2–10–00 Thursday
Vol. 65 No. 28 Feb. 10, 2000
Pages 6523–6880

# Federal Register

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

**The seal of the National Archives and Records Administration authenticates the Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register,** Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

**How To Cite This Publication:** Use the volume number and the page number. Example: 65 FR 12345.

Printed on recycled paper.

## SUBSCRIPTIONS AND COPIES

**PUBLIC**

**Subscriptions:**

| | |
|---|---|
| Paper or fiche | **202–512–1800** |
| Assistance with public subscriptions | **512–1806** |
| **General online information** | **202–512–1530; 1–888–293–6498** |

**Single copies/back copies:**

| | |
|---|---|
| Paper or fiche | **512–1800** |
| Assistance with public single copies | **512–1803** |

**FEDERAL AGENCIES**

**Subscriptions:**

| | |
|---|---|
| Paper or fiche | **523–5243** |
| Assistance with Federal agency subscriptions | **523–5243** |

# Contents

**Federal Register**

Vol. 65, No. 28

Thursday, February 10, 2000

**Agricultural Marketing Service**
RULES
Spearmint oil produced in Far West, 6528–6531

**Agricultural Research Service**
RULES
National Agricultural Library; loan and copying fees, 6526–6528

**Agriculture Department**
*See* Agricultural Marketing Service
*See* Agricultural Research Service
*See* Animal and Plant Health Inspection Service
*See* Forest Service
*See* Natural Resources Conservation Service
*See* Rural Housing Service

**Animal and Plant Health Inspection Service**
RULES
Plant-related quarantine, domestic:
Gypsy moth, 6525–6526

**Antitrust Division**
NOTICES
National cooperative research notifications:
Digital Imaging Group, Inc., 6631
OBI Consortium, Inc., 6631
Ohio Aerospace Institute Federated Intelligent Product Environment Consortium, 6631
Salutation Consortium, Inc., 6632
Southwest Research Institute, 6632
Telematics Suppliers Consortium, Inc., 6632
UOP LLC et al., 6632–6633
VSI Alliance, 6633

**Centers for Disease Control and Prevention**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6602–6606
Submission for OMB review; comment request, 6606–6607
Grants and cooperative agreements; availability, etc.:
Childhood Lead Poisoning Prevention Programs, 6607–6613

**Civil Rights Commission**
NOTICES
Meetings; Sunshine Act, 6585

**Commerce Department**
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration

**Commodity Futures Trading Commission**
PROPOSED RULES
Commodity Exchange Act:
Minimum financial requirements for futures commission merchants and introducing brokers, 6569–6573
NOTICES
Contract market proposals:
Minneapolis Grain Exchange—
Durum wheat; quality specifications, 6591–6592

**Copyright Office, Library of Congress**
PROPOSED RULES
Digital Millennium Copyright Act:
Circumvention of copyright protection systems for access control technologies; exemption to prohibition, 6573–6574

**Customs Service**
NOTICES
Automation program test:
Prototype conclusion, 6688

**Defense Department**
*See* Navy Department
RULES
Acquisition regulations:
Class deviation authority delegation, 6551–6552
Government-unique specifications and standards; offeror alternatives (OMB Circular A-119), 6553
Mentor-protege program improvements, 6554–6561
People's Republic of China, 6553–6554
PROPOSED RULES
Acquisition regulations:
Contract drawings, maps, and specifications, 6574–6575
Profit policy, 6574
NOTICES
Meetings:
Science Board task forces, 6592

**Drug Enforcement Administration**
NOTICES
Schedules of controlled substances; production quotas:
Schedules I and II—
2000 aggregate, 6635–6637
*Applications, hearings, determinations, etc.:*
Cedarburg Laboratories, Inc., 6633
Chattem Chemicals, Inc., 6633
Chirex Technology Center, Inc., 6634
Ganes Chemicals Inc., 6634
High Standard Products, 6634
Irix Pharmaceuticals, Inc., 6634–6635
LifePoint, Inc., 6635

**Education Department**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6593–6594
Grants and cooperative agreements; availability, etc.:
Elementary and secondary education—
Advanced Placement Incentive Program, 6872–6873
Meetings:
Federal Interagency Coordinating Council, 6594
Postsecondary Education Improvement Fund National Board, 6594–6595

**Energy Department**
*See* Federal Energy Regulatory Commission

**Environmental Protection Agency**
RULES
Air pollution control; new motor vehicles and engines:
Tier 2 motor vehicle emission standards and gasoline sulfur control requirements, 6698–6870

**Executive Office of the President**
*See* Presidential Documents

**Federal Aviation Administration**
**RULES**
Airworthiness directives:
Boeing, 6534–6535
General Electric Co., 6533–6534
Class C airspace, 6535–6536
**PROPOSED RULES**
Airworthiness directives:
Airbus, 6563–6564, 6566–6569
Bombardier, 6565–6566
**NOTICES**
Meetings:
Controller Pilot Data Link Communications Industry Day, 6686–6687
RTCA, Inc., 6687

**Federal Communications Commission**
**RULES**
Radio services, special:
Amateur services—
Operator license structure simplification, etc., 6548–6551
Television broadcasting:
Digital television spectrum; ancillary or supplementary use; fees, 6544–6548
**NOTICES**
Agency information collection activities:
Proposed collection; comment request, 6600
Submission for OMB review; comment request, 6600–6601

**Federal Energy Regulatory Commission**
**NOTICES**
Electric rate and corporate regulation filings:
Cook Inlet Energy Supply L.P. et al., 6596–6598
Environmental statements; notice of intent:
Trans-Union Interstate Pipeline, L.P., 6598–6599
*Applications, hearings, determinations, etc.:*
ANR Pipeline Co., 6595
Maritimes & Northeast Pipeline, L.L.C., 6595
Midwestern Gas Transmission Co., 6595
Pacific Gas & Electric Co., 6595–6596
Petal Gas Storage Co., 6596
Williston Basin Interstate Pipeline Co., 6596

**Federal Reserve System**
**RULES**
Extensions of credit by Federal Reserve banks (Regulation A):
Discount rate change, 6531–6533
**NOTICES**
Banks and bank holding companies:
Change in bank control, 6601
Formations, acquisitions, and mergers, 6601
Permissible nonbanking activities, 6601–6602

**Federal Trade Commission**
**NOTICES**
Meetings:
Online Access and Security Advisory Committee, 6602

**Fish and Wildlife Service**
**NOTICES**
Endangered and threatened species permit applications, 6618–6619
Marine mammals:
Incidental taking; authorization letters, etc.—
King and Kittitas Counties, WA; Plum Creek Timber Co.; habitat conservation plan, 6590

**Food and Drug Administration**
**NOTICES**
Agency information collection activities:
Reporting and recordkeeping requirements, 6613
Meetings:
Pharmaceutical Science Advisory Committee, 6613–6614

**Forest Service**
**NOTICES**
Agency information collection activities:
Proposed collection; comment request, 6579–6580
Environmental statements; notice of intent:
Bitterroot National Forest, MT, 6580–6581
Umatilla National Forest, OR, 6582–6583
Wasatch-Cache National Forest, UT, 6583–6584
Meetings:
Lake Tahoe Basin Federal Advisory Committee, 6584

**Health and Human Services Department**
*See* Centers for Disease Control and Prevention
*See* Food and Drug Administration
*See* Health Care Financing Administration
*See* Substance Abuse and Mental Health Services Administration

**Health Care Financing Administration**
**NOTICES**
Agency information collection activities:
Proposed collection; comment request, 6614

**Housing and Urban Development Department**
**NOTICES**
Agency information collection activities:
Proposed collection; comment request, 6616–6618
Submission for OMB review; comment request, 6618

**Interior Department**
*See* Fish and Wildlife Service
*See* Land Management Bureau
*See* Minerals Management Service
*See* National Park Service
*See* Reclamation Bureau
*See* Surface Mining Reclamation and Enforcement Office

**Internal Revenue Service**
**NOTICES**
Agency information collection activities:
Proposed collection; comment request, 6688–6695

**International Trade Administration**
**NOTICES**
Antidumping:
Cut-to-length carbon-quality steel plate products from—
Various countries, 6585–6587
Countervailing duties:
Cut-to-length carbon-quality steel plate products from—
Various countries, 6587–6589
Export trade certificates of review, 6589–6590

**International Trade Commission**
**NOTICES**
Import investigations:
Cold-rolled steel products from—
Various countries, 6624

Cut-to-length steel plate from—
Various countries, 6624–6625
Excimer laser systems for vision correction surgery and components and methods for performing such surgery, 6625–6626
Heavy forged handtools from—
China, 6626–6627
Industrial belts from—
Various countries, 6627–6628
Magnesium from—
Canada, 6628–6629

**Justice Department**
*See* Antitrust Division
*See* Drug Enforcement Administration
**NOTICES**
Pollution control; consent judgments:
Anthony Dell'Aquila Enterprises et al., 6630
Cornell University, 6630
Raymark Industries, Inc., 6630–6631

**Land Management Bureau**
**NOTICES**
Environmental statements; availability, etc.:
Sonoran Pronghorn Forage Enhancement Project, AZ, 6619
Meetings:
Resource Advisory Councils—
John Day-Snake, 6620
Western Montana, 6619–6620

**Libraries and Information Science, National Commission**
*See* National Commission on Libraries and Information Science

**Library of Congress**
*See* Copyright Office, Library of Congress

**Minerals Management Service**
**RULES**
Outer Continental Shelf; oil, gas, and sulphur operations:
Postlease operations safety; update and clarification; correction, 6536

**National Commission on Libraries and Information Science**
**NOTICES**
Meetings; Sunshine Act, 6637

**National Council on Disability**
**NOTICES**
Committees; establishment, renewal, termination, etc.:
Youth Advisory Committee, 6637

**National Credit Union Administration**
**NOTICES**
Agency information collection activities:
Submission for OMB review; comment request, 6637–6638

**National Oceanic and Atmospheric Administration**
**RULES**
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific cod, 6561–6562
Pollock; steller sea lion protection measures; correction, 6561
**PROPOSED RULES**
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic herring, 6575–6577
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish, 6577–6578
**NOTICES**
Marine mammals:
Incidental taking; authorization letters, etc.—
King and Kittitas Counties, WA; Plum Creek Timber Co.; habitat conservation plan, 6590
Meetings:
International Commission for Conservation of Atlantic Tunas, U.S. Section Advisory Committee, 6591

**National Park Service**
**NOTICES**
Committees; establishment, renewal, termination, etc.:
Native American Graves Protection and Repatriation Review Committee, 6620
Meetings:
Going-to-the-Sun Road Advisory Committee, 6620–6621
Native American Graves Protection and Repatriation Review Committee, 6621
Native American Graves Protection and Repatriation Review Committee; findings and recommendations, 6621–6622
Native American human remains and associated funerary objects:
Virginia Department of Historic Resources, VA; inventory from Rockbridge County, VA, 6622–6623

**Natural Resources Conservation Service**
**NOTICES**
Field office technical guides; changes:
Iowa, 6584

**Navy Department**
**NOTICES**
Base realignment and closure:
Surplus Federal Property—
Naval Air Station, Key West, FL, 6592–6593
Meetings:
Naval Postgraduate School Board of Advisors to Superintendent, 6593

**Nuclear Regulatory Commission**
**NOTICES**
Meetings; Sunshine Act, 6643
Regulatory guides; issuance, availability, and withdrawal, 6644
*Applications, hearings, determinations, etc.:*
Consumers Energy Co., 6638
Hydro Resources, Inc., 6638
Indiana Michigan Power Co., 6638–6640
Northeast Nuclear Energy Co. et al., 6640–6641
Northern States Power Co., 6641–6643

**Postal Rate Commission**
**RULES**
Practice and procedure:
Proceedings; efficiency and effectiveness improvement; electronic filing, etc., 6536–6544

**Presidential Documents**
**EXECUTIVE ORDERS**
Government agencies and employees:
Genetic information; prohibiting discrimination in Federal employment (EO 13145), 6875–6880

**ADMINISTRATIVE ORDERS**
Soviet Union, Independent States of the Former; assistance (Presidential Determination No. 2000-11 of February 1, 2000), 6523

**Public Health Service**
*See* Centers for Disease Control and Prevention
*See* Food and Drug Administration
*See* Substance Abuse and Mental Health Services Administration

**Railroad Retirement Board**
**NOTICES**
Agency information collection activities:
Proposed collection; comment request, 6644

**Reclamation Bureau**
**NOTICES**
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Amortec, 6623

**Rural Housing Service**
**NOTICES**
Grants and cooperative agreements; availability, etc.:
Section 538 Guaranteed Rural Rental Housing Program; correction, 6585

**Securities and Exchange Commission**
**NOTICES**
Agency information collection activities:
Proposed collection; comment request, 6644–6645
Investment Company Act of 1940:
Exemption applications—
First American Investment Funds, Inc., et al., 6645–6647
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 6647–6665
Chicago Board Options Exchange, Inc., 6665–6669
Municipal Securities Rulemaking Board, 6669–6673
New York Stock Exchange, Inc., 6673–6675
Pacific Exchange, Inc., 6675–6680
Philadelphia Stock Exchange, Inc., 6680–6684

**Small Business Administration**
**NOTICES**
Disaster and emergency areas:
Kentucky, 6684

**Social Security Administration**
**NOTICES**
Agency information collection activities:
Proposed collection and submission for OMB review; comment request, 6684–6685

**State Department**
**NOTICES**
Meetings:
2000 International Telecommunication Union World Radiocommunication Conference; preparatory meeting, 6685
Cultural Property Advisory Committee, 6685–6686

**Substance Abuse and Mental Health Services Administration**
**NOTICES**
Agency information collection activities:
Proposed collection; comment request, 6614–6615
Meetings:
Grant programs technical assistance workshops, 6615–6616

**Surface Mining Reclamation and Enforcement Office**
**NOTICES**
Agency information collection activities:
Submission for OMB review; comment request, 6623–6624

**Surface Transportation Board**
**NOTICES**
Railroad operation, acquisition, construction, etc.:
Pennsylvania Lines LLC, 6687–6688

**Transportation Department**
*See* Federal Aviation Administration
*See* Surface Transportation Board
**NOTICES**
Aviation proceedings:
Agreements filed; weekly receipts, 6686

**Treasury Department**
*See* Customs Service
*See* Internal Revenue Service

---

**Separate Parts In This Issue**

**Part II**
Environmental Protection Agency, 6697–6870

**Part III**
Department of Education, 6871–6873

**Part IV**
The President, 6875–6880

---

**Reader Aids**
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.


**3 CFR**

**Administrative Orders:**

Presidential Determinations:

No. 2000–11 of February 1, 2000 .....6523

**Executives Orders:**

13145.....6523

**7 CFR**

301.....6525
505.....6526
985.....6528

**12 CFR**

201.....6531

**14 CFR**

39 (2 documents) .....6533, 6534
71.....6535

**Proposed Rules:**

39 (3 documents) .....6563, 6565, 6566

**17 CFR**

**Proposed Rules:**

1.....6569

**30 CFR**

250.....6536

**37 CFR**

**Proposed Rules:**

201.....6573

**39 CFR**

3001.....6536

**40 CFR**

80.....6698
85.....6698
86.....6698

**47 CFR**

73.....6544
97.....6548

**48 CFR**

CH. 2 .....6554
201.....6551
211.....6553
212.....6553
219.....6554
225 (2 documents) .....6551, 6553
252.....6553

**Proposed Rules:**

215.....6574
252.....6574

**50 CFR**

679 (2 documents) .....6561

**Proposed Rules:**

648.....6575
660.....6577

**Federal Register**
Vol. 65, No. 28
Thursday, February 10, 2000

# Presidential Documents

**Title 3—**

## The President

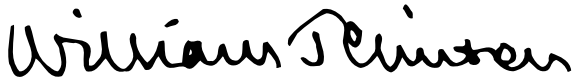
**Presidential Determination No. 2000–11 of February 1, 2000**

## Assistance Program for the Independent States of the Former Soviet Union

**Memorandum for the Secretary of State**

Pursuant to subsection 517(b) in title V of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000 (Public Law 106–113), I hereby determine that it is in the national security interest of the United States to make available funds appropriated under the heading ''Assistance for the Independent States of the Former Soviet Union'' in title II of that Act without regard to the restriction in that subsection.

You are directed to report this determination to the Congress and publish it in the **Federal Register**.



THE WHITE HOUSE,
*Washington, February 1, 2000.*

[FR Doc. 00–3289
Filed 2–9–00; 8:45 am]
Billing code 4710–10–M

# Rules and Regulations

Federal Register
Vol. 65, No. 28
Thursday, February 10, 2000

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

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 301

**[Docket No. 99–042–2]**

### Gypsy Moth Generally Infested Areas

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the gypsy moth regulations by adding 4 counties in Indiana, 6 counties in Michigan, 11 counties in Ohio, 4 cities and 3 counties in Virginia, and 2 counties in Wisconsin to the list of generally infested areas. As a result of the interim rule, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary to prevent the artificial spread of the gypsy moth to noninfested States.

**EFFECTIVE DATE:** The interim rule became effective on July 27, 1999.

**FOR FURTHER INFORMATION CONTACT:** Ms. Coanne E. O'Hern, Operations Officer, Invasive Species and Pest Management Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

**SUPPLEMENTARY INFORMATION:**

### Background

In an interim rule effective and published in the **Federal Register** on July 27, 1999 (64 FR 40509–40511, Docket No. 99–042–1), we amended the gypsy moth regulations in 7 CFR part 301 by adding 4 counties in Indiana, 6 counties in Michigan, 11 counties in Ohio, 4 cities and 3 counties in Virginia, and 2 counties in Wisconsin to the list in § 301.45–3(a) of generally infested areas. As a result of the interim rule, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary to prevent the artificial spread of the gypsy moth to noninfested States.

Comments on the interim rule were required to be received on or before September 27, 1999. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12372 and 12988 and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

### Regulatory Flexibility Act

This rule affirms an interim rule that amended the gypsy moth regulations by adding 4 counties in Indiana, 6 counties in Michigan, 11 counties in Ohio, 4 cities and 3 counties in Virginia, and 2 counties in Wisconsin to the list of generally infested areas. As a result of the interim rule, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary to prevent the artificial spread of the gypsy moth to noninfested States.

The following analysis addresses the economic effect of the interim rule on small entities, as required by the Regulatory Flexibility Act.

This action affects the interstate movement of regulated articles and outdoor household articles (OHA's) from and through areas in Indiana, Michigan, Ohio, Virginia, and Wisconsin that are newly regulated for gypsy moth. There are several types of restrictions that apply to the newly regulated areas. These restrictions will have their primary effect on persons moving OHA's, nursery stock, Christmas trees, logs and wood chips, and mobile homes interstate from a generally infested area to any area that is not generally infested.

Under the regulations, OHA's may not be moved interstate from a generally infested area into or through a noninfested area unless they are accompanied by either a certificate issued by an inspector or an OHA document issued by the owner of the articles, attesting to the absence of all life stages of the gypsy moth. Most individual homeowners moving their own articles who comply with the regulations choose to self-inspect and issue an OHA document. This takes a few minutes and involves no monetary cost. Individuals may also have State-certified pesticide applicators, trained by the State or U.S. Department of Agriculture (USDA), inspect and issue certificates.

Generally, regulated articles (such as logs, pulpwood, wood chips, mobile homes, nursery stock, and Christmas trees) may only be moved interstate from a generally infested area if they are accompanied by a certificate or limited permit issued by an inspector. However, logs, wood chips, and pulpwood may be moved without a certificate or limited permit if the person moving the articles attaches a statement to the waybill stating that he or she has inspected the articles and has found them free of all life stages of the gypsy moth. This exception minimizes the costs of moving logs, pulpwood, and wood chips interstate. Regulated articles may also be moved interstate from a generally infested area without a certificate if they are moved by the U.S. Department of Agriculture for experimental or scientific purposes and they are accompanied by a permit issued by the Administrator of the Animal and Plant Health Inspection Service.

Persons moving regulated articles interstate from a generally infested area may obtain a certificate or limited permit from an inspector or a qualified certified applicator. Inspectors will issue these documents at no charge, but costs may result from delaying the movement of commercial articles while waiting for the inspection. Certificates for interstate movement of mobile homes from a generally infested area may also be obtained from qualified certified applicators.

When inspection of regulated articles or OHA's reveals gypsy moth, treatment is often necessary. The preferred treatment, scraping egg masses and spraying caterpillars, costs $10 to $30 per shipment on average. Fumigation is another alternative, but it is more expensive, at $75 to $100 per shipment, and it may damage the shipment. Treatment is done by qualified certified applicators, most of which are small businesses. These businesses might

experience a slight increase in income as a result of the interim rule.

Nurseries and Christmas tree growers that move a substantial number of shipments interstate from the generally infested areas would be able to minimize treatment costs by treating their premises for gypsy moths under a compliance agreement with USDA. Treatment would cost businesses between $10 and $20 per acre. This alternative would enable nurseries and Christmas tree growers to issue their own certificates for interstate shipments and would be less costly than treating individual shipments. The entities that would be most likely to choose this alternative are nurseries that move a substantial number of shipments interstate from the generally infested areas and that treat their premises for other pests in addition to the gypsy moth. Producers that do not operate under a compliance agreement with APHIS, but that treat their premises under this option, would receive certification for each shipment from an inspector.

There are approximately 687 entities in the newly regulated areas that will incur costs from the interim rule. These entities include 286 nurseries, 179 Christmas tree growers, 85 loggers, and 41 sawmills. The vast majority of these entities are small businesses.

Approximately 100 of the affected entities are in Indiana. These entities include 70 nurseries, 20 loggers, and 10 Christmas tree growers. Nurseries in Indiana sold an average of $127,206 worth of crops in 1997, and Christmas tree growers had average sales of $16,332. Average sales figures for loggers and sawmills in Indiana are not available, but nationwide, loggers and sawmills averaged sales of $3.3 million in 1992. Only about 10 percent of the affected entities' shipments are expected to leave the generally infested area, and only half of those, or 5 percent overall, will require treatment.

Approximately 187 of the affected entities are in Michigan. There are approximately 19 nurseries and 168 Christmas tree growers in the newly regulated areas. We do not expect that any treatments will be necessary for shipments from the newly regulated areas in Michigan because gypsy moth populations are low in those areas due to climatic conditions. However, time, salary, and recordkeeping costs for self-inspections will be incurred for shipments leaving the regulated areas. We estimate that 50 percent of the Christmas trees, 20 percent of the logs, and less than 2 percent of the nursery stock produced in the newly regulated areas are shipped interstate to noninfested areas. Nurseries and Christmas tree growers will also incur a $30 per acre fee for gypsy moth inspections, which are mandated by the State as a licensing requirement. This inspection fee represents about 1.5 percent of the average per-acre value of sales of harvested cut Christmas trees in Michigan in 1997.

Approximately 240 of the affected entities are in Ohio, including 135 nurseries, at least 96 Christmas tree growers, and 9 sawmills. Nurseries in the newly regulated areas had average sales of $19,218 in 1997, while Christmas tree growers averaged $22,505. Sawmills averaged $1.7 million in shipments in 1992, indicating that at least some of them are not small businesses. We do not know how many shipments are likely to be shipped out of the newly regulated areas in Ohio.

There are approximately 98 affected entities in Virginia and 62 affected entities in Wisconsin. However, we do not anticipate any additional costs for entities in the newly regulated areas in Virginia and Wisconsin since they do not send shipments interstate from the generally infested areas.

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

### List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

## PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 64 FR 40509–40511 on July 27, 1999.

**Authority:** 7 U.S.C.147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 4th day of February, 2000.

**Richard L. Dunkle,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–3076 Filed 2–9–00; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

## Agricultural Research Service

## 7 CFR Part 505

## National Agricultural Library Fees for Loans and Copying

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is establishing a fee schedule for loans of materials, and establishing a fee schedule for copying of materials from the collections of the National Agricultural Library. Fees generated will be used to defray costs of document delivery and maintenance of the collection.

**DATES:** Effective April 1, 2000.

**ADDRESSES:** Address all correspondence to Eileen McVey, Access Services Librarian, Document Delivery Services Branch, National Agricultural Library, Agricultural Research Service, Room 300, 10301 Baltimore Ave., Beltsville MD 20705–2351. Telephone: 301–504-6503. Email: userfees@nal.usda.gov

**FOR FURTHER INFORMATION CONTACT:** Carol Ditzler, Head Document Delivery Services Branch, National Agricultural Library, Agricultural Research Service, Room 300, 10301 Baltimore Ave., Beltsville MD 20705–2351.

**SUPPLEMENTARY INFORMATION:** This rule was published as a proposed rule for comment on August 16, 1999. Two comments were received. One comment indicated that fee changes were reasonable and that the price increase was viewed as having a positive effect upon the ability of patrons to obtain materials. The second comment viewed the increase in fees as excessive in terms of photocopying. The National Agricultural Library believes the fees are comparable to those of other research libraries. A random sampling of 15 academic and research libraries that do charge flat fees indicated a photocopy charge that ranged from a low of $8.00 when using OCLC IFM service to a high of $25.00 for non-IFM requests. (IFM is a service provided by the Online Computer Library Center (OCLC) in Dublin, Ohio, which credits and debits charges for libraries that participate resulting in a reduction of costs for invoicing.) The library, therefore, considers a flat fee of $13.00 for photocopies on the low side of a median cost for such services.

