notice of availability of income-sensitive repayment option.*

(1) At the time of offering a borrower a loan and at the time of offering a borrower repayment options, the lender must provide the borrower with a notice that informs the borrower of the availability of income-sensitive repayment. This information may be provided in a separate notice or as part of the other disclosures required by this

section. The notice must inform the borrower—

(i) That the borrower is eligible for income-sensitive repayment, including through loan consolidation;

(ii) Of the procedures by which the borrower can elect income-sensitive repayment; and

(iii) Of where and how the borrower may obtain more information concerning income-sensitive repayment.

(2) The promissory note and associated materials approved by the Secretary satisfy the loan origination notice requirements provided for in paragraph (h)(1) of this section.

\* \* \* \* \*

3. Section 682.207 is amended by revising paragraph (b)(1)(vi) and adding a new paragraph (b)(1)(vii) to read as follows:

**§ 682.207 Due diligence in disbursing a loan.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(vi) Except as provided in paragraph (f)(1) of this section, may not disburse a second or subsequent disbursement of a Federal Stafford loan to a student who has ceased to be enrolled; and

(vii) May disburse a second or subsequent disbursement of an FFEL loan, at the request of the school, even if the borrower or the school returned the prior disbursement, unless the lender has information that the student is no longer enrolled.

\* \* \* \* \*

4. Section 682.208 is amended by adding a new paragraph (c)(3) to read as follows:

**§ 682.208 Due diligence in servicing a loan.**

\* \* \* \* \*

(c) \* \* \*

(3)(i) If the borrower disputes the terms of the loan in writing and the lender does not resolve the dispute, the lender's response must provide the borrower with an appropriate contact at the guaranty agency for the resolution of the dispute.

(ii) If the guaranty agency does not resolve the dispute, the agency's response must provide the borrower with information on the availability of the Student Loan Ombudsman's office.

\* \* \* \* \*

5. Section 682.210 is amended by revising paragraph (a)(5) to read as follows:

**§ 682.210 Deferment.**

(a) \* \* \*

(5) An authorized deferment period begins on the date the condition

entitling the borrower to the deferment first exists; however, except for the deferments described in paragraphs (b)(1)(i), (b)(4), (c), and (s)(2) of this section, a deferment cannot begin more than six months before the date the lender receives a request and documentation required for the deferment.

\* \* \* \* \*

6. Section 682.211 is amended by revising paragraph (f)(2), and adding a new paragraph (f)(10) to read as follows:

**§ 682.211 Forbearance.**

\* \* \* \* \*

(f) \* \* \*

(2) Upon the beginning of an authorized deferment period under § 682.210, or an administrative forbearance period as specified under paragraph (f)(10) or (i)(2) of this section;

\* \* \* \* \*

(10) For a period not to exceed 3 months for a borrower who is affected by a natural disaster.

\* \* \* \* \*

**§ 682.215 [Removed]**

7. Section 682.215 is removed.

8. Section 682.302 is amended by:

A. Revising paragraph (b)(1) and the introductory text of paragraph (b)(2).

B. In paragraph (b)(2)(ii), removing the word "or" that appears after the semi-colon.

C. In paragraph (b)(2)(iii), removing the period and adding, in its place, "; or".

D. Adding a new paragraph (b)(2)(iv).

E. Redesignating paragraphs (c)(1)(iii)(A) through (E) as paragraphs (c)(1)(iii)(C) through (G), respectively.

F. Revising redesignated paragraph (c)(1)(iii)(C).

G. Adding new paragraphs (c)(1)(iii)(A) and (B).

H. Revising paragraph (c)(3)(i)(A).

I. Adding a new paragraph (c)(4).

**§ 682.302 Payment of special allowance on FFEL loans.**

\* \* \* \* \*

(b) \* \* \*

(1) Except for non-subsidized Federal Stafford loans disbursed on or after October 1, 1981, for periods of enrollment beginning prior to October 1, 1992, or as provided in paragraphs (b)(2) through (b)(4), or (e) of this section, FFEL loans that otherwise meet program requirements are eligible for special allowance payments.

(2) For a loan made under the Federal SLS or Federal PLUS Program on or after July 1, 1987 and prior to July 1, 1994, and for any Federal PLUS loan made on or after July 1, 1998 or under § 682.209(e) or (f), no special allowance

is paid for any period for which the interest rate calculated prior to applying the interest rate maximum for that loan does not exceed—

\* \* \* \* \*

(iv) 9 percent in the case of a Federal PLUS loan made on or after October 1, 1998.

(c) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(A)(1) 2.8 percent to the resulting percentage for a Federal Stafford loan for which the first disbursement is made on or after July 1, 1998; or

(2) 2.2 percent to the resulting percentage for a Federal Stafford loan for which the first disbursement is made on or after July 1, 1998 during the borrower's in-school, grace, and authorized period of deferment;

(B) 2.5 percent to the resulting percentage for a Federal Stafford loan for which the first disbursement is made on or after July 1, 1995 for interest that accrues during the borrower's in-school, grace, and authorized period of deferment;

(C) Except as provided in paragraph (c)(1)(iii)(B) of this section, 3.1 percent to the resulting percentage for a Federal Stafford Loan made on or after October 1, 1992 and prior to July 1, 1998, and for any Federal SLS, Federal PLUS, or Federal Consolidation Loan made on or after October 1, 1992;

\* \* \* \* \*

(3)(i) \* \* \*

(A) The proceeds of tax-exempt obligations originally issued prior to October 1, 1993, the income from which is exempt from taxation under the Internal Revenue Code of 1986 (26 U.S.C.);

\* \* \* \* \*

(4) Loans made or purchased with funds obtained by the holder from the issuance of obligations originally issued on or after October 1, 1993, and loans made with funds derived from default reimbursement collections, interest, or other income related to eligible loans made or purchased with those tax-exempt funds, do not qualify for the minimum special allowance rate specified in paragraph (c)(3)(iii) of this section, and are not subject to the 50 percent limitation on the maximum rate otherwise applicable to loans made with tax-exempt funds.

\* \* \* \* \*

9. Section 682.305 is amended to read as follows by:

A. Revising the heading and paragraph (a)(1).

B. Adding new paragraphs (a)(3)(iii) through (v).

C. Revising paragraph (c)(1).

D. Revising the Office of Management and Budget control number.

**§ 682.305 Procedures for payment of interest benefits and special allowance and collection of origination and loan fees.**

(a) \* \* \*

(1) If a lender owes origination fees or loan fees under paragraph (a) of this section, it must submit quarterly reports to the Secretary on a form provided or prescribed by the Secretary, even if the lender is not owed, or does not wish to receive, interest benefits or special allowance from the Secretary.

\* \* \* \* \*

(3) \* \* \*

(iii) The Secretary collects from an originating lender the amount of origination fees the originating lender was authorized to collect from borrowers during the quarter whether or not the originating lender actually collected those fees. The Secretary also collects the fees the originating lender is required to pay under paragraph (a)(3)(ii) of this section. Generally, the Secretary collects the fees from the originating lender by offsetting the amount of interest benefits and special allowance payable to the originating lender in a quarter, and, if necessary, the amount of interest benefits and special allowance payable in subsequent quarters may be offset until the total amount of fees has been recovered.

(iv) If the full amount of the fees cannot be collected within two quarters by reducing interest and special allowance payable to the originating lender, the Secretary may collect the unpaid amount directly from the originating lender.

(v) If the full amount of the fees cannot be collected within two quarters from the originating lender in accordance with paragraphs (a)(3)(iii) and (iv) of this section and if the originating lender has transferred the loan to a subsequent holder, the Secretary may, following written notice, collect the unpaid amount from the holder by using the same steps described in paragraphs (a)(3)(iii) and (iv) of this section, with the term "holder" substituting for the term "originating lender".

\* \* \* \* \*

(c) \* \* \*

(1) If a lender originates or holds more than \$5 million in FFEL loans during its fiscal year, it must submit an independent annual compliance audit for that year, conducted by a qualified independent organization or person. The Secretary may, following written notice, suspend the payment of interest benefits and special allowance to a lender that does not submit its audit

within the time period prescribed in paragraph (c)(2) of this section.

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 1845-0020)

\* \* \* \* \*

**§ 682.400 [Amended]**

10. Section 682.400 is amended by:

A. In paragraph (b)(1)(i), adding the word "and" after the semi-colon.

B. In paragraph (b)(1)(ii), removing ";" and adding, in its place, a period.

C. Removing paragraph (b)(1)(iii).

11. Section 682.401 is amended by:

A. Revising paragraph (b)(11).

B. In the introductory text of paragraph (b)(23)(i), removing the words "as defined in § 682.800(d)".

C. Adding a heading to paragraph (c).

D. Revising paragraphs (c)(1), (c)(2), and (c)(3).

E. Adding a new paragraph (c)(5).

F. Revising paragraphs (e)(1) and (e)(3).

**§ 682.401 Basic program agreement.**

\* \* \* \* \*

(b) \* \* \*

(11) *Inquiries.* The agency must be able to receive and respond to written, electronic, and telephone inquiries.

\* \* \* \* \*

(c) *Lender-of-last-resort.* (1) The guaranty agency must ensure that it, or an eligible lender described in section 435(d)(1)(D) of the Act, serves as a lender-of-last-resort in the State in which the guaranty agency is the designated guaranty agency. The guaranty agency or an eligible lender described in section 435(d)(1)(D) of the Act may arrange for a loan required to be made under paragraph (c)(2) of this section to be made by another eligible lender. As used in this paragraph, the term "designated guaranty agency" means the guaranty agency in the State for which the Secretary has signed a Basic Program Agreement under this section.

(2) The lender-of-last-resort must make subsidized Federal Stafford loans and unsubsidized Federal Stafford loans to any eligible student who—

(i) Qualifies for interest benefits pursuant to § 682.301;

(ii) Qualifies for a combined loan amount of at least \$200; and

(iii) Has been otherwise unable to obtain loans from another eligible lender for the same period of enrollment.

(3) The lender-of-last resort may make unsubsidized Federal Stafford and Federal PLUS loans to borrowers who have been otherwise unable to obtain those loans from another eligible lender.

\* \* \* \* \*

(5)(i) Upon request of the guaranty agency, the Secretary may advance Federal funds to the agency, on terms and conditions agreed to by the Secretary and the agency, to ensure the availability of loan capital for subsidized and unsubsidized Federal Stafford and Federal PLUS loans to borrowers who are otherwise unable to obtain those loans if the Secretary determines that—

(A) Eligible borrowers in a State who qualify for subsidized Federal Stafford loans are seeking and are unable to obtain subsidized Federal Stafford loans;

(B) The guaranty agency designated for that State has the capability for providing lender-of-last-resort loans in a timely manner, either directly or indirectly using a third party, in accordance with the guaranty agency's obligations under the Act, but cannot do so without advances provided by the Secretary; and

(C) It would be cost-effective to advance Federal funds to the agency.

(ii) If the Secretary determines that the designated guaranty agency does not have the capability to provide lender-of-last-resort loans, in accordance with paragraph (c)(5)(i) of this section, the Secretary may provide Federal funds to another guaranty agency, under terms and conditions agreed to by the Secretary and the agency, to make lender-of-last-resort loans in that State.

\* \* \* \* \*

(e) \* \* \*

(1) Offer directly or indirectly any premium, payment, or other inducement to an employee or student of a school, or an entity or individual affiliated with a school, to secure applicants for FFEL loans, except that a guaranty agency is not prohibited from providing assistance to schools comparable to the kinds of assistance provided by the Secretary to schools under, or in furtherance of, the Federal Direct Loan Program;

\* \* \* \* \*

(3) Mail or otherwise distribute unsolicited loan applications to students enrolled in a secondary school or a postsecondary institution, or to parents of those students, unless the potential borrower has previously received loans insured by the guaranty agency;

\* \* \* \* \*

12. Section 682.402 is amended to read as follows by:

- A. Revising the heading.
- B. Revising the introductory text following the heading of paragraph (d)(3).
- C. Adding a new paragraph (d)(8).

- D. Revising paragraph (f)(2).
- E. Revising the Office of Management and Budget control number.

**§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.**

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \* Except as provided in paragraph (d)(8) of this section, in order to qualify for a discharge of a loan under paragraph (d) of this section, a borrower must submit a written request and sworn statement to the holder of the loan. The statement need not be notarized, but must be made by the borrower under the penalty of perjury, and, in the statement, the borrower must state—

\* \* \* \* \*

(8) *Discharge without an application.* A borrower's obligation to repay an FFEL Program loan may be discharged without an application from the borrower if the—

(i) Borrower received a discharge on a loan pursuant to 34 CFR 674.33(g) under the Federal Perkins Loan Program, or 34 CFR 685.213 under the William D. Ford Federal Direct Loan Program; or

(ii) The Secretary or the guaranty agency, with the Secretary's permission, determines that the borrower qualifies for a discharge based on information in the Secretary or guaranty agency's possession.

\* \* \* \* \*

(f) \* \* \*

(2) *Suspension of collection activity.* (i) If the lender is notified that a borrower has filed a petition for relief in bankruptcy, the lender must immediately suspend any collection efforts outside the bankruptcy proceeding against the borrower and—

(A) Must suspend any collection efforts against any co-maker or endorser if the borrower has filed for relief under Chapters 12 or 13 of the Bankruptcy Code; or

(B) May suspend any collection efforts against any co-maker or endorser if the borrower has filed for relief under Chapters 7 or 11 of the Bankruptcy Code.

(ii) If the lender is notified that a co-maker or endorser has filed a petition for relief in bankruptcy, the lender must immediately suspend any collection efforts outside the bankruptcy proceeding against the co-maker or endorser and—

(A) Must suspend collection efforts against the borrower and any other parties to the note if the co-maker or endorser has filed for relief under

Chapters 12 or 13 of the Bankruptcy Code; or

(B) May suspend any collection efforts against the borrower and any other parties to the note if the co-maker or endorser has filed for relief under Chapters 7 or 11 of the Bankruptcy Code.

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 1845-0020)

\* \* \* \* \*

13. Section 682.404 is amended to read as follows by:

A. Revising the introductory text of paragraph (a)(1).

B. Redesignating paragraph (a)(1)(ii) as (a)(1)(iii).

C. Revising paragraph (a)(1)(i), adding a new paragraph (a)(1)(ii), and revising redesignated paragraph (a)(1)(iii) introductory text, and paragraph (a)(1)(iii)(A).

D. Removing paragraphs (a)(2)(iii) and (a)(3), and revising paragraph (a)(2)(ii).

E. Redesignating paragraphs (a)(4) and (a)(5) as paragraphs (a)(3) and (a)(4), respectively.

F. Revising the redesignated paragraph (a)(4).

G. Revising the heading for paragraph (b), and removing the word "or" at the end of paragraph (b)(1)(i).

H. Revising paragraphs (b)(1)(i) and (b)(1)(ii).

I. Adding a new paragraph (b)(1)(iii).

J. Removing the word "or" after the semi-colon in paragraph (b)(2)(i).

K. Revising paragraphs (b)(2)(i) and (b)(2)(ii).

L. Adding a new paragraph (b)(2)(iii).

M. Revising the heading for paragraph (g).

N. Revising paragraphs (g)(1) and (g)(2), and removing paragraph (g)(3).

O. Redesignating paragraph (i) as paragraph (l).

P. Adding new paragraphs (i), (j), and (k).

Q. Revising the Office of Management and Budget control number.

**§ 682.404 Federal reinsurance agreement.**

(a) \* \* \*

(1) The Secretary may enter into a reinsurance agreement with a guaranty agency that has a basic program agreement. Except as provided in paragraph (b) of this section, under a reinsurance agreement, the Secretary reimburses the guaranty agency for—

(i) 95 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made on or after October 1, 1998;

(ii) 98 percent of its losses on default claim payments to lenders for loans for which the first disbursement is made on or after October 1, 1993, and before October 1, 1998; or

(iii) 100 percent of its losses on default claim payments to lenders—

(A) For loans for which the first disbursement is made prior to October 1, 1993;

\* \* \* \* \*

(2) \* \* \*

(ii) *Default aversion assistance* means the activities of a guaranty agency that are designed to prevent a default by a borrower who is at least 60 days delinquent and that are directly related to providing collection assistance to the lender.

\* \* \* \* \*

(4) If a lender has requested default aversion assistance as described in paragraph (a)(2)(ii) of this section, the agency must, upon request of the school at which the borrower received the loan, notify the school of the lender's request. The guaranty agency may not charge the school or the school's agent for providing this notification and must accept a blanket request from the school to be notified whenever any of the school's current or former students are the subject of a default aversion assistance request. The agency must notify schools annually of the option to make this blanket request.

(b) *Reduction in reinsurance rate.* (1) \* \* \*

(i) 90 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made before October 1, 1993 or transferred under a plan approved by the Secretary from an insolvent guaranty agency or a guaranty agency that withdraws its participation in the FFEL Program;

(ii) 88 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made on or after October 1, 1993, and before October 1, 1998; or

(iii) 85 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made on or after October 1, 1998.

(2) \* \* \*

(i) 80 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made before October 1, 1993 or transferred under a plan approved by the Secretary from an insolvent guaranty agency or a guaranty agency that withdraws its participation in the FFEL Program;

(ii) 78 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made on or after October 1, 1993, and before October 1, 1998; or

(iii) 75 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made on or after October 1, 1998.

\* \* \* \* \*

(g) *Share of borrower payments returned to the Secretary.* (1) After an agency pays a default claim to a holder using assets of the Federal Fund, the agency must pay to the Secretary the portion of payments received on those defaulted loans remaining after—

(i) The agency deposits into the Federal Fund the amount of those payments equal to the applicable complement of the reinsurance percentage that was in effect at the time the claim was paid; and

(ii) The agency has deducted an amount equal to—

(A) 30 percent of borrower payments received before October 1, 1993;

(B) 27 percent of borrower payments received on or after October 1, 1993, and before October 1, 1998;

(C) 24 percent of borrower payments received on or after October 1, 1998, and before October 1, 2003; and

(D) 23 percent of borrower payments received on or after October 1, 2003.

(2) Unless the Secretary approves otherwise, the guaranty agency must pay to the Secretary the Secretary's share of borrower payments within 45 days of its receipt of the payments.

\* \* \* \* \*

(i) *Account maintenance fee.* A guaranty agency is paid an account maintenance fee based on the original principal amount of outstanding FFEL Program loans insured by the agency. For fiscal years 1999 and 2000, the fee is 0.12 percent of the original principal amount of outstanding loans. After fiscal year 2000, the fee is 0.10 percent of the original principal amount of outstanding loans.

(j) *Loan processing and issuance fee.* A guaranty agency is paid a loan processing and issuance fee based on the principal amount of FFEL Program loans originated during a fiscal year that are insured by the agency. The fee is paid quarterly. No payment is made for loans for which the disbursement checks have not been cashed or for which electronic funds transfers have not been completed. For fiscal years 1999 through 2003, the fee is 0.65 percent of the principal amount of loans originated. Beginning October 1, 2003, the fee is 0.40 percent.

(k) *Default aversion fee.*—(1) *General.* If a guaranty agency performs default aversion activities on a delinquent loan in response to a lender's request for default aversion assistance on that loan, the agency receives a default aversion fee. The fee may not be paid more than once on any loan. The lender's request for assistance must be submitted to the guaranty agency no earlier than the 60th day and no later than the 120th day of

the borrower's delinquency. A guaranty agency may not restrict a lender's choice of the date during this period on which the lender submits a request for default aversion assistance.

(2) *Amount of fees transferred.* No more frequently than monthly, a guaranty agency may transfer default aversion fees from the Federal Fund to its Operating Fund. The amount of the fees that may be transferred is equal to—

(i) One percent of the unpaid principal and accrued interest owed on loans that were submitted by lenders to the agency for default aversion assistance; minus

(ii) One percent of the unpaid principal and accrued interest owed by borrowers on default claims that—

(A) Were paid by the agency for the same time period for which the agency transferred default aversion fees from its Federal Fund; and

(B) For which default aversion fees have been received by the agency.

(3) *Calculation of fee.* (i) For purposes of calculating the one percent default aversion fee described in paragraph (k)(2)(i) of this section, the agency must use the total unpaid principal and accrued interest owed by the borrower as of the date the default aversion assistance request is submitted by the lender.

(ii) For purposes of paragraph (k)(2)(ii) of this section, the agency must use the total unpaid principal and accrued interest owed by the borrower as of the date the agency paid the default claim.

(4) *Prohibition against conflicts.* If a guaranty agency contracts with an outside entity to perform any default aversion activities, that outside entity may not—

(i) Hold or service the loan; or

(ii) Perform collection activities on the loan in the event of default within 3 years of the claim payment date.

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 1845-0020)

\* \* \* \* \*

14. Section 682.406 is amended by revising the heading, the introductory text of paragraph (a), and paragraph (a)(14) to read as follows:

**§ 682.406 Conditions for claim payments from the Federal Fund and for reinsurance coverage.**

(a) A guaranty agency may make a claim payment from the Federal Fund and receive a reinsurance payment on a loan only if—

\* \* \* \* \*

(14) The guaranty agency certifies to the Secretary that diligent attempts have been made by the lender and the

guaranty agency under § 682.411(h) to locate the borrower through the use of effective skip-tracing techniques, including contact with the schools the student attended.

\* \* \* \* \*

15. Section 682.409 is amended by revising the introductory text of paragraph (a)(1) to read as follows:

**§ 682.409 Mandatory assignment by guaranty agencies of defaulted loans to the Secretary.**

(a)(1) If the Secretary determines that action is necessary to protect the Federal fiscal interest, the Secretary directs a guaranty agency to promptly assign to the Secretary any loans held by the agency on which the agency has received payment under § 682.402(f), 682.402(k), or 682.404. The collection of unpaid loans owed by Federal employees by Federal salary offset is, among other things, deemed to be in the Federal fiscal interest. Unless the Secretary notifies an agency, in writing, that other loans must be assigned to the Secretary, an agency must assign any loan that meets all of the following criteria as of April 15 of each year:

\* \* \* \* \*

16. Section 682.410 is amended by adding a new paragraph (b)(5)(vii) to read as follows:

**§ 682.410 Fiscal, administrative, and enforcement requirements.**

\* \* \* \* \*

(b) \* \* \*  
(5) \* \* \*

(vii) As part of the guaranty agency's response to a borrower who appeals an adverse decision resulting from the agency's administrative review of the loan obligation, the agency must provide the borrower with information on the availability of the Student Loan Ombudsman's office.

\* \* \* \* \*

17. Section 682.411 is revised to read as follows:

**§ 682.411 Lender due diligence in collecting guaranty agency loans.**

(a) *General.* In the event of delinquency on an FFEL Program loan, the lender must engage in at least the collection efforts described in paragraphs (c) through (n) of this section, except that in the case of a loan made to a borrower who is incarcerated, residing outside a State, Mexico, or Canada, or whose telephone number is unknown, the lender may send a forceful collection letter instead of each telephone effort required by this section.

(b) *Delinquency.* (1) For purposes of this section, delinquency on a loan begins on the first day after the due date

of the first missed payment that is not later made. The due date of the first payment is established by the lender but must occur by the deadlines specified in § 682.209(a) or, if the lender first learns after the fact that the borrower has entered the repayment period, no later than 75 days after the day the lender so learns, except as provided in § 682.209(a)(2)(v) and (a)(3)(ii)(E). If a payment is made late, the first day of delinquency is the day after the due date of the next missed payment that is not later made. A payment that is within five dollars of the amount normally required to advance the due date may nevertheless advance the due date if the lender's procedures allow for that advancement.

(2) At no point during the periods specified in paragraphs (c), (d), and (e) of this section may the lender permit the occurrence of a gap in collection activity, as defined in paragraph (j) of this section, of more than 45 days (60 days in the case of a transfer).

(3) As part of one of the collection activities provided for in this section, the lender must provide the borrower with information on the availability of the Student Loan Ombudsman's office.

(c) *1-15 days delinquent.* Except in the case in which a loan is brought into this period by a payment on the loan, expiration of an authorized deferment or forbearance period, or the lender's receipt from the drawee of a dishonored check submitted as a payment on the loan, the lender during this period must send at least one written notice or collection letter to the borrower informing the borrower of the delinquency and urging the borrower to make payments sufficient to eliminate the delinquency. The notice or collection letter sent during this period must include, at a minimum, a lender or servicer contact, a telephone number, and a prominent statement informing the borrower that assistance may be available if he or she is experiencing difficulty in making a scheduled repayment.

(d) *16-180 days delinquent (16-240 days delinquent for a loan repayable in installments less frequently than monthly).* (1) Unless exempted under paragraph (d)(4) of this section, during this period the lender must engage in at least four diligent efforts to contact the borrower by telephone and send at least four collection letters urging the borrower to make the required payments on the loan. At least one of the diligent efforts to contact the borrower by telephone must occur on or before, and another one must occur after, the 90th day of delinquency. Collection letters sent during this period must include, at

a minimum, information for the borrower regarding deferment, forbearance, income-sensitive repayment and loan consolidation, and other available options to avoid default.

(2) At least two of the collection letters required under paragraph (d)(1) of this section must warn the borrower that, if the loan is not paid, the lender will assign the loan to the guaranty agency that, in turn, will report the default to all national credit bureaus, and that the agency may institute proceedings to offset the borrower's State and Federal income tax refunds and other payments made by the Federal Government to the borrower or to garnish the borrower's wages, or to assign the loan to the Federal Government for litigation against the borrower.

(3) Following the lender's receipt of a payment on the loan or a correct address for the borrower, the lender's receipt from the drawee of a dishonored check received as a payment on the loan, the lender's receipt of a correct telephone number for the borrower, or the expiration of an authorized deferment or forbearance period, the lender is required to engage in only—

(i) Two diligent efforts to contact the borrower by telephone during this period, if the loan is less than 91 days delinquent (121 days delinquent for a loan repayable in installments less frequently than monthly) upon receipt of the payment, correct address, correct telephone number, or returned check, or expiration of the deferment or forbearance; or

(ii) One diligent effort to contact the borrower by telephone during this period if the loan is 91-120 days delinquent (121-180 days delinquent for a loan repayable in installments less frequently than monthly) upon receipt of the payment, correct address, correct telephone number, or returned check, or expiration of the deferment or forbearance.

(4) A lender need not attempt to contact by telephone any borrower who is more than 120 days delinquent (180 days delinquent for a loan repayable in installments less frequent than monthly) following the lender's receipt of—

(i) A payment on the loan;

(ii) A correct address or correct telephone number for the borrower;

(iii) A dishonored check received from the drawee as a payment on the loan; or

(iv) The expiration of an authorized deferment or forbearance.

(e) *181-270 days delinquent (241-330 days delinquent for a loan repayable in installments less frequently than monthly).* During this period the lender

must engage in efforts to urge the borrower to make the required payments on the loan. These efforts must, at a minimum, provide information to the borrower regarding options to avoid default and the consequences of defaulting on the loan.

(f) *Final demand.* On or after the 241st day of delinquency (the 301st day for loans payable in less frequent installments than monthly) the lender must send a final demand letter to the borrower requiring repayment of the loan in full and notifying the borrower that a default will be reported to a national credit bureau. The lender must allow the borrower at least 30 days after the date the letter is mailed to respond to the final demand letter and to bring the loan out of default before filing a default claim on the loan.

(g) *Collection procedures when borrower's telephone number is not available.* Upon completion of a diligent but unsuccessful effort to ascertain the correct telephone number of a borrower as required by paragraph (m) of this section, the lender is excused from any further efforts to contact the borrower by telephone, unless the borrower's number is obtained before the 211th day of delinquency (the 271st day for loans repayable in installments less frequently than monthly).

(h) *Skip-tracing.* (1) Unless the letter specified under paragraph (f) of this section has already been sent, within 10 days of its receipt of information indicating that it does not know the borrower's current address, the lender must begin to diligently attempt to locate the borrower through the use of effective commercial skip-tracing techniques. These efforts must include, but are not limited to, sending a letter to or making a diligent effort to contact each endorser, relative, reference, individual, and entity, identified in the borrower's loan file, including the schools the student attended. For this purpose, a lender's contact with a school official who might reasonably be expected to know the borrower's address may be with someone other than the financial aid administrator, and may be in writing or by phone calls. These efforts must be completed by the date of default with no gap of more than 45 days between attempts to contact those individuals or entities.

(2) Upon receipt of information indicating that it does not know the borrower's current address, the lender must discontinue the collection efforts described in paragraphs (c) through (f) of this section.

(3) If the lender is unable to ascertain the borrower's current address despite its performance of the activities

described in paragraph (h)(1) of this section, the lender is excused thereafter from performance of the collection activities described in paragraphs (c) through (f) and (l)(1) through (l)(3) and (l)(5) of this section unless it receives communication indicating the borrower's address before the 241st day of delinquency (the 301st day for loans payable in less frequent installments than monthly).

(4) The activities specified by paragraph (m)(1)(i) or (ii) of this section (with references to the "borrower" understood to mean endorser, reference, relative, individual, or entity as appropriate) meet the requirement that the lender make a diligent effort to contact each individual identified in the borrower's loan file.

(i) *Default aversion assistance.* Not earlier than the 60th day and no later than the 120th day of delinquency, a lender must request default aversion assistance from the guaranty agency that guarantees the loan.

(j) *Gap in collection activity.* For purposes of this section, the term *gap in collection activity* means, with respect to a loan, any period—

(1) Beginning on the date that is the day after—

(i) The due date of a payment unless the lender does not know the borrower's address on that date;

(ii) The day on which the lender receives a payment on a loan that remains delinquent notwithstanding the payment;

(iii) The day on which the lender receives the correct address for a delinquent borrower;

(iv) The day on which the lender completes a collection activity;

(v) The day on which the lender receives a dishonored check submitted as a payment on the loan;

(vi) The expiration of an authorized deferment or forbearance period on a delinquent loan; or

(vii) The day the lender receives information indicating it does not know the borrower's current address; and

(2) Ending on the date of the earliest of—

(i) The day on which the lender receives the first subsequent payment or completed deferment request or forbearance agreement;

(ii) The day on which the lender begins the first subsequent collection activity;

(iii) The day on which the lender receives written communication from the borrower relating to his or her account; or

(iv) Default.

(k) *Transfer.* For purposes of this section, the term *transfer* with respect to

a loan means any action, including, but not limited to, the sale of the loan, that results in a change in the system used to monitor or conduct collection activity on a loan from one system to another.

(l) *Collection activity.* For purposes of this section, the term *collection activity* with respect to a loan means—

(1) Mailing or otherwise transmitting to the borrower at an address that the lender reasonably believes to be the borrower's current address a collection letter or final demand letter that satisfies the timing and content requirements of paragraph (c), (d), (e), or (f) of this section;

(2) Making an attempt to contact the borrower by telephone to urge the borrower to begin or resume repayment;

(3) Conducting skip-tracing efforts, in accordance with paragraph (h)(1) or (m)(1)(iii) of this section, to locate a borrower whose correct address or telephone number is unknown to the lender;

(4) Mailing or otherwise transmitting to the guaranty agency a request for default aversion assistance available from the agency on the loan at the time the request is transmitted; or

(5) Any telephone discussion or personal contact with the borrower so long as the borrower is apprised of the account's past-due status.

(m) *Diligent effort for telephone contact.* (1) For purposes of this section, the term *diligent effort* with respect to telephone contact means—

(i) A successful effort to contact the borrower by telephone;

(ii) At least two unsuccessful attempts to contact the borrower by telephone at a number that the lender reasonably believes to be the borrower's correct telephone number; or

(iii) An unsuccessful effort to ascertain the correct telephone number of a borrower, including, but not limited to, a directory assistance inquiry as to the borrower's telephone number, and sending a letter to or making a diligent effort to contact each reference, relative, and individual identified in the most recent loan application or most recent school certification for that borrower held by the lender. The lender may contact a school official other than the financial aid administrator who reasonably may be expected to know the borrower's address or telephone number.

(2) If the lender is unable to ascertain the borrower's correct telephone number despite its performance of the activities described in paragraph (m)(1)(iii) of this section, the lender is excused thereafter from attempting to contact the borrower by telephone unless it receives a communication

indicating the borrower's current telephone number before the 211th day of delinquency (the 271st day for loans repayable in installments less frequently than monthly).

(3) The activities specified by paragraph (m)(1) (i) or (ii) of this section (with references to "the borrower" understood to mean endorser, reference, relative, or individual as appropriate), meet the requirement that the lender make a diligent effort to contact each endorser or each reference, relative, or individual identified on the borrower's most recent loan application or most recent school certification.

(n) *Due diligence for endorsers.* (1) Before filing a default claim on a loan with an endorser, the lender must—

(i) Make a diligent effort to contact the endorser by telephone; and

(ii) Send the endorser on the loan two letters advising the endorser of the delinquent status of the loan and urging the endorser to make the required payments on the loan with at least one letter containing the information described in paragraph (d)(2) of this section (with references to "the borrower" understood to mean the endorser).

(2) On or after the 241st day of delinquency (the 301st day for loans payable in less frequent installments than monthly) the lender must send a final demand letter to the endorser requiring repayment of the loan in full and notifying the endorser that a default will be reported to a national credit bureau. The lender must allow the endorser at least 30 days after the date the letter is mailed to respond to the final demand letter and to bring the loan out of default before filing a default claim on the loan.

(3) Unless the letter specified under paragraph (n)(2) of this section has already been sent, upon receipt of information indicating that it does not know the endorser's current address or telephone number, the lender must diligently attempt to locate the endorser through the use of effective commercial skip-tracing techniques. This effort must include an inquiry to directory assistance.

(o) *Preemption of State law.* The provisions of this section preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements or frustrate the purposes of this section.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1080a, 1082, 1087)

**§ 682.412 [Amended]**

18. Section 682.412 is amended by removing "§ 682.411(e)" in paragraph

(a) and adding, in its place, "§ 682.411(f)".

19. Section 682.413 is amended by revising paragraph (e)(1) to read as follows:

**§ 682.413 Remedial actions.**

\* \* \* \* \*

(e)(1)(i) The Secretary's decision to require repayment of funds, withhold funds, or to limit or suspend a lender, guaranty agency, or third party servicer from participation in the FFEL Program or to terminate a lender or third party from participation in the FFEL Program does not become final until the Secretary provides the lender, agency, or servicer with written notice of the intended action and an opportunity to be heard. The hearing is at a time and in a manner the Secretary determines to be appropriate to the resolution of the issues on which the lender, agency, or servicer requests the hearing.

(ii) The Secretary's decision to terminate a guaranty agency's participation in the FFEL Program after September 24, 1998 does not become final until the Secretary provides the agency with written notice of the intended action and provides an opportunity for a hearing on the record.

\* \* \* \* \*

20. Section 682.414 is amended by:

A. Revising paragraph (a)(4)(iii).

B. Revising the Office of Management and Budget control number.

**§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.**

(a) \* \* \*

(4) \* \* \*

(iii) Except as provided in paragraph (a)(4)(iv) of this section, a lender must retain the records required for each loan for not less than 3 years following the date the loan is repaid in full by the borrower, or for not less than five years following the date the lender receives payment in full from any other source. However, in particular cases, the Secretary or the guaranty agency may require the retention of records beyond this minimum period.

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 1845-0020)

\* \* \* \* \*

21. Section 682.417 is revised to read as follows:

**§ 682.417 Determination of Federal funds or assets to be returned.**

(a) *General.* The procedures described in this section apply to a determination by the Secretary that—

(1) A guaranty agency must return to the Secretary a portion of its Federal

Fund that the Secretary has determined is unnecessary to pay the program expenses and contingent liabilities of the agency; and

(2) A guaranty agency must require the return to the agency or the Secretary of Federal funds or assets within the meaning of section 422(g)(1) of the Act held by or under the control of any other entity that the Secretary determines are necessary to pay the program expenses and contingent liabilities of the agency or that are required for the orderly termination of the guaranty agency's operations and the liquidation of its assets.

(b) *Return of unnecessary Federal funds.* (1) The Secretary may initiate a process to recover unnecessary Federal funds under paragraph (a)(1) of this section if the Secretary determines that a guaranty agency's Federal Fund ratio under § 682.410(a)(10) for each of the two preceding Federal fiscal years exceeded 2.0 percent.

(2) If the Secretary initiates a process to recover unnecessary Federal funds, the Secretary requires the return of a portion of the Federal funds that the Secretary determines will permit the agency to—

(i) Have a Federal Fund ratio of at least 2.0 percent under § 682.410(a)(10) at the time of the determination; and

(ii) Meet the minimum Federal Fund requirements under § 682.410(a)(10) and retain sufficient additional Federal funds to perform its responsibilities as a guaranty agency during the current Federal fiscal year and the four succeeding Federal fiscal years.

(3)(i) The Secretary makes a determination of the amount of Federal funds needed by the guaranty agency under paragraph (b)(2) of this section on the basis of financial projections for the period described in that paragraph. If the agency provides projections for a period longer than the period referred to in that paragraph, the Secretary may consider those projections.

(ii) The Secretary may require a guaranty agency to provide financial projections in a form and on the basis of assumptions prescribed by the Secretary. If the Secretary requests the agency to provide financial projections, the agency must provide the projections within 60 days of the Secretary's request. If the agency does not provide the projections within the specified time period, the Secretary determines the amount of Federal funds needed by the agency on the basis of other information.

(c) *Notice.* (1) The Secretary or an authorized Departmental official begins a proceeding to order a guaranty agency to return a portion of its Federal funds,

or to direct the return of Federal funds or assets subject to return, by sending the guaranty agency a notice by certified mail, return receipt requested.

(2) The notice—

(i) Informs the guaranty agency of the Secretary's determination that Federal funds or assets must be returned;

(ii) Describes the basis for the Secretary's determination and contains sufficient information to allow the guaranty agency to prepare and present an appeal;

(iii) States the date by which the return of Federal funds or assets must be completed;

(iv) Describes the process for appealing the determination, including the time for filing an appeal and the procedure for doing so; and

(v) Identifies any actions that the guaranty agency must take to ensure that the Federal funds or assets that are the subject of the notice are maintained and protected against use, expenditure, transfer, or other disbursement after the date of the Secretary's determination, and the basis for requiring those actions. The actions may include, but are not limited to, directing the agency to place the Federal funds in an escrow account. If the Secretary has directed the guaranty agency to require the return of Federal funds or assets held by or under the control of another entity, the guaranty agency must ensure that the agency's claims to those funds or assets and the collectability of the agency's claims will not be compromised or jeopardized during an appeal. The guaranty agency must also comply with all other applicable regulations relating to the use of Federal funds and assets.

(d) *Appeal.* (1) A guaranty agency may appeal the Secretary's determination that Federal funds or assets must be returned by filing a written notice of appeal within 20 days of the date of the guaranty agency's receipt of the notice of the Secretary's determination. If the agency files a notice of appeal, the requirement that the return of Federal funds or assets be completed by a particular date is suspended pending completion of the appeal process. If the agency does not file a notice of appeal within the period specified in this paragraph, the Secretary's determination is final.

(2) A guaranty agency must submit the information described in paragraph (d)(4) of this section within 45 days of the date of the guaranty agency's receipt of the notice of the Secretary's determination unless the Secretary agrees to extend the period at the agency's request. If the agency does not submit that information within the

prescribed period, the Secretary's determination is final.

(3) A guaranty agency's appeal of a determination that Federal funds or assets must be returned is considered and decided by a Departmental official other than the official who issued the determination or a subordinate of that official.

(4) In an appeal of the Secretary's determination, the guaranty agency must—

(i) State the reasons the guaranty agency believes the Federal funds or assets need not be returned;

(ii) Identify any evidence on which the guaranty agency bases its position that Federal funds or assets need not be returned;

(iii) Include copies of the documents that contain this evidence;

(iv) Include any arguments that the guaranty agency believes support its position that Federal funds or assets need not be returned; and

(v) Identify the steps taken by the guaranty agency to comply with the requirements referred to in paragraph (c)(2)(v) of this section.

(5)(i) In its appeal, the guaranty agency may request the opportunity to make an oral argument to the deciding official for the purpose of clarifying any issues raised by the appeal. The deciding official provides this opportunity promptly after the expiration of the period referred to in paragraph (d)(2) of this section.

(ii) The agency may not submit new evidence at or after the oral argument unless the deciding official determines otherwise. A transcript of the oral argument is made a part of the record of the appeal and is promptly provided to the agency.

(6) The guaranty agency has the burden of production and the burden of persuading the deciding official that the Secretary's determination should be modified or withdrawn.

(e) *Third-party participation.* (1) If the Secretary issues a determination under paragraph (a)(1) of this section, the Secretary promptly publishes a notice in the **Federal Register** announcing the portion of the Federal Fund to be returned by the agency and providing interested persons an opportunity to submit written information relating to the determination within 30 days after the date of publication. The Secretary publishes the notice no earlier than five days after the agency receives a copy of the determination.

(2) If the guaranty agency to which the determination relates files a notice of appeal of the determination, the deciding official may consider any information submitted in response to

the **Federal Register** notice. All information submitted by a third party is available for inspection and copying at the offices of the Department of Education in Washington, D.C., during normal business hours.

(f) *Adverse information.* If the deciding official considers information in addition to the evidence described in the notice of the Secretary's determination that is adverse to the guaranty agency's position on appeal, the deciding official informs the agency and provides it a reasonable opportunity to respond to the information without regard to the period referred to in paragraph (d)(2) of this section.

(g) *Decision.* (1) The deciding official issues a written decision on the guaranty agency's appeal within 45 days of the date on which the information described in paragraphs (d)(4) and (d)(5)(ii) of this section is received, or the oral argument referred to in paragraph (d)(5) of this section is held, whichever is later. The deciding official mails the decision to the guaranty agency by certified mail, return receipt requested. The decision of the deciding official becomes the final decision of the Secretary 30 days after the deciding official issues it. In the case of a determination that a guaranty agency must return Federal funds, if the deciding official does not issue a decision within the prescribed period, the agency is no longer required to take the actions described in paragraph (c)(2)(v) of this section.

(2) A guaranty agency may not seek judicial review of the Secretary's determination to require the return of Federal funds or assets until the deciding official issues a decision.

(3) The deciding official's written decision includes the basis for the decision. The deciding official bases the decision only on evidence described in the notice of the Secretary's determination and on information properly submitted and considered by the deciding official under this section. The deciding official is bound by all applicable statutes and regulations and may neither waive them nor rule them invalid.

(h) *Collection of Federal funds or assets.* (1) If the deciding official's final decision requires the guaranty agency to return Federal funds, or requires the guaranty agency to require the return of Federal funds or assets to the agency or to the Secretary, the decision states a new date for compliance with the decision. The new date is no earlier than the date on which the decision becomes the final decision of the Secretary.

(2) If the guaranty agency fails to comply with the decision, the Secretary may recover the Federal funds from any funds due the agency from the Department without any further notice or procedure and may take any other action permitted or authorized by law to compel compliance.

(Approved by the Office of Management and Budget under control number 1845-0020).

22. Section 682.418 is amended by revising the heading and paragraph (a)(1), and removing the words "reserve fund" and adding, in their place, the words "Operating Fund", respectively, wherever they appear. The revised heading and text follows:

**§ 682.418 Prohibited uses of the assets of the Operating Fund during periods in which the Operating Fund contains transferred funds owed to the Federal Fund.**

(a) \* \* \*

(1) During periods in which the Operating Fund contains transferred funds owed to the Federal Fund, a guaranty agency may not use the assets of the Operating Fund to pay costs prohibited under paragraph (b) of this section and may not use the assets of the Operating Fund to pay for goods, property, or services provided by an affiliated organization unless the agency applies and demonstrates to the Secretary, and receives the Secretary's approval, that the payment would be in the Federal fiscal interest and would not exceed the affiliated organization's actual and reasonable cost of providing those goods, property, or services.

\* \* \* \* \*

23. A new § 682.419 is added to subpart D to read as follows:

**§ 682.419 Guaranty agency Federal Fund.**

(a) *Establishment and control.* A guaranty agency must establish and maintain a Federal Student Loan Reserve Fund (referred to as the "Federal Fund") to be used only as permitted under paragraph (c) of this section. The assets of the Federal Fund and the earnings on those assets are, at all times, the property of the United States. The guaranty agency must exercise the level of care required of a fiduciary charged with the duty of protecting, investing, and administering the money of others.

(b) *Deposits.* The agency must deposit into the Federal Fund—

(1) All funds, securities, and other liquid assets of the reserve fund that existed under § 682.410;

(2) The total amount of insurance premiums collected;

(3) Federal payments for default, bankruptcy, death, disability, closed

school, false certification, and other claims;

(4) Federal payments for supplemental preclaims assistance activities performed before October 1, 1998;

(5) 70 percent of administrative cost allowances received on or after October 1, 1998 for loans upon which insurance was issued before October 1, 1998;

(6) All funds received by the guaranty agency from any source on FFEL Program loans on which a claim has been paid, within 48 hours of receipt of those funds, minus the portion the agency is authorized to deposit in its Operating Fund;

(7) Investment earnings on the Federal Fund;

(8) Revenue derived from the Federal portion of a nonliquid asset, in accordance with § 682.420; and

(9) Other funds received by the guaranty agency from any source that are specifically designated for deposit in the Federal Fund.

(c) *Uses.* A guaranty agency may use the assets of the Federal Fund only—

(1) To pay insurance claims;

(2) To transfer default aversion fees to the agency's Operating Fund;

(3) To transfer account maintenance fees to the agency's Operating Fund, if directed by the Secretary;

(4) To refund payments made by or on behalf of a borrower on a loan that has been discharged in accordance with § 682.402;

(5) To pay the Secretary's share of borrower payments, in accordance with § 682.404(g);

(6) For transfers to the agency's Operating Fund, pursuant to § 682.421;

(7) To refund insurance premiums related to loans cancelled or refunded, in whole or in part;

(8) To return to the Secretary portions of the Federal Fund required to be returned by the Act; and

(9) For any other purpose authorized by the Secretary.

(d) *Prohibition against prepayment.* A guaranty agency may not prepay obligations of the Federal Fund unless it demonstrates, to the satisfaction of the Secretary, that the prepayment is in the best interests of the United States.

(e) *Minimum Federal Fund level.* The guaranty agency must maintain a minimum Federal Fund level equal to at least 0.25 percent of its insured original principal amount of loans outstanding.

(f) *Definitions.* For purposes of this section—

(1) *Federal Fund level* means the total of Federal Fund assets identified in paragraph (b) of this section plus the amount of funds transferred from the Federal Fund that are in the Operating

Fund, using an accrual basis of accounting.

(2) *Original principal amount of loans outstanding means—*

(i) The sum of—

(A) The original principal amount of all loans guaranteed by the agency; and

(B) The original principal amount of any loans on which the guarantee was transferred to the agency from another guarantor, excluding loan guarantees transferred to another agency pursuant to a plan of the Secretary in response to the insolvency of the agency;

(ii) Minus the original principal amount of all loans on which—

(A) The loan guarantee was cancelled;

(B) The loan guarantee was transferred to another agency;

(C) Payment in full has been made by the borrower;

(D) Reinsurance coverage has been lost and cannot be regained; and

(E) The agency paid claims.

(Authority: 20 U.S.C. 1072-1)

24. A new § 682.420 is added to subpart D to read as follows:

**§ 682.420 Federal nonliquid assets.**

(a) *General.* The Federal portion of a nonliquid asset developed or purchased in whole or in part with Federal reserve funds, regardless of who held or controlled the Federal reserve funds or assets, is the property of the United States. The ownership of that asset must be prorated based on the percentage of the asset developed or purchased with Federal reserve funds. In maintaining and using the Federal portion of a nonliquid asset under this section, the guaranty agency must exercise the level of care required of a fiduciary charged with protecting, investing, and administering the property of others.

(b) *Treatment of revenue derived from a nonliquid Federal asset.* If a guaranty agency derives revenue from the Federal portion of a nonliquid asset, including its sale or lease, the agency must promptly deposit the percentage of the net revenue received into the Federal Fund equal to the percentage of the asset owned by the United States.

(c) *Guaranty agency use of the Federal portion of a nonliquid asset.* (1)(i) If a guaranty agency uses the Federal portion of a nonliquid asset in the performance of its guaranty activities (other than an intangible or intellectual property asset or a tangible asset of nominal value), the agency must promptly deposit into the Federal Fund an amount representing the net fair value of the use of the asset.

(ii) If a guaranty agency uses the Federal portion of a nonliquid asset for purposes other than the performance of

its guaranty activities, the agency must promptly deposit into the Federal Fund an amount representing the net fair value of the use of the asset.

(2) Payments to the Federal Fund required by paragraph (c)(1) of this section must be made not less frequently than quarterly.

(Authority: 20 U.S.C. 1072-1)

25. A new § 682.421 is added to subpart D to read as follows:

**§ 682.421 Funds transferred from the Federal Fund to the Operating Fund by a guaranty agency.**

(a) *General.* In accordance with this section, a guaranty agency may request the Secretary's permission to transfer a limited amount of funds from the Federal Fund to the Operating Fund. Upon receiving the Secretary's approval, the agency may transfer the requested funds at any time within 6 months following the date specified by the Secretary. If the Secretary has not approved or disapproved the agency's request within 30 days after receiving it, the agency may transfer the requested funds at any time within the 6-month period beginning on the 31st day after the Secretary received the agency's request. The transferred funds may be used only as permitted by §§ 682.410(a)(2) and 682.418.

(b) *Transferring the principal balance of the Federal Fund.*—(1) *Amount that may be transferred.* Upon receiving the Secretary's approval, an agency may transfer an amount up to the equivalent of 180 days of cash expenses for purposes allowed by §§ 682.410(a)(2) and 682.418 (not including claim payments) for normal operating expenses to be deposited into the agency's Operating Fund. The amount transferred and outstanding at any time during the first 3 years after establishing the Operating Fund may not exceed the lesser of 180 days cash expenses for purposes allowed by §§ 682.410(a)(2) and 682.418 (not including claim payments), or 45 percent of the balance in the Federal reserve fund that existed under § 682.410 as of September 30, 1998.

(2) *Requirements for requesting a transfer.* A guaranty agency that wishes to transfer principal from the Federal Fund must provide the Secretary with a proposed repayment schedule and evidence that it can repay the transfer according to its proposed schedule. The agency must provide the Secretary with the following:

(i) A request for the transfer that specifies the desired amount, the date the funds will be needed, and the agency's proposed terms of repayment;

(ii) A projected revenue and expense statement, to be updated annually during the repayment period, that demonstrates that the agency will be able to repay the transferred amount within the repayment period requested by the agency; and

(iii) Certifications by the agency that during the period while the transferred funds are outstanding—

(A) Sufficient funds will remain in the Federal Fund to pay lender claims during the period the transferred funds are outstanding;

(B) The agency will be able to meet the reserve recall requirements of section 422 of the Act;

(C) The agency will be able to meet the statutory minimum reserve level of 0.25 percent, as mandated by section 428(c)(9) of the Act; and

(D) No legal prohibition exists that would prevent the agency from obtaining or repaying the transferred funds.

(c) *Transferring interest earned on the Federal Fund.* (1) *Amount that may be transferred.* The Secretary may permit an agency that owes the Federal Fund the maximum amount allowable under paragraph (b) of this section to transfer the interest income earned on the Federal Fund during the 3-year period following October 7, 1998. The combined amount of transferred interest and the amount of principal transferred under paragraph (b) of this section may exceed 180 days cash expenses for purposes allowed by §§ 682.410(a)(2) and 682.418 (not including claim payments), but may not exceed 45 percent of the balance in the Federal reserve fund that existed under § 682.410 as of September 30, 1998.

(2) *Requirements for requesting a transfer.* To be allowed to transfer the interest income, in addition to the items in paragraph (b)(2) of this section, the agency must demonstrate to the Secretary that the cash flow in the Operating Fund will be negative if the agency is not authorized to transfer the interest, and, by transferring the interest, the agency will substantially improve its financial circumstances.

(Authority: 20 U.S.C. 1072-1)

(Approved by the Office of Management and Budget under control number 1845-0020)

26. A new § 682.422 is added to subpart D to read as follows:

**§ 682.422 Guaranty agency repayment of funds transferred from the Federal Fund.**

(a) *General.* A guaranty agency must begin repayment of money transferred from the Federal Fund not later than the start of the 4th year after the agency establishes its Operating Fund. All

amounts transferred must be repaid not later than five years after the date the Operating Fund is established.

(b) *Extension for repaying the interest transferred.*—(1) *General.* The Secretary may extend the period for repayment of interest transferred from the Federal Fund from two years to five years if the Secretary determines that the cash flow of the Operating Fund will be negative if the transferred interest had to be repaid earlier or the repayment of the interest would substantially diminish the financial circumstances of the agency.

(2) *Agency eligibility for an extension.* To receive an extension, the agency must demonstrate that it will be able to repay all transferred funds by the end of the 8th year following the date of establishment of the Operating Fund and that the agency will be financially sound upon the completion of repayment.

(3) *Repayment of interest earned on transferred funds.* If the Secretary extends the period for repayment of interest transferred from the Federal Fund for a guaranty agency, the agency must repay the amount of interest during the 6th, 7th, and 8th years following the establishment of the Operating Fund. In addition to repaying the amount of interest, the guaranty agency must also pay to the Secretary any income earned after the 5th year from the investment of the transferred amount. In determining the amount of income earned on the transferred amount, the Secretary uses the average investment income earned on the agency's Operating Fund.

(c) *Consequences if a guaranty agency fails to repay transfers from the Federal Fund.* If a guaranty agency fails to make a scheduled repayment to the Federal Fund, the agency may not receive any other Federal funds until it becomes current in making all scheduled payments, unless the Secretary waives this restriction.

(Authority: 20 U.S.C. 1072-1)

27. A new § 682.423 is added to subpart D to read as follows:

**§ 682.423 Guaranty agency Operating Fund.**

(a) *Establishment and control.* A guaranty agency must establish and maintain an Operating Fund in an account separate from the Federal Fund. Except for funds that have been transferred from the Federal Fund, the Operating Fund is considered the property of the guaranty agency. During periods in which the Operating Fund contains funds transferred from the Federal Fund, the Operating Fund may

be used only as permitted by §§ 682.410(a)(2) and 682.418.

(b) *Deposits.* The guaranty agency must deposit into the Operating Fund—

- (1) Amounts authorized by the Secretary to be transferred from the Federal Fund;
- (2) Account maintenance fees;
- (3) Loan processing and issuance fees;
- (4) Default aversion fees;
- (5) 30 percent of administrative cost allowances received on or after October 1, 1998 for loans upon which insurance was issued before October 1, 1998;
- (6) The portion of the amounts collected on defaulted loans that remains after the Secretary's share of collections has been paid and the complement of the reinsurance percentage has been deposited into the Federal Fund;
- (7) The agency's share of the payoff amounts received from the consolidation or rehabilitation of defaulted loans; and
- (8) Other receipts as authorized by the Secretary.

(c) *Uses.* A guaranty agency may use the Operating Fund for—

- (1) Guaranty agency-related activities, including—
  - (i) Application processing;
  - (ii) Loan disbursement;
  - (iii) Enrollment and repayment status management;
  - (iv) Default aversion activities;
  - (v) Default collection activities;
  - (vi) School and lender training;
  - (vii) Financial aid awareness and related outreach activities; and
  - (viii) Compliance monitoring; and
- (2) Other student financial aid-related activities for the benefit of students, as selected by the guaranty agency.

(Authority: 20 U.S.C. 1072-2)

#### Subpart H—[Amended]

28. Sections 682.800 through 682.839 are removed, § 682.840 is redesignated as § 682.800, and the term “handicapped status” in the redesignated § 682.800(a) is removed and “disability status” is added in its place.

29. Appendix D to part 682 is revised to read as follows:

#### **Appendix D to Part 682—Policy for Waiving the Secretary's Right To Recover or Refuse To Pay Interest Benefits, Special Allowance, and Reinsurance on Stafford, Plus, Supplemental Loans for Students, and Consolidation Program Loans Involving Lenders' Violations of Federal Regulations Pertaining to Due Diligence in Collection or Timely Filing of Claims [Bulletin 88-G-138]**

**Note:** The following is a reprint of Bulletin 88-G-138, issued on March 11, 1988, with modifications made to reflect changes in the program regulations. For a loan that has lost reinsurance prior to December 1, 1992, this policy applies only through November 30, 1995. For a loan that loses reinsurance on or after December 1, 1992, this policy applies until 3 years after the default claim filing deadline. For the purpose of determining the 3-year deadline, reinsurance is lost on the later of (a) 3 years from the last date the claim could have been filed for claim payment with the guaranty agency for a claim that was not filed; or (b) 3 years from the date the guaranty agency rejected the claim, for a claim that was filed. These deadlines are extended by periods during which collection activities are suspended due to the filing of a bankruptcy petition.

#### *Introduction*

(1) This letter sets forth the circumstances under which the Secretary, pursuant to sections 432(a)(5) and (6) of the Higher Education Act of 1965 and 34 CFR 682.406(b) and 682.413(f), will waive certain of the Secretary's rights and claims with respect to Stafford Loans, PLUS, Supplemental Loans for Students (SLS), and Consolidation Program loans made under a guaranty agency program that involve violations of Federal regulations pertaining to due diligence in collection or timely filing. (These programs are collectively referred to in this letter as the FFEL Program.) This policy applies to due diligence violations on loans for which the first day of delinquency occurred on or after March 10, 1987 (the effective date of the November 10, 1986 due diligence regulations) and to timely filing violations occurring on or after December 26, 1986, whether or not the affected loans have been submitted as claims to the guaranty agency.

(2) The Secretary has been implementing a variety of regulatory and administrative actions to minimize defaults in the FFEL Program. As a part of this effort, the Secretary published final regulations on November 10, 1986, requiring lenders and guaranty agencies to undertake specific due diligence activities to collect delinquent and defaulted loans, and establishing deadlines for the filing of claims by lenders with guaranty agencies. In recognition of the time required for agencies and lenders to modify their internal procedures, the Secretary delayed for four months the date by which lenders were required to comply with the new due diligence requirements. Thus, § 682.411 of the regulations, which established minimum due diligence procedures that a lender must follow in order for a guaranty agency to receive reinsurance on a loan, became

effective for loans for which the first day of delinquency occurred on or after March 10, 1987. The regulations make clear that compliance with these minimum requirements, and with the new timely filing deadlines, is a condition for an agency's receiving or retaining reinsurance payments made by the Secretary on a loan. See 34 CFR 682.406(a)(3), (a)(5), (a)(6), and 682.413(b). The regulations also specify that a lender must comply with § 682.411 and with the applicable filing deadline as a condition for its right to receive or retain interest benefits and special allowance on a loan for certain periods. See 34 CFR 682.300(b)(2)(vi), 682.300(b)(2)(vii), 682.413(a)(1).

(3) The Department has received inquiries regarding the procedures by which a lender may cure a violation of § 682.411 regarding diligent loan collection, or of the 90-day deadline for the filing of default claims found in § 682.406(a)(3) and (a)(5), in order to reinstate the agency's right to reinsurance and the lender's right to interest benefits and special allowance. Preliminarily, please note that, absent an exercise of the Secretary's waiver authority, a guaranty agency may not receive or retain reinsurance payments on a loan on which the lender has violated the Federal due diligence or timely filing requirements, even if the lender has followed a cure procedure established by the agency. Under §§ 682.406(b) and 682.413(f), the Secretary—not the guaranty agency—decides whether to reinstate reinsurance coverage on a loan involving such a violation or any other violation of Federal regulations. A lender's violation of a guaranty agency's requirement that affects the agency's guarantee coverage also affects reinsurance coverage. See §§ 682.406(a)(7) and 682.413(b). As §§ 682.406(a)(7) and 682.413(b) make clear, a guaranty agency's cure procedures are relevant to reinsurance coverage only insofar as they allow for cure of violations of requirements established by the agency affecting the loan insurance it provides to lenders. In addition, all those requirements must be submitted to the Secretary for review and approval under 34 CFR 682.401(d).

(4) References throughout this letter to “due diligence and timely filing” rules, requirements, and violations should be understood to mean only the Federal rules cited above, unless the context clearly requires otherwise.

#### *A. Scope*

This letter outlines the Secretary's waiver policy regarding certain violations of Federal due diligence or timely filing requirements on a loan insured by a guaranty agency. Unless your agency receives notification to the contrary, or the lender's violation involves fraud or other intentional misconduct, you may treat as reinsured any otherwise reinsured loan involving such a violation that has been cured in accordance with this letter.

#### *B. Duty of a Guaranty Agency To Enforce Its Standards*

As noted above, a lender's violation of a guaranty agency's requirement that affects the agency's guarantee coverage also affects reinsurance coverage. Thus, as a general rule,

an agency that fails to enforce such a requirement and pays a default claim involving a violation is not eligible to receive reinsurance on the underlying loan.

However, in light of the waiver policy outlined below, which provides more stringent cure procedures for violations occurring on or after May 1, 1988 than for pre-May 1, 1988 violations, some guaranty agencies with more stringent policies than the policy outlined below for the pre-May 1 violations have indicated that they wish to relax their own policies for violations of agency rules during that period. While the Secretary does not encourage any agency to do so, the Secretary will permit an agency to take either of the following approaches to its enforcement of its own due diligence and timely filing rules for violations occurring before May 1, 1988.

(1) The agency may continue to enforce its rules, even if they result in the denial of guarantee coverage by the agency on otherwise reinsurable loans; or

(2) The agency may decline to enforce its rules as to any loan that would be reinsured under the retrospective waiver policy outlined below. In other words, for violations of a guaranty agency's due diligence and timely filing rules occurring before May 1, 1988, a guaranty agency is authorized, but not required, to retroactively revise its own due diligence and timely filing standards to treat as guaranteed any loan amount that is reinsured under the retrospective enforcement policy outlined in section I.C.1. However, for any violation of an agency's due diligence or timely filing rules occurring on or after May 1, 1988, the agency must resume enforcing those rules in accordance with their terms, in order to receive reinsurance payments on the underlying loan. For these post-April 30 violations, and for any other violation of an agency's rule affecting its guarantee coverage, the Secretary will treat as reinsured all loans on which the agency has engaged in, and documented, a case-by-case exercise of reasonable discretion allowing for guarantee coverage to be continued or reinstated notwithstanding the violation. But any agency that otherwise fails, or refuses, to enforce such a rule does so without the benefit of reinsurance coverage on the affected loans, and the lenders continue to be ineligible for interest benefits and special allowance thereon.

### C. Due Diligence

Under 34 CFR 682.200, default on a FFEL Program loan occurs when a borrower fails to make a payment when due, provided this failure persists for 270 days for loans payable in monthly installments, or for 330 days for loans payable in less frequent installments. The 270/330-day default period applies regardless of whether payments were missed consecutively or intermittently. For example, if the borrower, on a loan payable in monthly installments, makes his January 1st payment on time, his February 1st payment two months late (April 1st), his March 1st payment 3 months late (June 1st), and makes no further payments, the delinquency period begins on February 2nd, with the first delinquency, and default occurs on December 27th, when the April payment

becomes 270 days past due. The lender must treat the payment made on April 1st as the February 1st payment, since the February 1st payment had not been made prior to that time. Similarly, the lender must treat the payment made on June 1st as the March 1st payment, since the March payment had not been made prior to that time.

**Note:** Lenders are strongly encouraged to exercise forbearance, prior to default, for the benefit of borrowers who have missed payments intermittently but have otherwise indicated willingness to repay their loans. See 34 CFR 682.211. The forbearance process helps to reduce the incidence of default, and serves to emphasize for the borrower the importance of compliance with the repayment obligation.

### D. Timely Filing

(1) The 90-day filing period applicable to FFEL Program default claims is described in 34 CFR 682.406(a)(5). The 90-day filing period begins at the end of the 270/330-day default period. The lender ordinarily must file a default claim on a loan in default by the end of the filing period. However, the lender may, but need not, file a claim on that loan before the 360th day of delinquency (270-day default period plus 90-day filing period) if the borrower brings the account less than 270 days delinquent before the 360th day. Thus, in the above example, if the borrower makes the April 1st payment on December 28th, that payment makes the loan 241 days delinquent, and the lender may, but need not, file a default claim on the loan at that time. If, however, the loan again becomes 270 days delinquent, the lender must file a default claim within 90 days thereafter (unless the loan is again brought to less than 270 days delinquent prior to the end of that 90-day period). In other words, the Secretary will permit a lender to treat payments made during the filing period as curing the default if those payments are sufficient to make the loan less than 270 days delinquent.

(2) Section I of this letter outlines the Secretary's waiver policy for due diligence and timely filing violations. As noted above, to the extent that it results in the imposition of a lesser sanction than that available to the Secretary by statute or regulation, this policy reflects the exercise of the Secretary's authority to waive the Secretary's rights and claims in this area. Section II discusses the issue of the due date of the first payment on a loan and the application of the waiver policy to that issue. Section III provides guidance on several issues related to due diligence and timely filing as to which clarification has been requested by some program participants.

### I. Waiver Policy

#### A. Definitions

The following definitions apply to terms used throughout this letter:

**Full payment** means payment by the borrower, or another person (other than the lender) on the borrower's behalf, in an amount at least as great as the monthly payment amount required under the existing terms of the loan, exclusive of any forbearance agreement in force at the time of

the default. (For example, if the original repayment schedule or agreement called for payments of \$50 per month, but a forbearance agreement was in effect at the time of default that allowed the borrower to pay \$25 per month for a specified time, and the borrower defaulted in making the reduced payments, a full payment would be \$50, or two \$25 payments in accordance with the original repayment schedule or agreement.) In the case of a payment made by cash, money order, or other means that do not identify the payor that is received by a lender after the date of this letter, that payment may constitute a full payment only if a senior officer of the lender or servicing agent certifies that the payment was not made by or on behalf of the lender or servicing agent.

#### **Earliest unexcused violation** means:

(a) In cases when reinsurance is lost due to a failure to timely establish a first payment due date, the earliest unexcused violation would be the 46th day after the date the first payment due date should have been established.

(b) In cases when reinsurance is lost due to a gap of 46 days, the earliest unexcused violation date would be the 46th day following the last collection activity.

(c) In cases when reinsurance is lost due to three or more due diligence violations of 6 days or more, the earliest unexcused violation would be the day after the date of default.

(d) In cases when reinsurance is lost due to a timely filing violation, the earliest unexcused violation would be the day after the filing deadline.

**Reinstatement** with respect to reinsurance coverage means the reinstatement of the guaranty agency's right to receive reinsurance payments on the loan after the date of reinstatement. Upon reinstatement of reinsurance, the borrower regains the right to receive forbearance or deferments, as appropriate. Reinstatement with respect to reinsurance on a loan also includes reinstatement of the lender's right to receive interest and special allowance payments on that loan.

#### **Gap in collection activity** on a loan means:

(a) The period between the initial delinquency and the first collection activity;

(b) The period between collection activities (a request for preclaims assistance is considered a collection activity);

(c) The period between the last collection activity and default; or

(d) The period between the date a lender discovers a borrower has "skipped" and the lender's first skip-tracing activity.

**Note:** The concept of "gap" is used herein simply as one measure of collection activity. This definition applies to loans subject to the FFEL and PLUS programs regulations published on or after November 10, 1986. For those loans, not all gaps are violations of the due diligence rules.

**Violation** with respect to the due diligence requirements in § 682.411 means the failure to timely complete a required diligent phone contact effort, the failure to timely send a required letter (including a request for preclaims assistance), or the failure to timely engage in a required skip-tracing activity. If

during the delinquency period a gap of more than 45 days occurs (more than 60 days for loans with a transfer), the lender must satisfy the requirement outlined in I.D.1. for reinstatement. The day after the 45-day gap (or 60 for loans with a transfer) will be considered the date that the violation occurred.

*Transfer* means any action, including, but not limited to, the sale of the loan, that results in a change in the system used to monitor or conduct collection activity on a loan from one system to another.

#### B. General

1. *Resumption of Interest and Special Allowance Billing on Loans Involving Due Diligence or Timely Filing Violations.* For any loan on which a cure is required under this letter in order for the agency to receive any reinsurance payment, the lender may resume billing for interest and special allowance on the loan only for periods following its completion of the required cure procedure.

2. *Reservation of the Secretary's Right to Strict Enforcement.* While this letter describes the Secretary's general waiver policy, the Secretary retains the option of refusing to permit or recognize cures, or of insisting on strict enforcement of the remedies established by statute or regulation, in cases where, in the Secretary's judgment, a lender has committed an excessive number of severe violations of due diligence or timely filing rules and in cases where the best interests of the United States otherwise require strict enforcement. More generally, this bulletin states the Secretary's general policy and is not intended to limit in any way the authority and discretion afforded the Secretary by statute or regulation.

3. *Interest, Special Allowance, and Reinsurance Repayment Required as a Condition for Exercise of the Secretary's Waiver Authority.* The Secretary's waiver of the right to recover or refuse to pay reinsurance, interest benefits, or special allowance payments, and recognition of cures for due diligence and timely filing violations, are conditioned on the following:

a. The guaranty agency and lender must ensure that the lender repays all interest benefits and special allowance received on loans involving violations occurring prior to May 1, 1988, for which the lender is ineligible under the waiver policy for the "retrospective period" described in section I.C.1., or under the waiver policy for timely filing violations described in section I.E.1., by an adjustment to one of the next three quarterly billings for interest benefits and special allowance submitted by the lender in a timely manner after May 1, 1988. The guaranty agency's responsibility in this regard is satisfied by receipt of a certification from the lender that this repayment has been made in full.

b. The guaranty agency, on or before October 1, 1988, must repay all reinsurance received on loans involving violations occurring prior to May 1, 1988, for which the agency is ineligible under the waiver policy for the "retrospective period" described in section I.C.1., or under the waiver policy for timely filing violations described in section I.E.1. Pending completion of the repayment described above, a lender or guaranty agency

may submit billings to the Secretary on loans that are eligible for reinsurance under the waiver policy in this letter until it learns that repayment in full will not be made, or until the deadline for a repayment has passed without it being made, whichever is earlier. Of course, a lender or guaranty agency is prohibited from billing the Secretary for program payments on any loan amount that is not eligible for reinsurance under the waiver policy outlined in this letter. In addition to the repayments required above, any amounts received in the future in violation of this prohibition must immediately be repaid to the Secretary.

4. *Applicability of the Waiver Policy to Particular Classes of Loans.* The policy outlined in this letter applies only to a loan for which the first day of the 180/240-day or 270/330-day default period (as applicable) that ended with default by the borrower occurred on or after March 10, 1987, or, in the case of a timely filing violation, December 26, 1986, and that involves violations only of the due diligence or timely filing requirements or both. For a loan that has lost reinsurance prior to December 1, 1992, this policy applies only through November 30, 1995. For a loan that loses reinsurance on or after December 1, 1992, this policy applies until 3 years after the default claim filing deadline.

5. *Excuse of Certain Due Diligence Violations.* Except as noted in section II, if a loan has due diligence violations but was later cured and brought current, those violations will not be considered in determining whether a loan was serviced in accordance with 34 CFR 682.411. Guarantors must review the due diligence for the 180/270 or 270/330-day period (as applicable) prior to the default date ensuring the due date of the first payment not later made is the correct payment due date for the borrower.

6. *Excuse of Timely Filing Violations Due to Performance of a Guaranty Agency's Cure Procedures.* If, prior to May 1, 1988, and prior to the filing deadline, a lender commenced the performance of collection activities specifically required by the guaranty agency to cure a due diligence violation on a loan, the Secretary will excuse the lender's timely filing violation if the lender completes the additional activities within the time period permitted by the guaranty agency and files a default claim on the loan not more than 45 days after completing the additional activities.

7. *Treatment of Accrued Interest on "Cured" Claims.* For any loan involving any violation of the due diligence or timely filing rules for which a "cure" is required under section I.C. or I.E., for the agency to receive a reinsurance payment, the Secretary will not reimburse the guaranty agency for any unpaid interest accruing after the date of the earliest unexcused violation occurring after the last payment received before the cure is accomplished, and prior to the date of reinstatement of reinsurance coverage. The lender may capitalize unpaid interest accruing on the loan from the date of the earliest unexcused violation to the date of the reinstatement of reinsurance coverage. However, if the agency later files a claim for reinsurance on that loan, the agency must

deduct this capitalized interest from the amount of the claim. Some cures will not reinstate coverage. For treatment of accrued interest in those cases, see section I.E.1.c.

#### C. Waiver Policy for Violations of the Federal Due Diligence in Collection Requirements (34 CFR 682.411)

A violation of the due diligence in collection rules occurs when a lender fails to meet the requirements found in 34 CFR 682.411. However, if a lender makes all required calls and sends all required letters during any of the delinquency periods described in that section, the lender is considered to be in compliance with that section for that period, even if the letters were sent before the calls were made. The special provisions for transfers apply whenever the violation(s) and, if applicable, the gap, were due to a transfer, as defined in section I.A.

1. *Retrospective Period.* For one or more due diligence violations occurring during the period March 10, 1987–April 30, 1988—

a. There will be no reduction or recovery by the Secretary of payments to the lender or guaranty agency if no gap of 46 days or more (61 days or more for a transfer) exists.

b. If a gap of 46–60 days (61–75 days for a transfer) exists, principal will be reinsured, but accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period are limited to amounts accruing through the date of default.

c. If a gap of 61 days or more (76 days or more for a transfer) exists, the borrower must be located after the gap, either by the agency or the lender, in order for reinsurance on the loan to be reinstated. (See section I.E.1.d., for a description of acceptable evidence of location.) In addition, if the loan is held by the lender or after March 15, 1988, the lender must follow the steps described in section I.E.1., or receive a full payment or a new signed repayment agreement, in order for the loan to again be eligible for reinsurance. The lender must repay all interest benefits and special allowance received for the period beginning with its earliest unexcused violation, occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

2. *Prospective Period.* For due diligence violations occurring on or after May 1, 1988 based on due dates prior to October 6, 1998—

a. There will be no reduction or recovery by the Secretary of payments to the lender or guaranty agency if there is no violation of Federal requirements of 6 days or more (21 days or more for a transfer.)

b. If there exist not more than two violations of 6 days or more each (21 days or more for a transfer), and no gap of 46 days or more (61 days or more for a transfer) exists, principal will be reinsured, but accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the date of default. However, the lender must complete all required activities before the claim filing deadline, except that a preclaims assistance request must be made before the 240th day of delinquency. If the lender fails to make

this request by the 240th day, the Secretary will not pay any accrued interest, interest benefits, and special allowance for the most recent 180 days prior to default. If the lender fails to complete any other required activity before the claim filing deadline, accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the 90th day before default.

c. If there exist three violations of 6 days or more each (21 days or more for a transfer) and no gap of 46 days or more (61 days or more for a transfer), the lender must satisfy the requirements outlined in I.E.1., or receive a full payment or a new signed repayment agreement in order for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

d. If there exist more than three violations of 6 days or more each (21 days or more for a transfer) of any type, or a gap of 46 days (61 days for a transfer) or more and at least one violation, the lender must satisfy the requirement outlined in section I.D.1., for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

3. *Post 1998 Amendments.* For due diligence violations based on due dates on or after October 6, 1998—

a. There will be no reduction or recovery by the Secretary of payments to the lender or guaranty agency if there is no violation of Federal requirements of 6 days or more (21 days or more for a transfer).

b. If there exist not more than two violations of 6 days or more each (21 days or more for a transfer), and no gap of 46 days or more (61 days or more for a transfer) exists, principal will be reinsured, but accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the date of default. However, the lender must complete all required activities before the claim filing deadline, except that a default aversion assistance request must be made before the 330th day of delinquency. If the lender fails to make this request by the 330th day, the Secretary will not pay any accrued interest, interest benefits, and special allowance for the most recent 270 days prior to default. If the lender fails to complete any other required activity before the claim filing deadline, accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the 90th day before default.

c. If there exist three violations of 6 days or more each (21 days or more for a transfer) and no gap of 46 days or more (61 days or

more for a transfer), the lender must satisfy the requirements outlined in I.E.1. or receive a full payment or a new signed repayment agreement in order for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

d. If there exist more than three violations of 6 days or more each (21 days or more for a transfer) of any type, or a gap of 46 days (61 days for a transfer) or more and at least one violation, the lender must satisfy the requirement outlined in section I.D.1. for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished and ending with the date, if any, that reinsurance on the loan is reinstated.

#### *D. Reinstatement of Reinsurance Coverage for Certain Egregious Due Diligence Violations.*

1. *Cures.* In the case of a loan involving violations described in section I.C.2.d. or I.C.3.d., the lender may utilize either of the two procedures described in section I.D.1.a or I.D.1.b. for obtaining reinstatement of reinsurance coverage on the loan.

a. After the violations occur, the lender obtains a new repayment agreement signed by the borrower. The repayment agreement must comply with the ten-year repayment limitations set out in 34 CFR 682.209(a)(7); or

b. After the violations occur, the lender obtains one full payment. If the borrower later defaults, the guaranty agency must obtain evidence of this payment (e.g., a copy of the check) from the lender.

2. *Borrower Deemed Current as of Date of Cure.* On the date the lender receives a new signed repayment agreement or the curing payment under section I.D.1., reinsurance coverage on the loan is reinstated, and the borrower must be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to borrowers who are not in default. The lender must then follow the collection and timely filing requirements applicable to the loan.

#### *E. Cures for Timely Filing Violations and Certain Due Diligence Violations*

##### *1. Default Claims.*

a. *Reinstatement of Insurance Coverage.* Except as noted in section I.B.6., in order to obtain reinstatement of reinsurance coverage on a loan in the case of a timely filing violation, a due diligence violation described in section I.C.2.c. or I.C.3.c., or a due diligence violation described in section I.C.1.c. where the lender holds the loan on or after March 15, 1988, the lender must first locate the borrower after the gap, or after the date of the last violation, as applicable. (See section I.E.1.d. for description of acceptable evidence of location.) Within 15 days thereafter, the lender must send to the borrower, at the address at which the borrower was located, (i) a new repayment

agreement, to be signed by the borrower, that complies with the ten-year repayment limitations in 34 CFR 682.209(a)(7), along with (ii) a collection letter indicating in strong terms the seriousness of the borrower's delinquency and its potential effect on his or her credit rating if repayment is not commenced or resumed. If, within 15 days after the lender sends these items, the borrower fails to make a full payment or to sign and return the new repayment agreement, the lender must, within 5 days thereafter, diligently attempt to contact the borrower by telephone. Within 5–10 days after completing these efforts, the lender must again diligently attempt to contact the borrower by telephone. Finally, within 5–10 days after completing these efforts, the lender must send a forceful collection letter indicating that the entire unpaid balance of the loan is due and payable, and that, unless the borrower immediately contacts the lender to arrange repayment, the lender will be filing a default claim with the guaranty agency.

b. *Borrower Deemed Current Under Certain Circumstances.* If, at any time on or before the 30th day after the lender completes the additional collection efforts described in section I.E.1.a., or the 270th day of delinquency, whichever is later, the lender receives a full payment or a new signed repayment agreement, reinsurance coverage on the loan is reinstated on the date the lender receives the full payment or new agreement. The borrower must be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to borrowers who are not in default. In the case of a timely filing violation on a loan for which the borrower is deemed current under this paragraph, the lender is ineligible to receive interest benefits and special allowance accruing from the date of the violation to the date of reinstatement of reinsurance coverage on the loan.

c. *Borrower Deemed in Default Under Certain Circumstances.* If the borrower does not make a full payment, or sign and return the new repayment agreement, on or before the 30th day after the lender completes the additional collection efforts described in section I.E.1.a., or the 270th day of delinquency, whichever is later, the lender must deem the borrower to be in default. The lender must then file a default claim on the loan, accompanied by acceptable evidence of location (see section I.E.1.d.), within 30 days after the end of the 30-day period.

Reinsurance coverage, and therefore the lender's right to receive interest benefits and special allowance, is not reinstated on a loan involving these circumstances. However, the Secretary will honor reinsurance claims submitted in accordance with this paragraph on the outstanding principal balance of those loans, on unpaid interest as provided in section I.B.7., and for reimbursement of eligible supplemental preclaims assistance costs. In the case of a timely filing violation on a loan for which the borrower is deemed in default under this paragraph, the lender is ineligible to receive interest benefits and special allowance accruing from the date of the violation.

d. *Acceptable Evidence of Location.* Only the following documentation is acceptable as

evidence that the lender has located the borrower:

(1) A postal receipt signed by the borrower not more than 15 days prior to the date on which the lender sent the new repayment agreement, indicating acceptance of correspondence from the lender by the borrower at the address shown on the receipt; or

(2) Documentation submitted by the lender showing—

(i) The name, identification number, and address of the lender;

(ii) The name and Social Security number of the borrower; and

(iii) A signed certification by an employee or agent of the lender, that—

(A) On a specified date, he or she spoke with or received written communication (attached to the certification) from the borrower on the loan underlying the default claim, or a parent, spouse, sibling, roommate, or neighbor of the borrower;

(B) The address and, if available, telephone number of the borrower were provided to the lender in the telephone or written communication; and

(C) In the case of a borrower whose address or telephone number was provided to the lender by someone other than the borrower, the new repayment agreement and the letter sent by the lender pursuant to section I.E.1.a., had not been returned undelivered as of 20 days after the date those items were sent, for due diligence violations described in section I.C.1.c. where the lender holds the loan on the date of this letter, and as of the date the lender filed a default claim on the cured loan, for all other violations.

**2. Death, Disability, and Bankruptcy Claims.** The Secretary will honor a death or disability claim on an otherwise eligible loan notwithstanding the lender's failure to meet the 60-day timely filing requirement (See 34 CFR 682.402(g)(2)(i)). However, the Secretary will not reimburse the guaranty agency if, before the date the lender determined that the borrower died or was totally and permanently disabled, the lender had violated the Federal due diligence or timely filing requirements applicable to that loan, except in accordance with the waiver policy described above. Interest that accrued on the loan after the expiration of the 60-day filing period remains ineligible for reimbursement by the Secretary, and the lender must repay all interest and special allowance received on the loan for periods after the expiration of the 60-day filing period. The Secretary has determined that, in the vast majority of cases, the failure of a lender to comply with the timely filing requirement applicable to bankruptcy claims (§ 682.402(g)(2)(iv)) causes irreparable harm to the guaranty agency's ability to contest the discharge of the loan by the court, or to otherwise collect from the borrower. Therefore, the Secretary has decided not to excuse violations of the timely filing requirement applicable to bankruptcy claims, except when the lender can demonstrate that the bankruptcy action has concluded and that the loan has not been discharged in bankruptcy or, if previously discharged, has been the subject of a reversal of the discharge. In that case, the lender must return the borrower to the appropriate status

that existed prior to the filing of the bankruptcy claim unless the status has changed due solely to passage of time. In the latter case, the lender must place the borrower in the status that would exist had no bankruptcy claim been filed. If the borrower is delinquent after the loan is determined nondischargeable, the lender should grant administrative forbearance to bring the borrower's account current as provided in § 682.211(f)(4). The Secretary will not reimburse the guaranty agency for interest for the period beginning on the filing deadline for the bankruptcy claim and ending on the date the loan becomes eligible again for reinsurance. Reinsurance is reinstated on the date the bankruptcy action concludes and the loan is not discharged or on the date a previous discharge is reversed.

**II. Due Date of First Payment.** Section 682.411(b)(1) refers to the "due date of the first missed payment not later made" as one way to determine the first day of delinquency on a loan. Section 682.209(a)(3) states that, generally, the repayment period on an FFEL Program loan begins some number of months after the month in which the borrower ceases at least half-time study. Where the borrower enters the repayment period with the lender's knowledge, the first payment due date may be set by the lender, provided it falls within a reasonable time after the first day of the month in which the repayment period begins. In this situation, the Secretary generally permits a lender to allow the borrower up to 45 days from the first day of repayment to make the first payment (unless the lender establishes the first day of repayment under § 682.209(a)(3)(ii)(E)).

1. In cases where the lender learns that the borrower has entered the repayment period after the fact, current § 682.411 treats the 30th day after the lender receives this information as the first day of delinquency. In the course of discussion with lenders, the Secretary has learned that many lenders have not been using the 30th day after receipt of notice that the repayment period has begun ("the notice") as the first payment due date. In recognition of this apparently widespread practice, the Secretary has decided that, both retrospectively and prospectively, a lender should be allowed to establish a first payment due date within 60 days after receipt of the notice, to capitalize interest accruing up to the first payment due date, and to exercise forbearance with respect to the period during which the borrower was in the repayment period but made no payment. In effect, this means that, if the lender sends the borrower a coupon book, billing notice, or other correspondence establishing a new first payment due date, on or before the 60th day after receipt of the notice, the lender is deemed to have exercised forbearance up to the new first payment due date. The new first payment due date must fall no later than 75 days after receipt of the notice (unless the lender establishes the first day of repayment under § 682.209(a)(3)(ii)(E)). In keeping with the 5-day tolerance permitted under section I.C.2.a., for the "prospective period," or section I.C.3.a., for the "post 1998 amendment period," a lender that sends the above-described material on or before the 65th day after receipt of the notice will be

held harmless. However, a lender that does so on the 66th day will have failed by more than 5 days to send both of the collection letters required by § 682.411(c) to be sent within the first 30 days of delinquency and will thus have committed two violations of more than five days of that rule.

2. If the lender fails to send the material establishing a new first payment due date on or before the 65th day after receipt of the notice, it may thereafter send material establishing a new first payment due date falling not more than 45 days after the materials are sent and will be deemed to have exercised forbearance up to the new first payment due date. However, all violations and gaps occurring prior to the date on which the material is sent are subject to the waiver policies described in section I for violations falling in either the retrospective or prospective periods. This is an exception to the general policy set forth in section I.B.5., that only violations occurring during the most recent 180 or 270 days (as applicable) of the delinquency period on a loan are relevant to the Secretary's examination of due diligence.

*Please Note:* References to the "65th day after receipt of the notice" and "66th day" in the preceding paragraphs should be amended to read "95th day" and "96th day" respectively for lenders subject to § 682.209(a)(3)(ii)(E).

### III. Questions and Answers

The waiver policy outlined in this letter was developed after extensive discussion and consultation with participating lenders and guaranty agencies. In the course of these discussions, lenders and agencies raised a number of questions regarding the due diligence rules as applied to various circumstances. The Secretary's responses to these questions follow.

*Note:* The answer to questions 1 and 4 are applicable only to loans subject to § 682.411 of the FFEL and PLUS program regulations published on or after November 10, 1986.

**1. Q:** Section 682.411 of the program regulations requires the lender to make "diligent efforts to contact the borrower by telephone" during each 30-day period of delinquency beginning after the 30th day of delinquency. What must a lender do to comply with this requirement?

**A:** Generally speaking, one actual telephone contact with the borrower, or two attempts to make such contact on different days and at different times, will satisfy the "diligent efforts" requirement for any of the 30-day delinquency periods described in the rule. However, the "diligent efforts" requirement is intended to be a flexible one, requiring the lender to act on information it receives in the course of attempting telephone contact regarding the borrower's actual telephone number, the best time to call to reach the borrower, etc. For instance, if the lender is told during its second telephone contact attempt that the borrower can be reached at another number or at a different time of day, the lender must then attempt to reach the borrower by telephone at that number or that time of day.

**2. Q:** What must a lender do when it receives conflicting information regarding the date a borrower ceased at least half-time study?

A: A lender must promptly attempt to reconcile conflicting information regarding a borrower's in-school status by making inquiries of appropriate parties, including the borrower's school. Pending reconciliation, the lender may rely on the most recent credible information it has.

3. Q: If a loan is transferred from one lender to another, is the transferee held responsible for information regarding the borrower's status that is received by the transferor but is not passed on to the transferee?

A: No. A lender is responsible only for information received by its agents and

employees. However, if the transferee has reason to believe that the transferor has received additional information regarding the loan, the transferee must make a reasonable inquiry of the transferor as to the nature and substance of that information.

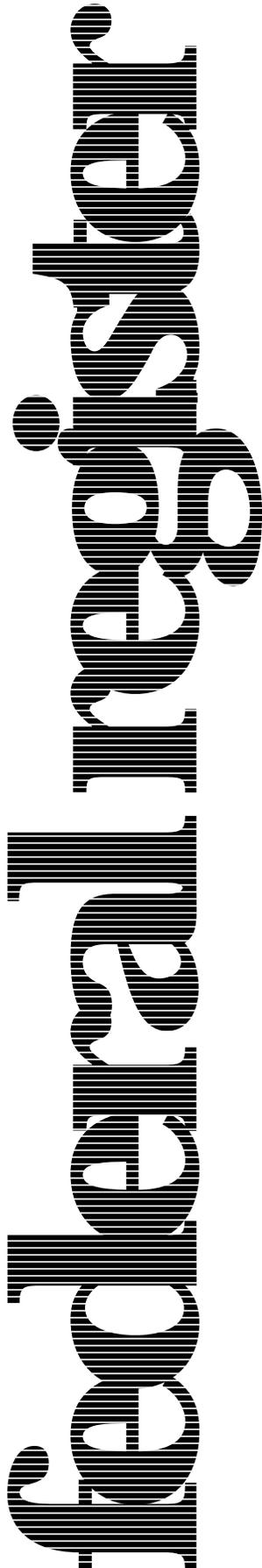
4. Q: What are a lender's due diligence responsibilities where a check received on a loan is dishonored by the bank on which it was drawn?

A: Upon receiving notice that a check has been dishonored, the lender must treat the payment as having never been made for purposes of determining the number of days that the borrower is delinquent at that time.

The lender must then begin (or resume) attempting collection on the loan in accordance with § 682.411, commencing with the first 30-day delinquency period described in § 682.411 that begins after the 30-day delinquency period in which the notice of dishonor is received. The same result occurs when the lender successfully obtains a delinquent borrower's correct address through skip-tracing, or when a delinquent borrower leaves deferment or forbearance status.

[FR Doc. 99-28172 Filed 10-28-99; 8:45 am]

BILLING CODE 4000-01-U



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Friday  
October 29, 1999

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**Part VI**

**Department of  
Transportation**

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**Federal Aviation Administration**

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**14 CFR Part 21, et al.**

**Transport Airplane Fuel Tank System  
Design Review, Flammability Reduction,  
and Maintenance and Inspection  
Requirements; Proposed Rule**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration**

**14 CFR Parts 21, 25, 91, 121, 125, and 129**

[Docket No. FAA-1999; Notice No. 99-18]

RIN 2120-AG62

**Transport Airplane Fuel Tank System Design Review, Flammability Reduction, and Maintenance and Inspection Requirements**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This proposed rulemaking would require design approval holders of certain turbine-powered transport category airplanes to submit substantiation to the FAA that the design of the fuel tank system of previously certificated airplanes precludes the existence of ignition sources within the airplane fuel tanks. It would also require the affected design approval holders to develop specific fuel tank system maintenance and inspection instructions for any items in the fuel tank system that are determined to require repetitive inspections or maintenance, to assure the safety of the fuel tank system. In addition, the proposed rule would require certain operators of those airplanes to incorporate FAA-approved fuel tank system maintenance and inspection instructions into their current maintenance or inspection program. Three amendments to the airworthiness standards for transport category airplanes are also proposed. The first would define new requirements, based on existing requirements, for demonstrating that ignition sources could not be present in fuel tanks when failure conditions are considered. The second would require future applicants for type certification to identify any safety critical maintenance actions and develop limitations to be placed in the instructions for continued airworthiness for the fuel tank system. The third would require means to minimize development of flammable vapors in fuel tanks, or means to prevent catastrophic damage if ignition does occur. These actions are the result of information gathered from accident investigations and adverse service experience, which has shown that unforeseen failure modes and lack of specific maintenance procedures on certain airplane fuel tank systems may result in degradation of design safety

features intended to preclude ignition of vapors within the fuel tank.

**DATES:** Comments must be received on or before January 27, 2000.

**ADDRESSES:** Comments on this proposed rulemaking should be mailed or delivered, in duplicate, to: U.S. Department of Transportation, Dockets, Docket No. FAA-1999-6411, 400 Seventh Street SW., Room Plaza 401, Washington DC 20590. Comments may also be sent electronically to the following Internet address: 9-NPRM-CMTS@faa.gov. Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except Federal holidays. In addition, the FAA is maintaining an information docket of comments in the Transport Airplane Directorate (ANM-100), Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, WA 98055-4056. Comments in the information docket may be examined between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Michael E. Dostert, FAA, Propulsion/Mechanical/Crashworthiness Branch (ANM-112), Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (425) 227-2132, facsimile (425) 227-1320; e-mail: mike.dostert@faa.gov.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments in duplicate to the Docket address specified above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking, will be filed in the docket. All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Late filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of the comments received. The Docket is available for public inspection before

and after the comment closing date. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-1999-6411." The postcard will be date stamped and mailed to the commenter.

**Availability of the NPRM**

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703-321-3339), the *Government Printing Office's* electronic bulletin board service (telephone: 202-512-1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: (800) 322-2722 or (202) 267-5948).

Internet users may reach the FAA's web page at <http://www.faa.gov/avr/arm/nprm/nprm.htm> or the *Government Printing Office's* webpage at <http://www.access.gpo.gov/nara> for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

**Background**

On July 17, 1996, a 25-year old Boeing 747-100 series airplane was involved in an inflight breakup after takeoff from Kennedy International Airport in New York, resulting in 230 fatalities. The accident investigation conducted by the National Transportation Safety Board (NTSB) indicated that the center wing fuel tank exploded due to an unknown ignition source. The NTSB has issued recommendations intended to reduce heating of the fuel in the center wing fuel tanks on the existing fleet of transport airplanes, reduce or eliminate operation with flammable vapors in the fuel tanks of new type certificated airplanes, and also to reevaluate the fuel system design and maintenance practices on the fleet of transport airplanes. The accident investigation

has now focused on mechanical failure as providing the energy source that ignited the fuel vapors inside the tank. This accident has prompted the FAA to examine the underlying safety issues surrounding fuel tank explosions, the adequacy of the existing regulations, the service history of airplanes certificated to these regulations, and existing fuel tank system maintenance practices.

### Flammability Characteristics

The flammability characteristics of the various fuels approved for use in transport airplanes results in the presence of flammable vapors in the vapor space of fuel tanks at various times during the operation of the airplane. Vapors from Jet A fuel (the typical commercial turbojet engine fuel) at temperatures below approximately 100°F are too lean to be flammable at sea level; at higher altitudes the fuel vapors become flammable at temperatures above approximately 45°F (at 40,000 feet altitude). However, the regulatory authorities and aviation industry have always presumed that a flammable fuel air mixture exists in the fuel tanks at all times and have adopted the philosophy that the best way to ensure airplane fuel tank safety is to preclude ignition sources within fuel tanks. This philosophy has been based on the application of fail-safe design requirements to the airplane fuel tank system to preclude ignition sources from being present in fuel tanks when component failures, malfunctions, or lightning encounters occur. Possible ignition sources that have been considered include electrical arcs, friction sparks, and autoignition. (The autoignition temperature is the temperature at which the fuel/air mixture will spontaneously ignite due to heat in the absence of an ignition source.) Some events that could produce sufficient electrical energy to create an arc include lightning, electrostatic charging, electromagnetic interference (EMI), or failures in airplane systems or wiring that introduce high-power electrical energy into the fuel tank system. Friction sparks may be caused by mechanical contact between certain rotating components in the fuel tank, such as a steel fuel pump impeller rubbing on the pump inlet check valve. Autoignition of fuel vapors may be caused by failure of components within the fuel tank, or external components or systems that cause components or tank surfaces to reach a high enough temperature to ignite the fuel vapors in the fuel tank.

### Existing Regulations/Certification Methods

The current 14 CFR part 25 regulations that are intended to require designs that preclude the presence of ignition sources within the airplane fuel tanks are as follows:

Section 25.901 is a general requirement that applies to all portions of the propulsion installation, which includes the airplane fuel tank system. It requires, in part, that the propulsion and fuel tank systems be designed to ensure fail-safe operation between normal maintenance and inspection intervals, and that the major components be electrically bonded to the other parts of the airplane.

Airplane system fail-safe requirements are provided in §§ 25.901(c) and 25.1309. Section 25.901(c) requires that "no single failure or malfunction or probable combination of failures will jeopardize the safe operation of the airplane." In general, the FAA's policy has been to require applicants to assume the presence of foreseeable latent (undetected) failure conditions when demonstrating that subsequent single failures will not jeopardize the safe operation of the airplane. Certain subsystem designs must also comply with § 25.1309, which requires airplane systems and associated systems to be "designed so that the occurrence of any failure condition which would prevent the continued safe flight and landing of the airplane is extremely improbable, and the occurrence of any other failure conditions which would reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions is improbable." Compliance with § 25.1309 requires an analysis, and testing where appropriate, considering possible modes of failure, including malfunctions and damage from external sources, the probability of multiple failures and undetected failures, the resulting effects on the airplane and occupants, considering the stage of flight and operating conditions, and the crew warning cues, corrective action required, and the capability of detecting faults.

This provision has the effect of mandating the use of "fail-safe" design methods which require that the effect of failures and combinations of failures be considered in defining a safe design. Detailed methods of compliance with §§ 25.1309(b), (c), and (d) are described in Advisory Circular (AC) 25.1309-1A, "System Design Analysis," and are intended as a means to evaluate the overall risk, on average, of an event occurring within a fleet of aircraft. The

following guidance involving failures is offered in that AC:

1. In any system or subsystem, a single failure of any element or connection during any one flight must be assumed without consideration as to its probability of failing. This single failure must not prevent the continued safe flight and landing of the airplane.

2. Additional failures during any one flight following the first single failure must also be considered when the probability of occurrence is not shown to be extremely improbable. The probability of these combined failures includes the probability of occurrence of the first failure.

As described in the AC, the FAA fail-safe design concept consists of the following design principles or techniques intended to ensure a safe design. The use of only one of these principles is seldom adequate. A combination of two or more design principles is usually needed to provide a fail-safe design (*i.e.*, to ensure that catastrophic failure conditions are not expected to occur during the life of the fleet of a particular airplane model).

- Design integrity and quality, including life limits, to ensure intended function and prevent failures.
- Redundancy or backup systems that provide system function after the first failure (e.g., two or more engines, two or more hydraulic systems, dual flight controls, etc.)
- Isolation of systems and components so that failure of one element will not cause failure of the other (sometimes referred to as system independence).
- Detection of failures or failure indication.
- Functional verification (the capability for testing or checking the component's condition).
- Proven reliability and integrity to ensure that multiple component or system failures will not occur in the same flight.
- Damage tolerance that limits the safety impact or effect of the failure.
- Designed failure path that controls and directs the failure, by design, to limit the safety impact.
- Flightcrew procedures following the failure designed to assure continued safe flight by specific crew actions.
- Error tolerant design that considers probable human error in the operation, maintenance, and fabrication of the airplane.
- Margins of safety that allow for undefined and unforeseeable adverse flight conditions.

These regulations, when applied to typical airplane fuel tank systems, lead to a requirement for prevention of

ignition sources inside fuel tanks. The approval of the installation of mechanical and electrical components inside the fuel tanks was typically based on a qualitative system safety analysis and component testing which showed: (1) that mechanical components would not create sparks or high temperature surfaces in the event of any failure, and (2) that electrical devices would not create arcs of sufficient energy to ignite a fuel-air mixture in the event of a single failure or probable combination of failures.

Section 25.901(b)(2) requires that the components of the propulsion system be "constructed, arranged, and installed so as to ensure their continued safe operation between normal inspection or overhauls." Compliance with this regulation is typically demonstrated by substantiating that the propulsion installation, which includes the fuel tank system, will safely perform its intended function between inspections and overhauls defined in the maintenance instructions.

Section 25.901(b)(4) requires electrically bonding the major components of the propulsion system to the other parts of the airplane. The affected major components of the propulsion system include the fuel tank system. Compliance with this requirement for fuel tank systems has been demonstrated by showing that all major components in the fuel tank are electrically bonded to the airplane structure. This precludes accumulation of electrical charge on the components and the possible arcing in the fuel tank that could otherwise occur. In most cases, electrical bonding is accomplished by installing jumper wires from each major fuel tank system component to airplane structure. Advisory Circular 25-8, "Auxiliary Fuel Tank Installations," also provides guidance for bonding of fuel tank system components and means of precluding ignition sources within transport airplane fuel tanks.

Section 25.954 requires that the fuel tank system be designed and arranged to prevent the ignition of fuel vapor within the system due to the effects of lightning strikes. Compliance with this regulation is typically shown by incorporation of design features such as minimum fuel tank skin thickness, location of vent outlets out of likely lightning strike areas, and bonding of fuel tank system structure and components. Guidance for demonstrating compliance with this regulation is provided in AC 20-53A, "Protection of Aircraft Fuel Systems Against Fuel Vapor Ignition Due to Lightning."

Section 25.981 requires that the applicant determine the highest temperature allowable in fuel tanks that provides a safe margin below the lowest expected autoignition temperature of the fuel that is approved for use in the fuel tanks. No temperature at any place inside any fuel tank where fuel ignition is possible may then exceed that maximum allowable temperature. This must be shown under all probable operating, failure, and malfunction conditions of any component whose operation, failure, or malfunction could increase the temperature inside the tank. Guidance for demonstrating compliance with this regulation has been provided in AC 25.981-1A, "Guidelines For Substantiating Compliance With the Fuel Tank Temperature Requirements." The AC provides a listing of failure modes of fuel tank system components that should be considered when showing that component failures will not create a hot surface that exceeds the maximum allowable fuel tank component or tank surface temperature for the fuel type for which approval is being requested. Manufacturers have demonstrated compliance with this regulation by testing and analysis of components to show that design features, such as thermal fuses in fuel pump motors, preclude an ignition source in the fuel tank when failures such as a seized fuel pump rotor occur.

#### **Airplane Maintenance Manuals and Instructions for Continued Airworthiness**

Historically, manufacturers have been required to provide maintenance related information for fuel tank systems in the same manner as for other systems. Prior to 1970, most manufacturers provided manuals containing maintenance information for large transport category airplanes, but there were no standards prescribing minimum content, distribution, and a timeframe in which the information must be made available to the operator. Section 25.1529, as amended by Amendment 25-21 in 1970, required the applicant for a type certificate (TC) to provide airplane maintenance manuals (AMM) to owners of the airplanes. This regulation was amended in 1980 to require that the applicant for type certification provide Instructions for Continued Airworthiness (ICA) prepared in accordance with Appendix H to part 25. In developing the ICA, the applicant is required to include certain information such as a description of the airplane and its systems, servicing information, and maintenance instructions, including the frequency and extent of inspections

necessary to provide for the continuing airworthiness of the airplane (including the fuel tank system). As required by Appendix H to part 25, the ICA must also include an FAA-approved Airworthiness Limitations section enumerating those mandatory inspections, inspection intervals, replacement times, and related procedures approved under § 25.571, relating to structural damage tolerance. Currently the Airworthiness Limitations section of the ICA applies only to airplane structure and not to the fuel tank system.

One method of establishing initial scheduled maintenance and inspection tasks is the Maintenance Steering Group (MSG) process, which develops a Maintenance Review Board (MRB) document for a particular airplane model. Operators may incorporate those provisions, along with other maintenance information contained in the ICA, into their maintenance or inspection program.

Section 21.50 requires the holder of a design approval, including the TC or supplemental type certificate (STC) for an airplane, aircraft engine, or propeller for which application was made after January 28, 1981, to furnish at least one set of the complete ICA to the owner of the product for which the application was made. The ICA for original type certificated products must include instructions for the fuel tank system. A design approval holder who has modified the fuel tank system must furnish a complete set of the ICA for the modification to the owner of the product.

#### **Type Certificate Amendments Based on Major Change in Type Design**

Over the years, many design changes have been introduced into fuel tank systems that may affect their safety. There are three ways in which major design changes can be approved: (1) the TC holder can apply for an amendment to the type design; (2) any person, including the TC holder, wanting to alter a product by introducing a major change in the type design not great enough to require a new application for a TC, may apply for an STC; and (3) in some instances a person may also make a major alteration to the type design through a field approval. The field approval process is a streamlined method for obtaining approval of relatively simple modifications to airplanes. An FAA Flight Standards Inspector can approve the alteration using Form FAA-337.

### Maintenance and Inspection Program Requirements

Airplane operators are required to have extensive maintenance or inspection programs that include provisions relating to fuel tank systems.

Section 91.409(e), which generally applies to other than commercial operations, requires an operator of a large turbojet multiengine airplane or a turbopropeller-powered multiengine airplane to select one of the following four inspection programs:

1. A continuous airworthiness inspection program that is part of a continuous airworthiness maintenance program currently in use by a person holding an air carrier operating certificate, or an operating certificate issued under part 119 for operations under parts 121 or 135, and operating that make and model of airplane under those parts;

2. An approved airplane inspection program approved under § 135.419 and currently in use by a person holding an operating certificate and operations specifications issued under part 119 for part 135 operations;

3. A current inspection program recommended by the manufacturer; or

4. Any other inspection program established by the registered owner or operator of that airplane and approved by the Administrator.

Section 121.367, which is applicable to those air carrier and commercial operations covered by part 121, requires operators to have an inspection program, as well as a program covering other maintenance, preventative maintenance, and alterations.

Section 125.247, which is generally applicable to operation of large airplanes, other than air carrier operations conducted under part 121, requires operators to inspect their airplanes in accordance with an inspection program approved by the Administrator.

Section 129.14 requires a foreign air carrier and each foreign operator of a U.S. registered airplane in common carriage, within or outside the U.S., to maintain the airplane in accordance with an FAA-approved program.

In general, the operators rely on the TC data sheet, MRB reports, ICA's, the Airworthiness Limitations section of the ICA, other manufacturers' recommendations, and their own operating experience to develop the overall maintenance or inspection program for their airplanes.

The intent of the rules governing the inspection and/or maintenance program is to ensure that the inherent level of safety that was originally designed into

the system is maintained and that the airplane is in an airworthy condition.

Historically, for fuel tank systems these required programs include operational checks (e.g., preflight and enroute), functional checks following maintenance actions (e.g., component replacement), overhaul of certain components to prevent dispatch delays, and general zonal visual inspections conducted concurrently with other maintenance actions, such as structural inspections. However, specific maintenance instructions to detect and correct conditions that degrade fail-safe capabilities have not been deemed necessary because it has been assumed that the original fail-safe capabilities would not be degraded in service.

### Design and Service History Review

The FAA has examined the service history of transport airplanes and performed an analysis of the history of fuel tank explosions on these airplanes. While there were a significant number of fuel tank fires and explosions that occurred during the 1960's and 1970's on several airplane types, in most cases the fire or explosion was found to be related to design practices, maintenance actions, or improper modification of fuel pumps. Some of the events were apparently caused by lightning strikes. In most cases, an extensive design review was conducted to identify possible ignition sources and actions were taken that were intended to prevent similar occurrences. However, recent fuel tank system related accidents have occurred in spite of these efforts.

On May 11, 1990, the center wing fuel tank of a Boeing 737-300 exploded while the airplane was on the ground at Nimoy Aquino International Airport, Manila, Philippines. The airplane was less than one year old. In the accident, the fuel-air vapors in the center wing tank exploded as the airplane was being pushed back from a terminal gate prior to flight. The accident resulted in 8 fatalities and injuries to an additional 30 people. Accident investigators considered a plausible scenario in which damaged wiring located outside the fuel tank may have created a short between 115 volt airplane system wires and 28 volt wires to a fuel tank level switch. This, in combination with a possibly defective fuel level float switch, was investigated as a possible source of ignition. However, a definitive ignition source was never confirmed during the accident investigation. This unexplained accident occurred on a newer airplane, in contrast to the July 17, 1996, accident which occurred on an older Boeing 747 airplane that was approaching the end of its initial design

life. These two accidents indicate that the development of an ignition source inside the fuel tank may be related to both the design and maintenance of the fuel tank systems.

### National Transportation Safety Board (NTSB) Recommendations

Since the July 17, 1996, accident, the FAA, NTSB, and aviation industry have been reviewing the design features and service history of the Boeing 747 and certain other transport airplane models. Based upon its review, the NTSB has issued the following recommendations to the FAA intended to reduce the exposure to operation with flammable vapors in fuel tanks and address possible degradation of the original type certificated fuel tank system designs on transport airplanes.

#### Reduced Flammability Exposure

*A-96-174:* Require the development of and implementation of design or operational changes that will preclude the operation of transport-category airplanes with explosive fuel-air mixtures in the fuel tanks:

#### Long Term Design Modifications:

(a) Significant consideration should be given to the development of airplane design modification, such as nitrogen-inerting systems and the addition of insulation between heat-generating equipment and fuel tanks. Appropriate modifications should apply to newly certificated airplanes and, where feasible, to existing airplanes.

*A-96-175:* Require the development of and implementation of design or operational changes that will preclude the operation of transport-category airplanes with explosive fuel-air mixtures in the fuel tanks:

#### Near Term Operational

(b) Pending implementation of design modifications, require modifications in operational procedures to reduce the potential for explosive fuel-air mixtures in the fuel tanks of transport-category aircraft. In the B-747, consideration should be given to refueling the center wing fuel tank (CWT) before flight whenever possible from cooler ground fuel tanks, proper monitoring and management of the CWT fuel temperature, and maintaining an appropriate minimum fuel quantity in the CWT.

*A-96-176:* Require that the B-747 Flight Handbooks of TWA and other operators of B-747s and other aircraft in which fuel tank temperature cannot be determined by flightcrews be immediately revised to reflect the

increases in CWT fuel temperatures found by flight tests, including operational procedures to reduce the potential for exceeding CWT temperature limitations.

*A-96-177:* Require modification of the CWT of B-747 airplanes and the fuel tanks of other airplanes that are located near heat sources to incorporate temperature probes and cockpit fuel tank temperature displays to permit determination of the fuel tank temperatures.

#### *Ignition Source Reduction*

*A-98-36:* Conduct a survey of fuel quantity indication system probes and wires in Boeing 747's equipped with systems other than Honeywell Series 1-3 probes and compensators and in other model airplanes that are used in Title 14 Code of Federal Regulations Part 121 service to determine whether potential fuel tank ignition sources exist that are similar to those found in the Boeing 747. The survey should include removing wires from fuel probes and examining the wires for damage. Repair or replacement procedures for any damaged wires that are found should be developed.

*A-98-38:* Require in Boeing 747 airplanes, and in other airplanes with fuel quantity indication system (FQIS) wire installations that are co-routed with wires that may be powered, the physical separation and electrical shielding of FQIS wires to the maximum extent possible.

*A-98-39:* Require, in all applicable transport airplane fuel tanks, surge protection systems to prevent electrical power surges from entering fuel tanks through fuel quantity indication system wires.

#### *Service History*

The FAA has also reviewed service difficulty reports for the transport airplane fleet and evaluated the certification and design practices utilized on these previously certificated airplanes. In addition, an inspection of fuel tanks on Boeing 747 airplanes was initiated. Representatives from the Air Transport Association (ATA), Association of European Airlines (AEA), the Association of Asia Pacific Airlines (AAPA), the Aerospace Industries Association of America, and the Association Europeenne de Constructeurs de Materiel Aerospacial (AECMA) initiated a joint effort to inspect and evaluate the condition of the fuel tank system installations on a representative sample of airplanes within the transport fleet. Data from initial inspections conducted as part of this effort and shared with the FAA

have assisted in establishing a basis for developing corrective action for airplanes within the transport fleet. In addition to the results from these inspections, the FAA has received reports of anomalies on in-service airplanes that have necessitated actions to preclude development of ignition sources in or adjacent to airplane fuel tanks. The following provides a summary of findings from design evaluations, service difficulty reports, and a review of current airplane maintenance practices.

#### *Aging Airplane Related Phenomena*

Fuel tank inspections initiated as part of the Boeing 747 accident investigation identified aging of fuel tank system components, contamination, corrosion of components and copper-sulfur deposits on components as possible conditions that could contribute to development of ignition sources within the fuel tanks. Results of detailed inspection of the fuel pump wiring on several Boeing 747 airplanes showed debris within the fuel tanks consisting of lockwire, rivets, and metal shavings. Debris was also found inside scavenge pumps. Corrosion and damage to insulation on FQIS probe wiring was found on wiring of 6 out of 8 probes removed from in-service airplanes. In addition, inspection of airplane fuel tank system components from out-of-service (retired) airplanes, initiated following the accident, revealed damaged wiring and corrosion buildup of conductive copper-sulfur deposits on the FQIS wiring on some Boeing 747 airplanes. The conductive deposits or damaged wiring may result in a location where arcing could occur if high power electrical energy was transmitted to the FQIS wiring from another airplane source. While the effects of corrosion on fuel tank system safety have not been fully evaluated, the FAA is developing a research program to obtain a better understanding of the effects of copper-sulfur deposits and corrosion on airplane fuel tank system safety.

Wear or chafing of electrical power wires routed in conduits that are located inside fuel tanks can result in arcing through the conduits. On December 9, 1997, the FAA issued Airworthiness Directive (AD) 96-26-06, applicable to certain Boeing 747 airplanes, which required inspection of electrical wiring routed within conduits to fuel pumps located in the wing fuel tanks and replacement of any damaged wiring. Inspection reports indicated that many instances of wear had occurred on Teflon sleeves installed over the wiring to protect it from damage and possible arcing to the conduit.

Inspections of wiring to fuel pumps on Boeing 737 airplanes with over 35,000 flight hours have shown significant wear to the insulation of wires inside conduits that are located in fuel tanks. In nine reported cases, wear resulted in arcing to the fuel pump wire conduit on airplanes with greater than 50,000 flight hours. In one case, wear resulted in burnthrough of the conduit into the interior of the 737 main tank fuel cell. On May 14, 1998, the FAA issued a telegraphic AD, T98-11-52, which required inspection of wiring to Boeing 737 airplane fuel pumps routed within electrical conduits and replacement of any damaged wiring. Results of these inspections showed that wear of the wiring occurred in many instances, particularly on those airplanes with high numbers of flight cycles and operating hours.

The FAA has also received reports of corrosion on bonding jumper wires within the fuel tanks on one in-service Airbus A300 airplane. The manufacturer investigating this event did not have sufficient evidence to determine conclusively the level of damage and corrosion found on the jumper wires. Although the airplane was in long-term storage, it does not explain why a high number of damaged/corroded jumper wires were found concentrated in a specific area of the wing tanks. Further inspections of a limited number of other Airbus models did not reveal similar extensive corrosion or damage to bonding jumper wires. However, they did reveal evidence of the accumulation of copper-sulfur deposits around the outer braid of some jumper wires. Tests by the manufacturer have shown that these deposits did not affect the bonding function of the leads. Airbus has developed a one-time-inspection service bulletin for all its airplanes to ascertain the extent of the copper-sulfur deposits and to ensure that the level of jumper wire damage found on the one A300 airplane is not widespread.

On March 30, 1998, the FAA received reports of three recent instances of electrical arcing within fuel pumps installed in fuel tanks on Lockheed L-1011 airplanes. In one case, the electrical arc had penetrated the pump and housing and entered the fuel tank. Preliminary investigation indicates that features incorporated into the fuel pump design that were intended to preclude overheating and arc-through into the fuel tank may not have functioned as intended due to discrepancies introduced during overhaul of the pumps. Emergency AD 98-08-09 was issued April 3, 1998, to specify a minimum quantity of fuel to be carried in the fuel tanks for the purpose of

covering the pumps with liquid fuel and thereby precluding ignition of vapors within the fuel tank until such time as terminating corrective action could be developed.

#### *Unforeseen Fuel Tank System Failures*

After an extensive review of the Boeing 747 design following the July 17, 1996, accident, the FAA determined that during original certification of the fuel tank system, the degree of tank contamination and the significance of certain failure modes of fuel tank system components had not been considered to the degree that more recent service experience indicates is needed. For example, in the absence of contamination, the FQIS had been shown to preclude creating an arc if FQIS wiring were to come in contact with the highest level of electrical voltage on the airplane. This was shown by demonstrating that the voltage needed to cause an arc in the fuel probes due to an electrical short condition was well above any voltage level available in the airplane systems. However, recent testing has shown that if contamination, such as conductive debris (lock wire, nuts, bolts, steel wool, corrosion, copper-sulfur deposits, metal filings, etc.) is placed within gaps in the fuel probe, the voltage needed to cause an arc is within values that may occur due to a subsequent electrical short or induced current on the FQIS probe wiring from electromagnetic interference caused by adjacent wiring. These anomalies, by themselves, could not lead to an electrical arc within the fuel tanks without the presence of an additional failure. If any of these anomalies were combined with a subsequent failure within the electrical system that creates an electrical short, or if high-intensity radiated fields (HIRF) or electrical current flow in adjacent wiring induces EMI voltage in the FQIS wiring, sufficient energy could enter the fuel tank and cause an ignition source within the tank.

On November 26, 1997, in Docket No. 97-NM-272-AD, the FAA proposed a requirement for operators of Boeing 747-100, -200, and -300 series airplanes to install components for the suppression of electrical transients and/or the installation of shielding and separation of fuel quantity indicating system wiring from other airplane system wiring. After reviewing the comments received on the proposed requirements, the FAA issued AD 98-20-40 on September 23, 1998 that requires the installation of shielding and separation of the electrical wiring of the fuel quantity indication system. On April 14, 1998, the FAA proposed a

similar requirement for Boeing 737-100, -200, -300, -400, and -500 series airplanes in Docket No. 98-NM-50-AD, which led to the FAA issuing AD 99-03-04 on January 26, 1999. The FAA action required in those two airworthiness directives is intended to preclude high levels of electrical energy from entering the airplane fuel tank wiring due to electromagnetic interference or electrical shorts. All later model Boeing 747 and 737 FQIS's have wire separation and fault isolation features that may meet the intent of these AD actions. This proposed rulemaking will require evaluation of these later designs.

Other examples of unanticipated failure conditions include incidents of parts from fuel pump assemblies impacting or contacting the rotating fuel pump impeller. The first design anomaly was identified when two incidents of damage to fuel pumps were reported on Boeing 767 airplanes. In both cases objects from a fuel pump inlet diffuser assembly were ingested into the fuel pump, causing damage to the pump impeller and pump housing. The damage could have caused sparks or hot debris from the pump to enter the fuel tank. To address this unsafe condition, the FAA issued AD 97-19-15. This AD requires revision of the airplane flight manual to include procedures to switch off the fuel pumps when the center tank approaches empty. The intent of this interim action is to maintain liquid fuel over the pump inlet so that any debris generated by a failed fuel pump will not come in contact with fuel vapors and cause a fuel tank explosion.

The second design anomaly was reported on Boeing 747-400 series airplanes. The reports indicated that inlet adapters of the override/jettison pumps of the center wing fuel tank were found to be worn. Two of the inlet adapters had worn down enough to cause damage to the rotating blades of the inducer. The inlet check valves also had significant damage. Another operator reported damage to the inlet adapter that was so severe that contact had occurred between the steel disk of the inlet check valve and the steel screw that holds the inducer in place. Wear to the inlet adapters has been attributed to contact between the inlet check valve and the adapter. Such excessive wear of the inlet adapter can lead to contact between the inlet check valve and inducer, which could result in pieces of the check valve being ingested into the inducer and damaging the inducer and impellers. Contact between the steel disk of the inlet check valve and the steel rotating inducer screw can cause

sparks. To address this unsafe condition, the FAA issued an immediately adopted rule, AD 98-16-19, on July 30, 1998.

Another design anomaly was reported in 1989 when a fuel tank ignition event occurred in an auxiliary fuel tank during refueling of a Beech 400 airplane. The auxiliary fuel tank had been installed under an STC. Polyurethane foam had been installed in portions of the tank to minimize the potential of a fuel tank explosion if uncontained engine debris penetrated those portions of the tank. The accident investigation indicated that electrostatic charging of the foam during refueling resulted in ignition of fuel-air vapors in portions of the adjacent fuel tank system that did not contain the foam. The fuel vapor explosion caused distortion of the tank and fuel leakage from a failed fuel line. Modifications to the design, including use of more conductive polyurethane foam and installation of a standpipe in the refueling system, were incorporated to prevent reoccurrence of electrostatic charging and resulting fuel tank ignition source.

#### **Review of Fuel Tank System Maintenance Practices**

In addition to the review of the design features and service history of the Boeing 747 and other airplane models in the transport airplane fleet, the FAA has also reviewed the current fuel tank system maintenance practices for these airplanes.

Typical transport category airplane fuel tank systems are designed with redundancy and fault indication features such that single component failures do not result in any significant reduction in safety. Therefore, fuel tank systems historically have not had any life-limited components or specific detailed inspection requirements, unless mandated by airworthiness directives. Most of the components are "on condition," meaning that some test, check, or other inspection is performed to determine continued serviceability, and maintenance is performed only if the inspection identifies a condition requiring correction. Visual inspection of fuel tank system components is by far the predominant method of inspection for components such as boost pumps, fuel lines, couplings, wiring, etc. Typically these inspections are conducted concurrently with zonal inspections or internal or external fuel tank structural inspections. These inspections normally do not provide information regarding the continued serviceability of components within the fuel tank system, unless the visual inspection indicates a potential problem

area. For example, it would be difficult, if not impossible, to detect certain degraded fuel tank system conditions, such as worn wiring routed through conduit to fuel pumps, debris inside fuel pumps, corrosion to bonding wire interfaces, etc., without dedicated intrusive inspections that are much more extensive than those normally conducted.

### Listing of Deficiencies

The list provided below summarizes fuel tank system design features, malfunctions, failures, and maintenance related actions that have been identified through service experience to result in a degradation of the safety features of airplane fuel tank systems. This list was developed from service difficulty reports and incident and accident reports. These anomalies occurred on in-service transport category airplanes contrary to the intent of regulations and policies intended to preclude the development of ignition sources within airplane fuel tank systems.

#### 1. Pumps:

- Ingestion of the pump inducer into the pump impeller and generation of debris into the fuel tank.
- Pump inlet case degradation, allowing the pump inlet check valve to contact the impeller.
- Stator winding failures during operation of the fuel pump. Subsequent failure of a second phase of the pump resulting in arcing through the fuel pump housing.
- Deactivation of thermal protective features incorporated into the windings of pumps due to inappropriate wrappings of the windings.
- Omission of cooling port tubes between the pump assembly and the pump motor assembly during fuel pump overhaul.
- Extended dry running of fuel pumps in empty fuel tanks, which was contrary to the manufacturer's recommended procedures.
- Use of steel impellers that may produce sparks if debris enters the pump.
- Debris lodged inside pumps.
- Arcing due to the exposure of electrical connections within the pump housing that have been designed with inadequate clearance to the pump cover.
- Thermal switches resetting over time to a higher trip temperature.
- Flame arrestors falling out of their respective mounting.
- Internal wires coming in contact with the pump rotating group, energizing the rotor and arcing at the impeller/adaptor interface.
- Poor bonding across component interfaces.

- Insufficient ground fault current protection capability.

- Poor bonding of components to structure.

#### 2. Wiring to pumps in conduits located inside fuel tanks:

- Wear of Teflon sleeving and wiring insulation allowing arcing from wire through metallic conduits into fuel tanks.

#### 3. Fuel pump connectors:

- Electrical arcing at connections within electrical connectors due to bent pins or corrosion.

- Fuel leakage and subsequent fuel fire outside of the fuel tank caused by corrosion of electrical connectors inside the pump motor which lead to electrical arcing through the connector housing (connector was located outside the fuel tank).

- Selection of improper materials in connector design.

#### 4. FQIS wiring:

- Degradation of wire insulation (cracking), corrosion and copper-sulfur deposits at electrical connectors.

- Unshielded FQIS wires routed in wire bundles with high voltage wires.

#### 5. FQIS probes:

- Corrosion and copper-sulfur deposits causing reduced breakdown voltage in FQIS wiring.
- Terminal block wiring clamp (strain relief) features at electrical connections on fuel probes causing damage to wiring insulation.

- Contamination in the fuel tanks causing reduced arc path between FQIS probe walls (steel wool, lock wire, nuts, rivets, bolts; mechanical impact damage to probes).

#### 6. Bonding straps:

- Corrosion to bonding straps.
- Loose or improperly grounded attachment points.
- Static bonds on fuel tank system plumbing connections inside the fuel tank worn due to mechanical wear of the plumbing from wing movement and corrosion.

#### 7. Electrostatic charge:

- Use of non-conductive reticulated polyurethane foam that holds electrostatic charge buildup.
- Spraying of fuel into fuel tanks through inappropriately designed refueling nozzles or pump cooling flow return methods.

### Fuel Tank Flammability

In addition to the review of potential fuel tank ignition, the FAA has undertaken a parallel effort to address the threat of fuel tank explosions by eliminating or significantly reducing the presence of explosive fuel air mixtures within the fuel tanks of new type designs, in-production, and the existing

fleet of transport airplanes. On April 3, 1997, the FAA published a notice in the **Federal Register** (62 FR 16014) that requested comments concerning the 1997 NTSB recommendations regarding reduced flammability listed earlier in this notice. That notice provided significant discussion of service history, background, and issues relating to reducing flammability in transport airplane fuel tanks. Comments received from that notice indicated that additional information was needed before the FAA could initiate rulemaking action to address the recommendations.

On January 23, 1998, the FAA published a notice in the **Federal Register** that established an Aviation Rulemaking Advisory Committee (ARAC) working group, the Fuel Tank Harmonization Working Group (FTHWG), tasked to achieve this goal. The ARAC consists of interested parties, including the public, and provides a public process for advice to be given to the FAA concerning development of new regulations. The FTHWG evaluated numerous possible means of reducing or eliminating hazards associated with explosive vapors in fuel tanks. On July 23, 1998, the ARAC submitted its report to the FAA. The full report has been placed in a docket that was created for this ARAC working group (Docket No. FAA-1998-4183). That docket can be reviewed on the U.S. Department of Transportation electronic Document Management System on the Internet at <http://dms.dot.gov>. The full report has also been placed in the docket for this rulemaking.

The report provided a recommendation for the FAA to initiate rulemaking action to amend § 25.981, applicable to new type design airplanes, to include a requirement to limit the time transport airplane fuel tanks could operate with flammable vapors in the vapor space of the tank. The recommended regulatory text proposed, "Limiting the development of flammable conditions in the fuel tanks, based on the intended fuel types, to less than 7 percent of the expected fleet operational time, or providing means to mitigate the effects of an ignition of fuel vapors within the fuel tanks such that any damage caused by an ignition will not prevent continued safe flight and landing." The report discussed various options of showing compliance with this proposal, including managing heat input to the fuel tanks, installation of inerting systems or polyurethane fire suppressing foam, and suppressing an explosion if one occurred, etc.

The level of flammability defined in the proposal was established based

upon comparison of the safety record of center wing fuel tanks that, in certain airplanes, are heated by equipment located under the tank, and unheated fuel tanks located in the wing. The FTHWG concluded that the safety record of fuel tanks located in the wings was adequate and that if the same level could be achieved in center wing fuel tanks, the overall safety objective would be achieved. Results from thermal analyses documented in the report indicate that center wing fuel tanks that are heated by air conditioning equipment located beneath them are flammable, on a fleet average basis, for up to 30 percent of the fleet operating time.

During the ARAC process it was also determined that certain airplane types do not locate heat sources adjacent to the fuel tanks. These airplanes provide significantly reduced flammability exposure, near the 5 percent value of the wing tanks. The group therefore determined that it would be feasible to design new airplanes such that fuel tank operation in the flammable range would be limited to near that of the wing fuel tanks. The primary method of compliance with the requirement proposed by the ARAC would likely be to control heat transfer into and out of fuel tanks such that heating of the fuel would not occur. Design features such as locating the air conditioning equipment away from the fuel tanks, providing ventilation of the air conditioning bay to limit heating and cool fuel tanks, and/or insulating the tanks from heat sources, would be practical means of complying with the regulation proposed by the ARAC.

In addition to its recommendation to revise § 25.981, the ARAC also recommended that the FAA continue to evaluate means for minimizing the development of flammable vapors within the fuel tanks to determine whether other alternatives, such as ground based inerting of fuel tanks, could be shown to be cost effective.

#### **Discussion of the Proposal**

The FAA review of the service history, design features, and maintenance instructions of the transport airplane fleet indicates that aging of fuel tank system components and unforeseen fuel tank system failures and malfunctions have become a safety issue for the fleet of turbine-powered transport category airplanes. The FAA proposes to amend the current regulations in four areas.

The first area of concern encompasses the possibility of the development of ignition sources within the existing transport airplane fleet. Many of the

design practices used on airplanes in the existing fleet are similar. Therefore anomalies that have developed on specific airplane models within the fleet could develop on other airplane models. As a result, the FAA considers that a one-time design review of the fuel tank system for transport airplane models in the current fleet is needed.

The second area of concern encompasses the need to require the design of future transport category airplanes to more completely address potential failures in the fuel tank system that could result in an ignition source in the fuel tank system.

Third, certain airplane types are designed with heat sources adjacent to the fuel tank, which results in heating of the fuel and a significant increase in the formation of flammable vapors in the tank. The FAA considers that fuel tank safety can be enhanced by reducing the time fuel tanks operate with flammable vapors in the tank and is therefore proposing a requirement to provide means to minimize the development of flammable vapors in fuel tanks or provide means to prevent catastrophic damage if ignition does occur.

Fourth, the FAA considers that it is necessary to impose operational requirements so that any required maintenance or inspection actions will be included in each operator's FAA-approved program.

#### **Proposed SFAR**

Historically, the FAA has worked together with the TC holders when safety issues arise to identify solutions and actions that need to be taken. Some of the safety issues that have been addressed by this voluntary cooperative process include those involving aging aircraft structure, thrust reversers, cargo doors, and wing icing protection. While some manufacturers have aggressively completed these safety reviews, others have not applied the resources necessary to complete these reviews in a timely manner, which delayed the adoption of corrective action. Although these efforts have frequently been successful in achieving the desired safety objectives, a more uniform and expeditious response is considered necessary to address fuel tank safety issues.

While maintaining the benefits of FAA-TC holder cooperation, the FAA considers that a Special Federal Aviation Regulation (SFAR) provides a means for the FAA to establish clear expectations and standards, as well as a timeframe within which the design approval holders and the public can be confident that fuel tank safety issues on

the affected airplanes will be uniformly examined.

This proposed rulemaking is intended to ensure that the design approval holder completes a comprehensive assessment of the fuel tank system and develops any required inspections, maintenance instructions, or modifications.

#### *Safety Review*

The proposed SFAR would require the design approval holder to perform a safety review of the fuel tank system to show that fuel tank fires or explosions will not occur on airplanes of the approved design. In conducting the review, the design approval holder would be required to demonstrate compliance with the standards proposed in this notice for § 25.981(a) and (b) (discussed below) and the existing standards of § 25.901. As part of this review, the design approval holder would be required to submit a report to the cognizant FAA Aircraft Certification Office (ACO) that substantiates that the fuel tank system is fail-safe.

The FAA intends that those failure conditions listed previously in this notice, and any other foreseeable failures, should be assumed when performing the system safety analysis needed to substantiate that the fuel tank system design is fail-safe. The system safety analysis should be prepared considering all airplane inflight, ground, service, and maintenance conditions, assuming that an explosive fuel air mixture is present in the fuel tanks at all times, unless the fuel tank has been purged of fuel vapor for maintenance. The design approval holder would be expected to develop a failure modes and effects analysis (FMEA) for all components in the fuel tank system. Analysis of the FMEA would then be used to determine whether single failures, alone or in combination with foreseeable latent failures, could cause an ignition source to exist in a fuel tank. A subsequent quantitative fault tree analysis should then be developed to determine whether combinations of failures expected to occur in the life of the affected fleet could cause an ignition source to exist in a fuel tank system.

Because fuel tank systems typically have few components within the fuel tank, the number of possible sources of ignition is limited. The system safety analysis required by this proposed rule would include all components or systems that could introduce a source of fuel tank ignition. This may require analysis of not only the fuel tank system components, (e.g., pumps, fuel pump power supplies, fuel valves, fuel quantity indication system probes,

wiring, compensators, densitometers, fuel level sensors, etc.), but also other airplane systems that may affect the fuel tank system. For example, failures in airplane wiring or electromagnetic interference from other airplane systems could cause an ignition source in the airplane fuel tank system under certain conditions and therefore would have to be included in the system safety analysis. A proposed revision to AC 25.981-1A, discussed later in this document, is being developed to provide guidance on performing the safety review.

The intent of the design review proposed in this notice is to assure that each fuel tank system design that is affected by this action will be fully assessed and that the design approval holder identifies any required modifications, added flight deck or maintenance indications, and/or maintenance actions necessary to meet the fail-safe criteria.

#### *Maintenance Instructions*

The FAA anticipates that the safety review would identify critical areas of the fuel tank and other related systems that would require maintenance actions to account for the effects of aging, wear, corrosion, and possible contamination on the fuel tank system. For example, service history indicates that copper-sulfur deposits may form on fuel tank components, including bonding straps and FQIS components, which could degrade the intended design capabilities by providing a mechanism by which arcing could occur. Therefore, it might be necessary to provide maintenance instructions to identify and eliminate such deposits.

The proposed SFAR would require that the design approval holder develop any specific maintenance and inspection instructions necessary to maintain the design features required to preclude the existence or development of an ignition source within the fuel tank system. These instructions would have to be established to ensure that an ignition source will not develop throughout the remaining operational life of the airplane.

#### *Possible Airworthiness Directives*

The design review may also result in identification of unsafe conditions on certain airplane models that would require issuance of airworthiness directives. For example, as discussed previously in this notice, the FAA has required or proposed requirements for design changes to the Boeing 737, 747, and 767; Boeing Douglas Products Division DC-10 and Lockheed L-1011 airplanes. Design practices utilized on

these models may be similar to those of other airplane types; therefore, the FAA expects that modifications to airplanes with similar design features may also be required.

The number and scope of any possible AD's may vary by airplane type design. For example, wiring separation and shielding of FQIS wires on newer technology airplanes significantly reduces the likelihood of an electrical short causing an electrical arc in the fuel tank; many newer transport airplanes do not route electrical power wiring to fuel pumps inside the airplane fuel tanks. Therefore, some airplane models may not require significant modifications or additional dedicated maintenance procedures. Other models may require significant modifications or more maintenance. For example, the FQIS wiring on some older technology airplanes is routed in wire bundles with high voltage power supply wires. The original failure analyses conducted on these airplane types did not consider the possibility that the fuel quantity indication system may become degraded allowing a significantly lower voltage level to produce a spark inside the fuel tank. Causes of degradation observed in service include aging, corrosion, or undetected contamination of the system. As previously discussed, the FAA has issued AD actions for certain Boeing 737 and 747 airplanes to address this condition. Modification of similar types of installations on other airplane models may be required to address this unsafe condition and to achieve a fail-safe design.

It should be noted that any design changes may, in themselves, require maintenance actions. For example, transient protection devices typically require scheduled maintenance in order to detect latent failure of the suppression feature. As a part of the required design review, the manufacturer would define the necessary maintenance procedures and intervals for any required maintenance actions.

#### *Applicability of the Proposed SFAR*

As proposed, the SFAR would apply to holders of TCs, and STCs for modifications that affect the fuel tank systems of turbine-powered transport category airplanes, for which the TC was issued after January 1, 1958, and the airplane has a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7500 pounds or more. The SFAR would also apply to applicants for type certificates, amendments to a type certificate, and supplemental type certificates affecting

the fuel tank systems for those airplanes identified above if the application was filed before the effective date of the proposed SFAR and the certificate was not issued before the effective date of the SFAR. The FAA has determined that turbine-powered airplanes, regardless of whether they are turboprops or turbojets, should be subject to the rule, because the potential for ignition sources in fuel tank systems is unrelated to the engine design. This would result in the coverage of the large transport category airplanes where the safety benefits and public interest are greatest. This action would affect approximately 6,000 U.S. registered airplanes in part 91, 121, 125, and 129 operations.

The date January 1, 1958, was chosen so that only turbine-powered airplanes, except for a few 1953-1958 vintage Convair 340s and 440s converted from reciprocating power, would be included. No reciprocating-powered transport category airplanes are known to be used currently in passenger service, and the few remaining in cargo service would be excluded. Compliance is not proposed for those older airplanes because their advanced age and small numbers would likely make compliance impractical from an economic standpoint. This is consistent with similar exclusions made for those airplanes from other requirements applicable to existing airplanes, such as the regulations adopted for flammability of seat cushions (49 FR 43188, October 24, 1984); flammability of cabin interior components (51 FR 26206, July 21, 1986); cargo compartment liners (54 FR 7384, February 17, 1989); access to passenger emergency exits (57 FR 19244, May 4, 1992); and Class D cargo or baggage compartments (63 FR 8032, February 17, 1998).

In order to achieve the benefits of this rulemaking for large transport airplanes as quickly as possible, the FAA has decided to proceed with this rulemaking with the applicability of the SFAR limited to airplanes with a maximum certificated passenger capacity of at least 30 or at least 7,500 pounds payload. Compliance is not proposed for smaller airplanes because it is not clear at this time that the possible benefits for those airplanes would be commensurate with the costs involved. However, the FAA intends to undertake a full regulatory evaluation of applying these requirements to small transport category and commuter category airplanes to determine the merits of subsequently extending the rule to airplanes with a passenger capacity of fewer than 30 and less than 7,500 pounds payload. Therefore, the FAA specifically requests comments as to the feasibility of

requiring holders of type certificates issued prior to January 1, 1958, or for airplanes having a passenger capacity of fewer than 30 and less than 7,500 pounds payload, to comply and the safety benefits likely to be realized.

#### *Supplemental Type Certificates (STC)*

The FAA considers that this rule should apply to STC holders as well, because a significant number of STCs effect changes to fuel tank systems, and the objectives of this proposed rule would not be achieved unless these systems are also reviewed and their safety ensured. The service experience noted in the background of this proposed rule indicates modifications to airplane fuel tank systems incorporated by STCs may affect the safety of the fuel tank system.

Modifications that could affect the fuel tank system include those that could result in an ignition source in the fuel tank. Examples include installation of auxiliary fuel tanks and installation of, or modification to, other systems such as the fuel quantity indication system, the fuel pump system (including electrical power supply), airplane refueling system, any electrical wiring routed within or adjacent to the fuel tank, and fuel level sensors or float switches. Modifications to systems or components located outside the fuel tank system may also affect fuel tank safety. For example, installation of electrical wiring for other systems that was inappropriately routed with FQIS wiring could violate the wiring separation requirements of the type design. Therefore, the FAA intends that a fuel tank system safety review be conducted for any modification to the airplane that may affect the safety of the fuel tank system. The level of evaluation that is intended would be dependent upon the type of modification. In most cases a simple qualitative evaluation of the modification in relation to the fuel tank system, and a statement that the change has no effect on the fuel tank system, would be all that is necessary. In other cases where the initial qualitative assessment shows that the modification may affect the fuel tank system, a more detailed safety review would be required.

Design approvals for modification to airplane fuel tank systems approved by STCs require the applicant to have knowledge of the airplane fuel tank system in which the modification is installed. The majority of these approvals are held by the original airframe manufacturers or airplane modifiers that specialize in fuel tank system modifications, such as installation of auxiliary fuel tanks.

Therefore, the FAA expects that the data needed to complete the safety review proposed in this notice would be available to the STC holder.

#### *Compliance*

This notice proposes a 12-month compliance time from the effective date of the final rule, or within 12 months after the issuance of a certificate for which application was filed before the effective date of this SFAR, whichever is later, for design approval holders to conduct the safety review and develop the compliance documentation and any required maintenance and inspection instructions. The FAA would expect each design approval holder to work with the cognizant FAA Aircraft Certification Office (ACO) and Aircraft Evaluation Group (AEG) to develop a plan to complete the safety review and develop the required maintenance and inspection instructions within the 12 month period. The plan should include periodic reviews with the ACO and AEG of the ongoing safety review and the associated maintenance and inspection instructions.

During the proposed 12-month compliance period, the FAA is committed to working with the affected design approval holders to assist them in complying with the requirements of this proposed SFAR. However, failure to comply within the specified time would constitute a violation of the proposed requirements and may subject the violator to certificate action to amend, suspend, or revoke the affected certificate in accordance with 49 U.S.C. § 44709. It may also subject the violator to a civil penalty of not more than \$1,100 per day until the SFAR is complied with, in accordance with 49 U.S.C. § 46301.

#### **Proposed Operating Requirements**

This proposed rule would require that affected operators incorporate FAA-approved fuel tank system maintenance and inspection instructions in their maintenance or inspection program within 18 months of the effective date of the proposed rule. If the design approval holder has complied with the SFAR and developed an FAA-approved program, the operator could incorporate that program to meet the proposed requirement. The operator would also have the option of developing its own program independently, and would be ultimately responsible for having an FAA-approved program, regardless of the action taken by the design approval holder.

The proposed rule would prohibit the operation of certain transport category airplanes operated under parts 91, 121,

125, and 129 beyond a specified compliance time, unless the operator of those airplanes has incorporated FAA-approved fuel tank maintenance and inspection instructions in its maintenance or inspection program, as applicable. The proposed regulation would require that the maintenance and inspection instructions be approved by the Administrator; for the purposes of this rule, the Administrator is considered to be the manager of the cognizant FAA ACO.

The operator would need to consider the following:

1. The fuel tank system maintenance and inspection instructions that would be incorporated into the operator's existing maintenance or inspection program would need to be approved by the FAA ACO having cognizance over the TC of the airplane. If the operator can establish that the existing maintenance and inspection instructions fulfill the requirements of this proposed rule, then the ACO may approve the operator's existing maintenance and inspection instructions without change.

2. The means by which the FAA-approved fuel tank system maintenance and inspection instructions would be incorporated into a certificate holder's FAA-approved maintenance or inspection program would be subject to approval by the certificate holder's principal maintenance inspector (PMI) or other cognizant airworthiness inspector. The FAA intends that any escalation to the FAA-approved inspection intervals would require the operator to receive FAA approval of the amended program. Any request for escalation to the FAA approved inspection intervals would need to include data to substantiate that the proposed interval will provide the level of safety intended by the original approval. If inspection results and service experience indicate that additional or more frequent inspections are necessary, the FAA may issue AD's to mandate such changes to the inspection program.

3. This rule would not impose any new reporting requirements; however, normal reporting required under 14 CFR §§ 121.703 and 125.409 would still apply.

4. This rule would not impose any new FAA recordkeeping requirements. However, as with all maintenance, the current operating regulations (e.g., 14 CFR §§ 121.380 and 91.417) already impose recordkeeping requirements that would apply to the actions required by this proposed rule. When incorporating the fuel tank system maintenance and inspection instructions into its

approved maintenance or inspection program, each operator should address the means by which it will comply with these recordkeeping requirements. That means of compliance, along with the remainder of the program, would be subject to approval by the cognizant PMI or other cognizant airworthiness inspector.

5. The maintenance and inspection instructions developed by the TC holder under the proposed rule generally would not apply to fuel tank systems modified by an STC, including any auxiliary fuel tank installations or other modifications. The operator, however, would still be responsible to incorporate specific maintenance and inspection instructions applicable to the entire fuel tank system that meet the requirements of this proposed rulemaking. This means that the operator should evaluate the fuel tank systems and any alterations to the fuel tank system and then develop, submit, and gain FAA approval of the maintenance and inspection instructions to evaluate repairs to such fuel tank systems.

The FAA recognizes that operators may not have the resources to develop maintenance or inspection instructions for the airplane fuel tank system. The proposed rule would therefore require the TC and STC holders to develop fuel tank system maintenance and inspection instructions that may be used by operators. If however, the STC holder is out of business or otherwise unavailable, the operator would independently have to acquire the FAA-approved inspection instructions. To keep the airplanes in service, operators, either individually or as a group, could hire the necessary expertise to develop and gain approval of maintenance and inspection instructions. Guidance on how to comply with this aspect of the proposed rule would be provided in the planned revision to AC 25.981-1A.

After the PMI having oversight responsibilities is satisfied that the operator's continued airworthiness maintenance or inspection program contains all of the elements of the FAA-approved fuel tank system maintenance and inspection instructions, the airworthiness inspector would approve the maintenance or inspection program revision. This approval would have the effect of requiring compliance with the maintenance and inspection instructions.

#### *Applicability of the Proposed Operating Requirements*

This proposed rule would prohibit the operation of certain transport category airplanes operated under 14 CFR parts 91, 121, 125, and 129 beyond a specified

compliance time, unless the operator of those airplanes has incorporated FAA-approved specific maintenance and inspection instructions applicable to the fuel tank system in its approved maintenance or inspection program, as applicable. The operational applicability was established so that all airplane types affected by the SFAR, regardless of type of operation, would be subject to FAA approved fuel tank system maintenance and inspection procedures. As discussed earlier, this proposed rulemaking would include each turbine-powered transport category airplane model, provided its TC was issued after January 1, 1958, and it has a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more.

#### *Field Approvals*

A significant number of changes to other transport category airplane fuel tank systems have been incorporated through field approvals issued to the operators of those airplanes. These changes may also significantly affect the safety of the fuel tank system. The operator of any airplane with such changes would be required to develop the fuel tank system maintenance and inspection program instructions and submit it to the FAA for approval, together with the necessary substantiation of compliance with the design review requirements of the SFAR.

#### *Compliance*

This notice proposes an 18 month compliance time from the effective date of the final rule for operators to incorporate FAA-approved long term fuel tank system maintenance and inspection instructions into their approved program. The FAA would expect each operator to work with the airplane TC holder or STC holder to develop a plan to implement the required maintenance and inspection instructions within the 18 month period. The plan should include periodic reviews with the cognizant ACO and AEG that would approve the associated maintenance and inspection instructions.

#### **Proposed Changes to Part 25**

Currently, § 25.981 defines limits on surface temperatures within transport airplane fuel tank systems. In order to address future airplane designs, the FAA proposes to revise § 25.981 to address both prevention of ignition sources in fuel tanks and reduction in the time fuel tanks contain flammable vapors. The first proposal would

explicitly include a requirement for effectively precluding ignition sources within the fuel tank systems of transport category airplanes. The second proposal would require minimizing the formation of flammable vapors in the fuel tanks.

#### *Fuel Tank Ignition Source Proposal*

The title of § 25.981 would be changed from "Fuel tank temperature" to "Fuel tank ignition prevention." The FAA proposes to retain the substance of existing paragraph (a), which requires the applicant to determine the highest temperature that allows a safe margin below the lowest expected auto ignition temperature of the fuel; and the existing paragraph (b), which requires precluding the temperature in the fuel tank from exceeding the temperature determined under paragraph (a). These requirements are redesignated as (a)(1) and (2) respectively.

Compliance with these paragraphs requires the determination of the fuel flammability characteristics of the fuels approved for use. Fuels approved for use on transport category airplanes have differing flammability characteristics. The fuel with the lowest autoignition temperature is JET A (kerosene), which has an autoignition temperature of approximately 450 °F at sea level. The autoignition temperature of JP-4 is approximately 470 °F at sea level. Under the same atmospheric conditions the autoignition temperature of gasoline is approximately 800 °F. The autoignition temperature of these fuels increases at increasing altitudes (lower pressures). For the purposes of this rule the lowest temperature at which autoignition can occur for the most critical fuel approved for use should be determined. The FAA intends that a temperature providing a safe margin is at least 50 °F below the lowest expected autoignition temperature of the fuel throughout the altitude and temperature envelopes approved for the airplane type for which approval is requested.

This proposal would also add a new paragraph (a)(3) to require that a safety analysis be performed to demonstrate that the presence of an ignition source in the fuel tank system could not result from any single failure, from any single failure in combination with any latent failure condition not shown to be extremely remote, or from any combination of failures not shown to be extremely improbable.

These new requirements define three scenarios that must be addressed in order to show compliance with the proposed paragraph (a)(3). The first scenario is that any single failure, regardless of the probability of occurrence of the failure, must not cause

an ignition source. The second scenario is that any single failure, regardless of the probability occurrence, in combination with any latent failure condition not shown to be at least extremely remote (i.e., not shown to be extremely remote or extremely improbable), must not cause an ignition source. The third scenario is that any combination of failures not shown to be extremely improbable must not cause an ignition source.

For the purpose of this proposed rule, "extremely remote" failure conditions are those not anticipated to occur to each airplane during its total life, but which may occur a few times when considering the total operational life of all airplanes of the type. This definition is consistent with that proposed by the Aviation Rulemaking Advisory Committee (ARAC) for a revision to FAA AC 25.1309-1A and that currently used by the Joint Aviation Authorities (JAA) in AMJ 25.1309. "Extremely improbable" failure conditions are those so unlikely that they are not anticipated to occur during the entire operational life of all airplanes of one type. This definition is consistent with the definition provided in FAA AC 25.1309-1A and retained in the draft revision to AC 25.1309-1A proposed by the ARAC.

The severity of the external environmental conditions that should be considered when demonstrating compliance with this proposed rule are those established by certification regulations and special conditions (e.g., HIRF), regardless of the associated probability. The proposed regulation would also require that the effects of manufacturing variability, aging, wear, and likely damage be taken into account when demonstrating compliance.

The proposed requirements are consistent with the general powerplant installation failure analysis requirements of § 25.901(c) and the systems failure analysis requirements of § 25.1309 as they have been applied to powerplant installations. This proposal is needed because the general requirements of §§ 25.901 and 25.1309 have not been consistently applied and documented when showing that ignition sources are precluded from transport category airplane fuel tanks.

Compliance with the proposed revision to § 25.981 would require analysis of the airplane fuel tank system using analytical methods and documentation currently used by the aviation industry in demonstrating compliance with §§ 25.901 and 25.1309. In order to eliminate any ambiguity as to the necessary methods of compliance, the proposed rule explicitly requires that

the existence of latent failures be assumed unless they are extremely remote, which is currently required under § 25.901, but not under § 25.1309. The analysis should be conducted assuming design deficiencies listed in the background section of this notice, and any other failure modes identified within the fuel tank system functional hazard assessment.

Based upon the evaluations required by paragraph (a), a new requirement would be added to paragraph (b) to require that critical design configuration control limitations, inspections, or other procedures be established as necessary to prevent development of ignition sources within the fuel tank system, and that they be included in the Airworthiness Limitations section of the ICA required by § 25.1529. This requirement would be similar to that contained in § 25.571 for airplane structure. Appendix H to part 25 would also be revised to add a requirement to provide any mandatory fuel tank system inspections or maintenance actions in the limitations section of the ICA.

Critical design configuration control limitations include any information necessary to maintain those design features that have been defined in the original type design as needed to preclude development of ignition sources. This information is essential to ensure that maintenance, repairs or alterations do not unintentionally violate the integrity of the original fuel tank system type design. An example of a critical design configuration control limitation for current designs discussed previously would be maintaining wire separation between FQIS wiring and other high power electrical circuits. The original design approval holder must define a method of ensuring that this essential information will be evident to those that may perform and approve such repairs and alterations. Placards, decals or other visible means must be placed in areas of the airplane where these actions may degrade the integrity of the design configuration. In addition, this information should be communicated by statements in appropriate manuals, such as Wiring Diagram Manuals.

#### *Flammability Proposal*

The FAA agrees with the intent of the recommended regulatory text recommended by the ARAC. However, due to the short timeframe that the ARAC was provided to complete the tasking, sufficient detailed economic evaluation was not completed to determine if practical means, such as ground based inerting, were available to reduce the exposure below the specific

value of 7 percent of the operational time included in the ARAC proposal. In addition the 7 percent level of flammability proposed by the FTHWG does not minimize flammability on certain applications, while in other applications, such as very short haul operations, it may not be practical to achieve. Therefore, the FAA is proposing a more objective regulation that is intended to minimize exposure to operation with flammable conditions in the fuel tanks.

As discussed previously, the ARAC has submitted a recommendation to the FAA that the FAA continue to evaluate means for minimizing the development of flammable vapors within the fuel tanks. Development of a definitive standard to address this recommendation will require a significant research effort that will likely take some time to complete. In the meantime, however, the FAA is aware that historically certain design methods have been found acceptable that, when compared to readily available alternative methods, increase the likelihood that flammable vapors will develop in the fuel tanks. For example, in some designs, including the Boeing 747, air conditioning packs have been located immediately below a fuel tank without provisions to reduce transfer of heat from the packs to the tank.

Therefore, in order to preclude the future use of such design practices, this proposal would revise § 25.981 to add a requirement that fuel tank installations be designed to minimize the development of flammable vapors in the fuel tanks. Alternatively, if an applicant concludes that such minimization is not advantageous, it may propose means to mitigate the effects of an ignition of fuel vapors in the fuel tanks. For example, such means might include installation of fire suppressing polyurethane foam or installation of an explosion suppression system.

This proposal is not intended to prevent the development of flammable vapors in fuel tanks because total prevention has currently not been found to be feasible. Rather, it is intended as an interim measure to preclude, in new designs, the use of design methods that result in a relatively high likelihood that flammable vapors will develop in fuel tanks when other practicable design methods are available that can reduce the likelihood of such development. For example, the proposal would not prohibit installation of fuel tanks in the cargo compartment, placing heat exchangers in fuel tanks, or locating a fuel tank in the center wing. The proposal would, however, require that practical means, such as transferring

heat from the fuel tank (e.g., use of ventilation or cooling air), be incorporated into the airplane design if heat sources were placed in or near the fuel tanks that significantly increased the formation of flammable fuel vapors in the tank, or if the tank is located in an area of the airplane where little or no cooling occurs. The intent of the proposal is to require that fuel tanks are not heated, and cool at a rate equivalent to that of a wing tank in the transport airplane being evaluated. This may require incorporating design features to increase or provide ventilation means for fuel tanks located in the center wing box, horizontal stabilizer, or auxiliary fuel tanks located in the cargo compartment. At such time as the FAA has completed the necessary research and identified an appropriate definitive standard to address this issue, new rulemaking would be considered to revise the standard proposed in this rulemaking.

#### *Applicability of Proposed Part 25 Change*

The proposed amendments to part 25 would apply to all transport category airplane models for which an application for type certification is made after the effective date of the rule, regardless of passenger capacity or size. In addition, as currently required by the provisions of § 21.50, applicants for any future changes to existing part 25 type certificated airplanes, including STCs, that could introduce an ignition source in the fuel tank system would be required to provide any necessary Instructions for Continued Airworthiness, as required by § 25.1529 and the proposed change to the Airworthiness Limitations section, paragraph H25.4 of Appendix H. In cases where it is determined that the existing ICA are adequate for the continued airworthiness of the altered product, then it should be noted on the STC, PMA supplement, or major alteration approval.

#### **FAA Advisory Material**

In addition to the amendments proposed in this notice, the FAA is developing a proposed revision to AC 25.981-1A, "Guidelines for Substantiating Compliance With the Fuel Tank Temperature Requirements." The proposed revision will include consideration of failure conditions that could result in sources of ignition of vapors within fuel tanks. The revised AC will provide guidance on how to substantiate that ignition sources will not be present in airplane fuel tank systems following failures or malfunctions of airplane components or

systems. This AC will also include guidance for developing any limitations for the ICA that may be generated by the fuel tank system safety assessment. Public comments concerning the proposed AC will be requested by separate notice published in the **Federal Register**.

#### **Future Regulatory Actions**

The ARAC report discussed earlier does not recommend specific actions to eliminate or significantly reduce the flammability of fuel tanks in current production and the existing fleet of transport airplanes. The report, however, recommends that the FAA continue to investigate means to achieve a cost-effective reduction in flammability exposure for these airplanes. The FAA has reviewed the report and established research programs to support the further evaluation needed to establish the practicality of methods for achieving reduced flammability exposure for newly manufactured and the existing fleet of transport airplanes. The FAA intends to initiate rulemaking to address these airplanes if practical means are established.

#### **Economic Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment**

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. And fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation). In conducting these analyses, the FAA has determined that this proposed rulemaking: (1) would generate benefits that justify its costs as required by Executive Order 12866 and would be a "significant regulatory action" as defined in DOT's Regulatory Policies and Procedures; (2) would have

a significant economic impact on a substantial number of small entities; (3) would have minimal effects on international trade; and (4) would not contain a significant intergovernmental or private sector mandate. These analyses, available in the docket, are summarized as follows.

#### *Affected Industries*

Based on 1996 data, the proposal would affect 6,006 airplanes, of which 5,700 airplanes are operated by 114 carriers under part 121 service, 193 airplanes are operated by 7 carriers that operate under both part 121 and part 135, 22 airplanes are operated by 10 carriers under part 125 service, and 91 airplanes are operated by 23 carriers operating U.S.-registered airplanes under part 129. At this time, the FAA does not have information on airplanes operating under part 91 that would be affected by the proposed rulemaking; however, the FAA believes that very few airplanes operating under part 91 would be affected by the proposal.

The proposed rule would also affect 12 manufacturers holding 35 type certificates (TCs) and 26 manufacturers and airlines holding 168 supplemental type certificates (STCs). The proposed rule would also affect manufacturers of future, new part 25 type certificated airplane models and holders of future, new part 25 supplemental type certificates for new fuel tank systems. At this time, the FAA cannot predict the number of new airplane models. Based on the past 10 years average, the FAA anticipates that about 17 new fuel tank system STCs would be granted annually. The FAA requests comments on these estimates and requests that commenters provide clear supporting additional information.

#### *Benefits*

In order to quantify the benefits from preventing future fuel tank explosions, the FAA assumes that the potential U.S. fuel tank explosion rate due to an unknown internal fuel tank ignition source is similar to the worldwide fleet explosion rate over the past 10 years. On that basis, the FAA estimates that if no preventative actions were to be taken, between one and two (the expected value would be 1.25) fuel tank explosions would be expected to occur during the next 10 years in U.S. operations.

By way of illustrating the potential effectiveness of an enhanced fuel tank system inspection program, on May 14, 1998, the FAA issued AD T98-11-52 requiring the inspection of fuel boost pump wires in the center wing tank of all Boeing 737's with more than 30,000

hours. Of the 599 airplanes inspected as of June 30, 1998, 273 wire bundles had noticeable chafing to wire insulation, 33 had significant (greater than 50 percent) insulation chafing, 8 had arcing on the cable but not through the conduit, while 2 had arcing through the conduit into the fuel tank.

In light of the findings from these inspections, the FAA believes that better fuel tank system inspections would be a significant factor in discovering potential fuel tank ignition sources. The FAA anticipates that compliance with the proposal would prevent between 75 percent and 90 percent of the potential future fuel tank explosions from unknown ignition sources.

Using a value of \$2.7 million to prevent a fatality, a value of the destroyed airplane of \$20 million, an average of \$30 million for an FAA investigation of an explosion, and assuming the proposal would prevent between 75 percent and 90 percent of these potential fuel tank explosions from an unknown ignition source, the potential present value of the expected benefits discounted over 10 years at 7 percent would be between \$260 million and \$520 million.

In addition, the proposed part 25 change would reduce the length of time that an explosive atmosphere would exist in the fuel tank during certain operations for new part 25 type certificated airplanes and for new fuel tank system STCs. At this time, the FAA cannot quantify these potential benefits, but they are not expected to be considerable in the immediate future. The FAA expects that these benefits would increase over time as new part 25 type certificated airplanes replace the older part 25 type certificated airplanes in the fleet.

#### *Compliance Costs*

The proposal consists of three parts. The first two are separate but interrelated parts, each of which would impose costs on the industry. The first is the proposed SFAR. The second is the proposed operational rules changes from the recommendations following the SFAR. The third part is the proposed part 25 change.

The compliance costs for the proposed SFAR would be due to the requirement for the design approval holder to complete a comprehensive fuel tank system design assessment and to provide recommendations for the inspections and model-specific service instructions within one year from the SFAR's effective date. The assessment may identify conditions that would be addressed by specific service bulletins or unsafe conditions that would result

in FAA issuance of an airworthiness directive (AD). However, those future costs would be the result of compliance with the service bulletin or the AD and are not costs of compliance with the proposed rulemaking. Those costs would be estimated for each individual AD, when proposed. In addition, the compliance costs do not include the compliance costs from an existing fuel tank AD.

The compliance costs for the proposed operational rule changes would be due to the requirement for the air carrier to incorporate these recommendations into its fuel tank system inspection and maintenance program within 18 months from the proposal's effective date. These compliance costs do not include the costs to repair and replace equipment and wiring that is found to need repair or replacement during the inspection. Although these costs are likely to be substantial, they are attributable to existing FAA regulations that require such repairs and replacements be made to assure the airplane's continued airworthiness.

The FAA anticipates that the proposed part 25 change would have a minimal effect on the cost of future type certificated airplanes because compliance with the proposed change would be done during the design phase of the airplane model before any new airplanes would be manufactured.

In addition, the FAA determines, after discussion with industry representatives, that the proposed part 25 changes would have a minimal impact on future fuel tank system STCs because current industry design practices could be adapted to allow compliance with the proposed requirement.

#### *Costs of Fuel Tank System Design Assessments—New SFAR*

The FAA has determined that 35 TCs and 68 fuel tank system STCs (many of the 168 STCs duplicate other STCs) would need a fuel tank system design assessment. Depending upon the complexity of the fuel tank system and the number of tanks, the FAA has estimated that a fuel tank system design assessment would take between 0.5 to 2 engineer years for a TC holder and an average of 0.25 engineer years for an STC holder. The FAA estimates that developing manual revisions and service bulletins would take between 0.25 to 1 engineer years for a TC holder and an average of 0.1 engineer years for an STC holder. In addition, the FAA and the TC or STC holder would each spend between 1 day and 5 days to review, revise, and approve the

assessment and the changes to the manual.

Using a total engineer compensation rate (salary and fringe benefits plus a mark-up for hours spent by management, legal, etc. on the assessment) of \$100 an hour, the FAA estimates that the one-time fuel tank system design assessment would cost TC holders a total of \$9.5 million, it would cost STC holders a total of \$4.9 million, and it would cost the FAA about \$220,000.

The FAA requests comments on the assumptions and the methodology and also requests that commenters provide additional data.

#### *Costs of Fuel Tank System Inspections—Operational Rule Changes*

*Methodology:* The costs to air carriers of complying with the operational requirements proposed for Parts 91, 121, 125, and 129 would be the additional (incremental) labor hours and additional airplane out-of-service time to perform the enhanced fuel tank system maintenance and inspections. However, the costs of the fuel tank system inspections that have been required by recent ADs are not included as a cost of complying with the proposed operational amendments.