### Classification

This rule has been reviewed under Executive Order 12866, and it has been

determined that it is not a ''significant regulatory action'' rule because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. This rule will not create any serious inconsistencies or otherwise interfere with actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlement, grants or user fees, or loan programs, or the rights and obligations of recipients thereof, and does not raise novel legal or policy issues arising out of legal mandates, the Presidents's priorities, or principles set forth in Executive Order 12866.

**Regulatory Flexibility Act**

The Department of Agriculture certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. No. 96-534, as amended (5 U.S.C. 601, *et seq.*).

**Paperwork Reduction Act**

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection and record keeping requirements that will be imposed in implementation of this proposed rule have been submitted to OMB. This collection was approved by OMB on September 30, 1999, with OMB NO.: 0518–0027 and an expiration date of 09/30/2002.

**Background**

Section 1410A of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3125a), as added by section 1606(a) of Pub. L. 101–624, expanded existing statutory authorities for the NAL. In particular, section 1410A(e) authorized the NAL Director to make copies of NAL bibliographies, to make microforms and other reproductions of books and other library materials in USDA, to provide any other library and information products and services, and to sell those products and services at such price (not less than the total costs of disseminating the products and services) as the Secretary of Agriculture deems appropriate. Receipts from such sales must be deposited to the credit of appropriations available to the NAL and remain available until expended.

Currently, USDA regulations (7 CFR part 1, Appendix A) supply a fee schedule for copying of NAL materials requested under the Freedom of Information Act (FOIA), 5 U.S.C. 552. NAL in this regulation adopts a fee schedule for copying of NAL materials pursuant to interlibrary loan or other research requests, and to cover the costs of interlibrary loans of materials from NAL collections.

*Fee Schedule for Loans of Materials From the NAL Collection*

The NAL will charge fees for interlibrary loans of original materials from the NAL collection to other non-Federal and non-USDA libraries and institutions in the United States and Canada. By original materials, it is meant that NAL will provide loans of original works, and not copies, except in rare instances where works are too fragile or valuable for shipment. Libraries are encouraged to obtain materials locally and to view the NAL as a library of last resort. Loans directly to individuals are not permitted.

A flat fee per loaned item will be charged. Fees generated will be used to recover actual processing costs and to offset general wear and tear on the collection when items are loaned. The amount is based on a study of current library costs and market comparisons. There will be no charge for renewals.

Costs for replacement of lost or damaged materials will be the actual cost to purchase a replacement or a flat fee if the exact cost cannot be determined. A processing cost will be added to all lost or damaged materials.

*Fee Schedule for Paper Copying, Duplication, and Reproduction Services from the NAL Collection*

The NAL will charge a fee for photocopying and reproduction services separate from the fee schedule applicable to FOIA requests under 7 CFR part 1, Appendix A, for paper copying, duplication, and reproduction services provided to non-USDA and non-federal libraries and institutions in the United States. These services will be provided only in response to an interlibrary loan request from a library. Use of the interlibrary loan system ensures that NAL receives the request in an appropriate form and format for response. In some exceptions, services will be provided for requests from individuals who have not been able to obtain materials through their local resources or who have made special arrangements with the Special Collections section using their forms.

Copying of articles is subject to a maximum limitation of 50 pages per article for purposes of copyright compliance. This is based on CONTU Guidelines (National Commission on New Technological Uses of Copyright Works), and the Code of Federal Regulations (Title 17, and Title 37, Volume 1).

The NAL will charge in its schedule of fees for photocopying of paper materials and paper copying of microfiche or microfilm. NAL is switching from a per page-based charge to a per item flat fee because, historically, the average request is between 10 and 20 pages. Establishing a flat fee allows the customer to estimate their costs more effectively and allows the library to eliminate the cost of multiple steps currently necessary in determining pro-rated fees. Fees established are based on actual costs (staffing, contract costs, supplies, copier maintenance, normal wear and tear on the collection, delivery costs, etc.) as well as based on a review of comparable fees across the nation charged by other research and academic libraries. All fees will apply to non-USDA and non-federal library requests that meet standard interlibrary loan format requirements and apply to copying of materials from the NAL collections only.

NAL also will charge a flat rate for the costs of duplication of NAL owned microfiche and microfilm. Photographic services from NAL Special Collections will be charged at cost for reproduction of the photo product, plus a flat rate for preparation costs.

*Payment Submission Requirements*

The National Technical Information Service (NTIS) within the United States Department of Commerce provides a number of services to Federal Agencies, one of which is billing and collection services. NAL uses NTIS as the preferred method for invoicing and payment of fees under this fee schedule. Use of NTIS by NAL is preferred because it is the only agency currently providing this service to Federal offices. NAL encourages institutional users to establish deposit accounts with NTIS if needed. Payment for services will be made by check, money order or credit card in U.S. funds directly to the NTIS upon receipt of an invoice from NTIS. Subject to service charges for the actual costs of performing the invoicing service, funds received by NTIS will be returned to NAL to the credit of the appropriation account charged with the costs of providing the loan or copying service.

**List of Subjects in 7 CFR Part 505**

Agricultural research, Agriculture, Libraries, Research, User fees.

For the reasons set out in the preamble, chapter V of Title 7 of the Code of Federal Regulations is amended as set forth below:

Part 505 is added to read as follows:

## PART 505—NATIONAL AGRICULTURAL LIBRARY FEES FOR LOANS AND COPYING

Sec.

505.1 Scope and purpose.
505.2 Fees for loans of materials in library collections.
505.3 Fees for copying, duplicating, and reproduction of materials in library collections.
505.4 Reserved.
505.5 Reserved.
505.6 Payment of fees.

**Authority:** 5 U.S.C. 301; 7 U.S.C. 3125a.

### § 505.1 Scope and purpose.

These regulations establish fees for loans, paper copying, duplication, or reproduction of materials in the collections of the National Agricultural Library (NAL) within the United States Department of Agriculture (USDA).

### § 505.2 Fees for loans of materials in library collections.

(a) NAL will make loans of original materials from its collections, and charge fees for such loans, to other non-Federal and non-USDA libraries and institutions in the United States and Canada only. Loans will not be made directly to individuals.

(b) Loans will be made at a flat fee of $15.00 per loaned item.

(c) Cost for replacement of lost or damaged items will be the actual cost to purchase a replacement plus a $50.00 processing fee; or if the cost cannot be determined, a flat rate of $75.00 for monographs or $150.00 for audiovisuals per item, plus a $50.00 processing fee.

(d) All services in this section will incur a billing surcharge per invoice generated in addition to the above fees which may change as vendor's charges change. This fee, currently $10.00, is billed as a direct cost recovery based on charges to the library by the billing vendor. Interlibrary loan requests submitted by participants in the ILL Fee Management (IFM) program under the Online Computer Library Center, Inc. (OCLC) will not incur the billing surcharge as their activities will not generate an invoice.

### § 505.3 Fees for paper copying, duplicating, and reproduction of materials in library collections.

(a) Photocopy reproduction of paper copy will be set as a flat fee of $13.00 for domestic requests and $16.00 for international requests for each document requested with a maximum of 50 pages per article for copyright compliance. Materials delivered to international addresses via the Internet will be charged at the domestic rate. Photocopy reproduction of paper copy that requires special handling due to size or condition will incur special handling fees to recover costs at $20.00 per half hour or fraction thereof.

(b) Paper copies of microfilm or microfiche will be produced at a flat fee of $13.00 for requests delivered domestically and $16.00 for requests requiring delivery to a international address. This charge is for each document requested with a maximum of 50 pages per article for copyright compliance.

(c) Duplication of NAL owned microfiche will be charged a flat fee of $13.00 per each 5 microfiche duplicated or fraction thereof. Duplication of NAL owned microfilm will be charged a flat fee of $20.00 for each reel produced.

(d) Photographic services from NAL Special Collections will be charged at cost for reproduction of the photo product (slides, transparencies, etc.) plus a preparation fee of $25.00 per half hour or fraction thereof.

(e) All services in this section will incur a billing surcharge, currently $10.00, per invoice generated in addition to the above fees. This fee is a direct cost recovery based on charges to the library by the billing vendor and is subject to change. Interlibrary loan requests submitted by participants in the IFM program on OCLC will not incur the billing surcharge as their activities will not generate an invoice.

### § 505.4 Reserved.

### § 505.5 Reserved.

### § 505.6 Payment of fees.

Charges which include billing and handling will be invoiced quarterly by the National Technical Information Service (NTIS) of the United States Department of Commerce. The NAL encourages users to establish deposit accounts with NTIS. Payment for services will be made by check, money order or credit card in U.S. funds directly to the NTIS upon receipt of invoice from NTIS. Subject to a reduction for the actual costs of performing the invoicing service by NTIS, all funds received will be returned to NAL for credit to the appropriations account charged with the cost of processing the loan or copying request.

Done at Washington, D.C.

**Edward B. Knipling,**

*Acting Administrator, Agricultural Research Service.*

[FR Doc. 00–2875 Filed 2–9–00; 8:45 am]

BILLING CODE 3410–03–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 985

**[Docket No. FV00–985–3 IFR]**

## Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 1999–2000 Marketing Year

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule increases the quantity of Class 3 (Native) spearmint oil produced in the Far West that handlers may purchase from, or handle for, producers during the 1999–2000 marketing year. This interim final rule increases the Native spearmint oil salable quantity by 102,311 pounds from 1,125,755 pounds to 1,228,066 pounds, and the allotment percentage by 5 percent from 55 percent to 60 percent. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended this rule to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the Far West spearmint oil market.

**DATES:** Effective on February 11, 2000 through May 31, 2000; comments received by April 10, 2000 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and

will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; 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 complying with this regulation by contacting Jay Guerber, 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, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 985 (7 CFR Part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada, and Utah), hereinafter referred to as the ''order.'' This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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 provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule increases the quantity of Native spearmint oil produced in the Far West that may be purchased from or handled for producers by handlers during the 1999–2000 marketing year, which ends on May 31, 2000. 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. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the order). Spearmint oil is also produced in the Midwest. The production area covered by the order normally accounts for approximately 63 percent of the annual U.S. production of Scotch spearmint oil and approximately 93 percent of the annual U.S. production of Native spearmint oil.

This rule increases the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers during the 1999–2000 marketing year, which ends on May 31, 2000. This rule increases the salable quantity from 1,125,755 pounds to 1,128,066 pounds and the allotment percentage from 55 percent to 60 percent for Native spearmint oil for the 1999–2000 marketing year.

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle for, producers during a marketing year. The salable quantity calculated by the Committee is based on the estimated trade demand. The total salable quantity is divided by the total industry allotment base to determine an allotment percentage. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's individual allotment base for the applicable class of spearmint oil.

The initial salable quantity and allotment percentages for Scotch and Native spearmint oils for the 1999–2000 marketing year were recommended by the Committee at its October 7, 1998, meeting. The Committee recommended salable quantities of 1,199,190 pounds and 1,125,755 pounds, and allotment percentages of 65 percent and 55 percent, respectively, for Scotch and Native spearmint oils. A proposed rule was published in the November 17, 1998, issue of the **Federal Register** (63 FR 63804). A final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1999–2000 marketing year was published in the January 19, 1999, issue of the **Federal Register** (64 FR 2799).

Pursuant to authority contained in sections 985.50, 985.51, and 985.52 of the order, at its January 13, 2000, meeting, the Committee unanimously recommended that the allotment percentage for Native spearmint oil for the 1999–2000 marketing year be increased by 5 percent from 55 percent to 60 percent. Taking into consideration the following discussion on adjustments to the Native spearmint oil salable quantity, the 1999–2000 marketing year salable quantity of 1,125,755 pounds will therefore be increased to 1,228,066 pounds.

The original total industry allotment base for Native spearmint oil for the 1999–2000 marketing year was established at 2,046,828 pounds and was revised during the year to 2,046,214 pounds to reflect a loss of 614 pounds of base due to non-production of some producers' total annual allotments. When the revised total allotment base of 2,046,214 pounds is applied to the originally established allotment percentage of 55, the 1999–2000 marketing year salable quantity of 1,125,755 pounds is effectively modified to 1,125,418 pounds.

By increasing the salable quantity and allotment percentage, this rule makes an additional amount of Native spearmint oil available by releasing such oil from the reserve pool. When applied to each individual producer, the 5 percent allotment percentage increase allows each producer to take up to an amount equal to 5 percent of their allotment base from their Native spearmint oil reserve. If a producer does not have any reserve pool oil, or has less than 5 percent of their allotment base in the reserve pool, the increase in allotment percentage will actually make less than such amount available to the market. Currently, producers receiving 10,020 pounds of additional allotment through this increase do not have any Native spearmint oil in reserve. Thus, rather than 102,311 additional pounds, this action effectively makes an additional 92,291 pounds of Native spearmint oil available to the market.

The following table summarizes the Committee recommendation:

**Native Spearmint Oil Recommendation**

(A) Estimated 1999–2000 Allotment Base—2,046,828 pounds. This is the figure the original 1999–2000 salable quantities and allotment percentages were based on.

(B) Revised 1999–2000 Allotment Base—2,046,214 pounds. This is 614

pounds less than the estimated allotment base. This is less because some producers failed to produce all of their previous year's allotment.

(C) Initial 1999–2000 Allotment Percentage—55 percent.

(D) Initial 1999–2000 Salable Quantity—1,125,755 pounds. This figure is 55 percent of 2,046,828 pounds.

(E) Initial Adjustment to the 1999–2000 Salable Quantity—1,125,418 pounds. This figure reflects the salable quantity available after the beginning of the 1999–2000 marketing year due to the 614 pound reduction in the industry allotment base to 2,046,214 pounds.

(F) Increase in Allotment Percentage—5 percent. This percentage increase was recommended by the Committee at its January 13, 2000, meeting.

(G) Revised 1999–2000 Allotment Percentage—60 percent. This figure is derived by adding the 5 percent increase to the initial 1999–2000 allotment percentage of 55 percent.

(H) Computed Increase in the 1999–2000 Salable Quantity—102,311 pounds. This is the product of the revised 1999–2000 allotment base of 2,046,214 and the 5 percent increase.

(I) Revised 1999–2000 Salable Quantity—1,228,066 pounds. This figure is 60 percent of the estimated 1999–2000 allotment base of 2,046,214 pounds.

(J) Effective Increase in the 1999–2000 Salable Quantity—92,291 pounds. This figure represents the amount of Native spearmint oil actually being made available by this action based on the adjustments described herein.

In making this latest recommendation, the Committee considered all available information on supply and demand. The 1999–2000 marketing year began on June 1, 1999. Handlers have indicated that with this action, the available supply of both Scotch and Native spearmint oils appears adequate to meet anticipated demand through May 31, 2000. Without the increase, the Committee believes the industry would not be able to meet market needs. As of January 13, 2000, approximately 25,000 pounds of Native spearmint oil was available for market. The average for sales of Native spearmint oil from January 1 to May 31 over the past 5 years is 208,994 pounds. However, average sales for the period June 1 through December 31 for the past 5 years are 953,978 pounds. The Far West spearmint oil industry has sold 1,206,290 pounds of Native spearmint oil through January 13, 2000. Therefore, based on past history the industry may require at least about 40,000 additional pounds of Native to meet the five year average annual market demand. This action has the effect of adding 92,291 pounds of Native spearmint oil to the amount available for market, bringing the total available supply for the period January 13 through May 31, 2000, up to approximately 117,300 pounds.

The Department, based on its analysis of available information, has determined that the salable quantity and allotment percentage for Native spearmint oil for the 1999–2000 marketing year should be increased to 1,228,066 and 60 percent, respectively.

This rule relaxes the regulation of Native spearmint oil and will allow growers to meet market needs and improve returns. In conjunction with the issuance of this rule, the Committee's revised marketing policy statement for the 1999–2000 marketing year has been reviewed by the Department. The Committee's marketing policy statement, a requirement whenever the Committee recommends implementing volume regulations or recommends revisions to existing volume regulations, meets the intent of section 985.50 of the order. During its discussion of revising the 1999–2000 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the Department's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

The increase in the Native spearmint oil salable quantity and allotment percentage allows for anticipated market needs for this class of oil. In determining anticipated market needs, consideration by the Committee was given to historical sales, and changes and trends in production and demand.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the AMS has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this initial 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 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 7 spearmint oil handlers subject to regulation under the marketing order and approximately 119 producers of Scotch spearmint oil and 105 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than $500,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 7 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 25 of the 119 Scotch spearmint oil producers and 7 of the 105 Native spearmint oil producers would be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. A normal spearmint oil producing operation would have enough acreage for rotation such that the total acreage required to produce the crop would be about one-third spearmint and two-thirds rotational crops. An average spearmint oil producing farm would thus have to have considerably more acreage than would be planted to spearmint during any given season. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil producing farms would fall into the category of large businesses.

Small spearmint oil producers represent a minority of farming operations and are more vulnerable to market fluctuations. Such small farmers

generally need to market their entire annual crop and do not have the resources to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because of stronger incomes from alternate crops which could support the operation for a period of time. Despite the advantage larger producers may have, increasing the Native salable quantity and allotment percentage will help both large and small producers by improving returns.

Based on projections available at the meeting, the Committee considered alternatives to the 5 percent increase. The Committee not only considered leaving the salable quantity and allotment percentage unchanged, but also looked at various increases ranging from 1 percent to 15 percent. The Committee reached its recommendation to increase the salable quantity and allotment percentage for Native spearmint oil after careful consideration of all available information, and believes that the level recommended will achieve the objectives sought. Without the increase, the Committee believes the industry would not be able to meet market needs. As of January 13, 2000, approximately 25,000 pounds of Native spearmint oil was available for market. The past 5-year average of Native spearmint oil sales from January 1 to May 31 is 208,994 pounds, whereas the 5-year average for the period June 1 through December 31 is 953,978 pounds. The Far West spearmint oil industry has sold 1,206,290 pounds of Native spearmint oil this season through January 13, 2000. Therefore, based on historical sales the industry may require about 40,000 additional pounds of Native oil to meet the five-year average annual market demand. This action has the effect of adding 92,291 pounds of Native spearmint oil to the amount available for market, bringing the total available supply for the period January 13 through May 31, 2000, up to approximately 117,300 pounds.

Annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicative information collection by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Finally, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. Interested persons are also invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements 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 **FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including that contained in the prior proposed and final rules in connection with the establishment of the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1999–2000 marketing year, the Committee's recommendation and other available information, it is found that to revise section 985.218 (42 FR 2799) to change the salable quantity and allotment percentage for Native spearmint oil, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on a revision to the salable quantity and allotment percentage for Native spearmint oil for the 1999–2000 marketing year. A 60–day comment period is provided. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule increases the quantity of Native spearmint oil that may be marketed during the marketing year which ends on May 31, 2000; (2) the current quantity of Native spearmint oil may be inadequate to meet demand for the remainder of the season, thus making the additional oil available as soon as is practicable is beneficial to both handlers and producers; (3) the Committee unanimously recommended this change at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

**List of Subjects in 7 CFR Part 985**

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

## PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 985.218 is amended by republishing the introductory text and revising paragraph (b) to read as follows:

[**Note:** This section will not appear in the annual Code of Federal Regulations.]

**§ 985.218 Salable quantities and allotment percentages–1999–2000 marketing year.**

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 1999, shall be as follows:

* * * * *

(b) Class 3 (Native) oil—a salable quantity of 1,288,066 pounds and an allotment percentage of 60 percent.

Dated: February 4, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–3041 Filed 2–9–00; 8:45 am]

BILLING CODE 3401–02–P

## FEDERAL RESERVE SYSTEM

## 12 CFR Part 201

**[Regulation A]**

## Extensions of Credit by Federal Reserve Banks; Change in Discount Rate

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board of Governors has amended its Regulation A on Extensions of Credit by Federal Reserve Banks to reflect its approval of an increase in the basic discount rate at each Federal Reserve Bank. The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks.

**DATES:** The amendments to part 201 (Regulation A) were effective February

2, 2000. The rate changes for adjustment credit were effective on the dates specified in 12 CFR 201.51.

**FOR FURTHER INFORMATION CONTACT:** Jennifer J. Johnson, Secretary of the Board, at (202) 452–3259; for users of Telecommunications Device for the Deaf (TDD), contact Diane Jenkins, at (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, D.C. 20551.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority of sections 10(b), 13, 14, 19, et al., of the Federal Reserve Act, the Board has amended its Regulation A (12 CFR part 201) to incorporate changes in discount rates on Federal Reserve Bank extensions of credit. The discount rates are the interest rates charged to depository institutions when they borrow from their district Reserve Banks.

The ''basic discount rate'' is a fixed rate charged by Reserve Banks for adjustment credit and, at the Reserve Banks' discretion, for extended credit. In increasing the basic discount rate from 5 percent to 5.25 percent, the Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks. The new rates were effective on the dates specified below. The 25-basis-point increase in the discount rate was associated with a similar increase in the federal funds rate approved by the Federal Open Market Committee and announced at the same time.

The Board and the Reserve Banks remain concerned that over time increases in demand will continue to exceed the growth in potential supply, even after taking account of the pronounced rise in productivity growth. Such trends could foster inflationary imbalances that would undermine the economy's record economic expansion.

Against the background of their long-run goals of price stability and sustainable economic growth and of the information currently available, the Board and the Reserve Banks believe the risks are weighted mainly toward conditions that may generate heightened inflation pressures in the foreseeable future.

### Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the change in the basic discount rate will not have a significant adverse economic impact on a substantial number of small entities. The rule does not impose any additional requirements on entities affected by the regulation.

### Administrative Procedure Act

The provisions of 5 U.S.C. 553(b) relating to notice and public participation were not followed in connection with the adoption of the amendment because the Board for good cause finds that delaying the change in the basic discount rate in order to allow notice and public comment on the change is impracticable, unnecessary, and contrary to the public interest in fostering price stability and sustainable economic growth.

The provisions of 5 U.S.C. 553(d) that prescribe 30 days prior notice of the effective date of a rule have not been followed because section 553(d) provides that such prior notice is not necessary whenever there is good cause for finding that such notice is contrary to the public interest. As previously stated, the Board determined that delaying the changes in the basic discount rate is contrary to the public interest.

### List of Subjects in 12 CFR Part 201

Banks, banking, Credit, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR part 201 is amended as set forth below:

## PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for 12 CFR part 201 continues to read as follows:

**Authority:** 12 U.S.C. 343 *et seq.*, 347a, 347b, 347c, 347d, 348 *et seq.*, 357, 374, 374a and 461.

2. Section 201.51 is revised to read as follows:

#### § 201.51 Adjustment credit for depository institutions.

The rates for adjustment credit provided to depository institutions under § 201.3(a) are:

| Federal Reserve Bank | Rate | Effective |
|---|---|---|
| Boston | 5.25 | February 2, 2000. |
| New York | 5.25 | February 2, 2000. |
| Philadelphia | 5.25 | February 2, 2000. |
| Cleveland | 5.25 | February 2, 2000. |
| Richmond | 5.25 | February 2, 2000. |
| Atlanta | 5.25 | February 2, 2000. |
| Chicago | 5.25 | February 2, 2000. |
| St. Louis | 5.25 | February 2, 2000. |
| Minneapolis | 5.25 | February 3, 2000. |
| Kansas City | 5.25 | February 2, 2000. |
| Dallas | 5.25 | February 4, 2000. |
| San Francisco | 5.25 | February 2, 2000. |

By order of the Board of Governors of the Federal Reserve System, February 4, 2000.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 00–3031 Filed 2–9–00; 8:45 am]

BILLING CODE 6210–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–ANE–79–AD; Amendment 39–11561; AD 2000–03–04]**

**RIN 2120–AA64**

## Airworthiness Directives; General Electric Company CF6–80C2 Series Turbofan Engines

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to General Electric Company (GE) CF6–80C2 series turbofan engines. This amendment requires removal from service of affected fan mid shafts prior to reaching a new, lower cyclic life limit, and replacement with serviceable parts. This amendment is prompted by recent component test data. The actions specified by this AD are intended to prevent fan mid shaft failure, which could result in an uncontained engine failure and damage to the aircraft.

**EFFECTIVE DATE:** April 10, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone 513–672–8400, fax 513–672–8422. 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.

**FOR FURTHER INFORMATION CONTACT:** William S. Ricci, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7742, fax 781–238–7199.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–80C2 series turbofan engines was published in the **Federal Register** on October 26, 1999 (64 FR 57608). That action proposed to require removal from service of affected fan mid shafts prior to reaching a new, lower cyclic life limit, and replacement with serviceable parts. That action was prompted by recent component test data. That condition, if not corrected, could result in fan mid shaft failure, which could result in an uncontained engine failure and damage to the aircraft.

### Comments Received

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

Two commenters concur with the rule as proposed.

### Conclusion

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

### Economic Analysis

There are approximately 1,796 engines of the affected design in the worldwide fleet. The FAA estimates that 230 engines installed on aircraft of US registry will be affected by this AD and that required parts will cost approximately $90,085 per engine. Based on these figures, the total cost impact of the AD on US operators is estimated to be $20,719,600.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order (EO) 13132.

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2000–03–04 General Electric Company:** Amendment 39–11561. Docket 98–ANE–79–AD.

*Applicability:* General Electric Company (GE) CF6–80C2 series turbofan engines, with fan mid shafts, part number (P/N) 9326M74P04 or P/N 9326M74P05, installed. These engines are installed on but not limited to Airbus Industrie A300 and A310 series, Boeing 747 and 767 series, and McDonnell Douglas MD–11 series aircraft.