The FAA intends that any additional fuel tank system inspection and maintenance actions resulting from the SFAR review would occur during an airplane's regularly scheduled major maintenance checks. From a safety standpoint, repeated entry increases the risk of damage to the airplane. Thus, the proposal would not require air carriers to alter their maintenance schedules, and the FAA anticipates that few or no airplanes would be taken out of service solely to comply with the proposal unless an immediate safety concern is identified. In that case, corrective action would be mandated by an AD.

The FAA anticipates that the proposal would require additional time out of service and man-hours to complete a fuel tank system inspection and equipment and wiring testing.

The FAA-estimated number of additional hours (for both man-hours and time out of service) to perform each of the various inspections is derived primarily from the available service bulletins and from discussions with airline maintenance engineers. For those turbojet models that have not been the subject of a fuel tank system inspection service bulletin, the FAA adopted the estimated hours from existing service bulletins of similar types of turbojet models. Although there have been no fuel tank system inspection service bulletins for turboprops, the FAA

received information concerning the estimated fuel tank system inspection time for a turboprop from commuter airline maintenance personnel. Based on this information and an FAA analysis that turboprop fuel tanks are smaller and have less equipment than turbojet fuel tanks, the FAA estimates that a turboprop fuel tank system inspection would take between one-third to one-half of the time it would take for the turbojet fuel tank system inspections defined in available bulletins.

The FAA requests comments on these estimates and that commenters provide supporting data.

*Estimated Compliance Costs:* The following cost and hour estimates are summaries of the Regulatory Evaluation of the proposal. The detailed estimated compliance costs, including all assumptions and the spreadsheet used for the calculations, are in that document, which is available in the docket.

The incremental cost of complying with the operational proposals would consist of the following four components: (1) the labor hours to incorporate the recommendations into the inspections manual; (2) the labor hours needed to perform the fuel tank system inspection; (3) the cost of the additional downtime required to complete the inspection; and (4) the increased documentation and reporting of the inspection and subsequent findings.

The FAA estimates that it would take an average of 5 engineer days to incorporate the recommendations into the inspections manual, for a cost of about \$4,000 per airplane model per operator, with a total cost of about \$1.16 million.

The FAA estimates that the increased number of labor hours per airplane resulting from the enhanced fuel tank system inspection and maintenance would range from 19 hours to 110 hours in the first three years, and would decline to 9 hours to 60 hours beginning in the fourth year. Using a total compensation rate (wages plus fringe benefits) of \$70 an hour for maintenance personnel, the FAA estimates that the annual per airplane costs of compliance would range from \$1,330 to \$7,700 in each of the first 3 years and from \$630 to \$4,200 in each year thereafter.

The FAA estimates that the total annual inspection costs would be about \$21.1 million during the first year, increasing by 4.3 percent per year from the projected increase in airline operations until the fourth year, when it would decline to about \$10.1 million increasing by 4.3 percent each year

thereafter. The present value of the total operational cost, discounted at 7 percent over 10 years, would be about \$100 million.

As noted earlier, equipment costs would not be attributed to the proposal but rather to the existing FAA airworthiness requirements. For example, inspecting fuel boost pump wiring may involve its disassembly and then reinstallation. Regardless of the wiring's condition, the cost of complying with the proposal would include reinstallation time. However, if the inspection or testing revealed the need for new wiring, the new wiring cost is not attributed to the proposal.

The proposal would increase out-of-service time because only a limited number of maintenance employees can work inside of a fuel tank at any point in time, and thereby would not allow air carriers the flexibility to perform the fuel tank system inspections during regularly scheduled major maintenance checks. Thus, the time to open the tank, drain the fuel, vent the tank, and close the tank are not costs attributed to the proposal because those activities are necessary to complete a scheduled maintenance check. On that basis, the FAA estimates that this annual increase in out-of-service time would be between 11.5 hours and 32 hours per airplane for each of the first 3 years and then decline to 10 to 25 hours per airplane in each year thereafter.

The economic cost of out-of-service time is lost net revenue, which is computed using the Office of Management and Budget (OMB) determination that the average annual risk-free productive rate of return on capital is 7 percent of the average value of that airplane model. Thus, out-of-service lost net revenue per fuel tank system inspection ranges from \$50 to \$9,750 per airplane, depending upon the airplane model. Assuming one major inspection per year, the total annual out-of-service lost net revenue would be about \$6.4 million during the first year, increasing by 4.3 percent per year until the fourth year when it would decline to about \$2.95 million but increase by 4.3 percent each year thereafter. The present value of this total lost net revenue, discounted at 7 percent over 10 years, would be about \$35.6 million.

The FAA estimates that the increased annual documentation and reporting time would be one hour of recordkeeping for every 8 hours of labor time in the first three years, and one hour of recordkeeping for every 10 hours of labor time in every year thereafter. Thus, the per airplane annual documentation cost would be between \$150 and \$850 in the first three years

becoming \$100 to \$540 each year thereafter.

To estimate the total documentation cost, it is noted that there is a voluntary industry program to inspect certain airplane model fuel tanks and report the findings and corrective actions taken to the manufacturer. The reporting costs of compliance associated with the proposal would not include these airplanes. On that basis, the FAA estimates that the present value of the total recordkeeping cost discounted at 7 percent for 10 years would be about \$17.4 million.

#### *Costs of Future Fuel Tank System Design Changes—Revised Part 25*

The FAA anticipates that these discounted costs would be minimal for new type certificated airplanes because these design costs would be incurred in the future by airplane models yet to be designed. After consultation with industry, the FAA also anticipates that these discounted costs would be minimal for future fuel tank system design supplemental type certificates because the existing systems would largely be in compliance. The FAA requests comments and supporting data on these determinations.

#### *Total Costs of Proposed SFAR and Proposed Operational Rules Changes*

Thus, the FAA estimates that the present value of the total cost of complying with the proposed SFAR and the proposed operational rules changes discounted over 10 years at 7 percent would be about \$170 million.

#### *Benefit-Cost Comparison of the Proposed Part 25 Change*

Although the FAA does not have quantified costs and benefits from the proposed part 25 changes at this time, the FAA believes that the future benefits would likely be greater than the future costs. The FAA requests comments and additional data on this determination.

#### *Benefit-Cost Comparison of the Proposed SFAR and the Proposed Operational Rules Changes*

In comparing the estimated benefits and costs, the FAA determines that using the lowest expected benefit estimate, the expected present value of the benefits (\$260 million) would be about 50 percent greater than the present value of the total compliance costs (\$170 million). Thus, the FAA concludes that the proposed SFAR and the proposed operational rules changes would be cost-beneficial.

### Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination finds that it will, the agency must prepare a Regulatory Flexibility Analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify, and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear. Recently, the Office of Advocacy of the Small Business Administration (SBA) published new guidance for Federal agencies in responding to the requirements of the Regulatory Flexibility Act, as amended.

Application of that guidance to the proposed part 25 change would only affect future airplane manufacturers; and currently all manufacturers of part 25 type certificated airplanes are considered to be large manufacturers. Although the proposed changes to part 25 would also affect future fuel tank system STCs, industry sources indicate that current industry designs would meet the proposed requirement. Thus, the FAA certifies that the proposed part 25 change would not have a significant economic impact on a substantial number of small airplane manufacturing entities.

However, application of that guidance to the proposed SFAR and to the proposed operational rule changes indicates that it would have a significant economic impact on a substantial number of small air carrier entities that have one to nineteen airplanes. Accordingly, a complete preliminary regulatory flexibility

analysis was conducted for those two elements of the proposal and is summarized as follows.

1. *Reasons why the FAA is considering the proposed rule.* This proposed action is being considered in order to prevent airplane explosions and the resultant loss of life (as evidenced by TWA Flight 800). Existing fuel tank system inspection programs may not provide comprehensive, systematic prevention and control of ignition sources in airplane fuel tanks.

2. *The objectives and legal basis for the proposal.* The objective of the proposal is to ensure the continuing airworthiness of airplanes certificated with 30 or more passengers or with a payload of 7,500 pounds or more. The design approval holder [including type certificates (TC) and supplemental type certificates (STC)] would be required to perform a design fuel tank system assessment and provide recommendations and instructions concerning fuel tank system inspections and equipment and wiring testing to the operators of those airplanes, as well as to create service bulletins and provide data to the FAA to support any needed ADs. An operator working under part 91, under part 121, under part 125, and all U.S.-registered airplanes used in scheduled passenger carrying operations under part 129, would be required to incorporate these recommendations or other approved instructions into the inspection manual and to perform these inspections and tests. The legal basis for the proposal is found in 49 U.S.C. 44901 *et seq.* As a matter of policy, the FAA must, as its highest priority (49 U.S.C. 40101(d)), maintain and enhance safety and security in air commerce.

3. *All relevant federal rules that may duplicate, overlap, or conflict with the proposal.* The FAA is unaware of any federal rules that would duplicate, overlap, or conflict with the proposal.

4. *A description and an estimate of the number of small entities to which the proposal would apply.* The proposal would apply to the operators of all airplanes certificated with 30 or more passengers or a 7,500 pound or more payload operated under part 91, part 121, part 125, and all U.S.-registered airplanes operated under part 129. Standard industrial classification (SIC) coding does not exactly coincide with the subsets of operators who could be affected by the proposal. Nevertheless, using data from the SBA, the distributions of employment size and estimated receipts for all scheduled air transportation firms (SIC Code 4512), given in Table 1 below, are representative of the operators who would be affected by the proposal.

5. *The projected reporting, recordkeeping, and other compliance requirements of the proposal.* The proposal would not impose any incremental recordkeeping authority. Existing 14 CFR part 43, in part, already prescribes the content, form, and disposition of maintenance, preventive maintenance, rebuilding, and alteration records for any aircraft having a U.S. airworthiness certificate or any foreign registered aircraft used in common carriage under part 121. The FAA recognizes, however, that the proposal would necessitate additional inspection and testing work, and consequently would also require the completion of the additional recordkeeping associated with that additional work.

The FAA estimates that each 8 additional hours of actual inspection and testing required under the proposal would require one additional hour for reporting and recordkeeping (7.5 recordkeeping minutes per inspection hour). This recordkeeping would be performed by the holder of an FAA-approved repairman or maintenance certificate. The projected recordkeeping and reporting costs of the proposal are included as part of the overall costs computed in the evaluation and included below in the Regulatory Flexibility Cost Analysis.

TABLE 1.

Operator Category (No. of employees)	Number of firms	Estimated receipts (in \$1,000)
0-4 .....	153	193,166
5-9 .....	57	145,131
10-19 .....	56	198,105
20-99 .....	107	1,347,711
101-499 ...	74	3,137,624
500+ .....	73	112,163,942
Total	520	117,185,679

Table 2 categorizes the estimated number of operators by number of airplanes that would be affected by the proposal and provides an estimate of the total number of affected airplanes in that operator category. Based on existing operator/airplane distributions, the FAA estimates that 131 U.S. operators would be subject to the proposal. (Note that this excludes the 19 non-U.S. owners of U.S.-registered airplanes that would be affected by the proposal. It should also be noted that Table 2 excludes Boeing 747 models, and, therefore, operators who exclusively fly Boeing 747s.)

TABLE 2.

Operator category	No. of operators	Total No. of airplanes
0-4 .....	48	93
5-9 .....	17	108
10-19 .....	22	271
20-29 .....	13	277
30-39 .....	4	145
40-49 .....	5	220
Total 0-50	109	1,114
50+ .....	22	4,594
U.S. Total	131	5,708
Non-U.S. ....	23	62
Total .....	154	5,770

6. Regulatory Flexibility Cost

*Analysis.* The proposal would consist of two actions affecting small business expenses. The first action, the proposed SFAR, would require all design approval TC holders and fuel tank system STC holders: (1) to complete a fuel tank system design assessment and to generate future service bulletins and provide data to the FAA; and (2) to provide operators with recommendations for fuel tank system

inspections, testing, and maintenance. The second action, the proposed operational rules changes, would require that operators incorporate these recommendations for an enhanced fuel tank system inspection and equipment and wiring testing into the inspection and maintenance manuals. This proposal would apply to both existing and future production airplanes and to future TCs and STCs. This Regulatory Flexibility Cost Analysis focuses on the

costs to operators of existing and future production airplanes, because almost 99 percent of the estimated costs of the proposal would be incurred by operators of those airplanes.

Table 3 summarizes the results for the total annualized compliance costs for U.S. operators only and also provides the estimated cost per operator and per airplane by each operator size category.

TABLE 3.

Operator category (No. of airplanes)	Total costs	Per operator cost	Per airplane cost
0-4 .....	\$293,000	\$6,100	\$3,150
5-9 .....	275,000	16,175	2,550
10-19 .....	1,123,000	51,050	4,150
20-29 .....	784,000	60,300	2,825
30-39 .....	234,000	58,500	1,600
40-49 .....	262,000	52,400	1,200
Total 0-4 .....	2,971,000	27,250	2,675
50+ .....	17,820,000	810,000	3,775
Total .....	20,791,000	158,700	3,650

7. Affordability Analysis. Although the FAA lacks financial data for most of the smallest operators, if the average operating revenues, calculated to be about \$1.25 million for the category of 0 to 4 employees from Table 1, are compared to the average annualized compliance costs from Table 3 (an admittedly crude method), it appears that the average operator would pay no more than 0.5 percent of operating revenues, based on an average annual risk-free return of 7 percent of the value of the airplane, to comply with the proposal. On that basis, most small entities would be able to offset the incremental compliance costs. Nevertheless, it is likely that there would be some of the very small

operators (those with 1 to 9 affected airplanes) that may have difficulties in offsetting these incremental costs. However, due to the unavailability of current financial data from the Department of Transportation on these smallest operators, the FAA cannot more definitively determine the potential impact on these smallest affected operators. The FAA solicits comments on these costs and requests that all comments be accompanied with clear supporting data.

8. Disproportionality analysis. The principle factors determining the compliance cost for an operator would be the type of airplane model in the operator's fleet and the number of airplanes that would be affected by the

proposal. As noted in the compliance cost section, the cost to inspect the fuel tank system of larger transport category airplane models would be 3 to 4 times more than the cost for a small transport category turboprop. Consequently, as seen in Table 3, the average per airplane compliance cost for operators with more than 50 airplanes is generally higher than the average cost per airplane for operators with fewer than 50 airplanes. This is due to the predominance of turboprops in the 30-50 airplane fleets, which would have the lowest compliance costs. However the per airplane cost for operators with 1 to 29 airplanes is higher than for the 30 to 50 airplane operators. Many of the smallest operators with fewer airplanes are cargo

operators utilizing larger and older turbojets, and they have fewer airplanes available to average the fixed costs associated with compliance with the proposal. Nevertheless, in general, the average compliance cost per airplane is relatively consistent for operators with fewer than 50 affected airplanes.

Further, the compliance cost relative to these airplanes operating revenues would be relatively small. As a result, the FAA does not believe that small entities, as a group, would be disadvantaged relative to large air carriers due solely to the slight disproportionate cost effects from compliance with the proposal.

9. *Competitiveness Analysis.* The proposal would likely impose significant costs on some of the smallest air carriers (those with 1 to 19 airplanes) and, as a consequence, may affect the relative position of these carriers in their markets. However, most of these smallest air carriers operate in "niche" markets in which the competition that occurs arises from other small operators using largely similar equipment and often competing on the basis of service rather than on the basis of price. In such markets, the number of competitors is very limited. For example, Atlas Air specializes in supplying international air cargo by using large all-cargo airplanes to carry bulky cargo, like oil rig equipment. Similarly, Northern Air Cargo specializes in mail and air cargo to rural Alaska.

The FAA believes that most of the markets served by these smallest air carriers are low-volume niche markets that larger air carriers have in many cases abandoned, because the larger air carriers' fleets have been designed for high-volume markets. Further, larger air carriers would not be interested in servicing most of these markets because they cannot compete on a cost basis. Thus, these smallest operators would be able to avoid direct competition with larger air carriers. As a result, to the extent that there would be adverse competitiveness effects, they would likely be minimal and they would occur with other similar-sized (1 to 19) air carriers. On that basis, the FAA concludes that small air carriers would not lose market share to larger air carriers.

The proposal would not impose significant compliance costs on a substantial number of small operators that have 20 or more airplanes that would be affected by the proposal. These operators include large regionals, medium regionals, commuter airlines, and air cargo carriers. To some extent, these operators avoid direct competition with major carriers. However, in those

markets where there is competition between the small entities and the larger air carriers, the proposal would have minimal competitive impact, because the per airplane compliance cost for a given airplane model would be roughly the same for a large and a small operator.

10. *Business Closure Analysis.* The FAA is unable to determine with certainty the extent to which small entities that would be significantly affected by the proposal would have to close their operations. Many of the very small operations (1 to 4 airplanes) operate very close to the margin, as evidenced by the constant exit from and entry into air carrier service of these types of air carriers. Consequently, in the absence of financial data, it is difficult to determine the extent to which the proposal would make the difference in an entity's remaining in business.

11. *Description of Alternatives.* In the general course of promulgating the proposed rule, the FAA has considered four approaches. The three alternatives to the proposed rule are described below. In formulating the alternatives, the FAA focused on its responsibility for aviation safety and its particular obligation under 49 U.S.C. 44717 to ensure the continuing airworthiness of airplanes. The three primary alternatives to the proposal considered by the FAA varied with respect to the number of airplanes to be included in the proposal. The proposed rule would limit the potential impact on airplanes most likely to be used by small entities, while meeting the Agency's safety responsibility.

*Alternative 1:* Require all airplanes in commercial service with more than 10 seats to be covered by the proposal.

Alternative 1 would require all airplanes operating under part 91, 121, 125, and 129 to comply with the proposal. This would also include operators supplying on-demand service under part 135. The FAA estimates that about 45 additional airplane models, about 2,360 additional airplanes, and about 550 additional operators would be covered by this proposed alternative. The airplane operation is not the principal business for many of these additional operators. In estimating these potential compliance costs, the FAA assumes that, due to their small fuel tanks and relative straightforward fuel systems, these airplanes would need one-half of the time reported for the smallest part 25 turboprop to complete the fuel tank system design assessment. In addition, the FAA assumes that it would also take one-quarter of the time reported for the smallest part 25

turboprop to complete the enhanced fuel tank system inspection and maintenance and wiring testing. Further, the FAA assumes that the out-of-service time would be one-half of the labor time to complete the inspection and testing. However, there would be no out-of-service time for part 135 on-demand airplanes because those operators would normally schedule maintenance when there was no activity. For the other operators, the FAA estimates the value of the average airplane would be about \$750,000.

The FAA estimates that the total additional compliance costs of including these operators (including the fuel tank system design assessment cost) would be about \$7.4 million in the first-year, becoming about \$1.1 million in the fourth year. The total compliance cost, discounted over 10 years at 7 percent, would be about \$17.1 million. The annualized cost, discounted over 10 years at 7 percent, would be about \$2.4 million.

This proposed alternative would not significantly increase the expected quantitative benefits because there have been no in-flight fuel tank explosions of these airplanes. In light of the absence of a fuel tank explosion accident history, the FAA does not believe at this time that the increased cost from including these smaller airplanes would be met with a commensurate level of benefits.

The FAA requests comments on these estimates and requests commenters to provide supporting data for the comments.

*Alternative 2:* Require all airplanes in commercial service with 30 or more seats (the proposed rule), plus all airplanes with 10 or more seats in scheduled commercial service, to be covered by the proposal.

Alternative 2 would add the requirement for all airplanes with 10 or more seats in scheduled commercial service operating under part 91, part 121, part 125, and part 129 to comply with the proposal. The FAA estimates that 30 additional airplane models, 724 additional airplanes, and about 84 additional operators would be covered by this proposed alternative. However, 35 of the 84 additional operators would already have airplanes that would be covered by the proposal. In estimating these potential compliance costs, the FAA makes the same assumptions that were described under Alternative 1.

On that basis, the FAA estimates that the additional compliance costs of including these operators (including the fuel tank system design assessment cost) would be about \$2.7 million in the first-year and about \$340,000 in the fourth

year. The total compliance cost, discounted over 10 years at 7 percent, would be about \$5.7 million. The annualized cost, discounted over 10 years at 7 percent, would be about \$806,000. However, as also described under Alternative 1, this proposed alternative would not significantly increase the expected quantitative benefits because there have been no in-flight fuel tank explosions of these airplanes.

The FAA requests comments on these estimates and requests commenters to provide supporting data for the comments.

*Alternative 3:* Require that only turbojet airplanes in commercial service be covered by the proposal.

This alternative would allow 1,034 turboprop airplanes certificated under part 25 to be exempt from the proposal's requirements. By doing so, it would reduce the first year cost of compliance to all of these exempted airplanes by about \$1.8 million, becoming about \$545,000 in the fourth year. The total compliance cost savings, discounted over 10 years at 7 percent, would be about \$8.3 million. The total annualized cost savings, discounted over 10 years at 7 percent, would be about \$1.2 million.

Although there have been no in-flight fuel tank explosions associated with these part 25 turboprop airplane models, the FAA believes that the underlying fuel tank system risk is similar to those of the larger turbojets. On that basis, as the FAA's estimated overall benefits are larger than its estimated overall costs, by extrapolation, removing 20 percent of the population at risk from the proposed rule would remove 20 percent of both the benefits and costs. As the benefits are estimated to be greater than the costs, the result would be a reduction in the net dollar benefits and higher safety risk. Finally, these airplanes are part 25 certificated and the FAA considers that the same level of safety should be applied to all part 25 certificated airplanes. Thus, as a result of performing the regulatory flexibility analysis and addressing the concerns of the SBA, the FAA believes that, in comparison to the two higher cost alternatives and the one lower cost alternative evaluated by the FAA, the proposal would provide the necessary level of safety in the most cost-effective manner.

12. *Special Considerations.* As seen in Table 3, on a proportional basis the proposal would have a slightly greater impact on larger air carriers. The per airplane annualized cost for a large operator with 50 or more airplanes would be \$3,775, where it would be

about \$2,675 for a smaller operator. However, this difference is relatively small, and the FAA concludes that the proposal would not alter the competitiveness of small air carriers relative to larger air carriers.

13. *Conclusion.* For a small operator with an airplane worth \$5 million, an annualized cost of \$2,675 would be equal to about three days of lost net revenue, based on an average annual risk-free productive rate of return on capital of 7 percent. However, the FAA also considers that even for small operators of these affected airplanes, the safety benefits would be greater than the compliance costs. The FAA requests comments on this analysis and requests commenters to supply supporting data for the comments.

#### *International Trade Impact Assessment*

Consistent with the Administration's belief in the general superiority, desirability, and efficacy of free trade, it is the policy of the Administrator to remove or diminish, to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and those affecting the import of foreign goods and services into the United States.

In accordance with that policy, the FAA is committed to develop as much as possible its aviation standards and practices in harmony with its trading partners. Significant cost savings can result from this, both to American companies doing business in foreign markets, and foreign companies doing business in the United States.

This proposed rule would have little or no impact on international trade. The proposed part 25 change would equally affect all future part 25 airplanes, wherever manufactured, that would be registered in the United States. Although the proposed operational rules changes would affect only U.S. registered airplanes, the net effect is expected to be small and the European Joint Aviation Authorities may consider similar regulations.

#### *Unfunded Mandates Assessment*

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104-4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2

U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of \$100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

The FAA determines that this proposed rule would not contain a significant intergovernmental or private sector mandate as defined by the Act.

#### **Federalism Implications**

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

#### **International Civil Aviation Organization (ICAO) and Joint Aviation Regulations**

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that this proposed rule would not conflict with any international agreement of the United States.

#### **Paperwork Reduction Act**

There are no new requirements for information collection associated with this proposed rule that would require approval from the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

## Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the operation of certain transport category airplanes under parts 91, 121, 125, and 129 of Title 14, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska.

### List of Subjects

#### 14 CFR Parts 21, 25, 91, 125 and 129

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

#### 14 CFR Part 121

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 21, 25, 91, 121, 125, and 129 of Title 14, Code of Federal Regulations, as follows:

#### PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

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

**Authority:** 42 U.S.C. 7572; 40105; 40113; 44701–44702, 44707, 44709, 44711, 44713, 44715, 45303.

2. In part 21, add SFAR No. XX to read as follows:

#### Special Federal Aviation Regulations

\* \* \* \* \*

#### SFAR No. XX—Fuel Tank System Fault Tolerance Evaluation Requirements

1. *Applicability.* This SFAR applies to the holders of type certificates, and supplemental type certificates affecting the airplane fuel tank system, for turbine-powered transport category airplanes, provided the type certificate was issued after January 1, 1958, and the airplane has a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7500 pounds or more. This SFAR

also applies to applicants for type certificates, amendments to a type certificate, and supplemental type certificates affecting the fuel tank systems for those airplanes identified above, if the application was filed before the effective date of this SFAR and the certificate was not issued before the effective date of this SFAR.

2. *Compliance:* No later than [12 months after the effective date of the final rule], or within 12 months after the issuance of a certificate for which application was filed before [effective date of the final rule], whichever is later, each type certificate holder, or supplemental type certificate holder of a modification affecting the airplane fuel tank system, must accomplish the following:

(a) Conduct a safety review of the airplane fuel tank system to determine that the design meets the requirements of §§ 25.901 and 25.981(a) and (b) of this chapter. If the current design does not meet these requirements, develop all design changes necessary to the fuel tank system to meet these requirements.

(b) Develop all maintenance and inspection instructions necessary to maintain the design features required to preclude the existence or development of an ignition source within the fuel tank system of the airplane.

(c) Submit a report for approval of the Administrator that:

(1) Provides substantiation that the airplane fuel tank system design, including all necessary design changes, meets the requirements of §§ 25.901 and 25.981(a) and (b) of this chapter; and

(2) Contains all maintenance and inspection instructions necessary to maintain the design features required to preclude the existence or development of an ignition source within the fuel tank system throughout the full operational life of the airplane.

#### PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

3. The authority citation for part 25 continues to read:

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44702, and 44704.

4. Section 25.981 is revised to read as follows:

#### § 25.981 Fuel tank ignition prevention.

(a) No ignition source may be present at each point in the fuel tank or fuel tank system where catastrophic failure could occur due to ignition of fuel or vapors. This must be shown by:

(1) Determining the highest temperature allowing a safe margin below the lowest expected autoignition temperature of the fuel in the fuel tanks.

(2) Demonstrating that no temperature at each place inside each fuel tank where fuel ignition is possible will exceed the temperature determined under paragraph (a)(1) of this section. This must be verified under all probable

operating, failure and malfunction conditions of each component whose operation, failure or malfunction could increase the temperature inside the tank.

(3) Demonstrating that an ignition source could not result from each single failure, from each single failure in combination with each latent failure condition not shown to be extremely remote, and from all combinations of failures not shown to be extremely improbable. The effects of manufacturing variability, aging, wear, corrosion, and likely damage must be considered.

(b) Based on the evaluations required by this section, critical design configuration control limitations, inspections or other procedures must be established as necessary to prevent development of ignition sources within the fuel tank system and must be included in the Airworthiness Limitations section of the ICA required by § 25.1529. Placards, decals or other visible means must be placed in areas of the airplane where maintenance, repairs or alterations may violate the critical design configuration limitations.

(c) The fuel tank installation must include—

(1) Means to minimize the development of flammable vapors in the fuel tanks; or

(2) Means to mitigate the effects of an ignition of fuel vapors within fuel tanks such that no damage caused by an ignition will prevent continued safe flight and landing.

5. Paragraph H25.4 of Appendix H is revised to read as follows:

#### Appendix H To Part 25—Instructions for Continued Airworthiness

##### H25.4 *Airworthiness Limitations section.*

(a) The Instructions for Continued Airworthiness must contain a section titled Airworthiness Limitations that is segregated and clearly distinguishable from the rest of the document. This section must set forth—

(1) Each mandatory replacement time, structural inspection interval, and related structural inspection procedures approved under § 25.571; and

(2) each mandatory replacement time, inspection interval, related inspection procedure, and all critical design configuration control limitations approved under § 25.981 for the fuel tank system.

(b) If the Instructions for Continued Airworthiness consist of multiple documents, the section required by this paragraph must be included in the principle manual. This section must contain a legible statement in a prominent location that reads: "The Airworthiness Limitations section is FAA-approved and specifies maintenance required under §§ 43.16 and 91.403 of the Federal Aviation Regulations, unless an alternative program has been FAA approved."

**PART 91—GENERAL OPERATING AND FLIGHT RULES**

6. The authority citation for part 91 continues to read as follows:

**Authority:** 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et. seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 21, 1983).

7. By adding a new § 91.410 to read as follows:

**§ 91.410 Fuel tank system maintenance and inspection instructions.**

After [18 months after the effective date of the final rule], no person may operate a turbine-powered transport category airplane with a type certificate issued after January 1, 1958, and a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more, unless instructions for maintenance and inspection of the fuel tank system are incorporated into its inspection program. Those instructions must be approved by the Administrator. Thereafter, the approved instructions can be revised only with the approval of the Administrator.

**PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS**

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

**Authority:** 49 U.S.C. 106(g), 40113, 40119, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44901, 44903-44904, 44912, 46105.

9. By adding a new § 121.370 to read as follows:

**§ 121.370 Fuel tank system maintenance and inspection instructions.**

After [18 months after the effective date of the final rule], no certificate holder may operate a turbine-powered transport category airplane with a type certificate issued after January 1, 1958, and a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7500 pounds or more, unless instructions for maintenance and inspection of the fuel tank system are incorporated in its maintenance program. Those instructions must be approved by the Administrator. Thereafter, the approved instructions can be revised only with the approval of the Administrator.

**PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE**

10. The authority citation for part 125 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701-44702, 44705, 44710-44711, 44713, 44716-44717, 44722.

11. By adding a new § 125.248 to read as follows:

**§ 125.248 Fuel tank system maintenance and inspection instructions.**

After [18 months after the effective date of the final rule], no certificate holder may operate a turbine-powered transport category airplane with a type certificate issued after January 1, 1958, and a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7500 pounds or more unless instructions for maintenance and inspection of the fuel tank system are incorporated in its inspection program.

Those instructions must be approved by the Administrator. Thereafter, the approved instructions can be revised only with the approval of the Administrator.

**PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRPLANE ENGAGED IN COMMON CARRIAGE**

12. The authority citation for part 129 continues to read:

**Authority:** 49 U.S.C. 106(g), 40104-40105, 40113, 40119, 44701-44702, 44712, 44716-44717, 44722, 44901-44904, 44906.

13. By amending § 129.14 by adding a new paragraph (c) to read as follows:

**§ 129.14 Maintenance program and minimum equipment list requirements for U.S.-registered airplanes.**

\* \* \* \* \*

(c) For turbine-powered transport category airplanes with a type certificate issued after January 1, 1958, and a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7500 pounds or more, no later than [18 months after the effective date of the final rule], the program required by paragraph (a) of this section must include instructions for maintenance and inspection of the fuel tank systems. Those instructions must be approved by the Administrator. Thereafter the approved instructions can be revised only with the approval of the Administrator.

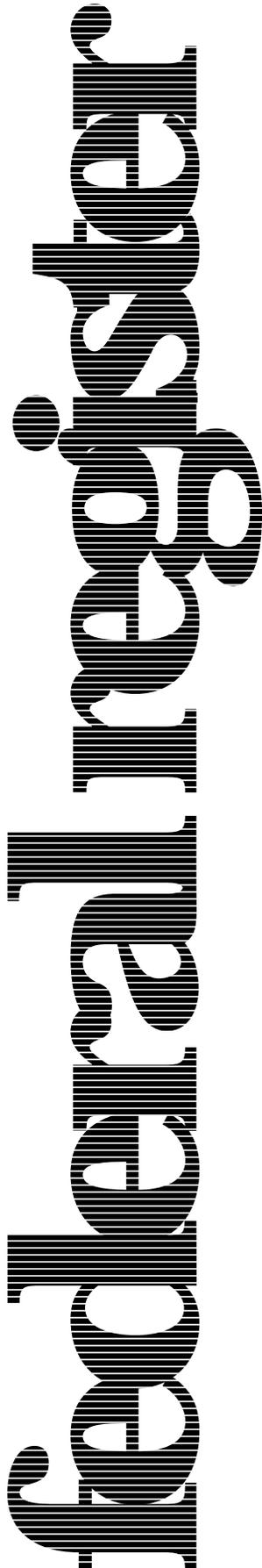
Issued in Washington, D.C., on October 26, 1999.

**Elizabeth Erickson,**

*Director, Aircraft Certification Service.*

[FR Doc. 99-28348 Filed 10-28-99; 8:45 am]

BILLING CODE 4910-13-U



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Friday  
October 29, 1999

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**Part VII**

**Environmental  
Protection Agency**

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40 CFR Part 372

Persistent Bioaccumulative Toxic (PBT)  
Chemicals; Final Rule

**ENVIRONMENTAL PROTECTION  
AGENCY**
**40 CFR Part 372**

[OPPTS-400132C; FRL-6389-11]

RIN 2070-AD09

**Persistent Bioaccumulative Toxic  
(PBT) Chemicals; Lowering of  
Reporting Thresholds for Certain PBT  
Chemicals; Addition of Certain PBT  
Chemicals; Community Right-to-Know  
Toxic Chemical Reporting**
**AGENCY:** Environmental Protection  
Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is lowering the reporting thresholds for certain persistent bioaccumulative toxic (PBT) chemicals that are subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). EPA is also adding a category of dioxin and dioxin-like compounds to the EPCRA section 313 list of toxic chemicals and establishing a 0.1 gram reporting threshold for the category. In addition, EPA is adding certain other PBT chemicals to the EPCRA section 313 list of toxic chemicals and establishing lower reporting thresholds for these chemicals. EPA is removing the fume or dust qualifier from vanadium and adding all forms of vanadium with the exception of

vanadium when contained in alloys. EPA is also adding vanadium compounds to the EPCRA section 313 list of toxic chemicals. However, EPA is not lowering the reporting thresholds for either vanadium or vanadium compounds. EPA is taking these actions pursuant to its authority under EPCRA section 313(f)(2) to revise reporting thresholds and pursuant to its authority to add chemicals and chemical categories that meet the EPCRA section 313(d)(2) toxicity criteria. The additions of these chemicals are based on their carcinogenicity or other chronic human health effects and/or their significant adverse effects on the environment.

Today's actions also include modifications to certain reporting exemptions and requirements for those toxic chemicals that are subject to the lower reporting thresholds. This document also announces the effective date of § 372.27 of the Code of Federal Regulations, which contained information collection requirements and which was originally published in the **Federal Register** on November 30, 1994.

**DATES:** 40 CFR 372.27 became effective on March 17, 1995, when the Office of Management and Budget approved its information collection requirements. This rule shall take effect on December 31, 1999. For purposes of EPCRA section 313(d)(4), the chemical additions shall be considered made as of November 30, 1999, and shall apply for the reporting year beginning January 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** For technical information on this final rule contact: Daniel R. Bushman, Petitions Coordinator, Environmental Protection Agency, Mail Code 7408, 401 M St., SW., Washington, DC 20460; telephone number 202-260-3882, e-mail address: bushman.daniel@epa.gov. For general information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1-800-535-0202, in Virginia and Alaska: 703-412-9877 or Toll free TDD: 1-800-553-7672.

**SUPPLEMENTARY INFORMATION:**
**I. General Information**
*A. Does this Action Apply to Me?*

You may be affected by this action if you manufacture, process, or otherwise use aldrin, chlordane, dioxin and certain dioxin-like compounds, heptachlor, hexachlorobenzene, isodrin, mercury, mercury compounds, methoxychlor, octachlorostyrene, pendimethalin, pentachlorobenzene, polychlorinated biphenyls, certain polycyclic aromatic compounds, tetrabromobisphenol A, toxaphene, trifluralin, and vanadium (except alloys) or vanadium compounds. See Table 1 in Unit V.C. for a more detailed listing. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of Potentially Affected Entities
Industry	SIC major group codes 10 (except 1011, 1081, and 1094), 12 (except 1241), or 20 through 39; industry codes 4911 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); 4931 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. section 6921 <i>et seq.</i> ), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis)
Federal Government	Federal facilities

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person

listed in the "FOR FURTHER INFORMATION CONTACT" section.

**B. How Can I Get Additional Information or Copies of this Document or Other Support Documents?**

1. *Electronically.* You may obtain electronic copies of this document from the EPA Internet Home Page at <http://www.epa.gov/>. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register--Environmental Documents." You can also go directly to

the "Federal Register" listings at <http://www.epa.gov/fedrgstr/>.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS-400132. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and any other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the

documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B-607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260-7099.

## II. Statutory Authority

EPA is finalizing these actions under sections 313(d)(1) and (2), 313(f)(2), 313(g), 313(h), and 328 of EPCRA, 42 U.S.C. 11023(d)(1)-(2), 11023(f)(2), 11023(g), 11023(h) and 11048; PPA section 6607, 42 U.S.C. 13106.

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using a listed toxic chemical in amounts above reporting threshold levels, to report certain facility specific information about such chemicals, including the annual quantity entering each environmental medium. These reports must be filed by July 1 of each year for the previous calendar year. Such facilities also must report pollution prevention and recycling data for these chemicals, pursuant to section 6607 of PPA.

### A. What is the Authority for the Addition of Chemicals?

Section 313 established an initial list of toxic chemicals comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add or delete chemicals from the list, and sets forth criteria for these actions. EPA has added and deleted chemicals from the original statutory list on the basis of the criteria in subparagraph (A), (B) and/or (C) of subsection (d)(2) of EPCRA section 313. Under section 313(e)(1), any person may petition EPA to add chemicals to, or delete chemicals from, the list on the grounds that it does or does not meet the criteria at 313(d)(2)(A) or (B). Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days, either by initiating a rulemaking or by publishing an explanation of why the petition is denied. EPCRA section 313(d)(2) states that a chemical may be added to the list if any of the three listing criteria set forth there are met. Therefore, in order to add a chemical, EPA must find that

at least one criterion is met, but does not need to examine whether all other criteria are also met. EPA has published a statement elaborating its interpretation of the section 313(d)(2) and (3) criteria for adding and deleting chemicals from the section 313 list (at 59 FR 61432, November 30, 1994) (FRL-4922-2).

### B. What is the Authority for the Lowering of Reporting Thresholds?

EPA is finalizing these actions pursuant to its authority under EPCRA section 313(f)(2) to revise reporting thresholds. EPCRA section 313 establishes default reporting thresholds, which are set forth in section 313(f)(1). Section 313(f)(2), however, provides that EPA:

may establish a threshold amount for a toxic chemical different from the amount established by paragraph (1). Such revised threshold shall obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements of this section. The amounts established by EPA may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

This provision provides EPA with broad, but not unlimited, authority to establish thresholds for particular chemicals, classes of chemicals, or categories of facilities, and commits to EPA's discretion the determination that a different threshold is warranted. Congress also committed the determination of the levels at which to establish any alternate thresholds to EPA's discretion, requiring only that any "revised threshold shall obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements" of section 313. 42 U.S.C. 11023(f)(2).

For purposes of determining what constitutes a "substantial majority of total releases," EPA interprets the language in section 313(f)(2), "facilities subject to the requirements of [section 313]," to refer to those facilities that fall within the category of facilities described by sections 313(a) and (b), i.e., the facilities currently reporting. Subsection (a) lays out the general requirement that "the owner or operator of facilities subject to the requirements of this section shall" file a report under EPCRA section 313. Subsection (b) then defines the facilities subject to the requirements of this section:

[t]he requirements of this section shall apply to owners and operators of facilities that have 10 or more full-time employees and that are in Standard Industrial Classification Codes 20-39, . . . and that manufactured, processed, or otherwise used a toxic chemical listed under subsection (c) of this section in excess of the quantity of that toxic

chemical established under subsection (f) of this section during the calendar year for which a toxic chemical release form is required under this section.

Thus, in revising the reporting thresholds, EPA must ensure that, under the new thresholds, a substantial majority of releases currently being reported will continue to be reported. No further prerequisites for exercising this authority appears in the statute.

### C. What is the Authority for Modifications to Other EPCRA Section 313 Reporting Requirements?

Today's actions also include modifications to certain reporting exemptions and requirements for those toxic chemicals that are subject to the lower reporting thresholds. Congress granted EPA rulemaking authority to allow the Agency to fully implement the statute. EPCRA section 328 provides that the "Administrator may prescribe such regulations as may be necessary to carry out this chapter" (28 U.S.C. 11048).

## III. Background Information

### A. What is the General Background for this Action?

Under EPCRA section 313, Congress set the initial parameters of the Toxic Release Inventory, but also gave EPA clear authority to modify reporting in various ways, including authority to change the toxic chemicals subject to reporting, the facilities required to report, and the threshold quantities that trigger reporting. By providing this authority, Congress recognized that the TRI program would need to evolve to meet the needs of a better informed public and to refine existing information. EPA has, therefore, undertaken a number of actions to expand and enhance TRI. These actions include expanding the number of reportable toxic chemicals by adding 286 toxic chemicals and chemical categories to the EPCRA section 313 list in 1994. Further, a new category of facilities was added to EPCRA section 313 on August 3, 1993, through Executive Order 12856, which requires Federal facilities meeting threshold requirements to file annual EPCRA section 313 reports. In addition, in 1997 EPA expanded the number of private sector facilities that are required to report under EPCRA section 313 by adding seven new industrial groups to the list of covered facilities. At the same time, EPA has sought to reduce the burden of EPCRA section 313 reporting by actions such as delisting chemicals it has determined do not meet the statutory listing criteria and establishing

an alternate reporting threshold of 1 million pounds for facilities with 500 pounds or less of production-related releases and other wastes. Facilities meeting the requirements of this alternate threshold may file a certification statement (Form A) instead of reporting on the standard EPCRA section 313 form, the Form R.

In today's actions, EPA is finalizing enhanced reporting requirements that focus on a unique group of toxic chemicals. These toxic chemicals which persist and bioaccumulate in the environment are commonly referred to as persistent bioaccumulative toxic chemicals or PBT chemicals. To date, with the exception of the alternate threshold certification on Form A, EPA has not altered the statutory reporting threshold for any listed chemicals. However, as the TRI program has evolved over time and as communities identify areas of special concern, thresholds and other aspects of the EPCRA section 313 reporting requirements may need to be modified to assure the collection and dissemination of relevant, topical information and data. Towards that end, EPA is increasing the utility of TRI to the public by adding a number of chemicals to the section 313 list of toxic chemicals that persist and bioaccumulate in the environment and by lowering the reporting thresholds for a number of toxic chemicals that have these properties. Toxic chemicals that persist and bioaccumulate are of particular concern because they remain in the environment for significant periods of time and concentrate in the organisms exposed to them. EPA believes that the public understands that these PBT chemicals have the potential to cause serious human health and environmental effects resulting from low levels of release and exposure (Refs. 75 and 76). Lowering the reporting thresholds for PBT chemicals will ensure that the public has important information on the quantities of these chemicals released or otherwise managed as waste, that would not be reported under the 10,000 and 25,000 pound/year thresholds that apply to other toxic chemicals.

#### *B. What Outreach Has EPA Conducted?*

EPA has engaged in a comprehensive outreach effort. This outreach served to inform interested parties, including industry groups affected by the rule, state regulatory officials, environmental organizations, labor unions, community groups, and the general public of EPA's intention to add certain PBT chemicals to the list of toxic chemicals under EPCRA section 313 and lower the

applicable reporting thresholds for a subset of PBT chemicals. For all interested parties, EPA held three public meetings (in Chicago, IL (February 23, 1999); San Francisco, CA (March 5, 1999); and Washington, DC (February 16, 1999)) during the comment period for the proposal. Participants included a range of industry representatives, trade associations (representing both small and large businesses), law firms representing industry groups, environmental groups, the general public, plus other groups and organizations. For state and tribal governments, EPA attended the regularly-held public meetings of the Forum on State and Tribal Toxics Action (FOSTTA) to discuss the PBT proposal. EPA also received substantial public comment on this proposal, to which EPA is responding in this Final Rule and the Response to Comments document (Ref. 69). In response to the strong interest by the public, and to allow more individuals and groups to submit their comments, EPA extended the public comment period to April 7, 1999 (at 64 FR 9957, March 1, 1999) (FRL-6066-1). Additional information regarding EPA's outreach may be found in supporting documents included in the public version of the official record.

#### **IV. Summary of Proposal**

##### *A. What Chemicals Did EPA Propose to Add to the EPCRA Section 313 List of Toxic Chemicals?*

In an initial screening of PBT chemicals that appear on the list of chemicals of concern in the various chemical initiatives, EPA identified seven chemicals and one category of chemicals that persist and bioaccumulate in the environment but that were not on the list of EPCRA section 313 toxic chemicals. Although identification of these chemicals for initial consideration prior to this rulemaking was based on their status as PBT chemicals, their proposed addition in this rulemaking was based solely on the determination that they meet the EPCRA section 313(d)(2) listing criteria. All of the chemicals proposed for addition were found to be reasonably anticipated to cause serious or irreversible chronic human health effects at relatively low doses or ecotoxicity at relatively low concentrations, and thus are considered to have moderately high to high chronic toxicity or high ecotoxicity. The chemicals and chemicals categories EPA proposed to add to the list of EPCRA section 313 toxic chemicals include: Dioxin and dioxin-like compounds category, benzo(g,h,i)perylene,

benzo(j,k)fluorene (fluoranthene), 3-methylcholanthrene, octachlorostyrene, pentachlorobenzene, tetrabromobisphenol A (TBBPA), vanadium (except alloys) and vanadium compounds.

##### *B. What Persistence and Bioaccumulation Issues Did EPA Consider?*

As noted above, for purposes of the proposed rule, EPA conducted its first, limited review of chemicals for their persistence and bioaccumulation properties under EPCRA section 313. EPA first established criteria to be used under section 313 for determining if a chemical persists or bioaccumulates in the environment. These criteria were then applied to determine whether the chemicals included in the review have the potential to persist and bioaccumulate in the environment. The initial group of chemicals reviewed were the result of EPA's screening assessment of two lists of persistent and bioaccumulative chemicals: (1) The Great Lakes Binational Level 1 list (Ref. 24); and (2) chemicals that received high scores for persistence and bioaccumulation in the initial version of the Waste Minimization Prioritization Tool (WMPT) developed by EPA's Office of Solid Waste (Ref. 74). Finally, included in this initial review were the chemicals included in the dioxin and dioxin-like compounds category that EPA had proposed for addition to the section 313 list in 1997 (at 62 FR 24887, May 7, 1997) (FRL-5590-1).

1. *Persistence.* A chemical's persistence refers to the length of time the chemical can exist in the environment before being destroyed (i.e., transformed) by natural processes. The proposal discussed those aspects of persistence that are important to consider in determining a chemical's persistence in the environment and set forth the criteria that EPA used for determining whether a chemical is persistent for purposes of reporting under EPCRA section 313. Numerous organizations and internationally negotiated agreements have set numerical criteria for environmental persistence, many of which have been developed through consensus processes (Ref. 68). Of those reviewed, the criteria for persistence in water, soil, and sediment tend to cluster around two half-lives, 1 to 2 months and 6 months while the persistence criterion for air was either a half-life of 2 or 5 days. A half-life of 6 months for water, soil, and sediment and half-lives of either 2 or 5 days for air were chosen by the international organizations as criteria for chemicals that are being banned or

severely restricted. However, EPCRA section 313 is an information collection and dissemination program. EPA believes that persistence criteria consistent with the criteria applied to chemicals that are of global or regional (e.g., Europe and the Great Lakes) concern and that are targeted for ban, restriction, or phase-out are inappropriate for such a program. Chemicals that meet the persistence criteria used in the international agreements are the extremely persistent chemicals. Applying these strict criteria to EPCRA section 313 would result in a very narrow list of chemicals that would focus on only extremely persistent chemicals. This is inconsistent with one of the fundamental tenets of right-to-know which is to provide the public with information on toxic chemicals that have the potential to cause adverse effects in their community. Further, persistence criteria of half-lives of 6 months and 5 days have not been used to establish whether a chemical is a PBT chemical but rather whether a chemical should have restrictions on its uses. The Agency stated in the proposal its belief that half-life criteria of 2 months for water, sediment, and soil and 2 days for air will include a better representative sample of chemicals that persist in the environment. Therefore, EPA used a half-life criterion of 2 months for water, sediment, and soil and a half-life of 2 days for air for the purposes of determining under EPCRA section 313 whether a toxic chemical is persistent in the environment. Under these criteria, if a toxic chemical meets any one of the media-specific criteria, it is considered to be persistent.

2. *Bioaccumulation.* Bioaccumulation is a general term that is used to describe the process by which organisms may accumulate chemical substances in their bodies. The term refers to both uptake of chemicals from water (bioconcentration) and from ingested food and sediment residues. The discussions and data on bioaccumulation in the proposed rule dealt strictly with aquatic organisms because most of the bioaccumulation data are from aquatic studies. The proposal also discussed, in detail, those aspects of determining bioaccumulation that are important to consider in assessing whether a particular chemical will bioaccumulate in the environment.

A chemical's potential to bioaccumulate can be quantified by measuring or predicting a chemical's bioaccumulation factor (BAF) or a chemical's bioconcentration factor (BCF). Sources of BAF and BCF data for the chemicals included in the proposed rule included a mixture of both

predicted and measured BAF and BCF values. The record for the proposed rule includes a document that explains the origin of the BAF or BCF value selected for each PBT chemical (Ref. 71). Most data were retrieved from the U.S. EPA's AQUIRE data base (Ref. 58) and the Japanese Chemicals Inspection and Testing Institute (CITI) data base (Ref. 18a).

As with persistence, a number of organizations and internationally negotiated agreements have set numerical criteria for bioaccumulation, many of which have been developed through a consensus processes. Of those reviewed, the criteria used for bioaccumulation was a BAF/BCF numerical value of either 5,000 or 1,000 or, in some cases, 500. The bioaccumulation criteria chosen by the international organizations as criteria for chemicals that are being banned or severely restricted was 5,000. However, for the same reasons discussed in Unit IV.B.1., EPA stated that the criteria used by the international organizations would not be appropriate for purposes of EPCRA section 313. Therefore, EPA used a BAF/BCF numerical criterion of 1,000 for determining if a chemical is bioaccumulative for purposes of EPCRA section 313.

3. *Persistence and bioaccumulation data.* In the proposal, EPA presented the bioaccumulation and persistence data for the PBT chemicals being considered. More detailed discussions of the sources of these data are provided in the support documents (Refs. 7 and 71). When considering the bioaccumulation and persistence potential of chemical categories, EPA reviewed the individual bioaccumulation and persistence data for the category members and determined in which tier the entire chemical category should be placed. For chemicals that had half-life ranges that bracketed the persistence tiers, EPA considered the types of studies supporting the half-life ranges and determined the most appropriate tier for each chemical.

#### *C. How Did EPA Propose to Address Dioxin and Dioxin-Like Compounds?*

In response to a petition from Communities For A Better Environment, EPA issued a proposed rule (at 62 FR 24887) to add a category of dioxin and dioxin-like compounds to the EPCRA section 313 list of toxic chemicals. As part of that action, EPA proposed to move 11 co-planar polychlorinated biphenyls (PCBs) from their listing under Chemicals Abstract Service Registry (CAS) Number 1336-36-3 to the dioxin and dioxin-like compounds category. However, since PCBs persist

and bioaccumulate, EPA stated its belief in the proposed rule that PCBs should be subject to lower reporting thresholds. Thus EPA believed there was no need to move the 11 co-planar PCBs to the proposed dioxin and dioxin-like compounds category. Therefore, EPA withdrew its original proposal to modify the listing for PCBs and instead proposed to lower the reporting thresholds for the current PCB listing which covers all PCBs (at 64 FR 710). Because of this change, the proposed dioxin and dioxin-like compounds category included only the 7 polychlorinated dibenzo-*p*-dioxins and the 10 polychlorinated dibenzofurans identified in the proposed rule. In order to focus reporting on those facilities that actually add to the environmental loading of the dioxin and dioxin-like compounds and to reduce reporting burden, EPA proposed to add the activity qualifier "manufacture only" to the category. This qualifier would have limited reporting to those dioxin and dioxin-like compounds that are manufactured at the facility, including those coincidentally manufactured.

#### *D. What Proposed Changes to Reporting Requirements for PBT Chemicals Did EPA Consider?*

1. *Changes to reporting thresholds.* In evaluating potential lower reporting thresholds for PBT chemicals, EPA considered not only their persistence and bioaccumulation and the purposes of EPCRA section 313, but also the potential burden that might be imposed on the regulated community. Because all PBT chemicals persist and bioaccumulate in the environment, they have the potential to pose greater exposure to humans and the environment over a longer period of time (Refs. 75 and 76). The nature of PBT chemicals indicates that small quantities of such chemicals are of concern, which provides strong support for setting lower reporting thresholds than the current section 313 thresholds of 10,000 and 25,000 pounds. For determining the levels at which reporting thresholds should be set for these chemicals, EPA adopted a two-tiered approach. EPA made a distinction between persistent bioaccumulative toxic chemicals and highly persistent, highly bioaccumulative toxic chemicals by proposing to set lower reporting thresholds based on two levels of persistence and bioaccumulation potential. EPA proposed to set a manufacture, process and otherwise use threshold of 100 pounds for PBT chemicals and a threshold of 10 pounds for that subset of PBT chemicals that are highly persistent and highly

bioaccumulative toxic chemicals. One exception to this is the reporting threshold for the dioxin and dioxin-like compounds category, see the discussion in Unit IV.D.2.

In determining the appropriate reporting thresholds to propose for PBT chemicals, EPA started with the premise that low or very low reporting thresholds may be appropriate for these chemicals based on their persistence and bioaccumulation potentials only. EPA then considered the burden that would be imposed by lower reporting thresholds and the distribution of reporting across covered facilities. Considering the factors described above, in addition to the purposes of EPCRA section 313, EPA proposed to lower the manufacture, process, and otherwise use thresholds to 100 pounds for PBT chemicals and to 10 pounds for that subset of PBT chemicals that are highly persistent and highly bioaccumulative. EPA presented the proposed section 313 reporting thresholds for each of the PBT chemicals considered. For purposes of section 313 reporting, threshold determinations for chemical categories are based on the total of all toxic chemicals in the category (see 40 CFR 372.25(d)).

2. *Special reporting threshold for dioxin and dioxin-like compounds.* The category of dioxin and dioxin-like compounds are highly persistent and highly bioaccumulative toxic chemicals. However, this category of chemicals poses unique problems with regard to setting section 313 reporting thresholds because these chemicals are generally produced in extremely small amounts compared to other section 313 chemicals. In response to EPA's original proposal to add dioxin and dioxin-like compounds, EPA received numerous comments suggesting that the reporting threshold for this category be set at zero. EPA stated its belief that rather than setting a zero reporting threshold it would be better to set a very low threshold that provides facilities with a clear indicator of when they are required to report. EPA proposed a manufacture threshold of 0.1 gram for the category. EPA expressed its intent to develop reporting guidance for industries that may fall within this reporting category. In addition to the proposed lower reporting threshold for the dioxin and dioxin-like compounds category, EPA requested comment on an alternative way of reporting release and other waste management data for this category. This alternative included reporting release and other waste management data for the dioxin and dioxin-like compounds category in

terms of grams of toxicity equivalents (TEQs).

#### *E. What Other Reporting Issues Did EPA Consider for PBT Chemicals?*

1. *De minimis exemption.* In 1988, EPA promulgated the *de minimis* exemption because: (1) The Agency believed that facilities newly covered by EPCRA section 313 would have limited access to information regarding low concentrations of toxic chemicals in mixtures that are imported, processed, otherwise used or manufactured as impurities; (2) the Agency did not believe that these low concentrations would result in quantities that would significantly contribute to threshold determinations and release calculations at the facility (53 FR 4509, February 16, 1988); and (3) the exemption was consistent with information collected by the Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard (HCS). However, given that: (1) Covered facilities currently have several sources of information available to them regarding the concentration of PBT chemicals in mixtures; (2) even minimal releases of persistent bioaccumulative chemicals may result in significant adverse effects and can reasonably be expected to significantly contribute to exceeding the proposed lower thresholds; and (3) the concentration levels chosen, in part, to be consistent with the OSHA HCS are inappropriately high for PBT chemicals, EPA's original rationale for the *de minimis* exemption does not apply to PBT chemicals. EPA therefore proposed to eliminate the *de minimis* exemption for PBT chemicals. EPA did not propose, however, to modify the applicability of the *de minimis* exemption to the supplier notification requirements (40 CFR 372.45(d)(1)) because the Agency believed there was sufficient information available.

2. *Use of the alternative threshold and Form A.* EPA stated its belief that use of the existing alternate threshold and reportable quantity for Form A would be inconsistent with the intent of expanded PBT chemical reporting. The general information provided in the Form A on the quantities of the chemical that the facility manages as waste is insufficient for conducting analyses on PBT chemicals and would be virtually useless for communities interested in assessing risk from releases and other waste management of PBT chemicals. EPA, therefore, proposed excluding all PBT chemicals from the alternate threshold of 1 million pounds.

3. *Proposed changes to the use of range reporting.* EPA stated its belief

that use of ranges could misrepresent data accuracy for PBT chemicals because the low or the high end range numbers may not really be that close to the estimated value, even taking into account its inherent error (i.e., errors in measurements and developing estimates). EPA believed this uncertainty would severely limit the applicability of release information where the majority of releases, particularly for PBT chemicals, are expected to be within the amounts eligible for range reporting. Given EPA's belief that the large uncertainty that would be part of these data would severely limit their utility, EPA proposed to eliminate range reporting for PBT chemicals.

4. *Proposed changes to the use of the half-pound rule and whole numbers.* EPA currently allows facilities to report whole numbers and to round releases of 0.5 pound or less to zero. EPA explained its concern that the combination of requiring the reporting of whole numbers and allowing rounding to zero would result in a significant number of facilities reporting their releases of some PBT chemicals as zero. EPA, therefore, proposed that all releases or other waste management quantities greater than  $\frac{1}{10}$  of a pound of PBT chemicals (except dioxins) be reported, provided that the appropriate activity threshold has been exceeded. For the category of dioxin and dioxin-like compounds, which have a proposed reporting threshold of 0.1 gram, EPA proposed that facilities report all releases and other waste management activities greater than 100 micrograms (ug) (i.e., 0.0001 gram).

5. *Proposed changes to other EPCRA section 313 reporting requirements.* The alkyl lead compounds tetraethyl lead (CAS No. 78-00-2) and tetramethyl lead (CAS No. 75-74-1) are currently reportable under the EPCRA section 313 category listing for lead compounds. However, these two chemicals specifically appear on the Binational Level 1 list of chemicals that have been identified for virtual elimination from the Great Lakes and thus are of special concern. EPA, therefore, proposed that separate reports be filed for these two members of the lead compounds category, which would allow better tracking of these specific lead compounds. In addition, EPA proposed to list "vanadium" and "vanadium compounds" and delete the EPCRA section 313 listing for "vanadium (fume or dust)." Since vanadium without the fume or dust qualifier would be a new section 313 listing, EPA did not propose to include additional reporting on alloys containing vanadium. In the proposal, EPA deferred making a final decision on

vanadium contained in alloys until the Agency could complete a scientific review of issues pertinent to some alloys. EPA proposed to include the qualifier "except when contained in an alloy" in the vanadium listing. EPA also requested comment on the adequacy of existing studies for determining the bioaccumulation potential of cobalt and cobalt compounds.

#### V. Summary of the Final Rule

##### A. Which Chemicals is EPA Adding to the List of Toxic Chemicals Under EPCRA Section 313?

In this action, EPA is adding seven chemicals and two chemical compound categories to the list of toxic chemicals subject to reporting under EPCRA section 313. These chemicals include: benzo(g,h,i)perylene, benzo(j,k)fluorene (fluoranthene), 3-methylcholanthrene, octachlorostyrene, pentachlorobenzene, TBBPA, vanadium (except when in an alloy), vanadium compounds, and a category consisting of 17 specified dioxin and dioxin-like compounds. EPA has determined that each of these

chemicals and chemical compound categories meets the listing criteria under EPCRA section 313(d)(2). Two of these chemicals, 3-methylcholanthrene and benzo(j,k)fluorene (fluoranthene), are being added as members of the polycyclic aromatic compounds (PACs) category. Vanadium, with the qualifier "fume or dust," has been on the list of toxic chemicals since the program's inception in 1987. In today's action, however, the Agency is removing the "fume or dust" qualifier from the vanadium listing. However, EPA is not including reporting on vanadium when contained in alloys. EPA is finalizing the proposed qualifier "except when contained in an alloy" to the vanadium listing. Therefore all elemental vanadium, unless it is in an alloy, is now reportable under EPCRA section 313. In addition to modifying the qualifier, EPA is also adding a new vanadium compounds category. Thus, all chemical compounds that contain vanadium are reportable under this listing. Further, EPA is finalizing its proposal (62 FR 24887) to add dioxins and 16 dioxin-like compounds.

However, the Agency is modifying the qualifier that it originally included with this listing. In the PBT proposed rule, EPA proposed to add the dioxin and dioxin-like compounds category with the qualifier "manufacturing only." However, based on comments the Agency received, EPA is changing this qualifier to include: Manufacturing; and the processing or otherwise use of dioxin and dioxin-like compounds if the dioxin and dioxin-like compounds are present as contaminants in a chemical and if they were created during the manufacturing of that chemical.

##### B. Which Chemicals is EPA Including as PBT Chemicals Under EPCRA Section 313?

EPA has made the final determination that 18 of the chemicals and chemical categories proposed meet the EPCRA section 313 criteria for persistence and bioaccumulation. Thus EPA is lowering the reporting threshold for all of these toxic chemicals. These chemicals and their final thresholds are listed in Table 1 below:

Table 1.—Reporting Thresholds for EPCRA Section 313 Listed PBT Chemicals

Chemical Name or Chemical Category Name	CASRN	Section 313 Reporting Threshold (in pounds unless noted otherwise)
Aldrin	309-00-2	100
Benzo(g,h,i)perylene	191-24-2	10
Chlordane	57-74-9	10
Dioxin and dioxin-like compounds category (manufacturing; and the processing or otherwise use of dioxin and dioxin-like compounds if the dioxin and dioxin-like compounds are present as contaminants in a chemical and if they were created during the manufacturing of that chemical)	NA	0.1 grams
Heptachlor	76-44-8	10
Hexachlorobenzene	118-74-1	10
Isodrin	465-73-6	10
Methoxychlor	72-43-5	100
Octachlorostyrene	29082-74-4	10
Pendimethalin	40487-42-1	100
Pentachlorobenzene	608-93-5	10
Polycyclic aromatic compounds category	NA	100
Polychlorinated biphenyl (PCBs)	1336-36-3	10
Tetrabromobisphenol A	79-94-7	100
Toxaphene	8001-35-2	10
Trifluralin	1582-09-8	100
Mercury	7439-97-6	10

Table 1.—Reporting Thresholds for EPCRA Section 313 Listed PBT Chemicals—Continued

Chemical Name or Chemical Category Name	CASRN	Section 313 Reporting Threshold (in pounds unless noted otherwise)
Mercury compounds	NA	10

EPA is deferring its decision for two chemicals and one chemical category. Specifically, EPA is deferring a determination on dicofol while the Agency continues to review the available persistence data. EPA is also deferring its decision on cobalt and cobalt compounds because it needs to further investigate the bioaccumulative potential of these chemicals.

#### C. What Thresholds Has EPA Established for PBT chemicals?

EPA is finalizing the thresholds it proposed for PBT chemicals in the January 5, 1999 (64 FR 688) **Federal Register**. Specifically, EPA is finalizing two thresholds based on the chemicals' potential to persist and bioaccumulate in the environment. The two levels include setting section 313 manufacture, process, and otherwise use thresholds at 100 pounds for PBT chemicals and at 10 pounds for that subset of PBT chemicals that are highly persistent and highly bioaccumulative. One exception is the dioxin and dioxin-like compounds category. The dioxin and dioxin-like compounds category threshold determination required special consideration because these highly persistent and highly bioaccumulative compounds are manufactured in extremely small amounts compared to other section 313 chemicals. In order to capture release and other waste management data, EPA is setting the threshold for the dioxin and dioxin-like compound category at 0.1 gram.

#### D. What Exemptions and Other Reporting Issues is EPA Addressing?

EPA is eliminating the *de minimis* exemption for the PBT chemicals included in today's final rule. However, this action will not affect the applicability of the *de minimis* exemption to the supplier notification requirements (40 CFR 372.45(d)(1)). During the inter-agency review process, it was suggested that EPA consider constructing an exemption for facilities in SIC code 5171, i.e., Petroleum Bulk Plants and Terminals. Specifically, it was suggested that EPA exempt the processing of PBT chemicals in petroleum products. Before EPA can consider this exemption, EPA must determine that these facilities process and release and otherwise manage as

waste very small aggregate quantities of PBT chemicals. The Agency is soliciting comments and information on this suggestion, particularly any information that could provide a factual basis for such an exemption. Please send your comments to the person listed in the "FOR FURTHER INFORMATION CONTACT" section within the next 60 days. EPA will evaluate this suggestion, and provide a response within approximately 180 days.

In today's action, EPA is also excluding all PBT chemicals from eligibility for the alternate threshold of 1 million pounds and eliminating for PBT chemicals range reporting for on-site releases and transfers off-site for further waste management. This will not affect the applicability of the range reporting of the maximum amount on-site as required by EPCRA section 313(g). EPA is addressing the alkyl lead compounds, tetraethyl lead (CAS No. 78-00-2), and tetramethyl lead (CAS No. 75-74-1), in a separate rulemaking for lead and lead compounds (64 FR 42222, August 3, 1999) (FRL-6081-4). Therefore, EPA is not finalizing any action with respect to these two lead compounds in today's action.

EPA proposed to require reporting of all releases and other waste management quantities greater than  $\frac{1}{10}$  of a pound of PBT chemicals (except dioxin), provided that the accuracy in the underlying data on which the estimate is based supports this level of precision. Also, EPA stated that releases and other waste management quantities would continue to be reported to two significant digits. In addition, EPA stated that for quantities of 10 pounds or greater, only whole numbers would be required to be reported. For the category of dioxin and dioxin-like compounds, which have a proposed reporting threshold of 0.1 gram, EPA proposed that facilities report all releases and other waste management activities greater than 100  $\mu\text{g}$  (i.e., 0.0001 gram). After reviewing all the comments on this issue, EPA is providing additional guidance on the level of precision at which facilities should report their releases and other waste management quantities of PBT chemicals. Facilities should still report releases and other waste management quantities greater than 0.1 pound

(except dioxins) provided the accuracy and the underlying data on which the estimate is based supports this level of precision. Rather than reporting in whole numbers and to two significant digits, if a facility's release or other waste management estimates support reporting an amount that is more precise than whole numbers and two significant digits, then the facility should report that more precise amount. The Agency believes that, particularly for PBT chemicals, facilities may be able to calculate their estimates of releases and other waste management quantities to  $\frac{1}{10}$  of a pound and believes that such guidance is consistent with the reporting requirements of sections 313(g) and (h).

#### E. What is the Relationship Between This Rule and the Clean Air Act Mercury Information Collection Request?

Throughout calendar year 1999, EPA has been using authority under section 114 of the Clean Air Act to require all coal-fired power plants over 25 megawatts to submit to EPA the results of analyses of the mercury content of their coal. A representative sample of these plants, stratified by type of plant and type of coal burned, have been required to perform stack testing to determine the amount (and species) of mercury emitted. The stack testing will allow EPA to develop a set of emissions factors that can be applied to the mercury in coal analysis to generate mercury emissions estimates for each coal-fired plant. EPA does not intend to continue to require plants to submit either the coal analysis or the stack testing beyond the current requirement. Therefore for the purpose of reporting mercury releases to the TRI, EPA expects coal-fired power plants that do not have monitoring or stack test data for the reporting year to use the emissions factors that EPA will develop and make available to the public in the summer of 2000.

## VI. Summary of Public Comments and EPA Responses

### A. What Comments Did EPA Receive on its Statutory Authority to Add Chemicals and Lower the Reporting Threshold and What is EPA's Response?

Several commenters assert that EPCRA section 313(f)(2) only grants EPA the authority to raise the statutory thresholds, but not to lower them. They agree that the substantial majority test is met "as a matter of logical necessity" when EPA lowers the reporting threshold, and argue that this makes the "substantial majority" test essentially meaningless when thresholds are lowered. They argue that this demonstrates that Congress did not intend for EPA to lower reporting thresholds, only to raise them.

These commenters also rely on the language of other provisions of EPCRA section 313 to support their argument that Congress did not grant EPA authority to lower thresholds. They rely on the fact that section 313(f)(2) does not provide that EPA can "raise or lower" thresholds, unlike section 313(d), under which EPA can "add or delete" chemicals from the list, and section 313(b), under which EPA can "add or delete" industry sectors. In addition, the commenters argue that section 313(f)(2) is analogous to section 313(l), where, despite the use of the otherwise neutral term "modify," Congress clearly meant for EPA only to make the reporting requirements less frequent (i.e., less stringent). Based on these provisions, they also argue that, where Congress intended EPA to have the authority to both expand and restrict reporting, the statute explicitly provides the authority, but where Congress only intended to authorize EPA to reduce the reporting burden, it provided a neutral term, and then restricted it. The commenters argue that in section 313(f)(2), Congress qualified EPA's authority with a substantial majority restriction that only makes sense if EPA raises the thresholds.

EPA disagrees with the commenters' interpretations. Section 313(f)(2) clearly authorizes EPA to lower thresholds, as well as to raise them. The plain language of this provision provides that "the Administrator may establish a threshold different from the amount established by paragraph (1)." It clearly does not state that the Administrator may only establish a higher threshold than the amount established by paragraph (1), which appears to be the commenters' interpretation. Moreover, in the House debate on the conference report, Representative Edgar, one of EPCRA's sponsors, noted:

The EPA is authorized to revise these thresholds, but only if such revised thresholds obtain reporting on a substantial majority of total releases, especially if such revised thresholds raise the statutory levels. . . (A Legislative History of the Superfund Amendments and Reauthorization Act of 1986, Committee Print, vol. 6, 5315) (emphasis added).

The clear implication of this statement is that Congress intended EPA to have the authority to lower, as well as to raise, the statutory thresholds.

The commenters' interpretation that EPA lacks the authority to lower the thresholds conflicts with Congressional intent in other ways. During debate on the Conference Report, Representative Edgar noted that "This act is intended to provide a *comprehensive view of toxic chemical exposure* and, hopefully, provide a basis for more sensible and effective local, State, and national policies." *Legislative History* at 5316. See, also, *Legislative History* at 5313 and 5338. And yet without the authority to lower the thresholds, EPA cannot ensure that this objective is achieved. For example, Congress included PCBs on the original list of EPCRA section 313 chemicals, thereby indicating an intent to provide the public with a "comprehensive view of exposure" to PCBs; but under the original reporting requirements, EPA only received 6 reports. Under no interpretation can six reports be characterized as obtaining "a comprehensive view of toxic chemical exposure." *Legislative History* at 5315.

EPA also disagrees with the comment that the Agency's interpretation has rendered this provision meaningless. This argument is based on a logical fallacy; a standard need not constrain agency action to the same degree in all circumstances to be meaningful. Congress may impose a standard that constrains actions to varying degrees in different circumstances. In this case, the Congressional debate on this provision indicates that Congress was most concerned with the loss of publicly available information that may result from raising the thresholds. See, e.g., *Legislative History* at 5315-16. It is therefore reasonable to assume that Congress chose to impose a standard that presented a greater constraint on the Agency's ability to raise thresholds, and therefore created a ceiling beyond which the Agency was not authorized to modify thresholds.

Further, notwithstanding the fact that under EPA's interpretation of section 313(f)(2), the Agency can meet the statutory standard without the need for quantitative support when it lowers the threshold, EPA does not believe that Congress has granted it unfettered

discretion to establish a different threshold. As discussed at length in Unit VI.E., Congress provided significant guidance in other provisions of the statute and the legislative history, to guide the Agency's exercise of discretion under this provision. Moreover, as noted above, the substantial majority requirement establishes a ceiling beyond which the Agency is not authorized to modify thresholds.

EPA also disagrees with the commenters' interpretation of other provisions of EPCRA section 313. In general, Congress established the basic framework of right-to-know reporting in EPCRA section 313, and selectively granted EPA carefully qualified authority to adjust individual parameters as appropriate. For example, EPA is authorized to modify the chemicals on the EPCRA section 313 list, the SIC codes and facilities covered by section 313, the reporting frequency, and the reporting thresholds, but each grant of authority is constrained to varying degrees by the standards contained in each respective provision. As the commenters have correctly noted, where Congress intended to restrict the Agency's authority to modify the original requirements, it did so explicitly. For example section 313(l) specifically limits EPA's authority to modify the reporting frequency: ". . . but the Administrator may not modify the frequency to be any more often than annually." Similarly Congress included no provision authorizing any amendments to the generally applicable employee threshold. It is therefore reasonable to assume that had Congress intended to only permit EPA to raise the thresholds, they would have included such an explicit restriction in the provision. Moreover, as noted earlier in this unit, the little legislative history that exists on this provision indicates that Congress intended EPA to have the discretion to both raise and lower the reporting thresholds. Further, EPA disagrees with the commenters' interpretation that Congress relied on different statutory construction to indicate its decision not to grant the Agency authority to decrease reporting thresholds, rather than relying on an explicit restriction in the plain language of the statute. EPA is aware of no indication of such Congressional intent in the legislative history, nor have the commenters cited to any. More to the point, the commenters' interpretation is clearly refuted by the inclusion in section 313(l) of an explicit restriction, demonstrating that where Congress

intended to restrict EPA's authority, it did so explicitly.

One commenter argues that EPA lacks authority to lower the thresholds based on a comparison of the language in EPCRA sections 311 and 312 authorizing EPA to revise the section 311 and section 312 thresholds, with the language of section 313(f)(2). The commenter states that Congress could have used this same broad and simple language in section 313, and argues that because it did not, but instead chose to impose the "substantial majority" requirement, this demonstrates that Congress did not intend EPA to have the authority to lower the thresholds. Instead, the commenter argues, Congress was concerned with reporting burden when it crafted section 313, and so declined to grant EPA authority to lower the thresholds.

EPA disagrees. There is no significant difference between the language in sections 311, 312, and 313 that supports the commenter's interpretation. Unlike section 313, Congress did not establish thresholds in sections 311 and 312, but granted the Administrator broad discretion to determine whether a threshold was even appropriate; at what level to establish the threshold; and to modify it as appropriate. The language with which Congress conferred this authority provides that "the Administrator may establish threshold quantities. . . ." This is almost identical to the language of section 313(f)(2), which simply provides that "the Administrator may establish a threshold amount for a toxic chemical different from the amount established by paragraph (1)." The commenter's argument turns wholly on the inclusion of the "substantial majority" requirement, and as explained above, EPA does not believe that this standard either precludes EPA from lowering thresholds or demonstrates Congressional intent to do so.

Several commenters challenged EPA's finding that its alternate thresholds would capture a substantial majority of total releases, contending that the Agency had impermissibly relied on an increase in the number of reports submitted. The commenters assert that EPA is required to estimate releases at these facilities and determine, on a percentage basis, whether a "substantial majority" of all releases of each chemical, from all facilities subject to EPCRA section 313, will be captured. One commenter noted that, even if lowering the threshold for an EPCRA section 313 chemical results in an increase in the number of reports on the chemical, this does not necessarily mean that the additional reports will

capture a substantial majority of the total releases from all facilities subject to EPCRA section 313 reporting. In order for the lower threshold to meet the statutory test, the threshold must result in capturing at least two thirds of all releases of the chemical at covered facilities. The commenter contended that the number of reports is irrelevant to the percentage of releases captured by the reports. If a certain chemical were present at only one facility in the country subject to EPCRA section 313, the submission of one report on the chemical accounting for at least 66% of the releases from that facility would satisfy the "substantial majority" test. By contrast, if a lower threshold generated 1,000 new reports on a EPCRA section 313 chemical, the "substantial majority" test would not be met if those reports did not account for at least 66% of the total releases from all facilities subject to EPCRA section 313. This may be the case, for example, if a large percentage of releases of the EPCRA section 313 chemical occurred at facilities otherwise subject to EPCRA section 313 that do not meet the threshold for that particular chemical that triggers the obligation to report the releases.

EPA disagrees with the commenter's interpretation. As noted in the proposed rule, EPA interprets the language in 313(f)(2), "facilities subject to the requirements of [section 313]," to refer to those facilities that fall within the category of facilities described by sections 313(a) and (b). Subsection (a) lays out the general requirement that "the owner or operator of facilities subject to the requirements of this section" file an EPCRA section 313 report. Subsection (b) then further defines the facilities subject to the requirements of this section:

[t]he requirements of this section shall apply to owners and operators of facilities that have 10 or more full-time employees and that are in Standard Industrial Classification Codes 20-39, . . . and that manufactured, processed, or otherwise used a toxic chemical listed under subsection (c) of this section in excess of the quantity of that toxic chemical established under subsection (f) of this section during the calendar year for which a toxic chemical release form is required under this section.

Thus, to be subject to the requirements, a facility must meet all three of the requirements laid out in subsection (b). This means that the class of facilities subject to reporting under section 313 will vary according to the individual chemical. Moreover, facilities that have not exceeded a threshold for a particular chemical are not "subject to the

requirements" of EPCRA section 313 for that chemical.

To determine whether a particular threshold, either higher or lower, for an individual chemical meets the substantial majority test, one would compare the total national aggregate of releases of the chemical by covered facilities at the existing thresholds with the estimated total national aggregate of releases at the proposed alternate threshold, and determine whether a substantial majority of releases reported under the original thresholds would be reported. Logically, the universe of facilities subject to the requirements under a lower threshold will always be either equivalent to, or greater, than the universe of facilities that are subject to the requirements under the existing thresholds. Moreover, because facilities subject to the requirements of section 313 must report "the annual quantity of the toxic chemical entering each environmental medium," EPA can meet the substantial majority standard when lowering the thresholds, without the need for quantitative support; i.e., facilities that report, must report their releases and other waste management quantities. In this instance, the number of reports serves as an adequate surrogate for releases because essentially all releases (and other waste management quantities) will be reported by facilities subject to the requirements of this section.

In other words, facilities "subject to the requirements of this section" are those that must file EPCRA section 313 reports. Thus, the baseline against which the "substantial majority of total releases" is measured is the category of facilities that currently submit reports. Consequently, if quantitative support for its finding were necessary, EPA would be justified in relying on the number of reports to make its finding.

By contrast, although it is not clear exactly how the commenters interpret the phrase "facilities subject to the requirements of this section," it is clear that they do so without reference to all of the requirements in subsections (a) and (b). And essentially, any interpretation that ignores any portion of subsection (b), results in an interpretation of EPCRA section 313(f)(2) as "facilities *otherwise* or *potentially* subject to the requirements of this section." This is inconsistent with the plain language of section 313(f)(2). The commenters can only support their argument that EPA has not met the "substantial majority" test by assuming that all facilities, irrespective of whether they are in a covered SIC code or they exceed the existing thresholds, are subject to EPCRA section

313, and that EPA must ensure that it captures a substantial majority of releases from the universe of those facilities. If this were correct, the addition of certain SIC codes could be a prerequisite to lowering thresholds for certain chemicals. Such a requirement is not currently included in section 313. The commenters have provided no support in either the statute or legislative history for these interpretations. Nor have the commenters provided any support for the interpretation that "substantial majority" equates to a particular percentage, such as 66%.

Finally, EPA notes, as it noted in the proposed rule, that, for several reasons, it does not believe that it has the necessary information to develop even reasonably accurate estimates of the potential releases that would be reported at an average facility at each of the identified options for a lowered threshold. Specifically, EPA believes that: (1) Sufficient information is not currently available for these chemicals, and (2) there is insufficient information on the numerous processes employed by all the sectors involved to calculate a comprehensive release estimate for each sector. While there are some data available, comprehensive data are not available for all sectors and chemicals. EPA further notes that none of the commenters provided either any information or methodology to address this issue, notwithstanding EPA's specific request.

Two commenters rely on excerpts from the debate on the Conference Report with respect to section 313(f)(2) to argue that EPA is only authorized to revise the thresholds if EPA presents a convincing analysis that revisions to the threshold will capture a substantial majority of the releases while also ensuring that it is not placing undue burdens on facilities which contribute little to such releases. The commenters argue that EPA has not satisfied the substantial majority requirement, and to do so, must conduct a more thorough assessment of the burden imposed on industry focused on the volume of releases that will be captured, not the number of reports. Another commenter compares the legislative history of sections 311 and 312 with 313, and concludes that Congress clearly intended EPA to factor burden into section 313 threshold questions.