**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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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

To prevent fan mid shaft failure, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Remove from service affected fan mid shafts and replace with a serviceable part, as follows:

**Note 2:** GE CF6–80C2 Service Bulletin (SB) No. 72–958, dated December 10, 1998, contains information on this subject.

(1) For fan mid shafts that have accumulated 9,000 or more cycles-since-new (CSN) on the effective date of this AD, remove from service within 3,500 cycles-in-service (CIS) after the effective date of this AD, or prior to accumulating 15,000 CSN, whichever occurs first.

(2) For fan mid shafts that have accumulated 1,800 CSN or more, but less

than 9,000 CSN on the effective date of this AD, remove from service within 5,000 CIS after the effective date of this AD, or prior to accumulating to 12,500 CSN, whichever occurs first.

(3) For fan mid shafts that have accumulated less than 1,800 CSN on the effective date of this AD, remove from service prior to accumulating 6,800 CSN.

**Note 3:** GE CF6–80C2 SB 72–750, Revision 2, dated September 4, 1998, contains information on reworking fan mid shafts that results in changing the P/N. After that rework, this AD would not apply to engines containing the reworked fan mid shaft.

**New Life Limits**

(b) Except for the provisions of paragraph (a) of this AD, no fan mid shafts, P/N 9326M74P04 or 9326M74P05, may remain in service beyond 6,800 CSN.

**Alternate Method of Compliance**

(c) 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 request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

**Ferry Flights**

(d) 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 aircraft to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on April 10, 2000.

Issued in Burlington, Massachusetts, on February 2, 2000.

**David A. Downey,**

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

[FR Doc. 00–2988 Filed 2–9–00; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 96–NM–226–AD; Amendment 39–11562; AD 2000–03–05]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737–200 Series Airplanes Modified in Accordance with Supplemental Type Certificate (STC) ST00969AT

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–200 series airplanes that requires removal of the existing emergency floor path lighting system and replacement with an FAA-approved emergency floor path lighting system. This amendment is prompted by information indicating that the existing emergency floor path lighting system does not provide adequate lighting and cueing for safe evacuation of the airplane in the event of an emergency. The actions specified by this AD are intended to prevent such inadequate lighting and cueing, which could delay or impede the flight crew and passengers when exiting the airplane during an emergency.

**EFFECTIVE DATE:** March 16, 2000.

**ADDRESSES:** Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia.

**FOR FURTHER INFORMATION CONTACT:** Eugene Evans, Aerospace Engineer, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6081; fax (770) 703–6097.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–200 series airplanes was published in the **Federal Register** on June 23, 1999 (64 FR 33443). That action proposed to require removal of the existing emergency floor path lighting system and replacement with an FAA-approved emergency floor path lighting system. That proposal was prompted by information indicating that the existing emergency floor path lighting system does not provide adequate lighting and cueing for safe evacuation of the airplane in the event of an emergency. The actions specified by that proposal are intended to prevent such inadequate lighting and cueing, which could delay or impede the flight crew and passengers when exiting the airplane during an emergency.

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 concurs with the proposed rule.

Another commenter requests that the compliance time be extended to six months so that it will have adequate time to integrate the affected airplanes into the maintenance cycle.

The FAA concurs. The FAA has determined that such an extension of the compliance time to within 6 months after the effective date of the AD will not adversely affect safety. The final rule has been revised accordingly.

**Conclusion**

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

**Cost Impact**

There are approximately 40 Boeing Model 737–200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 4 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane to accomplish the removal of the system, and that the average labor rate is $60 per work hour. It will take approximately 40 work hours per airplane to accomplish the required replacement with an FAA-approved system. Required parts for the replacement will cost approximately $10,000 for a new system, per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $524,800, or $13,120 per airplane.

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

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2000–03–05 Boeing:** Amendment 39–11562. Docket 96–NM–226–AD.

*Applicability:* Model 737–200 series airplanes equipped with SAF–T–GL0 Aerospace Limited emergency floor path lighting systems installed in accordance with Supplemental Type Certificate (STC) ST00969AT, certificated in any category.

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

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

To prevent inadequate lighting and cueing of the emergency floor path lighting system, which could delay or impede the flight crew and passengers when exiting the airplane during an emergency, accomplish the following:

(a) Within 6 months after the effective date of this AD, remove the existing photoluminescent emergency floor path lighting system from the airplane. Replace it with an emergency floor path lighting system in accordance with Supplemental Type Certificate ST01829AT, dated February 11, 1999, or an FAA–approved emergency floor path lighting system that is installed in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

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

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

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

(d) This amendment becomes effective on March 16, 2000.

Issued in Renton, Washington, on February 4, 2000.

**Donald L. Riggin,**

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

[FR Doc. 00–3131 Filed 2–9–00; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 99–AWA–12]**

**RIN 2120–AA66**

## Revision to the Legal Description of the Burlington International Class C Airspace Area; VT

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

**ACTION:** Final rule.

**SUMMARY:** This action revises the legal description of the Burlington, VT, Class C airspace area by changing the operating hours to be consistent with the current operational requirements. Specifically, the Class C airspace area will be designated effective during the specific days and hours of operation of the Burlington Tower and Approach Control facility as established in advance by a Notice to Airmen (NOTAM). The effective dates and times thereafter will be continuously published in the Airport/Facility Directory. This action will not change the actual dimensions, configuration, or operating requirements of the Burlington Class C airspace area.

**EFFECTIVE DATE:** February 24, 2000.

**FOR FURTHER INFORMATION CONTACT:** Terry Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

### Background

The Burlington Airport Traffic Control Tower is reducing its hours of operation. The Burlington Class C airspace area remains an essential safety measure in support of the ongoing airport operation requirements.

On November 15, 1999, the FAA published an NPRM (64 FR 61803) that proposed to revise the legal description of the Burlington, VT, Class C airspace area by changing the operating hours to be consistent with the current operational requirements. Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. No comments objecting to the proposal were received. However, one error was found in the coordinates of the legal description in the notice for the Burlington International Airport, VT. Except for the change in the coordinates, this amendment is the same as that proposed in the notice.

### The Rule

This amendment to part 71 of The Federal Aviation Regulations (14 CFR part 71) revises the legal description of the Burlington Class C airspace area located at Burlington, VT. The legal description will use the operating hours for the Class C airspace area which are consistent with the current requirements. The Class C airspace area is designated effective during the specific days and hours of operation of the Burlington facility as established in advance by a NOTAM. This action is a technical amendment to the legal description and will not change the actual dimensions, configuration, or operating requirements of the Burlington Class C airspace area.

The coordinates for this airspace docket are based on North American Datum 83. Class C airspace areas are published in paragraph 4000 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 C airspace area listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, 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) 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 proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Act.

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

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

In consideration of the foregoing, 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 4000–Subpart C—Class C Airspace*

* * * * *

**Burlington International Airport, VT [Revised]**

Burlington International Airport, VT (lat. 44°28′23′ N., long. 73°09′01′ W.)

That airspace extending upward from the surface to and including 4,400 feet MSL within a 5–mile radius of the Burlington International Airport, and that airspace extending upward from 2,200 feet MSL to 4,400 feet MSL within a 10–mile radius of Burlington International Airport from the 360° bearing from the airport clockwise to the 180° bearing from the airport, excluding the airspace within Restricted Area R–6501; and that airspace extending upward from 1,500 feet MSL to 4,400 feet MSL within a 10–mile radius of the airport from the 180° bearing from the airport clockwise to the 360° bearing from the airport. This Class C airspace area is effective during the specific 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 Washington, DC on February 3, 2000.

**Reginald C. Matthews,**

*Manager, Airspace and Rules Division.*

[FR Doc. 00–3077 Filed 2–9–00; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## 30 CFR Part 250

**RIN 1010–AC32**

## Postlease Operations Safety

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Corrections to Final Regulations.

**SUMMARY:** This document contains corrections to the final rule titled ''Postlease Operations Safety'' that was published Tuesday, December 28, 1999 (64 FR 72756). We are correcting a section title and adding a word in the section that was inadvertently omitted.

**EFFECTIVE DATE:** January 27, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kumkum Ray, (703) 787–1600.

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations that are the subject of these corrections supersede 30 CFR 250, subpart A, General, regulations on the effective date and affect all operators and lessees on the Outer Continental Shelf.

With respect to the corrections, the title of § 250.142 is inaccurate and the word ''District'' was omitted inadvertently in the section.

**Need for Correction**

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

**Correction of Publication**

Accordingly, the publication on December 28, 1999, of the final regulations, which were the subject of FR Doc. 99–31869, is corrected as follows:

**§ 250.142 [Corrected]**

On page 72783, in the first column, the title of and the language in § 250.142 are corrected to read :

**§ 250.142 How do I receive approval for departures?**

We may approve departures to the operating requirements. You may apply for a departure by writing to the District or Regional Supervisor.

Dated: January 31, 2000.

**E.P. Danenberger,**

*Chief, Engineering and Operations Division.*

[FR Doc. 00–3109 Filed 2–9–00; 8:45 am]

BILLING CODE 4310–MR–U

## POSTAL RATE COMMISSION

## 39 CFR Part 3001

**[Docket No. RM98–3; Order No. 1284]**

## Revisions to Rules of Practice; Final Rule

**AGENCY:** Postal Rate Commission.

**ACTION:** Final Rule.

**SUMMARY:** This rule adopts final changes in Commission rules of practice. These changes adopt certain special rules of practice on a permanent basis, make several other procedural improvements, and make minor technical corrections and conforming changes. Adoption of these rules will aid in effective administration of Commission proceedings.

**DATES:** February 10, 2000.

**ADDRESSES:** Send correspondence concerning this document to 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., Suite 300, Washington, DC 20268–001, 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

**Regulatory History**

Initial notice of proposed rule: 63 FR 46732 (September 2, 1998).

Supplementary notice of proposed rule: 64 FR 72622 (Dec. 28, 1999).

**Introduction**

The Commission initiated this rulemaking to amend its rules of

practice and procedure (rules or rules of practice) to improve the efficiency and effectiveness of proceedings conducted pursuant to 39 U.S.C. 3624. See order no. 1218 (63 FR 46732, Sept. 2, 1998). The initial order encouraged comments on any topic covered in 39 CFR 3001.1–92, with the exception of library references and confidential information, which were to be addressed in separate rulemakings. In particular, comments were solicited regarding the extent to which electronic filing requirements or options could be added to the current rules, and on the incorporation of all (or most) of the special rules of practice into the rules. The special rules were originally designed for use in omnibus rate proceedings and recently have been employed in several classification and complaint dockets. These rules encompass five discrete areas: evidence, discovery, service, cross-examination and ''general,'' which in part addresses the use of library references. The rules generally provide both detailed procedures designed for complex omnibus rate cases with numerous participants, and pleading deadlines which are more accelerated than those in the existing rules.

Five sets of comments suggesting improvements were received. Commenters generally supported the integration of the special rules into the current rules of practice and procedure, but gave a mixed response to the possibility of electronic filing requirements. Some commenters suggested that several technical and procedural rules were outdated in light of current technology and practice. Certain ''streamlining'' measures also were proposed.

In order no. 1274, the Commission proposed specific changes in the rules which address the aforementioned areas of interest, as well as commenters' remarks. See order no. 1274 (64 FR 72622, Dec. 28, 1999). Proposed modifications included the incorporation of most of the special rules and minor updates of several current rules to reflect internal Commission changes since the rules were first promulgated. The proposed rules generally have been tested in numerous Commission proceedings, and have proven to be effective and efficient.

The Commission narrowed the scope of the rulemaking by limiting its consideration to Subpart A—Rules of General Applicability (rules 1–43). Thus, to the extent commenters' remarks encompassed Subparts B through F (rules 51–92), which include regulations pertaining to the initiation of dockets, they were deferred for consideration to a later rulemaking.

**Response to Order No. 1274**

Three sets of comments were received in response to order no. 1274. The comments are available for public inspection in the Commission's docket section, and can be accessed electronically at www.prc.gov. The comments essentially support the proposed revisions as reasonable and appropriate. However, there are some concerns with regard to the revised filing deadlines for various pleadings in Commission proceedings. Also, commenters suggest that clarification of some rules may be necessary. Finally, several minor technical amendments to the Commission's rules are proposed. Each comment will be addressed in turn.

**Deadlines**

*Reversion of the Proposed 7-day Deadline to the Current 10-day Deadline for Objections to Interrogatories, Requests for Production of Documents or Things, and Requests for Admissions (Rules 26(c), 27(c) and 28(c), Respectively)*

One commenter maintains that the shortened deadline for objections to discovery requests which the Commission proposes in rules 26(c), 27(c) and 28(c) is too severe and may result in ''increased motions practice and other inefficiencies.'' According to the commenter, a backlog of responses to interrogatories during extensive discovery in an omnibus rate case has been experienced frequently under the current 10-day deadline. This situation would be exacerbated if the period for responses was shortened. Moreover, the proposed 7-day deadline does not reflect incorporation of the special rules, but rather is an untested proposal.

The commenter presents a valid argument. The shortened time period for objections to discovery was proposed in conjunction with the abbreviated pleading periods prescribed by the special rules. However, the Commission recognizes that the special rules have been tested and proven successful in numerous Commission proceedings, whereas the proposal at issue is untried. As such, the Commission will not implement this shortened deadline as a final rule, and the current 10-day deadline will remain in effect. The proposed abbreviated deadline may instead be considered for implementation as a special rule during the docket no. R2000–1 omnibus rate case or other Commission proceeding.

*Implementation of a Shortened Time Period for Filing Motions to Compel Responses To Discovery in Revised Rules 26(d), 27(d) and 28(d)*

One commenter suggests that the period for participants to file motions to compel responses to discovery be shortened from the current 14 days to 10 days. The commenter argues that the abbreviated time period will effectively reduce those outstanding discovery disputes pending against a participant both during and after the hearing stage of its case-in-chief. Further, the shortened deadline would be consistent with the current, somewhat analogous 10-day period for response to a motion provided by rule 21(b).

The Commission declines to modify rules 26(d), 27(d) and 28(d) as proposed by the commenter. While the commenter's proposal has merit, the shortened time frame has never been tested as a special rule to gauge its effectiveness. The Commission therefore would be inclined to direct that the proposal first be applied in a particular case to determine its feasibility prior to any promulgation of a rule.

*Reversion of the Proposed 7-day Deadline for Responses to Motions in Rule 21 to the Current 10-day Deadline*

One commenter argues against the adoption of the Commission's proposal to shorten the deadline for responses to motions from 10 to seven days. According to the commenter, this abbreviated period is not a special rule and has not been tested in the course of a major rate proceeding. The commenter maintains that the shortened deadline would be difficult to meet and would likely result in numerous filings for extension of time to reply.

While not a special rule, the abbreviated time frame nonetheless has been imposed in a number of instances where motions have been seriously contested, and met with success. Additionally, the special rules require responses to motions to compel discovery in seven days, and applying this time period to all motions practice will eliminate confusion. In light of these considerations, the Commission is not persuaded by the commenter's arguments. The Commission's proposal will be implemented.

**Exhibits**

*Inclusion of Special Rule 1–B, Exhibits*

One commenter notes that the Commission did not incorporate the special rule addressing exhibits in its revised rules. That special rule specifies what information must be included in each exhibit, such as cross-references

for multi-part exhibits. The commenter maintains that the special rule on exhibits ensures the provision of those citations and references to sources necessary for a meaningful review of a particular exhibit, and therefore should be a part of the Commission's rules of practice and procedure. It is suggested that the special rule be inserted after the first sentence of rule 31(b), which pertains to documentary materials.

The Commission agrees that the special rule on exhibits merits inclusion in the rules of practice and procedure. That rule was not proposed for incorporation in order no. 1274 based on the Commission's assessment that the current rules and the revised rule on library references sufficiently addressed the filing of exhibits. See order no. 1273 (64 FR 67487, Dec. 2, 1999). However, it is possible that the special rule on exhibits would provide more comprehensive guidance on the matter. As suggested, this special rule is incorporated into current rule 31(b), documentary material.

**Filing Option Terms**

*Clarification of Proposed Rule 10 (Form and Number of Copies of Documents)*

One commenter questions whether it is the intention of the Commission to amend rule 10 to allow pleadings to be filed either in hardcopy form or on computer diskettes on a document-by-document basis.

The proposed amendment to rule 10 does allow participants to select the medium of filing on a document-by-document basis. Under the proposed rule, a participant is not required to select only one form of filing for all of that participant's documents in a given proceeding.

**Number of Copies**

*Reduction in the Number of Hardcopy Documents Requested for Filing Under Rule 10(d)*

Under rule 10, any participant filing a hardcopy document must present an original and 24 copies of the document. One commenter proposes that the number of required hard copies be reduced, given the availability of such documents on the Commission's web site and the potential time savings associated with a reduced filing requirement.

The Commission declines to amend rule 10 as requested, but notes that an alternative option was proposed by the Commission in order no. 1274. The proposed rule 10 allows for the electronic filing of documents, with a reduced number of hard copies. Thus, participants may submit a filing on computer diskette (in compliance with rule 10(c) specifications), accompanied by only one printed original and three hard copies of that filing.

**Internet-Based Service List**

*Clarification of Rule 12(d) Regarding the Appropriate Service List for Compliance With Service Requirements*

One commenter suggests that Commission rule 12(d) (service list) be modified to designate the service list on the Commission's web site as the current service list for effective service of documents. Such a modification would decrease the likelihood of participants utilizing out-of-date service lists, as is possible with reliance on a hardcopy service list, particularly in complex, multi-party cases.

The Commission finds this proposal reasonable, and will so amend rule 12(d). Each participant is responsible for ensuring that its listing on the Commission's web site (www.prc.gov) is accurate, and should promptly notify the Commission of any errors.

**Postal Service Street Address**

*Inclusion of Postal Service Street Address in Rule 12(e)*

The Postal Service suggests that rule 12(e), which describes the method of service of documents, be amended to include the Postal Service's street address. The Commission finds this proposal reasonable, and therefore amends rule 12(e) to read, in relevant part, ''. . . Chief Counsel, Rates and Classification, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 6536, Washington, DC 20260–1137.''

**Suggested Change to Rule 18**

*Amendment of Rule 18 Regarding Participants' Right To Request a Hearing*

One commenter notes that the current rule 18 (nature of proceedings) essentially allows participants the right to request a hearing without specifying the grounds for the request. In this regard, rule 18 is inconsistent with other Commission rules which require that the underlying purpose for a hearing request be cited. The commenter suggests that the phrase ''Except as otherwise provided in these rules'' be added to rule 18 to eliminate this inconsistency.

The Commission is in favor of eliminating any perception of inconsistency in its rules of practice and procedure. To this end, rule 18(a) (proceedings to be set for hearing) will be modified as proposed.

**Suggested Change to Rule 21(b)**

*Modification of Rule 21(b) Regarding Answers to Motions*

A commenter suggests that language be added to the rule to better signal the reader that the deadline imposed for responses to motions to strike, in the new rule 21(c), varies from the deadlines otherwise imposed in rule 21.

The Commission finds no compelling reason to add such language to rule 21(b). In the first instance, the same 7-day day deadline is imposed for responses to motions to strike in rule 21(c) and for answers to motions in rule 21(b). Furthermore, the potential for different deadlines for responses already is highlighted, as the revised rule 21(b) provides, in relevant part: ''Within seven days after a motion is filed, or such other period as the rules provide or the Commission or presiding officer may fix, any participant may file and serve an answer. . . .''

**Suggested Change in Numbering**

*Renumbering of Proposed New Rule 25*

One commenter suggests that the new rule 25 be renumbered as ''25a,'' thereby eliminating the need to renumber the current discovery rules. In this manner, confusion regarding the renumbered rules may be avoided in future cases, when the rules pertaining to discovery are researched, and past Commission documents referring to the current rule numbers are cited.

While the Commission understands this concern, it declines to act on this suggestion, as the **Federal Register** Document Drafting Handbook (DDH) states that numbers with alpha characters (such as part 25a) are not permitted in designating units within the Code of Federal Regulation (CFR) system. See **Federal Register** DDD, Section 1.12 at 1–22 (October 1998 Revision). The Commission is confident that the renumbering of the discovery rules, as proposed in order no. 1274, will not significantly impact either the Commission or the participants in future proceedings.

**Rule 25 Clarification**

*Clarification of Proposed Rule 25 With Regard to the Extended Period of Discovery on the Postal Service*

The proposed rule 25 provides, in relevant part, that ''[d]iscovery requests of this nature are permissible for the purpose of the development of rebuttal testimony and may be made up to 20 days prior to the filing date for final rebuttal testimony.'' One commenter suggests that the Commission's intent to limit the extended discovery period for

the sole purpose of rebuttal testimony development may be more fully realized by adding the word ''only'' to the provision.

It is agreed that modification of rule 25 as suggested is consistent with the intent of the rule and Commission precedent. The Commission therefore modifies rule 25 to read as follows, in relevant part: ''Discovery requests of this nature are permissible only for the purpose of the development of rebuttal testimony and may be made up to 20 days prior to the filing date for final rebuttal testimony.''

**Minor Corrections and Conforming Changes**

Several minor technical amendments to the Commission's rules of practice and procedure are now made. In rule 12(d), the phrase ''by each participating with the address'' is changed ''by each participant with the address.'' In rule 12(e), which provides for the method of service of documents in Commission proceedings, the word ''persons'' is changed to ''individuals'' to conform with the inserted special rules. In rule 26(c), the phrase ''service of interrogatories'' is substituted for the phrase ''the request for production,'' as that rule addresses interrogatories for the purpose of discovery. In rule 26(g), the word ''party'' is changed to ''participant,'' in accordance with Commission terminology. Likewise, in rule 27(c), all references to ''party'' are changed to ''participant.'' In rule 27(e), ''[s]uch compelled documents or things shall be made available to the participants making the motion * * *'' is changed to ''[s]uch compelled documents or things shall be made available to the participant making the motion * * *'' In rule 30(e)(1), the phrase ''including the Postal Service'' is deleted, as the term ''participant'' used in the sentence in question encompasses the Postal Service. Finally, the Commission notes that a minor typographical error and some superfluous text in order no. 1274 which was highlighted by a commenter was, in fact, corrected in the associated **Federal Register** notice. See 64 FR 72622 (Dec. 28, 1999).

*Text of Amended Revisions*

For the reasons discussed above, the Commission hereby amends Subpart A of its rules of practice and procedure as set forth in the attachment to this order. [Note: material in the attachment appears below, conformed to Office of the Federal Register style requirements.]

*Ordering Paragraphs*

The first ordering paragraph states that the Commission adopts the provisions set out in the attachment as the final rules amending 39 CFR 3001.1–43. The second paragraph states that the rules are effective upon publication in the **Federal Register**. The third paragraph states that the Secretary shall cause this order to be published in the **Federal Register**.

**Margaret P. Crenshaw,**

*Secretary.*

**List of Subjects in 39 CFR Part 3001**

Administrative practice and procedure, Postal Service.

For the reasons discussed in the preamble, the Commission amends 39 CFR part 3001—Rules of Practice and Procedure Subpart A—Rules of General Applicability as follows:

## PART 3001—RULES OF PRACTICE AND PROCEDURE

### Subpart A—Rules of General Applicability

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

**Authority:** 39 U.S.C. 404(b); 3603, 3622–24, 3661, 3662, 3663.

2. Revise § 3001.4 to read as follows:

**§ 3001.4 Method of citing rules.**

This part shall be referred to as the ''rules of practice.'' Each section, paragraph, or subparagraph shall include only the numbers and letters to the right of the decimal point. For example, ''3001.24 *Prehearing conferences*'' shall be referred to as ''section 24'' or ''rule 24.''

3. Amend § 3001.5 by revising paragraph (e) and adding paragraph (q) to read as follows:

**§ 3001.5 Definitions.**

* * * * *

(e) *Presiding officer* means the Chairman of the Commission in proceedings conducted by the Commission en banc or the Commissioner or employee of the Commission designated to preside at hearings or conferences.

* * * * *

(q) *Office of the Consumer Advocate* or *OCA* means the officer of the Commission designated to represent the interests of the general public in a Commission proceeding.

4. Amend § 3001.7 by revising paragraph (d)(1) to read as follows:

**§ 3001.7 Ex parte communications.**

* * * * *

(d) *Violations of ex parte rules.* (1) Upon notice of a communication knowingly made or knowingly caused to be made by a participant in violation of paragraph (b) of this section, the Commission or presiding officer at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the participant to show cause why his/her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

* * * * *

5. Amend § 3001.9 by revising paragraph (b) to read as follows:

**§ 3001.9 Filing of documents.**

* * * * *

(b) *Acceptance for filing.* Only such documents as conform to the requirements of this part and any other applicable rule, regulation or order of the Commission shall be accepted for filing. Unacceptable filings will be rejected by the Secretary and will not be included in the file in the proceeding involved. The Secretary shall notify the sender of any unacceptable document and the presiding officer in the proceeding in which such document was tendered that such document was rejected. Acceptance for filing shall not waive any failure to comply with the rules, and such failure may be cause for subsequently striking all or any part of any document.

6. Amend § 3001.10 as follows:

a. Redesignate paragraph (c) as (d),

b. Revise redesignated paragraph (d); and

c. Add new paragraph (c) to read as follows:

**§ 3001.10 Form and number of copies of documents.**

* * * * *

(c) *Computer diskette.* Participants capable of submitting documents stored on computer diskettes may use an alternative procedure for filing documents with the Commission. Provided that the stored document is a file generated in either Acrobat (pdf), Word, or WordPerfect, in lieu of the other requirements of section 10 of the rules, a participant may submit a diskette containing the text of each filing simultaneously with the filing of one printed original and three hard copies. Attachments will be accepted in their native format (i.e., Excel, Lotus, etc.). Documents must be submitted in Arial 12 point font, or such program, format, or font as the presiding officer may designate to assist with optical character recognition (OCR).

(d) *Number of copies.* Except for correspondence, computer diskette filing as provided for in paragraph (c) of this section, or as otherwise permitted by the Commission, the Secretary or the presiding officer in any proceeding, all persons shall file with the Secretary an original and 24 fully conformed copies of each document required or permitted to be filed under this part. The copies need not be signed but shall show the full name of the person signing the original document and the certificate of service attached thereto.

7. Amend § 3001.12 as follows:

a. Revise paragraph (b),

b. Revise paragraph (d), and

c. Revise paragraph (e) to read as follows:

**3001.12 Service of documents.**

* * * * *

(b) *Service by the participants.* Every document filed by any person with the Commission in a proceeding shall be served by the person filing such document upon the participants in the proceeding individually or by such groups as may be directed by the Commission or presiding officer except for discovery requests governed by §§ 3001.26(a) and (c), 3001.27(a) and (c), and 3001.28(a) and (c), and except for designations for written cross-examination, notices of intent to conduct oral cross-examination and notices of intent to participate in oral argument, which need be served only on the Commission, the OCA, the Postal Service, and the complementary party (as applicable), as well as on participants filing a special request for service. Also, discovery requests and pleadings related thereto, such as objections, motions for extensions of time, motions to compel or for more complete answers, and answers to such pleadings, must be served only on the Commission, the OCA, the Postal Service, the complementary party, and on any other participant so requesting, as provided in sections 26–28 of the rules of practice. Special requests relating to discovery must be served individually upon the party conducting discovery and state the witness who is the subject of the special request.

* * * * *

(d) *Service list.* The Secretary shall maintain a current service list in each proceeding which shall include the participants in that proceeding and up to two individuals designated for service of documents by each participant with the address and, if possible, a telephone number and facsimile number designated in the participant's initial pleading in such proceeding or a notice of appearance as provided in § 3001.6(c). The service list shall show the participants actively participating in the hearing and representative groups established pursuant to paragraph (c) of this section. The Secretary's current service list for a particular proceeding may be found on the Commission's web site, www.prc.gov. Each participant is responsible for ensuring that its listing on the Commission's web site is accurate, and should promptly notify the Commission of any errors. Service on the Secretary's service list in any proceeding, as directed by the Commission or the presiding officer, shall be deemed service in compliance with the requirements of this section.

(e) *Method of service.* Service may be made by First-Class Mail or personal delivery to the address shown for the individuals designated on the Secretary's service list. Service of any document upon the Postal Service shall be made by delivering or mailing six copies thereof to the Chief Counsel, Rates and Classification, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 6536, Washington, DC 20260–1137. Service via electronic filing may be available under circumstances prescribed by the Commission or the presiding officer.

* * * * *

8. Amend § 3001.17 by redesignating paragraphs (a–1), (b) and (c) as paragraphs (b), (c) and (d).

9. Amend § 3001.18 by revising paragraph (a) to read as follows:.

**§ 3001.18 Nature of proceedings.**

(a) *Proceedings to be set for hearing.* Except as otherwise provided in these rules, in any case noticed for a proceeding to be determined on the record pursuant to § 3001.17(a), the Commission may hold a public hearing if a hearing is requested by any party to the proceeding or if the Commission in the exercise of its discretion determines that a hearing is in the public interest. The Commission may give notice of its determination that a hearing shall be held in its original notice of the proceeding or in a subsequent notice issued pursuant to paragraph (b) of this section and § 3001.19.

* * * * *

10. Revise § 3001.19 to read as follows:

**§ 3001.19 Notice of prehearing conference or hearing.**

In any proceeding noticed for a proceeding on the record pursuant to § 3001.17(a) the Commission shall give due notice of any prehearing conference or hearing by including the time and place of the conference or hearing in the notice of proceeding or by subsequently issuing a notice of prehearing conference or hearing. Such notice of prehearing conference or hearing shall give the title and docket designation of the proceeding, a reference to the original notice of proceeding and the date of such notice, and the time and place of the conference or hearing. Such notice shall be published in the **Federal Register** and served on all participants in the proceeding involved. Notice of the time and place where a hearing will be reconvened shall be served on all participants in the proceeding unless announcement was made thereof by the presiding officer at the adjournment of an earlier session of the prehearing conference or hearing.

11. Amend § 3001.20 by revising paragraph (a) to read as follows:

**§ 3001.20 Formal intervention.**

(a) *Who may intervene.* A notice of intervention will be entertained in those cases that are noticed for a proceeding pursuant to § 3001.17(a) from any person claiming an interest of such nature that intervention is allowed by the Act, or appropriate to its administration.

* * * * *

12. Amend § 3001.20a by revising the introductory text to read as follows:

**§ 3001.20a Limited participation by persons not parties.**

Notwithstanding the provisions of § 3001.20, any person may appear as a limited participator in any case that is noticed for a proceeding pursuant to § 3001.17(a), in accordance with the following provisions;

* * * * *

13. Amend § 3001.21 as follows:

a. Revise paragraph (b), and

b. Add new paragraph (c) to read as follows:.

**§ 3001.21 Motions.**

* * * * *

(b) *Answers.* Within seven days after a motion is filed, or such other period as the rules provide or the Commission or presiding officer may fix, any participant to the proceeding may file and serve an answer in support of or in opposition to the motion pursuant to §§ 3001.9 to 3001.12. Such answers shall state with particularity the position of the participant with regard to the ruling or relief requested in the motion and the grounds and basis and statutory or other authority relied upon. Unless the Commission or presiding officer otherwise provides, no reply to

an answer or any further responsive document shall be filed.

(c) *Motions to strike.* Motions to strike are requests for extraordinary relief and are not substitutes for briefs or rebuttal evidence in a proceeding. All motions to strike testimony or exhibit materials are to be submitted in writing at least 14 days before the scheduled appearance of the witness, unless good cause is shown. Responses to motions to strike are due within seven days.

**§ 3001.28 [Removed]**

14. Remove § 3001.28.

**§ 3001.25, 3001.26 and 3001.27 [Redesignate as §§ 3001.26, 3001.27 and 3001.28, respectively]**

15. Redesignate §§ 3001.25, 3001.26 and 3001.27 as §§ 3001.26, 3001.27, 3001.28.

16. Revise redesignated § 3001.26 to read as follows:

**§ 3001.26 Interrogatories for purpose of discovery.**

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve upon any other participant in a proceeding written, sequentially numbered interrogatories, by witness, requesting nonprivileged information relevant to the subject matter in such proceeding, to be answered by the participant served, who shall furnish such information as is available to the participant. A participant through interrogatories may require any other participant to identify each person whom the other participant expects to call as a witness at the hearing and to state the subject matter on which the witness is expected to testify. The participant serving the interrogatories shall file a copy thereof with the Secretary pursuant to § 3001.9 and shall also serve the Postal Service and the OCA. Special requests for service by other participants shall be honored. Follow-up interrogatories to clarify or elaborate on the answer to an earlier discovery request may be filed after the initial discovery period ends. They must be served within seven days of receipt of the answer to the previous interrogatory unless extraordinary circumstances are shown.

(b) *Answers.* Answers to discovery requests shall be prepared so that they can be incorporated as written cross-examination. Each answer shall begin on a separate page, identify the individual responding, the participant who asked the question, and the number and text of the question. Each interrogatory shall be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection shall be stated in the manner prescribed by paragraph (c) of this section. The participant responding to the interrogatories shall serve the answers on the participant who served the interrogatories within 14 days of the service of the interrogatories or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Participants may submit responses with a declaration of accuracy from the respondent in lieu of a sworn affidavit. Answers are to be signed by the person making them. If the person responding to the interrogatory is unavailable to sign the answer when filed, a signature page must be filed within 10 days thereafter with the Commission, but need not be served on participants. Copies of the answers to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon other participants pursuant to § 3001.12(b).

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an interrogatory, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the interrogatory, providing estimates of cost and work hours required, to the extent possible. An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an opinion or contention that relates to fact or the application of law to fact, but the Commission or presiding officer may order that such an interrogatory need not be answered until a prehearing conference or other later time. Objections are to be signed by the attorney making them. Copies of objections to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon the proponent of the interrogatory, the Postal Service, and the OCA within 10 days of service of interrogatories. Special requests for service by other participants shall be honored.

(d) *Motions to compel responses to discovery.* Motions to compel a more responsive answer, or an answer to an interrogatory to which an objection was interposed, should be filed within 14 days of the answer or objection to the discovery request. The text of the discovery request, and any answer provided, should be provided as an attachment to the motion to compel. Participants who have objected to interrogatories which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

(e) *Compelled answers.* The Commission, or the presiding officer, upon motion of any participant to the proceeding, may compel a more responsive answer, or an answer to an interrogatory to which an objection has been raised if the objection is found not to be valid, or may compel an additional answer if the initial answer is found to be inadequate. Such compelled answers shall be served on the participant who moved to compel the answer within seven days of the date of the order compelling an answer or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Copies of the answers shall be filed with the Secretary pursuant to § 3001.9 and on participants pursuant to § 3001.12(b).

(f) *Supplemental answers.* The individual or participant who has answered interrogatories is under the duty to seasonably amend a prior answer if he/she obtains information upon the basis of which he/she knows that the answer was incorrect when made or is no longer true. Participants shall serve supplemental answers to update or to correct responses whenever necessary, up until the date the answer could have been accepted into evidence as written cross-examination. Participants filing supplemental answers shall indicate whether the answer merely supplements the previous answer to make it current or whether it is a complete replacement for the previous answer.

(g) *Orders.* The Commission or the presiding officer may order that any participant or person shall answer on such terms and conditions as are just and may for good cause make any protective order, including an order limiting or conditioning interrogatories, as justice requires to protect a participant or person from undue annoyance, embarrassment, oppression, or expense.

17. Revise redesignated § 3001.27 to read as follows:

**§ 3001.27 Requests for production of documents or things for purpose of discovery.**

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of

admissible evidence, any participant may serve on any other participant to the proceeding a request to produce and permit the participant making the request, or someone acting in his/her behalf, to inspect and copy any designated documents or things which constitute or contain matters, not privileged, which are relevant to the subject matter involved in the proceeding and which are in the custody or control of the participant upon whom the request is served. The request shall set forth the items to be inspected either by individual item or category, and describe each item and category with reasonable particularity, and shall specify a reasonable time, place and manner of making inspection. The participant requesting the production of documents or things shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon the Postal Service and the OCA. Special requests for service by other participants shall be honored.

(b) *Answers.* The participant upon whom the request is served shall serve a written answer on the participant who filed the request within 14 days after the service of the request, or within such other period as may be fixed by the presiding officer. The answer shall state, with respect to each item or category, that inspection will be permitted as requested unless the request is objected to pursuant to paragraph (c) of this section. The participant answering the request shall sign and file a copy of the answer with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon other participants pursuant to § 3001.12(b).

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item or category, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the request, providing estimates of cost and work hours required, to the extent possible. Objections are to be signed by the attorney making them. The participant objecting to requests shall serve the objections on the participant requesting production of documents or things, upon the Secretary pursuant to § 3001.9 and upon the Postal Service and the OCA within 10 days of the request for production. Special requests for service by other participants shall be honored.

(d) *Motions to compel requests for production of documents or things for purposes of discovery.* Motions to compel shall be filed within 14 days of the answer or objection to the discovery request. The text of the discovery request, and any answer provided, should be provided as an attachment to the motion to compel. Participants who have objected to requests for production of documents or things which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

(e) *Orders.* Upon motion of any participant to the proceeding to compel a response to discovery, as provided in paragraph (d) of this section, the Commission or the presiding officer may compel production of documents or things to which an objection has been raised if the objection is found not to be valid. Such compelled documents or things shall be made available to the participant making the motion within seven days of the date of the order compelling production or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Documents or things ordered to be produced also shall be filed pursuant to § 3001.9 and served pursuant to § 3001.12(b). The Commission or the presiding officer may, on such terms and conditions as are just and reasonable, order that any participant in a proceeding shall respond to a request for inspection, and may make any protective order of the nature provided in § 3001.26(g) as may be appropriate.

18. Revise redesignated § 3001.28 to read as follows:

**§ 3001.28 Requests for admissions for purpose of discovery.**

(a) *Service and content.* In the interest of expedition, any participant may serve upon any other participant a written request for the admission, for purposes of the pending proceeding only, of any relevant, unprivileged facts, including the genuineness of any documents or exhibits to be presented in the hearing. The participant requesting the admission shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon the Postal Service and the OCA. Special requests for service by other participants shall be honored.

(b) *Answers.* Each matter of which an admission is requested shall be separately set forth and is admitted unless within 14 days after service of the request, or within such other period as may be fixed by the presiding officer, the participant to whom the request is directed serves upon the participant requesting the admission a written answer or files an objection pursuant to paragraph (c) of this section. A participant who answers a request for admission shall file a copy of the answer with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon other participants pursuant to § 3001.12(b).

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the request, providing estimates of cost and work hours required to the extent possible. Objections are to be signed by the attorney making them. The participant objecting to requests for admissions shall serve the objections on the participant requesting admissions, upon the Secretary pursuant to § 3001.9 and upon the Postal Service and the OCA, within 10 days of the request. Special requests for service by other participants shall be honored.

(d) *Motions to compel responses to requests for admissions.* Motions to compel a more responsive answer, or an answer to a request to which an objection was interposed, shall be filed within 14 days of the answer or objection to the request for admissions. The text of the request for admissions, and any answer provided, should be provided as an attachment to the motion to compel. Participants who have objected to requests for admissions which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

(e) *Orders.* Upon motion of any participant to the proceeding the Commission or the presiding officer may compel answers to a request for admissions to which an objection has been raised if the objection is found not to be valid. Such compelled answers shall be served on the participants who moved to compel the answers within seven days of the date of the order compelling production or within such other period as may be fixed by the Commission or the presiding officer, but before the conclusion of the hearing. Copies of the answers shall be filed upon the Secretary pursuant to § 3001.9 and served upon other participants pursuant to § 3001.12(b). If the

Commission or presiding officer determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served.

19. Add § 3001.25 to read as follows:

**§ 3001.25 Discovery—general policy.**

(a) Rules 26 through 28 allow discovery reasonably calculated to lead to admissible evidence during a noticed proceeding. Generally, discovery against a participant will be scheduled to end prior to the receipt into evidence of that participant's direct case. An exception to this procedure shall operate in all proceedings brought under 39 U.S.C. 3622, 3623, 3661 and 3662 when a participant needs to obtain information (such as operating procedures or data) available only from the Postal Service. Discovery requests of this nature are permissible only for the purpose of the development of rebuttal testimony and may be made up to 20 days prior to the filing date for final rebuttal testimony.

(b) The discovery procedures set forth in rules 26 through 28 are not exclusive. Participants are encouraged to engage in informal discovery whenever possible to clarify exhibits and testimony. The results of these efforts may be introduced into the record by stipulation, by supplementary testimony or exhibit, by presenting selected written interrogatories and answers for adoption by a witness at the hearing, or by other appropriate means. In the interest of reducing motion practice, parties also are expected to use informal means to clarify questions and to identify portions of discovery requests considered overbroad or burdensome.

(c) If a participant or an officer or agent of a participant fails to obey an order of the Commission or the presiding officer to provide or permit discovery pursuant to §§ 3001.26 to 3001.28, the Commission or the presiding officer may make such orders in regard to the failure as are just, and among others, may direct that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the proceeding in accordance with the claim of the participants obtaining the order, or prohibit the disobedient participant from introducing designated matters in evidence, or strike the evidence, complaint or pleadings or parts thereof.

20. Amend § 3001.30 by revising paragraph (e) to read as follows:

**§ 3001.30 Hearings.**

* * * * *

(e)(1) *Presentations by participants.* Any participant shall have the right in public hearings of presentation of evidence, cross-examination (limited to testimony adverse to the participant conducting the cross-examination), objection, motion, and argument. The case-in-chief of participants other than the proponent shall be in writing and shall include the participant's direct case and rebuttal, if any, to the initial proponent's case-in-chief. It may be accompanied by a trial brief or legal memoranda. (Legal memoranda on matters at issue will be welcome at any stage of the proceeding.) There will be an opportunity for participants to rebut presentations of other participants and for the initial proponent to present surrebuttal evidence. New affirmative matter (not in reply to another participant's direct case) should not be included in rebuttal testimony or exhibits. When objections to the admission or exclusion of evidence before the Commission or the presiding officer are made, the grounds relied upon shall be stated. Formal exceptions to rulings are unnecessary.

(2) *Written cross-examination.* Written cross-examination will be utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence. Designations of written cross-examination should be served no later than three working days before the scheduled appearance of a witness. Designations shall identify every item to be offered as evidence, listing the participant who initially posed the discovery request, the witness and/or party to whom the question was addressed (if different from the witness answering), the number of the request and, if more than one answer is provided, the dates of all answers to be included in the record. (For example, ''OCA–T1–17 to USPS witness Jones, answered by USPS witness Smith (March 1, 1997) as updated (March 21, 1997)).'' When a participant designates written cross-examination, two copies of the documents to be included shall simultaneously be submitted to the Secretary of the Commission. The Secretary of the Commission shall prepare for the record a packet containing all materials designated for written cross-examination in a format that facilitates review by the witness and counsel. The witness will verify the answers and materials in the packet, and they will be entered into the transcript by the presiding officer. Counsel may object to written cross-examination at that time, and any designated answers or materials ruled objectionable will be stricken from the record.

(3) *Oral cross-examination.* Oral cross-examination will be permitted for clarifying written cross-examination and for testing assumptions, conclusions or other opinion evidence. Notices of intent to conduct oral cross-examination should be delivered to counsel for the witness and served three or more working days before the announced appearance of the witness and should include specific references to the subject matter to be examined and page references to the relevant direct testimony and exhibits. Participants intending to use complex numerical hypotheticals, or to question using intricate or extensive cross-references, shall provide adequately documented cross-examination exhibits for the record. Copies of these exhibits should be delivered to counsel for the witness at least two calendar days (including one working day) before the scheduled appearance of the witness.

* * * * *

21. Amend § 3001.31 as follows:

a. Revise paragraph (b)(1),

b. Revise paragraph (c),

c. Revise paragraph (e), and

d. Revise paragraph (f).

e. Revise paragraphs (k)(3)(i)(*d*) through (*f*), (k)(3)(i)(*i*) and paragraph (k)(4) to read as follows:

**§ 3001.31 Evidence.**

* * * * *

(b) *Documentary material.*—(1) *General.* Documents and detailed data and information shall be presented as exhibits. Exhibits should be self-explanatory. They should contain appropriate footnotes or narrative explaining the source of each item of information used and the methods employed in statistical compilations. The principal title of each exhibit should state what it contains or represents. The title may also contain a statement of the purpose for which the exhibit is offered; however, this statement will not be considered part of the evidentiary record. Where one part of a multi-part exhibit is based on another part or on another exhibit, appropriate cross-references should be made. Relevant exposition should be included in the exhibits or provided in accompanying testimony. Testimony, exhibits and supporting workpapers prepared for Commission proceedings that are premised on data or conclusions developed in a library reference shall provide the location of that information within the library reference with sufficient specificity to permit ready reference, such as the page and line, or

the file and the worksheet or spreadsheet page or cell. Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant or not intended to be put in evidence, the participant offering the same shall plainly designate the matter offered excluding the immaterial or irrelevant parts. If other matter in such document is in such bulk or extent as would unnecessarily encumber the record, it may be marked for identification, and, if properly authenticated, the relevant and material parts may be read into the record, or, if the Commission or presiding officer so directs, a true copy of such matter in proper form shall be received in evidence as an exhibit. Copies of documents shall be delivered by the participant offering the same to the other participants or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the entire document and to offer in evidence in like manner other material and relevant portions thereof.

* * * * *

(c) *Commission's files.* Except as otherwise provided in § 3001.31(e), in case any matter contained in a report or other document on file with the Commission is offered in evidence, such report or other document need not be produced or marked for identification, but may be offered in evidence by specifying the report, document, or other file containing the matter so offered.

* * * * *

(e) *Designation of evidence from other Commission dockets.* Participants may request that evidence received in other Commission proceedings be entered into the record of the current proceeding. These requests shall be made by motion, shall explain the purpose of the designation, and shall identify material by page and line or paragraph number. Absent extraordinary justification, these requests must be made at least 28 days before the date for filing the participant's direct case. Oppositions to motions for designations and/or requests for counter-designations shall be filed within 14 days. Oppositions to requests for counter-designations are due within seven days. At the time requests for designations and counter-designations are made, the moving participant must submit two copies of the identified material to the Secretary of the Commission.

(f) *Form of prepared testimony and exhibits.* Unless the presiding officer otherwise directs, the direct testimony of witnesses shall be reduced to writing and offered either as such or as an exhibit. All prepared testimony and exhibits of a documentary character shall, so far as practicable, conform to the requirements of § 3001.10(a) and (b).

* * * * *

(k) * * *

(3) * * *

(i) * * *

(*d*) A hard copy of all data bases;

(*e*) For all source codes, documentation sufficiently comprehensive and detailed to satisfy generally accepted software documentation standards appropriate to the type of program and its intended use in the proceeding;

(*f*) The source code in hardcopy form;

* * * * *

(*i*) An expert on the design and operation of the program shall be provided at a technical conference to respond to any oral or written questions concerning information that is reasonably necessary to enable independent replication of the program output. Machine-readable data files and program files shall be provided in the form of a compact disk or other media or method approved in advance by the Administrative Office of the Postal Rate Commission. Any machine-readable data file or program file so provided must be identified and described in accompanying hardcopy documentation. In addition, files in text format must be accompanied by hard-copy instructions for printing them. Files in machine code must be accompanied by hardcopy instructions for executing them.

* * * * *

(4) *Expedition.* The offeror shall expedite responses to requests made pursuant to this section. Responses shall be served on the requesting party, and notice thereof filed with the Secretary in accordance with the provisions of § 3001.12, no later than 14 days after a request is made.

22. Amend § 3001.43 as follows:

a. Revise paragraphs (e)(4) introductory text and (e)(4)(i),

b. Revise paragraph (g)(1)(iii), and

c. Revise paragraph (g)(2)(iii).

**§ 3001.43 Public attendance at Commission meetings.**

* * * * *

(e) * * *

(4) The public announcement required by this section may consist of the Secretary:

(i) Publicly posting a copy of the document in the office of the Secretary of the Commission at 1333 H Street, NW., Suite 300, Washington, DC 20268–0001;

* * * * *

(g) * * *

(1) * * *

(iii) Ten copies of such requests must be received by the office of the Secretary no later than three working days after the issuance of the notice of meeting to which the request pertains. Requests received after that time will be returned to the requester with a statement that the request was untimely received and that copies of any nonexempt portions of the transcript or minutes for the meeting in question will ordinarily be available in the office of the Secretary 10 working days after the meeting.

* * * * *

(2) * * *

(iii) Ten copies of such requests should be filed with the office of the Secretary as soon as possible after the issuance of the notice of meeting to which the request pertains. However, a single copy of the request will be accepted. Requests to close meetings must be received by the office of the Secretary no later than the time scheduled for the meeting to which such a request pertains.

* * * * *

[FR Doc. 00–3026 Filed 2–7–00; 1:08 pm]

BILLING CODE 7710–FW–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 97–247; FCC 99–362]**

### Fees for Ancillary or Supplementary Use of Digital Television Spectrum

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document denies Petitions for Reconsideration of the Report and Order in this proceeding. It reaffirms the previously established fee of five percent of gross revenues received from feeable ancillary or supplementary services provided by DTV stations. It also reaffirms the conclusion that home shopping, infomercial, and direct marketing services are not feeable.

**EFFECTIVE DATE:** January 15, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mania Baghdadi, Policy and Rules Division, Mass Media Bureau (202) 418–2120.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Memorandum Opinion and Order, (''*MO&O*''), FCC 99–362, adopted November 19, 1999 and released November 24, 1999. The full text of this

Commission *MO&O* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12 St. SW, Washington, DC, 20554. The complete text of this *MO&O* may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

**Synopsis of Report and Order**

**I. Introduction**

1. In our Report and Order (''*R&O*'') in this proceeding, (63 FR 69208, December 14, 1998), we implemented Section 201 of the Telecommunications Act of 1996 (''1996 Act'') which adopted Section 336 of the Communications Act of 1934, requiring broadcast television licensees to pay a fee if they provide certain types of ancillary or supplementary services on their digital television (''DTV'') bitstream. Based on the criteria set forth in Section 201, we adopted rules to require DTV licensees to pay a fee of five percent of the gross revenues received from the provision of such ''feeable'' ancillary or supplementary services. We also provided guidance on which services are subject to this fee and specifically concluded that home shopping, infomercial, and direct marketing services would not be feeable.