EPA disagrees. Ultimately, EPA must comply with the statutory language, and section 313(f)(2) does not impose any requirement on the Agency to rely on the type of analyses described by the commenter. In addition, the commenters' reliance on the statements

made during the Conference Report debate are misplaced. The commenter only quotes part of Representative Edgar's statement; the full quotation indicates only that EPA must present a convincing case, "based on verifiable, historical data" that the statutory thresholds warrant revision. As discussed below in Unit VI.E., EPA believes it has presented a convincing case that the thresholds should be lowered for PBT chemicals. The commenter also failed to include the portion of Representative Edgar's statement explaining that a convincing case was particularly necessary if the effect of the modification was to raise the thresholds. See, *Legislative History* at 5315.

Nonetheless, as discussed in greater detail in Unit VI.E., EPA considered the burden that lower thresholds would impose on industry in selecting the PBT thresholds. EPA believes that the levels it has adopted will capture significantly more information about PBT chemicals than current thresholds, but will not be unduly burdensome on industry. In addition, as discussed in the Response to Comments document (Ref. 69), EPA believes that the number of reports filed is a more accurate measure of burden than the volume of releases.

A commenter alleges that EPA's interpretation of section 313(f)(2) contradicts its prior statements regarding threshold changes. The commenter states that EPA was clear in the original EPCRA section 313 rulemaking that the statute requires a substantial majority finding supported by actual data. For example, in the June 1987 proposed rule, EPA stated: "The Agency is interested in data that would support the necessary finding that a modified threshold would still generate reporting on a substantial majority of total releases, as the statute requires." And in the February 16, 1988 final rule promulgating EPCRA section 313 requirements, EPA stated

... the first few years' data should be evaluated to determine whether modifications of the threshold would meet the statutory test of obtaining reporting on a substantial majority of the releases (i.e., pounds released per year) of each chemical from subject facilities. EPA may consider changing the reporting thresholds based on several years of data collection.

The commenter also notes that in neither the proposed nor final rule establishing EPCRA section 313 requirements did EPA specifically assert that it had the authority to lower thresholds.

EPA disagrees that its statements in this rulemaking contradict its prior statements in the 1988 rulemaking. As

a preliminary matter, EPA has never denied that the requirement that a revised threshold obtain reporting on a substantial majority of total releases applies to any action lowering the reporting thresholds. Specifically, EPA's discussion in the 1987 proposed rule was in the context of a response to proposals from the Small Business Administration (SBA) that the Agency raise the thresholds to capture only larger facilities. EPA's statements in the 1988 final rule also need to be evaluated with SBA's proposals in mind. Moreover, while it is true that the discussion to which the commenter cited did not distinguish between lowering and raising the thresholds (it was intended as a response to comments on both sides of the issue), EPA notes that the majority of the comment summary focuses on requests to raise the thresholds. Finally, while it is true that EPA did not specifically assert its authority to lower the thresholds in either rule, neither did EPA deny that EPCRA section 313(f)(2) grants it this authority. However, it is worth noting that in the final rule, EPA responded to comments from environmental and public interest groups requesting that the Agency lower the thresholds, and that EPA never stated or implied that it lacked the authority to lower thresholds.

One commenter states that EPA's authority to lower reporting thresholds is not limitless. The commenter argues that a decision to lower the thresholds must be tied to the overall purpose of the Act, namely, to inform the public of potential health risks posed by the presence of toxic chemicals released to the environment in their communities. A regulatory decision to capture more reports under EPCRA section 313 must be based on the need to inform the public of health risks associated with the releases captured in those reports. Otherwise, the usefulness of the TRI data base begins to diminish. EPA needs to demonstrate that the releases of the PBTs at such small amounts pose a meaningful risk to the public health. Another commenter asserts that EPA is relying on the purposes of EPCRA to support its interpretation of section 313(f), and argues that, although section 313(h) does describe intended uses for TRI data, section 313(h) itself does not describe the purposes or intention of section 313. The commenter instead relies on several provisions of section 313 and argues that the purpose and intention of Congress to make information available to the public was balanced by concerns about the potential burden of the TRI program. The commenter also states that the uses

Congress anticipated for TRI data do not outweigh the balance that Congress intended between generating information and minimizing burden, and do not grant EPA blanket authority to expand the reporting requirements.

EPA agrees with the commenter that its authority to lower reporting thresholds is not limitless, and that its decision to lower the thresholds must be tied to EPCRA's overall purposes. However, EPA believes that Congress granted the Agency broad, but not unfettered, discretion to determine when it is appropriate to lower thresholds, and to determine the specific thresholds that are appropriate. As discussed in greater detail in Unit VI.E., EPA believes that its decision to lower the thresholds, and the thresholds it has chosen, reflect these principles.

However, EPA generally disagrees with the remainder of the commenter's conclusions. As discussed in more detail in Unit VI.F., EPA is not required to base its decisions under EPCRA section 313 on the need to inform the public of health risks associated with reported releases and other waste management quantities. And as discussed elsewhere in this preamble and the Response to Comments document (Ref. 69), EPA believes that the information that will be reported as a result of this rulemaking will provide useful information to the public.

In large measure, the issues raised in the second comment closely relate to the specific thresholds and EPA's rationale for choosing them, and this issue is discussed in more detail in Unit VI.E. However, to the extent it relates to EPA's interpretation of section 313(f)(2), some response is also provided here.

As a preliminary matter, while it is true that EPCRA section 313 does not explicitly identify the purposes of the section, the Conference Report makes clear that subsection (h) of section 313:

Describes the intended uses of the toxic chemical release forms required to be submitted by this section and expresses the purposes of this section. The information collected under this section is intended to inform the general public and the communities surrounding covered facilities about releases of toxic chemicals, to assist in research, to aid in development of regulations, guidelines, and standards, and for other similar purposes. (Conference Report at 299).

Contrary to the commenter's assertion, the Agency never indicated that it was relying on section 313(h) to expand its authority under section 313(f)(2). Rather, EPA noted that it was relying on the purposes of section 313 as an additional source of Congressional direction to guide the Agency's exercise

of discretion under this provision. EPA relied on section 313(h), in part, because the Agency believes that its implementation of EPCRA generally should be guided by EPCRA section 313's purposes. In addition, section 313(h) shares certain elements with the Congressional guidance on section 313(f)(2) in the legislative history. As discussed in greater detail in Unit VI.E., EPA has distilled those common elements, and relied on them to guide its discretion in establishing the specific thresholds under section 313(f)(2).

EPA also disagrees with the commenter's assertion that the purpose of EPCRA is to achieve a balance between the public's right to information about their potential exposures to toxic chemicals and the reporting burden imposed on industry. EPCRA section 313(f)(2) does not require EPA to consider burden in establishing revised thresholds. Although EPA has included the reporting burdens imposed on industry as one consideration in determining the appropriate thresholds, the Agency is also mindful that the authors of EPCRA, while sensitive to the burdens EPCRA section 313 reporting placed on industry, never intended this consideration to outweigh the public's need for access to information concerning release and waste management, and thus their potential exposure to toxic chemicals. See, e.g., *Legislative History* at 5315-16 and 5338-39. And with respect to the assertion that the general purposes of section 313 are to balance the public's right-to-know about toxic chemical releases and other waste management in their communities against the reporting burdens EPCRA section 313 imposes, EPA notes that reporting burden is not included anywhere in section 313(h). Nor does the strong policy directive underlying EPA's overall implementation of EPCRA section 313 support such an interpretation. Representative Edgar, one of the bill's primary architects noted:

The heart of the Federal Right-to-Know Program is its reporting requirements, which are intended to provide a comprehensive picture of the community's and the Nation's exposure to toxic chemicals. As the Environmental Protection Agency, the States, and localities implement this program, they should be guided by several general principles.

First, Congress recognizes a compelling need for more information about the Nation's exposure to toxic chemicals. Until now, the success of such regulatory programs such as the Clean Air Act, the Resource Conservation and Recovery Act, and the Clean Water Act has been impossible to measure because no broad-based national information has been

compiled to indicate increases or decreases in the amounts of toxic pollutants entering our environment. As a result, the reporting provision in this legislation should be construed expansively to require the collection of the most information permitted under the statutory language. Any discretion to limit the amount of information reported should be exercised only for compelling reasons. . . . *Legislative History* at 5313.

Significantly, Representative Edgar did not include reporting burden as one of the general principles that should guide the Agency's implementation of EPCRA section 313. Rather, he stated:

This is a new Federal initiative, and I recognize the desire of some of my colleagues to move ahead cautiously to ensure that burdens imposed on industry are not excessive. Frankly, my concerns rest with the families that live in the shadows of these chemical and manufacturing plants. I have put myself in their shoes and have fought for a program that looks after their needs. This legislation gets us well on the path to the full disclosure they deserve. *Id* at 5316.

Nonetheless, EPA has considered the legislative history on section 313(f)(2), including the excerpts cited by the commenter, and determined it would be reasonable to include some consideration of the reporting burdens in selecting its revised thresholds. The degree to which EPA included burden in its selection of the thresholds established in this rulemaking is discussed at length in Unit VI.E. and the Response to Comments document (Ref. 69).

EPA agrees that section 313(h) does not grant EPA unfettered discretion to expand EPCRA's reporting requirements; as noted in a previous response, Congress established the basic parameters of the EPCRA section 313 reporting requirements, and selectively granted EPA carefully qualified authority to modify certain of them. In this action, for example, EPA is only affecting the activity thresholds, but Congress established other limitations that govern whether a facility is subject to reporting. For example, facilities with fewer than 10 employees are not subject to reporting under subsection 313(b)(1).

*B. What Comments Did EPA Receive on Persistence Criteria, Bioaccumulation Criteria, and Toxicity Criteria, and What Are EPA's Responses?*

1. *Comments on EPA's general approach.* Several commenters contend that only chemicals which are globally recognized as persistent bioaccumulative toxic chemicals should form the foundation of the EPCRA section 313 PBT chemical list and criteria. The application of the criteria in this manner is consistent with several existing international agreements and

programs, such as the Great Lakes Binational Strategy, the North American Commission on Environmental Cooperation (NACEC), the United Nations Economic Commission for Europe's (UNECE) agreement to address persistent organic pollutants (POPs), and the United Nations Environmental Programme (UNEP). These programs have prompted widely accepted numerical values for persistence and bioaccumulation and defined parameters for assessing toxicity. These criteria have also been adopted with U.S. support and leadership and the commenters contend that it is not clear why EPA is now taking a vastly different approach to identifying PBT criteria in the proposed rule. The commenters suggest that EPA conform the criteria for PBT chemicals on EPCRA section 313 with the criteria and chemicals that are part of the programs being implemented by the NACEC, UNECE, and UNEP. By doing so, EPA would harmonize the U.S. program with similar international programs that focus on a narrow set of PBT chemicals.

EPA believes that it would be inappropriate to merely adopt the criteria and list of chemicals managed under the international programs cited because the purposes of the TRI program are different than the purposes of the cited international programs. The TRI was established by Congress under EPCRA section 313 in response to public demand for information on toxic chemicals being released in their communities. The TRI program is national in scope, but a significant part of its overriding goal is to provide information on releases to local communities so that they can determine if the releases result in potential risks. The entire concept of TRI, and indeed other, similar Pollutant Release and Transfer Registries (PRTs) since established in several nations, is founded on the belief that the public has the right to know about chemical use, release, and other waste management in the areas in which they live, as well as the hazards associated with these chemicals. This emphasis is fundamentally different from the global focus of the UNEP negotiation and its concept of residual risk. It is EPA's position that the domestic, community-based purposes of EPCRA section 313 have important implications with regard to the criteria used to identify toxic chemicals as persistent and/or bioaccumulative, as well as the methods and models used to evaluate persistence and/or bioaccumulation.

EPCRA section 313 charges EPA with collecting and disseminating information on releases, among other

waste management data, so that communities can estimate local exposure and local risks. One intent of EPCRA section 313 is to provide information to the public so that they can take an active role in determining what risks resulting from toxic chemical releases in their community are acceptable. This basic local empowerment is a cornerstone of the right-to-know program.

EPCRA section 313(h) states that:

The release forms required under this section are intended to provide information to the Federal, State, and local governments and the public, including citizens of communities surrounding covered facilities. The release form shall be available, consistent with section 11044(a) of this title, to inform persons about releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines, and standards; and for other similar purposes.

EPCRA section 313 establishes an information collection and dissemination program. EPA interprets EPCRA section 313(g)(2) to require facilities to use readily available information to prepare each chemical-specific EPCRA section 313 report. The statute does not require that the facility conduct additional monitoring or emissions measurements to determine these quantities. A facility must only use readily available data or reasonable estimation methods in preparing the quantitative information it reports.

The purpose of EPCRA section 313 is not to ban the manufacture or use of a chemical, to restrict releases of the chemical, or to dictate how it should be used or released. As a result, the burden and control EPCRA section 313 imposes is significantly less than that imposed by a statute that controls the manufacture, use, and/or release of a chemical. The focus of EPCRA section 313 is not equivalent to the focus of a statute or international agreements in which chemicals are to be banned, phased-out, or restricted.

In contrast, the international agreements cited by the commenters are intended to ban, restrict, or phase-out the manufacture, use and/or release of a limited set of persistent organic pollutants and certain heavy metals that are highly persistent and highly bioaccumulative. Descriptions of the purposes of the Protocol on Persistent Organic Pollutants (POPs); Convention on Long-Range Transboundary Air Pollution (LRTAP), UNECE, UNEP on POPs, North American Commission for Environmental Cooperation's Sound Management of Chemicals (NACEC

SMOC), as well as the International Council of Chemical Associations' (ICCA) position on POPs are presented below. The following quotes clearly illustrate that the intent of the international agreements is to narrowly focus on that subset of toxic chemicals which are of regional (e.g., North America and Europe) or global concern. UNECE LRTAP

The ultimate objective is to eliminate any discharges, emissions and losses of POPs. The Protocol bans the production and use of some products outright (aldrin, chlordane, chlordecone, dieldrin, endrin, hexabromobiphenyl, mirex and toxaphene). Others are scheduled for elimination at a later stage (DDT, heptachlor, hexachlorobenzene, PCBs). Finally, the Protocol severely restricts the use of DDT, HCH (including lindane) and PCBs. The Protocol includes provisions for dealing with the wastes of products that will be banned. (The 1998 Aarhus Protocol on Persistent Organic Pollutants (POPs); Convention on Long-Range Transboundary Air Pollution, United Nations Economic Commission for Europe (UNECE) at <http://www.unece.org/env/lrtap>) (Ref. 54)

UNEP

International action to protect health and the environment through measures which will reduce and/or eliminate emissions and discharges of persistent organic pollutants, including the development of an international legally binding instrument. (Governing Council Decisions 20/24, 1999; United Nations Environmental Programme at <http://irptc.unep.ch/pops/newlayout/negotiations.htm>) (Ref. 57)

NACEC SMOC

NACEC SMOC has developed action plans for PCBs, DDT, chlordane, and mercury. The action plans include 1) for PCBs "work toward the virtual elimination of PCBs in the environment, which the task force is interpreting as no measurable release to the environment"; 2) for DDT "gradual reduction of DDT use for malaria control" and "additional reductions," 3) for chlordane "phase-out of chlordane use", and 4) for mercury "reduce sources of anthropogenic mercury pollution." The longer-term goal of the plan is to reduce the presence of mercury in the environment to achieve naturally occurring levels." (North American Cooperation for the Sound Management of Chemicals (June 1998); North American Commission for Environmental Cooperation at <http://www.cec.org/english/profile/coop/Pollute-f.cfm?format=1>) (Ref. 40)

ICCA

*ICCA Position:* ICCA member associations have demonstrated their commitment to sound chemicals management, and to the goal of reducing the potential human health and environmental risks that may be associated with POPs. Many POPs are already subject to considerable voluntary risk management by chemical companies, and the uses of most substances identified as POPs has been discontinued or extremely limited

by chemical companies within the countries represented by ICCA member associations. (International Council of Chemical Associations (ICCA) Briefing Note on Persistent Organic Pollutants (POPs) (April 21, 1998) at <http://www.icca-chem.org/issues.htm>) (Ref. 26)

In addition, as directed under EPCRA section 313(h), EPA makes the TRI data available to various groups, including international organizations, that, in turn, use the information to decide whether to ban, restrict, or phase-out chemicals.

For the same reasons, EPA also disagrees that only substances globally recognized as POPs should provide the basis of persistence criteria for this rulemaking. POPs are organic chemicals whose characteristics of persistence in the environment, accumulation in biological organisms and toxicity make them priority pollutants that cause significant environmental risks to humans and ecosystems. The substances or substance categories being considered for implementation of global controls through the UNEP negotiations (UNEP/

GC.18/32, 1995: aldrin, chlordane, DDT, dieldrin, endrin, heptachlor, mirex, toxaphene, hexachlorobenzene, PCBs, polychlorinated dibenzo-*p*-dioxins and furans) (Refs. 44 and 45) were selected largely because they or their degradation products pose risks that may occur far from their sites of initial entry into the environment. The UNEP action is the global counterpart to similar, regional negotiations, most notably the UNECE Convention on Long-Range Transboundary Air Pollution (LRTAP) (Ref. 54); the North American Free Trade Agreement (NAFTA) CEC Initiative on the Sound Management of Chemicals (Ref. 39); and the bilateral US/Canada agreement to control discharge or release of POPs in the Great Lakes basin (Ref. 23). A central theme of the UNEP action, consistent with its global scope, is the notion of residual risk, meaning specifically that to be subject to the negotiations, it is not sufficient for a substance to pose risks within a nation or regionally, rather it must pose risks to populations and nations distant from release sites.

2. *Comments on EPA's individual criteria.* The same commenters state that EPA should use the international criteria being applied by UNEP, UNECE LRTAP, NACEC SMOC, for persistence, bioaccumulation, and toxicity. Some of these commenters also include the criteria developed by CMA (CMA, PTB Policy Implementation Guidance: Product Risk Management Guidance for PTBs (February 1996)). One commenter includes the criteria developed by the ICCA for POPs. Another commenter states that there is no reason to adopt criteria that are significantly more stringent than those used in other programs. One commenter states that EPA should consider the degree of toxicity and focus on the most toxic chemicals. Some commenters state that EPA should couple the persistence and bioaccumulation criteria to each other. They believe that these criteria should not be considered independently. The numerical criteria presented by some of the commenters are provided below:

Table 2.—Numerical Persistence and Bioaccumulation Criteria Suggested by Commenters

	CMA PTB Policy	NACEC SMOC	UNECE (LRTAP) POPs	UNEP POPs/CEG FRAMEWORK	Environment Canada Toxic Substances Management Policy (June 1995)	ICCA
Persistence	Half-life = 6 months in water or 1 year in soil	Half-life > = 2 days air; 6 months water/soil; or 1 year sediment	Half-life > 2 months water or 6 months soils/sediment; or otherwise sufficiently persistent to be of concern	Half-life > [2 or 6] months soil/sediment; or other evidence that substance is sufficiently persistent to be of concern	Half-life > = 2 days air; 6 months water/soil; 1 year sediment	Half-life = 6 months water, 1 year soil sediments, or 5 days air
Bioaccumulation	BAF/BCF > = 5,000 or estimation techniques	BAF/BCF > = 5,000 or Log $K_{ow}$ > = 5	BAF/BCF > 5,000 or Log $K_{ow}$ > 5 or factors such as high toxicity	BCF/BAF > 5,000 or Log $K_{ow}$ > [4 or 5]; evidence that substance with significantly lower BCF/BAF is of concern, e.g., due to high toxicity/ecotoxicity; or monitoring data in biota indicating sufficient bioaccumulation to be of concern	Half-life > 2 months water or 6 months soils/sediment (or otherwise sufficiently persistent to be of concern)	BCF > 5,000 or log Log $K_{ow}$ > 5 and < 7.5, MW < 700 and substance is not metabolized

Table 2.—Numerical Persistence and Bioaccumulation Criteria Suggested by Commenters—Continued

	CMA PTB Policy	NACEC SMOC	UNECE (LRTAP) POPs	UNEP POPs/CEG FRAMEWORK	Environment Canada Toxic Substances Management Policy (June 1995)	ICCA
Toxicity	Professional judgment in evaluation of aquatic toxicity, wildlife toxicity, oral/dermal/inhalation toxicity (mammals and birds), reproductive toxicity, neurological toxicity; carcinogenicity, mutagenicity, and/or teratogenicity	Acute and chronic (including toxicity of breakdown products, if appropriate)	Potential to affect human health and/or the environment adversely	Evidence that (chronic) toxicity or ecotoxicity data indicate a potential for damage to human health or the environment caused by the substance resulting or anticipated from long-range transport	CEPA - toxic	Expert judgment that acute aquatic lethality, subchronic and chronic aquatic toxicity, acute wildlife toxicity, oral/dermal/inhalation toxicity in mammals and birds, carcinogenicity, mutagenicity, teratogenicity, reproductive toxicity, neurological toxicity, and immune system effects must be demonstrated or expected to occur at the concentrations observed in the environment

EPA is establishing criteria in this rulemaking for the TRI program for persistence and bioaccumulation. EPCRA section 313(d)(2) already provides toxicity criteria for the TRI program. While EPA chose in this rulemaking to focus on chemicals that are toxic and persistent and bioaccumulative, EPA did not state that the persistence criterion could only be applied in conjunction with the bioaccumulation criterion and vice versa. EPA has not tied the criteria together because there is no scientific rationale to define persistence criteria in terms of both bioaccumulation and persistence and to define bioaccumulation both in terms of persistence and bioaccumulation. As illustrated by the descriptions of persistence and bioaccumulation provided in the proposed rule, persistence and bioaccumulation are separate chemical and/or biological processes. They are not by definition dependent upon the other.

A chemical's persistence refers to the length of time the chemical can exist in the environment before being destroyed. (at 64 FR 698)

and

Bioaccumulation is a general term that is used to describe the process by which organisms may accumulate chemical substances in their bodies. (at 64 FR 703)

A chemical is not considered to be persistent if it is only bioaccumulative. For example, a chemical may be extremely persistent and yet not bioaccumulate appreciably. For example, metals cannot be destroyed in the environment and thus are extremely persistent. Some metals bioaccumulate appreciably while others do not. However, the degree to which a metal can bioaccumulate does not affect the metal's persistence in the environment. The connection suggested by the commenters is not scientifically justified. Thus, EPA does not believe that persistence criteria can be applied only in conjunction with the bioaccumulation criteria. EPA reiterates that in this rulemaking the Agency chose to focus on those toxic chemicals that meet both the persistence and bioaccumulation criteria proposed for EPCRA section 313. In the future, the Agency may focus on toxic chemicals that are either persistent or bioaccumulative.

A discussion of the individual criteria is presented in the remainder of this unit.

a. *Persistence.* EPA proposed persistence criteria for the TRI program of half-lives of 2 months in water, soil, and sediment and 2 days in air. As discussed in Unit VI.B.1., EPA disagrees

that it must choose persistence criteria for EPCRA section 313, an information collection and dissemination program, consistent with the international criteria being applied to chemicals that are of global or regional (e.g., Europe and the Great Lakes) concern and that are being targeted for ban, restriction, or phase-out. Chemicals that meet the persistence criteria used in the international agreements are extremely persistent chemicals. Applying these criteria to EPCRA section 313 would result in a very narrow list of chemicals that would focus on only extremely persistent chemicals. This is inconsistent with both the purposes of EPCRA section 313 and with EPA's technical judgment. There is no "bright line" that separates what is persistent from what is not persistent. The degree of persistence is a continuum. Chemicals with a half-life of 2 to 6 months are not non-persistent. They are less than chemicals with a half-life of greater than 6 months. The degree of persistence that should be used as criteria is not an absolute scientific determination. Rather it is a combination of science and policy. As discussed in the proposed rule and the remainder of this section, organizations have generally used as persistence criteria half-lives of 2 months and/or 6 months for water, soil, and sediment.

The determination of which set of numerical criteria to apply will depend on the final intent: for example, providing communities with information on persistent chemicals that can build up in their environment versus banning the manufacture and use and eliminating releases of a chemical that has global impacts. For EPCRA section 313, which provides information on toxic chemicals to communities, researchers, and governments, the criteria should be in keeping with both science and the intent of the statute.

Long-range transport (LRT) and residual risk are relevant domestically, since chemical substances may be transported regionally and transcontinentally, resulting in exposures at sites distant from releases but still within U.S. borders. Nevertheless, as a general rule, the closer the sources and receptor are, the more likely it is that released material will reach that receptor. The 12 UNEP POPs or their degradation products all meet or exceed the half-life criterion of 6 months for soil, water, or sediment, often by large margins (Refs. 44 and 45), and the 6 months criterion thus acts to isolate these substances for international attention aimed at limiting LRT. But a shorter half-life criterion is necessary to protect communities from bioaccumulative toxicants derived from sources closer to home, since, all other things being equal, a pollutant reaches nearby populations in less time than distant ones.

An article by Wania and Mackay (Ref. 81) is often cited in discussions of "global distillation" of relatively mobile POPs such as hexachlorobenzene and lindane, which tend to have inverted concentration profiles such that concentrations increase with distance from the source (i.e., from temperate to polar regions) rather than the reverse. What may be less obvious is that the converse is also true; namely, that less volatile substances show no significant latitudinal dependence; that low-mobility POPs such as mirex and the more highly chlorinated PCBs tend to undergo *rapid deposition and retention* close to their sources; and that all but high or relatively high mobility chemicals are expected to show "normal" concentration profiles, such that concentrations decline with distance from warmer sources to colder remote regions (Ref. 81). A recent study of organochlorine contaminants in sea otters illustrates this point. Although the levels of total DDTs observed were not considered toxicologically significant, Bacon *et al.* (Ref. 8) found the highest levels in California sea otters (ca. 850 micrograms per kilogram ( $\mu\text{g}/$

kg)) but much lower levels in Aleutian otters (40  $\mu\text{g}/\text{kg}$ ) and southeast Alaska otters (1  $\mu\text{g}/\text{kg}$ ), and attributed the higher levels in the California otters to extensive DDT use and production in this region from the 1950s to the 1970s. Even UNEP's Criteria Expert Group (CEG), which is charged with developing criteria and procedures for addition of substances beyond the original 12 POPs, has highlighted the importance of "near-field" exposures:

In warmer climates exposures may occur closer to the source; e.g., occupational exposure during use, or local exposure caused by runoff from use or leaking from stockpiles. Food, such as fish, may be a major route of intake also in warmer climates [in contrast to Arctic and sub-Arctic regions] and POPs may accumulate in the food chain and reach high levels in predatory species in these conditions. (UNEP/POPS/INC/CEG/1/2: 1998) (Ref. 56)

An additional factor that argues for adopting the more protective persistence criterion is the need for communities with vulnerable populations to have access to data on release and other waste management quantities. Examples of such populations include toddlers who play in contaminated soil, local farmers who consume their own produce, and subsistence as well as sport fishers, who often consume large quantities of what they catch. The relative importance of any of these pathways depends on the properties of the substance, rates and media of release and other factors, but ingestion of bioaccumulating substances may occur by all of these routes. The Organization for Economic Cooperation and Development (OECD) guidance on the assessment of indirect human exposure to chemical toxicants is consistent with EPA policy, and states that in the case of local, site-specific emissions, one or more of these subgroups may be particularly endangered (Ref. 53).

From a scientific perspective there is no one best persistence criterion. However, it is simply not accurate to state that there is no precedent or basis for using a persistence criterion of 2 months. As outlined in the proposed rule (64 FR 701), similar values have been proposed by several authorities, including the Ontario, Canada Ministry of Environment and Energy (MOEE) for its Candidate Substances List for Bans or Phaseouts (Ref. 36); the Canadian initiative for Accelerated Reduction/Elimination of Toxics (ARET) (Refs. 1 and 2); the International Joint Commission's (IJC) Great Lakes Water Quality Agreement (GLWQA) (Ref. 27); and the UNECE's LRTAP Convention, which did adopt 2 months as the

persistence criterion of record for water (Ref. 54). In each of these programs the focus was on persistent, bioaccumulative and toxic substances, and it is noteworthy that all are national or regional, not global, in scope. Thus, a trend exists in which authorities with domestic or regional mandates to take action to reduce risks from indirect exposure to PBT chemicals have recommended half-life criteria substantially lower than 6 months.

EPA's Office of Water maintains a Listing of Fish and Wildlife Advisories (LFWA) for the U.S. and territories, which listed 2,299 advisories in 1997 (Ref. 29). U.S. states and territories and Native American tribes have primary responsibility for issuing advisories for the general population, which include recommendations to limit or avoid consumption of certain fish and wildlife from specific water bodies. The overwhelming majority of the advisories are for well recognized PBT chemicals (chlordane, mercury, PCBs, etc.), but many less familiar substances are also represented. The number and content of advisories in LFWA clearly indicate that toxicologically significant levels of chemical contaminants, specifically PBT chemicals, are often found in fish and wildlife that are caught noncommercially and consumed by the U.S. population. It is generally impossible to determine the exact source(s) of exposure for the species and locations included in any given advisory, but it seems highly unlikely that the majority of listed contaminants in U.S. waters could be derived from non-U.S. (i.e., geographically distant) sources. The LFWA thus lends further support to the contention that concern for exposure to PBT chemicals is not limited to situations where the exposure results primarily from LRT. It should be noted that the fact that no advisories have been issued for a particular chemical does not mean that it does not persist. Not all species of aquatic organisms are tested nor are all water bodies, in addition, each state determines what it will use as the level of concern for issuing an advisory.

A series of Toxic Substances Control Act (TSCA) section 5 Premanufacture Notifications (PMNs) submitted to EPA in 1990 also illustrates that exposure to PBT chemicals is not limited to LRT (Refs. 37 and 38), and also demonstrates: (i) Why EPA believes that the persistence criterion for bioaccumulating substances in soil, water, or sediment should be set substantially lower than 6 months; and (ii) that for purposes of EPCRA section 313, concern for potential exposures to persistent and bioaccumulative toxics

must extend beyond the UNEP's 12 widely acknowledged POPs. The substances in question were alkylated diphenyls for use as solvents, and for which EPA expected discharge to receiving streams and rivers. The submitter supplied data on use and disposal, aquatic toxicity, and biodegradability. The submitted environmental fate data and EPA estimates of biodegradability based on structural analogs suggested that half-lives in water would be well below 6 months, but not necessarily lower than 2 months. As a result of concerns expressed by EPA, use was limited to sites where resulting water concentrations could be limited to 1 microgram per liter ( $\mu\text{g/L}$ ) or less; concomitantly, the submitter was also informed of EPA's belief that a potential for *long-term risk* existed, but that EPA could not quantify this risk since assessments typically evaluated releases over only 1 year. In 1998, results of monitoring were announced by the State EPA and revealed that the alkylated biphenyls had been found in fish fillets and sediment samples from the receiving stream.

One commenter contends that the persistence criteria of half-lives of 2 months for water, soil, and sediment and 2 days for air may not be sufficiently protective (i.e., the criteria may be too high).

EPA disagrees with the comment. EPA believes that it should adopt criteria that focus on toxic chemicals that will build up in the environment, while at the same time not limiting the list of persistent toxic chemicals to only those that are of global concern. As discussed earlier in this section, EPA believes that 2 months is a reasonable half-life criterion given the purposes of EPCRA section 313. EPA believes that application of lower criteria would include so many substances as to be impractical. Further, given the uncertainties that often exist regarding physical properties and environmental behavior of chemicals, caution is especially appropriate for substances with shorter half-lives, since they are (all other things being equal) less likely to build up in the environment than more persistent substances. EPA believes that the adoption of criteria of half-lives of 2 months in water, soil, and sediment and a half-life of 2 days in air allows EPA to balance the need to provide communities and other data users with information on toxic chemicals that persist in their environment without being overly inclusive or restrictive.

One commenter contends that a half-life criterion for air of 2 days should be

considered sufficient in and of itself for designating substances as persistent.

EPA agrees with the comment. EPA made the following statements in the proposed rule regarding the 2-day air half-life criterion and its use in the determination as to whether a chemical was a PBT under EPCRA section 313:

For the purposes of determining whether a toxic chemical is persistent in the environment under section 313, EPA used a half-life criterion of 2 months for water/sediment and soil and a half-life of 2 days for air. Given the above discussions, EPA believes that, for purposes of reporting under section 313, these values are appropriate for determining whether a toxic chemical is persistent in the environment and will persist long enough in the environment to bioaccumulate or be transported to remote locations. Under these criteria, if a toxic chemical meets any one of the media specific criteria, then it is considered to be persistent. Thus if a toxic chemical's half-life in water or sediment or soil is equal to or greater than 2 months or greater than 2 days for air then the toxic chemical is considered to be persistent for purposes of section 313. Note that when considering persistence in connection with the potential for a toxic chemical to bioaccumulate, meeting the air half-life criteria alone would not be sufficient, since a chemical's potential to bioaccumulate is usually dependent on it being persistent in either water, sediment, or soil. In determining whether the chemicals in this proposal were persistent, EPA did not rely solely on the persistence in air. (at 64 FR 702)

It is clear from the discussion above that EPA agrees with the commenter that when considering persistence alone an air half-life of 2 days would be considered sufficient to classify a chemical as persistent under EPCRA section 313. However, for the reasons explained above, if a chemical only meets the 2-day air half-life persistence criteria, EPA does not believe that would be sufficient for classifying a chemical as a PBT under EPCRA section 313.

Some commenters contend that EPA's two-tiered approach to the persistence criteria is confusing.

EPA notes that it proposed only one set of persistence criteria for EPCRA section 313, half-lives of 2 months or greater in water, soil, and sediment and 2 days in air. The Agency did not propose to use half-lives of 6 months or greater in water, soil, and sediment and 2 days in air as a second set of persistence criteria for EPCRA section 313. However, for purposes of setting reporting thresholds in this rulemaking, the Agency did choose to focus on the subset of PBT chemicals that have half-lives of 6 months or greater in water, soil, or sediment (and BCF/BAFs greater

than 5,000) by proposing a 10 pound reporting threshold.

For the reasons given above, EPA reaffirms its intention to use a half-life of 2 months as the criterion for persistence in water, soil, and sediment and a half-life of 2 days as the criterion for air when characterizing a chemical as persistent for purposes of EPCRA section 313.

b. *Bioaccumulation.* EPA proposed as bioaccumulation criteria for the TRI program bioaccumulation/bioconcentration factors of 1,000. As discussed in Unit VI.B.1., EPA disagrees that it must choose for EPCRA section 313, bioaccumulation criteria consistent with the international criteria. Applying these strict criteria to EPCRA section 313 would result in a very narrow list of chemicals that would focus on only extremely bioaccumulative chemicals. This is inconsistent with the purposes of EPCRA section 313 and with EPA's technical judgment. There is no "bright line" that separates what is bioaccumulative from what is not bioaccumulative. The degree of bioaccumulation is a continuum. Chemicals with BCFs or BAFs of 1,000 to 5,000 are not non-bioaccumulative. They are less bioaccumulative than chemicals with BCFs or BAFs greater than 5,000. The degree of bioaccumulation that should be used as a criterion is not an absolute scientific determination. Rather it is a combination of science and policy. As discussed in the proposed rule and below, organizations have generally used as bioaccumulation criteria BAFs/BCFs of 1,000 and 5,000. The determination of which numerical criterion to apply will depend on the final intent: for example, providing communities with information on bioaccumulative chemicals that can accumulate in organisms versus banning the manufacture and use and eliminating releases of a chemical that has global impacts. For EPCRA section 313 which provides information on toxic chemicals to communities, researchers, and governments, the criteria should be in keeping with both the Agency's scientific judgment and the intent of the statute.

From a scientific perspective there is no one bioaccumulation criterion. However, it is simply not accurate to state that there is no precedent or basis for using a bioaccumulation criterion of 1,000. As noted in the proposed rule, for a number of years EPA scientists and programs have used a BCF of 1,000 or more to indicate a high level of concern for bioaccumulation. In addition, this value has been used in some Canadian projects, many dealing with the Great

Lakes basin. Also, Germany proposed a BAF/BCF criterion of 1,000 during negotiation of the LRTAP Protocol. Support for a BAF criterion of 1,000 also comes from the Final Water Quality Guidance for the Great Lakes System (FWQGGLS) (60 FR 15366, March 23, 1995) (FRL-5173-7). In this document, EPA stated that bioaccumulation of persistent pollutants is a serious environmental threat to the Great Lakes Basin Ecosystem and that chemicals identified as bioaccumulative chemicals of concern (BCCs) (i.e., with BAF values greater than 1,000) would receive increased attention and more stringent controls. The final guidance designated as BCCs those chemicals with human health BAFs greater than 1,000 that were derived from certain field-measured BAFs. One commenter believed that the BAF criteria used in the FWQGGLS did not provide support for the use of a BAF of 1,000 since a more strenuous methodology taking more factors into account was used. However, EPA believes that this does provide support for the criteria established for the purposes of EPCRA section 313 because, although the underlying technical assessments may be more stringent, the bioaccumulation level of concern is still a BAF of 1,000. Also, as noted by some commenters, EPA has proposed to use a BCF/BAF of 1,000 to trigger testing under TSCA section 5(e) (63 FR 53417). Specifically, for chemicals subject to TSCA section 5 that have a BAF of 1,000 or greater and that meet certain toxicity and persistence criteria (similar to the EPCRA section 313 persistence criteria) testing would be "triggered" by specific production limits. While the manufacturer of the chemical would be allowed to commercialize the substance, certain controls could be stipulated, including specific limits on exposures, releases, or uses. EPA notes that in the same **Federal Register** document, the Agency has proposed that chemicals that have a bioaccumulation factor of 5,000 and that meet certain toxicity and persistence criteria (e.g., half-life of 6 months or greater in soil) be placed in a "Ban Pending Testing," bin. Chemicals meeting these criteria could be subject to more stringent control up to a ban on commercial production.

Not only is there precedent for the use of a BCF/BAF of 1,000, but EPA believes that the purposes of the statute argue for the use of the more expansive criterion. Data on PBT chemicals are the type of information that will be of particular use to specific communities such as those that consist of subsistence fishers. Subsistence fishers (as well as sports

fishers) are more highly exposed to PBT chemicals than the general population. Subsistence fishers consume large quantities of what they catch. In addition, children are affected by lower doses of certain PBTs than are adults. Children of both subsistence fishers and sport fishers will consume larger quantities of lake food and seafood than children in other communities. As discussed in Unit VI.B.2., EPA's Office of Water maintains a Listing of Fish and Wildlife Advisories (LFWA) for the U.S. and its territories, which listed 2,299 advisories in 1997 (Ref. 29). The overwhelming majority of the advisories are for well-recognized PBT chemicals (chlordane, mercury, PCBs, etc.), but many less familiar substances are also represented. The number and content of advisories in LFWA clearly indicate that toxicologically significant levels of chemical contaminants, specifically PBTs, are often found in fish and wildlife that are caught noncommercially and consumed by the U.S. population. It should be noted that the fact that no advisories have been issued for a particular chemical does not mean that the chemical does not bioaccumulate. Not all species of aquatic organisms are tested nor are all water bodies. In addition, each state determines what it will use as the level of concern for issuing an advisory. EPA believes that it would be inconsistent with the intent of EPCRA section 313 to limit the information on bioaccumulative toxic chemicals to only information for the most bioaccumulative.

One commenter contends that EPA did not provide scientific justification for its choice of the bioaccumulation criterion of a BCF/BAF of 1,000. The commenter states the EPA's discussion of the origin of the 1,000 BCF/BAF value at a 1976 meeting sponsored by the American Society of Testing and Materials, and its reaffirmation in 1995 in a research article by two of the original authors, the use of the value by scientists in EPA's Office of Research and Development's Duluth Laboratories, by EPA's Office of Pollution Prevention and Toxics in the review of chemicals under TSCA sections 4 and 5, by EPA's Office of Water in the Final Water Quality Guidance for the Great Lakes System, and the use by other authorities, such as the German government, to identify chemicals of high concern for bioaccumulation do not provide a technical basis for choosing a value of 1,000 as a criterion for bioaccumulation. The commenter contends that a criterion of 5,000 is scientifically supportable because

chemicals with a BCF/BAF of 5,000 have a high potential to biomagnify.

As discussed above, there is no scientifically "best" bioaccumulation criterion. The degree of bioaccumulation is a continuum. A chemical does not bioaccumulate only if it has a BCF that is 5,000 or greater. A chemical that has a BCF of 1,000 will bioaccumulate, specifically the chemical will be present in an organism at a concentration that is 1,000 times greater than its concentration in the surrounding aqueous environment. Rather the choice of a value along the bioaccumulation spectrum is based to a large degree on how the criterion is to be used, e.g., to track chemicals entering a particular environment, or to restrict the use of chemicals, etc. As such the choice of a bioaccumulation criterion is a combination of science and policy.

The commenter did not provide support for the contention that 5,000 was scientifically the "best" bioaccumulation criterion. Specifically, the commenter did not indicate why as a scientific matter a BCF of 5,000 was preferable to a BCF of, for example 4,000 or a BCF of 15,500. While the commenter did note that chemicals that have a BCF of 5,000 tend to have a high potential to biomagnify, the commenter did not indicate in what way this factored into his determination that a BCF of 5,000 is the scientifically "best" bioaccumulation criterion. In addition, EPA does not agree that a BAF or BCF of 5,000 indicates that a chemical will be more likely to biomagnify since biomagnification is a much more complex process. Biomagnification is not a separate process from bioaccumulation or bioconcentration, but is instead a specific example or subset of both. Biomagnification has been defined as: The result of the processes of bioconcentration and bioaccumulation by which tissue concentrations of bioaccumulated chemicals increase as the chemical passes up through two or more trophic levels (Ref. 43). The difference between bioaccumulation and biomagnification is that for a chemical to biomagnify its level of bioaccumulation must increase as it moves up the food chain. The whole concept of biomagnification can be viewed as controversial (Ref. 9) and biomagnification has been studied for only a few chemicals. Most importantly, biomagnification is not required in order to have a concern for chemicals that bioaccumulate. This is because bioaccumulation in even one species can have a serious impact on that species or any other species that feeds on it. For example, if a chemical only bioaccumulates in fish then the fish will

be exposed to higher concentrations of the chemical as will anything that eats the fish. Therefore, EPA believes that there is no reason to establish biomagnification as a criterion for PBT chemicals since bioaccumulation is of more than sufficient concern in and of itself.

None of the other commenters who believe that the bioaccumulation criterion of 1,000 is too expansive suggested that EPA adopt another value, other than the 5,000 value used in international agreements, addressed in previous responses in this unit. At most, several commenters took issue with the fact that the EPCRA section 313 bioaccumulation criterion (BCF/BAF of 1,000) is 5 fold less than the international bioaccumulation criterion of a BCF/BAF of 5,000. Given that for each of these programs the focus was on PBT chemicals that are of global concern, EPA believes that as a matter of public policy, it is more appropriate for a reporting program to use a more protective criterion than that used in international agreements that seek to ban or severely restrict the use and/or release of chemicals.

One commenter believes that EPA should not adopt a bioaccumulation criterion (BCF/BAF of 1,000) for EPCRA section 313 that is more stringent than the criterion for a Great Lakes BCCs (a human health BAF of 1,000). EPA notes that BCCs will receive stringent controls which is not the case for toxic chemicals identified as bioaccumulative (and persistent) under EPCRA section 313.

Many commenters supported the proposed bioaccumulation criterion of a BCF/BAF or 1,000. However, one of these commenters believes that 1,000 should be the criterion only if the BCF or BAF is a measured value. If the BCF is an estimated value, then the criterion should be 500.

EPA believes that such a two-tiered approach will add confusion. Further, estimated or predicted BCFs are often based on measured data and equations that have been found to correlate well with measured data. In addition, EPA believes that a BCF of 500 is overly expansive. EPA believes that expanding the criteria to include estimated BCFs of 500 would label so many chemicals as bioaccumulative as to be impractical. EPA believes that the adoption of the criterion of BCF/BAF of 1,000 allows EPA to balance the need to provide communities with information on toxic chemicals that bioaccumulate without being overly inclusive or restrictive.

Some commenters contend that EPA's two-tiered approach to the bioaccumulation criteria is confusing. EPA notes that it proposed only one

bioaccumulation criterion for EPCRA section 313, a BCF/BAF of 1,000. The Agency did not propose to use a BCF/BAF of greater 5,000 as a second bioaccumulation criterion for EPCRA section 313. However, for purposes of setting reporting thresholds in this rulemaking, the Agency did choose to focus on the subset of PBT chemicals that have a BCF/BAF greater than 5,000 (and half-lives greater than 6 months) by proposing an even lower reporting threshold.

For the reasons given above, EPA reaffirms its intention to use a BCF/BAF of 1,000 as the criterion for characterizing a chemical as bioaccumulative under EPCRA section 313.

*c. Toxicity.* A number of commenters contend that EPA should set a separate toxicity criteria for PBT chemicals. EPA disagrees. EPCRA section 313 provides toxicity criteria at section 313(d)(2) to be used in adding a chemical to or deleting a chemical from the EPCRA section 313 list of toxic chemicals. These criteria are:

(A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

(B) The chemical is known to cause or can reasonably be anticipated to cause in humans-

- (i) cancer or teratogenic effects, or
- (ii) serious or irreversible-
  - (I) reproductive dysfunctions,
  - (II) neurological disorders,
  - (III) heritable genetic mutations, or
  - (IV) other chronic health effects.

(C) The chemical is known to cause or can reasonably be anticipated to cause, because of-

- (i) its toxicity,
- (ii) its toxicity and persistence in the environment, or
- (iii) its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

Given that Congress has provided EPA with specific toxicity criteria, and that listed chemicals are statutorily defined as "toxic chemicals," the Agency does not believe that additional "toxicity" criteria would be appropriate. One reason is that the Agency is concerned that this would imply that TRI data on the toxic chemicals that meet the statutory toxicity criteria are of less value than TRI data that meet both the statutory toxicity criteria and some additional toxicity criteria that would be developed by EPA. EPA believes that bifurcating the list with an additional,

non-statutory toxicity criteria would be inconsistent with the intent of Congress. In addition, it is worth noting that some of the toxicity criteria presented by the commenters are fundamentally consistent with the toxicity criteria outlined in the statute. However, EPA notes that some of the criteria provided by the commenters are risk criteria rather than hazard criteria. For example, see ICCA Briefing Note on POPs (April 21, 1998) (Ref. 26). As discussed at length in the final rule adding 286 chemicals to the EPCRA section 313 list (59 FR 61432), the EPCRA section 313(d)(2)(B) toxicity criteria (chronic toxicity) are hazard criteria, not risk criteria. The EPCRA section 313(d)(2)(C) criteria are primarily hazard based with only a limited exposure component. To impose additional toxicity criteria for purposes of defining a PBT or a PT or BT chemical based on risk rather than hazard would be inconsistent with EPCRA section 313. See, e.g., *Legislative History* at 5186. Risk assessment may be appropriate for use under statutes that control the manufacture, use and/or release of a chemical. However, EPCRA section 313 is an information collection provision that is fundamentally different from other environmental statutes that control or restrict chemical activities. For these reasons, EPA believes that it is inappropriate to add toxicity criteria, beyond the criteria provided by Congress at EPCRA section 313(d)(2).

3. *Persistence and bioaccumulation consideration under EPCRA section 313(d)(2)(C)(ii) and (iii).* The criteria that EPA has laid out in this rule for determining if a chemical is a persistent and/or bioaccumulative chemical are not the same criteria EPA uses when conducting assessments for listing chemicals pursuant to EPCRA section 313(d)(2)(C)(ii) and (iii). These sections of EPCRA allow EPA to consider whether a chemical meets the listing criteria based on "its toxicity and persistence in the environment" or "its toxicity and tendency to bioaccumulate in the environment." Including consideration of persistence and/or bioaccumulation modifies the way in which EPA assesses a chemical's toxicity for purposes of listing. EPA interprets the results of the toxicity data in light of a chemical's persistence and/or bioaccumulation, and adjusts its concerns for the chemical's toxicity in accordance with the degree to which a chemical persists or bioaccumulates. For example, standard aquatic toxicity tests provide toxicity results in time frames that range from hours to a few weeks. For aquatic toxicity that results

from such short exposure times, a chemical with a persistence half-life of even 2 weeks will result in a greater potential for exposure and therefore increased concern for the concentration at which toxicity is expressed. In this case, EPA would be concerned about the chemical's persistence at levels well below a half-life of 2 months or more. Because EPA's concern under these provisions is with the interrelationship between two chemical properties and how that affects whether the chemical can reasonably be anticipated to cause a significant adverse effect on the environment, EPA believes that it needs to be able to consider a broader range of values. By contrast, the persistence and bioaccumulation criteria established in today's rulemaking serve a different purpose; they are intended to operate independent of a chemical's toxicity, to identify a fixed class of chemicals. EPA has provided this explanation to clarify the different purposes of the persistence and bioaccumulation criteria established in this rule, and the use of persistence and bioaccumulation in assessments pursuant to EPCRA section 313(d)(2)(C)(ii) and (iii).

### C. Criteria as they Apply to Metals

Many commenters contend that the persistence criteria proposed by EPA were developed for organic chemicals and cannot be applied to metals, or if applied, are not useful in screening for hazard. The critical parameter in determining risk is bioavailability, not persistence. This has been recognized by international organizations of which EPA is a member, so it is unclear why it is now necessary for EPA to deviate from these policies. Metals are not harmful if they are not in a bioavailable form. Moreover, metals are natural components of the earth's crust and many are accumulated by living organisms because they are essential nutrients. Two of the commenters state that because persistence is defined as "the failure of a substance to readily biodegrade," this concept has no relevance for metals.

EPA disagrees. The scientific literature contains many definitions of persistence which vary in detail, but center on a common theme: persistence is the *ability of a chemical substance to remain in a particular environment in an unchanged form*. This definition makes no mention whatsoever of any specific processes that may impact a substance's environmental fate, such as biodegradation. According to this definition, specific metal compounds may or may not be persistent depending on the form of the metal and environmental conditions, but the

elemental metal itself obviously meets the definition, and this was acknowledged in the majority of comments received.

That elemental metals are persistent by definition is widely accepted. While they may take different oxidation states that can be interconverted, the elemental metal itself cannot be destroyed. For example, chromium (VI) may convert to chromium (III). Both are simply different forms of chromium. All elemental metals therefore meet the 2 months half-life criterion automatically. Given this, it is obviously false to assert, as did the majority of commenters on this issue, that EPA's proposed persistence criteria *cannot be applied* to metals. The position of many commenters was that in determining whether a metal or metal compound may actually pose a risk if released to the environment, bioavailability is much more important than the fact that a substance meets the formal "definition" of persistence. EPA agrees that bioavailability is important in determining the potential for the metal to be accumulated in organisms, but parent metals do have the potential to become available from metal compounds under common environmental conditions. Availability of the metal ion may be the result of biotic or abiotic processes. There are a number of environmental factors which EPA considers in determining the availability of the metal ion. These include hydrolysis, pH effects on solubility, photolysis, aerobic and anaerobic transformations, and *in vivo* transformations. As outlined in the remainder of this section, it is realistic to expect that, in general, metals when released into the environment can encounter conditions in which they are available at levels sufficient to exert toxicity and bioaccumulate.

EPA also disagrees with the commenters' claims, direct or implied, that metals released to the environment as a result of human activity must be of negligible concern because they:

- Cannot be converted to bioavailable forms; or even if initially bioavailable are rapidly sequestered in such a way that subsequent exposure is impossible; or
  - If bioavailable, are naturally wholesome and good because organisms need them to function.
- EPA disagrees with this simplistic view. Metals can enter the environment in bioavailable forms or can be converted in the environment into bioavailable forms. As shown below, metals and metal compounds may be available to bioaccumulate under many realistic and common environmental conditions.

The commenters are correct in stating that metals released to the environment from anthropogenic sources are affected by prevailing environmental conditions, meaning broadly the wide variety of physical, chemical and biological processes that act upon them, and these collectively determine the form in which the metal ultimately exists.

According to Klein (Ref. 28), interconversion of inorganic metal compounds can be quite rapid, especially for ionic forms, and as a result the chemical form in which an elemental metal is released may not be the predominant form post-release. Generally, the ionic forms of inorganic metals are the most available. Availability is affected by many factors and its determination is complex. For metals environmental conditions can affect their availability. A detailed scientific discussion of the environmental fate of lead, which is representative of other metals, and that is illustrative of many of the more important environmental variables that affect availability is provided in Refs. 14, 28, 30, 50, 66a, 72, and 84. See also the preamble to EPA's recent proposal to lower the EPCRA section 313 reporting thresholds for lead and lead compounds (64 FR 42222). The same basic chemical properties and environmental variables will affect the degree of availability of a metal in the environment regardless of the specific metal. There is no metal that is unavailable under all conditions.

EPA recognizes that lead and lead compounds are the subject of an EPA proposal under EPCRA section 313 (64 FR 42222). The inclusion of the discussion of the environmental fate of lead and lead compounds does not predetermine EPA's decision on the appropriate thresholds that should be set for lead and lead compounds. That determination will be based on a number of factors, including the bioaccumulation of lead.

Microbial transformations in soil, water, and sediment are often important in determining the overall fate of metals and metal compounds, and therefore the potential for formation of bioavailable forms. Metals known to undergo microbial oxidation/reduction processes include, antimony, arsenic, iron, mercury, selenium, and tellurium (Ref. 11). Arsenic microbiology illustrates the importance of environmental conditions in the interconversion of inorganic forms of arsenic. Microbial populations in activated sludge can oxidize arsenite to arsenate under aerobic conditions, but under anaerobic conditions such as often predominate in sediments, arsenate can be reduced to arsenite and

beyond. Both arsenites and arsenates can be available in the environment (Ref. 11). Microorganisms can reduce mercury in the form of mercuric chloride to elemental mercury, and are also capable of producing elemental mercury from organomercurials such as phenylmercuric acetate and methylmercuric chloride. Although the reduction of  $Hg^{2+}$  to elemental mercury can be regarded as decreasing availability, the elemental mercury formed is volatile and more likely to enter the global atmospheric circulation.

Mercury is perhaps better known for its potential to be biomethylated by bacteria in the environment (Ref. 11). Mercury has very high stability constants with organic ligands and can form true organometallic compounds (Ref. 6). As indicated by Stumm and Morgan (Ref. 49), metals and metalloids that form stable alkyl compounds are of special concern because they may be volatile; may accumulate in cells; and are toxic to the central nervous system of higher organisms. Methylmercury is highly bioaccumulative and is by far the best studied example of microbial bioalkylation. However, methylation of arsenic is also fairly well-characterized, involves the replacement of substituent oxygen atoms by methyl groups (e.g., arsenate is biomethylated to form dimethylarsine), and is important in the transfer of arsenic from sediment to the atmosphere (Ref. 11). Lead, germanium, selenium, tellurium, tin, and several other metals can also be biomethylated (Ref. 49).

Many of the commenters noted that certain metals are indeed micronutrients (e.g., cobalt, copper, and iron), and are accumulated precisely because they are required for certain cellular functions. It does not follow, however, that any amount of the same metal is acceptable or desirable. Accumulation of essential elements is usually governed by homeostatic mechanisms that control uptake (Ref. 28), but excessive uptake is possible and can be toxic to an organism. For example, selenium which is a micronutrient can cause selenosis at doses as low as 0.023 milligrams per kilogram per day (mg/kg/day). Clinical signs of selenosis include the characteristic "garlic odor" of excess selenium excretion in the breath and urine, thickened and brittle nails, hair and nail loss, lowered hemoglobin levels, mottled teeth, skin lesions, and central nervous system (CNS) abnormalities (peripheral anesthesia, acroparesthesia, and pain in the extremities) (Ref. 61). Similarly, copper, which is an essential nutrient, at high doses can cause vascular injury and hemolytic anemia. It should also be

noted that copper exhibits high acute and chronic toxicity to aquatic organisms that results in the death of the organism (61 FR 54381, October 18, 1996) (FRL-5396-9), and inhalation of hexavalent chromium is known to cause cancer in humans (Ref. 60), even though chromium in very small oral doses is a micronutrient (Ref. 25). Moreover, the commenters freely cite Allen (Ref. 4), Chapman (Ref. 18) and other authors to the effect that metals are accumulated "deliberately" depending on the physiological needs of the organism, but it is clear that this applies only to metals that are essential nutrients. Metals are generally taken into cells by nutrient metal transport systems, and these are not sufficiently specific to completely exclude nonessential metals, some of which may be toxic and/or bioaccumulative. In this situation nutrient metals can be displaced from their binding sites by undesirable, toxic metals, which then gain access to the cell interior with concomitant exclusion of the essential metal (Ref. 49). Toxic metal ions are then free to react with critical enzymes or otherwise disrupt cellular functions if they reach certain levels. Often this toxicity occurs at relatively low doses. For example, inorganic arsenic is a known human carcinogen and causes chronic toxicity at doses as low as 0.014 mg/kg/day (Ref. 59). Lead has no known biological function in humans but is readily absorbed and has been shown to cause various toxic effects. For example, children can suffer permanent damage from lead poisoning, resulting in lowered intelligence, learning disabilities, hearing loss, reduced attention span, and behavioral abnormalities (Ref. 66).

EPA concludes that under many environmental conditions, metals and metal compounds may be available to express toxicity and to bioaccumulate, and that these effects are not necessarily limited to metals that are not essential nutrients. It is appropriate, therefore, to be concerned about the potential adverse effects, and one step in this direction is to more accurately assess emissions from anthropogenic activities. EPCRA section 313 provides that opportunity. Precedent for this concern exists at the international level in the form of a protocol for heavy metals under the UNECE LRTAP, which is currently being negotiated. The draft protocol expresses concern ". . . that emissions of certain heavy metals are transported across national boundaries and may cause damage to ecosystems. . . and may have harmful effects on human health. . .," and specifically

advocates assessing and controlling emissions caused by human activities (Ref. 54).

Several commenters raised the issue of EPA participation in various international organizations, claiming that any attempt to apply EPA's proposed persistence and bioaccumulation criteria and/or assessment approach to metals would violate the policies of these organizations, whose positions EPA has previously endorsed. These claims are false because the commenters either misunderstand or misstate the aforementioned policies. The main focus of the commenter's attention is two documents, the OECD's *Harmonized Integrated Hazard Classification System for Human Health and Environmental Effects of Chemical Substances* (Ref. 41), and the North American Agreement on Environmental Cooperation (NAAEC)'s *Process for Identifying Candidate Substances for Regional Action under the Sound Management of Chemicals Initiative* (Ref. 39). A report from a joint Canada/European Union Technical Workshop on metals (Ref. 17) was also cited by commenters and reached similar conclusions.

The OECD document's pronouncements on metals are contained in paragraphs 22 and 23 of that document. Paragraph 22 reads as follows:

For inorganic compounds and metals, the concept of degradability as applied to organic compounds has limited or no meaning. Rather the substance may be transformed by normal environmental processes to either increase or decrease the bioavailability of the toxic species. Equally, the use of bioaccumulation data should be treated with care. Specific guidance will be [but has not yet been] provided on how these data for such materials may be used in meeting the requirements of the classification criteria. (Ref. 41)

By "degradability as applied to organic compounds" OECD means molecular degradation, most often by microbial degradation and/or hydrolysis or other abiotic processes, to progressively simpler organic chemical structures, leading eventually to inorganic substances like carbon dioxide and water. But, note, paragraph 22 does not in any way suggest that metals are not persistent. Moreover, it does not suggest that OECD hazard classification criteria cannot be applied, only that "care" (i.e., professional judgment) is required in the interpretation of data relative to the classification criteria. In fact, EPA agrees that bioavailability is important in determining the potential for the metal to be accumulated in organisms.

The Agency has analyzed information on the environmental fate of metals, and, as noted above, asserts its professional judgment that the parent metals do have the potential to become available from metal compounds under commonly encountered environmental conditions. Therefore, the Agency's treatment of metals is consistent with the OECD's intent.

The same holds with respect to NAAEC's pronouncements under the SMOC (Ref. 39). The focus of NAAEC/SMOC (Ref. 39) is the development of North American Regional Action Plans (NARAPs) for substances that pose significant risk to human health and the environment in all three member countries (namely, Mexico, Canada, and the United States). To date, NARAPs have been established for DDT/chlordane, PCBs, and mercury (note: a metal). NAAEC/SMOC (Ref. 39) acknowledges the persistence of metals, but highlights the role of expert judgment in assessing potential bioavailability of metals and metal compounds:

For naturally occurring substances such as metals and minerals, the Task Force understands that the direct application of the persistence and bioaccumulation criteria proves very difficult.....Organometals can behave like other persistent organic pollutants in their metallic form, and as certain compounds, metals tend to be infinitely persistent though not necessarily in a form that is bioavailable, and in some cases, they naturally bioaccumulate for beneficial purposes in organisms (i.e., essential elements). Expert judgment is essential for a meaningful evaluation of these substances.

Further, an earlier section of the document (Ref. 39) states,

It is understood that expert scientific judgment plays a significant role in acknowledging and addressing the difficulties posed by quantitative criteria for persistence and bioaccumulation, particularly in relation to naturally-occurring substances like metals and minerals where the potential for transformation to complexes or metallic species which are more or less bioavailable, are emerging as important considerations.

It is difficult to read into the preceding any intention to *exclude* metals and metal compounds from consideration, as many commenters imply, and more specifically, to declare that these substances have no potential to pose risk because they are never released in bioavailable forms; cannot be converted to bioavailable forms under any foreseeable circumstances, etc. On the contrary, it is clear from the preceding language as well as the inclusion of mercury among the NARAPs developed to date that any substance judged to be potentially

bioavailable and that otherwise meets the SMOC criteria, whether organic or inorganic, should not be excluded as a candidate for action. As outlined above, it is realistic to expect that, in general, released metals can encounter conditions in which they are available at levels sufficient to exert toxicity and bioaccumulate. Therefore, the Agency's treatment of metals is consistent with international policy under NAAEC/SMOC (Ref. 39).

Finally, EPA reminds commenters that a mechanism already exists to address concerns for any metal compound for which the data show that the metal cannot become available. The issue of bioavailability was addressed previously for EPCRA section 313 chemical assessments through EPA's policy and guidance concerning petitions to delist individual members of the metal compound categories listed under EPCRA section 313 (56 FR 23703, May 23, 1991). This policy states that if the metal in a metal compound cannot become available as a result of biotic or abiotic processes, then the metal will not be available to express its toxicity, and by extension, to bioaccumulate. If the intact metal compound is not toxic and the metal is not available from the metal compound, then such a chemical is a potential candidate for delisting. EPA has received fewer than 10 petitions to delete individual metal compounds because the petitioner contended that the metal portion of the metal compound would not be available under environmental conditions or *in vivo*.

#### D. Multimedia Modeling

One commenter contends that EPA should clarify how and when multimedia models will be used in the evaluation of PBT chemicals. EPA should not use the EQC model or other multimedia models as the sole determinant of potential risk. If exposure and use information is available, a detailed technical evaluation based on these data is preferred over modeling based on hypothetical exposure and loading scenarios.

The purpose of this rulemaking is to lower reporting thresholds for certain EPCRA section 313 substances that are being designated as persistent and bioaccumulative, and to list several additional substances that meet EPCRA section 313 listing criteria and are also persistent and bioaccumulative. Although neither quantitative risk nor exposure assessments have been performed, nor are they required under EPCRA, designation as a PBT does imply the existence of *potential* risk.

However, contrary to the comment, EPA has not proposed that multimedia models be used as the sole factor in determining persistence. As clearly stated in the proposed rule, EPA intends to use such modeling "as an additional factor, in conjunction with reaction half-lives for individual media, bioaccumulation/bioconcentration factors, etc., in justifying [the] actions proposed."

In the proposed rule EPA did explain in a general way (at 64 FR 703) how models would be used in PBT evaluation, and stated that results of multimedia modeling may be used to override compartment (medium)-specific degradation half-lives, but only if all model inputs are judged sufficiently accurate. This leaves unspecified what specific value(s) might be used for overall environmental persistence *criteria* (expressed either as an overall residence time or overall half-life). To date no international scientific or regulatory authority has proposed any such criterion for POPs/PBT chemicals, and the complex relationship between compartment-specific and overall persistence criteria is in fact a major topic of current research.

One commenter raises concerns regarding the modification EPA made to the EQC III model that deleted advective losses and sediment burial.

EPA modified the model to exclude advective losses and sediment burial because if these processes are included the persistence based on destruction will be underestimated. In multimedia modeling, advection can be viewed as the flow into or out of the evaluative environment or "box." These include processes such as downstream flow in surface waters, dispersion downwind in air, and burial in sediments. The model considers these non-destructive processes to result in loss from the evaluative environment in the same way that destruction does. However, these processes simply result in the transport of a chemical to another part of the environment downwind or downstream from where it is released, or its deposition into sediments, but not the destruction of the chemical.

The persistence of a chemical calculated when the model is run considering advective losses include non-destructive transport processes which remove the chemical from the evaluative environment. For example, the environmental persistence of a chemical released to water which does not significantly partition to sediments, degrade, or volatilize will reflect the rate at which the water to which it is released flows out of the evaluative environment. In this example, the

relative rate of non-destructive transport out of the evaluative environment may be more rapid than the processes which result in the destruction of the chemical. Thus, the persistence calculated by the model will be less than if advective transport from the evaluative environment was not considered.

EPA used the model to evaluate persistence based on destruction in a multimedia environment. This is consistent with EPCRA section 313 persistence criteria in that the criteria are based on destruction, not transport of the chemical. The Level III (non-equilibrium partitioning, steady state mass balance) models are preferred for developing qualitative and quantitative predictions of chemical distribution, pathways, and relative concentrations (Ref. 16). Level III models can also be used to assess persistence (Ref. 33). At steady state (level III) conditions the amount of chemical is unchanging with time and the input and output rates for a compartment are equal. The overall residence time of the chemical is the mass of the chemical in the compartment divided by the input or output rates. This represents the average time the chemical will reside in the compartment. Output may be by reactions that result in the destruction of the chemical or by advective flow (non-destructive) usually in air or water. When the model is modified to eliminate advective flow, the persistence of a chemical based on the rates of reactions that result in the destruction of the chemical can be assessed. Webster et al (Ref. 82) used this approach in evaluating the environmental persistence of chemicals using a multimedia fate model and noted that if advective loss is included, the residence time is reduced and can give a misleading impression of a short persistence. It was also noted that these advective losses "... merely relocate the chemical; they do not destroy it." EPA also used a modified version of the EQC level III model as a tool to assist on the characterization of the persistence of the chemicals subject to this rule. In this version of the model only irreversible transformation contributes to net loss of a chemical. In other words, the model was modified to represent a "closed box" in which the effect of processes that serve only to move the chemical from within the evaluative environment to outside of it, primarily in air and water (advective losses) were nullified. Sediment processes responsible for transport of the chemical from the evaluative environment such as sediment burial were similarly treated. The intent of this modification was to

make sure that only processes responsible for the destruction of the chemical were considered in evaluating its persistence in a multimedia environment. EPA supports the use of level III multimedia models modified, as described, for their ability to simultaneously consider reaction rates and partitioning so as to give a reasonable assessment of the persistence of chemicals in the multimedia environment.

However, EPA notes that its reliance on the multimedia modeling was limited. As discussed in the proposed rule (at 64 FR 703) and in Unit VI.B.2., EPA primarily considered media-specific data and made a case-by-case determination about the persistence of each chemical.

#### *E. Thresholds*

The issue most frequently raised by commenters was the Agency's choice of thresholds and the factors that EPA considered in lowering the thresholds. Many commenters contended that EPA should not consider burden in choosing thresholds. They believe that EPA should set a threshold of 10 pounds for PBT chemicals and 1 pound for that subset of PBT chemicals that are both highly persistent and highly bioaccumulative. Some commenters believe that EPA should set a threshold of 1 pound for all chemicals that are PBT chemicals. Numerous commenters believe that the threshold for reporting should be zero. Other commenters believe that burden should have been a greater consideration in EPA's choice of reporting thresholds. Many of these commenters believe that EPA should set thresholds based on some percentage of releases that would be reported.

EPA disagrees with these commenters. As explained in the proposal, the Agency considered a number of factors to determine the appropriate thresholds that should be established for these chemicals. EPA relied on the language of EPCRA sections 313(f)(2) and (h), and the legislative history to elicit the following principles to guide its exercise of discretion in lowering the thresholds, and in selecting the specific thresholds for PBT chemicals: (1) The purposes of EPCRA section 313; (2) the "verifiable, historical data" that convinces EPA of the need to lower the thresholds; (3) the chemical properties shared by the members of the class of toxic chemicals for which EPA is lowering the thresholds i.e., the degree of persistence and bioaccumulation; and (4) the reporting burden imposed by revised thresholds to the extent that such consideration would not deny the

public significant information from a range of covered industry sectors. Further, EPA believes that in the language of EPCRA section 313, and its legislative history, Congress provided direction on the appropriate weight to allocate to each of these considerations in implementing EPCRA section 313(f)(2). These considerations underlay the entire process by which EPA determined the appropriate thresholds. But, as noted below, the Agency's choice of revised thresholds was governed, and ultimately constrained, by EPCRA section 313's overriding purpose, which is to provide government agencies, researchers, and local communities, with a comprehensive picture of toxic chemical releases and potential exposures to humans and ecosystems.

In general, EPA's implementation of EPCRA section 313 is guided by the statutory purposes described by EPCRA section 313(h), which provides:

The release forms required under this section are intended to provide information to the Federal, State, and local governments and the public, including citizens of communities surrounding covered facilities. The release form shall be available... to inform persons about releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines, and standards; and for other similar purposes.

In addition to section 313(h), EPA was also guided by several statements on the principles intended to guide EPA's implementation of EPCRA section 313 made by Representative Edgar, one of EPCRA section 313's principal architects, during debate on the Conference Report. See, *Legislative History* at 5313-16. In the course of his statement, Representative Edgar also articulated EPCRA section 313's overriding purpose, which is:

to provide a *comprehensive view of toxic chemical exposure* and, hopefully, provide a basis for more sensible and effective local, State, and national policies. *Legislative History* at 5316 (emphasis added).

Based on the existing reporting requirements, the Agency believes that there are still significant gaps in the picture the TRI data provides local communities, government agencies, and researchers. One of the most significant of these gaps is a comprehensive picture of the releases and potential exposure of PBT chemicals to humans and the environment. Currently, only a very limited picture of releases and other waste management of PBT chemicals is available from the TRI data, in part, as a result of the current thresholds. For

example, under the current reporting thresholds, in 1997, EPA received only 29 reports on mercury and mercury compounds, and 6 reports on PCBs. This does not present a "comprehensive view of toxic chemical exposure." In addition, information on the releases and other waste management of PBT chemicals is particularly significant because these chemicals both persist and bioaccumulate. Individually, each of these attributes has the potential to pose increased exposures to humans and the environment. Toxic chemicals possessing both attributes have the potential to pose *significant* exposures to humans and ecosystems over a longer period of time; even small amounts of PBT chemicals that enter the environment can accumulate to elevated concentrations in the environment and in organisms, and therefore have a greater potential to result in adverse effects on human health and the environment.

As a first step in addressing the significant gap of information on PBT chemical releases and waste management, EPA considered whether to lower the reporting thresholds for PBT chemicals. EPA then looked to section 313(f)(2) for further guidance on how to proceed. Since lowering the thresholds ensures that "all facilities subject to the requirements of [section 313]" will continue to report, the requirement in section 313(f)(2) that a revised threshold obtain a "substantial majority of total releases of each chemical at all facilities subject to the requirements of this section" can be met without the need for quantitative support. Consequently, EPA looked to other sources of Congressional direction in the statute and legislative history to guide its exercise of discretion in establishing revised thresholds.

Given that there is no guidance on implementing section 313(f)(2) in the Conference Report, EPA looked to the debate on the Conference Report. In this context, Representative Edgar, stated:

It is also important to clarify the intent of Congress in establishing thresholds for reporting under this section. . . . These thresholds were designed to obtain reporting on both a *substantial majority of the Nation's toxic chemical releases and to obtain reporting from a large number of firms.* These thresholds reflect Congress' judgement that such thresholds appropriately balance the need for information against the burden on facilities required to provide such information. The EPA is authorized to revise these thresholds, but only if such revised thresholds continue to obtain reporting on a substantial majority of total releases. Any determination by the EPA regarding the ability of revised thresholds to obtain reporting on a substantial majority of

releases, especially if such revised thresholds raise the statutory levels, *must be based on verifiable, historical data which presents a convincing case that the statutory levels must be revised.* *Legislative History* at 5313 (emphasis added).

And during the House debate, Representative Swift noted that any revised threshold "should be *designed to improve the usefulness of the reports.* It must be structured to obtain reporting on a substantial majority of the *total nationwide releases* of the toxic chemical at *all facilities covered by section 313.*" *Id.* at 5338 (emphasis added).

In determining how to structure its threshold revisions, and particularly how it would improve the usefulness of the reports, EPA also consulted EPCRA's purposes, laid out in subsection (h). In this context, EPA also considered the statements made by Senator Stafford during debate on the Conference Report:

This section also requires the Administrator to computerize the data reported on the required forms and to make these data public by various means. Successful implementation of this requirement is vital to the basic purpose of the program. *The data should be managed in the computer in such a way as to allow a wide variety of analyses. For example, it should be possible to retrieve data, not only about individual facilities, but also aggregate data organized by type of chemical, type of effect, geographic location, company name, etc. as well as combinations of these parameters. . . .* *Legislative History* at 5186 (emphasis added).

Based on this Congressional guidance, EPA reached several conclusions. First, ample "verifiable, historical data" exists to support EPA's conclusions that PBT chemicals persist for long periods of time in the environment and bioaccumulate in organisms, including humans; that this persistence and bioaccumulation can result in higher exposures to humans and the environment; and that to "obtain a substantial majority of the Nation's toxic chemical releases," lower thresholds for PBT chemicals are warranted. For example, PCBs have been found throughout the Great Lakes in sediments, water, and aquatic organisms. Multimedia analyses indicate that the majority (80-90%) of human exposure to chlorinated organic compounds, such as PCBs comes from the food pathway, a lesser amount (5-10%) from air, and minute amounts (less than 1%) from water. Most of the data available on human exposure to PCBs in the Great Lakes come from the analyses of contaminant levels in drinking water and sport fish. The

consumption of contaminated sport fish and wildlife can significantly increase human exposure to the Great Lakes critical pollutants, such as PCBs. The sport fish are exposed to PCBs by consumption of sediments and through water (Ref. 76). See also Refs. 75 and 77.

Further, EPA strongly believes that increased reporting on PBT chemicals will improve the usefulness of the data on these chemicals. There are currently very few reports for some of the PBT chemicals, such as mercury, mercury compounds and PCBs. The currently available data provide a distorted picture of potential exposures to humans and the environment, because at the current thresholds only a fraction of the releases from facilities otherwise subject to EPCRA section 313 are reported. This limited reporting results in a significant underestimation of the releases from the industry sectors covered by EPCRA section 313. As such, the current data are of limited use for evaluating the potential exposures to humans and the environment of toxic chemicals that persist and bioaccumulate. Expanding the picture of releases, and therefore potential exposures, will increase the utility of all the TRI data on these chemicals. See, e.g., Economic Analysis, Chapter 6.4 (Ref. 67).

On these bases, EPA determined that revising the thresholds would be an important first step in closing the information gap on PBT chemicals. The Agency then began the process of determining the appropriate levels at which to establish the revised thresholds. For a number of technical and policy reasons, EPA chose an approach focused on two classes of PBT chemicals: (1) Toxic chemicals that meet the EPCRA section 313 persistence and bioaccumulation criteria discussed in Unit VI.B., i.e., those toxic chemicals that have half-lives of 2 months or greater in water/sediment or soil and that have bioaccumulation or bioconcentration factors of 1,000 and (2) the subset of PBT chemicals that are highly persistent and highly bioaccumulative, i.e., those toxic chemicals that have half-lives of 6 months or greater in water/sediment or soil and that have bioaccumulation or bioconcentration factors of 5,000 or greater.

First, for the most persistent and bioaccumulative toxic chemicals any release will lead to elevated concentrations in the environment and in organisms. EPA believes that such highly persistent and highly bioaccumulative toxic chemicals are of international, as well as national concern, because of the extent of their

persistence and bioaccumulation. As discussed elsewhere in this preamble, these facts have been widely recognized; there are a number of international agreements that ban, restrict, or phase out the manufacture, use and/or release of highly persistent and highly bioaccumulative toxic chemicals.

Similarly, toxic chemicals that are persistent and bioaccumulative are of national, regional, and local concern. As discussed elsewhere in this preamble, toxic chemicals that are persistent and bioaccumulative present a significant concern to many local communities due to the proximity of the communities to industrial sources. All other things being equal, a pollutant reaches nearby populations in less time than distant ones. Thus, toxic chemicals that persist and bioaccumulate can pose significant exposures to communities and ecosystems that immediately surround industrial sources as well as those communities that are subject to regional transport.

Given the international support for the extreme limitations on the use and release of toxic chemicals that are highly persistent and highly bioaccumulative, and the significant exposures that persistent and bioaccumulative toxic chemicals can pose to both local communities and broader regions of the United States and North America, EPA believes that it is appropriate to lower the reporting thresholds for *both* (1) Persistent and bioaccumulative toxic chemicals and (2) for highly persistent and highly bioaccumulative toxic chemicals. In addition, EPA believes this information is important to the public, government agencies, and researchers; for example, the information reported by facilities under the lower thresholds will help these groups assess the loading of the PBT chemicals in both local and regional ecosystems, e.g., a small lake or river or a larger ecosystem such as the Great Lakes or the Chesapeake Bay. See also, Economic Analysis at Chapter 6, pages 32–50 for examples of other uses of TRI data (Ref. 67).

Second, EPA considered how the revised thresholds would provide the information on PBT chemicals needed to assist the public to obtain “a comprehensive view of toxic chemical exposure,” as well as to assist government agencies, researchers, and other persons to conduct research and to establish appropriate regulations, guidelines and standards, in accordance with the directives laid out in subsection (h). EPA determined that providing greater information on two identifiable classes of chemicals best achieved these ends. It is consistent

with the actions of a significant number of the groups that would use this information; for example, as discussed in Unit VI.B., UNEP is in the process of negotiating an international agreement on the class of persistent organic pollutants with half-lives of 6 months and BCF/BAF values of 5,000. See also Economic Analysis at Chapter 6, pages 46–48 for examples of how TRI data will be used (Ref. 67). Moreover, EPA determined that data on members within the same class are more easily comparable; the members of the classes EPA established in this rulemaking share a qualitatively comparable level of concern based on their potential for increased exposure. The Agency believed that creating two distinct classes of comparable chemicals would significantly enhance the ability of researchers, government agencies, and other similar persons, to use the reports. Establishing distinct classes of comparable chemicals normalizes the subsequent years' data, providing a baseline against which data users can ascertain trends over time. Consequently researchers can more easily distinguish, and therefore track, the releases and other waste management of highly PBT chemicals, to evaluate the efficacy and progress of the policy strategies intended to address the risks of PBT chemicals, such as the Binational Great Lakes Water Quality Initiative. Finally, administrative convenience argued for establishing a limited number of alternate thresholds. As a practical matter, it would be burdensome for both the Agency and the regulated community to track a variety of individual thresholds for separate chemicals. In addition, because this was only the Agency's initial rulemaking to lower thresholds for certain PBT chemicals, EPA intended that the revised thresholds establish a set of categories that would be generally applicable to future designated PBT chemicals. All of these considerations led the Agency to conclude that it should establish two sets of revised thresholds based on two classes of PBT chemicals.

Thus, having concluded it was appropriate to focus the rulemaking on two classes of chemicals, persistent and bioaccumulative toxic chemicals and that subset of PBT chemicals that are highly persistent and highly bioaccumulative, EPA began the process of determining the specific thresholds that would achieve the purposes of subsections (f)(2) and (h). The intrinsic properties of PBT chemicals argue for very low thresholds. The subset of PBT chemicals that are highly persistent and

highly bioaccumulative warrant, in the absence of other considerations, a threshold approaching zero. Any release of these toxic chemicals is of global concern because they can persist for long periods of time, can maintain their identity even after undergoing long range transport, and can bioaccumulate to a significant degree. As discussed above, and at length in Unit VI.B., the potential impacts that can result from any release of toxic chemicals that are highly persistent and highly bioaccumulative have been widely recognized. There are a number of international agreements that ban, restrict, or phase out the manufacture, use and/or release of the most persistent and bioaccumulative toxic chemicals.

However, EPA believes that a zero threshold would be impractical. Attempting to require facilities to determine if they manufacture, process, or otherwise use any amount whatsoever of these chemicals would be extremely burdensome and perhaps technically impossible. Without an actual numerical threshold, many facilities might report some amount of these chemicals in a misguided attempt to assure compliance. This could lead to misleading and inaccurate data on the actual sources of these chemicals. EPA believes that rather than setting a zero reporting threshold it would be better to set a very low threshold that provides facilities with a clear indicator of when they are required to report. In general for purposes of EPCRA section 313, 1 pound is the practical equivalent of zero for these chemicals. EPA explained these considerations in the proposed rule (64 FR 712) and has received no information from commenters that convinces the Agency to pursue a different approach.