2. The National Association of Broadcasters and the Association for Maximum Service Television have filed a joint petition (the ''NAB/MSTV Petition'') asking us to set the fee at two percent of gross revenues rather than five percent. The Office of Communication Inc. of the United Church of Christ, the Benton Foundation, the Center for Media Education, the Civil Rights Forum and Media Access Project have filed a joint petition (the ''UCC, *et al.* Petition'') asking us to hold that home shopping, infomercials, and direct marketing services are subject to fees. We deny both petitions for reconsideration.

**II. Background**

3. Pursuant to the 1996 Act, the Commission has assigned each existing broadcast television station an additional channel to convert to digital technology. We are requiring broadcasters to provide on their DTV bitstream at least one over-the-air video program signal at no direct charge to viewers. 47 CFR 73.624(b). Aside from this requirement, we have given broadcasters great flexibility in the services they provide over their DTV bitstream. They may offer a wide range of ancillary or supplementary services such as computer software distribution, data transmission, teletext, interactive materials, aural messages, paging services, audio signals, and subscription video.

4. The 1996 Act requires broadcasters to pay a fee to the U.S. Treasury to the extent they use their DTV bitstream to provide ancillary or supplementary services—

(A) For which the payment of a subscription fee is required in order to receive such services, or

(B) For which the licensee directly or indirectly receives compensation from a third party in return for transmitting material furnished by such a third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required). 47 U.S.C. 336(e)(1).

The 1996 Act directed the Commission to establish a program to assess and collect this fee based on the following three objectives:

- ''To recover for the public a portion of the value of the public spectrum resource made available for such commercial use'';
- ''To avoid unjust enrichment through the method employed to permit such uses of that resource'';
- To ''recover for the public an amount that, to the extent feasible, equals but does not exceed (over the term of the license) the amount that would have been recovered had such services been licensed pursuant to [the competitive bidding process.]'' 47 U.S.C. 336(e)(2).

5. In the *R&O,* we established a fee program that requires broadcasters to pay a fee of five percent of the gross revenues they receive from feeable ancillary or supplementary services offered on their DTV bitstream. We reasoned that this fee is consistent with the three objectives set forth in the Act. It also represented a reasonable fee in light of the record in the proceeding, in which some parties argued for a very low or nominal fee and others for a fee of more than ten percent.

**III. The NAB/MSTV Petition**

6. NAB/MSTV argue that we failed to consider two studies they submitted that they believe call for a fee of two percent of gross revenues rather than five percent. The first study, prepared by Jerry Hausman, purports to establish ''the low and declining value of comparable spectrum,'' and also that digital ancillary or supplementary services ''face significant business and technological uncertainty.'' The second study, prepared by Kent Anderson, describes several surveys of technology licensing fees in the private sector. The Association of Local Television Stations (''ALTV'') submitted comments supporting the NAB/MSTV Petition. The National Cable Television Association (''NCTA'') filed an opposition to the petition.

7. Contrary to NAB/MSTV's suggestion, we did consider the two studies in reaching our decision in the *R&O*. Indeed, consistent with a recommendation in the Hausman Study, we declined to impose an upfront or hybrid fee on DTV licensees that provide feeable services. Although we rejected arguments based on the two studies to set the fee lower than five percent, we explained in the *R&O* our reasons for doing so. We reaffirm this decision and amplify our reasons below.

8. The Anderson Study describes several surveys of royalty rates used in licensing various technologies in the private sector. Although we did not cite the Anderson Study explicitly and our discussion of the issue was brief, the *R&O* did reject arguments that we should set a lower fee based on analogies to copyright royalty rates. We declined to do so because the policy concerns and economic considerations involved in setting a fee for ancillary or supplementary services appear to be different from the considerations involved in negotiations over private licensing rights. We have more closely examined the Anderson Study and are not persuaded that we should alter our decision. Indeed, the Anderson Study itself acknowledges that ''[e]ach licensing negotiation has unique characteristics, making it very difficult to demonstrate that the royalty observed for any one licensing agreement reasonably applies to another.'' This statement confirms our reluctance in the *R&O* to directly base the fee required under Section 336(e) on analogies to private licensing arrangements.

9. Aside from this concern, the Anderson Study can actually be read to *support* a fee of five percent of gross revenues. The NAB/MSTV Petition, at 5, argues that the Anderson Study ''found that licensing rates for unproven technologies without 'highly favorable economics' tended to be very low.'' But the full sentence in the Anderson Study that is cited to support this statement states: ''For 'minor' innovations the range [of running royalty rates] is 1 to 5 percent, and for 'major' innovations it is 3 to 8 percent. Only in the case of innovations characterized as 'revolutionary' (*i.e.*, suggesting highly favorable economics) do the rates rise to the 5 to 10 percent range.'' The five percent fee we have established thus falls somewhere in the middle of these reported ranges and could even be

characterized as falling within the range of royalty rates for ''minor innovations.'' More generally, Anderson summarizes the overall results of his research as ''show[ing] that some technologies earn royalties on the order of 2 to 3 percent or less, most earn royalties of 5 percent or less, and only those technologies with unusually favorable economics receive rates of more than 10 percent.'' Again, this places a five percent fee squarely in the average range, which we believe is reasonable. This is especially the case since we are not imposing an upfront or hybrid fee on DTV licensees. By comparison, a fair number of the royalty arrangements described in the Anderson Study appear to involve upfront payments in addition to royalty fees. Taking these upfront payments into account suggests that the five percent fee we have established may actually fall toward the low end of the total licensing payments (royalties plus upfront fees) surveyed in the Anderson Study.

10. We now turn to the Hausman Study. Based on an econometric study of the FCC's previous auctions, Hausman reports that prices for spectrum auctioned by the Commission have been decreasing over time on a per megahertz per population basis. He also posits that there will be significant sunk cost investments required to provide DTV ancillary or supplementary services, and also significant business and technological uncertainty facing these services. Hausman concludes that ''the combination of overall declining auction results over time and the significant business and technological uncertainty with respect to sunk costs would lead to an expected outcome of relatively low auction results for spectrum used for ancillary services.'' Noting that the *Notice* had sought comment on setting the fee in the range of one to ten percent, Hausman recommends ''that the Commission initially begin with a fee toward the low end of the range.''

11. As an initial matter, we question a number of the underlying assertions made in the Hausman Study. Even assuming it is true that there is a downward trend in per megahertz, per population prices for the spectrum auctions the Commission has previously held, this does not necessarily mean that an auction of the spectrum used for DTV ancillary or supplementary services would follow this trend. As we stated in the *R&O,* the auction values realized by the Commission in conducting a particular spectrum auction reflect factors that are specific to the particular spectrum being auctioned. These factors include the anticipated demand for the telecommunications services provided using the particular spectrum and the technological uncertainty associated with the application. The *R&O* pointed to evidence that suggests that the broadcast spectrum that will be used to provide DTV ancillary or supplementary services could command higher prices than predicted by the trend described in the Hausman Study. In particular, we noted that the sales values of broadcast properties have increased sharply over the past several years, reflecting the increasing value of their spectrum licenses. The NAB/MSTV Petition faults the *R&O* for focusing on this evidence and for not placing greater weight on the value of *non*-broadcast spectrum because most ancillary or supplementary services will be non-broadcast in nature. But we think it is reasonable to expect that the prices investors pay for television stations reflect not only the anticipated profits from providing broadcast video programming on the station but also the projected profits from ''non-broadcast'' ancillary or supplementary services that they can now provide on the station's DTV bitstream. The recent sales prices for television stations thus shed some light on the value of the spectrum used to provide the ancillary or supplementary services.

12. In addition, we question the Hausman Study's assertions regarding the degree of uncertainty and sunk costs DTV licensees will face in providing ancillary or supplementary services. Whether or not they choose to provide ancillary or supplementary services, DTV licensees will need to invest in DTV facilities in order to provide a free, over-the-air digital broadcast service. Given this, it would appear that the incremental or marginal cost of providing any feeable ancillary or supplementary services may not be as significant as Hausman and NAB/MSTV suggest. The most substantial costs incurred by broadcasters, such as transmitters and towers, will be sunk or fixed costs that are already incurred in connection with the provision of nonfeeable services, thus minimizing the additional investment required to provide feeable services. We consequently agree with NCTA that the risk associated with offering ancillary or supplementary services will be diminished by the fact that DTV licensees will be providing nonfeeable broadcast services.

13. We also think Hausman and NAB/MSTV overstate the level of uncertainty broadcasters face in developing ancillary or supplementary services. We fully recognize developing and implementing these services will entail challenges and risks. But broadcasters are not venturing into completely uncharted territory. They have been authorized to provide ancillary services on parts of their analog signals for years, although these services have been limited due to the lack of capacity on analog channels. Broadcasters have also become increasingly involved over the years in developing and selling programming carried on cable networks, and they can translate this experience into providing subscription programming over their DTV bitstream should that appear profitable to them. More recently, a number of broadcasters have invested in internet-related companies, suggesting that the internet's interactive and datacasting applications, which potentially could also be offered over the DTV bitstream, may prove profitable.

14. Aside from the questions we have about some of the Hausman Study's underlying assertions, we have a more fundamental objection to the conclusion NAB/MSTV seek to draw from it. In particular, neither NAB/MSTV nor Hausman provides a persuasive basis to conclude that Hausman's assertions, even taken at face value, require us to set the fee at two percent rather than five percent of gross revenues. The Hausman Study seems to acknowledge this in that it has no firm recommendation on the level of the fee, only suggesting that the FCC initially set the fee ''toward the low end of the range'' and that the Commission ''might consider'' initially setting the fee at one percent or less. For its part, the NAB/MSTV Petition argues that the studies it has submitted ''provide [ ] strong support for the Commission to set a low initial fee'' and concludes that the fee should be two percent of gross revenues, yet it provides no rationale why a ''low fee'' necessarily means a fee of two percent as opposed to five percent.

15. We continue to think that a fee of five percent of gross revenues is reasonable in light of the criteria set forth in Section 336(e). A central theme underlying NAB/MSTV's arguments and the studies they have submitted is that we should set the fee so as not ''to discourage the development of new ancillary and supplementary services'' and to ''promote [ ] the efficient use of digital spectrum.'' We agree that this is a worthy goal and, indeed, Section 1 of the Communications Act states that one of the Act's purposes is to promote an ''efficient'' radio communication service. 47 U.S.C. 151. But this general policy cannot trump the specific statutory criteria set forth in Section 336(e)(2) for establishing the fee, none

of which require that the fee be designed to maximize efficiency. Indeed, taken to its logical conclusion, the goal of maximizing efficiency and encouraging ancillary or supplementary services would mean that the fee should be set at zero or some nominal percentage rate as this would eliminate any influence the fee would have on a DTV licensee's decision to provide ancillary or supplementary services as opposed to nonfeeable broadcast video programming. But clearly this is not what Congress intended. A fee system that raised no or only nominal revenue from licensees that provide ''feeable'' ancillary or supplementary services would (quite literally) make Congress's enactment of Section 336(e) all for naught.

16. In the end, implementing Section 336(e) is not, to paraphrase one of the parties, an exact science. NAB/MSTV acknowledge that the Commission has ''broad discretion under the Act in setting the fee level.'' In exercising this discretion, we have sought to promote the efficient use of the spectrum and the development of innovative ancillary or supplementary services by DTV licensees. But this discretion is bounded by Section 336(e), which requires us to design the fee not only to approximate the revenue that would have been received had these services been licensed through an auction, but also to recover a portion of the value of the spectrum used for these services and avoid ''unjust enrichment'' of DTV licensees who have been given the exclusive right to apply for DTV channels without having to bid for them at an auction. Weighing these factors and the comments submitted in the proceeding—some of which argued for a fee of less than one percent while others argued for a fee of over ten percent—we established a fee of five percent of gross revenues generated from feeable ancillary or supplementary services. The amount raised by this fee will vary with the gross revenues from these services, *i.e.*, with the willingness of consumers to pay for such services. As a consequence, if the consumer value for these services is low, the fee payment will be small. Given this, and the record in this proceeding and the criteria set forth in Section 336(e), we continue to believe this is a reasonable fee and consistent with the statute, and therefore deny the NAB/MSTV Petition.

**IV. The UCC, et al. Petition**

17. In the *R&O*, we decided not to impose fees on revenues received from home shopping, infomercial or direct marketing services. We reasoned that:

> [t]he purpose of this proceeding is not to exact fees from existing broadcasters for existing services but, rather, to design a program for the assessment of fees on ancillary or supplementary services which will be provided on the DTV bitstream. We agree with the commenters who argued that home shopping and infomercials are commercial advertisements, excluded by statute from the scope of ancillary and supplementary services as they are video services received by viewers without a fee. [Footnote omitted.] We therefore find that home shopping channels and infomercials are free, over-the-air television services, supported by commercial advertisements, and not subject to a fee.

18. UCC, *et al.* ask the Commission to reconsider this decision. They interpret the 1996 Act as requiring us to impose fees on home shopping, infomercial, and direct marketing services. NAB, MSTV, ALTV, and Home Shopping Network (''HSN'') and ValueVision International (''ValueVision'') have opposed UCC, *et al.'s* petition for reconsideration and argue that the Commission was correct in concluding that these services are not subject to fees.

19. UCC, *et al.* interpret the *R&O* as basing this conclusion on two rationales: (1) That home shopping, infomercials, and direct marketing services are ''existing'' services, and therefore grandfathered from the fee requirements in the Act; and (2) that these services are ''commercial advertisements'' rather than programming services, and consequently fall within Section 336(e)(1)(B), which exempts from fees ''commercial advertisements used to support broadcasting for which a subscription fee is not required.'' As to the first rationale, UCC, *et al.* argue that the 1996 Act does not give the Commission authority to grandfather existing services from the new statutory fee requirements. As to the second rationale, UCC, *et al.* maintain that it is arbitrary and capricious to categorize home shopping and similar services as ''commercial advertisements'' exempt under Section 336(e)(1)(B) because Congress, the Commission, and the broadcast industry have consistently characterized these services as *programming* not as commercial advertisements.

20. We think UCC, *et al.* have misconstrued the *R&O* on these points. Our decision was not intended to grandfather existing services. Nor was it based on whether home shopping and similar services should be categorized as ''commercial advertisements'' or ''programming.'' We recognize that the *R&O*, may have been unclear on this point in that it referred to these services as ''commercial advertisements.'' But we did not intend this characterization to be the basis for our decision not to impose fees on these services. Rather, we based this decision on what we see as a threshold criterion in the statute: only *ancillary or supplementary* services are subject to fees under the Act. Because traditional home shopping, infomercial and direct marketing services are free, over-the-air, video services and therefore do not qualify as ancillary or supplementary services as we have defined that term in our rules, 47 CFR 73.624(c), they are not subject to fees. Or, as we put it in the *R&O*, these services are ''excluded by statute from the scope of ancillary and supplementary services as they are video services received by viewers without a fee.'' We take this opportunity to elaborate on this reasoning.

21. Section 336(e)(1), which defines the ''services to which fees apply,'' speaks only in terms of ''ancillary or supplementary services'' in delineating in subsections (A) and (B) the two types of such services that are subject to fees. In doing so, it necessarily excludes from the fees requirement services that are not ''ancillary or supplementary'' to begin with. Although the Act does not define the phrase ''ancillary or supplementary services,'' the Commission did so in implementing Section 336 in its DTV rulemaking proceeding, Fifth *R&O* in MM 87–268, (62 FR 26966, May 16, 1997). In that proceeding, we adopted § 73.624(c) of our rules, which provides an illustrative list of ancillary or supplementary services: they include, but are not limited to, ''computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, audio signals, subscription video, and any other services that do not derogate DTV broadcast stations' obligations'' to ''transmit at least one over-the-air video program signal at no direct charge to viewers.'' 47 CFR 73.624 (b) and (c). Section 73.624(c) goes on to state ''that any video broadcast signal provided at no direct charge to viewers shall not be considered ancillary or supplementary.''

22. Traditional home shopping, infomercial, or direct marketing services are video broadcast signals and are offered at no direct charge to viewers. As such, they fall outside the scope of our definition of ''ancillary or supplementary services,'' and therefore are not subject to fees under Section 336(e)(1) of the Act. We think this is consistent with Congress's intent in enacting Section 336(e)(1). To be sure, we adopted our definition of ''ancillary or supplementary services'' after

enactment of the 1996 Act. But as HSN and ValueVision state, ''the Act's specific instruction that fees were to be assessed only on 'ancillary and supplementary' digital services was arrived at in the context of the Commission's contemporaneous consideration of [its then pending DTV rulemaking proceeding], in which the Commission repeatedly and consistently made clear that 'ancillary and supplementary' services are separate and distinct from existing, traditional over-the-air broadcast services.' We believe Congress drew the same distinction in enacting Section 336, excluding free, over-the-air broadcast video programming service from fees. Traditional home shopping, infomercials, and direct marketing services have long been a free, over-the-air broadcast service, or, in § 73.624(c)'s rubric, a ''video broadcast signal provided at no direct charge to viewers.'' It follows that in enacting Section 336 Congress did not intend to include these existing services within the phrase ''ancillary or supplementary services'' and subject them to fees.

23. Further evidence of this can be found in Section 336(b)(3), which states, among other things, that ''no ancillary or supplementary service shall have any rights to carriage under section 614 or 615,'' *i.e.*, the statutory ''must carry'' rights broadcast television stations have to be carried on cable systems in their local area. 47 U.S.C. 336(b)(3). If a free, over-the-air home shopping broadcast service is considered an ''ancillary or supplementary service,'' stations carrying such programming would be rendered ineligible for must carry rights under Section 336(b)(3). We do not think Congress could have intended such a result given that, in Section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992 (the ''1992 Cable Act''), it directed the FCC to determine whether home shopping stations served the public interest and were entitled to must carry rights. It would make little sense for Congress to charge us with this duty, and then four years later preclude home shopping stations from must carry rights under Section 336(b)(3) without a mention, either in the 1996 Act or its legislative history, of Section 4(g) of the 1992 Cable Act. A basic principle of statutory construction is to seek to construe statutory provisions so that they are consistent with each other. We think the most reasonable way to square Section 336 and Section 4(g) of the 1992 Cable Act is not to treat traditional home shopping, infomercials, and direct marketing services as ancillary or supplementary services.

24. We do not agree with UCC, *et al.*'s suggestion that our decision not to apply fees to home shopping, infomercials and direct marketing services means any service provided without charge to the viewer is exempt from fees regardless of whether a third party compensates a broadcaster for carriage. Nor do we agree with UCC, *et al.*'s argument that our decision effectively nullifies Section 336(e)(1)(B), which requires us to impose fees on ancillary or supplementary services ''for which the licensee directly or indirectly receives compensation from a third party in return for transmitting material furnished by such third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required).'' Our decision today does not exempt, for example, payments made to a DTV licensee by a stock broker to transmit stock quote data to the broker's clients even though the clients pay no direct fee for this service. This clearly would be an ''ancillary or supplementary service'' that is feeable under Section 336(e)(1)(B).

25. But where, as here, the service is a video broadcast signal provided at no direct charge to viewers, it is not feeable, even though the broadcaster may be receiving compensation from a third party to carry the service. As HSN and ValueVision point out, to hold otherwise would mean that ''all the affiliates of the ABC, CBS and NBC broadcast television networks arguably would be subject to fees for their free, over-the-air broadcast services because they receive compensation from their networks for airing network programming.'' These are video broadcast signals provided to viewers at no direct charge, and therefore are not ancillary or supplementary services and are not subject to fees. We consequently deny UCC, *et al.*'s Petition.

26. We make one final note. Our decision in the *R&O*, like our decision today, applies only to traditional home shopping, infomercials, direct marketing and similar services with no interactive or ''clickable'' elements and which can entail viewers purchasing products by calling a telephone number identified during the broadcast. We recognize that it may be possible in the future for these purchases to be made via an interactive system provided by the licensee on its DTV bitstream. For example, a DTV viewer may be able to purchase a product shown on a home shopping program by clicking a special icon displayed on the screen and transmitting a purchase order via the licensee's DTV bitstream. In reply comments submitted in the initial round of comments of this proceeding, ValueVision and HSN stated that such an interactive purchase order system was being explored and argued that revenues generated from this sort of system should be exempt from fees. Because such services are only at a nascent stage and the particular circumstances are unclear at this point, we decline to decide whether they would constitute an ancillary or supplementary service subject to a fee under Section 336(e)(1)(B).

### V. Administrative Matters

27. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and record-keeping requirements or burdens on the public. In addition, the Final Regulatory Flexibility Act Analysis set forth in the *R&O* in this proceeding remains unchanged.

28. Accordingly, pursuant to the authority granted by 47 U.S.C. 4(i), 303, 336(e), and 47 CFR 1.429, the Petition for Reconsideration filed jointly by the National Association of Broadcasters and the Association for Maximum Service Television, and the Petition for Reconsideration filed jointly by the Office of Communication Inc. of the United Church of Christ, the Benton Foundation, the Center for Media Education, the Civil Rights Forum and Media Access Project, are both hereby *denied*.

1. This proceeding is terminated.

### List of Subjects in 47 CFR Part 73

Television, television broadcasting.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–3068 Filed 2–9–00; 8:45 am]

**BILLING CODE 6712–01–P**

---

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 97

**[WT Docket No. 98–143, RM–9148, RM–9150, RM–9196; FCC 99–412]**

### Amateur Service Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document revises the Amateur Radio Service rules to simplify the Amateur Radio Service operator license structure; streamlines the

number of examination elements; and reduces the emphasis on telegraphy that underlies the current license structure to the greatest extent possible, consistent with the international radio regulations. This action will allow current Amateur Radio Service licensees to contribute more to the advancement of the radio art; reduce the administrative costs that the Commission incurs in regulating this service and streamline our licensing processes; eliminate unnecessary requirements that may discourage or limit individuals from becoming trained operators, technicians, and electronic experts; and promote efficient use of spectrum allocated to the Amateur Radio Service.

**DATES:** Effective April 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** William T. Cross, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680, TTY (202) 418–7233.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order*, WT Docket No. 98–143, FCC 99–412, adopted December 22, 1999, and released December 30, 1999. The complete text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC's Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC. The complete text of this *Report and Order* may also be obtained from the Commission's copy contractor, International Transcription Services, Inc., 1231 20th St., NW, Washington, DC 20036, telephone (202) 857–3800. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–0620 (voice) or (202) 418–2555 (TTY), or at mcontee@fcc.gov. The complete (but unofficial) text is also available on the Commission's Internet site at >http://www.fcc.gov/Bureaus/Wireless/Orders/1999< under the file name ''fcc99412.txt'' in ASCII text and ''fcc99412.wp'' in WordPerfect format.

## Summary of Report and Order

1. In the *Notice of Proposed Rule Making (Notice)* (63 FR 49059, September 14, 1998) in WT Docket No. 98–143, the Commission initiated the instant proceeding to examine the Amateur Radio Service rules in an effort to streamline its licensing processes and eliminate unnecessary and duplicative rules.

2. By this action, the Commission simplifies the Amateur Radio Service operator license structure; streamlines the number of examination elements; and reduces the emphasis on telegraphy that underlies the current license structure to the greatest extent possible, consistent with the international Radio Regulations. Specifically, the Commission amends the rules to reduce the number of operator license classes from six to three, reduce the number of telegraphy examination elements from three to one, reduce the number of written examination elements from five to three, authorize Advanced Class amateur radio operators to prepare and administer examinations for the General Class amateur radio operator license, and eliminate Radio Amateur Civil Emergency Service (RACES) station licenses.

3. The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). In the *Notice*, the Commission certified that the proposed rule amendments, if promulgated, would not have a significant economic impact on a substantial number of small business entities, as defined in Section 601(3) of the RFA because the rule amendments do not apply to small business entities. Rather, the rules apply to individuals who are interested in radio technique solely with a personal aim and without pecuniary interest. No comments were received concerning this certification. The Commission now affirms this certification with respect to the rules adopted in this *Report and Order.* Accordingly, the Commission certifies, pursuant to Section 605(b) of the RFA, that the rules adopted herein will not have a significant economic impact on a substantial number of small entities, as defined in the RFA.

## List of Subjects in 47 CFR Part 97

Amateur radio, Examinations, Radio, Volunteer examiners.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

## Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 97 as follows:

## PART 97—AMATEUR RADIO SERVICE

1. The authority citation for part 97 continues to read as follows:

**Authority:** 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.9 is amended by revising paragraph (b) to read as follows:

### § 97.9 Operator license.

(a) * * *

(b) The person named in an operator license grant of Novice, Technician, Technician Plus, General or Advanced Class, who has properly submitted to the administering VEs a FCC Form 605 document requesting examination for an operator license grant of a higher class, and who holds a CSCE indicating that the person has completed the necessary examinations within the previous 365 days, is authorized to exercise the rights and privileges of the higher operator class until final disposition of the application or until 365 days following the passing of the examination, whichever comes first.

3. Section 97.13 is amended by revising paragraphs (b) and (c)(2) to read as follows:

### § 97.13 Restrictions on station location.

* * * * *

(b) A station within 1600 m (1 mile) of an FCC monitoring facility must protect that facility from harmful interference. Failure to do so could result in imposition of operating restrictions upon the amateur station by a District Director pursuant to § 97.121 of this part. Geographical coordinates of the facilities that require protection are listed in § 0.121(c) of this chapter.

(c) * * *

(2) If the routine environmental evaluation indicates that the RF electromagnetic fields could exceed the limits contained in § 1.1310 of this chapter in accessible areas, the licensee must take action to prevent human exposure to such RF electromagnetic fields. Further information on evaluating compliance with these limits can be found in the FCC's OET Bulletin Number 65, ''Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields.''