EPA then considered the relative degree of persistence and bioaccumulation between the two classes of chemicals. EPA wanted to establish two sets of revised thresholds with the same approximate relationship to each other, as the relative exposure potentials of PBT chemicals to that subset of highly persistent and highly bioaccumulative PBT chemicals. Simply stated, chemicals with half-lives of 6 months or greater and a BAF/BCF of 5,000 or greater have a higher exposure potential than chemicals with half-lives of 2 months or greater and a BAF/BCF of 1,000 or greater. However, although, as discussed below, EPA could establish a qualitative relationship, the Agency could not reliably quantify the relative exposure potential across the board for all of the members of both classes. Therefore, in attempting to translate the qualitative exposure potential of PBT

chemicals to that subset of PBT chemicals that are highly persistent and highly bioaccumulative into a qualitative threshold relationship. EPA considered both the attributes of these chemicals and factors specific to thresholds.

The manufacture, process, and otherwise use thresholds are not equivalent to release thresholds although, in many cases, the quantity manufactured or otherwise used will be very similar to the quantity released. Thus, even if EPA were able to quantify the relative exposure potential of PBT chemicals and that subset of PBT chemicals that are highly persistent and highly bioaccumulative, based on their degrees of persistence and bioaccumulation, and their interrelationship, the Agency would not rely solely on this to select a quantitative threshold relationship between these two classes of chemicals because: (1) The manufacturing, processing, and otherwise use thresholds are not equivalent to release thresholds, and (2) the quantity released, not the quantity manufactured, processed or otherwise used, is a critical factor in determining exposure.

Nonetheless, EPA believes that the relative reporting thresholds should be based to some extent upon the qualitative differential between the potential exposures that may result from releases of PBT chemicals and that subset of PBT chemicals that are highly persistent and highly bioaccumulative.

There is not a direct quantifiable relationship between the potential exposures that can result from equivalent releases of a toxic chemical that persists in the environment with a half-life of 6 months and that has a bioaccumulation factor of 5,000 and releases of a toxic chemical that persists in the environment with a half-life of 2 months and that has a bioaccumulation factor of 1,000. The potential exposure to humans and the environment will depend upon a number of factors, including release patterns, environment variables such as soil type, surface water chemistry, the types and distribution of flora and fauna, and fish consumption patterns. However, EPA did consider the relative differences in the potential exposures between these two classes. For example, after 1 year, there will be more than 15 times as much of a highly persistent chemical that remains in the environment than of a persistent chemical, all other things being equal. Similarly, fish will accumulate more than 5 times as much of the highly bioaccumulative chemical than of the bioaccumulative chemical, all other things being equal. While EPA believes

that it can qualitatively describe the relative relationship of highly persistent chemicals to persistent chemicals and the relative relationship of highly bioaccumulative chemicals to bioaccumulative chemicals, the Agency cannot at the present time, define the relative relationship of persistence and bioaccumulation between the two classes of chemicals. This is in large part due to the many variables that must be considered in determining the potential exposures both due to the interaction of these chemical attributes and the large number of environmental factors that must be considered when evaluating persistence and bioaccumulation together.

Although EPA could not develop an exact quantitative threshold relationship between the two classes of chemicals, the Agency did consider the factors discussed above and did rely to some extent on the numerical relationships between the highly persistent and persistent chemicals and the highly bioaccumulative and bioaccumulative chemicals. Therefore, given that: (1) Highly bioaccumulative toxic chemicals will accumulate approximately 5 times greater than bioaccumulative toxic chemicals, (2) highly persistent toxic chemicals will remain in the environment after 1 year, at a level about 15 times greater than persistent toxic chemicals, (3) the fact that the EPCRA section 313 reporting thresholds are not release thresholds but that in some instances the quantities manufactured or otherwise used will be very similar to the quantity released, and (4) toxic chemicals that persist in the environment with half-lives of 2 months and bioaccumulation factors of 1,000 or greater can be of both local and regional concern, EPA believes that the threshold for PBT chemicals should be a factor of 10 greater than the threshold for that subset of PBT chemicals that are highly persistent and highly bioaccumulative. EPA believes that this ratio balances the uncertainties and factors, including numerical factors, that the Agency considered. Therefore, based on the chemicals' intrinsic characteristics, EPA would establish thresholds of 1 pound for that subset of PBT chemicals that are highly persistent and highly bioaccumulative and 10 pounds for PBT chemicals.

However, the legislative history of section 313(f)(2) indicates that in establishing the original thresholds, Congress recognized the burden imposed on the regulated community. Lowering thresholds necessarily will increase that burden. Therefore, EPA determined it would be reasonable to include some consideration of reporting

burden in selecting thresholds for PBT chemicals. But EPA accorded less weight to burden than to the other considerations discussed above. First, neither section 313(f)(2), section 313(h), nor any other provision of EPCRA requires EPA to consider burden. Second, EPA was mindful of the fact that in several places in the legislative history Congress made clear it never intended impacts on reporting facilities to outweigh the public's right-to-know about their potential exposures to toxic chemicals. For example, although Representative Edgar recognized that Congress had considered burden in establishing the statutory thresholds, he did not include reporting burden as one of the general principles that should guide the Agency's implementation of EPCRA section 313 as a whole. Rather, he stated:

This is a new Federal initiative, and I recognize the desire of some of my colleagues to move ahead cautiously to ensure that burdens imposed on industry are not excessive. Frankly, my concern rest with the families that live in the shadows of these chemical and manufacturing plants. I have put myself in their shoes and have fought for a program that looks after their needs. This legislation gets us well on the path to the full disclosure they deserve. *Legislative History* at 5316. See also, *Legislative History* at 5185-86 (Senate debate on the Conference Report).

As noted in Unit VI.A, one of the major pieces of Congressional guidance on the establishment of alternate thresholds was to obtain a comprehensive picture of "total nationwide releases of the toxic chemical at all facilities covered by section 313." This language, plus other Congressional directives on implementing section 313 generally, such as section 313(h), reflect an interest in obtaining information from a broadly representative range of sources. Consequently, EPA determined that the Agency should consider burden only to the extent that it would not deny the public significant information from a range of covered industry sectors.

Therefore, EPA estimated the number of reports that would be submitted by each industry sector for four groups of thresholds, 1 and 10 pounds, 10 and 100 pounds, 100 and 1,000 pounds, and 1,000 pounds for both classes of chemicals. These options were selected for the following reasons. EPA needed a reasonable but finite number of options to evaluate, and the options described above represent a reasonable picture of the entire range of potential revised thresholds. Data limitations on the manufacturing, processing, and otherwise use of PBT chemicals in the numerous industries, processes, and uses covered by EPCRA section 313

constrained EPA's ability to make meaningful and reliable distinctions between threshold options that are less than an order of magnitude apart. For example, while EPA believes it can reliably estimate the difference in the number of reports from a 10 pound reporting threshold and a 100 pound reporting threshold, EPA believes that the data are insufficient to allow it to make a meaningful and reliable distinction in estimates of options that are closer than an order of magnitude such as 35 pounds and 50 pounds. EPA explained its data limitations in the proposal, and commenters provided no information that would allow the Agency to increase the resolution of its analysis. Consequently, for the final rule, EPA analyzed options that were orders of magnitude apart from the two thresholds identified through its technical review: 1 pound for highly persistent and highly bioaccumulative chemicals, and 10 pounds for persistent and bioaccumulative chemicals.

Based on information provided in the economic analysis for this rulemaking, at the technical reporting thresholds EPA would obtain information from a broad range of facilities (Ref. 67a). The analysis showed that at a threshold of 1 pound, the public would obtain information from all industry sectors that are currently subject to EPCRA section 313, and that have been identified as manufacturing, processing, or otherwise using those highly persistent highly bioaccumulative toxic chemicals that are part of this rulemaking (except dioxin and dioxin-like compounds which are discussed below). At a threshold of 10 pounds, the public would obtain information from all industry sectors that are currently subject to EPCRA section 313, and that have been identified as manufacturing, processing, or otherwise using those PBT chemicals that are part of this rulemaking. At the technical reporting thresholds, the estimated costs of the additional reports filed would have totaled \$355 million in the first year, and \$193 million in subsequent years (Ref. 67). EPA considered these costs, even though it cannot quantify the value of the information obtained or lost at the various thresholds, and cannot quantify the relationship between the reporting costs and the value of the information reported, or lost, at a particular threshold.

At thresholds of 10 pounds for highly persistent and highly bioaccumulative chemicals and 100 pounds for persistent and bioaccumulative chemicals, EPA is still able to obtain a significant amount of information on both classes of PBT chemicals from a wide range of industry

sectors and sources. For example, no reporting on TBBPA would be lost from any sources or industry sectors at 100 pounds, and some information on octachlorostyrene would be potentially lost from only one industry sector, pesticide manufacturing facilities. At these thresholds, EPA does, however, lose information significant to local communities; for example, EPA loses considerable reporting on mercury and mercury compounds at 10 pounds, but the loss of information is localized in a limited number of industry sectors, and the public will still obtain some reporting from all of the currently covered industry sectors (Ref. 67a). For this threshold option, EPA estimated the total burden at these thresholds to be \$191 million for the first year, and \$105 million for subsequent years (Ref. 67).

At thresholds of 100 and 1,000 pounds and higher, EPA's analysis indicated that the public, government agencies, and researchers would lose information on many of the PBT chemicals from certain industry sectors and sources. For example, at a threshold of 100 pounds for toxic chemicals that are highly persistent and highly bioaccumulative, the Agency would not obtain reporting on mercury and mercury compounds generated in boilers in the manufacturing sector or information on octachlorostyrene from the primary metal industries (Ref. 67a). However, at these thresholds, EPA estimated the total first year costs to be \$99 million and \$55 million in subsequent years (Ref. 67).

These analyses led EPA to several conclusions. First, thresholds of 10 pounds for highly persistent and highly bioaccumulative chemicals and 100 pounds for persistent and bioaccumulative chemicals, achieve a significant reduction in reporting burden. Second, at these thresholds EPA obtains information from a broad distribution of industry sectors. Although EPA also loses information significant to local communities at these thresholds, it maintains the overall distribution of reporting from a broad range of industry sectors nationally. EPA could have attempted to compensate for the community-level loss of information on individual members of the classes of PBT chemicals (i.e., by establishing separate thresholds of 1 pound or 10 pounds for individual chemicals), but only by failing to take reporting burden into account for those individual chemicals. As explained previously, the availability of the data limited EPA's ability to distinguish meaningfully between thresholds separated by less than an order of magnitude. In addition,

establishing separate thresholds would sacrifice many of the benefits of receiving information from comparable facilities using comparable chemicals, discussed earlier in this unit. Thus greater information for local communities would be achieved at the expense of the increased utility of the reports for other purposes established under EPCRA section 313(h)--e.g., assisting governmental agencies, researchers, agencies and other persons in the conduct of research and data gathering; and aiding in the development of appropriate regulations, guidelines, and standards. EPA believes that, to be consistent with the overriding policy directive in subsection (h), it must achieve a balance between improving the utility of the reports for all of the groups that rely on TRI data. Finally, as noted earlier in this Unit, administrative convenience argues against the establishment of individual thresholds. Among other issues, it would be burdensome on both EPA and the regulated community to track a variety of separate thresholds. Moreover, EPA intends the revised thresholds established in this rulemaking for the two classes of PBT chemicals to be generally applicable to future members of the two classes; absent a strong technical or policy concern to the contrary, it would ultimately be inconsistent with the purposes of EPCRA section 313 for chemicals that share such common characteristics to have vastly different thresholds.

Therefore, EPA believes its selection of thresholds of 100 pounds for PBT chemicals and 10 pounds for that subset of PBT chemicals that are highly persistent and highly bioaccumulative, balances the purposes of EPCRA section 313 and the Agency's desire to provide a comprehensive picture on releases and potential exposures of PBT chemicals, while factoring in an appropriate degree of the consequent impact on the regulated community.

Dioxin and dioxin-like compounds are highly persistent and highly bioaccumulative toxic chemicals. As discussed above, toxic chemicals that are highly persistent and highly bioaccumulative warrant, in the absence of other considerations, a threshold approaching zero. But, for the reasons discussed previously in this section, EPA does not believe that a zero threshold would be practical. However, because the dioxin and dioxin-like compounds are manufactured in extremely small amounts, EPA needed to select a threshold lower than that for the other highly persistent and highly

bioaccumulative chemicals in order to obtain any reporting.

In choosing reporting thresholds for these chemicals, the Agency considered the extent of the information on dioxin and dioxin-like compounds that would be made available to the public, government agencies and researchers. EPA considered whether this level of information would provide them with "a comprehensive view of toxic chemical exposure," given the attributes of dioxin and dioxin-like compounds, and with "broad-based national information." At a threshold of 0.1 gram, the public would obtain information from all industry sectors that are subject to EPCRA section 313 and that have been identified in the *Inventory of Sources of Dioxin in the United States* (Ref. 3). EPA does not believe that a higher threshold, i.e., 1.0 grams, would provide the public with broad-based national information because there would be no information on the manufacture and release and other waste management of certain sectors. For example, at a higher threshold, EPA anticipates that there would be no reporting from hazardous waste incinerators, pulp mills, non high ferrous foundry industries, and secondary lead smelters (Ref. 67a). At thresholds lower than 0.1 gram, there is greater coverage *within* certain industry sectors, with a concomitant significant increase in burden. EPA believes its selection of a threshold of 0.1 gram for dioxin and dioxin-like compounds balances the purposes of EPCRA section 313 and the Agency's desire to provide a comprehensive picture on releases and exposures of dioxin and dioxin-like compounds while factoring in an appropriate degree of the resultant impact on the regulated community.

#### *F. What Comments Did EPA Receive on Exposure and Risk Considerations and What Are EPA's Responses?*

One of the most significant issues raised by commenters relates to the Agency's lack of consideration of quantitative risk in modifying the section 313(f) reporting thresholds. Specifically, a number of commenters believe that EPA should use quantitative risk as a criterion in determining whether to lower the reporting thresholds and in choosing a particular reporting threshold for each PBT chemical. The commenters contend that EPA should conduct risk assessments and make a formal determination that at a particular threshold releases of the PBT chemical pose a risk before lowering the reporting threshold. While the majority of commenters who commented on the issue believe that

EPA should make a risk determination before modifying the reporting thresholds, the rationale for their conclusions varied. Some commenters state that a risk determination is required by EPCRA because the intent of EPCRA is to provide information to the public of potential risks posed by the presence of toxic chemicals released to the environment in their communities. Some commenters state that in addition to addressing the substantial majority test, EPCRA section 313(f)(2) requires EPA to use the degree of risk that releases will pose to communities as a determinant in choosing new thresholds. Other commenters state that consideration of risk is a required component of any action under EPCRA section 313. In support of this position, one of the commenters cites two D.C. Circuit Court decisions. Other commenters contend that it would be good public policy to choose a threshold based on risks. Some commenters contend that EPA should lower the reporting thresholds only for those chemicals that present the highest risks to the public. One commenter, however, believes that the Agency should not consider the degree of risk in making a determination to lower the reporting thresholds for PBT chemicals because the consideration of risk in past actions taken by EPA under other environmental statutes have not resulted in a decrease of human health or environmental risks due to PBT chemicals. The commenter states that the increasing number of fish advisories and the lingering and, in some cases, increasing levels of PBT chemicals in the environment and in fish, wildlife, and human tissue demonstrates the magnitude of the failure of the "risk management strategy."

EPA disagrees with the commenters' assertion that evidence of risk is required prior to lowering the threshold for any EPCRA section 313 chemical. Section 313(f)(2) addresses revisions to the reporting thresholds. It does not require EPA to establish, prior to the lowering of reporting thresholds, that releases at a particular threshold will result in specific quantitative risks. That section expressly provides that the Administrator may establish a threshold amount for a toxic chemical different from the 25,000 pound threshold for manufacturing and processing activities and the 10,000 pound threshold for otherwise use activities. The only prerequisite for revising the reporting threshold for a toxic chemical is that the revised threshold obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to

the requirements of EPCRA section 313. As discussed in Units II.B. and VI.A., EPA believes that it has satisfied the requirements of EPCRA section 313(f)(2) without the need for quantitative support.

EPA believes that the commenters attribute a purpose to EPCRA that is inconsistent with that clearly intended by Congress. Specifically, Congress stated in EPCRA section 313(h) that:

The release forms required under this section are intended to provide information to the Federal, State, and local governments and the public, including citizens of communities surrounding covered facilities. The release form shall be available... to inform persons about releases of toxic chemicals to the environment; to assist government agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines, and standards; and for other similar purposes. 42 U.S.C. section 11023(h).

Neither EPCRA section 313(h) nor its legislative history directs EPA to limit the collection of information on releases to those releases that, from the Federal government's perspective, pose significant local human and environmental exposure and human health and environmental risks. See, e.g., *Legislative History* at 5186.

Federal and local perspectives on what may be an acceptable risk are likely to be very different. The roles of local government and the Federal government differ significantly in terms of ensuring environmental quality. In passing EPCRA, Congress determined that it is for the public to take the information reported on the use and releases and other waste management of toxic chemicals, and to determine whether these releases result in potential risks that the community determines warrant further action given other factors, such as economic and environmental conditions, or particularly vulnerable human or ecological populations. Congress did not intend the Federal government to consider these specific local factors prior to determining whether certain information should be made public or prior to determining whether a different threshold should be established for one or more toxic chemicals.

The intent of EPCRA section 313 is to move the determination of what risks are acceptable from EPA to the communities in which the releases occur. This basic local empowerment is a cornerstone of the right-to-know program. EPCRA section 313 establishes an information collection and dissemination program. The burden it imposes is significantly less than the

burden imposed by a statute which controls the manufacture, use, and/or disposal of a chemical. EPCRA section 313 requires that a facility use readily available data, or if such data are not available, reasonable estimates to prepare each chemical-specific report. The statute does not require that the facility conduct monitoring or emissions measurements to determine these quantities. This is in contrast to other environmental statutes that may require a facility to monitor releases, change its manufacturing process, install a specific waste treatment technology, or dispose of wastes in a certain manner. As such, the Agency believes that as a matter of policy the standard that must be met to require information pursuant to EPCRA section 313 is less than that required to regulate a chemical under a statute such as the Clean Air Act. See, e.g., *Legislative History* at 5186.

Further, contrary to assertions by some commenters, EPCRA section 313 does not require the collection of quantitative risk data nor does the statute require that risk data be disseminated to the public. Rather TRI data provide communities with information on releases and other waste management quantities. TRI data cannot, in themselves, provide information on quantitative risks to individual communities. A determination of the potential risk that a chemical release may pose is dependent upon a number of factors, including the toxicity of the chemical, the physical chemical properties of the chemical, the specific media to which the chemical is released, and site-specific information that will determine the estimated exposures. While TRI data are not in themselves measures of risk, they are an important input that local communities can use along with the factors described in this section to determine potential risks to themselves, their children, their communities, and their environment that may result from releases of toxic chemicals.

EPA's decision to lower the reporting threshold for PBT chemicals is rationally related to the EPCRA section 313 goals of informing communities, assisting research and data gathering, and aiding the development of regulations and guidelines. Because PBT chemicals persist in the environment for a significant period of time and bioaccumulate in animal tissues, PBT chemicals have the potential to be pervasive in the environment, in the food chain, and often in humans. In short, for PBT chemicals, releases and other waste management activities for relatively small amounts of PBT chemicals are of concern. Accordingly,

pursuant to the intended purposes of EPCRA, even relatively small releases and other waste management activities for PBT chemicals need to be reported in order to inform communities, assist those engaged in research and data gathering, and to aid the development of regulations and guidelines. Lowered reporting thresholds for PBT chemicals are needed to obtain reporting on these relatively small releases and other waste management activities for PBT chemicals. Consequently, EPA believes that including consideration of the quantitative risk in establishing the thresholds would be poor public policy that would be inconsistent with the overall principles of EPCRA.

Finally, the reference by one of the commenters to two D.C. Circuit Court decisions is misplaced. In support of its position that EPA must undertake a risk assessment of any toxic chemical it is considering for lower reporting thresholds, the commenter cites *American Petroleum Institute v. Costle*, 665 F.2d 1176, 1187 (D.C. Cir. 1981), *cert. denied*, 455 U.S. 1034 (1982), and *Milwaukee Metropolitan Sewerage District v. EPA*, 40 F.3d 392 (D.C. Cir. 1994). Neither case cited by the commenter addresses EPCRA. Nor do these cases establish a generally applicable principle of law that risk assessments are required prior to any government action. In *Milwaukee Metropolitan Sewerage* the court reviewed standards adopted by EPA in a Clean Water Act regulation. In *American Petroleum Institute* the court reviewed the primary and secondary national ambient air quality standards for ozone promulgated by EPA under the Clean Air Act. Both the Clean Air Act and the Clean Water Act have no bearing on EPCRA section 313. Unlike the statutes at issue in the cases cited by the commenter, consideration of risk is not a requirement of section 313(f)(2) for modifying the reporting thresholds for EPCRA section 313 listed chemicals, and, in fact, the consideration of risk is generally not required for any rulemaking under section 313. *Troy Corporation v. EPA*, 120 F.3d 277 (D.C. Cir. 1997).

Some commenters further state that in proposing to change EPCRA section 313 reporting thresholds, EPA has not addressed any of the factors the Agency mentioned when it originally promulgated EPCRA section 313 regulations. In the February 16, 1988 final rule, EPA stated:

EPA may consider a number of factors for threshold modification including exposure factors such as population density, the distance of population from covered facilities, and the types of releases. Threshold

modifications could also take into account the relative potency of the chemical or class of chemicals and effects of concern. (53 FR 4508).

In this statement, the commenters contend that EPA correctly mentions factors that relate to risk (i.e., exposure and relative toxicity). The current proposal to change reporting thresholds under EPCRA section 313 fails to address these factors.

As is clearly evident in the quote from the February 16, 1988 final rule, EPA stated that these were things that it "may consider" or that could be taken into account. These statements do not require that the possible factors mentioned above be a basis for any change in the reporting thresholds nor do they preclude the consideration of factors such as the persistence and/or bioaccumulation of toxic chemicals in modifying the reporting thresholds. This statement was not a commitment that EPA would consider risk in any decision to modify reporting thresholds. It merely provided examples of things that the Agency may consider.

As explained in previous responses, EPA does not believe that it would be good public policy to consider factors related to quantitative risk with respect to establishing thresholds for PBT chemicals. Given the degree of persistence and bioaccumulation that these toxic chemicals exhibit, EPA believes that the value of this information to the public outweighs the policy considerations presented in favor of considering risk factors in establishing revised thresholds. Any other decision would be inconsistent with the legislative intent underlying EPCRA section 313.

Finally, EPA notes that this decision is consistent with the approach adopted in modifying the thresholds to establish a 1 million pound manufacture, process, or otherwise use threshold for facilities that have 500 pounds or less of production-related waste (59 FR 61488, November 30, 1994) (FRL-4920-5). Any decision to include risk considerations in establishing modified thresholds under section 313(f)(2) would compel the Agency to re-examine the thresholds established for facilities with less than 500 pounds of production-related waste.

Several commenters contend that a chemical's degree of persistence and bioaccumulation are unrelated to the chemical's exposure potential. They disagree that persistence and bioaccumulation are necessarily indicators of exposure or exposure potential. As an example, the commenter states that many of the compounds EPA is targeting are highly lipophilic, non-water soluble

compounds, and the greatest potential for bioaccumulative effects is through uptake from the water column. EPA should evaluate how these compounds partition in the environment. Those that are not bioavailable have limited exposure potential, and therefore limited risk. Thus, the commenter believes that EPA must consider exposure in conjunction with persistence and bioaccumulation.

EPA disagrees with the commenters. All other things being equal, the chemical with a higher degree of persistence and bioaccumulation will have a greater exposure potential than the chemical with a lower degree of persistence and bioaccumulation. For example, all other things being equal, a chemical that has a half-life in water of 4 months will have a higher exposure potential to aquatic organisms than a chemical with a half-life in water of 1 month. Fifty percent of the first chemical will remain in the water after 4 months while only 12.5% of the second chemical will remain in the water after 4 months. After 4 months, aquatic organisms will be exposed to 4 times more of the first chemical than the second chemical. Clearly the chemical with the greater persistence has the higher exposure potential.

EPA does not believe that the commenter's example supports their contention that persistence and bioaccumulation are unrelated to exposure potential. As EPA understands the commenter's example, chemicals that have the greatest bioaccumulation potential will not be bioavailable in water because they are highly lipophilic and non-water soluble. Thus, because they are not bioavailable in water, they cannot bioaccumulate in aquatic organisms. A well-studied example that clearly contradicts the commenter's claim is the bioaccumulation of polychlorinated biphenyls (PCBs) in the Great Lakes. PCBs have BAFs as high as 141,000,000 (Table 1, at 64 FR 707-8) and very, very low water solubility. PCBs have been found throughout the Great Lakes in sediments, water, and aquatic organisms. Multimedia analyses indicate that the majority (80-90%) of human exposure to chlorinated organic compounds, such as PCBs comes from the food pathway, a lesser amount (5-10%) from air, and minute amounts (less than 1%) from water. Most of the data available on human exposure to toxic substances in the Great Lakes come from the analyses of contaminant levels in drinking water and sport fish. The consumption of contaminated sport fish and wildlife can significantly increase human exposure to the Great Lakes critical pollutants. The sport fish

are exposed to PCBs by consumption of sediments and in water, from which they bioaccumulate the PCBs (Ref. 62).

Some commenters contend that EPCRA requires that EPA consider the risks that a chemical may pose when making determinations to add a chemical to the EPCRA section 313 list of toxic chemicals. In support of this position, one commenter cites two D.C. Circuit Court decisions.

As discussed in detail in the final rule adding 286 chemicals to EPCRA section 313 (59 FR 61432), EPA disagrees with commenters that the Agency must include a risk assessment component to EPCRA section 313 determinations. While the Agency believes that there are limited circumstances where it may be appropriate to consider risk in making listing determinations, e.g., acute human health effects, EPA does not believe that the intent of EPCRA, the EPCRA section 313 toxicity criteria, or the legislative history support the contention that risk assessment is a required component of all EPCRA section 313 listing determinations.

The EPCRA section 313 toxicity criteria require that exposure and risk factors be considered only when determining if the toxic chemical should be listed on EPCRA section 313 based on its acute human health effects, but even then in only a very limited manner. The statute mandates that EPA consider whether "a chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries." EPA has, and will continue to look at exposures reasonably likely to exist beyond facility site boundaries when making a listing determination pursuant to EPCRA section 313(d)(2)(A). However, EPA notes that none of the toxic chemicals added in today's action were added pursuant to paragraph (A) of that section.

The statute is silent on the issue of exposure considerations for the section 313(d)(2)(B) and (C) criteria. The language of section 313 does not prohibit EPA from considering exposure factors when making a finding under either section 313(d)(2)(B) or section 313(d)(2)(C). However, the language of sections 313(d)(2)(B) and (C) does not require the type of exposure assessment and/or risk assessment argued by the commenters. EPA believes that it has the discretion under both section 313(d)(2)(B) and section 313(d)(2)(C) to consider, where appropriate, those exposure factors that may call into question the validity of listing of any

specific chemical on EPCRA section 313.

EPA believes that its position regarding the limited use of risk in listing decisions is consistent with the purpose and legislative history of EPCRA section 313, as illustrated in the following passage from the Conference report:

The Administrator, in determining to list a chemical under any of the above criteria, may, but is not required to, conduct new studies or risk assessments or perform site-specific analyses to establish actual ambient concentrations or to document adverse effects at any particular location. (H. Rep. 99-962, 99th Cong., 2nd Sess., p. 295 (October 3, 1986)). See also *Legislative History* at 5186.

This passage indicates that Congress did not intend to require EPA to conduct new studies, such as exposure studies, or to perform risk assessments. Therefore, Congress did not consider these activities to be mandatory components of all section 313 decisions. EPA believes that this statement combined with the plain language of the statutory criteria clearly indicate that Congress intended that the decision of whether and how to consider exposure under EPCRA section 313(d)(2)(B) and (C) should be left to the Agency's discretion. EPA has carefully considered when and how to use exposure to fully implement the right-to-know provisions of EPCRA. The Agency believes that exposure should be considered only in very limited circumstances when adding a chemical to EPCRA section 313(d)(2)(B) or (C). The Agency's interpretation of the section 313(d)(2) and (d)(3) criteria for modifying the section 313 list of toxic chemicals is discussed in the final rule adding 286 chemicals to EPCRA section 313 (at 59 FR 61440-2). And in fact, EPA's interpretation was upheld by the D.C. Circuit in *Troy v. EPA*, 120 F.3d 277. The addition of chemicals pursuant to EPCRA section 313(d)(2)(B) and (C) in today's rulemaking is consistent with this interpretation.

The intent of EPCRA section 313 is to move the determination of which risks are acceptable from EPA to the communities in which the releases occur. This basic, local empowerment is a cornerstone of the right-to-know program. EPCRA section 313 establishes an information collection and dissemination program. It provides the public with information that can be used with other site-specific factors to determine if releases into their communities result in risks that the community determines warrant further action given other factors, such as economic and environmental

conditions, or particularly vulnerable human or ecological populations.

In addition, the reference by one of the commenters to two D.C. Circuit Court decisions is misplaced. In support of its position that EPA must undertake a risk assessment of any toxic chemical it is considering to add to EPCRA section 313, the commenter cites *American Petroleum Institute v. Costle*, 665 F.2d 1176, 1187 (D.C. Cir, 1981), *cert. denied*, 455 U.S. 1034 (1982), and *Milwaukee Metropolitan Sewerage District v. EPA*, 40 F.3d 392 (D.C. Cir. 1994). As discussed in a previous response in this unit, neither case cited by the commenter addresses EPCRA. In addition, since both cases were decided prior to *Troy*, by the same court, that decided the specific issue raised by the commenter, nothing in the two earlier cases cited by the commenter can overrule that decision.

#### G. Which Chemicals is EPA Adding to the List of EPCRA Section 313 Toxic Chemicals?

EPA is adding the following chemicals to the EPCRA section 313 list of toxic chemicals: dioxin and dioxin-like compounds, benzo(g,h,i)perylene, benzo(j,k)fluorene (fluoranthene), 3-methylcholanthrene, octachlorostyrene, pentachlorobenzene, tetrabromobisphenol A, vanadium (except alloys) and vanadium compounds. EPA conducted a hazard assessment on each chemical being added to the EPCRA section 313 list of toxic chemicals today. This assessment was separate and independent from the review conducted to determine each chemical's persistence and bioaccumulation potential, although EPA considered some of the same data in certain of its hazard assessments. EPA finds that each chemical being added today meets the criteria for chronic human toxicity and/or environmental toxicity, as set forth at EPCRA sections 313(d)(2)(B) and (C). A summary discussion of the basis for listing each of these chemicals as well as other related issue are presented in the remainder of this unit. A more extensive discussion of these issues is included in the Response to Comments document (Ref. 69) and supporting documents.

1. *Dioxin and dioxin-like compounds category.* There were a number of comments received on the addition of the dioxin and dioxin-like compounds category and these are addressed in detail in the Response to Comments document (Ref. 69). Most of the comments on the toxicity data that EPA presented in support of the addition of the category concern the dioxin-like

compounds since most commenters seemed to agree that 2,3,7,8-tetrachlorodibenzo-*p*-dioxin (dioxin or 2,3,7,8-TCDD) meets the criteria for listing under EPCRA section 313(d)(2)(B). A number of commenters did not believe that there was sufficient information to add any of the dioxin-like compounds while several commenters argue that the data on the octa- and heptachlorodibenzo-*p*-dioxins in particular were not sufficient. Commenters also argue that reliance on established toxicity equivalence factors (TEFs) does not provide sufficient support for determining that the dioxin-like compounds meet the EPCRA section 313(d)(2)(B) criteria.

EPA disagrees with the commenters that contend that there are not sufficient data to add the dioxin-like compounds pursuant to EPCRA section 313(d)(2)(B). 2,3,7,8-TCDD is generally recognized as one of the most studied toxic compounds found in the environment. To require the degree of documentation supporting toxicological classification of 2,3,7,8-TCDD as a necessary criterion for determining that other dioxin-like compounds exhibit dioxin-like toxicity or for listing under EPCRA section 313 is an arbitrary and unrealistic criteria. As discussed in more detail in the Response to Comments document (Ref. 69), a more scientifically supportable set of criteria for determining if compounds exhibit dioxin-like toxicity was proposed by the World Health Organization European Centre for Environmental Health (WHO-ECEH) and the International Programme on Chemical Safety (IPCS) consultation group. These criteria include: (1) A compound must show a structural relationship to TCDD; (2) a compound must bind to the Ah receptor; (3) a compound must elicit Ah receptor-mediated biochemical and toxic responses; and (4) a compound must be persistent and accumulate in the food chain. Each of the 2,3,7,8 substitute dioxins and furans included in the dioxin TEQ approach meet these criteria (Ref. 3).

The commenters often quoted from the EPA Science Advisory Board (SAB) review of EPA's draft dioxin reassessment, to help support the claim that dioxin-like compounds other than 2,3,7,8-TCDD should not be included in the toxic release inventory. The SAB report is a complex document containing a number of contrasting observations. Care must be taken to accurately capture the SAB's concerns. For example, in their Executive Summary, the SAB concluded that, "The use of the TEFs as a basis for developing an overall index of public

health risk is clearly justified"; they caution, however, "that practical application depends on the reliability of the TEFs and the availability of representative and reliable data." In their summary conclusions, the SAB stated:

The document (EPA Draft Reassessment) represents a departure from the earlier EPA risk assessment for dioxin, which dealt primarily with 2,3,7,8-TCDD. In addressing a broad range of dioxin-like compounds having the common property of binding to the Ah receptor and producing related responses in cells and whole animals, it creates opportunities for a holistic assessment of the cumulative impacts of these broadly distributed anthropogenic pollutants. Thus, while the environmental concentrations of each compound alone may be too low to produce effects of concern, the combined exposure may be producing effects that warrant concern. The use of the concept of TEFs and the concentrations of the compounds in foods and environmental media to produce an overall index of public health risk is clearly justifiable.

The character and thrust of these statements made by the SAB are significantly different from those selectively chosen by many of the commenters opposing the addition of some or all of the dioxin-like compounds. The apparent contradiction between these broad concluding statements by the SAB and those cited by several commenters is due, in part, to commenters confusing the SAB criticisms of the text of the draft reassessment with statements about the general state of scientific knowledge. The SAB clearly felt that EPA needed to do a more rigorous job of discriminating between the inferences it drew about the toxicity of 2,3,7,8-TCDD, other 2,3,7,8 substitute dioxins and furans, and dioxin-like PCBs. Many of the comments cited were intended to help EPA generate a more rigorous scientific discussion in its final reassessment document rather than to represent substantive conclusions reached by the SAB on the nature of dioxin toxicology. Fully taking these concerns into consideration it was still the SAB's overall judgment, as stated above, that "the use of the TEFs as a basis for developing an overall index of public health risk is clearly justified."

Some commenters argue that there are qualitative differences in the toxicity of the different 2,3,7,8-substituted isomers of polychlorinated dioxins (PCDDs) and furans (PCDFs). Specifically, there are structural differences between the more toxic, lower chlorinated isomeric PCDDs and PCDFs and the higher chlorinated congeners to the extent that the octa- and hepta-PCDDs and PCDFs should not be added to the list of EPCRA section 313

toxic chemicals. These arguments are not valid for several reasons. First, there are data from subchronic studies for both octa- and hepta-PCDDs and PCDFs which demonstrate dioxin-like effects (Refs. 19, 21, 79, and 80). The new WHO TEFs are based on these subchronic studies (Ref. 78). While short-term studies indicate limited dioxin-like effects of these chemicals, these contrasting results are readily explained by the structural differences between the octa- and hepta-PCDDs and PCDFs compared to the lower chlorinated PCDDs and PCDFs. The relative potency of the dioxin-like compounds is related to both their ability to bind to the Ah receptor and their pharmacokinetic properties (Ref. 20). The water solubility of PCDDs and PCDFs decrease with increasing chlorine substitution. Hence the octa- and hepta-PCDDs and PCDFs are significantly less soluble in aqueous solutions compared to the lower chlorinated PCDDs and PCDFs. These solubility problems limit the amount of chemical that can be absorbed in high dose acute toxicity studies. The lack of effect observed in the high dose acute studies is consistent with the limited aqueous solubility of these compounds. However, low dose subchronic studies allow the chemicals to be better absorbed and bioaccumulate to concentrations which produce biochemical and toxic effects (Refs. 19, 21, 79, and 80). Once again this is consistent with the evidence of dioxin-like effects of these chemicals observed in the low-dose subchronic studies. Although not legally required to determine that a chemical meets the listing criteria under EPCRA section 313(d)(2)(B), it should be noted that human exposure to octa- and hepta-PCDDs and PCDFs are subchronic low dose exposures, similar to the experimental studies which demonstrate dioxin-like effects of these chemicals (Refs. 19, 21, 79, and 80).

While there are structural differences between the octa- and hepta-PCDDs and PCDFs compared to the lower chlorinated PCDDs and PCDFs, these differences result in quantitative not qualitative differences in the toxicity of these chemicals. The quantitative differences are demonstrated by the lower potency of the octa- and hepta-congeners compared to TCDD. In addition, the TEFs reflect these quantitative differences by assigning lower TEF values to the octa- and hepta-PCDDs and PCDFs. While there is limited evidence that the shape of the dose-response curve for induction of CYP1A1 activity *in vitro* for octachlorodibenzo-*p*-dioxin (OCDD) is

different from TCDD, *in vivo* evidence indicates that the dose response for CYP1A1 induction by octachlorodibenzofuran (OCDF) in three tissues is equivalent to TCDD (Ref. 20). However, it should be noted that these are quantitative not qualitative differences.

Commenters also argue that octa- and hepta-PCDDs and PCDFs should not be listed because "there is a growing consensus in the scientific community that the potential risks posed by dioxins are largely driven by a limited number of dioxin and dioxin-like compounds (tetra-, penta-, and hexa-PCDDs and PCDFs and certain coplanar PCBs)." It is important to remember that, as discussed in Unit VI.F., EPCRA section 313 is primarily a hazard-based rather than a risk-based statute. The "growing consensus" on dioxin toxicity is probably best captured by the revised TEFs recently established by the WHO (Ref. 78). In this review the scientific evidence for ascribing values of relative toxicity to octa- and hepta-PCDDs and PCDFs was specifically reviewed, as evidenced by the lowering of the TEF for OCDD and OCDF by a factor of 10. In the course of the deliberations by the WHO panel of internationally distinguished scientists, there was the opportunity to remove both octa- and hepta-PCDDs and PCDFs from the TEF listings. However, the WHO panel concluded that the best scientific interpretation of the data available was to leave hepta-PCDDs and PCDFs unchanged and reduce but not eliminate OCDD from TEQ calculations. Even with this reduced toxicity, OCDD and OCDF clearly meet the listing criteria of EPCRA section 313(d)(2)(B).

EPA disagrees with the commenters that contend that TEFs are not adequate support for listing chemicals under EPCRA section 313. The development of TEFs has been a rigorous scientific effort involving a number of international panels of scientific experts and has involved the careful review of all relevant scientific literature. EPA believes that the development and review processes used for the generation of the TEFs was sound and represents a reasoned and reliable judgment on the dioxin toxicity of each of the 17 dioxin and dioxin-like compounds. The Response to Comments document (Ref. 69) includes an extensive discussion of the history of the development of dioxin TEFs which demonstrates why EPA believes that the TEFs are well supported scientifically and consequently have been openly adopted by the international scientific and regulatory community. In addition, as EPA has previously explained (59 FR

61432), the Agency believes that EPCRA section 313 allows a chemical category to be added to the list, where EPA identifies the toxic effects of concern for at least one member of the category and then shows why those effects can reasonably be expected to be caused by all other members of the category. Here, individual toxicity data are not available for all members of the category; however, there is sufficient information to conclude based on generally accepted scientific principles, that all of these chemicals are highly toxic based on structural and physical/chemical property similarities to those members of the category for which data are available.

Thus, EPA reaffirms that there is sufficient evidence for adding dioxin and dioxin-like compounds on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available cancer and other serious chronic health effects data for these compounds. Therefore, EPA is finalizing the listing of dioxin and dioxin-like compounds on the EPCRA section 313 list.

a. *Manufacturing only qualifier for dioxins and dioxin-like compound category.* Comments were mixed with regard to EPA's proposal to add a manufacture only qualifier to the dioxin and dioxin-like compounds category. Some commenters agree with EPA's statements in the proposed rule concerning the burden reduction aspects of the qualifier and the fact that as a result, the dioxin reporting would focus on facilities that manufacture dioxin and dioxin-like compounds rather than those that process or otherwise use raw materials containing dioxin and dioxin-like compounds that have accumulated in those raw materials. Some commenters state that the qualifier would avoid duplicative testing and administrative costs among many processing and using industries which do not necessarily discharge dioxins or furans into the environment. Some commenters state that all releases of dioxin and dioxin-like compounds must be reported, not just those resulting from the manufacture of these chemicals. Other commenters note that a significant gap is created by the manufacture only qualifier because it would exclude the processing and otherwise use of chemicals that contain dioxin and dioxin-like compounds as a result of the processes used to manufacture them. Commenters specifically cite pentachlorophenol as an example of a chemical that is contaminated with dioxin and dioxin-like compounds from its manufacturing process. Commenters state that the processing and use of such chemicals

result in the release of dioxin and dioxin-like compounds that would go unreported under the manufacture only qualifier. One commenter states that if the qualifier is finalized the commenter would like to see language that requires facilities to report if the background levels of dioxin are modified, concentrated, or somehow added to in the manufacturing process. Another commenter states that if the Agency wants to exempt animal sources of dioxin, such as dioxin contained in meat and other animal products, it should craft the rule to do so and not cut out other significant sources of dioxin in the environment by exempting all facilities that process material containing dioxin.

EPA believes that in order to obtain any reporting on dioxin and dioxin-like compounds a very low threshold is required, which is several orders of magnitude lower than the thresholds for other PBT chemicals. At such a low reporting threshold it is estimated that thousands of reports could potentially be filed by facilities, mainly food processing facilities, due to the amount of dioxins in the raw materials they process. The dioxins found in the meat and dairy products that food processors handle have been previously released, circulated in the environment, and bioaccumulated in animals; thus these are not additional loadings to the environment but loadings that have already occurred and cycled through the environment due to the persistence and bioaccumulative properties of these compounds. The unique combination of very low thresholds, the number of food processors that would be required to file, and the fact that they would be filing because of the bioaccumulation of previously released material, led EPA to add the manufacture only qualifier to the dioxins category. The qualifier was added in response to the unique set of conditions that apply to the reporting of dioxin and dioxin-like compounds. The manufacture only qualifier was added to reduce reporting burden on facilities, mainly in the food processing industry, that results from the unique combination of circumstances related to the reporting for these chemicals and to focus on those activities that add to the loading of dioxins in the environment rather than on activities dealing with previously released and bioaccumulated chemicals.

However, EPA acknowledges that the commenters who noted that the processing and otherwise use of chemicals contaminated with dioxin and dioxin-like compounds as a result of their manufacturing process, are correct that these would be newly

created and thus any releases of dioxin and dioxin-like compounds that are due to the processing and otherwise use of such chemicals would be new loadings on the environment. In addition, EPA agrees, and has never stated otherwise, that the processing or use of chemicals contaminated with dioxin and dioxin-like compounds could result in the release of these chemicals to the environment. Given the fact that the manufacture of certain chemicals also results in the manufacture of dioxin and dioxin-like compounds that remain with those chemicals as impurities, EPA believes that releases and other waste management quantities for the dioxin and dioxin-like compounds found as impurities with those chemicals should be reported under the dioxin and dioxin-like compounds category. Thus, EPA's original proposal would have created an exemption that was too broad. Consequently, EPA is modifying the qualifier to read as follows:

Dioxin and dioxin-like compounds (Manufacturing; and the processing or otherwise use of dioxin and dioxin-like compounds if the dioxin and dioxin-like compounds are present as contaminants in a chemical and if they were created during the manufacturing of that chemical)

EPA believes that narrowing its proposal in this fashion is consistent with EPA's intention to focus on new loadings to the environment for dioxin and dioxin-like compounds.

One commenter states that the activity qualifier for dioxin and dioxin-like compounds is intended to minimize the burden of reporting on naturally-occurring constituents of raw materials and that this qualifier would be consistent with the PBT criteria set forth by Canada's Department of the Environment in their Toxic Substances Management Policy. The commenter states that the Canadian policy requires a chemical to be "predominantly anthropogenic" to be considered a PBT chemical. The commenter states that EPA's assumption that these compounds are ubiquitous in raw materials may be incorrect. The commenter further states that these compounds may be formed in combustion processes due to the ubiquitous presence of precursor chemicals in coal, such as natural hydrocarbons and chlorine. The commenter argues that it is not reasonable to expect the hydrocarbon nor the chlorine to be removed from the raw material prior to combustion. Thus, the "incidental manufacture" of extremely minute amounts of these chemicals may be unavoidable.

EPA disagrees that the sole basis for its qualifier was to minimize the burden

of reporting. The qualifier was added in response to the unique set of conditions that apply to the reporting of dioxin and dioxin-like compounds. As noted above, EPA was, and remains, concerned that, because dioxin is ubiquitous in the environment, the reporting be focused on those facilities that actually add to the environmental loading of these chemicals. EPA did not state that dioxin and dioxin-like compounds would be ubiquitous in all raw material and did not intend to imply that all raw materials contain these compounds. EPA stated that these compounds are ubiquitous in the environment and, thus, facilities that process raw materials containing these compounds might have to report because of the very low reporting threshold necessary to obtain reports from any sources, including those facilities that coincidentally manufacture them. In addition, although the qualifier may be consistent with Canada's Toxic Substances Management Policy, EPA has not proposed any requirement that a chemical must be "predominantly anthropogenic" to be considered a PBT chemical under EPCRA section 313. The commenter is correct that dioxin and dioxin-like compounds may be manufactured in combustion processes due to the "ubiquitous presence of precursor chemicals" and that such "incidental manufacture" may be unavoidable. However, the mere presence of the dioxin precursors will not guarantee dioxin production. There are well documented conditions that favor the formation of dioxins during combustion, and in some cases it may be possible to stringently control fuel composition, flow times, temperature, and other conditions in order to substantially reduce or even eliminate the incidental manufacture of dioxins during combustion processes.

b. *Withdrawal of the proposal to include dioxin-like PCBs in the dioxin category.* Several commenters support EPA's decision to withdraw the proposal to modify the current PCB listing and move the 11 co-planar PCBs to the proposed dioxin and dioxin-like compounds category and retain the co-planar PCBs as part of the current PCB listing. Two commenters support EPA's decision to leave co-planar PCBs out of the dioxin and dioxin-like compounds category since the structure, metabolism, gene regulation, and toxicities of PCBs are substantially different from those of 2,3,7,8-tetrachlorodibenzo-*p*-dioxin. One commenter takes exception to the use of the term "dioxin-like" as a way of describing PCBs and other chlorinated

compounds and agrees that the PCBs should be kept out of the "dioxin-like" class. Other commenters also argue that PCBs are more appropriately classified as PCBs, not dioxin-like compounds.

One commenter contends that since these chemicals are no longer allowed to be distributed in commerce, maintaining a separate EPCRA section 313 chemical category for these chemicals will streamline data management. This approach will also enable EPCRA section 313 reporting for this category of chemicals to be more consistent with existing data already collected for the purposes of complying with TSCA. Further the commenter asserts that approach is also consistent with EPA's Reinvention Policy and will enable "one-stop" reporting.

Another commenter asserts that it is unclear just how many grams of dioxin-like compounds would be excluded from this reporting since there are conflicting Agency proposals at work: the first is a much lower threshold for dioxins. The second includes only dioxins manufactured on site. Since PCBs are not generally manufactured on site, these 11 dioxin-like compounds would not be reported under the proposal if they were included as dioxins. On the other hand, if all dioxins (manufactured, processed, and otherwise used) are included in the EPCRA section 313 threshold determination, these 11 PCBs could make the difference between a facility's reporting or not reporting dioxins. If the dioxin threshold remains as proposed, then the 11 PCBs should remain with the PCB category. Further the commenter argues that if the threshold is expanded to include sources other than those that manufacture dioxin on-site, then the PCBs should be part of the dioxin-like compounds category. If EPA does not modify the dioxin threshold to include all dioxin uses, the 11 dioxin-like PCBs should remain with the PCB category.

While EPA agrees with the commenters that the co-planar PCBs should remain as part of the current PCB listing, the Agency does not agree with all of the reasons the commenters have presented. As EPA stated in the proposed rule:

... EPA has determined that all PCBs persist and bioaccumulate. Since PCBs persist and bioaccumulate, EPA believes that they should be subject to lower reporting thresholds, and thus there is no need to move the 11 co-planar PCBs to the proposed dioxin and dioxin-like compounds category. Therefore, EPA has decided to withdraw its proposal to modify the current listing for PCBs and instead proposes to lower the reporting thresholds for the current PCB

listing which covers all PCBs. EPA believes that, since all PCBs persist and bioaccumulate, it is appropriate to lower the reporting threshold for this class of chemicals and that this proposal is less burdensome than requiring separate reporting on the dioxin-like PCBs as part of the proposed dioxin and dioxin-like compounds category (at 64 FR 710).

EPA did not base its decision on a determination that co-planar PCBs were not "dioxin-like" and keeping them under the current PCB listing should not be interpreted as such a determination. Also, since EPA is not expanding the qualifier for the dioxin and dioxin-like compounds category to include all processing and otherwise use activities, the amounts of co-planar PCBs that might be reportable under the category would not be expected to contribute significantly to threshold determinations for the category at most facilities.

Four commenters specifically do not support EPA's decision to withdraw the proposal to modify the current PCB listing. Commenters assert that the aggregation of dioxin-like PCBs together with other PCBs will fail to provide reporting of useful information on dioxin-like PCBs. The commenters either contend that the PCBs should be included in the dioxin-like compounds category or the PCBs and all dioxin-like compounds should be reported separately. One commenter argues that the aggregate reporting of dioxin-like PCBs and other PCBs fails to provide any information on the release of dioxin-like PCBs to meet the research, regulatory, or public information goals of EPA's proposal. This commenter raises several points. The commenter contends that specifically, even if some facilities releasing dioxin-like PCBs reported these releases as a portion of their total PCBs production of 10 pounds annually or greater, information on dioxin-like PCBs releases would still be unobtainable. The commenter asserts that aside from the food chain, where some dioxin-like PCBs tend to concentrate disproportionately, available measurements indicate that these dioxin compounds are only a small portion of the mass of all PCB compounds. The commenter further argues that some of these dioxin compounds such as PCB-126 are far more toxic than other dioxin-like and non dioxin-like PCBs. Thus, the commenter asserts that in addition to all of the problems of dioxin-like chemical aggregate reporting, one would not know what, if any, portion of the total PCBs reported were dioxin-like. The commenter contends that the dioxin-like co-planar PCBs also should be

reported individually so that a TEQ for all 28 dioxin and dioxin-like compounds can be calculated. Another commenter argues that based on information about current body burdens of co-planar PCBs, they compose as much or an even greater percentage of one's overall exposure than the 17 dioxin and dioxin-like compounds. This commenter cites an EPA document that stated that: "[e]stimates of exposure to dioxin-like CDDs and CDFs based on dietary intake are in the range of 1-3 pg TEQ/kg/day. Estimates based on the contribution of dioxin-like PCBs to toxicity equivalents raise the total to 3-6 pg TEQ/kg/day." Some commenters contend that reporting the co-planar PCBs differently from the 17 dioxin and dioxin-like compounds would make any assessment of the overall release and potential health impact of these types of compounds difficult. One commenter argues that PCBs are currently contaminating sediments and industrial sites nationally and have ruined fish as a natural resource for human consumption across the nation and that the distinction between dioxin-like PCBs and dioxin-like compounds made under this rule is a distinction without a difference. This commenter urges EPA to include all dioxin-like compounds, including PCBs, in the dioxin-like compounds category and to require strict accounting from all sources which release these compounds and which manufacture them, incidentally or by design.

One commenter contends that the failure to report dioxin-like PCBs as a distinct entity separate from other PBT chemicals may hold back information on a significant portion of the total dioxin-like hazard from releases by facilities that report under EPCRA section 313, even if all dioxin and furan releases were reported. The commenter argues that environmental exposure measurements, such as those from fish in San Francisco Bay and from human tissues nationally, indicate that dioxin-like PCBs contribute a very significant portion of the total toxicity hazard from exposure to all dioxin-like chemicals. The commenter also asserts that PCB releases might in some cases represent an inadequately measured yet significant portion of the ongoing dioxin release hazard. If, for example, PCB-126 comprises even 1/10 of the PCBs release measured from San Francisco Bay Area sources, it would contribute substantially to total dioxin-like toxicity emission from some of these facilities. The commenter contends that the failure to provide release information on dioxin-like PCBs under EPA's proposal

may result in failure to inform the public about a significant portion of the total dioxin toxicity that is still released.

EPA agrees that PCBs are toxic chemicals of concern that have caused significant contamination of the environment and that co-planar PCBs may have dioxin-like health effects. However, this does not, in itself, create a requirement that the co-planar PCBs must be moved from their current PCB listing to the dioxin and dioxin-like compounds category. EPA does not believe that the co-planar PCBs must be reported separately from the non co-planar PCBs because they may be more toxic than other PCBs. In general, chemical categories consist of chemicals that vary in their level of toxicity but this variability alone does not mean that release information must be reported separately for each chemical in the category. EPA believes that all PCBs are of concern and that leaving the co-planar PCBs under the current PCB listing will still provide the public with useful and important information. In deciding not to move the co-planar PCBs to the dioxin category, EPA also considered any potential additional burden associated with splitting the reporting for PCBs into two different listings, as well as the fact that facilities are not likely to be able to determine quantities of the specific co-planar PCBs in question. Specifically, EPA considered the lack of readily available estimation techniques for determining quantities of co-planar PCBs, as opposed to other PBT chemicals and the PCB listing as a whole (co-planar PCBs will be included in the estimation of PCBs). EPA determined that since all PCBs are of concern and since the reporting threshold for all of the PCBs under the PCB listing would be lowered substantially, that requiring separate reporting on the co-planar PCBs was not warranted.

One commenter contends that the failure to report dioxin-like PCBs would fail to provide information on that subgroup of dioxin-like compounds for which there is the greatest need for additional information. The commenter argues that EPA's evaluation of the emission of dioxin-like chemicals nationwide shows that there is less information on releases of dioxin-like PCBs than there is for other dioxin compounds. The commenter asserts that similarly, their survey of source information in the San Francisco Bay Area shows that, despite many measurements of dioxin and furan releases, and despite a handful of source measurements confirming PCBs, there are few or no source measurements for dioxin-like PCBs. The commenter

argues that the information on releases from facilities is even less available for the dioxin-like PCBs than it is for the other dioxin-like chemicals and that EPA's analysis in the proposed rule fails to consider adequately this extreme need for source release information.

EPA agrees that there is far less information available on co-planar PCBs than for dioxin and other dioxin-like compounds. Much less testing and analysis has been conducted for these chemicals. This would pose an additional problem for reporting on the co-planar PCBs separately from the other PCBs. EPA considered the ability to estimate quantities of specific co-planar PCBs and determined that there is a lack of readily available estimation techniques for co-planar PCBs. In fact, at this time, the Agency would not be able to provide guidance for making a reasonable estimate of quantities of co-planar PCBs that may be manufactured in certain processes. In addition, EPCRA section 313 does not require any additional monitoring beyond that required by other provisions of law so listing the co-planar PCBs separately would not mean that additional source measurements would be developed. Thus, listing under EPCRA section 313 will not require the development of additional monitoring data that could be used to make reasonable estimations of thresholds or releases and other waste management quantities. Given the lack of information available for estimating quantities of co-planar PCBs and the potential additional burden associated with splitting the reporting for PCBs into two different listings, EPA decided to leave the co-planar PCBs under the current PCB listing.

One commenter asserts that the burden on industrial producers of dioxin-like PCBs is not an appropriate reason for excluding dioxin-like PCBs from the dioxin and dioxin-like compounds category because this will not meet EPCRA's right-to-know goal for dioxin-like PCBs. The commenter contends that EPA's cost analysis does not address dioxin-like PCBs specifically and thus, EPA's rationale in Unit VI. of the preamble of the proposed rule (64 FR 688) that "this proposal is less burdensome than requiring separate reporting on the dioxin-like PCBs" is not based on any cost analysis in EPA's proposal. The commenter argues further that in any case, aggregate reporting of dioxin-like PCBs with a 10 pound threshold will fail to obtain the required reporting on a substantial majority of dioxin-like PCBs or to provide needed information about dioxin-like PCB releases and therefore, EPA's perceptions regarding reporting burden

cannot properly outweigh the public's need for the information which is denied under EPA's new proposal. The commenter refers to the proposal to retain dioxin-like PCBs under the PCB listing as the "less than 10 pounds exemption." The commenter asserts that existing evidence demonstrates that many dioxin producing processes such as waste incinerators, oil-fired boilers, and other processes also produce potentially significant amounts of PCBs which are released to the environment from these facilities. The commenter argues that this evidence suggests that at least some facilities reporting under EPCRA section 313 are likely to be releasing dioxin-like PCBs as a portion of these PCB releases. The commenter contends that the evidence also suggests that most or all releases of dioxin-like PCBs at these facilities may be associated with total annual PCB production of less than 10 pounds per facility and thus, EPA may not meet the requirement that a substantial majority of dioxin-like PCBs be reported under this exemption.

Reporting burden was not the sole or even most important factor in EPA's decision not to move the co-planar PCBs to the dioxin and dioxin-like compounds category. In reaching its final decision, EPA considered the fact that additional information would be collected on all PCBs by lowering the threshold for the PCB listing and that the additional information that would be collected was sufficient for EPCRA section 313 purposes, as well as less burdensome. Even in its proposal EPA did not conclude that reporting burden alone outweighed the public's right-to-know about chemical releases. As stated in other responses to this issue, EPA is also concerned about the ability to estimate quantities of specific co-planar PCBs since there is a lack of readily available estimation techniques for co-planar PCBs. It is correct that EPA did not attempt to quantify the reduction in burden that would result from not including the co-planar PCBs in the dioxin and dioxin-like compounds category. However, EPA believes that it would be inherently less burdensome since facilities would not have to attempt to determine if they can estimate co-planar PCBs separately and filing one form would obviously be easier and less confusing than attempting to track and adjust the amounts that must be applied to two different listings and filing two reports. With regard to the issue of obtaining reporting on a substantial majority of "dioxin-like PCB" releases, as stated in EPCRA section 313(f)(2), the

determination of whether a revised threshold meets the "substantial majority" standard is measured against the "total releases of the chemical at all facilities subject to the requirements of this section." As EPA stated in the proposed rule:

For purposes of determining what constitutes a "substantial majority of total releases", EPA interprets "facilities subject to the requirements" of section 313 as the facilities currently reporting. ... (at 64 FR 689).

Currently, facilities required to report on PCBs must report on all PCBs, not just the co-planar PCBs or any other individual PCBs. The current listing includes all PCBs. Consequently EPA does not believe that the requirements of section 313(f)(2) function as an impediment to its decision to withdraw its proposal to include the co-planar PCBs in the dioxin and dioxin-like compounds category. As discussed in Units II.B. and VI.A., EPA believes that it has satisfied the requirements of EPCRA section 313(f)(2), without the need for quantitative support.

*c. Listing dioxin and dioxin-like compounds as a category versus individual listing of each chemical.*

Some commenters contend that reporting dioxin and dioxin-like compounds as one category would not provide useful information and asked that the individual compounds be reported. One commenter recommends that reporting on individual chemical species should be required when the information is available. One commenter who supports the individual reporting of all of the dioxin and dioxin-like compounds, states that the amounts of individual dioxin compounds released from facilities is part of the important public information needed to assist research and policy development. The commenter claims that reporting as a category will not provide the public with the information to assess the relative hazards of releases since one dioxin-like compound can have a relative hazard several orders of magnitude less than 2,3,7,8-tetrachlorodibenzo-*p*-dioxin. This commenter also states that different sources often emit a different mix of dioxin compounds and that this information is widely used to trace dioxin contamination to specific root causes. The commenter states that the relative amounts of the many different dioxin-like chemicals in a sample are compared to create a "profile" which might match the profile created by emission from a particular source. The commenter did not support the reporting of the category based on toxic

equivalents (TEQs) but thought it important for the users of the data to be able to determine TEQs. Some other commenters make the same general argument that individual isomer reporting is needed to facilitate risk characterization including transport and fate of the different isomers.

Some commenters contend that certain dioxin-like compounds such as octachlorodibenzo-*p*-dioxin and octachlorodibenzofuran should not be reported since they are ubiquitous in the environment and are the least toxic under the toxic equivalent factors (TEFs). One commenter states that EPA should require reporting only for the most toxic congeners: the tetra-, penta-, and hexa-congeners and not the hepta- and octa-congeners which are less toxic and less relevant from a risk standpoint. Other commenters state that only 2,3,7,8-tetrachlorodibenzo-*p*-dioxin should be reported. Some commenters contend that reporting for these compounds should not be required at the same reporting threshold as the other dioxin and dioxin-like compounds. Most commenters who would like to exclude certain dioxin-like compounds did not indicate that they wanted individual reporting of the remaining compounds. Some commenters support the reporting of dioxin and dioxin-like compounds as a category, as EPA proposed. One commenter states that if reporting is not limited to just 2,3,7,8-tetrachlorodibenzo-*p*-dioxin, then the commeter supports EPA's proposal to limit the category to only the 7 dioxins and 10 furans listed in the proposed rule.

After consideration of all of the comments on this issue, EPA has decided that the best way to report on dioxin and dioxin-like compounds is to report them as a category. This is consistent with the way EPA has addressed other groups of chemicals that share the same toxic effect and in this case are also generated as complex mixtures. As discussed in Units VI.G.1.d. and e., reporting as a category and based on TEQs would not provide users of the data with information on which compounds contribute the most to the TEQ total. In addition, requiring facilities to report each compound individually would impose an additional burden on the industries that will be required to report. However, EPA agrees that being able to determine the amounts of the individual dioxin and dioxin-like compounds would make the data more useful. Therefore EPA will add a section to the Form R that will require the reporting facility to provide the distribution of dioxin and

each dioxin-like compound for the total quantity that the facility is reporting. If a facility has information on the distribution of the dioxin and dioxin-like compounds, the facility must report either the distribution that best represents the distribution of the total quantity of dioxin and dioxin-like compounds released to all media from the facility; or its one best media-specific distribution. This information is only required if it is available from the data used to calculate thresholds, releases, and other waste management quantities, no additional analysis is required. As with all other reporting under EPCRA section 313, this information will only be required if the facility has information that can be used to make a reasonable estimate of the distribution from the available data. With the distribution of congeners reported on each Form R, the user of the data can determine the grams of dioxin and each individual dioxin-like compound that makes up the total quantity reported on the Form R. Under this reporting mechanism, all of the information that the commenters have stated is important to determining the significance of quantities reported under this category will be provided to the public but the reporting facilities will still only have to file one report. Any of the other possible options, such as reporting in terms of TEQs or reporting each individual compound separately, either do not provide all of the information the commenters would like to have, or impose too great an additional reporting burden without providing the public with significant additional information.

*d. Using mass versus TEQs for reporting releases and other waste management quantities.* Most of the commenters on this issue suggest that EPA should require that release and other waste management data for the dioxin and dioxin-like compounds category be reported in terms of TEQs rather than in terms of absolute grams. The following list is a summary of the various reasons provided by the commenters in support of reporting dioxin and dioxin-like compounds in terms of TEQs: (1) All dioxin data reported under other EPA programs as well as other Federal and state regulatory programs are reported in terms of toxicity equivalents; (2) the public is familiar with dioxin data reported in terms of TEQs and reporting in other units would cause confusion and be misleading; (3) TEQs provide more meaningful information than total weights since they take into account the relative toxicities of the various dioxin-

like compounds; (4) facilities that report under other regulatory programs are likely to rely upon TEQ data that they already have; (5) use of absolute mass may cause misleading comparisons between grams and grams TEQ; (6) releases reported in absolute mass make it difficult to assess the impacts these compounds may have on the environment due to the differences in their toxicities; and (7) reports based on TEQs would provide far more useful information about potential community risks than reports based on the total mass of compounds in the category since more risk information would be provided.

One commenter argues that EPA's justification for adding the category is based on assumptions about the toxicity of the other dioxin-like compounds relative to dioxin itself and that given these assumptions the reporting of TEQs makes sense. The commenter states that under current TEQ schemes, these dioxin-like compounds are all less toxic than dioxin, as much as 1,000 times less, and that facilities should not simply sum emissions on the Form R for compounds with such drastically different toxicities. One commenter suggests that EPA require the reporting of both grams and TEQs and if not both, then just grams. This commenter asserts that if only grams are reported, the data will be somewhat difficult to interpret without any further information, but if only TEQs are required to be reported, then there are uncertainties about what and how much is discharged.

Another commenter states that if EPA is going to require dioxin reporting as a group and not by specific chemicals, TEQ reporting is an unnecessary complication. The commenter states that the TEFs used to formulate the TEQs are constantly reviewed and changed, which would necessitate EPA review and possible reissuance of new TEFs each year. The commenter argues that this would make previous years' TRI data impossible to compare once the changes were made.

While EPA recognizes that TEQs are a common way of expressing quantities of dioxin-like compounds, EPA does not believe that reporting in these units would be the best or most appropriate way to report for the dioxin and dioxin-like compounds category under EPCRA section 313. Although some commenters believe that TEQ reporting should be used since not all of the dioxin-like compounds are as toxic as dioxin itself, EPA has determined that all of the dioxin-like compounds meet the listing criteria of EPCRA section 313. Since all of these compounds meet the listing criteria, the actual mass of each member

of the category should be reported. To do otherwise would deny the public information on the actual quantities of toxic chemicals entering the environment. It would also be inconsistent with all other reporting of EPCRA section 313 toxic chemicals since none of them are reported based on relative toxicities. In addition, this would be inconsistent with EPCRA section 313(g)(1)(C)(iv) which requires that "the annual quantity of the toxic chemical entering each environmental medium" be reported.

Some of the commenters state that TEQs should be used because they provide more risk information to the public than just reporting mass. While TEQs do provide information on relative toxicity, EPA does not believe that increasing the amount of risk information is a basis for changing the EPCRA section 313 method for reporting from mass-based to relative toxicity-based. As discussed in Unit VI.F., EPCRA section 313 is not a risk-based program, and reporting is not intended to communicate information about relative risks. Rather it provides local communities with data on release and other waste management quantities on listed toxic chemicals, so that they may use the data in conjunction with information on chemical properties (e.g., persistence and bioaccumulation) and site-specific information to determine if releases present a potential risk. It is also not clear, as some commenters state, that the public is more familiar with dioxin data reported in terms of TEQs or that they will understand TEQs any better than grams.

EPA does not believe that the fact that other programs require reporting in TEQs and that facilities will already have TEQ information is a significant reason to require TEQ reporting under EPCRA section 313. Since the first piece of information that is required to determine TEQs is the grams of dioxin and each dioxin-like compound, these facilities should already have the gram-based information they would need. In addition, as stated above, EPCRA section 313 reporting serves the purposes of EPCRA section 313; other programs, e.g., the CWA, are risk-based command and control programs.

Several commenters also disagree with the concerns that EPA raised in the proposed rule, which were:

... there are three significant disadvantages to reporting in TEQs. First, revisions in TEF factors for individual dioxin-like compounds in future years would require changes to the calculations in the reported release and other waste management quantities, thus making year to year comparisons more difficult, unless the particular dioxin-like compounds

are identified. Second, some facilities may not be able to report in TEQs, since, although they may be able to estimate a mass quantity for the category as a whole, they may not have enough information to estimate the relative distribution of all category members. Third, TEQ reporting would be different from all other TRI reporting, which is mass-based, and may cause additional confusion. (at 64 FR 712-713)

Some commenters contend that EPA's first concern is not valid since the EPCRA section 313 reporting requirements have been changed several times in the past in spite of difficulties in comparing future reports to past performance. Two commenters state that this same logic could be applied to the use of AP-42 factors which EPA acknowledges have been revised and refined over the years, and that this also diminishes the value of year-to-year reporting comparisons. One commenter suggests that EPA could minimize any confusion that might be caused by a subsequent change in one or more TEFs by each year specifically publishing or cross referencing the TEFs that must be used for that reporting period.

One commenter contends that EPA's second and third concerns appeared weak in light of the much greater risk information provided by a TEQ approach. Some commenters contend that EPA's third concern is not valid since the reporting requirement being proposed for dioxin and dioxin-like compounds is different whether TEQs are used or not. One commenter states that the third concern is clearly dwarfed by the confusion that would ensue if all dioxin-like compounds were reported as equivalent, when the hazards vary by a factor of 500. One commenter states that reporting dioxin on a TEQ basis will cause more rather than less confusion if the public mistakenly compares data in grams with data presented in grams TEQ. Some commenters agreed with the concerns EPA expressed in the preamble. One commenter states that it agreed with these concerns but that the concern about year-to-year comparisons being more difficult also applies to the reporting of a single mass value for the entire category. The commenter contends that since the amounts of the individual dioxin-like compounds would not be known, if TEFs change, one cannot adjust previously reported values to reflect the changes in TEFs. This commenter suggests that in order to make the information reported of greatest use, the mass of dioxin and each of the dioxin-like compounds should be reported once a TEQ threshold is exceeded.

One commenter argues that while TEQs are a valid and scientifically

sound metric for reporting the likely health hazard of a compound, that was not the intended purpose of the EPCRA section 313 reporting requirement. The commenter claims that reporting dioxin and dioxin-like compounds in TEQs will cause confusion, since all other reporting under EPCRA is done in terms of mass and does not take toxicity into account.

EPA believes, as do some of the commenters, that the concerns that were expressed in the proposed rule for reporting dioxin and dioxin-like compounds in terms of TEQs under EPCRA section 313 are valid. EPA disagrees with those commenters who claim that since other changes in reporting have occurred, such as revisions to AP-42 emission factors, there should be no concern for the changes that might occur in TEFs and the resulting TEQs. The fact that certain changes have occurred in reporting requirements or methods of estimation and that those changes may make certain year-to-year comparisons more difficult does not reduce the concern for knowingly selecting reporting units, based on relative toxicity as opposed to emission factors, that have changed in the past and may well change in the future. Also, EPA would be required to choose a particular set of TEFs (i.e., as of 1999) and would need to amend them by rulemaking each time the TEFs were revised. Changes in TEFs and the resulting TEQs would be unlike any of the past changes in EPCRA section 313 reporting since none of these reporting changes were related to the relative toxicity of chemicals that meet the listing criteria of EPCRA section 313. The cross referencing or publishing of the TEFs that must be used for each reporting period would still not allow year-to-year comparisons since without knowing a facility's distribution of each of the category members the TEQ cannot be recalculated. EPA's concerns that some facilities may not be able to report in terms of TEQs are also valid. Although most facilities that will be able to make reasonable estimations for the dioxin and dioxin-like compounds category should be able to report in terms of TEQs, there may be some that can only report in actual mass units and they should not be exempt from reporting. EPA is also still concerned that TEQs would be different than other EPCRA section 313 reporting units, since they are not based on absolute mass, and that this could cause confusion. EPA does not agree with the commenters that state that this does not matter since the reporting for the dioxin and dioxin-like compounds category is

going to be different anyway. The only real reporting difference for the dioxin and dioxin-like compounds category is that the reporting units are in grams rather than pounds. To determine the amounts in pounds all that one would have to do is multiply the grams by 0.002204. However, TEQ reporting would be much different since in order to understand the reported value one would need to understand the basis for TEFs, what they are, how they relate to dioxin, and how TEQs are calculated from the individual TEFs. This obviously requires more knowledge on the part of the data user than simply understanding different units of mass and does have the potential to cause some confusion.

One commenter contends that neither total mass nor TEQ reporting provides sufficient information on reduction in potential exposure and risk. The commenter asserts that it is possible that a facility could reduce its dioxin TEQ while releasing a greater mass of dioxin-like compounds, but neither total mass nor TEQ reporting would really provide a good picture of what a facility was doing. The commenter suggests that if EPA wants to provide TEQ information to the public, it should also require facilities to report dioxins by individual chemical, rather than as a group.

Another commenter that favors the reporting of dioxin and dioxin-like compounds as individual chemicals claims that reporting as a category but in TEQs would still fail to reveal the amounts of individual dioxin compounds released. The commenter argues that this alternative would provide no information on individual compounds for use in tracing dioxin source profiles. The commenter contends that reporting in TEQs would provide better information on the relative toxicity hazard based upon today's toxicity information but that information on the relative toxicity of the many dioxin-like chemicals is improving and thus toxicity factors for some of these compounds will change in the future. The commenter claims that in future years the Inventory would have to choose between keeping the old toxicity calculation (and becoming irrelevant in comparison with other research data), or changing the toxicity calculation (and becoming irrelevant for tracking changes in dioxin release rates over time). The commenter contends that the need to aid research and policy development based on current science and the need to track release rates over time are fundamental to the Inventory's purpose and that this alternative must be rejected as just another ill-advised aggregate reporting scheme. The

commenter recommends that EPA require the reporting of dioxin and dioxin-like compounds in the way these compounds are measured and analyzed by scientists and government agencies, as individual chemicals, and consider an additional service by EPA to calculate and report dioxin toxicity as TEQ for the year-to-year data using the most recent toxicity information which becomes available.

Several commenters make the point that for dioxin and dioxin-like compounds neither reporting total mass nor reporting in terms of TEQs provides sufficient information on potential exposures and risks, and that neither would allow for the tracing of dioxin source profiles. EPA agrees that neither approach would provide all of the data that the commenters would like to have reported and that being able to determine TEQs would provide additional useful information. A common solution to the TEQ issue that the commenters suggest, was to report dioxin and each individual dioxin-like compound separately rather than as a category. However, EPA believes that this approach would be overly burdensome and unnecessary to get the kind of data that would be the most useful. As discussed in the previous section of this unit, many other commenters requested that dioxin and dioxin-like compounds be reported separately rather than as a category. After consideration of all of the comments on this issue, EPA has determined that the best way to report for the dioxin and dioxin-like compounds category is to report in terms of absolute grams for the entire category. This is consistent with all other reporting under EPCRA section 313 and will provide the most consistent information from year-to-year. However, EPA agrees with most of the commenters that being able to determine TEQs from the reported data and being able to determine which individual chemicals are included in a facilities report would make the data more useful to the public. Therefore, as discussed in the previous section of this unit, EPA will add a section to the Form R that will require the reporting facility to provide the distribution of dioxin and each dioxin-like compound for the total quantity that the facility is reporting. If a facility has information on the distribution of the dioxin and dioxin-like compounds, the facility must report either the distribution that best represents the distribution of the total quantity of dioxin and dioxin-like compounds released to all media from the facility; or its one best media-

specific distribution. This information is only required if it is available from the data used to calculate thresholds, releases, and other waste management quantities, no additional analysis is required. As with all other reporting under EPCRA section 313, this information will only be required if the facility has information that can be used to make a reasonable estimate of the distribution from the available data. With the distribution of the individual members of the category reported on each Form R, the user of the data can determine the grams TEQ that correspond to the absolute grams reported and can adjust the grams TEQ as TEF values change over time. Under this reporting mechanism, all of the information that the commenters state is important to determining the significance of quantities reported for this category will be provided to the public on one Form R. This way all parties can express the data in whichever format they believe is best, and since the first thing that must be determined under any reporting method is the mass of each member of the category, there should be little, if any, additional burden associated with including the distribution.

*e. Using TEQs as the basis for reporting thresholds.* All of the commenters on this issue requested that the reporting threshold for the dioxin and dioxin-like compounds be set in terms of TEQs. Most of the commenters indicate that the reasons they support a TEQ-based threshold were the same as the reasons they support reporting release and other waste management quantities in terms of TEQs (see the first paragraph of the preceding section of this unit). Two commenters argue that since EPA proposed to use TEQs for reporting release and other waste management quantities, that not basing the reporting threshold on TEQs would be inconsistent. The commenters contend that a facility may trigger reporting by having emissions that exceed the threshold (in terms of absolute weight) but have no significant reporting quantity (in terms of TEQ equivalent weight) and, therefore, no significant health risk. The commenters recommend the use of a consistent approach where TEQs are used for both threshold determinations and release and other waste management quantities. The commenters state that such an approach would be consistent with the health risk rationale for EPCRA reporting, yet not rely on site-specific risk approaches that may evolve over time. Another commenter had similar concerns suggesting that it would be

extremely burdensome and unnecessarily complex to have thresholds based on absolute grams and release and other waste management quantities reported in TEQs and recommends that EPA should use TEQs for both.

One commenter claims that it may ease the reporting burden somewhat to base the EPCRA section 313 reporting threshold on a TEQ basis rather than attempting to develop mass-based estimates. Another commenter contends that in order to determine the sum of the mass of the 17 dioxin and dioxin-like compounds, one already will have determined the mass of each compound individually and that with data reported by compound, a TEQ can easily be calculated. The commenter also suggests that there are short-term screening bioassays for determining the TEQ of a sample that are less expensive, more sensitive, and can be done more rapidly than traditional analytical chemistry methods. The commenter states that rather than facilities trying to guess what their releases may be, in an attempt to avoid spending money on expensive analytical chemistry methods, if the reporting threshold were based on TEQs, a facility can readily and more inexpensively screen its releases. The commenter argues that having a reporting threshold based on TEQ is more representative of potential health risks and recommends that EPA consider using some amount of TEQs as the reporting threshold. Another commenter suggests that one option would be to report releases of each dioxin-like compound if the total, in TEQ, exceeds some chosen threshold.

One commenter that suggests that TEQs should be used for thresholds, notes that reporting dioxin on a mass basis is quite different from reporting on a TEQ basis. The commenter asserts that since some of the dioxin-like compounds have TEFs of 0.001 then the 0.1 gram threshold could require facilities that produce 0.0001 gram TEQ of dioxin to report. The commenter claims that when compared to the estimate that there are 2,973 grams TEQ of U.S. dioxin emissions such amounts are insignificant and meaningless. The commenter maintains that using TEQs instead of the mass of each compound for determining whether an EPCRA reporting threshold for dioxin and dioxin-like compounds is exceeded would not deprive EPA or the public of information regarding meaningful releases of dioxin. The commenter also recommends that whatever units EPA decides to use should be the same for thresholds and for release and other waste management quantities.

One commenter suggests that EPA should require sources to use toxicity factors in calculating the manufacturing threshold for dioxin and dioxin-like compounds to avoid triggering the threshold based solely on non-detection. The commenter states that the 17 dioxin-like compounds to which the 0.1 gram proposed reporting threshold would apply vary in toxicity by a factor of 1,000 but that EPA does not take this variation in toxicity into consideration for the purpose of determining the manufacturing threshold.

EPA did not propose to use TEQs as the units of measurement for the EPCRA section 313 reporting threshold for dioxin and dioxin-like compounds. EPA has the same concerns for using TEQs for EPCRA section 313 thresholds as it does for reporting releases and other waste management quantities in terms of TEQs, and most of the issues raised here have been addressed in the preceding section of this unit. Most importantly, since EPA has determined that each of the dioxin-like compounds meets the listing criteria of EPCRA section 313, the actual mass of each member of the category should be included in threshold determinations. Also, the fact that the TEFs and thus the TEQs can change over time, is even more important for thresholds since TEF changes would in effect change the threshold, because for example, the same mass quantity that would have exceeded the threshold before the change may not exceed the threshold after the change.

As one of the commenters pointed out, using TEQs as the units for the reporting threshold is much different than using actual mass. The commenter showed how a 0.1 gram threshold for a dioxin-like compound with a TEF of 0.001 would be equivalent to a 0.0001 gram TEQ threshold. The opposite of this is that if the 0.1 gram threshold were in units of TEQ, then for dioxin-like compounds with a 0.001 TEF, it would take 100 grams to reach the reporting threshold. Using TEQs as the units for the reporting threshold would thus be equivalent to establishing separate thresholds for each member of the dioxin and dioxin-like compounds category based on their relative toxicity. EPA does not believe that any of the reporting requirements of EPCRA section 313 should be based on relative toxicities since, as discussed in Unit VI.F., EPCRA section 313 is not a risk-based program and reporting is not intended to communicate information about the Federal government's risk determinations for individual chemicals. Rather it provides local communities with data on release and

other waste management quantities on listed toxic chemicals, so that they may use the data in conjunction with information on chemical properties (e.g. persistence and bioaccumulation) and site-specific information to determine if releases present a potential risk.

Several commenters express concern about consistency between the units of measurement for the threshold for the dioxin and dioxin-like compounds category and the units of measurement used to report releases and other waste management quantities. While EPA is not adopting the use of TEQ as some commenters requested, EPA is being consistent since absolute gram quantities will be used for both thresholds and the reporting of releases and other waste management quantities.