4. Section 97.17 is amended by revising paragraph (a) to read as follows:

### § 97.17 Application for new license grant.

(a) Any qualified person is eligible to apply for a new operator/primary station, club station or military recreation station license grant. No new license grant will be issued for a Novice, Technician Plus, or Advanced Class operator/primary station or a RACES station.

* * * * *

5. Section 97.21 is amended by revising paragraph (a)(3) introductory text and (a)(3)(iii) to read as follows:

**§ 97.21 Application for a modified or renewed license.**

(a) * * *

(3) May apply to the FCC for renewal of the license grant for another term in accordance with § 1.913 of this chapter. Application for renewal of a Technician Plus Class operator/primary station license will be processed as an application for renewal of a Technician Class operator/primary station license.

* * * * *

(iii) For a club station or military recreation station license grant showing a call sign obtained through the sequential call sign system, and for a club or military recreation station license grant showing a call sign obtained through the vanity call sign system but whose grantee does not want to have the vanity call sign reassigned to the station, the application must be presented in document form to a Club Station Call Sign Administrator who must submit the information thereon to the FCC in an electronic batch file. The Club Station Call Sign Administrator must retain the collected information for at least 15 months and make it available to the FCC upon request. RACES station license grants will not be renewed.

* * * * *

6. Section 97.301 is amended by removing paragraph (f) and revising paragraph (e) to read as follows. The frequency tables in 97.301 (a), (b), (c), and (d) remain unchanged.

**§ 97.301 Authorized frequency bands.**

* * * * *

(e) For a station having a control operator who has been granted an operator license of Novice Class or Technician Class and who has received credit for proficiency in telegraphy in accordance with the international requirements.

| Wavelength band | ITU region 1 | ITU region 2 | ITU region 3 | Sharing requirements (see § 97.303 paragraph) |
|---|---|---|---|---|
| *HF* | *MHz* | *MHz* | *MHz* | |
| 80 m | 3.675–3.725 | 3.675–3.725 | 3.675–3.725 | (a) |
| 40 m | 7.050–7.075 | 7.10–7.15 | 7.050–7.075 | (a) |
| 15 m | 21.10–21.20 | 21.10–21.20 | 21.10–21.20 | |
| 10 m | 28.10–28.50 | 28.10–28.50 | 28.10–28.50 | |
| *VHF* | *MHz* | *MHz* | *MHz* | |
| 1.25 m | | 222–225 | | (a) |
| *UHF* | *MHz* | *MHz* | *MHz* | |
| 23 cm | 1270–1295 | 1270–1295 | 1270–1295 | (h)(i) |

7. Section 97.307 is amended by revising paragraph (f) (10) to read as follows:

**§ 97.307 Emission standards.**

* * * * *

(f) * * *

(10) A station having a control operator holding a Novice Class operator license or a Technician Class operator license and who has received credit for proficiency in telegraphy in accordance with the international requirements may only transmit a CW emission using the international Morse code or phone emissions J3E and R3E.

* * * * *

8. Section 97.313 is amended by revising paragraphs (c)(2) and (f) to read as follows:

**§ 97.313 Transmitter power standards.**

* * * * *

(c) * * *

(2) The 28.1–28.5 MHz segment when the control operator is a Novice Class operator or a Technician Class operator who has received credit for proficiency in telegraphy in accordance with the international requirements; or

* * * * *

(f) No station may transmit with a transmitter power exceeding 50 W PEP on the UHF 70 cm band from an area specified in footnote US7 to § 2.106 of Part 2, unless expressly authorized by the FCC after mutual agreement, on a case-by-case basis, between the District Director of the applicable field facility and the military area frequency coordinator at the applicable military base. An Earth station or telecommand station, however, may transmit on the 435–438 MHz segment with a maximum of 611 W effective radiated power (1 kW equivalent isotropically radiated power) without the authorization otherwise required. The transmitting antenna elevation angle between the lower half-power (−3 dB relative to the peak or antenna bore sight) point and the horizon must always be greater than $10^{o}$.

* * * * *

9. Section 97.407 is amended by revising paragraph (b) introductory text to read as follows:

**§ 97.407 Radio Amateur Civil Emergency Service (RACES).**

* * * * *

(b) The frequency bands and segments and emissions authorized to the control operator are available to stations transmitting communications in RACES on a shared basis with the amateur service. In the event of an emergency which necessitates the invoking of the President's War Emergency Powers under the provisions of Section 706 of the Communications Act of 1934, as amended, 47 U.S.C. 606, RACES stations and amateur stations participating in RACES may only transmit on the following frequency segments:

* * * * *

10. Section 97.501 is revised to read as follows:

**§ 97.501 Qualifying for an amateur operator license.**

Each applicant must pass an examination for a new amateur operator license grant and for each change in operator class. Each applicant for the class of operator license grant specified below must pass, or otherwise receive examination credit for, the following examination elements:

(a) Amateur Extra Class operator: Elements 1, 2, 3, and 4;

(b) General Class operator: Elements 1, 2, and 3;

(c) Technician Class operator: Element 2.

11. Section 97.503 is amended by removing paragraph (c) and revising paragraphs (a) and (b) to read as follows:

**§ 97.503 Element standards.**

(a) A telegraphy examination must be sufficient to prove that the examinee has the ability to send correctly by hand and

to receive correctly by ear texts in the international Morse code at not less than the prescribed speed, using all the letters of the alphabet, numerals 0–9, period, comma, question mark, slant mark, and prosigns AR, BT, and SK. Element 1: 5 words per minute

(b) A written examination must be such as to prove that the examinee possesses the operational and technical qualifications required to perform properly the duties of an amateur service licensee. Each written examination must be comprised of a question set as follows:

(1) Element 2: 35 questions concerning the privileges of a Technician Class operator license. The minimum passing score is 26 questions answered correctly.

(2) Element 3: 35 questions concerning the privileges of a General Class operator license. The minimum passing score is 26 questions answered correctly.

(3) Element 4: 50 questions concerning the privileges of an Amateur Extra Class operator license. The minimum passing score is 37 questions answered correctly.

12. Section 97.505 is amended by revising paragraph (a) to read as follows:

**§ 97.505 Element credit.**

(a) The administering VEs must give credit as specified below to an examinee holding any of the following license grants or license documents:

(1) An unexpired (or expired but within the grace period for renewal) FCC-granted Advanced Class operator license grant: Elements 1, 2, and 3.

(2) An unexpired (or expired but within the grace period for renewal) FCC-granted General Class operator license grant: Elements 1, 2, and 3.

(3) An unexpired (or expired but within the grace period for renewal) FCC-granted Technician Plus Class operator (including a Technician Class operator license granted before February 14, 1991) license grant: Elements 1 and 2.

(4) An unexpired (or expired but within the grace period for renewal) FCC-granted Technician Class operator license grant: Element 2.

(5) An expired or unexpired FCC-granted Novice Class operator license grant: Element 1.

(6) A CSCE: Each element the CSCE indicates the examinee passed within the previous 365 days.

(7) An unexpired (or expired less than 5 years) FCC-issued commercial radiotelegraph operator license or permit: Element 1.

(8) An expired FCC-issued Technician Class operator license document granted before March 21, 1987: Element 3.

(9) An expired or unexpired FCC-issued Technician Class operator license document granted before February 14, 1991: Element 1.

* * * * *

13. Section 97.507 is amended by revising paragraph (a) to read as follows:

**§ 97.507 Preparing an examination.**

(a) Each telegraphy message and each written question set administered to an examinee must be prepared by a VE holding an Amateur Extra Class operator license. A telegraphy message or written question set may also be prepared for the following elements by a VE holding an operator license of the class indicated:

(1) Element 3: Advanced Class operator.

(2) Elements 1 and 2: Advanced, General, or Technician (including Technician Plus) Class operators.

* * * * *

14. Section 97.509 amended by revising paragraphs (a) and (b)(3) to read as follows:

**§ 97.509 Administering VE requirements.**

(a) Each examination for an amateur operator license must be administered by a team of at least 3 VEs at an examination session coordinated by a VEC. Before the session, the administering VEs or the VE session manager must ensure that a public announcement is made giving the location and time of the session. The number of examinees at the session may be limited.

(b) * * *

(3) Be a person who holds an amateur operator license of the class specified below:

(i) Amateur Extra, Advanced or General Class in order to administer a Technician Class operator license examination;

(ii) Amateur Extra or Advanced Class in order to administer a General Class operator license examination;

(iii) Amateur Extra Class in order to administer an Amateur Extra Class operator license examination.

* * * * *

[FR Doc. 00–2983 Filed 2–9–00; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF DEFENSE

## 48 CFR Parts 201 and 225

**[DFARS Case 99–D027]**

## Defense Federal Acquisition Regulation Supplement; Delegation of Class Deviation Authority

**AGENCY:** Department of Defense (DOD).

**ACTION:** Final rule.

**SUMMARY:** The Acting Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to authorize the senior procurement executives for the Army, Navy, and Air Force, and the Directors of the Defense Commissary Agency and the Defense Logistics Agency, to approve certain class deviations from the Federal Acquisition Regulation (FAR) and the DFARS.

**EFFECTIVE DATE:** February 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kathleen Fenk, Defense Acquisition Regulations Council, PDUSD(AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0296; telefax (703) 602–0350. Please cite DFARS Case 99–D027.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This final rule amends DFARS Parts 201 and 225 to authorize the senior procurement executives for the Army, Navy, and Air Force, and the Directors of the Defense Commissary Agency and the Defense Logistics Agency, to approve certain class deviations from the FAR and the DFARS. The rule also contains amendments to reflect the title change of the ''Under Secretary of Defense for Acquisition and Technology'' to the ''Under Secretary of Defense for Acquisition, Technology, and Logistics.''

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comment should cite DFARS Case 99–D027.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

### List of Subjects in 48 CFR Parts 201 and 225

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR parts 201 and 225 are amended as follows:

1. The authority citation for 48 CFR Parts 201 and 225 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 201.201–1 is amended in paragraph (d)(i) introductory text by removing the parenthetical ''(A&T)'' and adding in its place ''(AT&L)'', and by revising paragraph (d)(i)V. to read as follows:

#### 201.201–1 The two councils.

* * * * *

(d)(i) * * *

V. Deviations: If a recommended revision of DFARS is a FAR deviation, identify the deviation and include under separate TAB a justification for the deviation that addresses the requirements of 201.402(2). The justification should be in the form of a memorandum for the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics).

* * * * *

#### 201.301 [Amended]

3. Section 201.301 is amended in paragraph (b) by removing ''USD (A&T)'' and adding in its place ''Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD (AT&L))''.

4. Section 201.304 is amended as follows:

a. In paragraph (1)(i) introductory text by removing ''Under Secretary of Defense (Acquisition and Technology) (USD (A&T))''; and adding in its place ''USD (AT&L)'';

b. In paragraph (1)(ii) by removing the parenthetical ''(A&T)'' both places it appears and adding in its place ''(AT&L)'';

c. In paragraph (2)(ii) by removing the parenthetical ''(A&T)'' and adding in its place ''(AT&L)''; and

d. By revising paragraphs (3) through (5) to read as follows:

#### 201.304 Agency control and compliance procedures.

* * * * *

(3) Contracting activities must obtain the appropriate approval (see 201.404) for any class deviation (as defined in FAR subpart 1.4) from the FAR or DFARS, before its inclusion in a department/agency or component supplement or any other contracting regulation document such as a policy letter or clause book.

(4) Each department and agency must develop and, upon approval by USD(AT&L)DP, implement, maintain, and comply with a plan for controlling the use of clauses other than those prescribed by FAR or DFARS.

(5) Departments and agencies must submit requests for the Secretary of Defense, USD(AT&L), and USD(AT&L)DP approvals required by this section through the Director of the DAR Council.

* * * * *

5. Section 201.402 is amended by revising paragraph (1); removing paragraph (2); redesignating paragraph (3) as paragraph (2); and revising newly designated paragraph (2) introductory text to read as follows:

#### 201.402 Policy.

(1) The Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L)DP), is the approval authority within DoD for any individual or class deviation from—

(i) FAR 3.104, Procurement Integrity, or DFARS 203.104, Procurement Integrity;

(ii) FAR Subpart 27.4, Rights in Data and Copyrights, or DFARS Subpart 227.4, Rights in Data and Copyrights;

(iii) FAR part 30, Cost Accounting Standards Administration, or DFARS part 230, Cost Accounting Standards Administration;

(iv) FAR subpart 31.1, Applicability, or DFARS subpart 231.1, Applicability (contract cost principles);

(v) FAR subpart 31.2, Contracts with Commercial Organizations, or DFARS subpart 231.2, Contracts with Commercial Organizations; or

(vi) FAR part 32, Contract Financing (except subparts 32.7 and 32.8 and the payment clauses prescribed by subpart 32.1), or DFARS part 232, Contract Financing (except subparts 232.7 and 232.8).

(2) Submit requests for deviation approval through department/agency channels to the approval authority in paragraph (1) of this section, 201.403, or 201.404, as appropriate. Submit deviations that require USD(AT&L)DP approval through the Director of the DAR Council. At a minimum, each request must—

* * * * *

6. Sections 201.403 and 201.404 are revised to read as follows:

#### 201.403 Individual deviations.

(1) Individual deviations, except those described in 201.402(1) and paragraph (2) of this section, must be approved in accordance with the department/agency plan prescribed by 201.304(4).

(2) Contracting officers outside the United States may deviate from prescribed nonstatutory FAR and DFARS clauses when—

(i) Contracting for support services, supplies, or construction, with the governments of North Atlantic Treaty Organization (NATO) countries or other allies (as described in 10 U.S.C. 2341(2)), or with United Nations or NATO organizations; and

(ii) Such governments or organizations will not agree to the standard clauses.

#### 201.404 Class deviations.

(b)(i) Except as provided in paragraph (b)(ii) of this section, USD(AT&L)DP is the approval authority within DoD for any class deviation.

(ii) The senior procurement executives for the Army, Navy, and Air Force, and the Directors of the Defense Commissary Agency and the Defense Logistics Agency, may approve any class deviation, other than those described in 201.402(1), that does not—

(A) Have a significant effect beyond the internal operating procedures of the department or agency;

(B) Have a significant cost or administrative impact on contractors or offerors;

(C) Diminish any preference given small business concerns by the FAR or DFARS; or

(D) Extend to requirements imposed by statute or by regulations of other agencies such as the Small Business Administration and the Department of Labor.

## PART 225—FOREIGN ACQUISITION

#### 225.970 [Amended]

7. Section 225.970 is amended by removing ''201.402(2)'' and adding in its place ''201.403(2)''.

[FR Doc. 00–2945 Filed 2–9–00; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF DEFENSE

### 48 CFR Part 211

**[DFARS Case 99–D024]**

### Defense Federal Acquisition Regulation Supplement; OMB Circular A–119

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** The Acting Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address use of a Federal Acquisition Regulation (FAR) provision that invites offerors to propose alternatives to Government-unique standards. This DFARS rule instructs DoD contracting officers not to use the FAR provision, since DoD uses the Single Process Initiative to encourage offerors to propose alternatives to Government-unique specifications and standards.

**EFFECTIVE DATE:** February 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Melissa Rider, Defense Acquisition Regulations Council, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3061. Telephone (703) 602–4245; telefax (703) 602–0350. Please cite DFARS Case 99–D024.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This final DFARS rule supplements the final FAR rule that was published at 64 FR 51834 on September 24, 1999 (Federal Acquisition Circular 97–14, Item V) to implement Office of Management and Budget Circular A–119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities. The FAR rule added a provision at FAR 52.211–7 to permit offerors to propose voluntary consensus standards as alternatives to Government-unique standards included in a solicitation. In accordance with the prescription at FAR 11.107(b), use of the provision is optional for agencies that use the categorical method of reporting their use of voluntary consensus standards to the National Institute of Standards and Technology. DoD uses the categorical method of reporting. In addition, DoD uses the Single Process Initiative procedures at DFARS 211.273 and 252.211–7005 to encourage offerors to propose industry standards as alternatives to Government-unique specifications and standards. Therefore, this DFARS rule specifies that the provision at FAR 52.211–7 will not be used in DoD solicitations.

DoD published a proposed rule at 64 FR 61056 on November 9, 1999. One source submitted comments in response to the proposed rule. DoD considered those comment in the development of the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the provision at FAR 52.211–7, Alternatives to Government-Unique Standards, is optional, and DoD already has implemented procedures for encouraging offerors to propose alternatives to Government-unique specifications and standards through the Single Process Initiative.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Part 211

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Part 211 is amended as follows:

1. The authority citation for 48 CFR Part 211 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 211—DESCRIBING AGENCY NEEDS

2. Subpart 211.1 is added to read as follows:

### Subpart 211.1—Selecting and Developing Requirements Documents

Sec.

211.107 Solicitation provision.

#### 211.107 Solicitation provision.

(b) DoD uses the categorical method of reporting. Do not use the provision at FAR 52.211–7, Alternatives to Government-Unique Standards, in DoD solicitations.

[FR Doc. 00–2944 Filed 2–10–00; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF DEFENSE

### 48 CFR Parts 212, 225, and 252

**[DFARS Case 98–D305]**

### Defense Federal Acquisition Regulation Supplement; People's Republic of China

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** The Acting Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8120 of the DoD Appropriations Act for fiscal year 1999, as amended by Section 144 of Title I, Division C, of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999. Section 8120 places restrictions on the award of contracts to companies in which the People's Republic of China or the People's Liberation Army of the People's Republic of China owns more than 50 percent interest.

**EFFECTIVE DATE:** February 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations Council, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0288; telefax (703) 602–0350. Please cite DFARS Case 98–D305.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This rule finalizes the interim rule that was published at 64 FR 8727 on February 23, 1999. DoD received no public comments on the interim rule.

The interim rule implemented Section 8120 of the DoD Appropriations Act for fiscal year 1999 (Public Law 105–262). Section 8120 places restrictions on the award of contracts to companies owned or partially owned by the People's Republic of China or the People's Liberation Army of the People's Republic of China. This final rule also incorporates the provisions of Section 144 of Title I, Division C, of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277). Section 144 of Public Law 105–277 amended Section 8120 of Public Law 105–262 to restrict contract award only if the Secretary of Defense determines that the People's Republic of China or the People's Liberation Army of the People's Republic of China owns more than 50 percent interest in a company. The Secretary of Defense has delegated the authority for such determinations to the Director of Defense Procurement.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule pertains only to companies in which the Director of Defense Procurement has determined that the People's Republic of China or the People's Liberation Army of the People's Republic of China owns more than 50 percent interest.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Parts 212, 225, and 252

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

### Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR parts 212, 225, and 252, which was published at 64 FR 8727 on February 23, 1999, is adopted as a final rule with the following changes:

1. The authority citation for 48 CFR parts 212, 225, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 225—FOREIGN ACQUISITION

2. Sections 225.771–2 through 225.771–4 are revised and section 225.771–5 is added to read as follows:

#### 225.771–2 Legal authority.

This section implements Section 8120 of the DoD Appropriations Act for fiscal year 1999 (Pub. L. 105–262), as amended by Section 144 of Title I, Division C, of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105–277).

#### 225.771–3 Prohibition on contract award.

If using fiscal year 1999 funds made available by Title III (Procurement) or Title IV (Research, Development, Test and Evaluation) of Pub. L. 105–262, do not award or renew a contract with any company in which the Director of Defense Procurement has determined that the People's Republic of China or the People's Liberation Army of the People's Republic of China owns more than 50 percent interest.

#### 225.771–4 Procedures.

(a) Forward any information that the People's Republic of China or the People's Liberation Army of the People's Republic of China owns more than 50 percent interest in a company, through the head of the agency, to the Director, Defense Procurement, ATTN: OUSD (AT&L) DP/FC, 3060 Defense Pentagon, Washington, DC 20301–3060.

(b) Upon verification of the information, the Director of Defense Procurement will ask the General Services Administration to list the company as ineligible on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

#### 225.771–5 Solicitation provision.

Use the provision at 252.225–7017, Prohibition on Award to Companies Owned by the People's Republic of China, in solicitations for contracts that will use fiscal year 1999 funds made available by Title III or IV of Pub. L. 105–262.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.225–7017 is revised to read as follows:

#### 252.225–7017 Prohibition on Award to Companies Owned by the People's Republic of China.

As prescribed in 225.771–5, use the following provision:

**Prohibition on Award to Companies Owned by the People's Republic of China (FEB 2000)**

(a) *Definition.* ''People's Republic of China,'' as used in this provision, means the government of the People's Republic of China, including its political subdivisions, agencies, and instrumentalities.

(b) *Prohibition on award.* Section 8120 of the Department of Defense Appropriations Act for fiscal year 1999 (Pub. L. 105–262), as amended by Section 144 of Title I, Division C, of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105–277), prohibits the award of a contract under this solicitation to any company in which the Director of Defense Procurement (Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics)) has determined that the People's Republic of China or the People's Liberation Army of the People's Republic of China owns more than 50 percent interest.

(c) *Representation.* By submission of an offer, the offeror represents that the People's Republic of China or the People's Liberation Army of the People's Republic of China does not own more than 50 percent interest in the offeror.

(End of provision)

[FR Doc. 00–2943 Filed 2–9–00; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF DEFENSE

## 48 CFR Part 219 and Appendix I to Chapter 2

**[DFARS Case 99–D307]**

## Defense Federal Acquisition Regulation Supplement; Mentor-Protege Program Improvements

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Acting Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 811 of the National Defense Authorization Act for Fiscal Year 2000. Section 811 amends statutory provisions pertaining to the DoD Pilot Mentor-Protege Program.

**DATES:** *Effective date:* February 10, 2000.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before April 10, 2000, to be considered in the formation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan Schneider, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted via the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 99–D307 in all correspondence related to this rule. E-mail comments should cite DFARS Case 99–D307 in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Schneider, (703) 602–0326.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This interim rule revises DFARS Subpart 219.71 and Appendix I to implement Section 811 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65). Section 811 amends statutory provisions pertaining to the DoD Pilot Mentor-Protege Program. The amendments revise the procedures for reimbursement

of costs to mentor firms for assistance provided to protege firms; require both mentor and protege firms to submit progress reports; require the Defense Contract Management Command to conduct annual performance reviews of mentor-protege agreements; extend the period for entering into mentor-protege agreements until September 30, 2002; and extend the period during which mentor firms may incur costs under the Program until September 30, 2005.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The rule changes procedures for administering and monitoring the Mentor-Protege Program, but maintains the primary objective of providing incentives for major DoD contractors to assist small disadvantaged business concerns and qualified organizations employing the severely disabled in enhancing their capabilities to satisfy Government and commercial contract requirements. Therefore, DoD has not performed and initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 99–D307.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) applies because the interim rule contains new information collection requirements. Under the emergency processing provisions of 44 U.S.C. 3507(j) as implemented at 5 CFR 1320.13, the Office of Management and Budget (OMB) has granted emergency approval of the information collection requirements through July 31, 2000, under OMB Clearance Number 0704–0412. DoD will obtain the OMB approval required by 44 U.S.C. 3507(a)(2) prior to publication of the final rule.

1. *Comments:* Comments are invited. Particular comments are solicited on:

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 the burden of the information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

2. *Title, Associated Form, and OMB Number:* DoD Pilot Mentor-Protege Program, Defense Federal Acquisition Regulation Supplement Appendix I; OMB Number 0704–0412.

3. *Needs and Uses:* The new information collection required by Appendix I, Policy and Procedures for the DoD Pilot Mentor-Protege Program, is required by Section 811 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65). DoD will use the information to assess whether the purposes of the Pilot Mentor-Protege Program have been attained and to prepare the reports to Congress required by Section 811 of Public Law 106–65.

4. *Affected Public:* Businesses or other for-profit entities.

5. *Annual Burden Hours:* 435.

6. *Number of Respondents:* 145.

7. *Responses Per Respondent:* 1.

8. *Number of Responses:* 145.

9. *Average Burden Per Response:* 3 hours (1 reporting hour; 2 recordkeeping hours).

10. *Frequency:* Annually.

11. *Supplementary Information:* DFARS Appendix I requires a protege firm to report on its progress under a mentor-protege agreement by concurring with or rebutting its mentor firm's year-end report. The protege firm also must provide data on its employment, revenues, and participation in DoD contracts. The report is required annually during the protege firm's Program participation term and for 2 fiscal years after the expiration of the Program participation term.

**D. Determination to Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 811 of the National Defense Authorization Act for Fiscal Year 2000. Section 811 amends statutory provisions pertaining to the DoD Pilot Mentor-Protege Program. Section 811 became effective on October 5, 1999. DoD will consider comments received in response to this interim rule in the formation of the final rule.

**List of Subjects in 48 CFR Part 219**

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR part 219 and Appendix I to Chapter 2 are amended as follows:

1. The authority citation for 48 CFR Part 219 and Appendix I to Subchapter I continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 219—SMALL BUSINESS PROGRAMS

2. Subpart 219.71 is revised to read as follows:

### Subpart 219.71—Pilot Mentor-Protege Program

Sec.

219.7100 Scope.
219.7101 Policy.
219.7102 General.
219.7103 Procedures.
219.7103–1 General.
219.7103–2 Contracting officer responsibilities.
219.7104 Developmental assistance costs eligible for reimbursement or credit.
219.7105 Reporting.
219.7106 Performance reviews.