EPA does not agree with those commenters who state that the information collected under a 0.1 gram threshold would, in some cases, represent such a small portion of the estimated national amount of dioxin TEQs that the data would not be useful. On a facility-by-facility basis, the amounts reported may be a small percentage of the national total, but that does not mean that it will not be useful or meaningful to the public. One of the purposes of EPCRA section 313 is to provide information to communities about releases into their community. A small percentage of national releases may pose potential risks to local communities. Further, even information that shows little or no releases helps communities to understand what risks may be or may not be present in their communities and helps government agencies to target resources. In addition, since not all of the sources of dioxin and dioxin-like compounds will be reporting under EPCRA section 313, the amount reported will be a larger portion of the total amount reported under EPCRA section 313 than it will be on a national basis. The issue of how many sources of dioxin and dioxin-like compounds are captured by EPCRA section 313 are addressed in the Response to Comments document (Ref. 69) for this rulemaking.

EPA does not agree that reporting in terms of TEQs would necessarily be less burdensome. As one commenter states, in order to determine the sum of the mass of the 17 dioxin and dioxin-like compounds, one already will have determined the mass of each compound individually and that with data reported by compound, a TEQ can easily be calculated. Since the TEQs are calculated from the relative amounts of dioxin and each dioxin-like compound that is present, it is an additional step to present the data in terms of TEQs and

therefore it should not be less burdensome.

f. *Reporting guidance for dioxin and dioxin-like compounds.* A number of commenters requested that EPA develop reporting guidance for the dioxin and dioxin-like compounds category.

EPA agrees that guidance should be provided to assist facilities in determining threshold and release quantities for the dioxin and dioxin-like compounds category. As EPA stated in the proposed rule:

EPA intends to develop reporting guidance for industries that may fall within this reporting category. The guidance developed will be consistent with the methods and procedures that EPA has developed for determining if dioxin and dioxin-like compounds are present in various industrial processes, including Method 23 (Ref. 77) developed for electric utilities. In developing the reporting guidance for the dioxin and dioxin-like compounds category EPA will work with interested parties to provide the best possible guidance for reporting facilities (at 64 FR 712).

EPA will provide a guidance document to assist certain facilities in making thresholds and release determinations for the dioxin and dioxin-like compounds category. The guidance document will be consistent with EPA established methods of measuring or estimating quantities of dioxin and dioxin-like compounds, including Method 23.

2. *Benzo(g,h,i)perylene (CAS No. 191-24-2) (Ref. 70).* EPA proposed to add benzo(g,h,i)perylene to EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C). One commenter states that EPA should not add benzo(g,h,i)perylene to the EPCRA section 313 list of toxic chemicals because there are insufficient data to support the EPCRA section 313(d)(2)(C) determination. The commenter states that EPA used predicted aquatic toxicity values based on quantitative structure activity relationship (QSAR) analysis but did not provide any toxicity data. The commenter contends that EPA did not provide any evidence to support the statement that aquatic QSAR equations show a high correlation between predicted and measured toxicity values, and did not provide any other information to support use of QSAR for this type of chemical.

EPA disagrees with the commenter's statements. EPA provided the following discussion in the proposed rule:

Three of the chemicals being proposed for listing (benzo(g,h,i)perylene, 3-methylcholanthrene, and octachlorostyrene) have been found to meet the EPCRA section 313(d)(2)(C) criteria for ecotoxicity based on predicted aquatic toxicity values generated

from quantitative structure activity relationship (QSAR) equations and other predictive techniques. As previously stated (58 FR 63500, December 1, 1993), EPA believes that, where no or insufficient actual measured aquatic toxicity data exist upon which to base a decision, toxicity predictions generated by QSARs and other predictive techniques may constitute sufficient evidence that a chemical meets the section 313 listing criteria. EPA's authority to use such predictive techniques derives from section 313(d)(2) of the statute, which states that EPA shall base its listing determinations on, *inter alia*, "generally accepted scientific principles." EPA believes that the aquatic QSAR equations that are in widespread use and show a high correlation between predicted and measured aquatic toxicity values can be considered to be "generally accepted scientific principles" and can appropriately form the basis of a listing determination (Ref. 70). (at 64 FR 693)

EPA believes that QSAR data is valid predicted aquatic toxicity data and the fact that no actual toxicity studies were provided does not mean that the available data were insufficient to determine that benzo(g,h,i)perylene met the listing criteria of EPCRA section 313(d)(2)(C). In addition, EPA did provide support for the statement that aquatic QSAR equations are in widespread use and show a high correlation between predicted and measured aquatic toxicity values. The docket for the proposed rule contained a document titled "SAR/QSAR in the Office of Pollution Prevention and Toxics" In: Environmental Toxicology and Risk Assessment: 2nd Volume, STP 1216. One of the articles in this reference was titled *Validation of Structure Activity Relationships Used By the USEPA's Office of Pollution Prevention and Toxics for the Environmental Hazard Assessment of Industrial Chemical*. This includes the methods of SAR for the class of neutral organic chemicals which, as discussed in the support document, was used for benzo(g,h,i)perylene since it is a neutral organic chemical. Thus, EPA did provide support for its conclusions about QSAR analysis and for the use of QSAR for benzo(g,h,i)perylene.

This commenter also states that EPA uses an estimated Log  $K_{ow}$  in its aquatic toxicity prediction and argues that Log  $K_{ow}$  is an inaccurate predictor for many chemicals particularly if it is estimated rather than measured. The commenter contends that EPA's basis for the listing of benzo(g,h,i)perylene is a prediction based upon a prediction, with no actual data and that this is not a sufficient basis for listing under EPCRA section 313 and it does not meet the statutory requirements for listing that a chemical is "known to cause or can reasonably be

anticipated to cause" a significant adverse effect.

EPA disagrees with the commenter's conclusions. The majority of the SAR calculations in the ECOSAR Class Program are based upon the octanol/water partition coefficient ( $K_{ow}$  or Log P) since there is a correlation between Log P and toxicity. Using the measured aquatic toxicity values and estimated Log P values, regression equations can be developed for a class of chemicals. Toxicity values for a chemical within that class may then be calculated by inserting the estimated  $K_{ow}$  into the class regression equation and correcting the resultant value for the molecular weight of the compound. The ecological assessment guidelines for predicting the toxicity of chemicals with limited measured aquatic toxicity data have been used for over a decade (Ref. 35). The commenter has not provided the Agency with any concrete information or data indicating that this approach either is not a generally accepted scientific approach or is unreliable, and the Agency finds no reasonable basis to change these techniques at this time. In addition, the commenter did not provide any data to indicate that the predicted Log  $K_{ow}$  for benzo(g,h,i)perylene was inaccurate.

This commenter also contends that EPA's failure to consider exposure in this proposed rule is particularly important for benzo(g,h,i)perylene. The commenter argues that given the properties of benzo(g,h,i)perylene, any release into water will result in the vast majority (more than 99%) of the compound being partitioned to sediment or adsorbed onto suspended particulates and organics in the water column and thus the potential for this chemical to be in a toxic form and pose risk in natural systems is low.

EPA disagrees with the commenters' contention that EPA should consider exposure in its determination that benzo(g,h,i)perylene meets the EPCRA section 313(d)(2)(C) listing criteria. As discussed in Unit VI.F., EPA is only required to consider exposure under a limited set of circumstances. In the final chemical expansion rule (59 FR 61432), EPA further explained its policy on the use of exposure considerations under EPCRA section 313(d)(2)(C) and the fact that the Agency does not consider exposure for chemicals that are highly ecotoxic. As EPA explained in the final rule:

The Agency believes that exposure considerations are not appropriate in making determinations (1) under section 313(d)(2)(B) for chemicals that exhibit moderately high to high human toxicity (These terms, which do not directly correlate to the numerical

screening values reflected in the Draft Hazard Assessment Guidelines, are defined in unit II.) based on a hazard assessment, and (2) under section 313(d)(2)(C) for chemicals that are highly ecotoxic or induce well-established adverse environmental effects (at 59 FR 61441).

Although EPA does not believe that it would be appropriate to consider exposure, EPA also disagrees with the commenter's characterization of the fate of benzo(g,h,i)perylene. Environmental fate models show that the chemical will only partition about 60% to the sediment. Also, the Agency cannot rely on the environment to serve as a sink for this chemical. Other environmental conditions such as turbidity, biological activity, or the chemical activity in water could cause redistribution of the chemical into the water column again.

Based upon QSAR equations and other predictive techniques, EPA has concluded that benzo(g,h,i)perylene is toxic. It has the potential to kill fish, daphnia, and algae, among other adverse effects, based on chemical and/or biological interactions. Benzo(g,h,i)perylene can cause these toxic effects at relatively low concentrations. The predicted aquatic toxicity values for benzo(g,h,i)perylene, based upon QSAR analysis using the equation for neutral organics and an estimated Log  $K_{ow}$  of 6.7, included calculated values of 0.030 milligrams per liter (mg/L) for the fish 96-hour  $LC_{50}$  (i.e., the concentration that is lethal to 50% of test organisms) and 0.0002 mg/L for fish chronic toxicity; 0.012 mg/L for daphnia 48-hour  $LC_{50}$  and 0.027 mg/L for the daphnid 16-day chronic  $LC_{50}$ ; and 0.03 mg/L for the algae 96-hour  $EC_{50}$  (i.e., the concentration that is effective in producing a sublethal response in 50% of tests organisms) with an algal chronic toxicity of 0.012 mg/L.

Benzo(g,h,i)perylene can cause its toxic effects at relatively low concentrations, therefore EPA considers it to be highly toxic. Since benzo(g,h,i)perylene is toxic at relatively low concentrations EPA believes that it causes or can reasonably be anticipated to cause a significant adverse effect on the environment. In addition, because of the nature of the potential significant adverse effects, e.g., fish, daphnia, and algae kills, and the impacts such effects can have on ecological communities and ecosystems, EPA has determined that they are of sufficient seriousness to warrant reporting.

EPA reaffirms that there is sufficient evidence for listing benzo(g,h,i)perylene on the EPCRA section 313 list of toxic chemicals pursuant to EPCRA section 313(d)(2)(C)(i) based on the available

ecotoxicity information for this chemical. Therefore, EPA is finalizing the addition of benzo(g,h,i)perylene on the EPCRA section 313 list.

3. *Benzo(j,k)fluorene (fluoranthene)* (CAS No. 206-44-0) (Ref 70). EPA proposed to add fluoranthene to EPCRA section 313 pursuant to EPCRA sections 313 (d)(2)(B) and (C). EPA received no comments specific to the carcinogenicity data that EPA presented in the proposed rule in support of the addition of fluoranthene to the EPCRA section 313 list of toxic chemicals. Thus, EPA reaffirms that there is sufficient evidence for adding fluoranthene to this list of EPCRA section 313 toxic chemicals pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

One commenter argues that EPA should refrain from listing fluoranthene pending additional assessment of the data. The commenter contends that EPA's reported toxicity values for fluoranthene span a range of about two orders of magnitude and that for such a wide range, it is necessary to evaluate potential exposure to determine which scenarios, and therefore which types of data, are most relevant to this compound following a release. The commenter argues that fluoranthene is a highly lipophilic compound that will bind primarily to sediment and suspended organics, so it is not clear whether the reported toxicity values on which EPA relies for the listing are applicable to this compound in the environment. EPA assumes the commenter was referring to data used to support EPA's proposal to list fluoranthene pursuant to EPCRA section 313(d)(2)(C).

As discussed in Unit VI.F., EPA does not believe that it is appropriate to consider exposure for chemicals that are highly ecotoxic as the data for fluoranthene clearly shows it is. However, even if EPA were to consider exposure, the commenter provided no data to support the assumption that fluoranthene will bind primarily to sediments and suspended organics, and EPA believes that fluoranthene will partition to water as well as sediment. While the ecotoxicity data for fluoranthene does range over about two orders of magnitude that does not, in itself, form a basis for conducting an exposure assessment. There are data that clearly show that fluoranthene is highly ecotoxic. Thus, an exposure assessment is not required. While it does not impact EPA's assessment, EPA notes that of the ecotoxicity values presented in the proposed rule, 9 were within the same order of magnitude, 4

were one order of magnitude higher, and 2 were two orders of magnitude higher. Thus, 60% are within the same order of magnitude and 87% are within one order of magnitude. EPA does not believe that this represents a very wide distribution as the commenter implies.

Based on the available toxicity data, EPA has concluded that fluoranthene is toxic. It has the potential to kill mysid shrimp, a variety of freshwater benthic species and various saltwater species and it can also cause other adverse effects on fish and mysids, based on chemical and/or biological interactions. Fluoranthene can cause these toxic effects at relatively low concentrations. Ecotoxicity values for fluoranthene include a calculated 96-hour  $LC_{50}$  of 0.04 mg/L for mysid shrimp. Using standard acute toxicity tests, fluoranthene has been tested in 12 freshwater species from 11 genera. For freshwater benthic species, the acute 96-hour  $LC_{50}$  calculated values are 0.032 mg/L for an amphipod (*Gammarus minus*), 0.070 mg/L for a hydra (*Hydra americana*), 0.17 mg/L for an annelid (*Lumbriculus variegatus*), and 0.17 mg/L for a snail (*Physella virgata*). For saltwater species, the 96-hour  $LC_{50}$  values are 0.051 mg/L for a mysid (*Mysidopsis bahia*), 0.066 mg/L for an amphipod (*Ampelisca abdita*), 0.14 mg/L for a grass shrimp (*Palaemonetes pugio*), and 0.50 mg/L for an annelid (*Neanthes arenaceodentata*). Fathead minnows exposed to fluoranthene at a concentration of 0.0217 mg/L for 28 days in a chronic early life-stage test showed a reduction of 67% in survival and a 50.2% reduction in growth relative to the controls. In a 28-day chronic study, mysids exposed to 0.021 mg/L of fluoranthene showed a 26.7% reduction in survival and a 91.7% reduction in reproduction; at 0.043 mg/L all mysids died. In a 31-day study, mysids showed a reduction of 30% in survival, 12% in growth, and 100% in reproduction relative to controls at a concentration of 0.018 mg/L of fluoranthene.

Fluoranthene can cause its toxic effects at these relatively low concentrations, therefore EPA considers it to be highly toxic. Since fluoranthene is toxic at relatively low concentrations, EPA believes that it causes or can reasonably be anticipated to cause a significant adverse effect on the environment. In addition, because of the nature of the potential significant adverse effects, e.g., kills of mysid shrimp, a variety of freshwater benthic species, and various saltwater species, and the impacts such effects can have on ecological communities and ecosystems, EPA has determined that

they are of sufficient seriousness to warrant reporting.

Thus, EPA reaffirms that there is sufficient evidence for adding fluoranthene on the EPCRA section 313 list of toxic chemicals pursuant to EPCRA section 313(d)(2)(C)(i) based on the available ecotoxicity information for this chemical.

Therefore, EPA is finalizing the listing of fluoranthene on the EPCRA section 313 list.

4. *3-Methylcholanthrene* (CAS No. 56-49-5) (Ref. 70). EPA proposed to add 3-methylcholanthrene to EPCRA section 313 pursuant to EPCRA sections 313(d)(2)(B) and (C). EPA received no comments on the carcinogenicity data that EPA presented in the proposed rule in support of the addition of 3-methylcholanthrene to the EPCRA section 313 list of toxic chemicals. Thus, EPA reaffirms that there is sufficient evidence for adding 3-methylcholanthrene to the list of EPCRA section 313 toxic chemicals pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

No comments were received concerning the ecotoxicity data that EPA presented for 3-methylcholanthrene in the proposed rule. Based upon quantitative structure activity relationship (QSAR) equations and other predictive techniques, EPA has concluded that 3-methylcholanthrene is toxic. It has the potential to kill fish and daphnia as well as cause other adverse effects on fish, daphnia, and algae based on chemical and/or biological interactions. 3-Methylcholanthrene can cause these toxic effects at relatively low concentrations. The predicted aquatic toxicity values for 3-methylcholanthrene, based on QSAR analysis using the equation for neutral organics and an estimated  $\log K_{ow}$  of 7.05, include a calculated fish 96-hour  $LC_{50}$  of 0.009 mg/L and a chronic fish toxicity value of 0.003 mg/L, a daphnia 48-hour  $LC_{50}$  of 0.005 mg/L and a 16-day chronic  $LC_{50}$  of 0.015 mg/L, and an algae 96-hour  $EC_{50}$  of 0.0105 mg/L with a calculated chronic toxicity value of 0.014 mg/L.

3-Methylcholanthrene can cause its toxic effects at these relatively low concentrations; therefore, EPA considers it to be highly toxic. Since 3-methylcholanthrene is toxic at relatively low concentrations, EPA believes that it causes or can reasonably be anticipated to cause a significant adverse effect on the environment. In addition, because of the nature of the potential significant adverse effects, e.g., fish and daphnia kills, and the impacts such effects can

have on ecological communities and ecosystems, EPA has determined that they are of sufficient seriousness to warrant reporting.

Thus, EPA reaffirms that there is sufficient evidence for listing 3-methylcholanthrene on the EPCRA section 313 list of toxic chemicals pursuant to EPCRA section 313(d)(2)(C)(i) based on the available ecotoxicity information for this chemical.

Therefore, EPA is finalizing the listing of 3-methylcholanthrene on the EPCRA section 313 list.

5. *Octachlorostyrene* (CAS No. 29082-74-4) (Ref. 70). EPA proposed to add octachlorostyrene to EPCRA section 313 pursuant to EPCRA sections 313(d)(2)(B) and (C). One commenter argues that octachlorostyrene (OCS) should not be included in the EPCRA section 313 PBT chemicals list. The commenter contends that OCS was included as a PBT chemical simply because it appears on several lists of persistent and bioaccumulative chemicals and not based on a thorough evaluation of its toxicity. The commenter argues that there is limited toxicity data for OCS and cited two statements that were in EPA's support document for the addition of OCS and the other chemicals being added in this rulemaking. The two statements the commenter cited were:

The health hazard data which support TRI listing are very limited. Human health data were not located. (Ref. 70 p. 48)

EPA disagrees with the commenters' conclusions. The commenter did not comment on the actual toxicity data that EPA provided as the basis for listing OCS pursuant to EPCRA section 313(d)(2)(B). Rather the commenter takes two statements that were contained in the support document out of context to support their apparent contention that there are insufficient data to list OCS under EPCRA section 313(d)(2)(B). The fact that the commenter has taken these statements out of context is demonstrated by the content of the rest of the paragraph that contained the statements the commenter cited:

Laboratory studies on rats suggest OCS may have acute and chronic effects on the liver, kidneys, and thyroid. In a long-term study (one year) of rats a LOAEL of 0.31 mg/kg/day was determined based on significant histological effects on these organs. (Ref. 70)

The statements the commenter cited only acknowledged that there was not a vast amount of toxicity data for OCS and specifically, that there were no human studies; they do not support the commenters' conclusion that OCS does not meet listing criteria of EPCRA

section 313(d)(2)(B). In addition, these statements were from the summary section of the discussion on OCS, more detailed discussion of the toxicity data for OCS was contained in the other sections on OCS toxicity but the commenter provided no comments on this information.

EPA reaffirms that there is sufficient evidence for adding OCS to the EPCRA section 313 list of toxic chemicals pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic, nephric, and thyroid toxicity data for this chemical.

The same commenter also claims that the toxicity comparisons to hexachlorobenzene are not supported and that no references or rationale are provided to support basing the aquatic toxicity of OCS on that of hexachlorobenzene. As with the human health data, the commenter argues that there are limited environmental toxicity data for OCS and cited some statements that were in EPA's support document. The statements the commenter cited were:

So far as is known, after a search of former EEB chemical files, the ecological hazard of OCS has never been formally reviewed under TSCA section 4 or in the OPPT Risk Management (RM) process. OCS was briefly reviewed for aquatic toxicity in August 1986, as part of an OTS (now OPPT) chemical scoring project. Thus, available information on OCS is very limited. (Ref. 70, p. 52)

EPA disagrees with the commenter's conclusions. The commenter has not commented on the actual toxicity data but rather states that the data are limited and that hexachlorobenzene is not an appropriate analogue for predicting the aquatic toxicity data for OCS. The statements the commenter cited only acknowledged that there was not a vast amount of toxicity data for OCS, they do not support the commenter's conclusion that OCS does not meet the listing criteria of EPCRA section 313(d)(2)(C). Contrary to the commenter's statement, EPA did provide a reference to the use of hexachlorobenzene as an appropriate analogue for OCS. As EPA stated in the same section of the support document the commenter cited:

OCS is one of 7 compounds in this chemical class (chlorinated styrenes) with the generic formula  $C_8H_{8-x}Cl_x$ , where x equals 8 for OCS. This class is analogous to the chlorinated benzenes; for example hexachlorobenzene (HCB), is considered to be an appropriate analogue chemical for OCS (2). (Ref. 70, page 52).

The reference EPA cited is a previous EPA analysis of this class of chemicals that also used hexachlorobenzene as an appropriate analogue for OCS. EPA believes that since OCS and

hexachlorobenzene are both highly chlorinated derivatives of benzene they can reasonably be anticipated to have similar toxicities. However, in addition to aquatic toxicity data on hexachlorobenzene, EPA provided the results of a QSAR analysis of OCS, using a measured  $\text{Log } K_{ow}$  of 7.7, that gave a predicted 14-day  $\text{LC}_{50}$  value of 6  $\mu\text{g/L}$  for guppies.

Based upon QSAR equations and analogue data, EPA has concluded that OCS is toxic. It has the potential to kill fish and inhibit photosynthesis in algae, among other adverse effects, based on chemical and/or biological interactions. OCS can cause these toxic effects at relatively low concentrations. The predicted aquatic toxicity value for OCS, based upon QSAR analysis using a measured  $\text{Log } K_{ow}$  of 7.7, is an estimated 14-day  $\text{LC}_{50}$  of 6  $\mu\text{g/L}$  for guppies. Based on the chemical analogue hexachlorobenzene, OCS can reasonably be anticipated to inhibit photosynthesis in algae at a concentration of 30  $\mu\text{g/L}$  and have a calculated subchronic  $\text{EC}_{50}$  value of 16  $\mu\text{g/L}$  for daphnids.

OCS can cause its toxic effects at these relatively low concentrations; therefore, EPA considers it to be highly toxic. Since OCS is toxic at relatively low concentrations, EPA believes that it causes or can reasonably be anticipated to cause a significant adverse effect on the environment. In addition, because of the nature of the potential significant adverse effects, e.g., fish kills, and inhibition of photosynthesis in algae and the impacts such effects can have on ecological communities and ecosystems, EPA has determined that they are of sufficient seriousness to warrant reporting.

EPA reaffirms that there is sufficient evidence for listing OCS on the EPCRA section 313 list of toxic chemicals pursuant to EPCRA section 313(d)(2)(C)(i) based on the available ecotoxicity information for this chemical.

Therefore, EPA is finalizing the addition of OCS on the EPCRA section 313 list.

6. *Pentachlorobenzene (CAS No. 609-93-5) (Ref. 70)*. EPA proposed to add pentachlorobenzene to EPCRA section 313 pursuant to EPCRA sections 313(d)(2)(B) and (C). No comments were received concerning the human health toxicity data that EPA presented in the proposed rule. Thus, EPA reaffirms that there is sufficient evidence for adding pentachlorobenzene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic, nephric, hematological, and

developmental toxicity data for this chemical.

No comments were received concerning the ecotoxicity data that EPA presented for pentachlorobenzene in the proposed rule. Based on the available toxicity data, EPA has concluded that pentachlorobenzene is toxic. It has the potential to kill fish and mysid shrimp as well as cause other adverse effects on algae and daphnia, based on chemical and/or biological interactions. Pentachlorobenzene can cause these toxic effects at relatively low concentrations. Aquatic acute toxicity calculated values for pentachlorobenzene include a sheepshead minnow 96-hour  $\text{LC}_{50}$  of 0.83 mg/L, bluegill sunfish 96-hour  $\text{LC}_{50}$ s of 0.25 mg/L and 0.3 mg/L, a guppy 96-hour  $\text{LC}_{50}$  of 0.54 mg/L, and a mysid shrimp 96-hour  $\text{LC}_{50}$  of 0.16 mg/L. Because pentachlorobenzene can cause these toxic effects at these relatively low concentrations, EPA considers it to be highly toxic. Additional acute toxicity calculated values include algae 96-hour  $\text{EC}_{50}$ s of 1.98 mg/L and 6.78 mg/L, and daphnia 48-hour  $\text{EC}_{50}$ s of 1.3 mg/L and 5.28 mg/L. Considering pentachlorobenzene's persistence and bioaccumulation potential pentachlorobenzene is considered highly toxic to aquatic organism at these higher concentrations.

As discussed above, pentachlorobenzene is highly toxic. Because pentachlorobenzene is highly toxic at relatively low concentrations, EPA believes that it causes or can reasonably be anticipated to cause a significant adverse effect on the environment. In addition, because of the nature of the potential significant adverse effects, e.g., fish and mysid shrimp kills as well as other adverse effects on algae and daphnia, and the impacts such effects can have on ecological communities and ecosystems, EPA has determined that they are of sufficient seriousness to warrant reporting.

Thus, EPA reaffirms that there is sufficient evidence for adding pentachlorobenzene on the EPCRA section 313 list of toxic chemicals pursuant to EPCRA section 313(d)(2)(C)(i), (ii), and (iii) based on the available ecotoxicity information for this chemical.

Therefore, EPA is finalizing the listing of pentachlorobenzene on the EPCRA section 313 list.

7. *Tetrabromobisphenol A (CAS No. 79-94-7) (Ref. 70)*. EPA proposed to add TBBPA to EPCRA section 313 pursuant to EPCRA sections 313(d)(2)(B) and (C). One commenter claims that the study cited by EPA in support of its

conclusion that TBBPA meets the EPCRA section 313(d)(2)(B) criteria for listing based on developmental toxicity was not a study on TBBPA. The study in question was submitted to EPA by ICI Americas Inc. with a cover letter identifying Saytex 111, the product tested, as being TBBPA. The product was identified as TBBPA by both name and CAS number.

EPA has determined that the product tested was not TBBPA as claimed by the submitter but has been unable to determine why it was misidentified by the submitter. ICI Americas is now Zeneca at the Delaware location that submitted the study. A Zeneca staff member researched the submission and found that the report was originally from Ethyl Corporation and that no other report on TBBPA was submitted to EPA on that date. Without the misidentified developmental study, no adequate toxicology studies or other data were located by EPA that support the addition of TBBPA pursuant to EPCRA section 313(d)(2)(B). Thus, EPA is not adding TBBPA based on concerns for developmental toxicity or any other human health effects.

The same commenter provides comments on the persistence and bioaccumulation of TBBPA and contends that there are insufficient data to conclude that TBBPA meets the listing criteria of EPCRA section 313(d)(2)(C)(ii) and 313(d)(2)(C)(iii). These two sections deal with EPA's authority to add a chemical based on its "toxicity and persistence in the environment" and its "toxicity and tendency to bioaccumulate in the environment" respectively. However, the commenter does not contend that TBBPA does not meet the listing criteria of EPCRA section 313(d)(2)(C)(i) which addresses EPA's authority to add a chemical based on its "toxicity" without consideration of persistence and bioaccumulation. EPA believes that TBBPA is persistent and bioaccumulative as discussed in Unit VI.H. However, EPA did not propose to add TBBPA to the EPCRA section 313 list of toxic chemicals based on its persistence or bioaccumulation data, and neither of these properties were mentioned in the toxicity discussion of TBBPA in the proposed rule. Rather, EPA based its listing decision on the ecotoxicity data alone which indicated that TBBPA was highly toxic even without consideration of persistence or bioaccumulation.

Based on the available toxicity data, EPA has concluded that TBBPA is toxic. It has the potential to kill fish, daphnid, and mysid shrimp, among other adverse effects, based on chemical and/or

biological interactions. TBBPA can cause these toxic effects at relatively low concentrations. Aquatic acute toxicity calculated values for TBBPA include a fathead minnow 96-hour  $LC_{50}$  of 0.54 mg/L, a rainbow trout 96-hour  $LC_{50}$  of 0.40 mg/L, a bluegill sunfish 96-hour  $LC_{50}$  of 0.51 mg/L, and a daphnid 48-hour  $LC_{50}$  of 0.96 mg/L; mysid shrimp 96-hour  $LC_{50}$  values ranged from 0.86 to 1.2 mg/L depending on the age of the shrimp. Aquatic chronic toxicity calculated values from a daphnia 21-day study resulted in a Maximum Acceptable Toxicant Concentration (MATC) that was between 0.30 and 0.98 mg/L (geometric mean 0.54 mg/L) based on a significant reduction in reproduction rates; a fathead minnow 35-day study resulted in a MATC that was calculated to be between 0.16 and 0.31 mg/L (geometric mean 0.22 mg/L) based on adverse effects on embryo and larval survival.

TBBPA can cause its toxic effects at these relatively low concentrations; therefore, EPA considers it to be highly toxic. Since TBBPA is toxic at relatively low concentrations, EPA believes that it causes or can reasonably be anticipated to cause a significant adverse effect on the environment. In addition, because of the nature of the potential significant adverse effects, e.g., fish, daphnid, and mysid shrimp kills, and the impacts such effects can have on ecological communities and ecosystems, EPA has determined that they are of sufficient seriousness to warrant reporting.

EPA reaffirms that there is sufficient evidence for listing TBBPA on the EPCRA section 313 list of toxic chemicals pursuant to EPCRA section 313(d)(2)(C)(i) based on the available ecotoxicity information for this chemical. Therefore, EPA is finalizing the addition of TBBPA on the EPCRA section 313 list.

**8. Vanadium and vanadium compounds.** EPA proposed to add vanadium and vanadium compounds to EPCRA section 313 pursuant to EPCRA sections 313(d)(2)(C). One commenter cited the following statement from the proposed rule, "However, very few toxicity tests have been conducted with invertebrates." The commenter argues that, beyond vanadium pentoxide, the Agency appears to have very little toxicity data on vanadium compounds. The commenter contends that the paucity of toxicity data on many different forms of vanadium compounds in the proposal, as well as in the literature, does not appear to support the Agency's belief that "the evidence is sufficient to list vanadium and vanadium compounds on EPCRA section 313 pursuant to EPCRA section

313(d)(2)(C) based on the available ecotoxicity information on vanadium and vanadium compounds" (at 64 FR 698).

EPA disagrees with the commenters' conclusions. Although there is limited information on vanadium's toxicity on invertebrates, data that were available for invertebrates shows that vanadium is toxic to these species. Furthermore, EPA's assessment of vanadium's toxicity included algae and vertebrates, and showed that the chemical is highly toxic to aquatic organisms. The data on vanadium are not limited to vanadium pentoxide, the ecological data provided in the proposed rule for vanadium evaluates vanadium toxicity based on data for other vanadium compounds including: sodium metavanadate, sodium orthovanadate, vanadyl sulfate, and ammonium vanadate. In assessing the ecological toxicity of vanadium and vanadium compounds, EPA evaluated the parent metal (vanadium) and determined that it is highly toxic to some aquatic species and anticipated to cause a significant adverse effect on the environment of sufficient seriousness to warrant reporting. Thus, vanadium, the parent metal in vanadium compounds, is the concern, not the other components of each vanadium compound. Many metals are tested in the salt form because these forms are readily soluble in aqueous solutions. The toxicity data for vanadium shows that the metal is highly toxic (aquatic toxicity < 1 mg/L) to the most sensitive species. This evaluation of vanadium's toxicity is acceptable according to traditional guidelines for the assessment of toxic substances as conducted by the Agency for over 2 decades. In addition, when consideration is given to vanadium's persistence it is also considered highly toxic at higher concentrations.

Three commenters contend that since most vanadium compounds are practically insoluble, they consequently have very low bioavailability, and thus it is likely that they could qualify for delisting. The commenters argue that the delisting process is extremely cumbersome, time-consuming and costly. One of these commenters contends that it is inappropriate to list all of vanadium compounds based on aquatic toxicity of the few compounds cited in the proposed rule. The bioavailability of metals such as vanadium was also raised as an issue at the public meetings held for this rulemaking. It was suggested that the parent metal will not be bioavailable from certain metal compounds that may be released into the environment and that therefore the compounds cannot be

properly characterized as a PBT chemical.

EPA disagrees with these comments. First, it should be noted that EPA has not addressed whether vanadium and vanadium compounds can properly be classified as PBT chemicals in this rulemaking. The sole issue, therefore, is whether vanadium and vanadium compounds meet the EPCRA section 313(d)(2)(C) listing criteria. EPA's analysis of the environmental fate of vanadium and vanadium compounds shows that under many environmental conditions vanadium will be available and thus is able to express its toxicity. The commenters have not provided EPA with any data or acceptable scientific studies indicating that vanadium in any particular compound will not become available in the environment. In fact, at least one commenter appears to indicate that these vanadium compounds may merely have low solubility. In these compounds, the parent metal vanadium can become available. While water soluble vanadium compounds would obviously provide vanadium in an immediately bioavailable form, solubility is not the only factor to consider in determining the bioavailability of vanadium from a vanadium compound. In addition to solubility, processes such as: hydrolysis at various pHs; solubilization in the environment at various pHs; photolysis; aerobic transformations (both abiotic and biotic); anaerobic transformation (both abiotic and biotic); and bioavailability when the compounds are ingested (solubilization in and/or absorption from the gastrointestinal tract and solubilization in various organs) need to be considered. In Unit VI.C., EPA discusses in detail the persistence and bioavailability of metals in general.

The issue of bioavailability has been addressed for EPCRA section 313 chemical assessments through EPA's policy and guidance concerning petitions to delist individual members of the metal compound categories on the EPCRA section 313 toxic chemical list (56 FR 23703). This policy states that if the metal in a metal compound cannot become available as a result of biotic or abiotic processes then the metal will not be available to express its toxicity. If the intact metal compound is not toxic and the metal is not available from the metal compound then such a chemical is a potential candidate for delisting.

One commenter argued that the lowest toxicity value cited by EPA for a marine algal species was for *Dunaliella marina* with a 9-day LC<sub>50</sub> of 0.5 mg/L but that EPA omitted a study which tested the same species and reported no

significant adverse effects at a concentration of 50 mg/L.

EPA believes that the study that reported the 9-day LC<sub>50</sub> of 0.5 parts per million (ppm) on *Dunaliella marina*, is accurate and was acceptably conducted within the guidelines for ecological assessments of hazardous chemicals. This study shows the most sensitive species' response to the chemical. There are differences in the two studies that could explain the range of toxicity between the two. They are: (1) Differences in the exposure times, (2) the species used in the experiments, and (3) the form of vanadium that was exposed to the organisms. The exposure time in the study EPA cited reported a 9-day LC<sub>50</sub> of 0.5 mg/L. However, the study the commenter cites did not report an LC<sub>50</sub> duration. Also, the species for the study EPA cited reported the test species to be *Dunaliella marina* (*salina*), but the study the commenter cited only reported the genus name for this organism. Furthermore, the study EPA cited reported the form of vanadium as sodium vanadate, but the study the commenter cites only reported using the vanadium compound without reporting the specific salt form. It is clear that any one of the three factors mentioned, or some combination of these factors, likely accounts for the variation in toxicity between the two studies.

One commenter argues that a study, omitted in EPA's review of vanadium toxicity, on nine algal species showed no significant reduction in productivity (as measured by chlorophyll synthesis) at vanadium concentrations in excess of 10 mg/L. The commenter also contends that the authors of the study also demonstrated that phosphate concentrations were critical in the toxicity of vanadium to algae.

The Agency has not neglected to review the study cited by the commenter. However, EPA interprets the study cited by the commenter as describing the competition uptake between vanadium and phosphorus in an algal medium containing two different kinds of phosphorus concentrations (i.e., phosphorus deficient and phosphorus sufficient). Also, this study was performed only on freshwater algae and one form of vanadium (orthovanadate) which only exists in a pH range of 3 to 6. This study did report a moderately high toxicity value for *Scenedesmus acutus* between 5 and 177 M, which continues to support EPA's findings that vanadium is toxic to algae. Furthermore, EPA is aware that there are studies that were not included in the assessment that showed that the chemical was more

toxic than the values reported in EPA's assessment. However, each study was carefully reviewed based on EPA's extensive evaluation process which reviews studies for conformance with generally accepted scientific standards and tests. The studies that were reported in EPA's assessment used generally accepted, validated scientific methods for evaluating aquatic toxicity. The toxicity values that were reported in the ecological assessment of vanadium toxicity were from well-conducted studies.

One commenter argues that it appears from a review of the data that the contention that vanadium is highly toxic to algae has no basis. The commenter contends that with the exception of one study on a single species, *Ceratium hirundinella*, none of the studies on freshwater algae showed significant toxicity at concentrations below 10 mg/L. The commenter states that the lowest level of toxicity reported for a marine species (*Dunaliella marina*) was an LC<sub>50</sub> of 0.5 mg/L, but that there is conflicting evidence that the threshold of toxicity for this species may be higher than 50 mg/L. The commenter concludes that there appears to be little evidence that vanadium is a highly toxic agent to algae. The commenter also argues that evaluating the toxicity of a compound based on the response of individual algal species can be misleading. The commenter contends that algae never exist within either marine or freshwater environments as monocultures, but rather as dynamic mixed populations. The commenter concludes that unless a compound can be shown to have a broad effect over an entire assemblage or over numerous species of either freshwater or marine species, it is not likely to have a significant effect within the natural environment.

EPA's assessment on algae toxicity shows that vanadium is highly toxic based on the most sensitive species' response to the chemical. There is no conflict in the threshold of toxicity of *Dunaliella marina*. As stated above, there are three factors that most probably account for the differences between the study EPA cited and the study the commenter cites. After careful review of the available data, it is EPA's professional judgment that the study EPA cited provides accurate and valid data.

Algae studies have been included in ecological risk assessments for over 2 decades. Several guidelines on different species have been written to show that these genera are important in the environment and show sensitivity in how chemicals affect the biota. EPA

agrees that algae usually do not exist in monocultures in the marine or freshwater environment. However, testing monocultures species is the most accurate method to determine whether a chemical is directly harmful to that species. Therefore, if a compound is highly toxic to a particular species of algae or any species, its effects can be extrapolated to represent other species exposed to that chemical. This evaluation process has been used by the Agency and accepted by OECD for over two decades, and used on thousands of chemicals. Vanadium's toxicity ranges from highly toxic to moderately toxic for algae in EPA's assessment. It is reasonable from the evidence in EPA's assessment of vanadium that the species that is the most sensitive to the chemical can represent the toxicity for all other species based on this narrow range. EPA's final evaluation of any chemical's toxicity is based on the most sensitive species' response.

One commenter contends that the study EPA cited that reported the 144-hour LC<sub>50</sub> of 0.4 and 0.5 mg/L for vanadyl sulfate (VOSO<sub>4</sub>) and ammonium metavanadate (NH<sub>4</sub>VO<sub>3</sub>), respectively, were actually values for VOSO<sub>4</sub> and sodium metavanadate (NaVO<sub>3</sub>) respectively. The commenter contends that the 144-hour LC<sub>50</sub> for NH<sub>4</sub>VO<sub>3</sub> was 1.5 mg/L. The commenter also argues that EPA neglected to report from the same study a 144-hour LC<sub>50</sub> of 1.1 mg/L for vanadate pentoxide (V<sub>2</sub>O<sub>5</sub>) for this species. The commenter also contends that the findings of 144-hour LC<sub>50</sub>s of 2.5 to 8.1 mg/L in goldfish (*Carassius auratus*) for the same four vanadium species were also omitted.

The comment concerning the vanadium compounds for the 144-hour LC<sub>50</sub>s of 0.4 and 0.5 mg/L is correct. EPA inadvertently cited to the incorrect compound in the study. The correct vanadium compounds will be reflected in an update to the support document. However, sodium metavanadate, is still a vanadium compound and the study therefore continues to support EPA's findings that vanadium is highly toxic to fish. The other values of 2.5 and 8.1 mg/L merely provide further support for EPA's finding that the vanadium is moderately toxic to fish. However, considering vanadium's persistence in the environment, EPA believes that it is highly toxic at concentrations between 1 and 10 mg/L. Thus the goldfish values provide further support to EPA's finding that vanadium is highly toxic to some aquatic organisms.

One commenter contends that in assessing the toxicity of vanadium to fish, EPA neglected to review the following studies: (1) Hamilton and

Buhl (1997), who reported a 96-hour LC<sub>50</sub> for the flannelmouth sucker (*Catostomus latipinnis*) of 11.7 mg/L; (2) Taylor et al. (1985), who reported a 96-hour LC<sub>50</sub> for English sole (*Limanda limanda*) of 26.8 mg/L; (3) Ernst and Garside (1987), who reported a 96-hour LC<sub>50</sub> for the brook trout (*Salvelinus fontinalis*) alevins of 24 mg/L and for yearlings of 7–15 mg/L (the authors also reported that the method by which stock solutions are formulated could have a dramatic effect on the toxicity of vanadium through its effects on the polymeric form of the metal in the test study); and (4) Hamilton and Buhl (1990), who reported a 96-hour LC<sub>50</sub> for chinook salmon (*Oncorhynchus tshawytscha*) fry of 16.5 mg/L.

EPA undertook an exhaustive review of vanadium toxicity. The studies the commenter has listed show that vanadium compounds are moderately toxic to fish, which further support EPA's findings on the toxicity of vanadium. EPA's review of the studies cited in the proposed rule are not contradicted or undermined by the studies provided by the commenter, and continue to support the Agency's conclusion that vanadium and vanadium compounds are highly toxic to some aquatic species.

One commenter states that the background document to support EPA's proposal to list vanadium and vanadium compounds indicates that the proposed listing is based on data for five vanadium compounds: vanadium pentoxide, sodium metavanadate, sodium orthovanadate, vanadyl sulfate, and ammonium vanadate. The commenter contends that EPA may consider listing under EPCRA section 313 for the individual compounds for which the Agency has data, but EPA is not justified in listing a broad "vanadium and vanadium compounds" category based on data for only five compounds. The commenter suggests that EPA consider individual listings for these compounds, or a category consisting only of the compounds for which the Agency has data.

EPA disagrees with the commenter's characterization of the Agency's assessment of vanadium and vanadium compounds. In assessing the ecological toxicity of vanadium and vanadium compounds, EPA evaluated the parent metal (vanadium) and determined that it is highly toxic to some aquatic organisms and can reasonably be anticipated to cause a significant adverse effect on the environment of sufficient seriousness to warrant reporting pursuant to EPCRA section 313(d)(2)(C). Thus, vanadium, the parent metal in vanadium compounds,

is the concern, not the other components of each compound. Many metals are tested in the salt form because they are readily soluble in aqueous solutions. The toxicity data for vanadium shows that the metal is highly toxic (aquatic toxicity < 1 mg/L) to the most sensitive species. In addition, because vanadium is persistent, EPA considers any toxicity values between 1 and 10 mg/L as indicating high ecotoxicity. This evaluation of vanadium's toxicity is acceptable according to traditional guidelines for the assessment of toxic substances conducted by the Agency for over two decades.

EPA has also provided sufficient basis for the inclusion of all vanadium compounds in the category. As EPA stated in the 1994 chemical expansion final rule:

The Agency believes it satisfies the statutory criteria to add a category to the list by identifying the toxic effect of concern for at least one member of the category and then showing why that effect may reasonably be expected to be caused by all other members of the category. (at 59 FR 61442) See also, *Troy, supra* at 277.

EPA developed a hazard assessment for vanadium which reviewed the toxicity data for several vanadium compounds. The assessment indicated that the vanadium from these compounds is highly toxic to aquatic organisms. Since it is the vanadium from these compounds that is highly toxic rather than the intact chemical compound, EPA believes that all chemicals that are a source of vanadium meet the EPCRA section 313(d)(2)(C) listing criteria. Thus, EPA has established the toxic effect of concern, the chemical species that causes the effect, and the basis for why it may reasonably be expected that all members of the vanadium compounds category can cause the effects of concern.

Based on the available toxicity data, EPA has concluded that vanadium and vanadium compounds are toxic. They have the potential to kill fish, algae, and invertebrates as well as causing a range of other adverse effects on fish, algae, and invertebrates, based on chemical and/or biological interactions. Vanadium and vanadium compounds can cause these toxic effects at relatively low concentrations. Toxicity data for vanadium and vanadium compounds include for algae, a 9-day LC<sub>50</sub> of 0.5 mg/L, a 15-day LC<sub>50</sub> of 0.5 mg/L, inhibition of growth at 0.1 ppm, adverse effects on cell division at 3 ppb, 20 ppb, and 0.5 ppm; and for fish, a 96-hour LC<sub>50</sub> of 0.62 ppm, and growth and survival depression of larvae at 0.17 ppm. Because vanadium and vanadium

compounds can cause these toxic effects at these relatively low concentrations, EPA considers these chemicals to be highly toxic. Additional toxicity values include for algae, 9-day LC<sub>50</sub>s of 2 and 3 ppm, and a 15-day LC<sub>50</sub> of 2 mg/L; for invertebrates, a 9-day LC<sub>50</sub> of 10 ppm; and for fish, 96-hour LC<sub>50</sub>s of 6.4 ppm, 10 ppm, and 7 mg/L, an LC<sub>50</sub> of 5.6 mg/L, an 11-day LC<sub>50</sub> of 1.99 mg/L, 14-day LC<sub>50</sub>s from 1.95 to 4.34 mg/L, and 7-day LC<sub>50</sub>s from 1.9 to 6.0 ppm. Considering vanadium's persistence, vanadium and vanadium compounds are considered highly toxic to aquatic organism at these higher concentrations.

As discussed above, vanadium and vanadium compounds are highly toxic. Because vanadium and vanadium compounds are toxic at relatively low concentrations, EPA believes that they cause or can reasonably be anticipated to cause a significant adverse effect on the environment. In addition, because of the nature of the potential significant adverse effects, e.g., fish, algae, and invertebrate kills as well as a range of other adverse effects on fish, algae, and invertebrates, and the impacts such effects can have on ecological communities and ecosystems, EPA has determined that they are of sufficient seriousness to warrant reporting.

Thus, EPA reaffirms that there is sufficient evidence for adding vanadium and vanadium compounds on the EPCRA section 313 list of toxic chemicals pursuant to EPCRA section 313(d)(2)(C)(i) and (ii), based on the available ecotoxicity information for vanadium and vanadium compounds.

Therefore, EPA is finalizing the listing of vanadium and vanadium compounds on the EPCRA section 313 list.

*a. Reporting limitation of alloys.* A number of commenters support EPA's proposed determination to defer the reporting of vanadium when contained in alloys (64 FR 717). Many commenters also suggest that the Agency adopt a reporting limitation for the other metals such as chromium, copper, manganese, and nickel which are commonly found in alloys. The commenters assert that alloys have significantly different bioavailability, bioaccumulation, and toxicity characteristics than other forms of metals, and thus should be treated separately. The commenters argue that alloys are inherently more stable than unalloyed materials, do not enter the environment as readily as unalloyed materials and hence do not interact as greatly with organisms, and should be considered safer from an environmental and human health perspective. The commenters suggested that alloys should be treated separately not only for threshold changes, but also for EPCRA

section 313 listings in general and recommend excluding alloys from general EPCRA section 313 listings for metals.

One commenter states in regard to the reporting of metals in alloys that it makes little or no sense to require the reporting of such "useless" information, since the information does not serve the purpose of informing the community. The commenter contends that not adding vanadium when contained in alloys would help to achieve EPCRA section 313's underlying purpose, i.e., to provide the public with meaningful information, while at the same time reducing the burden on reporting facilities. Another commenter argues that the proposed alloys exemption correctly recognizes that metals in alloys are not generally available for exposure or for toxic effects. The commenter argues that expansion of the exemption would improve the TRI data base by reporting only releases that may pose risks to human health and the environment, thereby providing the public with more meaningful data.

Two commenters state that the definition of vanadium alloys should include "fused alloy slag" in the qualifier as well. The commenters contend that the state of the vanadium in a ferroalloy form is one of intimate chemical combination on the atomic level, not a simple mixture of individual components and it is inherently stable and cannot be dissociated by ordinary means. The commenters argue that likewise, the fused alloy slag formed represents an intimate chemical combination of materials as a result of the smelting operation. The commenters assert that these elemental materials may include various components such as gangue or ore, ash of fuel, refractory lining, or other stable oxides with the ultimate characterization resting upon the chemical stability of the resultant fused alloy bearing slag. Thus, the commenters argue, vanadium contained in either alloy or alloy slag form is fused in a stable compound and therefore, no releases of vanadium into the environment would occur from either substance. The commenters state that the true environmental issue to consider in the formulation of an activity qualifier is the leachability of the material in that state, and since in both of the aforementioned cases the vanadium is in a stable compound, leaching would not be expected. The commenters assert that without allowing an exemption for fused alloy slag, large volumes of steelmaking and ferroalloy slag will unnecessarily fall under this reporting requirement. The commenters request that EPA reconsider

its position and expand the definition of alloy to include both vanadium alloys and vanadium alloy slags.

EPA agrees with those commenters that support EPA's belief that it would be inappropriate, at this time, to change the status quo regarding reporting vanadium when contained in an alloy. As EPA stated in the proposed rule, the Agency is reviewing the issue of whether there should be any changes to the reporting requirements for metals contained in alloys.

In the proposed rule, EPA did not state, and did not intend to imply, that EPA considers alloys to be "safe," or as some commenters suggested, that EPA had "correctly" recognized that metals in alloys are not generally available for exposure or to express their toxic effects. EPA has not completed its review of the alloys issue and has made no conclusions regarding whether there should or should not be any type of limitation or exemption for any metals contained in alloys. EPA's proposal merely recognized that while this issue was under review, it would not be appropriate to add alloy forms of vanadium.

The commenters contend that alloys have significantly different bioavailability, bioaccumulation, toxicity characteristics than other forms of metals and are inherently more stable than unalloyed materials and do not enter the environment as readily as unalloyed materials. EPA believes that the issue with alloys is primarily bioavailability, i.e., do the metals contained in alloys become available. This issue is the focus of EPA's current review. At this point in time, while EPA is in the process of a scientific review of the issues pertinent to alloys, the Agency is not prepared to make a final determination on whether vanadium in vanadium alloys meet the EPCRA section 313(d)(2) toxicity criteria.

The commenters did not provide any data to support their contention. The Agency does not believe that a metal compound in a slag necessarily will be environmentally unavailable; rather, the Agency's experience with a previous EPCRA section 313(d) review of manganese slags, indicates that at least in some cases the metal will be available (60 FR 44000, August 24, 1995) (FRL-4954-6).

Some commenters suggested that EPA create an alloys reporting limitation for all metals contained in alloys. However, as EPA has stated, the review of whether any kind of exemption or reporting limitation should be granted for certain metals in alloys is still under review and until the Agency has thoroughly reviewed the available data, EPA is not

prepared to extend the reporting limitation to any other metals. For example, EPA is not lowering the reporting threshold for cobalt and cobalt compounds, and therefore the Agency is taking no action with respect to a reporting limitation for cobalt when contained in alloys.

One commenter asserts that for reasons of consistency--which helps ensure data quality--with existing EPCRA section 313 metal compound categories, they oppose adding the qualifier "except when contained in an alloy" in any new listing for vanadium.

EPA has not completed its review of the alloys issue and has made no

conclusions regarding whether there should be any type of general limitation or exemption for any metals contained in alloys. EPA merely recognized that while this issue was under review it would not be appropriate to increase the reporting requirements for those facilities that would otherwise submit reports for vanadium contained in alloys. Therefore, as discussed earlier in this section, EPA has expanded the EPCRA section 313 listing for vanadium by removing the "fume or dust" qualifier for vanadium, but has not added the alloy forms of vanadium. Until EPA has the opportunity to fully

evaluate the available data, the Agency is not prepared to make a final determination whether vanadium contained in alloys meets the EPCRA section 313(d)(2) listing criteria and should therefore be added. EPA believes that consistency, in this context, does not provide a sufficient basis to require reporting of vanadium contained in alloys.

#### H. Persistence and Bioaccumulation

The persistence and bioaccumulation data for the PBT chemicals covered by this final rule are listed in Table 3. A discussion of these data follows Table 3.

Table 3.—Persistence and Bioaccumulation Data

Chemical Category/Chemical Name	CASRN	BCF	BAF	Air Half-life	Surface Water Half-life	Soil Half-life
<b>Dioxin/Dioxin-Like Compounds</b>						
<i>Polychlorinated dibenzo-p-dioxins</i>						
1,2,3,4,6,7,8-heptachlorodibenzo-p-dioxin	35822-46-9	1,466		12.2-4.2 hrs		~20 yrs
1,2,3,4,7,8-hexachlorodibenzo-p-dioxin	39227-28-6	5,176		12.4-2.7 hrs		~20 yrs
1,2,3,6,7,8-hexachlorodibenzo-p-dioxin	57653-85-7	3,981		12.4-2.7 hrs		~20 yrs
1,2,3,7,8,9-hexachlorodibenzo-p-dioxin	19408-74-3	1,426		12.4-2.7 hrs		~20 yrs
1,2,3,4,6,7,8,9-octachlorodibenzo-p-dioxin	3268-87-9	2,239		20.4-4.8 hrs		~20 yrs
1,2,3,7,8-pentachlorodibenzo-p-dioxin	40321-76-4	10,890		14.8-2.0 hrs		~20 yrs
2,3,7,8-tetrachlorodibenzo-p-dioxin	1746-01-6	5,755		9.6-1.2 hrs		20-1.5 yrs
<i>Polychlorinated dibenzofurans</i>						
1,2,3,4,6,7,8-heptachlorodibenzofuran	67562-39-4	3,545		25.0-4.3 hrs		~20 yrs
1,2,3,4,7,8,9-heptachlorodibenzofuran	55673-89-7	3,545		25.0-4.3 hrs		~20 yrs
1,2,3,4,7,8-hexachlorodibenzofuran	70648-26-9	3,586		13.3-3 hrs		~20 yrs
1,2,3,6,7,8-hexachlorodibenzofuran	57117-44-9	3,586		13.3-3 hrs		~20 yrs
1,2,3,7,8,9-hexachlorodibenzofuran	72918-21-9	10,300		13.3-3 hrs		~20 yrs
2,3,4,6,7,8-hexachlorodibenzofuran	60851-34-5	3,586		13.3-3 hrs		~20 yrs
1,2,3,4,6,7,8,9-octachlorodibenzofuran	39001-02-0	1,259		29.4-13.7 hrs		~20 yrs
1,2,3,7,8-pentachlorodibenzofuran	57117-41-6	33,750		11.6-1.2 hrs		~20 yrs
2,3,4,7,8-pentachlorodibenzofuran	57117-31-4	42,500		11.6-1.2 hrs		~20 yrs
2,3,7,8-tetrachlorodibenzofuran	51207-31-9	2,042		11.5-2.1 hrs		~20 yrs
<b>Pesticides</b>						
Aldrin	309-00-2	3,715		10 hrs-1 hr	24 days <sup>1</sup>	9 yrs-291 days
Chlordane	57-74-9	11,050	>6,000,000 <sup>2</sup>	5 days-12 hrs	239 days	8-0.4 yrs
Heptachlor	76-44-8	19,953		10.5 hrs-1 hr	129.4-23.1 hrs	4 yrs-8 days
Isodrin	465-73-6	20,180		10 hrs-1 hr		5 yrs-180 days
Methoxychlor	72-43-5	8,128		12 hrs-1 hr	15.2-5 days	136-81 days
Pendimethalin	40487-42-1	1,944		21-2 hrs		1300-54 days
Toxaphene	8001-35-2	34,050		16 days-19 hrs	5 yrs-1 yr	11-1 yrs
Trifluralin	1582-09-8	5,674		3.2-0.42 hrs	36.5-4.5 days <sup>1</sup>	394-99 days
<b>Polycyclic Aromatic Compounds</b>						

Table 3.—Persistence and Bioaccumulation Data—Continued

Chemical Category/Chemical Name	CASRN	BCF	BAF	Air Half-life	Surface Water Half-life	Soil Half-life
Benzo(a)pyrene	50-32-8	912		2.4 hrs	17.3-5.4 yrs	14.6 yrs-151 days
Benzo(b)fluoranthene	205-99-2	5,631		1.4 days-3.4 hrs	≥100 days	14.2 yrs-87 days
Benzo(r,s,t)pentaphene	189-55-9	26,280		13 hrs-1 hr		371-232 days
Benzo(a)anthracene	56-55-3	800		13 hrs-1 hr	3-1.2 yrs	2.0 yrs-240 days
7,12-Dimethylbenz(a)anthracene	57-97-6	5,834		4-0.4 hrs	6 yrs-1 yr	28-20 days
Dibenzo(a,h)anthracene	53-70-3	31,440		13 hrs-1 hr	≥100 days	2 yrs-240 days
3-Methylcholanthrene	56-49-5	17,510		3-0.3 hrs	3.8-1.7 yrs	
7H-Dibenzo(c,g)carbazole	194-59-2	16,900		23-2 hrs		>160 days
Benzo(k)fluoranthene	207-08-9	10,090		12 hrs-1 hr		11 yrs-139 days
Benzo(j)fluoranthene	205-82-3	10,090		12 hrs-1 hr		10.5 yrs
Dibenzo(a,e)pyrene	192-65-4	6,875		13 hrs-1 hr		371-232 days
Dibenzo(a,h)pyrene	189-64-4	26,280		13 hrs-1 hr		371-232 days
Indeno(1,2,3-cd)pyrene	193-39-5	28,620		7.6-0.34 hrs		730-58 days
Dibenz(a,h)acridine	226-36-8	3,500		13 hrs-1 hr		>160 days
Dibenz(a,j)acridine	224-42-0	18,470		23-2 hrs		>160 days
Benzo(g,h,i)perylene	191-24-2	25,420		10.0-0.31 hrs	≥100 days	1.8 yrs-173 days
Dibenzo(a,e)fluoranthene	5385-75-1	26,280		10 hrs-1 hr		371-232 days <sup>3</sup>
5-Methylchrysene	3697-24-3	9,388		5-0.5 hrs	3.8 yrs-79 days <sup>4</sup>	2.7 yrs-255 days <sup>4</sup>
Dibenzo(a,l)pyrene	191-30-0	6,875		13 hrs-1 hr		371-232 days
Benzo(a)phenanthrene	218-01-9	800		13 hrs-1 hr	3.8 yrs-79 days	2.7 yrs-255 days
1-Nitropyrene	5522-43-0	908		4 days-10 hrs	44 yrs-16 yrs	
Benzo(j,k)fluorene (fluoranthene)	206-44-0	5,100		20-2 hrs		13 yrs-110 days
<b>Metals/Metal Compounds</b> Mercury <sup>5</sup> and Mercury compounds	7439-97-6	7,000-36,000		see footnote 5	see footnote 5	see footnote 5
<b>Polychlorinated Biphenyl (PCBs)</b>	1336-36-3		>200,000 <sup>2,6</sup>			
2,3,3',4,4',5,5'-heptachlorobiphenyl	39635-31-9	4,922		191-19 days	>56 days	>5-3.92 yrs
2,3,3',4,4',5-hexachlorobiphenyl	38380-08-4	37,590		127-13 days	>56 days	>5-3.42 yrs
2,3,3',4,4',5'-hexachlorobiphenyl	69782-90-7	37,590		114-11 days	>56 days	>5-3.42 yrs

Table 3.—Persistence and Bioaccumulation Data—Continued

Chemical Category/Chemical Name	CASRN	BCF	BAF	Air Half-life	Surface Water Half-life	Soil Half-life
2,3',4,4',5,5'-hexachlorobiphenyl	52663-72-6	37,590		114-11 days	>56 days	>5-3.42 yrs
3,3',4,4',5,5'-hexachlorobiphenyl	32774-16-6	73,840		88-9 days	>56 days	>5-3.42 yrs
2,3,3',4,4'-pentachlorobiphenyl	32598-14-4	196,900	>134,000,000 <sup>2</sup>	80-8 days	>56 days	7.25-0.91 yrs
2,3,4,4',5-pentachlorobiphenyl	74472-37-0	196,900		67-7 days	>56 days	7.25-0.91 yrs
2,3',4,4',5-pentachlorobiphenyl	31508-00-6	184,300	>141,000,000 <sup>2</sup>	80-8 days	>56 days	7.25-0.91 yrs
2',3,4,4',5-pentachlorobiphenyl	65510-44-3	196,900		50-5 days	>56 days	7.25-0.91 yrs
3,3',4,4',5-pentachlorobiphenyl	57465-28-8	196,900		57-6 days	>56 days	7.25-0.91 yrs
3,3',4,4'-tetrachlorobiphenyl	32598-13-3	105,900		37-4 days	>98 days	4.83-0.91 yrs
<b>Other Chemicals</b>						
Hexachlorobenzene	118-74-1	29,600-66,000	>2,500,000 <sup>2</sup>	1,582-158 days		5.7-2.7 yrs
Octachlorostyrene	29082-74-4	33,113	>117,000,000 <sup>2</sup>	10 hrs-1 hr		5.7-2.7 yrs <sup>7</sup>
Pentachlorobenzene	608-93-5	8,318	>640,000 <sup>2</sup>	460-46 days		194 days->22 yrs
Tetrabromobisphenol A	79-94-7	780; 1,200; 3,200		9 days-1 day	84-48 days	44-179 days

<sup>1</sup>The reported half-life data for water are suspected to include significant removal from the medium by processes other than degradation (e.g., volatilization).

<sup>2</sup>Values are for Piscivorous Fish.

<sup>3</sup>Since data could not be found for this chemical, the data for the dibenzopyrenes (192-65-4; 189-64-0; 191-30-0), which are structural analogues, was used.

<sup>4</sup>Since data could not be found for this chemical, the data for benzo(a)phenanthrene (218-01-9), a structural analogue was used.

<sup>5</sup>The bioaccumulation potential for the parent metals is assumed to be equivalent to the associated metal compounds since in the environment the parent metals may be converted to a metal compound. Since metals are not destroyed in the environment they persist longer than 6 months.

<sup>6</sup>Lowest value reported for a dichlorinated PCB.

<sup>7</sup>Since no data could be found for this chemical, the data for the structural analogues hexachlorobenzene (118-74-1) and pentachlorobenzene (608-93-5) was used.

1. *Persistence—*a. *Dioxin and dioxin-like compounds.* In the proposal, EPA preliminarily determined that dioxin and dioxin-like compounds have persistence half-life values in soil that ranged from 1.5 years to more than 20 with all but one chemical having a soil half-life of more than 20 years. EPA has reviewed information and all comments received on dioxin and dioxin-like compounds' persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that dioxin and dioxin-like compounds persist in the environment with half-lives of 2 months or greater and therefore meet the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical category can be found in EPA's Response to Comments document for this rulemaking (Ref. 69)

and/or in EPA's support documents for this rulemaking (Ref. 7). In addition, dioxin and dioxin-like compounds persist in the environment with a half-life of greater than 6 months making it highly persistent. This, plus other factors, supports EPA's decision to lower the threshold to 0.1 gram.

b. *Aldrin.* In the proposal, EPA preliminarily determined that aldrin has persistence half-life values in soil of 291 days to 9 years and a persistence half-life value in water of 24 days. EPA has reviewed information and all comments received on aldrin's persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that aldrin persists in the environment with a half-life of 2 months or greater and therefore meets the persistence criterion established in this rulemaking. A complete discussion of

EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 7).

c. *Chlordane.* In the proposal, EPA preliminarily determined that chlordane has persistence half-life values in soil of 0.4-8 years and a persistence half-life value in water of 239 days. EPA has reviewed information and all comments received on chlordane's persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that chlordane persists in the environment with a half-life of 2 months or greater and therefore meets the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69)

and/or in EPA's support documents for this rulemaking (Ref. 7). In addition, chlordane persists in the environment with a half-life of greater than 6 months which supports EPA's decision to lower the threshold to 10 pounds.

d. *Heptachlor*. In the proposal, EPA preliminarily determined that heptachlor has persistence half-life values in soil of 8 days to 4 years and a persistence half-life value in water of 23.1–129.4 hours. EPA has reviewed information and all comments received on heptachlor's persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that heptachlor persists in the environment with a half-life of 2 months or greater and therefore meets the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 7). In addition, heptachlor persists in the environment with a half-life of greater than 6 months which supports EPA's decision to lower the threshold to 10 pounds.

e. *Isodrin*. In the proposal, EPA preliminarily determined that isodrin has persistence half-life values in soil of 180 days to 5 years. EPA has reviewed information and all comments received on isodrin's persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that isodrin persists in the environment with a half-life of 2 months or greater and therefore meets the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 7). In addition, isodrin persists in the environment with a half-life of greater than 6 months which supports EPA's decision to lower the threshold to 10 pounds.

f. *Methoxychlor*. In the proposal, EPA preliminarily determined that methoxychlor has persistence half-life values in soil of 81 to 136 days and a persistence half-life value in water of 5 to 15.2 days. EPA has reviewed information and all comments received on methoxychlor's persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that methoxychlor persists in the environment with a half-life of 2 months or greater and therefore meets the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to

Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 7).

g. *Pendimethalin*. In the proposal, EPA preliminarily determined that pendimethalin has a persistence half-life value in soil of 54 to 1,300 days. EPA received several significant comments addressing pendimethalin's persistence potential which are addressed below. EPA has reviewed information and all comments received on pendimethalin's persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that pendimethalin persists in the environment with a half-life of 2 months or greater and therefore meets the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 7).

One commenter contends that EPA has miscategorized pendimethalin as a PBT chemical based on limited screening data which conflicts with conclusions reached by EPA in its risk assessment under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The commenter believes that the characterization of pendimethalin is inaccurate and will lead to misplaced effort and misplaced focus on listed chemicals, and that there will be no benefit to the public or the environment in lowering the reporting threshold for pendimethalin.

EPA disagrees with the commenter. EPA did not base its determination that pendimethalin meets the EPCRA section 313 persistence criteria, nor that pendimethalin is highly persistent on "screening" data. EPA's conclusion that pendimethalin persists with a half-life greater than 6 months is based on a well-conducted study in which pendimethalin degrades in soil with a half-life of 1,322 days. Further, even if these data were discounted, there are numerous data submitted in support of reregistration of pendimethalin under FIFRA that provide strong evidence that pendimethalin meets the EPCRA section 313 persistence criteria, i.e., a half-life greater than 2 months. A more detailed discussion of these data is presented in the following responses. Contrary to the assertion by the commenter, the categorization of pendimethalin as a PBT chemical as described in the proposed rule is not in conflict with the conclusions reached by EPA during the FIFRA assessment. In addition, EPA disagrees that there will be no benefits

to the public or the environment from lowering the thresholds for pendimethalin. EPA believes that pendimethalin, like all PBT chemicals, is of special concern because it has the potential to cause adverse effects even when released to the environment in small quantities because it can bioaccumulate in organisms to levels much greater than those present in the environment. EPA believes that lowering the reporting threshold for pendimethalin will provide information to the public that will increase their awareness of low levels of releases to the environment which have the potential to concentrate in organisms and cause adverse effects, which is fully consistent with the purposes of EPCRA section 313.

The commenter states that EPA has ignored bioavailability in designating pendimethalin as a PBT chemical and argues that the true bioaccumulation potential for pendimethalin is greatly overestimated based on the results of the standard laboratory fish bioconcentration study. The commenter asserts that when data on bioavailability, degradation, and depuration are all considered, the "real world" bioconcentration potential for pendimethalin is low and, therefore pendimethalin should not be mischaracterized as a PBT chemical.

The bioavailability data the commenter refers to was not specifically identified. Bioavailability of a chemical will vary from environment to environment and soil type to soil type. Caution must be taken, however, not to draw the erroneous conclusion that because a chemical has been shown to have a high affinity to sorb to sediments in aquatic environments that it will not be available for uptake by aquatic organisms. Examples like the PCBs (see Unit VI.F. for a further discussion on this issue) indicate that although some of these compounds have sorption coefficients much greater than pendimethalin, they are still widely found in the tissues of aquatic organisms in contaminated waters. Further, it would be erroneous to state that pendimethalin is not bioavailable because if it were not bioavailable it could not function as an herbicide.

The commenter claims that using EPA's own criteria (half-lives longer than 2 months in water, sediment, or soil, or a half-life longer than 2 days in air) pendimethalin cannot be classified as persistent. Rather the commenter contends that pendimethalin has "low" or "low to moderate" persistence.

The commenter is incorrect. The Agency has set persistence criteria of half-lives for soil, sediment, and water

greater than 2 months and a half-life in air of greater than 2 days. Chemicals meeting these criteria are considered persistent for purposes of EPCRA section 313. There are, in fact, no qualifiers such as "low," "moderate," or "high" associated with the persistence criteria. The commenter's characterization of the persistence of pendimethalin as "low" or "low to moderate" is thus not particularly relevant. It appears, based on the comments, that the commenter defines low to moderate persistence as a half-life of greater than 2 days in air and greater than 2 months in soil, sediment, or water. If this is the case, then the commenter in fact concurs with EPA's assessment of pendimethalin as persistent (half-life greater than 2 months in soil or water and greater than 2 days in air).

If the commenter, instead, meant that pendimethalin has half-lives of less than 2 months in soil or water, and 2 days in air, EPA notes that the commenter has failed to provide data to support that assertion, and that EPA's review of the data support the Agency's conclusion.

A commenter cites numerous laboratory and field dissipation studies in support of the claim that pendimethalin does not meet the persistence criteria.

EPA disagrees that the degree of persistence of pendimethalin can be characterized by the field dissipation studies cited by the commenter. Field dissipation studies are not equivalent to the studies which measure the half-life for destruction of a chemical in a specific medium (i.e., soil, water, or air). Field dissipation studies are designed to measure the rate or extent of chemical loss from the medium after application of the chemical. The processes by which the chemical is lost may include not only those that result in destruction of the chemical, but those which only transport the chemical from one medium to another such as volatilization. The studies cited by the commenter measure the dissipation of pendimethalin from soil. For a relatively volatile chemical such as pendimethalin, field dissipation studies are of limited use in assessing persistence because an unknown amount of pendimethalin will be transported from soil to air, resulting in a measured loss from that medium, but not destruction. Thus, the field dissipation studies cited by the commenter will underestimate the persistence of pendimethalin in soil.

The commenter cites several laboratory experiments on the degradation of pendimethalin in soil to

support the argument that pendimethalin does not meet the persistence criteria. For example, they state that laboratory aerobic soil degradation studies have been conducted in which pendimethalin was applied to soil grab samples and incubated under controlled conditions. Pendimethalin degraded in laboratory soil studies with half-lives ranging from 31 to 1,322 days. In the *Reregistration Eligibility Decision (RED) for Pendimethalin* (Ref 63) document, EPA explained that 172 days was used instead of 1,322 days because:

The half-lives for aerobic soil metabolism ranged from 42-563 days in the literature studies referenced below with a guideline study reporting a half-life of 1,322 days for a total of 27 total observations. Because of the range of half-life values, statistical analyses of the available data were performed. The mean, median, and modal half-lives are 126, 122, and 122 days, respectively, with a standard deviation of 66 days (n=24). The half-life values of 409, 563, and 1,322 days were not included in the final statistical analyses because they were greater than three standard deviations from the mean. Based on soils and crops that are normally treated with pendimethalin, the reviewer assumed that temperatures would likely range from 20-30 °C and soil moisture contents from 50-75% Field Capacity (FC). The range of observed half-lives in the above experimental conditions was 72-172 days.

The commenter contends that the 1,322-day half-life value is assumed to be an outlier (Ref. 5), the range was 31 to 172 days. Thus, it is claimed that laboratory studies also indicate that pendimethalin has a low to moderate persistence according to the EPCRA section 313 persistence criteria.

EPA believes that the guideline study that reported a half-life of 1,322 days represents an accurate and representative value for the assessment of the persistence of pendimethalin in the environment. In situations where multiple values for half-lives are submitted under FIFRA to EPA's Office of Pesticide Program (OPP), statistical analysis may be conducted to determine mean values and standard deviations. The analysis permits the use of a value for exposure assessment modeling that takes into account the variability in data, and allows the exclusion of values more than three standard deviations outside the mean as "outliers." The designation as an outlier does not invalidate the study, and in fact, EPA maintains that even a study designated as an "outlier," if valid, gives useful half-life information.

In their assessment of the persistence of chemicals in soils, OPP focuses on studies using soil types, soil moisture contents, and temperatures consistent

with the field application of the chemical in its intended use. In the OPP review of the studies, the reviewer assumed that in the field application of the chemical, temperatures would likely range from 20-30 °C and that soil moisture would range from 50 to 75% field capacity. The consideration of data from studies conducted under these conditions resulted in a half-life range of 72 to 172 days for pendimethalin. It should be noted that even after the elimination of outliers and consideration of studies relevant to normal field application, the entire half-life range is above 2 months, clearly meeting the criteria for persistence in soil, i.e., a half-life of 2 months.

The releases of pendimethalin subject to EPCRA section 313 reporting, in many cases, will not be to agricultural soils under typical application scenarios. EPA, therefore, contends that even though some soil half-life values were not considered by OPP, either because they were derived using studies that did not represent the desired field conditions, or because they were labeled as statistical outliers, the study conditions still represent realistic scenarios for releases reported under EPCRA section 313 and are valid for use in the determination of persistence.

The commenter cites studies conducted using flooded soils to support the argument that pendimethalin does not meet the persistence criteria. The commenter asserts that the studies involved the use of pendimethalin spiked into soil grab samples covered with a shallow layer of water and incubated in the laboratory under controlled conditions. In laboratory flooded soil studies, pendimethalin degradation half-lives ranged from seven to 104 days with the majority of studies giving half-lives of less than 2 months. Degradation of pendimethalin was more rapid in flooded soils than in nonflooded soils in most instances. The commenter asserts that these results demonstrate that pendimethalin has a low to moderate persistence in flooded soils according to the EPCRA section 313 persistence criteria.

EPA agrees that the reported degradation half-lives in laboratory flooded soils studies range from 7 to 104 days. The studies were reviewed for quality and preferred methodologies. Of the studies that are of acceptable quality, EPA chose the highest value (most protective) of the range to determine if the chemical meets the EPCRA section 313 persistence criteria. In this case, the value of 104 days would be used to characterize pendimethalin as persistent in flooded soils. However,

there is not a separate persistence criterion for flooded soils, nor are data on flooded soils preferable to other soil data. EPA notes that other soil studies, as discussed above in this section, indicate a half-life of 1,322 days in soils.

The commenter states that while pendimethalin is stable to hydrolysis, it will degrade in natural water and water/sediment systems under laboratory conditions with degradation half-lives ranging from 4 to 22 days.

Photodegradation is also rapid with half-lives of approximately 3.5 days. The commenter concludes that these results indicate that pendimethalin has a low persistence in both water and its underlying sediment according to the EPCRA section 313 persistence criteria.

Two of the aerobic aquatic degradation studies cited by the commenter were not provided to the Agency or are not publicly available, (i.e., they are internal American Cyanamid studies). It is unclear from the summary provided whether the cited studies measured destruction of pendimethalin or its loss from the medium by non-destructive water to air transport processes. If the latter is the case, the "dissipation half-lives" cited cannot be used to characterize persistence. EPA agrees that if the half-lives reported for aerobic aquatic degradation represent half-lives for destruction of the chemical, they do not meet the criteria for persistence in water. However, as noted, the full studies were not available for review and as such, EPA cannot assume that the studies followed destruction of pendimethalin, or that the studies meet the quality criteria outlined in this rule.

The commenter cites a half-life range of 6 to 22 days derived from an anaerobic aquatic degradation study to support the argument that pendimethalin has a low persistence in both water and its underlying sediment according to the EPCRA section 313 persistence criteria. EPA agrees that the persistence half-life values cited by the commenter do not meet the EPCRA section 313 persistence criteria, but points out that additional data submitted in support of the reregistration of pendimethalin indicated that half-lives in aquatic environments could be longer. OPP used flooded soil degradation studies to assess the persistence of pendimethalin under anaerobic aquatic conditions. Half-lives in these studies ranged from 6 to 105 days. In its discussion of the potential impact of pendimethalin on water resources, OPP in the RED notes that pendimethalin has an anaerobic aquatic metabolism half-life of 60 days. EPA believes that after review of the

available data on its persistence in water pendimethalin meets the EPCRA section 313 persistence criteria.

EPA agrees that rapid aqueous photodegradation under laboratory studies has been reported for pendimethalin. However, the photolysis screening tests used are designed to allow the determination of rates of photolysis at shallow depths in pure water as a function of latitude and season. EPA believes that the environmental relevance of these tests should be considered in their use to determine persistence, and that the results are most applicable to shallow, clear waters. EPA believes that the application of the results beyond these environments is tenuous due to the attenuation of light by suspended matter and increasing depth in the aquatic environment. EPA believes that pendimethalin's tendency to sorb to soil and sediments may result, under some circumstances, in its deposition in benthic environments beyond the effects of aqueous photolysis. Therefore, EPA does not believe that the half-life for pendimethalin in water should be based on aqueous photolysis.

The commenter claims pendimethalin will not persist in air according to the EPCRA section 313 persistence criteria for air since it has a half-life of less than 2 days. The commenter discusses the estimation of pendimethalin's atmospheric half-life and a study on its photodegradation in air. The commenter cites the results of a calculation according to the method of Atkinson performed to determine the rate constant for reaction of pendimethalin with OH radicals in the gas phase (Ref 42). A tropospheric half-life of 3.4 hours was calculated using the method. The photolysis of pendimethalin was investigated by Bossan, *et al.*, 1995 (Ref. 15), who reported on the photoreactivity of pendimethalin on airborne fly ash and kaolin using simulated sunlight. Approximately 70% of applied pendimethalin degraded within 30 minutes when adsorbed to fly ash but little degradation was observed after 100 minutes when pendimethalin was bound to kaolin.

EPA agrees that pendimethalin does not meet the persistence half-life criteria for air of greater than 2 days, but because it meets the persistence criteria for soil and water, this does not affect EPA's conclusion. As noted in the proposed final rule (at 64 FR 702), a chemical need only meet one of the media-specific criteria to be considered persistent.

The commenter cites EPA's pendimethalin RED document and cites its conclusion in support of the

argument that pendimethalin does not meet the persistence criteria. The commenter describes the RED conclusions as follows:

Pendimethalin dissipates in the environment by binding to soil, microbially-mediated metabolism and volatilization. It is essentially immobile in soil.

Based on laboratory studies and limited field study information, pendimethalin is slightly to moderately persistent in aerobic soil environments. Persistence decreases with increased temperature, increased moisture and decreased soil organic carbon.

EPA disagrees with the commenters' suggestion that the OPP RED for pendimethalin concludes that it does not meet the EPCRA 313 persistence criteria. As stated in an earlier response, "moderate" persistence has no relevance in the context of the proposed rule. A chemical is considered persistent if it has half-lives of 2 days in air or 2 months in soil, sediment, or water, respectively.

The commenter implies that OPP has concluded that pendimethalin does not meet the persistence criteria by selectively citing the OPP RED while failing to acknowledge other information OPP discussed in the document confirming the persistence of pendimethalin. OPP did not make any formal summary conclusions regarding the overall environmental persistence of pendimethalin. The commenter has selectively cited from the RED by taking a few comments out of context while ignoring additional findings which demonstrate that pendimethalin meets the persistence criteria.

The first statement cited by the commenter addresses dissipation in the environment. Two of the three processes (soil binding and volatilization) responsible for dissipation do not result in the destruction of the chemical and cannot be directly related to persistence. Volatilization results in the relocation of the chemical to the atmosphere. Binding to soil does not destroy pendimethalin and under some soil conditions has been shown to increase persistence. While microbial metabolism of pendimethalin can result in its destruction, it has been shown to be a slow process under many environmental conditions.

The commenter cites OPP's qualitative description of the persistence of pendimethalin in aerobic soil environments as slight to moderate. This does not serve as, nor did OPP intend for this statement to represent, a quantitative description of pendimethalin's persistence in soil. OPP does not attempt to relate this characterization to a numeric range of persistence values in the RED, and the

commenter does not provide a rationale for concluding that OPP's language indicates that pendimethalin does not meet the EPCRA section 313 persistence criteria.

The final sentence of the citation points out factors that decrease persistence, but a more detailed reading of the RED on the subject of pendimethalin persistence in aerobic soils reveals that its persistence increases as temperature and soil moisture decrease, and soil organic carbon increase.

The commenter performed a Level III EQC Multimedia Modeling assessment for pendimethalin assuming "best case, reasonable case, and worst case" scenarios. The calculated overall environmental persistence was determined for pendimethalin to be 5 days, 58 days, and 142 days under the "best, reasonable, and worst case" scenarios, respectively. The results of the multimedia model indicated that pendimethalin will have a persistence in the environment of less than 2 months, assuming a reasonable case scenario. The commenter claims that multimedia modeling results indicate that pendimethalin will not be persistent according to the EPCRA section 313 persistence criteria.

The commenter notes that the values it calculated using the EQC model are much lower than the 30 days and 487 days calculated for EPA (Ref. 51) assuming best case and worst case scenarios. The commenter alleges that EPA assumed that half-lives in soil, sediment and water were identical, 54 days and 1,322 days, respectively (Ref. 7). The data presented above, however, indicate that these were erroneous assumptions. The half-lives for pendimethalin dissipation in water, soil, and sediment are not identical, and the 1,322 day half-life is an outlier.

The commenter concludes that pendimethalin will have a low to moderate persistence whether found in the air, water, soil, or sediment compartments of the environment. The commenter asserts that this is supported by field and laboratory degradation studies, multimedia modeling, and EPA's FIFRA registration environmental assessment of pendimethalin. Therefore, pendimethalin should not be classified as persistent for purposes of inclusion on the EPCRA section 313 list of PBT chemicals.

EPA disagrees that pendimethalin will have low persistence in the environment whether laboratory and field studies or multimedia modeling are considered. Multimedia mass balance models offer the most convenient means to estimate overall

environmental persistence from information on sources and loadings, chemical properties and transformation processes, and intermedia partitioning. For the chemicals included in the proposed rule, EPA used a modified version of the EQC model (Ref. 33) to estimate overall environmental persistence. Overall persistence estimated in this way is used as an additional factor, in conjunction with reaction half-lives for individual media, bioaccumulation/bioconcentration factors, in justifying the determination made by EPA in this rule.

The EQC model is based on the fugacity approach first delineated by Mackay (Ref. 31) and subsequently applied to numerous environmental processes (Ref. 32). It uses an "evaluative environment" in which environmental parameters such as bulk compartment dimensions and volumes (e.g., total area, volume of soil and sediment, etc.) are standardized, so that overall persistence for chemicals with different properties and rates of transformation may be compared on an equal basis (Ref. 15). EPA used a version of the EQC level III model (Ref. 33) which was modified to focus on net losses by deleting model terms for advective losses (movement out of the evaluative environment of air and water potentially containing a chemical) and sediment burial (Ref. 82). In this version of the model only irreversible transformation contributes to net loss of a chemical.

The overall persistence obtained from this model is calculated as the total amount in the evaluative environment when steady state is achieved, divided by the total loss rate. The results thus obtained are neither an overall environmental half-life nor a compartment (or transformation)-specific half-life; rather they are equivalent to an environmental residence time. When only irreversible transformation contributes to net loss--i.e., under the conditions of this version of the EQC model--overall environmental persistence times can be converted to half-lives by multiplying the former by  $\ln 2$  (i.e., 0.693). The overall half-life calculated in this way is for dissipation in the environment as a whole and cannot be related directly to any individual compartment.

The commenter selected media-specific environmental half-lives for use as input to the EQC model. The values were characterized as "best," "reasonable" and "worst" case. No justification was given for this classification. It appeared that the shortest half-lives were categorized as "best case." Based on the information

provided by the commenter, it was not always possible to determine whether the half-lives for soil or water selected by the commenter for use as input to the EQC model were for destruction of chemical, or its dissipation from the medium. As noted previously, dissipation half-lives do not necessarily represent destruction of the chemical since non-destructive transport processes such as volatilization can be responsible for loss from the medium. Their use in multimedia modeling could potentially underestimate overall environmental persistence. This is particularly important since the modified EQC model predicted that greater than 90% of the pendimethalin would partition to soil at steady state. If a soil half-life based on loss from soil by nondestructive processes was used rather than one based on the destruction of pendimethalin, its persistence would have been underestimated.

In its modeling of the overall environmental persistence of pendimethalin EPA used the highest, lowest and mean values for the ranges of media-specific half-lives from valid studies as inputs to the modified EQC model, not the highest and lowest as stated by the commenter. These included a half-life for pendimethalin in soil of 1,322 days. EPA determined that the study was properly conducted and chose the half-life value of 1,322 days for soil because it represented the most environmentally protective half-life derived from a valid study. The calculated overall environmental persistence half-lives were 1 month, 8 months, and 16 months based on the highest, mean, and lowest half-lives, respectively. For chemicals in this rulemaking, EPA considered the multimedia modeling EQC results in characterizing persistence in the overall environment. EPA only intended to use multimedia modeling results to override the medium-specific persistence data in limited circumstances, e.g., only if all model inputs are judged to be accurate (and, as noted above, the commenter's inputs cannot be determined to be accurate). But even if EPA were to use the EQC model to assess persistence, pendimethalin would be considered persistent because, with the EPA inputs described above, EQC overall environmental persistence half-lives were calculated to be greater than 6 months using the mean and maximum air, soil, and water half-lives calculated.

In response to this comment (even though it was unclear whether the commenter was basing its assertion on degradation data or dissipation data), EPA conducted a new EQC assessment for pendimethalin using the same half-

life inputs selected by the commenter. The calculated overall environmental persistence half-life was greater than 2 months using the longest half-lives provided by the commenter for air, soil, water, and sediment. These results support EPA's assertion that the persistence of pendimethalin in the environment meets the EPCRA section 313 persistence criteria.

The commenter argues that the scientifically-based risk assessments conducted on pendimethalin as a part of the pesticide registration process should not be ignored, and that EPA should review pesticide PBT chemical classifications with EPA registration information to ensure an accurate analysis has been performed.

The commenter notes that EPA has determined through the review of a complete set of studies that this material used at an approximate rate of 1.0 to 2.0 pounds of active ingredient per acre does not present an unreasonable risk to human health or the environment, that low levels of pendimethalin in manufacturing wastewater releases do not pose an unacceptable risk to the environment, and that reported EPCRA section 313 air releases do not pose a significant risk to human health or the environment.

The commenter concludes that based on the weight of evidence it is clear that releases of pendimethalin from manufacturing do not pose a significant threat to human health and the environment and that pendimethalin should not be branded as having a high potential for harm as indicated by the proposed listing as a PBT chemical and lowering of the reporting threshold.

EPA disagrees that the risk assessments cited by the commenter are relevant to the characterization of pendimethalin as a PBT chemical. The characterization of chemicals as PBT chemicals for the purpose of this rule are based on intrinsic physical-chemical properties. Risk is not an intrinsic property of a substance, but rather the result of the combination of intrinsic hazard (toxicity) a substance possesses and the exposure to a target organism under a defined set of circumstances. It is possible for a substance to present a risk under one set of exposure conditions, but not another. In contrast, a substance characterized as a PBT chemical will remain a PBT chemical, regardless of the exposure to it or its levels in the environment. (See Unit VI.C.)

Toxic chemicals that persist and bioaccumulate are of particular concern because they remain in the environment for significant periods of time and concentrate in the organisms exposed to

them. Furthermore, these PBT chemicals can have serious human health and environmental effects resulting from low levels of release and exposure.

EPA believes that the substances subject to this rule have been characterized as PBT chemicals using scientifically sound indicators based on the intrinsic properties of the substances. The PBT characterization is independent of the risk the substance may pose under a given set of circumstances. These substances have been characterized as persistent, bioaccumulative and toxic and, therefore, meet the criteria for lowered reporting thresholds.

Further, FIFRA requires the Agency to determine that pesticidal uses of a chemical do not cause "unreasonable adverse effects on the environment," which is defined in FIFRA section 2(bb) as "any unreasonable risk to man or the environment taking into account the economic, social, and environmental costs and benefits of the use of pesticides" (7 U.S.C. section 136(bb)). FIFRA is a regulatory statute, and the impacts of regulation can be immediate and direct (e.g., banning of a chemical), and as such EPA examines not only the hazards presented by the chemical, but also the specific exposure scenarios, and weighs the risks against the benefits of the chemical. The "unreasonable adverse effects" determination under FIFRA is specific to the intentional use of the chemical as a pesticide and does not address other uses or releases of the chemical that may result from manufacture, processing, or other use. Furthermore, a determination under FIFRA that the use of a chemical will not result in an "unreasonable adverse effect" is not a determination that the chemical is not hazardous or persistent or that the use of the chemical is without risk, but merely that the benefits of agricultural use as a pesticide outweigh its risks as an agricultural pesticide or that the pesticide chemical residues on food or feed meet the standards of section 408 of the Federal Food, Drug, and Cosmetic Act. EPCRA section 313 was not enacted to serve the same purpose as FIFRA. Listing on EPCRA section 313 provides communities with some of the information required to determine what risks may result from the manufacture, processing, and use of a chemical, and to allow local communities to determine for themselves whether such risks are acceptable, information not provided under FIFRA.

h. *Toxaphene*. In the proposal, EPA preliminarily determined that toxaphene has persistence half-life

values in soil of 1 to 11 years and a persistence half-life value in water of 1 to 5 years. EPA has reviewed information and all comments received on toxaphene's persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that toxaphene persists in the environment with a half-life of 2 months or greater and therefore meets the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking. (Ref. 7). In addition, toxaphene persists in the environment with a half-life of greater than 6 months which supports EPA's decision to lower the threshold to 10 pounds.

i. *Trifluralin*. In the proposal, EPA preliminarily determined that trifluralin has persistence half-life values in soil of 99 to 394 days and a persistence half-life value in water of 5 to 37 days. EPA has reviewed information and all comments received on trifluralin's persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that trifluralin persists in the environment with a half-life of 2 months or greater and therefore meets the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 7).

j. *Polycyclic aromatic compounds*. In the proposal, EPA preliminarily determined that PACs have persistence half-life values in soil that ranged from 20 days to 13 years. All but a few had half-lives well in excess of 6 months. These chemicals had persistence half-life values in water that ranged from 79 days to 44 years. EPA received one significant comment addressing the persistence potential of PACs, which is discussed below. EPA has reviewed information and all comments received on PACs' persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that PACs persist in the environment with half-lives of 2 months or greater and therefore meet the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical category can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 7).

One commenter contends that EPA has incorrectly ignored biotreatment

studies in evaluating persistence for PACs. EPA has also ignored a large body of recent research on sequestration and other phenomena that collectively act to reduce the bioavailability of soil contaminants, such as PACs.

Biotreatment studies include activated sludge or other wastewater treatment studies. As EPA stated in the proposed rule (at 64 FR 700), the reason for excluding such studies is that wastewater treatment in general and activated sludge in particular represent conditions that are far removed from ambient (surface) waters, soils, and sediments. Data on environmental fate and persistence of substances in wastewater and activated sludge normally cannot be extrapolated to the other conditions. The commenter seems most concerned about land biotreatment (bioremediation) studies, but in fact goes well beyond the concept of treatability, appearing to infer that EPA has ignored all biodegradation studies of PACs. However, this is incorrect because all mixed-culture biodegradation studies other than activated sludge tests--i.e., field tests as well as lab studies that used authentic soil, water and/or sediment grab samples--were considered in determining persistence for all of the listed substances.

The commenter also discusses recent research indicating that bioavailability of a substance may decline with time of incubation in soil, and suggests that EPA should include "reasonable bioavailability factors" in its determination of persistence. As an example of why this is relevant, there has been a concern that Superfund site remediation actions may be mistargeted if they are based on residues released from the soils by vigorous extraction procedures, since chemical substances in soil may become nonbioavailable yet still be extractable for analytical purposes. Additionally, bioremediation may fail to destroy all of a substance that such analysis shows is present, if some portion is sequestered in a non-bioavailable state. Further, the commenter contends that chemicals (including many PACs) are not bioavailable if the bioavailability is considerably less than 100%. The commenter does further specify a numerical bioavailability criteria.

The commenter over-generalizes from the research findings, using selective citation and quotation from the literature to give the impression that all is now known and any substance released to soil is as good as gone toxicologically speaking. Other reports can be quoted to the effect that the many factors determining bioavailability,

sequestration, etc. are far from completely resolved, and deserve much further research. Moreover, sequestration does not necessarily imply non-bioavailability. For example, in a study of PAC sequestration and bioremediation, Tang et al. (Ref. 51a) state that:

The results of the present study suggest that extensive biodegradation by microorganisms does not necessarily remove all of the fraction of an aged compound that is bioavailable since some uptake by worms occurred even after the laboratory-scale bioremediation. . . . it is also possible that a portion of a compound that is sequestered is available to different degrees to dissimilar organisms. . . . It may be that the mass of material that becomes sequestered should be considered as existing in two forms. One form may be unavailable to all organisms because it is physically remote and thus inaccessible. The second form may be differentially available, and its assimilation, toxicity, and/or biodegradation may depend on the properties of the species and its ability to mobilize the molecules from this non-remote location.

[There is] danger if it is assumed that the disappearance of lethality denotes the absence of bioavailability....The point is reinforced by the case of DDT, which is sequestered in soil (13) and whose lethality to insects totally disappears as a result of such sequestration (5), yet a portion of that insecticide was still assimilated by earthworms introduced into soil that was treated in the field with DDT *more than 40 years before the bioassay was performed.* . . . (emphasis added)

And in a similar paper on DDT and dieldrin, Robertson and Alexander (Ref. 43a) state that:

The significance of soil properties in controlling sequestration is evident in the early observation that the degree of sequestration of lindane after 22 months was greatest in a muck, intermediate in extent in a loam, and least in a sandy loam (11). Thus, *soil properties must be considered in attempting to predict the bioavailability of persistent compounds.* It is also evident from the data presented herein that the bioavailability of a sequestered toxicant varies with the exposed species. Thus, the declines in toxicity of aged DDT and dieldrin to the three test insects were quite different; whereas the lethality of the sequestered compound to one species had almost disappeared, it still was effective against a second. (emphasis added)

The conclusion is manifest: it is that although chemical substances released to soil may become sequestered over time, it cannot be assumed that this process necessarily leads to nonbioavailability even when the time horizon is years. Site- and species-specific factors, as well as substance properties, are important in determining bioavailability. Therefore, it is appropriate to be concerned about the

bioavailability in soil and sediment of PACs and other substances that meet the PBT criteria established for this rulemaking.

Further, there is no scientific reason why a chemical can only be considered bioavailable if its bioavailability approaches 100%. The degree of bioavailability will vary depending upon the environmental conditions. In addition, as noted above the degree of bioavailability will also be species dependent. Therefore, EPA believes that the commenter's approach is overly simplistic.

k. *Benzo(g,h,i)perylene.* In the proposal, EPA preliminarily determined that benzo(g,h,i)perylene has persistence half-life values in soil of 173 days to 1.8 years and persistence half-life values in water of greater than 100 days. EPA has reviewed information and all comments received on benzo(g,h,i)perylene's persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that benzo(g,h,i)perylene persists in the environment with a half-life of 2 months or greater and therefore meets the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking. (Ref. 7). In addition, benzo(g,h,i)perylene persists in the environment with a half-life of greater than 6 months which supports EPA's decision to lower the threshold to 10 pounds.

1. *Mercury and mercury compounds.* Because metals may convert to different oxidation states but can never be destroyed, all metals meet the 6 months half-life criterion automatically. EPA received a few significant comments addressing mercury and mercury compounds' persistence. These are discussed below. EPA has reviewed information and all comments received on mercury and mercury compounds' persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that mercury and mercury compounds persist in the environment with half-lives of 2 months or greater and therefore meet the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical category can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and in EPA's support documents for this rulemaking (Ref. 7). In addition, mercury and mercury compounds persist in the environment with a half-life of greater

than 6 months which supports EPA's decision to lower the threshold to 10 pounds.

One commenter asserts that EPA should not classify all forms of mercury as persistent. The commenter agrees that Hg (0) is properly characterized as persistent. However, the commenter contends that EPA is incorrect in characterizing Hg (II) as persistent because it is removed rapidly from the atmosphere via wet and dry deposition.

EPA believes that the commenter confuses residence time with half-life; these terms do not represent equivalent processes. There is a distinction between atmospheric "half-life," which is the amount of time necessary for half of the chemical present to be destroyed in the medium, and atmospheric "residence time" which is the length of time a chemical resides in a particular environmental medium. For the purposes of this rule "half-life" includes only irreversible chemical transformations resulting in the destruction of chemical whereas "residence time" includes factors such as transport of the substance to another medium, for example, wet and dry deposition, sorption, complexation or sequestration; and reversible changes in speciation (i.e., oxidation reduction reactions). EPA agrees that Hg (0) has an average "residence time" in the atmosphere of about 1 year and that Hg (II) may be deposited relatively quickly by wet and dry deposition processes, leading to a "residence time" of hours to months (Ref. 42a). But the shorter residence times noted for Hg (II) are due to physical transport from the medium, rather than irreversible transformations resulting in the destruction of chemical. Hg (0) released to the atmosphere is rapidly converted to Hg (II) through ozone-mediated oxidation. However, this is not an irreversible reaction, nor does it result in the destruction of the substance since the Hg (II) produced from oxidation of Hg (0) by ozone can be reduced back to Hg (0) by sulfite (Ref. 28a). The persistence of mercury will not be mitigated simply by redox reactions of Hg (0) to and from Hg (II). Whether as Hg (0) or as Hg (II), mercury persists in the environment. Environmental processes may cause it to change oxidation states or to be transported from one environmental medium to another; however, these processes will not destroy it.

EPA agrees that the report cited provides reasonable estimates of the fraction of mercury emissions from each source category that is likely to be in the form of Hg (II) versus the fraction as Hg (0). However, this information is not relevant to the assessment of the

persistence of mercury and mercury compounds because persistence considers destruction only.

m. *Polychlorinated biphenyls*. In the proposal, EPA preliminarily determined that polychlorinated biphenyls (PCBs) have persistence half-life values in soil that ranged from 1 to 7 years and persistence half-life values in water that ranged from 56 to 98 days. EPA has reviewed information and all comments received on PCBs' persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that PCBs persist in the environment with half-lives of 2 months or greater and therefore meet the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical listing can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 7). In addition, all of the PCBs persist in the environment with a half-life of greater than 6 months which supports EPA's decision to lower the threshold to 10 pounds.

n. *Hexachlorobenzene*. In the proposal, EPA preliminarily determined that hexachlorobenzene has persistence half-life values in soil of 3 to 6 years. EPA has reviewed information and all comments received on hexachlorobenzene's persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that hexachlorobenzene persists in the environment with a half-life of 2 months or greater and therefore meets the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and in EPA's support documents for this rulemaking (Ref. 7). In addition, hexachlorobenzene persists in the environment with a half-life of greater than 6 months which supports EPA's decision to lower the threshold to 10 pounds.

o. *Octachlorostyrene*. In the proposal, EPA preliminarily determined that OCS has persistence half-life values in soil of 3 to 6 years. EPA received one significant comment addressing OCS's persistence potential which is discussed below. EPA has reviewed information and all comments received on OCS's persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that OCS persists in the environment with a half-life of 2 months or greater and therefore meets the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can

be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 7). In addition, OCS persists in the environment with a half-life of greater than 6 months which supports EPA's decision to lower the threshold to 10 pounds.

One commenter believes that OCS should not be considered to be a PBT chemical. The commenter admits that OCS has the potential to bioaccumulate and may theoretically persist in the environment, but cites falling environmental levels of OCS and the lack of evidence of human and environmental toxicity as justification for why OCS should not be considered to be a persistent, bioaccumulative and toxic chemical. The commenters contend that pentachlorobenzene and hexachlorobenzene are not good analogs for OCS.

EPA disagrees. As discussed in Unit VI.G., EPA believes that OCS meets the EPCRA section 313 toxicity criteria. Further, EPA believes that OCS is highly persistent. No measured half-life data for soil or water that met the standards for data acceptability could be located for octachlorostyrene (CAS No. 29082-74-4). Therefore, EPA used half-lives for the structural analogs pentachlorobenzene (CAS No. 608-93-5) and hexachlorobenzene (CAS No. 118-74-1) for estimating half-lives for OCS. EPA believes that pentachlorobenzene and hexachlorobenzene are good analogs for OCS because they, like OCS, are highly chlorinated benzene derivatives, which are structurally very similar. By analogy, OCS is expected to have a half-life in soil of greater than 6 months and greater than 2 days in air (Ref. 7). These half-lives are sufficient to designate OCS as persistent using the criteria described in the proposed rule. EPA believes that its use of analog data is scientifically supportable because like OCS both analogs are highly chlorinated monocyclic aromatics.

EPA believes that the degree of toxicity as well as the degree of persistence and bioaccumulation are inherent to a chemical. The absolute level of a chemical in the environment does not affect its degree of persistence, bioaccumulation, or whether or not it has been shown to cause adverse effects to aquatic organisms. The absolute level in the environment is a factor of both how much is entering the environment and the persistence of the chemical in the environment. The degree to which a chemical is present in aquatic organisms is not only a measure of the BAF, but also inputs into the environment and

persistence. The assertions made by the commenter do not support their contentions concerning the toxicity, persistence, or bioaccumulation of OCS.

p. *Pentachlorobenzene*. In the proposal, EPA preliminarily determined that pentachlorobenzene has persistence half-life values in soil of 194 days to more than 22 years. EPA received no significant comments addressing pentachlorobenzene's persistence potential. EPA has reviewed information and all comments on pentachlorobenzene's persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that pentachlorobenzene persists in the environment with a half-life of 2 months or greater and therefore meets the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 7). In addition, pentachlorobenzene persist in the environment with a half-life of greater than 6 months which supports EPA's decision to lower the threshold to 10 pounds.

q. *Tetrabromobisphenol A*. In the proposal, EPA preliminarily determined that TBBPA has persistence half-life values in soil of 44 to 179 days and persistence half-life values in water of 48 to 84 days. EPA received several significant comments addressing TBBPA's persistence and discusses them below. EPA has reviewed information and all comments received on TBBPA's persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that TBBPA persists in the environment with a half-life of 2 months or greater and therefore meets the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 7).

One commenter states that EPA's determination that TBBPA is persistent in the environment appears to be based upon a model which uses default data, that it is difficult to interpret EPA's methodology for applying its *EQC Model Output for Toxics Release Inventory PBT Rule Chemicals*, and it therefore is not clear how EPA arrived at the conclusion that TBBPA is persistent.

EPA disagrees that it is unclear how the EQC model was used in the assessment of chemical persistence and

that EPA used only default data. EPA provided discussion on the conduct of the multimedia modeling in the document titled *EQC Model Output for Toxics Release Inventory PBT Rule Chemicals* (Ref. 33). EPA used chemical-specific input data (i.e., half-lives in air, soil, water, and sediment and chemical properties) where available in all multimedia modeling runs. No default data were used in lieu of chemical-specific inputs. All chemical-specific inputs for each chemical were listed in this document. Further, EPA explained its use of the modified EQC model not only in the support document identified earlier, but also in the preamble to the proposed rule. In its description of the modeling EPA stated:

Multimedia mass balance models offer the most convenient means to estimate overall environmental persistence from information on sources and loadings, chemical properties and transformation processes, and intermedia partitioning. For the chemicals included in this proposed rule EPA used the [modified] EQC model. . . to estimate overall environmental persistence. Overall persistence estimated in this way is used as an additional factor, in conjunction with reaction half-lives for individual media, bioaccumulation/ bioconcentration factors, etc., in justifying actions proposed in this rule.

The EQC model is based on the fugacity approach first delineated by Mackay (Ref. 31) and subsequently applied to numerous environmental processes (Ref. 32). It uses an "evaluative environment" in which environmental parameters such as bulk compartment dimensions and volumes (e.g., total area, volume of soil and sediment) are standardized, so that overall persistence for chemicals with different properties and rates of transformation may be compared on an equal basis (Ref. 15). EPA used a version of the EQC level III model (Ref. 33) which was modified to focus on net losses by deleting model terms for advective losses (movement out of the evaluative environment of air and water potentially containing a chemical) and sediment burial (Ref. 82). In this version of the model only irreversible transformation contributes to net loss of a chemical.

The overall persistence obtained from this model is calculated as the total amount in the evaluative environment when steady state is achieved, divided by the total loss rate. The results thus obtained are neither an overall environmental half-life nor a compartment (or transformation)-specific half-life; rather they are equivalent to an environmental residence time. When only irreversible

transformation contributes to net loss--i.e., under the conditions of this version of the EQC model--overall environmental persistence times can be converted to half-lives by multiplying the former by  $\ln 2$  (i.e., 0.693). The overall half-life calculated in this way is for dissipation in the environment as a whole and cannot be related directly to any individual compartment.

In the analysis EPA used the highest, lowest and mean values for the ranges of half-lives for soil, air, and water as inputs to the model. These half-lives were collected from the literature from scientifically sound studies and were subject to data quality standards. The overall environmental persistence half-life for TBBPA calculated based on the EQC model was greater than 2 months but less than 6 months using the longest half-lives for air, soil, water, and sediment. These results support EPA's assertion that the persistence of TBBPA in the environment will meet the EPCRA section 313 persistence criteria.

The commenter believes that TBBPA does not meet the persistence criteria for air. To support this contention the commenter refers to a study cited in a World Health Organization (WHO) document (Ref. 83). Specifically the commenter cites photodegradation studies that demonstrated that the half-life of TBBPA absorbed onto silica gel exposed to ultraviolet (UV) radiation was 0.12 day in air. In addition, the commenter contends that studies of the photolysis of TBBPA in the presence of UV light and hydroxyl radicals show that TBBPA was totally degraded within 5 to 6 days with an estimated 33-hour half-life. The commenter did not provide these studies or provide references to the original studies.

Further, the same commenter cites WHO EHC 172 (Ref. 83) for data on photodegradation to support the claim that TBBPA does not meet the persistence criteria for air. A review of the citation provided by the commenter reveals that it is a secondary reference taken from unpublished data from Bayer (Ref. 10). EPA was unable to review the full unpublished study to determine the quality of the data, only the summary found in the WHO document was available. In the WHO summary of the Bayer study TBBPA adsorbed onto silica gel and was exposed to ultraviolet irradiation at the 254 nanometer (nm) wavelength. Eight metabolites were detected and a half-life value of 0.12 days obtained. WHO noted that "[i]t is difficult to derive environmental conclusions from the results of these experiments."

EPA believes that the environmental relevance of the test results is doubtful.

While the experiment may demonstrate the potential for TBBPA to undergo photodegradation under laboratory conditions, the experimental conditions, to the extent they could be determined from the short summary provided, were not environmentally relevant.

In order for a molecule to undergo photochemical change it must absorb light. It is well known that only the transitions corresponding to ultraviolet/visible light absorption are inherently energetic enough to lead to chemical reactions. The wavelengths of importance for photochemical transformations is thus ultraviolet/visible light with a wavelength of 110 - 750 nm. When environmental photochemistry at or near the earth's surface is considered, the wavelengths of light of importance are further narrowed because the stratospheric ozone layer effectively prevents UV irradiation of less than 290 nm from reaching the earth's surface. Thus, only the light of the 290-750 nm wavelength absorbed by a molecule can potentially lead to photochemical changes of that molecule in the environment near the earth's surface. EPA believes that because the subject study utilized UV irradiation at the 254 nm wavelength, a wavelength that does not reach the earth's surface due to mitigation by stratospheric ozone, the half-life derived is not relevant and, therefore, cannot be used to determine the persistence of TBBPA in air.

The commenter also refers to studies of the photolysis of TBBPA in the presence of UV light and hydroxyl radicals in which TBBPA was shown to totally degrade within 5 to 6 days with an estimated 33-hour half-life. No additional information or references were provided to enable EPA to evaluate these findings for use in the characterization of the atmospheric half-life TBBPA.

The commenter contends that TBBPA's molecular structure makes it inherently biodegradable. The hydroxyl moiety on the TBBPA molecule can be readily transformed by organisms in the environment. The parent TBBPA molecule is no longer present once this biotransformation takes place. Therefore, based on TBBPA's structure alone, the Agency should consider TBBPA as unlikely to be environmentally persistent.

EPA disagrees with the statement that based on structure alone, the Agency should consider TBBPA as unlikely to be environmentally persistent. While EPA generally believes that measured values from well conducted studies are preferable to structure activity relationships (SAR) as an indicator of

persistence, the Agency believes that it is possible to make some general statements about the biodegradability of TBBPA based on its structure.

Current knowledge of structure biodegradability relationships suggests that the presence of multiple bromines on an aromatic molecule adversely affects biodegradation. In fact, when the biodegradability of TBBPA is assessed with EPA structure activity relationship tools for predicting biodegradation from structure (Refs. 46 and 47), the presence of multiple aromatic bromines, a carbon with four single bonds, and the molecular weight of TBBPA are all structural features that reduce biodegradability. Therefore, even if EPA were to base its assessment of the persistence of TBBPA on its molecular structure, the Agency would conclude that it is not readily biodegradable.

The commenter contends that TBBPA will not meet the persistence criteria for water, soil, and sediment because TBBPA will biodegrade in these media. The commenter cites the results of several biodegradation studies as demonstrating that TBBPA is not persistent in these media. The commenter states that even though degradation studies have shown that TBBPA is not "readily biodegradable" (i.e., TBBPA is not mineralized to a significant extent by sewage sludge within 28 days) there are studies that indicate it is not persistent. Specifically, in studies submitted to EPA in 1989, TBBPA has been shown to be subject to biodegradation both in soil and sediment under aerobic or anaerobic conditions; TBBPA's estimated half-life derived from these studies is 50 days. In studies submitted by the Brominated Flame Retardants Industry Panel to EPA, TBBPA also was shown to undergo degradation in a sediment/water system with an estimated half-life of 48 to 84 days. (These data were reported under the Agency's TSCA Section 4 test rule.) The commenter argues that these data demonstrate that TBBPA does not meet most widely (and internationally) accepted criteria for persistence in soil or sediments (See Unit VI.B.) Therefore, TBBPA should not be considered to be persistent for purposes of EPCRA Section 313.

The commenter cites additional research conducted on the biodegradation of TBBPA under aerobic and anaerobic conditions in soil (Refs. 47) and asserts that the data indicate that "TBBPA does not meet the most widely and internationally accepted criteria." EPA discusses its assessment of the Springborn soil biodegradation studies elsewhere in the Response to Comments document (Ref. 69). As

explained earlier, the international persistence criteria are not relevant to the classification of persistence under the criteria adopted by the Agency, and EPA disagrees that TBBPA should not be considered persistent because it does not meet the "most widely (and internationally) accepted" criteria. (See Unit VI.B.)

The commenter makes the argument that TBBPA has been shown to be subject to biodegradation in soil and sediment under aerobic and anaerobic conditions with "estimated" half-lives of 50 days. Although the commenter derived a biodegradation half-life, the method used to do so and the validity of the value could not be determined because no supporting information was provided. EPA questions the validity of the 50-day half-lives estimated by the commenter on those grounds.

The commenter refers to two soil grab sample studies and a sediment/water microbial system study. These studies investigated the biodegradation of TBBPA in three different soil types in the presence (aerobic) and absence (anaerobic) of oxygen, and the biodegradation of TBBPA in a system containing sediment and river water in the presence of oxygen. In the aerobic soil studies less than 6% ultimate biodegradation (complete biodegradation to CO<sub>2</sub>) was observed over the 64-day test period. The major portion of TBBPA remained in the soil. Analysis showed after 64 days 74 to 82% TBBPA remained in a Massachusetts sandy loam soil, 36 to 40% remained in an Arkansas silt loam, and 41 to 43% remained in a California clay loam soil. Over the course of the experiments, TBBPA either remained in soil undegraded, underwent minor structural changes (primary biodegradation), or to a very small extent (<6%), underwent complete biodegradation to CO<sub>2</sub>. Individual values for evolved CO<sub>2</sub> in each soil type over time were not reported and biodegradation half-life values were not calculated. If it is assumed in the absence of values for CO<sub>2</sub> evolution at sampling times spaced evenly over the test period reported data, that TBBPA underwent a steady rate of degradation over the duration of the experiments, approximate half-lives of 44 to 179 days can be estimated (Ref. 7).

Biodegradation half-lives from the aerobic soil biodegradation experiments can be approximated. The half-life is defined as the amount of time necessary for the destruction of half of the chemical present in the medium. Given that the duration of the soil biodegradation test is 64 days (equivalent to greater than 2 months), a

chemical that undergoes less than 50% biodegradation by the end of the test period would have a half-life of greater than 2 months and meet the EPCRA 313 persistence criteria for soil. In one of the soils in which TBBPA was tested (a Massachusetts sandy loam soil) 74 to 82% of the original TBBPA applied remained in the soil unchanged at the end of the 64-day test period. Thus, in this study, TBBPA was shown to have a half-life in soil of greater than 2 months since less than 50% degradation of TBBPA occurred in 64 days.

The biodegradation of TBBPA in the same three soils as above under anaerobic conditions in a 64-day test has also been studied. The results showed that 44 to 57% of the TBBPA applied to soil remained undegraded in the Massachusetts sandy loam soil after a 64-day test period, 53–65% in an Arkansas silt loam soil, and 90% in a California clay loam soil. Less than 50% destruction of the test chemical occurred over a 64-day (> 2 month) test period in all soils tested. Thus, in this study, TBBPA was shown to have a half-life in soil of greater than 2 months since less than 50% degradation of TBBPA occurred in 64 days.

Aerobic sediment water microbial test systems containing natural sediments and river water were used to measure degradation half-lives for TBBPA in 56-day experiments. Half-lives calculated for the biodegradation of TBBPA ranged from 48 to 84 days. Researchers found an apparent correlation between half-lives and TBBPA concentration, and half-lives and microbial concentrations. Thus, in this study, TBBPA was shown to have a half-life in sediment water systems of greater than 2 months when either the larger value or the mean of the two values is considered.

Further, the commenter claims that abiotic degradation of TBBPA in water also is expected. The calculated half-life of decomposition of TBBPA by UV radiation in water was 10.2 days in spring, 6.6 in summer, 25.9 in autumn, and 80.7 days in winter. Therefore, TBBPA is not expected to be persistent in water. No other information was provided.

The commenter cites WHO EHC 172 (Ref. 83) for data on photodegradation to support the claim that TBBPA does not meet the persistence criteria for water. In its review of the literature to evaluate the persistence of TBBPA, EPA found no information on its photodegradation in water. A review of the citation provided by the commenter reveals that it is a secondary reference taken from an unpublished study from Bayer (Ref. 10). EPA was unable to review the full unpublished study to determine the

quality of the data. Only the summary found in the WHO document was available. The Bayer study on photodegradation in water yielded calculated half-lives ranging from 6.6 days to 80.7 days with the longest half-life calculated during the winter, when solar irradiation is least intense and the shortest half-life occurring in the summer, when the solar irradiation is most intense. The commenter did not include the fact that the effect of cloud cover lengthened the calculated half-life by a factor of 2. Water depth was also found to influence the direct photodegradation of TBBPA. At the surface of a water body, solar irradiation is fairly uniform; however, as depth increases, both the water itself and materials in it can attenuate the transmission of solar energy through the water column. Irradiance has been shown to decrease by greater than 90% for both ultraviolet and visible light at a depth of 5 meters in a eutrophic lake (Ref. 52). EPA disagrees with the commenter's conclusion that TBBPA photodegradation in water will be sufficiently rapid that it will not meet the persistence criteria. Based on the study cited by the commenter which includes an 80-day (> 2 month) half-life for photodegradation of TBBPA in winter, and the mitigating effects of water depth and cloud cover on rates of photodegradation, EPA believes that a half-life of greater than 2 months in water is supported. EPA, therefore asserts that based on these findings, TBBPA meets the EPCRA section 313 persistence criteria of greater than 2 months in soil and water.

**2. Bioaccumulation—**a. *Dioxin and dioxin-like compounds.* In the proposal, EPA preliminarily determined that dioxin and dioxin-like compounds have BCF values that range from 1,259–42,500 with 6 chemicals over 5,000 and 6 chemicals between 3,500 and 5,000. EPA has reviewed information and all comments received on dioxin and dioxin-like compounds' bioaccumulation characteristics. As indicated in Table 3, EPA finds that dioxin and dioxin-like compounds bioaccumulate in the environment with BAF/BCF values greater than 1,000 and therefore meet the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical category can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71). In addition, most of the members of the dioxin and dioxin-like compounds category bioaccumulate in the environment with

a value close to, or well above, 5,000, which supports EPA's decision to lower the threshold to 0.1 gram.

b. *Aldrin.* In the proposal, EPA preliminarily determined that aldrin has a BCF value of 3,715. EPA has reviewed information and all comments received on aldrin's bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that aldrin bioaccumulates in the environment with a BAF/BCF value greater than 1,000 and therefore meets the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71).

c. *Chlordane.* In the proposal, EPA preliminarily determined that chlordane has a BCF value of 11,050. EPA has reviewed information and all comments received on chlordane's bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that chlordane bioaccumulates in the environment with a BAF/BCF value greater than 1,000 and therefore meets the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71). In addition, chlordane bioaccumulates in the environment with a BCF value greater than 5,000 which supports EPA's decision to lower the threshold to 10 pounds.

d. *Heptachlor.* In the proposal, EPA preliminarily determined that heptachlor has a BCF value of 19,953. EPA has reviewed information and all comments received on heptachlor's bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that heptachlor bioaccumulates in the environment with a BAF/BCF value greater than 1,000 and therefore meets the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and in EPA's support documents for this rulemaking (Ref. 71). In addition, heptachlor bioaccumulates in the environment with a BAF/BCF value greater than 5,000 which supports EPA's decision to lower the threshold to 10 pounds.

e. *Isodrin*. In the proposal, EPA preliminarily determined that isodrin has a BCF value of 20,180. EPA has reviewed information and all comments received on isodrin's bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that isodrin bioaccumulates in the environment with a BAF/BCF value greater than 1,000 and therefore meets the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71). In addition, isodrin bioaccumulates in the environment with a BAF/BCF value greater than 5,000 which supports EPA's decision to lower the threshold to 10 pounds.

f. *Methoxychlor*. In the proposal, EPA preliminarily determined that methoxychlor has a BCF value of 8,128. EPA has reviewed information and all comments received on methoxychlor's bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that methoxychlor bioaccumulates in the environment with a BAF/BCF value greater than 1,000 and therefore meets the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71).

g. *Pendimethalin*. In the proposal, EPA preliminarily determined that pendimethalin has a BCF value of 1,944. EPA has reviewed information and all comments received on pendimethalin's bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that pendimethalin bioaccumulates in the environment with a BAF/BCF value greater than 1,000 and therefore meets the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71).

h. *Toxaphene*. In the proposal, EPA preliminarily determined that toxaphene has a BCF value of 34,050. EPA has reviewed information and all comments received on toxaphene's bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that

toxaphene bioaccumulates in the environment with a BAF/BCF value greater than 1,000 and therefore meets the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71). In addition, toxaphene bioaccumulates in the environment with a BAF/BCF value greater than 5,000 which supports EPA's decision to lower the threshold to 10 pounds.

i. *Trifluralin*. In the proposal, EPA preliminarily determined that trifluralin has a BCF value of 5,674. EPA has reviewed information and all comments received on trifluralin's bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that trifluralin bioaccumulates in the environment with a BAF/BCF value greater than 1,000 and therefore meets the bioaccumulation criterion. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71).

j. *Polycyclic aromatic compounds*. In the proposal, EPA preliminarily determined that PACs have BCF values that ranged from 800 to 31,440 with 16 of the 21 members of the category having BCF values greater than 5,000. EPA received several comments concerning the PACs category listing and the bioaccumulation data which are addressed below. EPA has reviewed information and all comments received on PACs' bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that PACs bioaccumulate in the environment with BAF/BCF values greater than 1,000 and therefore meet the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical category can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71).

Three of the commenters support the retention of a single PACs category while one commenter believes that splitting the category into two categories would be the most appropriate option. Additional specific comments were as follows. One commenter stated that PACs are typically found as mixtures in incoming natural organic raw materials, such as coal and that it would be

difficult to separate information into two reporting categories. Another commenter stated that reporting as one category is also more consistent with the Great Lakes Binational Toxics Strategy Level 2 listing for these chemicals. A commenter stated that the alternate proposal to create two PAC categories would be unnecessarily burdensome for the regulated community since reporting facilities would be required to speciate their PAC releases, and, if chemicals from both categories exceeded reporting thresholds, file two Form R reports, instead of one. One commenter stated that use of a single PACs category will simplify the reporting requirements; thus, it will reduce reporting burden. Several commenters stated that according to the proposed rule, 16 of the 21 members of the category had BCF values greater than 5,000 and that one proposal would regard the entire PACs category to be highly persistent and bioaccumulative, regardless of each individual PAC's actual persistence and bioaccumulative properties. Several commenters stated that they believed that splitting the category into two categories would be the most appropriate course. Another commenter stated that no chemical should be added to the highly persistent/bioaccumulative category when it does not fit the criteria and that in order to gain the most accurate information, two separate categories would be the superior solution. The commenter stated that lowering the reporting threshold for the PACs category to 10 pounds is unjustified considering that, according to EPA data, many of the individual PACs within the category do not meet the PBT criteria.

EPA considered splitting the PACs category into two or three categories or listings, but EPA believes, as do most of the commenters, that the most appropriate option is to retain a single PACs category. The PACs category was created because the members of the category are chemically and structurally very similar, share the same toxicological effect (carcinogenicity), and typically are produced, released, and otherwise managed as waste as complex mixtures rather than individual chemicals. As such it would be more difficult to estimate releases if the category were split into two or three categories based on the currently available bioaccumulation data. These reasons support retaining a single PACs category. EPA agrees with those commenters that stated that the retention of a single PACs category would be the simpler and less burdensome option. EPA also

recognizes that, based on currently available information, not all members of the PACs category meet the highly persistence and highly bioaccumulative criteria. Of the 21 chemicals in the PACs category proposed for a lower threshold, 5 have BCF values that nominally do not meet the highly bioaccumulative criteria, while the rest exceed the highly bioaccumulative criteria. Given the structural similarities of the members of this category and the higher bioaccumulation values for 16 of the 21 PACs, the 5 BCF values below 5,000 may underestimate, to some extent, the bioaccumulation potential of these compounds. For purposes of this rulemaking, EPA is classifying the PACs category as persistent and bioaccumulative rather than highly persistent and highly bioaccumulative. Thus, the PACs category will have a reporting threshold of 100 pounds. However, the Agency will continue to assess the bioaccumulation potential of this category and specifically whether the lower bioaccumulation values for 5 members of the category are appropriate.

k. *Benzo(g,h,i)perylene*. In the proposal, EPA preliminarily determined that benzo(g,h,i)perylene has a BCF value of 25,420. EPA has reviewed information and all comments received on benzo(g,h,i)perylene's bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that benzo(g,h,i)perylene bioaccumulates in the environment with a BAF/BCF value greater than 1,000 and therefore meets the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71). In addition, benzo(g,h,i)perylene bioaccumulates in the environment with a BCF value greater than 5,000 which supports EPA's decision to lower the threshold to 10 pounds.

l. *Mercury and mercury compounds*. In the proposal, EPA preliminarily determined that mercury and mercury compounds have BCF values that ranged from 7,000 to 36,000. EPA has reviewed information and all comments received on mercury and mercury compounds' bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that mercury and mercury compounds bioaccumulate in the environment with BAF/BCF values greater than 1,000 and therefore meet the bioaccumulation criterion

established in this rulemaking. A complete discussion of EPA's findings on this chemical category can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71). In addition, mercury and mercury compounds bioaccumulate in the environment with a value above 5,000, which supports EPA's decision to lower the threshold to 10 pounds.

m. *Polychlorinated biphenyls*. In the proposal, EPA preliminarily determined that PCBs have BCF values that ranged from 4,922 to 196,900. All of the PCBs, except one, had BCF values far exceeding 5,000. The one exception, 2,3,3',4,4',5,5' heptachlorobiphenyl, had a BCF value of 4,922. EPA has reviewed information and all comments received on PCBs' bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that PCBs bioaccumulate in the environment with BAF/BCF values greater than 1,000 and therefore meet the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical listing can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71). In addition, with one exception, all of the PCBs listed bioaccumulate in the environment with a value far exceeding 5,000, which supports EPA's decision to lower the threshold to 10 pounds.

n. *Hexachlorobenzene*. In the proposal, EPA preliminarily determined that hexachlorobenzene has a BCF value of 29,600 to 66,000. EPA has reviewed information and all comments received on hexachlorobenzene's bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that hexachlorobenzene bioaccumulates in the environment with a BAF/BCF value greater than 1,000 and therefore meets the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71). In addition, hexachlorobenzene bioaccumulates in the environment with a BAF/BCF value greater than 5,000 which supports EPA's decision to lower the threshold to 10 pounds.

o. *Octchlorostyrene*. In the proposal, EPA preliminarily determined that OCS has a BCF value of 33,113. EPA received one significant comment addressing

OCS's bioaccumulation potential which is discussed below. EPA has reviewed this comment and information on OCS's bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that OCS bioaccumulates in the environment with a BAF/BCF value greater than 1,000 and therefore meets the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71). In addition, OCS bioaccumulates in the environment with a BAF/BCF value greater than 5,000 which supports EPA's decision to lower the threshold to 10 pounds.

One commenter argued that OCS should not be included in the EPCRA section 313 PBT chemicals list. The commenter contends that OCS was included as a PBT chemical simply because it appears on several lists of persistent and bioaccumulative chemicals and not based on a thorough evaluation of its bioaccumulation. The commenter states that OCS has the potential to bioaccumulate, but nonetheless, OCS levels in fish and aquatic species in the Great Lakes continue to decline. The commenter provides a report on the Great Lakes region and argues that OCS should not be considered a PBT chemical since environmental concentration data show OCS levels in the environment are decreasing at a rate of 8% to 30% per year.

EPA disagrees with the commenter's conclusions. The commenter does not dispute the bioaccumulation values EPA presented in the proposed rule. Rather the commenter agrees that OCS has the potential to bioaccumulate but contends that since environmental concentrations are declining in the Great Lakes region OCS should not be considered a PBT chemical. The fact that OCS levels in the Great Lakes region may be declining is not a basis for concluding that OCS is not a PBT chemical or that it cannot bioaccumulate. There are a number of reasons that could explain a decrease in environmental concentrations of OCS but they do not change the fact that OCS has been shown to be highly bioaccumulative. OCS was included as a PBT chemical because it meets the EPCRA section 313 criterion for bioaccumulation laid out in the proposed rule, not simply because it has appeared on several other lists of PBT chemicals.

p. *Pentachlorobenzene*. In the proposal, EPA preliminarily determined

that pentachlorobenzene has a BCF value of 8,318. EPA has reviewed information and all comments received on pentachlorobenzene's bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that pentachlorobenzene bioaccumulates in the environment with a BAF/BCF value greater than 1,000 and therefore meets the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71). In addition, pentachlorobenzene bioaccumulates in the environment with a BAF/BCF value greater than 5,000 which supports EPA's decision to lower the threshold to 10 pounds.

q. *Tetrabromobisphenol A*. In the proposal, EPA preliminarily determined that TBBPA was found to have BCF values of 780; 1,200; and 3,200. EPA received one significant comment addressing TBBPA's bioaccumulation which is discussed below. EPA has reviewed the comments and information on TBBPA's bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that TBBPA bioaccumulates in the environment with a BAF/BCF value greater than 1,000 and therefore meets the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71).

One commenter contends that the available data on TBBPA do not support its classification as a PBT chemical. The commenter argues that the oyster BCF value of 780 does not support the proposed criterion of 1,000. The commenter also notes that EPA fails to consider that TBBPA is not retained in the body once dosing stops in a BCF test and that TBBPA is rapidly eliminated. The commenter states that rapid elimination limits any potential for biomagnification. The commenter notes that only the highest chironomid BCF value (3,200) was cited by EPA and not the fact that this is from a range of 650–3,200.

EPA believes that the available data do support classification of TBBPA as a PBT chemical. Measured BCF values of 780, 1,200, and 3,200 were obtained from TSCA section 4 tests with oysters, fish and chironomids, respectively. The measured BCF values of 1,200 and 3,200

for fish and chironomids respectively, clearly satisfy the EPCRA section 313 bioaccumulation criterion of 1,000. EPA is aware that TBBPA will be eliminated from the body eventually once exposure to the chemical is halted; however, continuous or intermittent exposures of TBBPA to organisms may result in significant tissue residues depending on the exposure or release scenarios. The issue of biomagnification of TBBPA is not relevant to determining if TBBPA is a PBT chemical. As discussed in Unit VI.B.3., biomagnification is not required in order to have a concern for chemicals that bioaccumulate. The highest chironomid BCF value was listed because it is considered as a worst case indication of bioaccumulation in sediment-dwelling invertebrates.

#### *I. Exemptions and Other Reporting Requirements*

1. *De minimis exemption*. Many of the commenters assert that the initial reasons for adopting the *de minimis* exemption are still valid and that this exemption should be maintained for PBT chemicals. Specifically, several commenters contend that the *de minimis* exemption was initially adopted to alleviate undue burden on reporting facilities and that the elimination of this exemption for PBT chemicals will significantly increase the reporting burden for this rulemaking.

EPA disagrees with the commenters' contention that the initial reasons for adopting the *de minimis* exemption are valid for PBT chemicals. As originally explained in the 1988 final rule implementing the reporting provisions of EPCRA section 313, reiterated in the 1997 final rule adding seven new industry sectors, and discussed in the proposal to this final rule, EPA promulgated the *de minimis* exemption for several reasons, of which burden was only one. In addition to burden reduction, EPA promulgated the *de minimis* exemption because: (1) The Agency believed that facilities newly covered by EPCRA section 313 would have limited access to information regarding low concentrations of toxic chemicals in mixtures that are imported, processed, otherwise used or manufactured as impurities; (2) the Agency did not believe that these low concentrations would result in quantities that would significantly contribute to threshold determinations and release calculations at the facility (53 FR 4509); and (3) the exemption was consistent with information collected under the Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard (HCS). If EPA

had adopted the exemption only to reduce burden, the exemption would have covered all uses of *de minimis* quantities of the toxic chemical in mixtures. The exemption, however, includes only limited uses of the toxic chemical in mixtures (i.e., importing, processing, otherwise use, and manufacturing impurities) that were roughly tailored to whether EPA expected that facilities were reasonably likely to have information that would allow them to determine thresholds and make release calculations.

The purpose of the PBT rulemaking, however, is different from past rulemakings in that it is intended to capture information on significantly smaller quantities of releases and other waste management associated with these chemicals. Most of the PBT chemicals addressed in this rule have been shown to cause adverse effects at concentrations far less than the *de minimis* levels. For example, dioxins have been shown to cause adverse effects at levels in the parts per trillion. In addition, after 10 years of experience with the program, the Agency believes there are many sources of information in addition to material safety data sheets (MSDSs), readily available to reporters to use in making EPCRA section 313 determinations. Some of these sources of information include EPA guidance documents (e.g., *EPCRA Section 313 Industry Guidance: Electricity Generating Facilities* (EPA 745-B-99-003)) and trade association guidance documents (e.g., National Council of the Paper Industry for Air and Stream Improvement (NCASI) Technical Bulletins and NCASI's *Handbook of Chemical Specific Information for SARA Title III Section 313 Form R Reporting*). In addition, relevant information has become much more accessible to covered facilities over the past 10 years. For example, although the United States Geological Survey's U.S. Coal Quality Database has been in existence since the mid 1970s, only more recently has it been made available on the Internet. (<http://energy.er.usgs.gov/products/databases/USCoal/index.htm>). Further, the Agency believes that it underestimated how much information covered facilities had available to them in 1988 regarding small concentrations of toxic chemicals in mixtures. Therefore, given that: (1) Covered facilities have several sources of information available to them regarding the concentration of PBT chemicals in mixtures; (2) even minimal releases of persistent bioaccumulative chemicals may result in significant adverse effects and these small

quantities can reasonably be expected to significantly contribute to the lower thresholds; and (3) the concentration levels originally chosen, in part, to be consistent with the OSHA HCS are inappropriately high for PBT chemicals. EPA believes that the reasons for the *de minimis* exemption that the Agency held for previous rulemakings do not apply to PBT chemicals.

A few commenters assert that reviewing each MSDS, when a facility may have many MSDSs for mixtures used on-site, to see if it includes trace quantities of PBT chemicals will be very time consuming. They contend that they do not have the manpower to track products on an individual basis looking for trace quantities of PBT chemicals and that these activities will be very burdensome.

EPA disagrees that eliminating the *de minimis* exemption for PBT chemicals will greatly increase burden under EPCRA section 313. Covered facilities are not required to report on toxic chemicals in mixtures and trade name products for which they have no concentration information or such information that is not reasonably known. However, if facilities do have information concerning the concentration of PBT chemicals in mixtures, such as on MSDSs, EPA does not believe it is more burdensome for facilities to identify and evaluate process streams containing relatively small quantities of PBT chemicals than for larger quantities of chemicals. Although some burden is associated with the identification and evaluation of process streams, EPA disagrees that the elimination of the *de minimis* exemption would vastly increase the extent of this required effort. Covered facilities will need to identify and evaluate process streams when considering a PBT chemical in concentrations below the *de minimis* level in the same manner they already do for toxic chemicals found in process streams in concentrations above the *de minimis* level. The additional burden can be attributed to resources spent considering and reporting on information they currently are allowed to disregard. Further, as explained above, EPA adopted the *de minimis* exemption for several reasons, of which burden reduction was only one, and EPA does not believe that these original reasons apply to this PBT rulemaking.

Some commenters assert that it is unrealistic for EPA to assume that industry will report only on what they know without making an effort to fill the data gaps and that enforcement actions could arise from reports based on only what is known to a facility.

EPA disagrees, however, because covered facilities are expected to have reasonable knowledge of the toxic chemicals present at their site and need only document their considerations concerning threshold determinations and release and other waste management calculations. As stated in EPCRA section 313(g)(2):

[i]n order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. *Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulation.* . . . (emphasis added)

Further, as stated previously, covered facilities are not required to report on toxic chemicals in mixtures and trade name products for which they have no concentration information, or for which such information is not readily available. Therefore, it is unlikely that facilities will have additional enforcement concerns.

Several commenters argue that the need to be consistent with the OSHA HCS that EPA cited in the 1988 final rule continues to be relevant with regards to collecting information on very small quantities.

EPA disagrees that the need to be consistent with OSHA to reduce burden is sufficient to justify retaining the *de minimis* exemption for PBT chemicals. EPA is not required to be consistent with the OSHA HCS. In 1988, EPA chose to be consistent with the OSHA HCS as part of its rationale for the exemption, because the Agency expected facilities to be familiar with these levels and thought that covered facilities might only have access to MSDSs for information on the content and percentage composition of toxic chemicals in mixtures. (See 53 FR 4509) However, EPA has never instructed facilities to stop looking if information concerning a toxic chemical is not on an MSDS. Rather, EPA has consistently instructed facilities to use their best readily available data in determining compliance with EPCRA section 313. As EPA explained earlier, given 10 years of experience with the program, the Agency believes that facilities may have other sources of information, in addition to MSDSs, available to them. Therefore, if a facility has better information regarding the concentration of a toxic chemical in a mixture, for example, that the chemical is above the *de minimis*

level, the facility should be using that information to comply with EPCRA section 313. Further, EPA is consistent in some respects because under the OSHA HCS, if an employer has reason to believe that a permissible exposure limit for a component may be exceeded under the mixture's normal circumstances of use, the HCS also requires employers to list chemicals that are below the 1.0% and 0.1% thresholds. Therefore, OSHA adopted exceptions to the 1.0% and 0.1% limits under the HCS. Similarly, PBT chemicals are different from other toxic chemicals in that they may pose a more significant concern to the environment in much smaller quantities than other toxic chemicals. Furthermore, as explained in other responses in this unit, EPA believes the remainder of its rationale for the *de minimis* exemption is not applicable to PBT chemicals. For example, contrary to the commenter's statement, the small concentrations subject to the *de minimis* exemption are not necessarily small quantities and may contribute significantly to exceeding the lowered reporting thresholds.

Some commenters argue that the Agency has not justified why the exemption will result in increased health risk to the public or the environment. One commenter specifically argues that given the extremely low levels of these PBT chemicals in coal, the risk to the general public from these releases, which they believe is the original purpose of the legislation, is not apparent. Another commenter asserts that EPA must demonstrate that the removal of the exemption for specific PBT chemicals will have a public health or environmental benefit. Yet another commenter argues that the concentration of toxic chemicals contained in mixtures is irrelevant to public health concerns when the compounds of concern remain chemically bound within benign compounds.

EPA strongly disagrees with those commenters who indicated that EPA must consider risk to the general public when determining whether to eliminate the *de minimis* exemption. A primary purpose of the TRI program is to provide data on the releases (and other waste management activities) of listed toxic chemicals to communities so that they may use these data in conjunction with toxicity information for the chemical and site-specific information to determine if releases present a potential risk. They can also use TRI data in other ways. For example, an individual can use TRI data as a factor

in choosing a neighborhood in which to live. The purpose of TRI, however, is not to make a national determination of risk, nor did EPA consider risk in its original adoption of the *de minimis* exemption under EPCRA section 313.

Moreover, as previously explained, EPA originally promulgated the *de minimis* exemption based on several considerations that are inapplicable to PBT chemicals. Where, as here, the rationale and factual bases underlying an exemption no longer exist with respect to a particular class, the Agency believes it cannot justify retaining the exemption for that class. Further, the Agency has received no information from any commenters that contradicts the Agency's factual and legal conclusions, or that would otherwise present a basis for retention of the *de minimis* exemption.

EPA also disagrees with the comment that because there are very low levels of PBT chemicals (e.g., mercury) in coal that the risk to the general public is not apparent. EPA believes that the commenter misunderstands the concept of risk. Because a chemical is in a low concentration in coal does not in itself control the level of risk that can result when coal is combusted. For example, mercury compounds are found in very low concentrations in coal. When coal is combusted, mercury compounds are either converted into mercury chloride or reduced to elemental mercury. Some of the mercury/mercury chloride is released to air and some remains in the bottom ash. The concentration of the mercury/mercury chloride in the air wastestream will not be the same as the concentration originally present in the coal. Once the mercury/mercury chloride is released, it will be carried varying distances before it is deposited. Mercury can be transported over large distances, while mercury chloride may be deposited relatively rapidly by wet and dry deposition processes. The amount of mercury in a community or ecosystem will depend upon sources both local and distant. Once mercury has been deposited, it will bioaccumulate in organisms and will also persist in the environment as a sink for exposure and bioaccumulation. The amount of mercury that a human, animal, or plant will be exposed to is related more closely to exposure pathways and the quantity that is present in an ecosystem rather than the concentration in the coal that is combusted. Thus, EPA believes that the commenter is incorrect.

One commenter asserts that the elimination of the *de minimis* thresholds would not yield meaningful additional information. The commenter

argues that the proposed rule vastly overstates the significance of TRI data and therefore incorrectly concludes that the *de minimis* thresholds would "deprive communities of important information on PBT chemicals" (at 64 FR 714). Instead, the commenter contends, TRI data only provide a snapshot view of releases from the chemical industry and the few other industry sectors subject to TRI reporting and that many potential release sources are not subject to TRI reporting. The commenter argues that these sources overwhelm the limited additional information that will be reported by eliminating the *de minimis* exemption.

EPA disagrees that the proposed rule vastly overstates the significance of the TRI data. The public, all levels of government, and the regulated community have come to rely on TRI data in improving decision-making, measuring pollution prevention, and understanding the environmental and health consequences of toxic chemical releases and other waste management activities. Although the Toxics Release Inventory does not contain a complete inventory of every release, EPA believes it does provide one of the most comprehensive and accessible sources of release and other waste management information available. EPA also disagrees with the commenter's assertion that the data base only contains information from the chemical industry and a few others. In fact, all 20 manufacturing industry groups as well as an additional 7 other industries including metal and coal mining facilities and hazardous waste management facilities are subject to EPCRA section 313. Further, with the addition of these 7 newly covered industries, EPA expects over 27,500 facilities to submit over 110,000 reports on more than 630 toxic chemicals to the TRI for the 1998 reporting year. Currently no other sources of information can provide releases and information on other waste management quantities and qualitative source reduction data with the scope, level of detail, and chemical coverage as data currently included in TRI.

Further, as EPA has previously explained, PBT chemicals can remain in the environment for a significant amount of time and can bioaccumulate in animal tissues. Even relatively small releases of such chemicals have the potential to accumulate over time and cause significant adverse impacts on human health and the environment. Therefore, EPA believes it is particularly important to gather and disseminate to the public relevant information on even relatively small amounts of releases and

other waste management of PBT chemicals. Under the 10,000 and 25,000 pound/year reporting thresholds, a significant amount of the releases and other waste management activities involving PBT chemicals are not being captured and thus the public does not have the information needed to determine if these chemicals are present in their communities at levels that may pose a significant risk.

Several commenters argue that the *de minimis* exemption already does not apply to the manufacture of a toxic chemical unless the toxic chemical is manufactured as an impurity or is imported. Therefore, any incidental manufacturing of a PBT chemical as a by-product would not be eligible for the *de minimis* exemption and would be subject to reporting. Thus, they argue, the elimination of the exemption will provide little additional information and will not provide added value.

The commenters are correct in stating that there are instances where PBT chemicals are manufactured as by-products and would, therefore, not be affected by the elimination of the *de minimis* exemption. However, as EPA explained in the PBT proposal, there are also many instances where a PBT chemical may exist in a mixture or trade name product at a concentration below the 1% or 0.1% *de minimis* limit but where the processing or otherwise use of the PBT chemical in that mixture would otherwise contribute significantly to or in itself exceed the reporting thresholds (at 64 FR 714). For example, mercury can be found at very low concentrations in steel. A resmelting facility could process and release more than 100 pounds of mercury a year from its resmelting activities. However, although this total quantity is greater than the 10 pound proposed threshold for mercury, if the concentration of mercury in the steel is less than the *de minimis* limit, none of the mercury would be reportable if the *de minimis* level is retained for PBT chemicals. Releases and other waste management associated with these exempt activities would be absent from the TRI data base. Because even minimal releases of PBT chemicals may result in elevated concentrations in the environment or in an organism and can have the potential to cause an adverse effect, EPA believes that all releases of these chemicals are of concern and that such information is significant and of value to the public.

a. *Readily available data.* Some commenters assert that the elimination of the *de minimis* exemption will conflict with the condition that reporters obtain data from readily

available sources. They argue that because concentrations below 1% (and 0.1% for carcinogens) are not required on MSDSs, reporters will no longer be able to use MSDSs to screen for products containing PBT chemicals below these concentrations. They further contend that AP-42 guidance, Air CHIEF CD-ROM, TANKS, CHEMDAT8 and WATER8 would provide additional assistance in estimating the amount of a PBT coincidentally manufactured in wastestreams or released; however, these tools will not help quantify the amount of chemical in materials which are distributed in commerce or used as feedstock. They assert that there are no other consistent sources of information on whether a product contains a PBT chemical below *de minimis* levels. They also assert that the elimination of the *de minimis* exemption will cause additional burden for the regulated community because covered facilities will struggle with how to comply in the absence of information.

The Agency believes that since reporting first began in 1988, new sources of information have become available to covered facilities to use to determine concentrations of toxic chemicals in mixtures. In addition to the data bases and information sources cited by the commenter, EPA believes there are other sources of data that can and should be used in making threshold determinations and release and other waste management calculations for PBT chemicals. Examples of these sources of information include EPA guidance documents (e.g., *EPCRA Section 313 Industry Guidance: Electricity Generating Facilities* (EPA 745-B-99-003)) and trade association guidance documents (e.g., National Council of the Paper Industry for Air and Stream Improvement (NCASI) Technical Bulletins and NCASI's *Handbook of Chemical Specific Information for SARA Title III Section 313 Form R Reporting*). In addition, relevant information has become much more accessible to covered facilities over the past 10 years. For example, the United States Geological Survey's U.S. Coal Quality Database has been in existence since the mid 1970s, but only more recently has it been made available on the Internet. (<http://energy.er.usgs.gov/products/databases/UScoal/index.htm>) EPA believes that these tools, in addition to the ones cited by the commenter, will help covered facilities quantify the amount of chemical in materials which are distributed in commerce or used as feedstock and will allow covered facilities to make

reasonable calculations to comply with EPCRA section 313. Further, the Agency believes that it underestimated how much information covered facilities had available to them in 1988 regarding small concentrations of toxic chemicals in mixtures. Therefore, EPA believes that facilities have sufficient information to make threshold determinations and release and other waste management calculations for PBT chemicals below *de minimis* concentrations. However, as EPA explained above, if a covered facility has no information, including no reasonable estimates or other reasonably known information, on the concentration of the toxic chemical in the mixture, they need not consider the chemical in that mixture for threshold determinations and release and other waste management calculations (at 53 FR 4511). Therefore if the only source of information on a toxic chemical in a mixture is from an MSDS, and the MSDS does not indicate if the chemical is contained in the mixture, the facility is not required to consider the toxic chemical towards threshold determinations or release and other waste management calculations.

Because some facilities covered under EPCRA section 313 have more extensive information available to them than they did in 1988, or EPA underestimated how much information they had available in 1988, and because these facilities are not required to report if they have no information on the concentration of the toxic chemical, the Agency believes that in these cases retention of the *de minimis* exemption would allow facilities to avoid reporting when information is available to them that would otherwise permit them to report.

Some commenters assert that facilities will have to begin monitoring for trace quantities of chemicals in mixtures if the *de minimis* exemption is eliminated for PBT chemicals. One commenter argues that the only way facilities would be able to estimate the levels of dioxin in combustion products and wastewater treatment "would be to undertake the costly burden of monitoring what comes off at a series of concentrations and temperatures." Another commenter asserts that if the *de minimis* level is eliminated, industry would be subject to increased enforcement action because exhaustive testing may be insufficient to detect the chemicals.

EPA disagrees with the commenters because, as stated previously, EPCRA section 313(g)(2) limits monitoring requirements under EPCRA section 313. Under this section, facilities are not required to perform any additional

monitoring or analysis of production, process or use other than that already collected under other requirements. However, if a facility is required to monitor toxic chemicals under another statute, this data must be considered in determining thresholds and release and other waste management calculations under EPCRA section 313. EPCRA section 313(g)(2) requires that facilities use readily available data, or in absence of such data, facilities are required to use reasonable estimates. If no monitoring data are available, the facility should use other readily available information in making threshold determinations and release and other waste management calculations. Further, if the facility believes that it has other, more representative data than its monitoring data, the facility should use that information instead.

As to specifically tracking PBT chemicals in wastewater, the commenter does not specify whether the toxic chemicals discussed in the comment are manufactured as by-products, are processed, or otherwise used. As discussed above, the *de minimis* exemption does not apply to toxic chemicals manufactured as by-products. Therefore, if PBT chemicals are coincidentally manufactured during on-site wastewater treatment, covered facilities would be required to consider those PBT toxic chemicals for threshold determinations and release and other waste management calculations even if the *de minimis* exemption were retained for PBT chemicals. Similarly, PBT chemicals manufactured as a result of burning fuel would not be exempt even if the *de minimis* exemption were retained because manufactured by-products are not eligible for this exemption. PBT chemicals in below *de minimis* concentrations in mixtures that are imported, processed, or otherwise used will be affected by the elimination of the *de minimis* exemption. Covered facilities will need to consider these quantities towards threshold determinations and release and other waste management calculations. These calculations would include the amounts contained in combustion by-products and wastewater treatment units. Additional monitoring of these quantities, however, would not be required under EPCRA section 313. Finally, EPA has limited the dioxin listing with the qualifier "manufacturing; and the processing or otherwise use of dioxin and dioxin-like compounds if the dioxin and dioxin-like compounds are present as contaminants in a chemical and if they were created

during the manufacturing of that chemical." Therefore, not all processing or otherwise use activities of the dioxin and dioxin-like compounds category must be considered towards a facility's threshold determinations.

Some commenters assert that EPA should maintain the *de minimis* exemption for PBT chemicals present as impurities. They argue that information on PBT chemicals present as impurities is not readily available and that obtaining the relevant data, conducting the initial reviews to determine what information is available, and identifying data gaps would impose a huge burden on industry. They argue that even developing estimates with any accuracy entails a significant amount of time. In the instance of impurities, they assert that the absence of data and the difficulty in developing estimates will result in a heavy burden with little information of value being reported. These commenters believe that the elimination of the *de minimis* level is a requirement to provide new data when utilizing the *de minimis* exemption.

EPA disagrees with these commenters. Although there are burdens associated with obtaining relevant data, determining available information and identifying data gaps, EPA disagrees that the elimination of the *de minimis* exemption for PBT chemicals present as impurities would vastly increase the extent of this required effort. From the comment, it is unclear why requiring facilities to identify and evaluate process streams containing small quantities of PBT chemicals as impurities is more burdensome than for larger quantities of these chemicals manufactured, processed, or otherwise used at a covered facility in excess of the activity thresholds. For example, a facility monitors for chemical A at a concentration of greater than 0.001% and monitors for chemical B at a concentration of greater than 1.5%. The monitoring is done for the same wastestream and the same frequency. There is no differential in effort or burden. Currently, the only difference is that facilities can ignore available data when utilizing the *de minimis* exemption.

One commenter asserts that the *de minimis* exemption should be retained for PBT chemicals present at mining facilities. The commenter argues that the burden upon the mining industry is even greater in the context of the low thresholds proposed for PBT chemicals. Further, the commenter asserts that although EPCRA does not require covered facilities to conduct tests concerning the amount of listed

chemicals processed, most reporters rely upon their knowledge of their manufacturing processes and raw materials to produce meaningful data for EPCRA section 313 reporting purposes. The commenter contends that this is not true of the mining industry. Due to the volume of materials moved in the extraction process and the heterogeneous nature of the materials mined, process knowledge often is inadequate to produce a meaningful picture of the minute levels of PBT chemicals that may be present in mining operations. The commenter asserts that inadequate process knowledge combined with the enormous expense of constantly testing the processed materials makes the elimination of the *de minimis* exemption for PBT chemicals unworkable as applied to mining operations.

EPA disagrees with the commenter. As the commenter points out, under EPCRA section 313(g)(2), facilities are not required to perform any additional monitoring or analysis of production, process, or use other than that already collected under other statutory or regulatory requirements. Therefore, there should be no added cost due to testing to comply with EPCRA section 313. However, EPA believes that in many cases mining facilities have the information needed to make reasonable estimates regarding small concentrations of PBT chemicals in the ores mined. In addition, as EPA explained in the 1988 final rule, if a covered facility has no information on the concentration of the toxic chemical in the mixture, including no reasonable estimates, the facility need not consider the chemical in that mixture for threshold determinations and release and other waste management calculations. If a mining facility does have information regarding the concentration of a toxic chemical in a mixture or trade name product, the facility must consider all non-exempted sources of the chemical for threshold determinations. If an activity threshold is exceeded for the chemical, the facility must then calculate release and other waste management quantities. Covered mining facilities will need to identify and evaluate process streams when considering a PBT chemical in concentrations below the *de minimis* level just as they already do for toxic chemicals found in process streams in concentrations above the *de minimis* level. Therefore, given that covered facilities: (1) Are not required to perform additional monitoring; (2) are not required to consider concentrations of toxic chemicals for which they have

no information; and (3) need only consider readily available data, EPA disagrees that identifying and evaluating mining activities involving mixtures containing less than 1.0% or 0.1% concentrations of PBT chemicals will be more burdensome than for larger quantities of these chemicals manufactured, processed, or otherwise used at a mining facility in excess of the activity thresholds.

b. *Alternate de minimis level.* Several commenters argue that in lieu of eliminating the *de minimis* exemption for PBT chemicals, it would make more sense to change the level for the *de minimis* exemption for these chemicals. Some commenters argue that a more appropriate approach would be to compare the current thresholds and the current *de minimis* levels and use the same ratio to create a new *de minimis* level for the lowered PBT chemical thresholds. Therefore, they argue, the existing level is 1% for a threshold of 10,000 pounds, so an analogous reduction of the *de minimis* level would be 0.01% for the new proposed threshold of 100 pounds and 0.001% for the new proposed threshold of 10 pounds per year and 1 ppb for dioxins. One commenter argues that the current *de minimis* level of 0.1% for known or suspected carcinogens is not appropriate for dioxins. They suggest that EPA lower the *de minimis* exemption for dioxins proportionally to the lower reporting threshold EPA sets in the final rule. They assert that a reporting threshold for dioxins of 0.002 pound TEQ (not the threshold in the PBT proposal nor the one that EPA is finalizing today), is approximately seven orders of magnitude less than the current 10,000 pound threshold. Therefore, they argue, the 0.1% *de minimis* exemption should be lowered proportionally to  $1 \times 10^{-8}\%$ . This translates to a concentration of 100 parts per trillion.

EPA disagrees with these commenters. As explained previously, EPA adopted the *de minimis* exemption for several reasons including the desire to be consistent with information mandated by the OSHA HCS. This OSHA standard requires the listing of hazardous chemicals on MSDSs but allows chemical suppliers to omit from the MSDSs hazardous chemicals that are below certain concentrations: Specifically, levels of 0.1% for OSHA carcinogens and 1.0% for other hazardous chemicals. However, the rationale for the OSHA HCS *de minimis* exemption is not relevant to PBT chemicals and therefore, is insufficient by itself to support an alternative *de minimis* exemption for PBT chemicals.

As explained in the 1983 final rule, OSHA chose the 1.0% concentration limit based on comments that this level seemed to be sufficiently protective of workers and was considered to be reasonable by a number of commenters (48 FR 53280, at 53290, November 25, 1983). OSHA was also persuaded by comments that in some instances the 1.0% cut-off levels may not be protective enough with respect to certain health hazards and adopted the 0.1% level for carcinogens (at 48 FR 53292). Specifically, PBT chemicals are of concern because they persist and bioaccumulate in the environment. Persistence and bioaccumulation were not considered as a part of the OSHA rulemaking. In addition, as explained in other responses in this unit, EPA's original rationale for this exemption is inapplicable to PBT chemicals, and the commenters have provided no alternate rationale to support an exemption based on extrapolating new *de minimis* levels from the proposed thresholds. Therefore, given the different intents between the OSHA HCS and EPCRA section 313, EPA does not believe that creating alternative *de minimis* levels for PBT chemicals based on a ratio between the lowered threshold and the OSHA HCS levels is appropriate.

Several commenters support EPA's elimination of the *de minimis* exemption for PBT chemicals. They assert that retention of the *de minimis* exemption would undermine the changes to the reporting threshold and would allow an unnecessary loophole from reporting. They assert that the rule does not require any additional testing for impurities and that the only additional reporting would be for those facilities that use sufficient quantities of mixtures or trade name products containing PBT chemicals as impurities. One commenter asserts that one of the original reasons for the *de minimis* exemption levels, that it was based on OSHA HCS thresholds of 1.0% for hazardous chemicals in mixtures and 0.1% for carcinogens in mixtures, does not apply to raw materials that are not manufactured chemicals, such as crude oil, coal, and mining inputs.

EPA agrees with these commenters and is eliminating the *de minimis* exemption for PBT chemicals addressed in today's rule. As discussed above, the reasons EPA indicated for originally adopting the *de minimis* exemption are not applicable to PBT chemicals. In addition, EPA has received no compelling arguments from commenters to extend the *de minimis* exemption to PBT chemicals. Because the purpose of today's rulemaking is different from past rulemakings in that it is intended to

capture information on significantly smaller quantities of releases and other waste management associated with these chemicals, the *de minimis* exemption could significantly limit the amount of reporting on PBT chemicals. Therefore, given that: (1) Covered facilities have several sources of information available to them regarding the concentration of PBT chemicals in mixtures; (2) even minimal releases of persistent bioaccumulative chemicals may result in significant adverse effects and can reasonably be expected to significantly contribute to the proposed lower thresholds; and (3) the concentration levels chosen, in part, to be consistent with the OSHA HCS are inappropriately high for PBT chemicals, EPA believes that the reasons for the *de minimis* exemption that the Agency held for previous rulemakings do not apply to PBT chemicals. EPA is therefore eliminating the *de minimis* exemption for PBT chemicals.

*c. Supplier notification.* Several commenters were confused by EPA's failure to modify the *de minimis* exemption for PBT chemicals under the supplier notification requirements. As explained in the PBT proposal, the Agency believes that covered facilities have sufficient information available to them on PBT chemicals. The requirement of additional information under the supplier notification requirements would result in redundancies. Commenters that correctly understood EPA's inaction on this topic support the retention of the *de minimis* exemption for purposes of Subpart C Supplier Notification Requirements under 40 CFR 372.45(d)(1). EPA agrees with these commenters and has therefore taken no action on the supplier notification requirements for PBT chemicals.

*2. Other exemptions.* Although the Agency received several comments regarding the existing exemptions, EPA is not modifying any of these exemptions in this rule. Any changes to these exemptions would require additional rulemaking, and any comments submitted to EPA during this rulemaking will be considered as part of EPA's evaluation of these exemptions.

*3. Use of alternate threshold and Form A.* One issue that commenters raise relates to EPA's proposal to exclude all PBT chemicals from the alternate threshold of 1 million pounds for PBT chemicals. Several commenters argue that EPA should retain the alternate threshold of 1 million pounds for PBT chemicals. EPA disagrees. As stated in detail in the proposal, EPA believes that use of the existing alternate threshold and reportable quantity for

Form A would be inconsistent with the intent of expanded PBT chemical reporting. The general information provided on the Form A, on the quantities of the chemical that the facility manages as waste is insufficient for conducting meaningful analyses on PBT chemicals.

A commenter states that because PACs in fuel are destroyed during combustion, EPA should retain the alternate threshold or provide a new alternate threshold. First, the commenter did not provide any information to support the contention that PACs in fuel are destroyed during combustion. And, to the contrary, EPA believes that, even if some or all of the PACs in fuel are destroyed during combustion, additional PACs may be created during the combustion process. Consequently, absent any information to support the basis for such an option, or the need for an alternate threshold, EPA does not believe it would be appropriate at this time to provide a new alternate Form A threshold. Although EPA solicited comments on this issue in the proposal, at this time, the Agency believes that it is appropriate to collect and analyze several years worth of data at the lowered thresholds before EPA considers developing a new alternate threshold and reportable quantity appropriate for PBT chemicals.

In addition, the commenter also appears to be raising a broader issue than just the destruction of PACs during combustion. The commenter implies that when a facility estimates its releases to be zero, the facility should be eligible to use the Form A. However, the commenter appears to misunderstand how to calculate the amounts required to determine eligibility for the Form A. Facilities may use the Form A provided that they do not exceed 500 pounds for the total annual reportable amount for a chemical, and that their amounts manufactured or processed or otherwise used do not exceed 1 million pounds. The annual reportable amount is equal to the combined total quantities released at the facility, treated at the facility, recovered at the facility as a result of recycle operations, combusted for the purpose of energy recovery at the facility, and amounts transferred from the facility to off-site locations for the purpose of recycle, energy recovery, treatment, and/or disposal. The commenter only appears to consider their releases as reportable amounts and does not appear to consider quantities generated from their other waste management activities as reportable amounts. This additional waste management information on PBT chemicals is very important to

communities because it helps them understand the quantities of EPCRA section 313 chemicals that are being transported through their communities, the destination of these EPCRA section 313 chemicals, as well as the reported waste management activity at the receiving facility. In conclusion, EPA has not proposed to disregard this waste management information in calculating the annual reportable amount, therefore the commenter's approach is not consistent with current reporting under Form A or appropriate as an approach for reporting on PBT chemicals.

The commenter also states that the alternate threshold should be retained in order to ensure that only meaningful amounts of substances are reported under EPCRA section 313. EPA disagrees that retention of the alternate threshold would ensure that only meaningful information is reported under EPCRA section 313. The 500 pound waste eligibility could be interpreted by some data users, as a worst case, to mean that greater than 500 pounds of the chemical has been released into the environment (i.e., 500 pounds of production-related waste as release and some quantity of catastrophic release). Other data users may assume that the facility had no catastrophic releases and all of the toxic chemical in waste was managed in a manner other than as a release, e.g., the toxic chemical in waste was recycled. For PBT chemicals where any release is a concern, an uncertainty level of 500 pounds may result in data that is virtually unusable. As a result, EPA does not agree with the commenter that the alternate threshold will ensure that only meaningful amounts of substances will be reported under EPCRA section 313.

In addition, the commenter argues elimination of the alternate threshold for PBT chemicals will cause reporting burdens to increase while failing to provide for the collection of substantial additional release information. EPA's economic analysis used reporting costs for the Form R to estimate the costs to those facilities that would not be able to use the alternate threshold. The economic analysis also evaluated the benefits of the collection of additional release and other waste management of PBT chemicals (Ref. 67). The commenter does not dispute those estimates. As a result, EPA sees no compelling argument to revise its decision to exclude all PBT chemicals from the alternate threshold of 1 million pounds.

A number of commenters argue that EPA should eliminate the alternate threshold of 1 million pounds for all

PBT chemicals on the EPCRA section 313 list. One commenter asserts that in light of the relatively small quantities of concern for PBT chemicals, particularly those with no deliberate commercial manufacture, it makes little sense to retain the Form A. The commenter further states that it believes that a modified Form A would be inappropriate due to the concern over releases of these chemicals at low levels. Another commenter adds that the Form A is clearly inappropriate for chemicals that will now have thresholds significantly lower than the 500 pound waste generation level. The commenter further contends that it is not appropriate for EPA to set a new Form A threshold for PBT chemicals, given the need to collect more information on these substances.

EPA agrees with the commenters that all PBT chemicals should be excluded from the alternate threshold of 1 million pounds. As stated in detail in the proposal, EPA believes that use of the existing alternate threshold and reportable quantity for Form A would be inconsistent with the intent of expanded PBT chemical reporting (at 64 FR 715-716). The general information provided in the Form A on the quantities of the chemical that the facility manages as waste is insufficient for conducting meaningful analyses on PBT chemicals.