**219.7100 Scope.**

This subpart implements the Pilot Mentor-Protege Program established under Section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101–510; 10 U.S.C. 2302 note). The purpose of the Program is to provide incentives for DoD contractors to assist small disadvantaged businesses in enhancing their capabilities and to increase participation of such firms in Government and commercial contracts. Qualified organizations employing the severely disabled, as defined in Section 8064A of Pub. L. 102–172, are also eligible to participate as protege firms.

**219.7101 Policy.**

DoD policy and procedures for implementation of the Program are contained in Appendix I, Policy and Procedures for the DoD Pilot Mentor-Protege Program.

**219.7102 General.**

The Program includes—

(a) Mentor firms that are prime contractors with at least one active subcontracting plan negotiated under FAR Subpart 19.7.

(b) Protege firms that are small disadvantaged business (SDB) concerns as defined at 219.001(1), or qualified organizations employing the severely disabled, eligible for receipt of Federal contracts and selected by the mentor firm.

(c) Mentor-protege agreements that establish a developmental assistance program for a protege firm.

(d) Incentives that DoD may provide to mentor firms, including:

(1) Reimbursement for developmental assistance costs through—

(i) A separately priced contract line item on a DoD contract; or

(ii) A separate contract, upon written determination by the Director, Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) SADBU, OUSD (AT&L)), that unusual circumstances justify reimbursement using a separate contract; or

(2) Credit toward SDB subcontracting goals, established under a subcontracting plan negotiated under FAR Subpart 19.7, for developmental assistance costs that are not reimbursed.

**219.7103 Procedures.**

**219.7103–1 General.**

The procedures for application, acceptance, and participation in the Program are in Appendix I, Policy and Procedures for the DoD Pilot Mentor-Protege Program. The Director, SADBU, OUSD (AT&L), approves contractors as mentor firms, approves mentor-protege agreements, and forwards approved mentor-protege agreements to the contracting officer when program funding is available through a DoD program manager.

**219.7103–2 Contracting officer responsibilities.**

Contracting officers must—

(a) Negotiate an advance agreement on the treatment of developmental assistance costs for either credit or reimbursement if the mentor firm proposes such an agreement, or delegate authority to negotiate to the administrative contracting officer (see FAR 31.109).

(b) Modify (without consideration) applicable contract(s) to incorporate the clause at 252.232–7005, Reimbursement of Subcontractor Advance Payments—DoD Pilot Mentor-Protege Program, when a mentor firms provides advance payments to a protege firm under the Program and the mentor firm requests reimbursement of advance payments.

(c) Modify (without consideration) applicable contract(s) to incorporate other than customary progress payments for small disadvantaged businesses in accordance with FAR 32.504(c) if a mentor firm provides such payments to a protege firm and the mentor firm requests reimbursement.

(d) Modify applicable contract(s) to establish a contract line item for reimbursement of developmental assistance costs if—

(1) A DoD program manager has made funds available for that purpose; and

(2) The contractor has an approved mentor-protege agreement.

(e) Negotiate and award a separate contract for reimbursement of developmental assistance cost if—

(1) A DoD program manager has made funds available for that purpose;

(2) The contractor has an approved mentor-protege agreement; and

(3) The Director, SADBU, OUSD (AT&L), has made a determination in accordance with 219.7102(d)(1)(ii).

(f) Authorized reimbursement for costs of assistance furnished to a protege firm in excess of $1,000,000 in a fiscal year only after receipt of a written determination from the Director, SADBU, OUSD (AT&L).

(g) Advise contractors of reporting requirements in Appendix I.

(h) Provide a copy of the approved Mentor-Protege agreement to the Defense Contract Management Command administrative contracting officer responsible for conducting the annual performance review (see Appendix I, Section I–112).

**219.7104 Developmental assistance costs eligible for reimbursement or credit.**

(a) Development assistance provided under an approved mentor-protege agreement is distinct from, and must not duplicate, any effort that is the normal and expected product of the award and administration of the mentor firm's subcontracts. The mentor firm must accumulate and charge costs associated with the latter in accordance with its approved accounting practices. Mentor firm costs that are eligible for reimbursement are set forth in Appendix I.

(b) Before incurring any costs under the Program, mentor firms must establish the accounting treatment of developmental assistance costs eligible for reimbursement or credit. Advance agreements are encouraged. To be eligible for reimbursement under the Program, the mentor firm must incur the costs before October 1, 2005.

(c) If the mentor firm is suspended or debarred while performing under an approved mentor-protege agreement, the mentor firm may not be reimbursed or credited for developmental assistance costs incurred more than 30 days after the imposition of the suspension or debarment.

(d) Developmental assistance costs incurred by a mentor firm before October 1, 2005, that are eligible for crediting under the Program, may be credited toward subcontracting plan goals as set forth in Appendix I.

**219.7105 Reporting.**

Mentor and protege firms must report on the progress made under mentor-protege agreements as indicated in Appendix I, Section I–111.

**219.7106 Performance reviews.**

The Defense Contract Management Command will conduct annual performance reviews of all mentor-protege agreements as indicated in Appendix I, Section I–112.

3. Appendix I to Chapter 2 is revised to read as follows:

**Appendix I—Policy and Procedures for the DOD Pilot Mentor-Protege Program**

I–100 Purpose.
I–101 Definitions.
I–101.1 Emerging SDB concern.
I–101.2 Historically Black college or university.
I–101.3 Minority institution of higher education.
I–102 General procedures.
I–103 Program duration.
I–104 Eligibility requirements for a protege firm.
I–105 Selection of protege firms.
I–106 Approval process for companies to participate in the Program as mentor firms.
I–107 Mentor-protege agreements.
I–108 Reimbursement procedures.
I–109 Credit for unreimbursed developmental assistance costs.
I–110 Advance agreements on the treatment of developmental assistance costs.
I–111 Reporting requirements.
I–112 Agreement reviews.

*I–100 Purpose.*

(a) This Appendix I to 48 CFR Chapter 2 implements the Pilot Mentor-Protege Program (hereinafter referred to as the ''Program'') established under Section 831 of Pub. L. 101–510, the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 2302 note). The purpose of the Program is to—

(1) Provide incentives to major DoD contractors, performing under at least one active approved subcontracting plan negotiated with DoD or another Federal agency, to assist small disadvantaged business (SDB) concerns or qualified organizations employing the severely disabled (hereinafter referred to as ''protege firms'') in enhancing their capabilities to satisfy DoD and other contract and subcontract requirements;

(2) Increase the overall participation of protege firms as subcontractors and suppliers under DoD contracts, other Federal agency contracts, and commercial contracts; and

(3) Foster the establishment of long-term business relationships between protege firms and such contractors.

(b) Under the Program, eligible companies approved as mentor firms will enter into mentor-protege agreements with eligible protege firms to provide appropriate developmental assistance to enhance the capabilities of the protege firms to perform as subcontractors and suppliers. According to the law, DoD may provide the mentor firm with either cost reimbursement or credit against SDB subcontracting goals established under contracts with DoD or other Federal agencies.

(c) DoD will measure the overall success of the Program by the extent to which the Program results in—

(1) An increase in the dollar value of subcontracts awarded to protege firms by mentor firms under DoD contracts;

(2) An increase in the dollar value of contract and subcontract awards to protege firms (under DoD contracts, contracts awarded by other Federal agencies, and commercial contracts) from the date of their entry into the Program until 2 years after the conclusion of the agreement;

(3) An increase in the number and dollar value of subcontracts awarded to a protege firm (or former protege firm) by its mentor firm (or former mentor firm);

(4) An increase in subcontracting with SDB concerns in industry categories where SDBs traditionally have not participated within the mentor firm's vendor base;

(5) The involvement of emerging SDBs in the Program; and

(6) An increase in the employment level of protege firms from the date of entry into the Program until 2 years after the completion of the agreement.

(d) This policy sets forth the procedures for participation in the Program applicable to companies that are interested in receiving—

(1) Reimbursement through a separate contract line item in a DoD contract or a separate contract with DoD; or

(2) Credit toward SDB subcontracting goals for costs incurred under the Program.

*I–101 Definitions.*

*I–101.1 Emerging SDB concern.*

A small disadvantaged business whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial code for the supplies or services that the protege firm provides or would provide to the mentor firm.

*I–101.2 Historically Black college or university.*

An institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

*I–101.3 Minority institution of higher education.*

An institution meeting the definition of ''Minority Institution'' at FAR 26.301.

*I–102 General procedures.*

(a) At any time between October 1, 1991, and September 30, 2002, companies interested in becoming mentor firms that want to take credit toward SDB subcontracting goals for costs incurred for providing developmental assistance to one or more protege firms must apply to DoD for participation in the Program pursuant to the application process set forth at I–106(a).

(b) At any time between October 1, 1991, and September 30, 2002, companies interested in becoming mentor firms that are able to identify funding from a DoD program manager(s) to provide developmental assistance to one or more protege firms must apply to DoD for participation in the Program, pursuant to the application process set forth at I–106(d).

*I–103 Program duration.*

Activities under the Program may occur only during the following periods:

(a) From October 1, 1991, until September 30, 2002, companies that have been approved for participation in the Program as mentor firms pursuant to I–102, General Procedures, may enter into mentor-protege agreements, pursuant to I–107, Mentor Protege Agreements.

(b) From October 1, 1991, until September 30, 2005, DoD may reimburse a mentor firm's costs of providing developmental assistance to its protege firm only if a DoD program manager has identified the funding for such costs and—

(1)(i) For mentor-protege agreements entered into prior to October 1, 1999, the mentor firm incurs such costs after DoD and the mentor firm enter into a separate contract, cooperative agreement, or other agreement; or

(ii) For mentor-protege agreements entered into on or after October 1, 1999, the mentor firm incurs such costs after DoD and the mentor firm enter into a separate contract based upon a determination by the Director, Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (SADBU, OUSD (AT&L)), that unusual circumstances justify using a separate contract; or

(2) The mentor firm incurs such costs pursuant to the execution of a separately priced contract line item added to a DoD contract(s).

(c) From October 1, 1991, until September 30, 2005, a mentor firm may receive credit toward the attainment of its goals for subcontract awards to SDBs, for unreimbursed costs incurred in providing developmental assistance to its protege firms, only it such costs are incurred pursuant to an approved mentor-protege agreement.

*I–104 Eligibility requirements for a protege firm.*

(a) An entity may qualify as a protege firm if it is—

(1) An SDB concern as defined at 219.001, paragraph (1) of the definition of ''small disadvantaged business concern,'' that is—

(i) Eligible for the award of Federal contracts; and

(ii) A small business according to the Small Business Administration (SBA) size standard for the Standard Industrial Classification (SIC) code that represents the contemplated supplies or services to be provided by the protege firm to the mentor firm; or

(2) A qualified organization employing the severely disabled as defined in Pub. L. 102–172, section 8064A.

(b) A protege firm may self-certify to a mentor firm that it meets the eligibility requirements in paragraph (a)(1) or (2) of this section. Mentor firms may rely in good faith on a written representation that the entity meets the requirements of paragraph (a)(1) or (2) of this section, except for a protege's status as a small disadvantaged business concern (see FAR 19.703(b)).

(c) A protege firm may have only one active DoD mentor-protege agreement.

*I–105 Selection of protege firms.*

(a) Mentor firms will be solely responsible for selecting protege firms. Mentor firms are encouraged to identify and select protege firms that are defined as emerging SDB concerns.

(b) The selection of protege firms by mentor firms may not be protested, except as in paragraph (c) of this section.

(c) In the event of a protest regarding the size or disadvantaged status of an entity selected to be a protege firm as defined in I–104(a)(1), the mentor firm must refer the protest to the SBA to resolve in accordance with 13 CFR Part 121 (with respect to size) or 13 CFR 124 (with respect to disadvantaged status).

(d) For purposes of the Small Business Act, no determination of affiliation or control (either direct or indirect) may be found between a protege firm and its mentor firm on the basis that the mentor firm has agreed to furnish (or has furnished) to its protege firm, pursuant to a mentor-protege agreement, any form of developmental assistance described in I–107(f).

(e) If at any time pursuant to paragraph (c) of this section, the SBA determines that an SDB protege firm is not an SDB concern, assistance that the mentor firm furnishes to such a concern after the date of the determination may not be considered assistance furnished under the Program.

*I–106 Approval process for companies to participate in the Program as mentor firms.*

(a) On or after October 1, 1991, a company that is interested in becoming a mentor firm that is seeking credit toward SDB subcontracting goals for costs incurred under the Program must submit a request to the Director, SADBU, OUSD (AT&L), for approval as a mentor firm under the Program. The Director will evaluate the request based on the extent to which the company's proposal addresses the items listed in paragraphs (b) and (c) of this section. To the maximum extent possible, a company should limit its request to not more than 10 pages, single-spaced. A company may identify more than one protege in its request for approval under the Program. The request must include the information required in paragraphs (b) and (c) of this section and may cover one or more proposed mentor-protege relationships.

(b) A company must indicate whether it is interested in participating in the Program pursuant to I–100(d)(1) or (2) and must submit the following information:

(1) A statement that the company is currently performing under at least one

active approved subcontracting plan negotiated with DoD or another Federal agency pursuant to FAR 19.702, and that the company is currently eligible for the award of Federal contracts.

(2) The number of proposed mentor-protege relationships covered by the request for approval as a mentor firm.

(3) A summary of the company's historical and recent activities and accomplishments under its SDB program.

(4) The total dollar amount of DoD contracts and subcontracts that the company received during the 2 preceding fiscal years. (Show prime contracts and subcontracts separately per year.)

(5) The total dollar amount of all other Federal agency contracts and subcontracts that the company received during the 2 preceding fiscal years. (Show prime contracts and subcontracts separately per year.)

(6) The total dollar amount of subcontracts that the company awarded under DoD contracts during the 2 preceding fiscal years.

(7) The total dollar amount of subcontracts that the company awarded under all other Federal agency contracts during the 2 preceding fiscal years.

(8) The total dollar amount and percentage of subcontracts that the company awarded to all SDB firms under DoD contracts and other Federal agency contracts during the 2 preceding fiscal years. (Show DoD subcontract awards separately.) If the company presently is required to submit a Standard Form (SF) 295, Summary Subcontract Report, the request must include copies of the final reports for the 2 preceding fiscal years.

(9) The number and total dollar amount of subcontracts that the company awarded to the identified protege firm(s) during the 2 preceding fiscal years (if any). (Show DoD subcontract awards and other Federal agency subcontract awards separately.)

(c) In addition to the information required in paragraph (b) of this section, companies must submit the following information for each proposed mentor-protege relationship:

(1) Information on the company's ability to provide developmental assistance to the identified protege firm and how that assistance will potentially increase subcontracting opportunities in industry categories where SDBs are not dominant in the company's vendor base.

(2) A letter of intent indicating that both the mentor firm and the protege firm will negotiate a mentor-protege agreement. The letter of intent must be signed by both parties and must contain the following information:

(i) The name, address, and telephone number of both parties.

(ii) The protege firm's business classification, based upon the SIC code(s) that represents the contemplated supplies or services to be provided by the protege firm to the mentor firm.

(iii) A statement that the protege firm meets the eligibility criteria in I–104(a)(1) or (2).

(iv) A preliminary assessment of the developmental needs of the protege firm, and the proposed developmental assistance the mentor firm envisions providing the protege firm to address those needs and enhance the protege firm's ability to perform successfully under contracts or subcontracts with DoD and other Federal agencies and commercial contracts.

(v) an estimate of the dollar amount and type of subcontracts that the mentor firm will award to the protege firm, and the period of time over which the mentor firm will make those awards.

(vi) Information as to whether the protege firm's development will be concentrated on a single major system, a service or supply program, research and development programs, initial production, or mature systems, or in the mentor firm's overall contract base.

(3) An estimate of the cost of the developmental assistance program and the period of time over which the mentor firm will provide assistance.

(4) A statement from the protege firm indicating its commitment to comply with the requirements for reporting and for review of the agreement during the duration of the agreement and for 2 years thereafter.

(d) A company that has identified Program funds to be made available through a DoD program manager must provide the information in paragraphs (b) and (c) of this section through the appropriate program manager and the cognizant Director, SADBU, to the Director, SADBU, OUSD(AT&L), with a letter signed by the appropriate program manager indicating the amount of funding that has been identified for the developmental assistance program. The company must submit a justification and endorsement from the cognizant Director, SADBU, when requesting—

(1) Reimbursement of developmental costs in excess of $1,000,000;

(2) Reimbursement through a separate contract; or

(3) A Program participation term greater than 3, but not more than 5, years.

(e) Companies seeking credit toward SDB subcontracting goals for the cost of developmental assistance, or reimbursement with funds made available by a DoD program manager, must submit four copies of the information specified in paragraphs (b) and (c) of this section to the Director, SADBU, OUSD(AT&L), ATTN: Pilot Mentor-Protege Program Manager, 1777 North Kent Street, Suite 9100, Arlington, VA 22209. Upon receipt of this information, the Director, SADBU, OUSD(AT&L), will review and evaluate each request and, to the maximum extent possible, within 30 days advise each applicant of approval or rejection of its request to become a mentor firm.

(f) A company approved as a mentor firm, either for credit or for reimbursement through funds made available by a DoD program manager, proceed with the negotiation of the mentor-protege agreement with the identified protege firm(s).

(g) Companies that apply for participation in the Program pursuant to paragraph (e) of this section, and are not approved, will be provided the reasons and an opportunity to submit additional information for reconsideration.

(h) A company may not be approved for participation in the Program as a mentor firm if, at the time of requesting participation in the Program, it is currently debarred or suspended from contracting with the Federal Government pursuant to FAR subpart 9.4.

(i) If the mentor firm is suspended or debarred while performing under an approved mentor-protege agreement, the mentor firm—

(1) May continue to provide assistance to its protege firms pursuant to approved mentor-protege agreements entered into prior to the imposition of such suspension or debarment;

(2) May not be reimbursed or take credit for any costs of providing developmental assistance to its protege firm, incurred more than 30 days after the imposition of such suspension or debarment; and

(3) Must promptly give notice of its suspension or debarment to its protege firm and the Director, SADBU, OUSD (AT&L).

*I–107 Mentor-protege agreements.*

(a) A signed mentor-protege agreement for each mentor-protege relationship identified under I–106(b)(2) must be submitted to the Director, SADBU, OUSD (AT&L), and approved before developmental assistance costs may be incurred. To the maximum extent possible, such mentor-protege agreements will be approved within 5 business days of receipt.

(b) Each signed mentor-protege agreement submitted for approval under the Program must include—

(1) The name, address, and telephone number of the mentor firm and the protege firm and a point of contact within the mentor firm who will administer the developmental assistance program;

(2) The SIC code that represents the contemplated supplies or services to be provided by the protege firm to the mentor firm and a statement that, at the time the agreement is submitted for approval, the protege firm, if an SDB concern, does not exceed the size standard for the appropriate SIC code;

(3) A developmental program for the protege firm specifying the type of assistance identified in paragraph (f) of this section that will be provided. The developmental program also must include—

(i) Factors to assess the protege firm's developmental progress under the Program, including milestones for providing the identified assistance;

(ii) The anticipated number, dollar value, and type of subcontracts to be awarded the protege firm consistent with the extent and nature of the mentor firm's business, and the period of time over which the subcontracts will be awarded; and

(iii) The dollar value of the technical assistance program, broken out per year;

(4) A program participation term for the agreement that does not exceed 3 years. Requests for an extension of the agreement for a period not to exceed an additional 2 years are subject to the approval of the Director, SADBU, OUSD (AT&L), and are contingent upon the endorsement and submission of justification for such an extension from the cognizant Director, SADBU. The justification must detail the unusual circumstances that warrant a term in excess of 3 years;

(5) Procedures for the mentor firm to notify the protege firm in writing at least 30 days in advance of the mentor firm's intent to voluntarily withdraw its participation in the Program. A mentor firm may voluntarily terminate its mentor-protege agreement(s) only if it no longer wants to be a participant in the Program as a mentor firm. Otherwise, a mentor firm must terminate a mentor-protege agreement for cause;

(6) Procedures for a protege firm to notify the mentor firm in writing at least 30 days in advance of the protege firm's intent to voluntarily terminate the mentor-protege agreement;

(7) Procedures for the mentor firm to terminate the mentor-protege agreement for cause which provide that—

(i) The mentor firm must furnish the protege firm a written notice of the proposed termination, stating the specific reasons for such action, at least 30 days in advance of the effective date of such proposed termination;

(ii) The protege firm must have 30 days to respond to such notice of proposed termination, and may rebut any findings believed to be erroneous and offer a remedial program;

(iii) Upon prompt consideration of the protege firm's response, the mentor firm must either withdraw the notice of proposed termination and continue the protege firm's participation, or issue the notice of termination; and

(iv) The decision of the mentor firm regarding termination for cause, conforming with the requirements of this section, will be final and is not reviewable by DoD; and

(8) Additional terms and conditions as may be agreed upon by both parties.

(c) Mentor firms must send a copy of any termination notices to the Director, SADBU, OUSD (AT&L), and the Defense Contract Management Command administrative contracting officer responsible for conducting the annual performance review, and, where funding is made available through a DoD program manager, must provide a copy to the program manager and to the contracting officer.

(d) Termination of a mentor-protege agreement will not impair the obligations of the mentor firm to perform pursuant to its contractual obligations under Government contracts and subcontracts. Termination of all or part of the mentor-protege agreement will not impair the obligations of the protege firm to perform pursuant to its contractual obligations under any contract awarded to the protege firm by the mentor firm.

(e) Only developmental assistance provided after DoD approval of the mentor-protege agreement may be reimbursed.

(f) The mentor-protege agreement may provide for the mentor firm to furnish any or all of the following types of developmental assistance:

(1) Assistance by mentor firm personnel in—

(i) General business management, including organizational management, financial management, and personnel management, marketing, business development, and overall business planning;

(ii) Engineering and technical matters such as production inventory control and quality assurance; and

(iii) Any other assistance designed to develop the capabilities of the protege firm under the developmental program.

(2) Award of subcontracts under DoD contracts or other contracts on a noncompetitive basis.

(3) Payment of progress payments for the performance of subcontracts by a protege firm in amounts as provided for in the subcontract; but in no event may any such progress payment exceed 100 percent of the costs incurred by the protege firm for the performance of the subcontract. Provision of progress payments by a mentor firm to an SDB protege firm at a rate other than the customary rate for SDBs must be implemented in accordance with FAR 32.504(c).

(4) Advance payments under such subcontracts. The mentor firm must administer advance payments in accordance with FAR subpart 32.4.

(5) Loans.

(6) Investment(s) in the protege firm in exchange for an ownership interest in the protege firm, not to exceed 10 percent of the total ownership interest. Investment may include, but are not limited to, cash, stock, and contribution in kind.

(7) Assistance that the mentor firm obtains for the protege firm from one or more of the following:

(i) Small Business Development Centers established pursuant to Section 21 of the Small Business Act (15 U.S.C. 648).

(ii) Entities providing procurement technical assistance pursuant to 10 U.S.C. Chapter 142 (Procurement Technical Assistance Centers).

(iii) Historically Black colleges and universities.

(iv) Minority institutions of higher education.

(g) A mentor firm may not require a protege firm to enter into a mentor-protege agreement as a condition for award of a contract by the mentor firm, including a subcontract under a DoD contract awarded to the mentor firm.

*I–108 Reimbursement procedures.*

(a) DoD will reimburse a mentor firm only for the cost of developmental assistance incurred by the mentor firm and provided to a protege firm under I–107(f)(1) and (7), and pursuant to an approved mentor-protege agreement. For agreements entered into prior to October 1, 1999, DoD will provide reimbursement only through a separate contract, cooperative agreement, or other agreement entered into between DoD and the mentor firm, awarded for the purpose of providing developmental assistance to one or more protege firms; a separately priced contract line item in a DoD contract; or inclusion of program costs in indirect expense pools. For agreements entered into on or after October 1, 1999, DoD will provide reimbursement only through a separately priced contract line item in a DoD contract; or through a separate contract if the Director, SADBU, OUSD(AT&L), determines the unusual circumstances justify reimbursement using a separate contract. No other means for the reimbursement of the costs of developmental assistance provided under I–107(f)(1) and (7) are authorized under the Program.

(b) Costs included in indirect expense pools will be reimbursed only to the extent that the costs are otherwise reasonable, allocable, and allowable.

(c) Assistance provided in the form of progress payments to SDB protege firms in excess of the customary progress payment rate for SDBs, will be reimbursed only if implemented in accordance with FAR 32.504(c).

(d) Assistance provided in the form of advance payments will be reimbursed only if the payments have been provided to a protege firm under subcontract terms and conditions similar to those in the clause at FAR 52.232.12, Advance Payments. Reimbursements of any advance payments will be made pursuant to the inclusion of the clause at FARS 252.232–7005, Reimbursement of Subcontractor Advance Payments—DoD Pilot Mentor-Protege Program, in appropriate contracts. In requesting reimbursement, the mentor firm agrees that the risk of any financial loss due to the failure or inability of a protege firm to repay any unliquidated advance payments will be the sole responsibility of the mentor firm.

(e) No other forms of developmental assistance are authorized for reimbursement under the Program.