EPA also agrees that a new alternate threshold for PBT chemicals would be inappropriate due to the concern over releases and other waste management of these chemicals at low levels. As stated in the proposal, even small quantities of persistent bioaccumulative chemicals may cause elevated concentrations in the environment and organisms that may cause significant adverse effects. Given the persistent and bioaccumulative nature of these chemicals and the need for the public to have information about smaller amounts of these PBT chemicals, EPA believes it would be inappropriate at this time to allow an option that would exclude significant information on some releases and other waste management of these chemicals.

In response to EPA's proposal to exclude all PBT chemicals from the alternate threshold of 1 million pounds, one commenter argues that EPA should consider establishing a new alternate reporting threshold for these chemicals. The commenter states that, at a minimum, an alternate reporting threshold of 10 to 100 pounds would be consistent with the throughput-reporting threshold proposed for all PBT chemicals except dioxins. The commenter further states that the SBA's analysis suggests significant reductions

in burden associated with alternate reporting thresholds of 50 pounds for PBT chemicals. The commenter states that, based on an SBA study commissioned of petroleum bulk plants, which it estimates will be the largest group of reporters under this proposal, it finds that most of the reports avoided by this alternate threshold would reflect zero releases.

EPA disagrees with the comment suggesting that a new alternate threshold be established for PBT chemicals. As stated in the proposal, even small quantities of persistent bioaccumulative chemicals may cause elevated concentrations in the environment and organisms that may cause significant adverse effects. Given the persistent and bioaccumulative nature of these chemicals and the need for the public to have information about smaller amounts of these PBT chemicals, EPA believes it would be inappropriate at this time to allow an option that would exclude significant information on some releases and other waste management of these chemicals. The general information provided in the Form A on the quantities of the chemical that the facility manages as waste is insufficient for conducting meaningful analyses on PBT chemicals. Therefore, EPA does not agree that a new alternate threshold for PBT chemicals should be established.

The commenter also suggests that reporting burdens will increase while failing to provide for the collection of substantial additional release information. EPA's economic analysis used reporting costs for the Form R to estimate the costs to those facilities that would not be able to use the alternate threshold. The economic analysis also evaluated the benefits of the collection of additional release and other waste management of PBT chemicals (Ref. 67). The commenter does not dispute those estimates. As a result, EPA sees no compelling argument to revise its decision to exclude all PBT chemicals from the alternate threshold of 1 million pounds.

*4. Data precision issues—*a. *Use of significant digits, half pound and whole numbers.* EPA proposed to require reporting of all releases and other waste management quantities of PBT chemicals (except dioxin) that are greater than  $\frac{1}{10}$  of a pound, provided that the accuracy in the underlying data on which the estimate is based supports this level of precision. EPA further stated that releases and other waste management quantities would continue to be reported to two significant digits. In addition, EPA stated that for quantities of 10 pounds or greater, only

whole numbers would be required to be reported. For the category of dioxin and dioxin-like compounds, which have a proposed reporting threshold of 0.1 gram, EPA proposed that facilities report all releases and other waste management activities greater than 100 µg (i.e., 0.0001 gram).

After reviewing all comments on this issue, EPA is providing the following guidance on the level of precision covered facilities should use to report their releases and other waste management quantities of PBT chemicals. Facilities should continue to report releases and other waste management amounts greater than 1/10 of a pound (except dioxin), at a level of precision supported by the accuracy of the underlying data and the estimation techniques on which the estimate is based.

This approach is consistent with the statutory reporting requirements when estimating reportable amounts. The statute requires facilities to, among other things, report "[t]he annual quantity of the toxic chemical entering each environmental medium." (42 U.S.C. 11023(g)(1)(C)(iv)). To determine this "annual quantity," the statute directs facilities to use readily available data (including monitoring data). When such data are not readily available, the statute directs facilities to use reasonable estimates. (42 U.S.C. 11023(g)(2)). However, while the statute allows for some level of imprecision regarding reportable amounts, it does not create an exemption or exception that would allow facilities to report less precisely than provided for by their data or estimation techniques. Therefore, facilities should report PBT chemicals as precisely as their estimation techniques or readily available data allow. If a facility's release or other management calculations support reporting an amount that is more precise than two significant digits, then the facility should report that more precise amount.

b. *Use of range reporting.* In the preamble to the proposed rule, EPA requested comments on its proposal to eliminate the use of range reporting in Form Rs for PBT chemicals. Commenters disagree with the proposal for a number of reasons outlined below.

Commenters argue that applying different reporting conventions for PBT chemicals would complicate EPCRA section 313 reporting, cause compliance difficulty, and introduce data inconsistencies (i.e., ranges for some chemicals but not for others). Commenters also argue that eliminating the use of range reporting for PBT chemicals has the potential to mislead

the public and divert attention from actual risks.

EPA disagrees that the elimination of the use of range reporting for PBT chemicals will cause insurmountable obstacles to EPCRA section 313 reporting and cause compliance difficulties and data inconsistencies. There are already many different industries that report to EPA for 643 chemicals. EPA provides numerous guidance documents and training opportunities to reporting industries. With the finalization of the PBT rule, EPA will provide updated guidance documents, will prepare and provide, in those cases where it is appropriate, chemical-specific guidance documents, and will continue to offer training in order to assist facilities in reporting under EPCRA section 313. EPA also believes that the Agency will be able to adequately explain to the public the different reporting requirements for PBT chemicals so that they are put in context of other TRI data. EPA currently does this for other types of chemicals on the EPCRA section 313 list such as metals and pesticides.

Additionally, EPA believes that the elimination of range reporting is a critical part of this rulemaking, of which the ultimate intent is to provide useful information on PBT chemicals to assist communities in determining if PBT chemicals are present in their communities at levels that may pose an unacceptable risk. This information on PBT chemicals can also be used by government agencies and others to identify problems, set priorities, and take appropriate steps to reduce any potential risks to human health and the environment. Consequently, the information collected about these PBT chemicals will inform the public rather than mislead the public and will actually assist the public in determining the risk of PBT chemicals in their communities.

Commenters also argue that reporting numerical values for PBT chemicals assumes a level of accuracy that generally does not exist in the measurement of releases. In addition, commenters state that estimating numerical values would require the use of material balances, which are difficult to apply and essentially inaccurate for chemicals used in low concentrations. Commenters contend that, especially where reports are estimates, ranges may in fact provide more information than point estimates. Commenters argue that, for these reasons, elimination of range reporting will result in inaccurate estimates. Commenters also state that eliminating the use of range reporting for PBT chemicals would give the false

impression of precise data, where uncertainty inherently exists.

As stated in the proposal, EPA believes that the use of ranges could misrepresent data accuracy because the low or the high end range numbers may not really be that close to the estimated value, even taking into account its inherent error (i.e., error in measurements and developing estimates) (at 64 FR 716). The user of the data must make a determination on whether to use the low end of the range, the mid-point, or the upper end. For example, a release of 501 pounds could be misinterpreted as 999 pounds if reported as a range of 500–999. This represents nearly a 100% error. This uncertainty severely limits the applicability of release information where the majority of releases, particularly for PBT chemicals, are expected to be within the amounts eligible for range reporting. The utility of these data would be severely limited given the uncertainty associated with data reported using ranges. Therefore, due to this uncertainty, EPA believes that facilities should report numerical values, not ranges, for PBT chemicals.

In addition, EPA believes that the information available to the typical EPCRA section 313 reporter is generally greater and/or more accessible than it was 10 years ago. Because of this improved information availability, EPA believes that many facilities will be able to accurately estimate releases and off-site transfers for further waste management of PBT chemicals in quantities of less than 1,000 pounds without the use of range codes. Although it may be true that some facilities will be better able to make those estimates than others, EPA does not believe this justifies not collecting the more specific and useful information from those facilities that can provide it.

Further, the Form R and Instructions and annual TRI data release provide information on the methods used to generate information reported and characterize many of the limitations that may apply to the data. This aids the data user in understanding the overall nature of the information available under EPCRA section 313. Facilities are required, for each release or transfer amount, to indicate on the principal method used to determine the amount of release reported. There are codes which allow the facility to indicate whether the estimate is based on monitoring data, mass balance calculations, published emission factors, or other approaches such as engineering calculations or best engineering judgment. By looking at the

information provided through the use of these codes, users of the data can gain an understanding of the degree of accuracy or uncertainty in any particular number reported by a facility. Thus, EPA believes that false impressions will not be communicated to the data user about the accuracy of the information filed.

Finally, EPCRA permits facilities to use reasonable estimates in the absence of readily available data to calculate reportable amounts. Compliance with EPCRA section 313 does not require that additional monitoring or sampling be done. Thus, the statute contemplates some level of imprecision in the data that may be filed, yet, by authorizing reporting based on reasonable estimates, affirms the community right-to-know purposes relative to information based on such reasonable estimates. Reporting releases of low volumes of PBT chemicals based on such reasonable estimates is no different than reporting on other toxic chemicals based on the same kind of information. The TRI data that has been reported since 1987 is a blend of estimates based on monitoring data, mass balance calculations, published emissions factors, and engineering calculations or engineering judgment.

The commenters contend that eliminating the use of range reporting for PBT chemicals would be extremely burdensome to facilities. EPA explained in the proposal that the original intent of providing the range reporting option was primarily as a burden reducing measure focused on small businesses. In past expansion activities, EPA has tried to retain burden reducing options wherever feasible. However, EPA does not expect the elimination of range reporting to significantly affect the unit cost of reporting because many facilities that could use range reporting are not choosing to do so. An analysis of the 1997 data reported under EPCRA section 313 reveals that the number of instances in which a range code was used for reporting quantities in sections 5 and 6 of the Form R was 37,168. These 37,168 instances included 7,605,305 pounds of releases and transfers using the median of the range code reported. However, there were 66,842 instances in which range reporting could have been used (i.e., the amounts reported where below 1,000 pounds), but the reporting facility chose instead to report a number rather than a range. These 66,842 instances included 13,662,758 pounds of releases and transfers. Thus, in 64% of the instances where range reporting could have been used facilities reported a number instead. The fact that in a majority of the instances in which range

reporting could have been used facilities opted to report specific numbers would appear to indicate that the elimination of range reporting for PBT chemicals is unlikely to impose any significant additional burden on facilities.

Therefore, EPA does not expect the elimination of range reporting to have any significant effect on unit reporting costs.

Commenters also argue that the elimination of the use of range reporting for PBT chemicals could result in an increase in the threat to confidential information and a possible increase in trade secret claims. Commenters maintain that Congress considered the need to protect trade secret information in the discussion of reporting chemical use and presence in ranges for EPCRA section 313:

The conference substitute provides for reporting categories of use and ranges of chemicals present because the exact use of an identified chemical at a facility or the exact amount present may disclose secret processes. In some circumstances, this information may need to be reported in terms of broad 43 categories of use or amount ranges. . . . (H.R. Report No. 99-962, 298)

However, EPA believes that the conference report language cited by the commenter clearly refers only to the use of range reporting for the data element entitled "maximum amount of the toxic chemical on-site at any time during the calendar year." EPA is not precluding range reporting for maximum amounts on-site. Contrary to the notion expressed by the commenter, Congress did not expressly direct EPA to allow range reporting for the reporting of releases and transfers off-site for further waste management. Additionally, in the statute, Congress provided the only means and mechanism for facilities to protect confidential business information (CBI) through the statute's trade secret provisions. If the commenter believes that any report filed might reveal confidential information as to the identity of the chemical, the commenter may choose to file a CBI claim by following the procedures as outlined in 40 CFR part 350. In addition, the statute is clear that trade secret claims may only be made for the identity of the chemical. Therefore, EPA believes that Congress adequately provided procedures for the protection of CBI and that a possible increase in CBI claims does not outweigh the need for increased information on releases and other waste management of PBT chemicals. See, *Legislative History* at 5185.

Commenters also argue that eliminating the use of range reporting for PBT chemicals will not result in the

collection of substantial additional release information. EPA disagrees. The issue of range reporting is closely tied to the lowering of the reporting thresholds for PBT chemicals. As EPA noted in the proposal,

Since PBT chemicals can remain in the environment for a significant amount of time and can bioaccumulate in animal tissues, even relatively small releases of such chemicals from individual facilities have the potential to accumulate over time to higher levels and cause significant adverse impacts on human health and the environment.

EPA also noted in the proposal that,

Under current reporting thresholds, a significant amount of the releases and other waste management activities involving PBT chemicals are not being captured and thus the public does not have the information needed to determine if PBT chemicals are present in their communities and at levels that may pose a significant risk.

Therefore, by the lowering of reporting thresholds, EPA will receive important information on the quantities of PBT chemicals being released or otherwise managed as waste. Given the lowering of the reporting thresholds, continued use of ranges could misrepresent data accuracy because the low or the high end range numbers may not really be that close to the estimated value, even taking into account any inherent error (i.e., errors in measurements and developing estimates). The user of the data must make a determination on whether to use the low end of the range, the mid-point, or the upper end. For example, a release of 501 pounds could be misinterpreted as 999 pounds if reported as a range of 500-999. This represents a nearly 100% error. This uncertainty severely limits the applicability of release information where the majority of releases, particularly for PBT chemicals, are expected to be within the amounts eligible for range reporting. Given that the large uncertainty would be part of these data and would severely limit their utility, EPA has concluded that facilities must report numerical values, not ranges, for PBT chemicals.

In addition to the above comments, several commenters recommend the use of multiple ranges rather than total elimination of ranges just for PBT chemicals. One commenter generally agrees with EPA's position that reporting ranges "B" (11 to 499 pounds) and "C" (500 to 999 pounds), as they currently exist, may be too broad to provide meaningful information for PBT chemicals. Because the proposal does not impose any new obligation to measure or test beyond what is currently required, however, the commenter believes it is still

appropriate to retain the "A" reporting range of 1 to 10 pounds for PBT chemicals. The commenter contends that the use of a specific number conveys a sense of precision that may not actually exist. The commenter argues that the retention of the "A" reporting range in its current form, coupled with the new reporting range of "greater than zero, but less than 1 pound," will provide meaningful and valuable information to the public on PBT chemical transfers or releases.

Another commenter agrees with the purpose underlying the EPA's proposal to prohibit the use of range reporting for PBT chemicals and believes the ranges authorized under the current rules are too broad to be useful for PBT chemicals. However, the commenter believes that EPA should recognize that reporting in ranges is often necessary because uncertainty makes the selection of a single number arbitrary.

Another commenter argues that EPA should retain range reporting for PBT chemicals, even if the ranges are lower than those allowed for non-PBT chemicals. The commenter further contends that they believe that range reporting helps to correct some of the error introduced to EPCRA section 313 reporting through the use of estimates.

EPA disagrees that the Agency should retain the "A" reporting range of 1 to 10 pounds for PBT chemicals or that the Agency should retain some form of range reporting for PBT chemicals. As stated in the proposal, EPA believes that the use of ranges could misrepresent data accuracy because the low or the high end range numbers may not really be that close to the estimated value, even taking into account its inherent error (i.e., error in measurements and developing estimates). The user of the data must make a determination on whether to use the low end of the range, the mid-point, or the upper end. For example, a release of 501 pounds could be misinterpreted as 999 pounds if reported as a range of 500-999. This represents a nearly 100% error. Even with a lower range such as 1 to 10 pounds, the uncertainty associated with range reporting could severely limit the applicability of release information for PBT chemicals. Numerical values are particularly important since PBT chemicals can remain in the environment for a significant amount of time and can bioaccumulate in animal tissues. This means that even relatively small releases of such chemicals from individual facilities have the potential to accumulate over time to higher levels and cause adverse impacts on the environment and organisms. The utility of these data would be limited given the

uncertainty associated with data reported using ranges. Therefore, due to this uncertainty, EPA is requiring that facilities report numerical values, not ranges, for PBT chemicals.

In addition, EPA believes that the information available to the typical EPCRA section 313 reporter is generally greater and more accessible than it was 10 years ago. Because of this improved information availability, EPA believes that facilities will be able to accurately estimate releases and off-site transfers for further waste management of PBT chemicals in quantities of less than 1,000 pounds without the use of range codes. Although it may be true that some facilities will be better able to make those estimates than others, EPA does not believe this justifies not collecting the more specific and useful information from those facilities that can provide it. Further, in the Form R, facilities are required, for each release or transfer amount, to indicate the principal method used to determine the amount of release reported. There are codes which allow the facility to indicate whether the estimate is based on monitoring data, mass balance calculations, published emission factors, or other approaches such as engineering calculations or best engineering judgment. By looking at the information provided through the use of these codes, users of the data can gain an understanding of the degree of accuracy or uncertainty in any particular number reported by a facility. Thus, EPA does not believe that false impressions will be communicated to the data user about the accuracy of the information filed.

Finally, as noted earlier EPCRA permits facilities to use reasonable estimates in the absence of readily available data to calculate reportable amounts. EPCRA does not require that additional monitoring or sampling be done in order to report. Thus, the statute contemplates some level of imprecision in the data that may be filed, yet, by authorizing reporting based on reasonable estimates, affirms the community right-to-know purposes relative to information based on such reasonable estimates.

A number of commenters agreed with EPA's proposal that range reporting be eliminated for all PBT chemicals on the EPCRA section 313 list. The commenters agreed with EPA's belief that the use of ranges could misrepresent data accuracy and significantly impact the usefulness of the data.

#### *J. Other Issues*

1. *Placing reported data into context.* Several commenters make the same general comment that EPCRA section 313 does not capture all sources of PBT chemical releases and therefore will not provide a complete or accurate picture of the releases of these chemicals. Commenters criticize the proposal for not putting the PBT releases from EPCRA section 313 covered facilities into context, in terms of either risk or the amount of PBT releases expected from non-covered facilities or sources. EPA disagrees with the implication by several commenters that simply because EPCRA section 313 may not capture all the sources of releases of PBT chemicals EPA should not attempt to capture more information from the facilities that do report under EPCRA section 313. This comment has been voiced in every major rulemaking under EPCRA section 313 but, as EPA has stated in the past, this is not an argument that EPA believes should restrict any efforts to collect additional data under EPCRA section 313. The mere fact that for some chemicals significant release sources are not captured does not in any way diminish the importance of the information that can be provided by those facilities that are required to report under EPCRA section 313. There is currently no one single reporting requirement that captures all of the releases of PBT chemicals and makes that information available to the public. For those chemicals that do have large release sources not captured under EPCRA section 313, EPA will use all available data to aid its actions and those of other international and national organizations and the public in efforts to address concerns on PBT chemicals. For example, all data will be considered to aid EPA's PBT strategy or other EPA PBT related programs; EPA will not rely solely on the data collected under EPCRA section 313. In addition, if there are significant sources of PBT chemicals that are not reported under EPCRA section 313, EPA will attempt to let the public know that some sources are not captured. In fact, in the most recent TRI data release documents, EPA has been providing information to the public on other sources of releases for certain EPCRA section 313 chemicals. In addition, EPA will continue to improve and augment public information materials so that users of the data will have information available to put in context the releases and other waste management of PBT chemicals by industries reporting under EPCRA section 313 versus those industries that do not report under EPCRA section 313.

In fact, rather than an argument against lowering the reporting thresholds for PBT chemicals, EPA believes that the argument the commenters are making is one that supports expanding the types of facilities that should be required to report under EPCRA section 313 and not an argument that supports denying the public the right-to-know about PBT chemical releases from EPCRA section 313 covered facilities.

Some commenters stated that since EPA did not use exposure or risk considerations, the data on PBT chemical releases will be misleading to the public by indicating risks where none exist. EPCRA section 313 is not a risk-based reporting system, and, as discussed in Unit VI.F., EPA believes that a risk-based approach to EPCRA section 313 reporting is at odds with the overriding policy of EPCRA section 313, which is to get information about the use, disposition, and management of toxic chemicals into the public domain, enabling the users of this information to evaluate the information and draw their own conclusions about risk. The intent of EPCRA section 313 is to move the determination of which risks are acceptable from EPA to the communities in which the releases occur. This basic, local empowerment is a cornerstone of the right-to-know program. In addition, EPA will continue to improve its annual public data release as well as its outreach and education efforts to assist users in understanding the data. Consequently, EPA disagrees with the commenters that the information reported on releases and other waste management of PBT chemicals will be misleading to the public.

Another commenter states that the quantities of PBT chemicals reported in the TRI will be far smaller than the quantities of other chemicals which pose far less significant health risks. The commenter is concerned that the small quantities could lead members of the public to overlook the data on PBT chemicals. Therefore, the commenter argues that EPA should present PBT data in a way that draws the public's attention to it. The commenter states that it sees a danger that without sufficient education and guidance, the public may either overestimate or underestimate the health risks from PBT chemicals. The commenter believes that EPA should make a commitment to ensuring that the public is given the necessary education and guidance. EPA understands that the quantities of PBT chemicals may be reported in smaller quantities than other chemicals under EPCRA section 313 and that these quantities have the potential to be

overlooked. EPA is also sensitive to the issue that data on PBT chemicals must be presented clearly to assist data users in understanding how the information on PBT chemicals is different from that reported on other chemicals under EPCRA section 313. EPA will continue to improve its annual public data release as well as its outreach and education efforts to assist users in understanding the data. Despite the concerns voiced by the commenters, EPA still believes that it is important to collect and disseminate this information so that communities can use the information with other site-specific factors to determine if releases into their communities result in risks that the community determines warrant further action given other factors, such as economic and environmental conditions, or particularly vulnerable human or ecological populations.

Another commenter expresses concern that release numbers for PBT chemical will not be comparable to those for other chemicals with higher reporting thresholds or to releases of the PBT chemical in previous years. The commenter adds that the lower thresholds may mislead the public into thinking that releases are rising or that a new chemical has been introduced at a facility. EPA understands the commenter's concern but does not believe this is a justification for not collecting additional information about PBT chemicals. EPA believes that it will be able to adequately explain to the public the different reporting requirements for PBT chemicals so that they are put in context of other TRI data. EPA will make clear which PBT chemicals were reportable prior to the finalization of this rule and what the reporting threshold was for these chemicals. Finally, EPA will continue to improve its annual public data release as well as its outreach and education efforts to assist users in understanding the data.

2. *Manufacture only qualifier for chemicals other than dioxin.* Many commenters request that EPA add a "manufacture only" qualifier to all PBT chemicals, not just the dioxin and dioxin-like compounds category. The commenters assert that the addition of the manufacture only qualifier to all PBT chemicals would greatly reduce the burden of the rule. Some commenters suggest that at a minimum the manufacture only qualifier should apply to polychlorinated biphenyls (PCBs), since EPA's rationale for applying the qualifier to dioxin and dioxin-like compounds is equally applicable to PCBs. One commenter contends that EPA's statement that the manufacture

qualifier is appropriate for chemicals that are "ubiquitous in the environment" because otherwise many facilities would be required to report simply due to background levels in raw materials applies to PCBs as well. Some commenters suggest that unintentionally manufactured by-products such as hexachlorobenzene and octachlorostyrene should also have the manufacture only qualifier. Some commenters argue that the burden of the rule could be significantly reduced if EPA focused the reporting effort on the manufacturing sector, which should help concentrate EPA's pollution prevention efforts on the sector most likely to be able to make reductions. Some commenters contend that the primary source for PBT chemicals within the EPCRA section 313 reporting sectors is from manufacturing, and these are the sources that should be focused on for tracking PBT chemicals. Some commenters assert that EPA has acknowledged that many chemicals identified as persistent and bioaccumulative are not imported, processed, or otherwise used, but are manufactured as by-products (at 64 FR 715). Some commenters assert that they agree that manufacturing is the primary source for environmental loading of PBT chemicals from EPCRA section 313 facilities, and thus the effort for reporting should be concentrated on the sources where PBT chemicals are generated and data can be gathered. Some commenters argue that concentration on the manufacturing of PBT chemicals provides an efficient focus for meaningful pollution prevention efforts. Some commenters assert that they are concerned that data from importing, processing, or otherwise use of PBT chemicals will be inaccurate and misleading since processors and users may not have the resources to conduct the analyses required to provide accurate estimates. One commenter contends that the fear of enforcement might motivate those importing, processing, or otherwise using PBT chemicals to report "some amount" and that such information is likely to be inaccurate, and will not accurately reflect the true level of concern. Some commenters assert that instead of requiring reports from the many sources where effective emissions reductions may not be possible, that the addition of a manufacture only activity qualifier for all PBT chemicals will provide the public with the most accurate information on PBT chemical emissions and the best opportunity to monitor EPCRA section 313-related

environmental loading of these chemicals.

EPA believes that in order to obtain any reporting on dioxin and dioxin-like compounds a very low threshold is required, which is several orders of magnitude lower than the thresholds for other PBT chemicals. At such a low reporting threshold it is estimated that thousands of reports could potentially be filed by facilities, mainly food processing facilities, due to the amount of dioxins in the raw materials they process. The dioxins found in the meat and dairy products that food processors handle have been previously released, circulated in the environment, and bioaccumulated in animals, thus these are not additional loadings to the environment but loadings that have already occurred and cycled through the environment due to the persistence and bioaccumulative properties of these compounds. The unique combination of very low thresholds, the number of food processors that would be required to file, and the fact that they would be filing because of the bioaccumulation of previously released material led EPA to propose to add only dioxin and dioxin-like compounds that are manufactured. EPA is finalizing the addition of dioxin with a revised qualifier in response to the unique set of conditions that apply to the reporting of dioxin and dioxin-like compounds. EPA proposed and is finalizing the addition of dioxin with a qualifier to reduce reporting burden on facilities, mainly in the food processing industry, that results from the unique combination of circumstances related to the reporting of these chemicals and to focus on those activities that add to the loading of dioxins in the environment rather than on activities dealing with previously released and bioaccumulated chemicals.

EPA did not conclude and does not believe that the manufacturing activity is the only important source of PBT chemical releases to the environment and believes that other activities such as processing or use can result in significant releases of PBT chemicals, including chemicals released to the environment for the first time. As discussed in Unit VI.G., EPA has modified the dioxin qualifier to reflect this. The unique combination of circumstances that exists for dioxin and dioxin-like compounds does not exist for any of the other PBT chemicals being added by this rule. EPA did not conclude that the manufacture qualifier is generally appropriate for other chemicals that are being added and that are "ubiquitous in the environment." The full statement in the proposal was "These dioxin and dioxin-like

compounds are ubiquitous in the environment and thus under the very low reporting thresholds necessary to get reports from any sources (see discussion in Unit VII.A.2.), facilities that process raw materials would be required to report simply because the raw material contains background levels of these chemicals" (at 64 FR 710). Clearly EPA made this statement in the context of the "very low reporting thresholds necessary to get reports [for the dioxin and dioxin-like compounds category] from any sources." This statement is consistent with the unique combination of circumstances that exists for dioxin and dioxin-like compounds and was not intended to apply to all PBT chemicals.

Neither did EPA conclude that the manufacturing activity is the activity for which facilities would be most likely to be able to make reductions or that EPA's pollution prevention efforts should focus solely on the manufacturing of PBT chemicals. Commenters provided no basis for such a conclusion and EPA believes that processors and users of PBT chemicals also have the opportunity to make effective emissions reductions by using less of a PBT chemical, by not using materials that contain PBT chemicals as contaminants, etc. In addition, the purposes of reporting under EPCRA section 313 are not limited to the collection of information from sources where effective reductions in release and other waste management quantities are possible. Data collected under EPCRA section 313 can serve a variety of information purposes that do not depend on how easy it is for the source to achieve reduction in releases and other waste management. The commenter statement that EPA has acknowledged that many chemicals identified as persistent and bioaccumulative are not imported, processed, or otherwise used, but are manufactured as by-products, is incorrect. The actual statement was: "[m]any of the chemicals identified as persistent and bioaccumulative in today's action are not imported, processed, or otherwise used but are manufactured as by-products" (at 64 FR 715). As the words "today's action" clearly demonstrate, this statement was not a broad statement about all PBT chemicals but simply an acknowledgment that many of the PBT chemicals in the proposed rule were by-products. In addition, this statement was made in the context of the discussion on the *de minimis* exemption about how removing the exemption for PBT chemicals would affect the

chemicals in the proposed rule; it was not a statement made in connection with the discussion on the manufacture only qualifier. EPA also did not state that manufacturing is the primary source for environmental loading of PBT chemicals from facilities covered under EPCRA section 313. The discussion on the loading of chemicals in the environment from manufacturing was in relation to the reporting of dioxin which, as discussed above, presents a unique combination of circumstances that EPA considered to determine how to focus its listing decision and does not apply to all PBT chemicals. EPA disagrees with the statements that data from facilities that import, process, or otherwise use PBT chemicals will be inaccurate and misleading or that such facilities will report some quantity out of fear of enforcement and that such information is likely to be inaccurate, and will not accurately reflect the true level of concern. EPA believes that facilities that import, process, or otherwise use PBT chemicals will be just as able to report as facilities that manufacture PBT chemicals. It is no more difficult to do calculations regarding small numbers than it is to do calculations on larger numbers, so if a facility that imports, processes, or otherwise uses PBT chemicals has information that allows them to make a reasonable estimation of quantities then they should be just as able to report as any manufacturing facility would be able to report on small quantities manufactured as by-products. If facilities that import, process, or otherwise use PBT chemicals do not have data available that allows them to make a reasonable estimation of quantities then they are not required to report. As for fear of enforcement, EPA can take enforcement actions both for under reporting and over reporting so facilities should not report an amount of a PBT chemical in order to avoid an enforcement action.

EPA does not believe that the unique combination of circumstances that exists for dioxin and dioxin-like compounds exists for any of the other PBT chemicals being added by this rule nor does EPA believe that reduced burden or any of the other reasons suggested by the commenters provide a sufficient reason to focus on manufacturing activity only for the other PBT chemicals in this rule. Therefore, EPA does not believe that it is appropriate to add a manufacture only qualifier to any of the other PBT chemicals in this rule.

3. *Waste management issues.* Some commenters contend that because activities such as recycling, approved

waste disposal, and treatment are incorporated into reported volumes, the EPCRA section 313 reported releases will be substantial overestimates of the actual quantities released to the ambient environment. They further argue that although this information may be useful to source reduction efforts, merging of reporting requirements under section 313 of EPCRA and section 6607 of PPA has resulted in information which is misleading to the public's desire to know the actual exposures that are occurring. Another commenter asserts that by requiring electricity generating facilities to report transfers off-site for treatment and disposal of PCBs from transformers, EPA has established a disincentive to properly dispose of PCB transformers and remove them from use because most PCB wastes transferred to off-site facilities are destroyed in regulated units which destroy at least 99.9999% of the PCBs. They are concerned that because the casual reader may conclude additional releases of PCBs to the environment have occurred, companies would have a disincentive to voluntarily remove PCBs.

The commenters are incorrect in stating that EPCRA section 313 release quantities include recycling and treatment amounts. Under EPCRA section 313, if a chemical activity threshold is met for the chemical, covered facilities are required to report the quantity of the toxic chemical entering each environmental medium; this includes "releases." The definition of release pursuant to EPCRA section 329(8) means:

any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, extremely hazardous substance, or toxic chemical.

There is no language in this definition, any other provision of EPCRA, or in the regulations promulgated pursuant to EPCRA section 313, that limit this definition to ambient releases to the environment which may result in public exposure. In fact the definition specifically includes disposing of toxic chemicals as well as the abandonment of closed receptacles. In addition, neither the statute nor the regulations limit this definition to on-site releases. Therefore, the statutory definition of release under EPCRA section 313 is significantly broader than the commenter seems to believe.

In addition to release reporting, under section 6607(b)(1) of the PPA, if a covered facility meets the reporting

thresholds under EPCRA section 313, the facility is required to report the "quantity of the chemical entering any wastestream (or otherwise released to the environment). . . ." This quantity includes amounts of the toxic chemical released, treated, and recycled. However, this quantity does not include:

[t]he amount of any toxic chemical released into the environment which resulted from a catastrophic event, remedial action, or other one time event, *and is not associated with production processes during the reporting year.* (PPA 6607 (b)(7)) (emphasis added)

Therefore, the quantity of the toxic chemical entering the wastestream as collected under section 6607(b)(1) of the PPA, is the amount of the toxic chemical in production related waste. Covered facilities currently report the amount of the toxic chemical in production related waste as quantities of the toxic chemical released, treated, combusted for energy recovery and recycled. These quantities are collected as separate data elements in section 8 of the Form R. Further, facilities report the ultimate disposition of toxic chemicals in waste such that these quantities (i.e., amounts released, treated, combusted for energy recovery, and recycled) are mutually exclusive. Collectively, then, these quantities are the amount entering the waste stream or the quantity of the toxic chemical in production related waste. For example, a covered facility transfers 1,000,000 pounds of PCBs to an incinerator for treatment. The covered facility knows that 999,999 pounds are destroyed in the incinerator and the remaining 1 pound is disposed in a landfill. The facility reports 999,999 pounds as transferred off-site for treatment and 1 pound as transferred off-site for disposal. These two quantities are reported as separate data elements on the Form R. The quantity reported as disposed off-site is considered released because, as explained previously, disposal is a type of release. The entire quantity (1,000,000 pounds) is the amount of production related waste.

Once collected, EPA presents the TRI data to the public in a number of formats. In its annual data release documents, EPA highlights different aspects of the quantities of toxic chemicals released and otherwise managed as waste. For example, EPA presents total on-site releases and, as subsets, presents the quantities released to air, surface water, underground injection and on-site land releases. (See 1997 Toxics Release Inventory (EPA 745-R-99-003) Figure 2-3 "TRI On-site

Releases") EPA also presents the quantity of total releases in the public data release. As discussed earlier, under EPCRA section 313, release quantities are not limited to quantities released to the ambient environment. Therefore, total releases, as presented in the public data release include both on and off-site releases as well as a variety of disposal methods. For example, in Table 2-20A of the 1997 public data release, EPA presents TRI on-site and off-site releases by chemical and type of release (e.g., air emissions, underground injection, etc.) (1997 Toxics Release Inventory; EPA 745-R-99-003).

In addition to TRI release data, EPA presents production related waste quantities in the public data release. Because production related waste includes releases, EPA includes release quantities with other waste management quantities. However, in this document, the Agency generally distinguishes quantities of the toxic chemical released from other types of waste management. EPA does not count the quantities of toxic chemicals treated, combusted for energy recovery or recycled as quantities released. (See, for example, 1997 Toxics Release Inventory (EPA 745-R-99-003) Table 2-20A "TRI On-site and Off-site Releases, by Chemical, 1997" and Table 2-20B "TRI Chemicals in Waste, by Chemical, 1997")

Further, EPA does not believe that the TRI program provides a disincentive for the proper and safe handling of PCBs in transformers managed as waste. As explained earlier, covered facilities are required under EPCRA section 313 and section 6607 of the PPA to report quantities of toxic chemicals released or otherwise managed as waste if they meet a chemical activity threshold. Quantities of toxic chemicals sent off-site for treatment are described as such. These transfers are not included as releases. In addition, EPA disagrees that quantities of PCBs sent off-site for treatment will be misunderstood by the public because these quantities are accurately represented in the TRI data base and in the public data release as a separate type of waste management.

Another commenter asserts that the proposed rule will not encourage waste minimization because facilities will not be able to modify process designs to accommodate such minimization simply on the basis of data generated from guidance documents or reasonable estimates. The commenter asserts that although industry has made substantial minimization gains, the technology is not available to treat or remove chemicals of concern from manufactured products or waste (prior to generation) at such low

concentrations and that any future improvements will be enormously expensive due to the low concentrations that would likely be involved.

EPA disagrees with the commenter. In the preamble to the proposed rule, EPA did not assert that covered facilities will begin performing waste minimization activities as a direct result of this rulemaking. Rather, the Agency stated that the PBT chemical rulemaking will provide data on PBT chemicals to EPA, industry, and the public. For example, several EPA offices have ongoing projects and programs that deal with issues concerning PBT chemicals. EPA has established the PBT planning group which is a coordinating body consisting of representatives from various program offices throughout EPA that are dealing with PBT chemicals. This group has developed a strategy to reduce pollution from PBT chemicals through the application of regulatory and nonregulatory authorities, with a strong emphasis on pollution prevention. The availability of that data, in turn, can allow all parties to identify and track releases of PBT chemicals and monitor the progress of the programs designed to reduce the amount of PBT chemicals entering the environment. The data will also allow EPA and others to design prevention strategies that are focused and effective.

In addition, EPA disagrees with the commenter's last assertion concerning the available technology and its costs. Although there are some processes that might not, at present, be amenable to source reduction in terms of PBT chemicals, some processes may be. For example, it may be possible to stringently control fuel composition, flow times, temperature, and other conditions in order to substantially reduce or even eliminate the incidental manufacture of dioxins during combustion processes. Therefore, EPA continues to believe that in some cases, opportunities for pollution prevention will present themselves resulting from information reported under EPCRA section 313 and section 6607 of the PPA.

**4. Modulated reporting thresholds.** The majority of commenters contend that modulating thresholds for reporting so that lower reporting thresholds are used every other year (with current thresholds used in alternate years) would introduce confusion for the regulated community and data users and would not significantly reduce burden. Further it could discourage facilities from establishing common standard procedures for data collection. Modulation will also result in data gaps, undermining data consistency and

tracking. Many commenters believe that annual reporting is a fundamental attribute of TRI.

EPA agrees that modulating the reporting thresholds would introduce confusion for both the regulated community and data users. For data users, EPA believes that modulating the reporting thresholds would limit the usefulness of the TRI data because there would be poor data consistency and poorer data quality. For the regulated community, EPA believes that the burden reduction would not be significant and would possibly be offset by the confusion that would be introduced by different thresholds in alternate years.

#### **VII. What Were the Results of EPA's Economic Analysis?**

EPA has prepared an economic analysis of the impact of this action, which is contained in a document entitled *Economic Analysis of the Final Rule to Modify Reporting of Persistent Bioaccumulative Toxic Chemicals under EPCRA Section 313* (Ref. 67). This document is available in the public docket for this rulemaking. The analysis assesses the costs, benefits, and associated impacts of the rule, including potential effects on small entities. The major findings of the analysis are briefly summarized here.

##### *A. What is the Need for the Rule?*

Federal regulations exist, in part, to address significant market failures. Markets fail to achieve socially efficient outcomes when differences exist between market values and social values. Two causes of market failure are externalities and information asymmetries. In the case of negative externalities, the actions of one economic entity impose costs on parties that are "external" to any market transaction. For example, a facility may release toxic chemicals without accounting for the consequences to other parties, such as the surrounding community, and the prices of that facility's goods or services thus will fail to reflect those costs. The market may also fail to efficiently allocate resources in cases where consumers lack information. For example, where information is insufficient regarding toxic releases, individuals' choices regarding where to live and work may not be the same as if they had more complete information. Since firms ordinarily have little or no incentive to provide information on their releases and other waste management activities involving toxic chemicals, the market fails to allocate society's resources in the most efficient manner.

This rule is intended to address the market failures arising from private choices about PBT chemicals that have societal costs, and the market failures created by the limited information available to the public about the release and other waste management activities involving PBT chemicals. Through the collection and distribution of facility-specific data on toxic chemicals, TRI overcomes firms' lack of incentive to provide certain information, and thereby serves to inform the public of releases and other waste management of PBT chemicals. This information enables individuals to make choices that enhance their overall well-being. Choices made by a more informed public, including consumers, corporate lenders, and communities, may lead firms to internalize into their business decisions at least some of the costs to society relating to their releases and other waste management activities involving PBT chemicals. In addition, by helping to identify areas of concern, set priorities and monitor trends, TRI data can also be used to make more informed decisions regarding the design of more efficient regulations and voluntary programs, which also moves society towards an optimal allocation of resources.

If EPA were not to take this action adding certain PBT chemicals to EPCRA section 313 and lowering reporting thresholds, the market failure (and the associated social costs) resulting from the limited information on the release and other waste management of PBT chemicals would continue. EPA believes that today's action will improve the scope of multi-media data on the release and other waste management of PBT chemicals. This, in turn, will provide information to the public, empower communities to play a meaningful role in environmental decision-making, and improve the quality of environmental decision-making by government officials. In addition, this action will serve to generate information that reporting facilities themselves may find useful in such areas as highlighting opportunities to reduce chemical use or release or other waste management and thereby lower costs of production and/or waste management. EPA believes that these are sound rationales for adding chemicals to the EPCRA section 313 list of toxic chemicals and lowering reporting thresholds for PBT chemicals.

##### *B. What Are the Costs Associated With This Rule?*

This action will result in the expenditure of resources that, in the absence of the regulation, could be used

for other purposes. The cost of the rule is the value of these resources in their best alternative use. Most of the costs of the rule result from requirements on

industry. Approximately 11,300 facilities are expected to submit approximately 20,000 additional Form R reports annually. The estimated

composition of this reporting, by chemical, is shown in Table 4.

Table 4.—Summary of Chemical Reporting as Estimated for Proposed and Final Rules

Chemical or Chemical Category	Estimated Number of Reports (Annual)	
	Proposed Rule	Final Rule
Alkyl lead (tetraethyl lead and tetramethyl lead)	134	N/A
Benzo(g,h,i)perylene	353	909
Dioxin and dioxin-like compounds category	1,863	1,475
Hexachlorobenzene	778	778
Mercury; mercury compounds category	5,230	5,346
Octachlorostyrene	230	230
Pentachlorobenzene	707	707
Pesticides (aldrin, chlordane, heptachlor, isodrin, methoxychlor, pendimethalin, toxaphene, trifluralin)	264	264
Polycyclic aromatic compounds (PACs) category	4,699	7,166
Polychlorinated biphenyls (PCBs)	2,267	2,310
Tetrabromobisphenol A	150	150
Vanadium; vanadium compounds category	654	655
Total	17,329	19,990

Table 5 displays the industry costs for this action based on the estimated number of facilities affected and the estimated number of additional reports. Aggregate industry costs in the first year for the rule are estimated to be \$145

million; in subsequent years they are estimated to be \$80 million per year. Industry costs are lower after the first year because facilities will be familiar with the reporting requirements, and many will be able to update or modify

information from the previous year's report. EPA is expected to expend \$2.0 million in the first year, and \$1.6 million in subsequent years as a result of the rule.

Table 5.—Summary of Reporting and Associated Costs as Estimated for Proposed and Final Rules

	Proposed Rule	Final Rule
Number of new facilities	2,600	3,114
Total number of facilities	9,515	11,257
Number of Form Rs submitted	17,329	19,990
First year industry costs	\$126 million	\$145 million
Subsequent year industry costs	\$70 million	\$80 million
EPA costs	\$1.4 million	\$1.6 million

The estimated cost of the final rule differs from the estimated cost of the proposed rule as shown in Table 5. There are six major reasons for this change. First, EPA received new data during the comment period on the concentrations of PACs and benzo(g,h,i)perylene in distillate fuel oil. Since approximately 18,000 manufacturing facilities subject to

EPCRA 313 reporting use distillate fuel oil, this change had a significant positive effect on the estimated number of reports for PACs and benzo(g,h,i)perylene as shown in Table 4. Second, the methodology for estimating reporting from facilities in SIC 5171 (Bulk Petroleum Stations and Terminals) was revised to account for the mix of products containing PBT

chemicals that are processed at these facilities. This revision also had a positive effect on the estimated number of reports. Third, because facility-level dioxin emission factors for coal- and oil-burning manufacturing facilities have not been developed, the estimated number of reporting facilities was reduced. Fourth, the reporting qualifier for dioxin was changed from

“manufacture only” to “manufacturing; and the processing or otherwise use of dioxin and dioxin-like compounds if the dioxin and dioxin-like compounds are present as contaminants in a chemical and if they were created during the manufacturing of that chemical” in the final rule. This resulted in additional expected reporting from facilities that process or otherwise use chemicals with dioxin impurities. Fifth, the Agency is not lowering EPCRA section 313 reporting thresholds for alkyl leads as part of this rulemaking. Therefore, no additional EPCRA section 313 reporting on alkyl leads is expected at this time. Sixth, the threshold for the PACs category was changed from 10 pounds in the proposed rule to 100 pounds in the final rule.

### C. What Are the Benefits of This Rule?

In enacting EPCRA and PPA, Congress recognized the significant benefits of providing the public with information on toxic chemical releases and other waste management practices. EPCRA section 313 has empowered the Federal government, State governments, industry, environmental groups, and the general public to fully participate in an informed dialogue about the environmental impacts of toxic chemicals in the United States. EPCRA section 313's publicly available data base provides quantitative information on toxic chemical releases and other waste management practices. Since the TRI program's inception in 1987, the public, government, and the regulated community have had the ability to understand the magnitude of chemical releases in the United States, and to assess the need to reduce the uses, releases and other waste management of toxic chemicals. TRI enables all interested parties to establish credible baselines, to set realistic goals for environmental progress over time, and to measure progress in meeting these goals over time. The TRI program is a neutral yardstick by which progress can be measured by all stakeholders.

The information reported under EPCRA section 313 increases knowledge of the amount of toxic chemicals released and waste management practices, and thus aids in the evaluation of the potential pathways of exposure, improves scientific understanding of the health and environmental risks of toxic chemicals; allows the public to make informed decisions on where to work and live; enhances the ability of corporate leaders and purchasers to more accurately gauge a facility's potential environmental liabilities; provides reporting facilities with information that can be used to

save money as well as reduce emissions; and assists Federal, State, and local authorities in making better decisions on acceptable levels of toxic chemicals in the environment.

There are two types of benefits associated with EPCRA section 313 reporting, those resulting from the actions required by the rule (such as reporting and recordkeeping), and those derived from follow-on activities that are not required by the rule. Benefits of activities required by the rule include the value of improved knowledge about the release and waste management of toxic chemicals, which leads to improvements in understanding, awareness, and decision-making. It is expected that this rule will generate such benefits by providing readily accessible information that otherwise would not be available to the public. The rule will benefit ongoing research efforts to understand the risks posed by PBT chemicals and to evaluate policy strategies that address the risks.

The second type of benefits derive from changes in behavior that may result from the information reported under EPCRA section 313. These changes in behavior, including reductions in releases of and changes in the waste management practices for toxic chemicals may yield health and environmental benefits. These changes in behavior come at some cost, and the net benefits of the follow-on activities are the difference between the benefits of decreased chemical releases and transfers and the costs of the actions needed to achieve the decreases.

Because the state of knowledge about the economics of information is not highly developed, EPA has not attempted to quantify the benefits of adding chemicals to EPCRA section 313 or changing reporting thresholds. Furthermore, because of the inherent uncertainty in the subsequent chain of events, EPA has also not attempted to predict the changes in behavior that result from the information, or the resultant net benefits (i.e., the difference between benefits and costs). EPA does not believe that there are adequate methodologies to make reasonable monetary estimates of either the benefits of the activities required by the rule, or the follow-on activities. The economic analysis of the rule, however, does provide illustrative examples of how the rule will improve the availability of information on PBT chemicals (Ref. 67).

A number of commenters asserted that information on the magnitude of PBT chemical releases that would be reported as a result of this rule is required for EPA and commenters to evaluate the benefit of EPA's proposed

alternatives. EPA disagrees with these commenters for the following reasons.

Existing data do not support estimates of releases to multiple environmental media from the full range of facilities that may be affected by the rule because most of the data required for the analysis would only be available after the rule is in place. For most PBT chemicals and industry sectors, up-to-date multi-media release and other waste management estimates for affected facilities do not exist. Even where release estimates are available for an industry sector, most are derived from national activity levels rather than from facility-level information. To the extent that release estimates are available, they tend to cover only a single medium such as air. EPA does not believe that there is sufficient information to make reasonable predictions of the multi-media releases and other waste management information that will be reported as a result of EPCRA section 313 rulemakings.

Some commenters note that EPA has estimated releases of certain PBT chemicals in recent reports such as the Mercury Study Report to Congress (Ref. 65) and the Inventory of Source of Dioxin in the United States (Ref. 73). In fact, EPA reported the results of these reports in its economic analysis for this proposal. These studies do not provide community- or facility-level release estimates. The estimates in these studies are derived using a “top-down” methodology in which emission factors are applied to activity levels for entire industries. While having an estimate of multi-media PBT releases for a specific industry sector is a first step, other information would also be required to estimate the releases that would be reported as a result of each proposed alternative. Assuming that multi-media release estimates were available for an entire industry sector, these releases would still have to be divided among individual facilities according to some currently unknown distribution. In addition, there is the complication that EPCRA section 313 reporting thresholds are based on chemical throughput (manufacture, process, or use) rather than chemical release. The relationship between a chemical throughput that triggers the submission of a report, and the releases reported will vary in some currently unknown manner among industries, as well as among facilities within an industry.

Therefore, EPA does not believe that there is sufficient information to make reliable release estimates for this rule, when considering all the affected chemicals and industries. The

uncertainties in the estimated values that go into such a calculation make predictions of facility level reporting extremely imprecise. Historical attempts to estimate the releases expected to be reported under EPCRA section 313 would have been imprecise to the point of being misleading, particularly in respect to estimates of releases per report or per facility (which some commenters have suggested that EPA should make). Further information on the feasibility of *ex ante* release estimates is available in the Response to Comments document (Ref. 69).

Aside from the general issue of uncertainty in the estimates of aggregate releases, predictions of releases per facility or per report (or dollars of reporting cost per pound of releases reported) are likely to be misleading due to the biases built into the estimates. The predicted number of reports (and thus costs) is generally an overestimate, since EPA's economic analyses use conservative estimates to avoid underestimating true costs. On the other hand, predictions of releases will tend to underestimate emissions, because while there may be information available on releases of some chemicals from some sectors, such estimates will not include other sources where releases are not identified until more detailed data (such as TRI data) are collected. Combining the two sets of estimates compounds the problem. Since estimated pounds of releases are underestimated and reports are overestimated, pounds per report would be biased significantly downward. Likewise, estimates of dollars of reporting cost per pound of releases (which varies as the inverse of pounds per report) would be biased significantly upward.

EPA notes that there were various reports and studies about air emissions of toxic chemicals prior to EPCRA section 313, but the collection of facility-level data provided significant new information on releases as well as other waste management. EPA cannot predict, at this stage, the quantity of releases and other waste management that will be reported as the result of this action any more accurately than it could have predicted when it proposed the original EPCRA section 313 rule.

Aside from the issue of whether EPA can predict releases and other waste management quantities prior to TRI reporting, EPA notes that pounds of releases (even if known) are not a reasonable proxy for the benefits of the information being provided. This is because the benefits of an informational regulation are not a linear function of the magnitude of the information being

reported. EPA disagrees with the implicit assumption by commenters that the benefits of information from different facilities is strictly and systematically related to the quantity reported as being released. Calculations such as the commenters have suggested presume that the benefit to the public of knowing about a release of 20,000 pounds is twice as large as the benefit of knowing about a release of 10,000 pounds; and that the benefit of knowing about a 40,000 pound release is twice the benefit of knowing about a 20,000 pound release and four times the benefit of knowing about a 10,000 pound release. EPA does not believe this characterization to be accurate.

One of the central purposes of TRI data is to inform the public about releases and other waste management of EPCRA section 313 listed toxic chemicals in their community so that the public can form its own conclusions about risks. The amount of releases and waste management quantities that a community may find relevant or useful will vary depending on numerous factors specific to that community, such as the toxicity of the various chemicals, potential exposure to these toxic chemicals, and the number of other facilities in the area that release EPCRA section 313 listed toxic chemicals. Section 313(h) of EPCRA states that the data are "to inform persons about releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines, and standards; and for other similar purposes" (See Unit VI.E. for a more detailed discussion on the purposes of EPCRA section 313). Pounds of releases reported does not measure how the data perform these functions, and thus is not a measure of benefits.

Finally, EPA notes that commenters on this rule did not provide information on approaches or methodologies for estimating releases and/or throughput, or on estimating releases from throughput data, for the spectrum of industries, chemicals, and facilities covered by the rule. Instead, some commenters submitted data from EPA studies (that EPA had already reviewed in the context of this rule and used as references for the economic analysis of the proposed rule) for very narrow slices of the regulated universe (for example, estimated mercury releases from electric utilities or estimated dioxin releases from the vinyl industry). EPA considered these data and determined that they are not sufficient to predict the releases and/or throughput that will be

reported as a result of this rule. Other commenters simply stated that EPA should consider releases without referencing any data. None of the commenters suggested new methodologies or approaches, or provided information from any sources that EPA had not already reviewed and considered. As a result, EPA continues to conclude that while there are data available to estimate national releases for some chemicals for some sectors, comprehensive, reliable data for all sectors and chemicals are unavailable, resulting in an incomplete data set. Furthermore, as stated previously, the quantity of releases reported are not a measure of the benefits of the rule. EPA does not believe that inaccurate or incomplete estimates of releases would aid the decision-making process for the rule. Therefore, EPA has not estimated the releases that would be reported as a result of the rule.

#### *D. What are the Potential Impacts on Small Entities?*

In accordance with the Regulatory Flexibility Act (RFA) and the Agency's longstanding policy of always considering whether there may be a potential for adverse impacts on small entities, the Agency has evaluated the potential impacts of this rule on small entities. The Agency's analysis of potentially adverse economic impacts is included in the Economic Analysis for this rule (Ref. 67). The following is a brief overview of EPA's findings.

1. *Overall methodology.* This rule may affect both small businesses and small governments. For the purpose of its analysis for the rule, EPA defined a small business using the small business size standards established by the Small Business Administration (SBA) at 13 CFR part 121. EPA defined small governments using the RFA definition of jurisdictions with a population of less than 50,000. No small organizations are expected to be affected by the rule.

Only those small entities that are expected to submit at least one report are considered to be affected for the purpose of the small entity analysis, although EPA recognizes that other small entities will conduct compliance determinations under lower thresholds. The number of affected entities will be smaller than the number of affected facilities, because many entities operate more than one facility. Impacts were calculated for both the first year of reporting and subsequent years. First year costs are typically higher than continuing costs because firms must familiarize themselves with the requirements. Once firms have become familiar with how the reporting

requirements apply to their operations, costs fall. EPA believes that subsequent year impacts present the best measure to judge the impact on small entities because these continuing costs are more representative of the costs firms face to comply with the rule.

EPA analyzed the potential cost impact of the rule on small businesses and governments for the manufacturing sector and in each of the recently added industry sectors separately in order to obtain the most accurate assessment for each. EPA then aggregated the analyses for the purpose of determining whether it could certify that the rule will not, if promulgated, have a "significant economic impact on a substantial number of small entities." RFA section 605(b) provides an exemption from the requirement to prepare a regulatory flexibility analysis for a rule where an agency makes and supports the certification statement quoted above. EPA believes that the statutory test for certifying a rule and the statutory consequences of not certifying a rule all indicate that certification determinations may be based on an aggregated analysis of the rule's impact on all of the small entities subject to it.

2. *Small businesses.* EPA used annual compliance costs as a percentage of annual company sales to assess the potential impacts on small businesses of this rule. EPA believes that this is a good measure of a firm's ability to afford the costs attributable to a regulatory requirement, because comparing compliance costs to revenues provides a reasonable indication of the magnitude of the regulatory burden relative to a commonly available measure of a company's business volume. Where regulatory costs represent a small fraction of a typical firm's revenue (for example, less than 1%, but not greater than 3%), EPA believes that the financial impacts of the regulation may be considered not significant. As discussed above, EPA also believes that it is appropriate to apply this measure to subsequent year impacts.

Based on its estimates of additional reporting as a result of the rule, the Agency estimates that approximately 6,300 businesses will be affected by the rule, and that approximately 4,400 of these businesses are classified as small based on the applicable SBA size standards. For the first reporting year, EPA estimates that approximately 17 small businesses may bear compliance costs between 1% and 3% of revenues, and that no small businesses will bear costs greater than 3%. In subsequent years, EPA estimates that approximately 5 small businesses may bear compliance costs between 1% and 3% of revenues,

and that no small businesses will bear costs greater than 3%. As stated above, EPA believes that subsequent-year impacts are the appropriate measure of small business impacts.

3. *Small governments.* To assess the potential impacts on small governments, EPA used annual compliance costs as a percentage of annual government revenues to measure potential impacts. Similar to the methodology for small businesses, this measure was used because EPA believes it provides a reasonable indication of the magnitude of the regulatory burden relative to a government's ability to pay for the costs, and is based on readily available data.

EPA estimates that 39 municipalities operate 49 publicly owned electric utility facilities. Of these facilities, 44 are expected to file additional reports as a result of this action. Of these affected facilities, 15 are operated by 15 small governments (i.e., those with populations under 50,000). It is estimated that none of these small governments will bear annual costs greater than 1% of annual government revenues.

4. *All small entities.* As discussed above, approximately 5 small businesses are expected to bear annual costs between 1% and 3% of annual revenues after the first year of reporting. None of the affected small governments are estimated to bear annual costs greater than 1% of annual revenues. No small organizations are expected to be affected by the rule. Thus, the total number of small entities with impacts above 1% of revenues does not change when the results are aggregated for all small entities (i.e., small businesses, small governments, and small organizations).

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#### **IX. Which Regulatory Assessment Requirements Apply to This Action?**

##### *A. What is the Determination under Executive Order 12866*

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this is an economically "significant regulatory action" because it is likely to have an annual effect of \$100 million or more. This action was submitted to the Office of Management and Budget (OMB) for review, and any substantive comments or changes made during that review have been documented in the public version of the official record.

EPA has prepared an economic analysis of the impact of this action, which is contained in a document entitled *Economic Analysis of the Final Rule to Modify Reporting of Persistent Bioaccumulative Toxic Chemicals under EPCRA Section 313* (Ref. 67). This document is available as a part of the public version of the official record for this action (instructions for accessing this document are contained in Unit I.B.) and is discussed in Unit VII.

##### *B. What is the Determination under the Regulatory Flexibility Act?*

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the EPA Administrator hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is presented in the small entity impact analysis

prepared as part of the Economic Analysis for this final rule (Ref. 67), which is also discussed in detail in Unit VII. and contained in the public version of the official record for this rule. The following is a brief summary of the Agency's factual basis for this certification.

For the purpose of analyzing potential impacts on small entities, EPA used the RFA definition of small entities in section 601(6) of the RFA. Under this section, small entities include small governments, small non-profit organizations, and small businesses. No small organizations are expected to be affected by this final rule. EPA defined small governments using the RFA definition of jurisdictions with a population of less than 50,000, and defined a small business using the small business size standards established by the Small Business Administration (SBA), which are generally based on the number of employees or annual sales/revenue a business in a particular industrial sector has.

Based on EPA's economic analysis, approximately 11,300 facilities are expected to submit approximately 20,000 additional Form R reports annually. Of these facilities, approximately 3,100 are expected to file TRI reports for the first time as a result of today's action. EPA estimates that the cost for collecting this information averages \$5,079 per Form R in the first reporting year, and \$3,557 in subsequent years. EPA estimates that there are 15 small governments that may be affected by the rule (i.e., EPA analysis estimates that these entities may have to file one or more reports under the final rule). EPA estimates that none of these small governments will bear annual costs greater than 1% of annual government revenues. EPA estimates that 5 small businesses of the approximately 4,400 small businesses potentially affected by the rule will experience annual compliance costs between 1% and 3% of annual sales after the first year of reporting. Given the relatively small estimated impacts on small entities, EPA believes that the rule will not have a significant economic impact on a substantial number of small entities. This determination is for the entire population of small entities potentially affected by this rule, since the test for certification is whether the rule as a whole has a significant economic impact on a substantial number of small entities.

Notwithstanding the Agency's certification of this rule under section 605(b) of the RFA, EPA remains committed to minimizing real impacts

on small entities where this does not unacceptably compromise the informational benefits of the rule. Although not required, EPA intends to prepare guidance for reporting on dioxin that will assist facilities in determining their compliance needs and in properly completing the form, which will help ensure that small entities receive assistance to ease their burden of compliance. EPA has prepared such documents for current reporters and has received positive feedback on their utility from the targeted facilities. In addition, the Agency is always interested in any comments regarding the economic impacts that this regulatory action would impose on small entities, particularly suggestions for minimizing that impact. Such comments may be submitted to the Agency at any time, to the address listed in Unit I.B.

Information relating to this determination has been provided to the Chief Counsel for Advocacy of the Small Business Administration, and is included in the public version of the official record for this rulemaking.

#### *C. What is the Determination under the Paperwork Reduction Act?*

The information collection requirements contained in this final rule have been submitted to OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, and in accordance with the procedures at 5 CFR 1320.11. OMB has approved the existing reporting and recordkeeping requirements EPA Toxic Chemical Release Inventory Form R (EPA Form No. 9350-1), supplier notification, and petitions under OMB Control No. 2070-0093 (EPA ICR No. 1363). An Information Collection Request (ICR) document has been prepared by EPA (EPA ICR No. 1363.10) to amend the existing ICR to include the burden associated with the lower reporting thresholds, and a copy may be obtained from Sandy Farmer, Office of Information Collections (OIC); U.S. Environmental Protection Agency (2137), 401 M St., SW., Washington, DC 20460, by calling (202) 260-2740, or electronically by sending an e-mail message to "farmer.sandy@epa.gov." An electronic copy has also been posted with this **Federal Register** document on EPA's Homepage with other information related to this action as described in Unit I.B., and may also be downloaded from the Internet at <http://www.epa.gov/icr/>.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information subject to OMB approval under the PRA

unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial publication in the **Federal Register**, are maintained in a list at 40 CFR part 9. The information requirements contained in this final rule are not effective until OMB approves them.

EPCRA section 313 requires owners or operators of certain facilities manufacturing, processing, or otherwise using any of over 600 listed toxic chemicals and chemical categories in excess of the applicable threshold quantities, and meeting certain requirements (i.e., at least 10 Full Time Employees or the equivalent), to report environmental on-site releases and transfers off-site for release and treatment. Under section 6607 of the PPA, facilities must also provide information on the quantities of the toxic chemicals in certain waste streams, and the efforts made to manage those waste quantities. The regulations codifying the EPCRA section 313 reporting requirements appear at 40 CFR part 372. Respondents may designate the specific chemical identity of a substance as a trade secret, pursuant to EPCRA section 322 (42 U.S.C. 11042). Regulations codifying the trade secret provisions can be found at 40 CFR part 350. Under the final rule, all facilities reporting under EPCRA section 313 on PBT chemicals would have to use the Form R (EPA Form No. 9350-1), which is currently approved by OMB.

For Form R, EPA estimates the industry reporting burden for collecting this information (including recordkeeping) to average 74 hours per report in the first year, at an estimated cost of \$5,079 per Form R. In subsequent years, the burden is estimated to average 52.1 hours per report, at an estimated cost of \$3,557 per Form R. These estimates include the time needed to review instructions; search existing data sources; gather and maintain the data needed; complete and review the collection of information; and transmit or otherwise disclose the information. The actual burden on any specific facility may be different from this estimate depending on the complexity of the facility's operations and the profile of the releases at the facility.

This final rule is estimated to result in reports from 11,300 respondents. Of these, 3,100 facilities are estimated to be reporting under EPCRA section 313 for the first time as a result of the rule, while 8,200 are currently reporting facilities that will be submitting additional reports. These facilities will submit an estimated additional 20,000

Form Rs. This rule therefore results in an estimated total burden of 2.1 million hours in the first year, and 1.2 million hours in subsequent years, at a total estimated industry cost of \$145 million in the first year and \$80 million in subsequent years. The existing ICR will be amended to include an additional annual burden of 1.5 million hours (annual average burden for the first 3 years of ICR approval).

Under the PRA, "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, where applicable, 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. EPA's burden estimates for the rule take into account all of the above elements, considering that under section 313, no additional measurement or monitoring may be imposed for purposes of reporting.

#### *D. What are the Determinations under the Unfunded Mandates Reform Act and Executive Orders 12875 and 13084?*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4), EPA has determined that this action contains a Federal mandate that may result in expenditures of \$100 million or more for the private sector in any 1 year, but that it will not result in such expenditures for State, local, and tribal governments, in the aggregate. Accordingly, EPA has prepared a written statement for this rule pursuant to section 202 of UMRA, and that statement is available in the public version of the official record for this rulemaking (Ref. 71a). The costs associated with this action are estimated in the economic analysis prepared for this rule (Ref. 67), which is also included in the public version of the official record and summarized in Unit VII. The following is a brief summary of the UMRA statement for the rule.

This rule is being promulgated pursuant to sections 313(d)(1) and (2), 313(f)(2), 313(g), 313(h), and 328 of EPCRA, 42 U.S.C. 11023(d)(1)-(2), 11023(f)(2), 11023(g), 11023(h) and

11048; PPA section 6607, 42 U.S.C. 13106. The economic analysis contains an analysis of the benefits and costs of this rule, which estimates that the total industry costs of the rule will be \$145 million in the first year and \$80 million per year thereafter, and concludes that the benefits will be significant but cannot be assigned a dollar value due to the lack of adequate methodologies. EPA believes that the benefits provided by the information to be reported under this rule will significantly outweigh the costs imposed by today's action. The benefits of the information will in turn have positive effects on health, safety, and the natural environment through the behavioral changes that may result from that information.

EPA has not identified any Federal financial resources that are available to cover the costs of this rule. As set forth in the economic analysis, EPA has estimated the future industry compliance costs (after the first year) of this rule to be \$80 million annually. Of those entities affected by today's action, EPA has not identified any disproportionate budgetary impact on any particular region, government, or community, or on any segment of the private sector. Based on the economic analysis, EPA has concluded that it is highly unlikely that this rule will have an appreciable effect on the national economy.

EPA has determined that it is not required to develop a small government agency plan as specified by section 203 of UMRA or to conduct prior consultation with State, local, or tribal governments under section 204 of UMRA, because the rule will not significantly or uniquely affect small governments and does not contain a significant Federal intergovernmental mandate.

Finally, EPA believes this rule complies with section 205(a) of UMRA. The objective of this rule is to expand the public benefits of the TRI program by exercising EPA's discretionary authority to add chemicals to the program and to lower reporting thresholds, thereby increasing the amount of information available to the public regarding the use, management, and disposition of PBT chemicals and enabling a more comprehensive view of PBT chemical exposures. In making additional information available through TRI, the Agency increases the utility of TRI data as an effective tool for empowering local communities, the public sector, industry, other agencies, and State and local governments to better evaluate risks to public health and the environment.

As described in Unit IV.D., EPA considered burden in the threshold selection. Existing burden-reducing measures (e.g., the laboratory exemption and the otherwise use exemptions, which include the routine janitorial or facility grounds maintenance exemption, motor vehicle maintenance exemption, structural component exemption, intake air and water exemption and the personal use exemption) will continue to apply to the facilities that file new reports as a result of this rule. EPA also will be assisting small entities subject to the rule, by such means as providing meetings, training, and compliance guides in the future, which also will ease the burdens of compliance. Many steps have been and will be taken to further reduce the burden associated with this rule, and to EPA's knowledge there is no available alternative to the rule that would obtain the equivalent information in a less burdensome manner. For all of these reasons, EPA believes the rule complies with UMRA section 205(a).

In addition, today's rule does not create an unfunded Federal mandate on State, local or tribal governments, nor does it significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 1(a) of Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), and section 3(b) of Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), do not apply to this proposed rule.

#### *E. What are the Determinations under Executive Orders 12898 and 13045?*

Pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency must consider environmental justice related issues with regard to the potential impacts of this action on environmental and health conditions in low-income populations and minority populations. Pursuant to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), if an action is economically significant under Executive Order 12866, the Agency must, to the extent permitted by law and consistent with the Agency's mission, identify and assess the environmental health risks and safety risks that may disproportionately affect children.

By lowering the section 313 reporting thresholds for PBT chemicals, EPA will provide communities across the United States (including low-income populations and minority populations) with access to data that may assist them in lowering exposures and consequently reducing chemical risks for themselves and their children. This information can also be used by government agencies and others to identify potential problems, set priorities, and take appropriate steps to reduce any potential risks to human health and the environment. Therefore, the informational benefits of the rule will have a positive impact on the human health and environmental impacts of minority populations, low-income populations, and children.

#### *F. What are the Determinations under Executive Orders 13132 and 12612?*

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), which will take effect on November 2, 1999. In the interim, the current Executive Order 12612, entitled *Federalism* (52 FR 41685, October 30, 1987) still applies. This action is expected to have a limited impact on municipal governments which operate electric utilities. EPA estimates that 39 municipalities operate 49 publicly owned electric utility facilities. Of these facilities, 44 are expected to file additional reports as a result of this action. Therefore EPA concludes that this rule will not have a substantial direct effect on 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, as specified in Executive Order 12612.

#### *G. What are the Determinations under the National Technology Transfer and Advancement Act?*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use

available and applicable voluntary consensus standards.

This action does not involve technical standards, nor did EPA consider the use of any voluntary consensus standards. In general, EPCRA does not prescribe technical standards to be used for threshold determinations or completion of EPCRA section 313 reports. EPCRA section 313(g)(2) states that "In order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulation."

*H. What are the Determinations under the Congressional Review Act?*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective December 31, 1999.

**List of Subjects in 40 CFR Part 372**

Environmental protection, Community right-to-know, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements, Superfund.

Dated: October 25, 1999.

**Carol M. Browner,**  
*Administrator.*

Therefore, 40 CFR part 372 is amended as follows:

**PART 372—[AMENDED]**

1. The authority citation for part 372 continues to read as follows:

**Authority:** 42 U.S.C. 11023 and 11048.

**§ 372.22 [Amended]**

2. In § 372.22(c), remove the phrase "§ 372.25 or § 372.27." and add in its place "§ 372.25, § 372.27, or § 372.28."

**§ 372.25 [Amended]**

3. Section 372.25 is amended as follows:

i. In the introductory text of § 372.25, remove the first clause "Except as provided in § 372.27," and add in its place "Except as provided in §§ 372.27 and 372.28,".

ii. In paragraphs (f), (g), and (h), remove the reference "§ 372.25" and add in its place "§ 372.25, § 372.27, or § 372.28".

4. In § 372.27, add a new paragraph (e) to read as follows:

**§ 372.27 Alternate threshold and certification.**

\* \* \* \* \*

(e) The provisions of this section do not apply to any chemicals listed in § 372.28.

5. Add a new § 372.28 to subpart B to read as follows:

**§ 372.28 Lower thresholds for chemicals of special concern.**

(a) Notwithstanding § 372.25 or § 372.27, for the toxic chemicals set forth in this section, the threshold amounts for manufacturing (including importing), processing, and otherwise using such toxic chemicals are as set forth in this section.

(1) Chemical listing in alphabetic order.

Chemical name	CAS No.	Reporting threshold
Aldrin .....	00309-00-2	100
Benzo(g,h,i)perylene .....	00191-24-2	10
Chlordane .....	00057-74-9	10
Heptachlor .....	00076-44-8	10
Hexachlorobenzene .....	00118-74-1	10
Isodrin .....	00465-73-6	10
Mercury .....	07439-97-6	10
Methoxychlor .....	00072-43-5	100
Octachlorostyrene .....	29082-74-4	10
Pendimethalin .....	40487-42-1	100
Pentachlorobenzene .....	00608-93-5	10
Polychlorinated biphenyl (PCBs) .....	01336-36-3	10
Tetrabromobisphenol A .....	00079-94-7	100
Toxaphene .....	08001-35-2	10
Trifluralin .....	01582-09-8	100

(2) Chemical categories in alphabetic order.

Category name	Reporting threshold
Dioxin and dioxin-like compounds (Manufacturing; and the processing or otherwise use of dioxin and dioxin-like compounds if the dioxin and dioxin-like compounds are present as contaminants in a chemical and if they were created during the manufacturing of that chemical) (This category includes only those chemicals listed below).	0.1 grams

67562-39-4 1,2,3,4,6,7,8-Heptachlorodibenzofuran

Category name	Reporting threshold
55673-89-7 1,2,3,4,7,8,9-Heptachlorodibenzofuran	
70648-26-9 1,2,3,4,7,8-Hexachlorodibenzofuran	
57117-44-9 1,2,3,6,7,8-Hexachlorodibenzofuran	
72918-21-9 1,2,3,7,8,9-Hexachlorodibenzofuran	
60851-34-5 2,3,4,6,7,8-Hexachlorodibenzofuran	
39227-28-6 1,2,3,4,7,8-Hexachlorodibenzo- <i>p</i> -dioxin	
57653-85-7 1,2,3,6,7,8-Hexachlorodibenzo- <i>p</i> -dioxin	
19408-74-3 1,2,3,7,8,9-Hexachlorodibenzo- <i>p</i> -dioxin	
35822-46-9 1,2,3,4,6,7,8-Heptachlorodibenzo- <i>p</i> -dioxin	
39001-02-0 1,2,3,4,6,7,8,9-Octachlorodibenzofuran	
03268-87-9 1,2,3,4,6,7,8,9-Octachlorodibenzo- <i>p</i> -dioxin	
57117-41-6 1,2,3,7,8-Pentachlorodibenzofuran	
57117-31-4 2,3,4,7,8-Pentachlorodibenzofuran	
40321-76-4 1,2,3,7,8-Pentachlorodibenzo- <i>p</i> -dioxin	
51207-31-9 2,3,7,8-Tetrachlorodibenzofuran	
01746-01-6 2,3,7,8 Tetrachlorodibenzo- <i>p</i> -dioxin	
Mercury compounds	10
Polycyclic aromatic compounds (PACs) (This category includes only those chemicals listed below).	100
00056-55-3 Benz(a)anthracene	
00205-99-2 Benzo(b)fluoranthene	
00205-82-3 Benzo(j)fluoranthene	
00207-08-9 Benzo(k)fluoranthene	
00206-44-0 Benzo(j,k)fluorene	
00189-55-9 Benzo(r,s,t)pentaphene	
00218-01-9 Benzo(a)phenanthrene	
00050-32-8 Benzo(a)pyrene	
00226-36-8 Dibenz(a,h)acridine	
00224-42-0 Dibenz(a,i)acridine	
00053-70-3 Dibenzo(a,h)anthracene	
00194-59-2 7H-Dibenzo(c,g)carbazole	
05385-75-1 Dibenzo(a,e)fluoranthene	
00192-65-4 Dibenzo(a,e)pyrene	
00189-64-0 Dibenzo(a,h)pyrene	
00191-30-0 Dibenzo(a,l)pyrene	
00057-97-6 7,12-Dimethylbenz(a)anthracene	
00193-39-5 Indeno[1,2,3-cd]pyrene	
00056-49-5 3-Methylcholanthrene	
03697-24-3 5-Methylchrysene	
05522-43-0 1-Nitropyrene	

(b) The threshold determination provisions under § 372.25(c) through (h) and the exemptions under § 372.38(b) through (h) are applicable to the toxic chemicals listed in paragraph (a) of this section.

#### § 372.30 [Amended]

6. Section 372.30 is amended as follows:

i. In paragraph (a), remove the phrase “in § 372.25 at” and add in its place “in § 372.25, § 372.27, or § 372.28 at”.

ii. In paragraphs (b)(1), the introductory text of (b)(3), (b)(3)(i), and (b)(3)(iv), remove the reference “§ 372.25” and add in its place “§ 372.25, § 372.27, or § 372.28”.

#### § 372.38 [Amended]

7. Section 372.38 is amended as follows:

i. In paragraph (a), add the following sentence at the end of the paragraph to read as follows: “This exemption does not apply to toxic chemicals listed in § 372.28, except for purposes of § 372.45(d)(1).”.

ii. In paragraphs (b), (c) introductory text, (d) introductory text, and (f), remove the reference “§ 372.25” and add in its place “§ 372.25, § 372.27, or § 372.28”.

iii. In paragraphs (g) and (h), remove the phrase “§ 372.25 or § 372.27” and add in its place “§ 372.25, § 372.27, or § 372.28”.

8. Section 372.65 is amended as follows:

i. In the table in paragraph (a), revise the entry for “Vanadium” and alphabetically add four chemicals.

ii. In the table in paragraph (b), revise the CAS no. entry “7440-62-2” and add four chemicals in numerical CAS no. sequence.

iii. In the table in paragraph (c), alphabetically add two categories, “dioxin and dioxin-like compounds” and “vanadium”, and alphabetically add two chemicals, “benzo(j,k)fluorene” and “3-methylcholanthrene”, under the polycyclic aromatic compounds (PACs) category.

The revisions and additions read as follows:

#### § 372.65 Chemicals and chemical categories to which the part applies.

\* \* \* \* \*  
(a) \* \* \*

Chemical name	CAS No.	Effective date
Benzo(g,h,i)perylene	00191-24-2	1/00
Octachlorostyrene	29082-74-4	1/00
Pentachlorobenzene	00608-93-5	1/00
Tetrabromobisphenol A	00079-94-7	1/00
Vanadium (except when contained in an alloy)	7440-62-2	1/00

(b) \* \* \*

CAS No.	Chemical name	Effective date
7440-62-2	Vanadium (except when contained in an alloy)	1/00
00079-94-7	Tetrabromobisphenol A	1/00
00191-24-2	Benzo(g,h,i)perylene	1/00
00608-93-5	Pentachlorobenzene	1/00
29082-74-4	Octachlorostyrene	1/00

(c) \* \* \*

Category name	Effective date
Dioxin and dioxin-like compounds (Manufacturing; and the processing or otherwise use of dioxin and dioxin-like compounds if the dioxin and dioxin-like compounds are present as contaminants in a chemical and if they were created during the manufacturing of that chemical) (This category includes only those chemicals listed below)	1/00
67562-39-4 1,2,3,4,6,7,8-Heptachlorodibenzofuran	
55673-89-7 1,2,3,4,7,8,9-Heptachlorodibenzofuran	
70648-26-9 1,2,3,4,7,8-Hexachlorodibenzofuran	
57117-44-9 1,2,3,6,7,8-Hexachlorodibenzofuran	
72918-21-9 1,2,3,7,8,9-Hexachlorodibenzofuran	
60851-34-5 2,3,4,6,7,8-Hexachlorodibenzofuran	
39227-28-6 1,2,3,4,7,8-Hexachlorodibenzo- <i>p</i> -dioxin	
57653-85-7 1,2,3,6,7,8-Hexachlorodibenzo- <i>p</i> -dioxin	
19408-74-3 1,2,3,7,8,9-Hexachlorodibenzo- <i>p</i> -dioxin	
35822-46-9 1,2,3,4,6,7,8-Heptachlorodibenzo- <i>p</i> -dioxin	
39001-02-0 1,2,3,4,6,7,8,9-Octachlorodibenzofuran	
03268-87-9 1,2,3,4,6,7,8,9-Octachlorodibenzo- <i>p</i> -dioxin	
57117-41-6 1,2,3,7,8-Pentachlorodibenzofuran	
57117-31-4 2,3,4,7,8-Pentachlorodibenzofuran	
40321-76-4 1,2,3,7,8-Pentachlorodibenzo- <i>p</i> -dioxin	
51207-31-9 2,3,7,8-Tetrachlorodibenzofuran	
01746-01-6 2,3,7,8-Tetrachlorodibenzo- <i>p</i> -dioxin	

Category name		Effective date
Polycyclic aromatic compounds (PACs): This category includes only those chemicals listed below).		
00206-44-0	Benzo(j,k)fluorene	1/00
00056-49-5	3-Methylcholanthrene	1/00
Vanadium compounds		1/00

9. In § 372.85, revise the introductory text of paragraph (b)(15)(i), add a new paragraph (b)(15)(ii), and revise paragraphs (b)(16)(i)(B) and (b)(16)(ii)(B) to read as follows:

**§ 372.85 Toxic chemical release reporting form and instructions.**

\* \* \* \* \*

(b) \* \* \* \* \*  
(15) \* \* \* \*

(i) An estimate of total releases in pounds (except for dioxin and dioxin-like compounds, which shall be reported in grams) per year (releases of less than 1,000 pounds per year may be indicated in ranges, except for chemicals set forth in § 372.28) from the facility plus an indication of the basis of estimate for the following:

\* \* \* \* \*

(ii) Report a distribution of the chemicals included in the dioxin and dioxin-like compounds category. Such distribution shall either represent the distribution of the total quantity of dioxin and dioxin-like compounds released to all media from the facility; or its one best media-specific distribution.

(16) \* \* \* \*

(i) \* \* \* \*

(B) An estimate of the amount of the chemical transferred in pounds (except for dioxin and dioxin-like compounds, which shall be reported in grams) per year (transfers of less than 1,000 pounds per year may be indicated as a range, except for chemicals set forth in

§ 372.28) and an indication of the basis of the estimate.

\* \* \* \* \*

(ii) \* \* \*

(B) An estimate of the amount of the chemical in waste transferred in pounds (except for dioxin and dioxin-like compounds, which shall be reported in grams) per year (transfers of less than 1,000 pounds may be indicated in ranges, except for chemicals set forth in § 372.28) to each off-site location, and an indication of the basis for the estimate and an indication of the type of treatment or disposal used.

\* \* \* \* \*

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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#### H.R. 2561/P.L. 106-79

Department of Defense Appropriations Act, 2000 (Oct. 25, 1999; 113 Stat. 1212)

#### S. 322/P.L. 106-80

To amend title 4, United States Code, to add the Martin Luther King Jr. holiday to the list of days on which the flag should especially be displayed. (Oct. 25, 1999; 113 Stat. 1285)

#### S. 800/P.L. 106-81

Wireless Communications and Public Safety Act of 1999 (Oct. 26, 1999; 113 Stat. 1286)

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