(f) The total amount reimbursed to a mentor firm for costs of assistance furnished to a protege firm in a fiscal year may not exceed $1,000,000 unless the Director, SADBU, OUSD(AT&L), determines in writing that unusual circumstances justify reimbursement at a higher amount. Request for authority to reimburse in excess of $1,000,000 must detail the unusual circumstances and must be endorsed and submitted by the program manager and the cognizant Director, SADBU.

*I–109 Credit for unreimbursed developmental assistance costs.*

(a) Developmental assistance costs incurred by a mentor firm for providing assistance to a protege firm pursuant to an approved mentor-protege agreement, that have not been reimbursed through a separate contract, cooperative agreement, or other agreement entered into between DoD and the mentor firm, or through a separately priced contract line item added to a DoD contract, may be credited as if it were a subcontract award for determining the performance of the mentor firm in attaining an SDB subcontracting goal established under any contract containing a subcontracting plan pursuant to the clause at FAR 52.219–9, Small Business Subcontracting Plan.

(b) For crediting purposes only, costs that have been reimbursed through inclusion in indirect expense pools may also be credited as subcontract awards for determining the performance of the mentor firm in attaining an SDB subcontracting goal established under any contract containing a subcontracting plan pursuant to the clause at FAR 52.219–9. However, costs that have not

been reimbursed because they are not reasonable, allocable, or allowable under I–108(b), will not be recognized for crediting purposes.

(c) Other costs that are not eligible for reimbursement pursuant to I–108(a) may be recognized for credit only if requested, identified, and incorporated in an approved mentor-protege agreement.

(d) The amount of credit a mentor firm may receive for any such unreimbursed developmental assistance costs must be equal to—

(1) Four times the total amount of such costs attributable to assistance provided by small business development centers, historically Black colleges and universities, minority institutions, and procurement technical assistance centers.

(2) Three times the total amount of such costs attributable to assistance furnished by the mentor's employees.

(3) Two times the total amount of other such costs incurred by the mentor in carrying out the developmental assistance program.

(e) A mentor firm may receive credit toward the attainment of an SDB subcontracting goal for each subcontract awarded for a product or a service by the mentor firm to an entity that qualifies as a protege firm pursuant to I–104(a). With respect to a former SDB protege firm(s), a mentor may take credit for awards to such concern(s) that, except for its size would be a small business concern owned and controlled by socially and economically disadvantaged individuals, but only if—

(1) The size of such business concern is not more than two time the appropriate size standard;

(2) The business concern formerly had a mentor-protege agreement with such mentor firm that was not terminated for cause; and

(3) The credit is taken not later than October 1, 2005.

(f) Amounts credited toward the SDB goal(s) for unreimbursed costs under the Program must be separately identified from the amounts credited toward the goal resulting from the award of actual subcontracts to protege firms. The combination of the two must equal the mentor firm's overall accomplishment toward the SDB goal(s).

(g) Adjustments may be made to the amount of credit claimed under paragraphs (a) and (b) of this section if the Director, SADBU, OUSD(AT&L), determines that—

(1) A mentor firm's performance in the attainment of its SDB subcontracting goals through actual subcontract awards declined from the prior fiscal year without justifiable cause; and

(2) Imposition of such a limitation on credit appears to be warranted to prevent abuse of this incentive for the mentor firm's participation in the Program.

(h) The mentor firm must be afforded the opportunity to explain the decline in SDB participation before imposition of any such limitation on credit. In making the final decision to impose a limitation on credit, the Director, SADBU, OUSD (AT&L), must consider—

(1) The mentor firm's overall SDB participation rates (in terms of percentages of subcontract awards and dollars awarded) as compared to the participation rates existing during the 2 fiscal years prior to the firm's admission to the Program;

(2) The mentor firm's aggregate prime contract awards during the prior 2 fiscal years and the total amount of subcontract awards under such contracts; and

(3) Such other information the mentor firm may wish to submit.

(i) The decision of the Director, SADBU, OUSD (AT&L), regarding the imposition of a limitation on credit will be final.

(j) Any prospective limitation on credit imposed by the Director, SADBU, OUSD (AT&L), must be expressed as a percentage of otherwise eligible credit, will apply beginning on a specific date in the future, and will continue until a date certain during the current fiscal year.

(k) Any retroactive limitation on credit imposed by the Director, SADBU, OUSD (AT&L), must reflect the actual costs incurred for developmental assistance (not exceeding the maximum amount reimbursed).

(l) For purposes of calculating any incentives to be paid to be a mentor firm for exceeding an SDB subcontracting goal pursuant to the clause at FAR 52.219–26, Small Disadvantaged Business Participation Program—Incentive Subcontracting, incentives will be paid only if an SDB subcontracting goal has been exceeded as a result of actual subcontract awards to SDBs (i.e., excluding credit under paragraphs (a), (b), and (c) of this section).

(m) Developmental assistance costs that are incurred pursuant to an approved mentor-protege agreement, and have been charged to, but not reimbursed through, a separate contract, cooperative agreement, or other agreement entered into between DoD and the mentor firm, or through a separately priced contract line item added to a DoD contract, will not be otherwise reimbursed, as either a direct or indirect cost, under any other DoD contract, irrespective of whether the costs have been recognized for credit against SDB subcontracting goals.

(n) Developmental assistance provided under an approved mentor-protege agreement is distinct from, and must not duplicate, any effort that is the normal and expected product of the award and administration of the mentor firm's subcontracts. Costs associated with the latter must be accumulated and charged in accordance with the contractor's approved accounting practices; they are not considered developmental assistance costs eligible for either credit or reimbursement under the Program.

*I–110 Advance agreements on the treatment of developmental assistance costs.*

Pursuant to FAR 31.109, approved mentor firms seeking either reimbursement or credit are strongly encouraged to enter into an advance agreement with the contracting officer responsible for determining final indirect cost rates under FAR 42.705. The purpose of the advance agreement is to establish the accounting treatment of the costs of the developmental assistance pursuant to the mentor-protege agreement prior to the incurring of any costs by the mentor firm. An advance agreement is an attempt by both the Government and the mentor firm to avoid possible subsequent dispute based on questions related to reasonableness, allocability, or allowability of the costs of developmental assistance under the Program. Absent an advance agreement, mentor firms are advised to establish the accounting treatment of such costs and address the need for any changes to their cost accounting practices that may result from the implementation of a mentor-protege agreement, prior to incurring any costs, and irrespective of whether costs will be reimbursed or credited.

*I–111 Reporting requirements.*

(a) Mentor firms must report on the progress made under active mentor-protege agreements semiannually for the periods ending March 31st and September 30th. The September 30th report must address the entire fiscal year. Reports are due 30 days after the close of each reporting period. The report must include—

(1) Data on performance under the mentor-protege agreement, including dollars obligated, expenditures, credit taken under the Program, SDB subcontract awards under DoD contracts, developmental assistance provided, impact of the agreement, and progress of the agreement (A recommended format and guidance for this submission are available via the Internet at http://www.acq.osd.mil/sadbu/mentor protege); and

(2) A copy of the SF 294, Subcontracting Report for Individual Contracts, for each contract where developmental assistance was credited, with a statement in Block 15 identifying—

(i) The amount of dollars credited to the SDB subcontract goal as a result of developmental assistance provided to protege firms under the Program; and

(ii) The number and dollar value of subcontracts awarded to the protege firm(s), broken out per protege.

(3) In addition to the reporting requirements of paragraph (a)(1) of this section, for commercial companies and companies participating in the DoD Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans, indicate in Block 15 of the SF 295—

(i) The total dollars credited to the SDB goal as a result of developmental assistances provided to a protege firm(s) under the Program; and

(ii) The total dollar amount of subcontracts awarded to the protege firm(s), broken out per protege.

(b) The protege firm must report on progress made under the mentor-protege agreement annually by October 31st. The protege firm must concur with or rebut its mentor's report that covers the period ending September 30th and must provide data on the firm's employment, annual revenue, and annual participation in DoD contracts. The report is required annually during the protege firm's Program participation term and for 2 fiscal years after the expiration of the Program participation term.

(c) Progress reports must be submitted as follows:

(1) For agreements that provide credit toward SDB subcontracting goals for costs incurred under the Program, to the Director, SADBU, OUSD (AT&L), and the Defense Contract Management Command (DCMC) administrative contracting officer.

(2) For agreements that provide for reimbursement of costs incurred under the Program, to the Director, SADBU, OUSD (AT&L), the contracting officer, the DCMC administrative contracting officer, the program office, and the cognizant Director, SADBU.

*I–112 Agreement reviews.*

The Defense Contract Management Command will conduct annual performance reviews of the progress and accomplishments realized under approved mentor-protege agreements. These reviews must verify data provided on the semiannual reports and must provide information as to—

(a) Whether all costs reimbursed to the mentor firm under the agreement were reasonably incurred to furnish assistance to the protege firm in accordance with the mentor-protege agreement and applicable regulations and procedures;

(b) Whether the mentor firm and protege firm accurately reported progress made by the protege firm in employment, revenues, and participation in DoD contracts during the Program participation term and for 2 fiscal years following the expiration of the agreement; and

(c) The amount of reimbursement, if any, that the mentor firm is eligible to receive in the remaining Program participation term of the agreement.

[FR Doc. 00–2946 Filed 2–9–00; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 000119015–0015–01; I.D. 010500A]**

**RIN 0648–AM32**

## Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Pollock Fisheries Off Alaska; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains corrections to the emergency interim rule to implement reasonable and prudent alternatives to avoid the likelihood that the pollock fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify their critical habitat that was published in the **Federal Register** on January 25, 2000.

**DATES:** Effective February 4, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kent Lind, 907–586–7650.

**SUPPLEMENTARY INFORMATION:** An emergency interim rule was published in the **Federal Register** on January 25, 2000 (65 FR 3892), implementing reasonable and prudent alternatives to avoid the likelihood that the pollock fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify their critical habitat.

### Correction

### PART 679—[CORRECTED]

On page 3902, in Table 20 to 50 CFR part 679, titled Steller Sea Lion Protection Areas in the Aleutian Islands Subarea:

In the entry for ''Seguam Island'', in the fifth column of the table, remove the Longitude ''172 33.06 W'', and add in its place ''172 33.60 W''.

Dated: February 3, 2000.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–3004 Filed 2–4–00; 4:46 pm]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 991223348–9348–01; I.D. 020700A]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Western Regulatory Area of the Gulf of Alaska

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim amount of the Pacific cod total allowable catch (TAC) apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), February 7, 2000, until 2400 hrs, A.l.t., December 31, 2000.

**FOR FURTHER INFORMATION CONTACT:** Andrew Smoker, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(2)(i), the interim Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area was established as 473 metric tons (mt), by the Interim 2000 Harvest Specifications of Groundfish for the GOA (65 FR 65, January 3, 2000).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the interim amount of the Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 450 mt, and is setting aside the remaining 23 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

### Classification

This action responds to the interim TAC limitations and other restrictions on the fisheries established in the interim 2000 harvest specifications for groundfish in the GOA. It must be implemented immediately to prevent overharvesting the interim amount of the Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the

GOA. A delay in the effective date is impracticable and contrary to the public interest, and further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: February 7, 2000.

**George H. Darcy,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–3111 Filed 2–7–00; 4:37 pm]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 65, No. 28
Thursday, February 10, 2000

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

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–07–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

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

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

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A300, A310, and A300–600 series airplanes, that currently requires a one-time operational test of the fire shut-off valves (FSOV) to determine if the FSOV's are functioning correctly, and replacement of failed parts with new or serviceable parts. This action would require repetitive performance of the operational test. This action would also limit the applicability to airplanes installed with certain FSOV's. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct failure of the FSOV's to close, which could result in failure of the engine fire shut-off system, and consequent inability to extinguish an engine fire.

**DATES:** Comments must be received by March 13, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–07–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–07–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–07–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

On July 24, 1998, the FAA issued AD 98–16–09, amendment 39–10685 (63 FR 40811, July 31, 1998), applicable to certain Airbus Model A300, A310, and A300–600 series airplanes, to require a one-time operational test of the fire shut-off valves (FSOV) to determine if the FSOV's are functioning correctly, and replacement of failed parts with new or serviceable parts. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to detect and correct failure of the FSOV's to close, which could result in failure of the engine fire shut-off system, and consequent inability to extinguish an engine fire.

### Actions Since Issuance of Previous Rule

Since the issuance of AD 98–16–09, the Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that the unsafe condition identified in that AD may continue to exist for certain affected airplanes despite compliance with the one-time requirements of that AD. Based on the results of the one-time operational test of the FSOV's, the manufacturer has determined that certain FSOV's, identified by part number series, have a high failure rate. Because of the high failure rate of those FSOV's, the manufacturer has recommended, and the DGAC has mandated, that the operational test be repetitively performed on airplanes equipped with those FSOV's.

### Explanation of Relevant Service Information

Airbus issued A300/A310/A300–600 All Operator Telex (AOT) 29–22, dated November 24, 1997, which was referenced and described in AD 98–16–09 as the appropriate source of service information for accomplishment of the actions of that AD. Accomplishment of the actions specified in the AOT is intended to adequately address the identified unsafe condition. The DGAC issued French airworthiness directive 98–356–259(B), dated September 9, 1998, to mandate repetitive performance of the operational test on airplanes incorporating certain FSOV's determined to have a high failure rate in order to ensure the continued

airworthiness of these airplanes in France.

**FAA's Conclusions**

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

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 98–16–09 to require repetitive accomplishment of the actions specified in the AOT described previously. This proposed AD would also limit the applicability to airplanes installed with certain FSOV's identified to have a high failure rate.

**Cost Impact**

There are approximately 103 airplanes of U.S. registry that would be affected by this proposed AD.

The operational test that is currently required by AD 98–16–09, and retained in this AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required test on U.S. operators is estimated to be $60 per airplane, per test cycle.

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

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–10685 (63 FR 40811, July 31, 1998), and by adding a new airworthiness directive (AD), to read as follows:

**Airbus Industrie:** Docket 99–NM–07–AD. Supersedes AD 98–16–09, Amendment 39–10685.

*Applicability:* Model A300, A310, and A300–600 series airplanes; on which any fire shut-off valve (FSOV) having part number (P/N) B38LC50XX (where XX is 05, 06, 07, 08, 09, or 10) is installed; certificated in any category.

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

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

To detect and correct failure of the FSOV's to close, which could result in failure of the engine fire shut-off system, and consequent inability to extinguish an engine fire, accomplish the following:

**Repetitive Operational Tests**

(a) Within 600 flight hours after the effective date of this AD, perform an operational test of the 4 FSOV's on the airplane, in accordance with Airbus All Operator Telex (AOT) 29–22, dated November 24, 1997. If any FSOV fails the test, prior to further flight, replace the FSOV with a new or serviceable FSOV, in accordance with the AOT. Repeat the operational test thereafter at intervals not to exceed 600 flight hours.

**Spares**

(b) As of the effective date of this AD, no person shall install an FSOV, part number (P/N) B38LC50XX (where XX is 05, 06, 07, 08, 09, or 10), on any airplane, unless a successful operational test has been performed in accordance with the requirements of this AD.

**Alternative Methods of Compliance**

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

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

**Special Flight Permits**

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

**Note 3:** The subject of this AD is addressed in French airworthiness directive 98–356–259(B), dated September 9, 1998.

Issued in Renton, Washington, on February 3, 2000.

**Charles Huber,**

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

[FR Doc. 00–2987 Filed 2–9–00; 8:45 am]

BILLING CODE 4910–13–U

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 99–NM–371–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model DHC–8–100, –200, and –300 Series Airplanes

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

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

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–100, –200, and –300 series airplanes. This proposal would require a one-time detailed visual inspection to detect damage of the ladder plates and access cover areas of the upper surface of the wings, repair, if necessary, and installation of new O-ring seals. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent damage of the upper wing ladder plates, which could result in displacement of the adjacent channel seals and consequent reduced lightning strike protection of the fuel tanks.

**DATES:** Comments must be received by March 13, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–371–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garrett Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

**FOR FURTHER INFORMATION CONTACT:** James E. Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7521; fax (516) 568–2716.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–371–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–371–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–8–100, –200, and –300 series airplanes. TCCA advises that, during maintenance, a sealing problem was detected in the access panels of the upper wing fuel tanks. Investigation revealed that the diameter of the O-ring seals installed during manufacture on certain airplanes may be too large for the grooves of the access panels of the upper wing fuel tanks. The large diameter O-ring seals can prevent the fuel tank access panels from fitting properly to the upper wing ladder plates. This improper fit could lead to fretting and corrosion damage of the upper wing ladder plates. Such damage, if not detected and corrected, could result in displacement of the adjacent channel seals and consequent reduced lightning strike protection of the fuel tanks.

### Explanation of Relevant Service Information

The manufacturer has issued Bombardier Service Bulletin S.B. 8–57–41, Revision 'A', dated July 28, 1999, which describes procedures for a one-time detailed visual inspection to detect damage (i.e., fretting and/or corrosion) of the ladder plates and access cover areas of the upper surface of the wings. The service bulletin also describes procedures for installing new 0.103 inch diameter O-ring seals. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–99–20, dated July 20, 1999, in order to assure the continued airworthiness of these airplanes in Canada.

### FAA's Conclusions

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

### Explanation of Requirements of Proposed Rule

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

### Differences Between Proposed AD and Service Bulletin

Operators should note that, although the Bombardier service bulletin specifies that the manufacturer may be

contacted for disposition of certain conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Additionally, operators should note that, the Bombardier service bulletin does not provide procedures for repair of damage within certain limits. However, this proposed AD would require the repair of damage that is determined to be within certain limits; the repair would be required to be accomplished in accordance with the Structure Repair Manual (SRM).

**Cost Impact**

The FAA estimates that 235 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed inspection and installation and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $84,600, or $360 per airplane.

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

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Bombardier, Inc.** (Formerly de Havilland, Inc.): Docket 99-NM–371-AD.

*Applicability:* Model DHC–8–100, –200, and –300 series airplanes, having serial numbers 003 through 528 inclusive and 531; certificated in any category.

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

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

To prevent damage of the upper wing ladder plates, which could result in displacement of the adjacent channel seals and consequent reduced lightning strike protection of the fuel tanks, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a one-time detailed visual inspection to detect damage (i.e., fretting and/or corrosion) of the ladder plates and access cover areas of the upper surface of the wings in accordance with paragraph III.A., III.B., or III.C., as applicable, of the Accomplishment Instructions of Bombardier Service Bulletin S.B. 8–57–41, Revision 'A', dated July 28, 1999.

**Note 2:** For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required.''

(1) If no damage is detected, prior to further flight, install new 0.103-inch diameter O-ring seals in accordance with paragraph III.A., III.B., or III.C., as applicable, of the Accomplishment Instructions of the service bulletin.

(2) If any damage is detected that is within the limits specified in the Structure Repair Manual (SRM), prior to further flight, repair the damage in accordance with the SRM, and install new 0.103-inch diameter O-ring seals in accordance with paragraph III.A., III.B., or III.C., as applicable, of the Accomplishment Instructions of the service bulletin.

(3) If any damage is detected that is outside the limits specified in the SRM, prior to further flight, repair in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate, and install new 0.103–inch diameter O–ring seals.

**Alternative Methods of Compliance**

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

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

**Special Flight Permits**

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

**Note 4:** The subject of this AD is addressed in Canadian airworthiness directive CF–99–20, dated July 20, 1999.

Issued in Renton, Washington, on February 4, 2000.

**Donald L. Riggin,**

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

[FR Doc. 00–3133 Filed 2–9–00; 8:45 am]

**BILLING CODE 4910–13–U**

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–NM–99–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A320 Series Airplanes

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

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

**SUMMARY:** This document proposes the supersedure of two existing airworthiness directives (AD), applicable to certain Airbus Model A320 series airplanes, that currently require modification of the rear spar web of the wing and cold expansion of certain attachment holes for the forward pintle fitting and certain holes at the actuating cylinder anchorage of the main landing gear (MLG). This proposed action would add a requirement for repetitive inspections to detect fatigue cracking in certain areas of the rear spar of the wing, and corrective action, if necessary. This proposed action would also provide for optional terminating action for the requirements of this AD. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct fatigue cracking, which may lead to reduced structural integrity of the wing and the MLG.

**DATES:** Comments must be received by March 13, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–99–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–99–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–99–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

On April 26, 1993, the FAA issued AD 93–08–15, amendment 39–8563 (58 FR 27923, May 12, 1993), applicable to certain Airbus Model A320 series airplanes, which requires modification of the rear spar web of the wing.

On December 21, 1993, the FAA issued AD 93–25–13, amendment 39–8777 (59 FR 1903, January 13, 1994), applicable to certain Airbus Model A320 series airplanes, which requires cold expansion of certain attachment holes for the forward pintle fitting and certain holes at the actuating cylinder anchorage of the main landing gear (MLG).

Those actions were prompted by the results of fatigue testing conducted by the manufacturer. The requirements of those ADs are intended to prevent fatigue cracking, which may lead to reduced structural integrity of the wing and MLG.

### Actions Since Issuance of Previous Rules

Since the issuance of AD 93–08–13 and AD 93–25–13, the Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness autority for France, has advised the FAA that cracks were found on a Model A320 series airplane despite compliance with the requirements of those ADs. Investigation by the manufacturer provided further indication that an airplane on which the modifications required by that AD were installed could experience cracking prior to reaching the design life limits of the airplane. In response to these findings, the DGAC mandated repetitive ultrasonic inspections to detect fatigue cracks on the rear spar to ensure the structural integrity of the airplane.

Subsequent analysis of the results of the ultrasonic inspections indicated that reducing the inspection threshold for selected holes would ensure the structural integrity of the area and prevent the need for extensive repairs of the wing inner rear spar.

### Explanation of Relevant Service Information

Airbus issued Service Bulletin A320–57–1088, dated September 30, 1996; Revision 01, dated September 17, 1997; and Revision 02, dated July 29, 1999. This service bulletin describes procedures for repetitive ultrasonic inspections to detect cracking of the rear spar of the wing in the area of holes for the attachment of the gear rib, the forward pintle fitting, and the MLG actuating cylinder anchorage. Revision 02 specifies a reduced threshold for the initial inspection of certain holes [holes 52 through 55 (actuating cylinder anchorage) and holes 82, 83, 87, and 88 (gear support rib)]; the compliance time for the initial inspection of the remaining 32 holes is unchanged.

Accomplishment of the actions specified in the service bulletin described previously is intended to adequately address the identified unsafe condition. The DGAC classified Airbus Service Bulletin A320–57–1088 as mandatory and issued French airworthiness directive 1999–264–135(B), dated June 30, 1999, in order to ensure the continued airworthiness of these airplanes in France.

Airbus also issued Service Bulletin A320–57–1089, dated December 22, 1996, Revision 01, dated April 17, 1997; and Revision 02, dated November 6, 1998. This service bulletin describes a modification of all affected fastener holes in the rear spar of the wing. The modification involves a cold re-expansion of the holes in the rear spar of the wing for the attachment of gear rib 5, the forward pintle fitting, and the actuating cylinder anchorage; cold expansion of the pintle fitting and gear rib 5; and installation of interference fit fasteners into the rear spar and gear rib 5 while maintaining a clearance fit in the actuating cylinder anchorage and pintle fitting. This service bulletin specifies that the modification would

eliminate the need for the repetitive ultrasonic inspections specified by Airbus Service Bulletin A320–57–1088. It would also eliminate the need for the modification specified by Airbus Service Bulletin A320–57–1004 and the cold expansion specified by Airbus Service Bulletin A320–57–1060, if accomplished prior to the accumulation of 12,000 total flight cycles.

**FAA's Conclusions**

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

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 93–08–15 and AD 93–25–13 to continue to require modification of the wing rear spar web and cold expansion of certain attachment holes for the forward pintle fitting and certain holes at the actuating cylinder anchorage of the MLG. The proposed AD would add a requirement for repetitive ultrasonic inspections to detect fatigue cracking in certain areas of the wing rear spar, and repair of cracking. This proposed AD also would provide for optional terminating action for the inspections proposed by this AD.

**Difference Between Proposed Rule and Service Bulletin**

Operators should note that, although Service Bulletin A320–57–1088 specifies that the manufacturer may be contacted for a repair if cracks are found, this proposal would require the repair of those cracks to be accomplished in accordance with a method approved by the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by the FAA or the DGAC would be acceptable for compliance with this proposed AD.

**Cost Impact**

There are approximately 126 airplanes of U.S. registry that would be affected by this proposed AD.

Subsequent to the issuance of AD 93–08–15 and AD 93–25–13, the FAA reviewed the figure it used in calculating the labor rate relevant to the required AD activities. In order to account for various inflationary costs in the airline industry, the FAA has found it appropriate to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

It takes approximately 60 work hours per airplane to accomplish the modification of the rear spar web of the wing, as required by AD 93–08–15 and retained in this AD, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the modification on U.S. operators is estimated to be $3,600 per airplane.

It takes approximately 600 work hours per airplane to accomplish the cold expansion of certain holes associated with the MLG, as required by AD 93–25–13 and retained in this AD, at an average labor rate of $60 per work hour. Required parts are provided by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the cold expansion on U.S. operators is estimated to be $36,000 per airplane.

The inspection that is proposed in this AD action would take approximately 24 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $181,440, or $1,440 per airplane, per inspection cycle.

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

Should an operator elect to accomplish the optional terminating action specified in this proposed AD, it would take approximately 750 work hours, at an average labor rate of $60 per work hour. The required parts would cost $27,036; $30,595; or $32,727; depending on the airplane configuration. Based on these figures, the cost per airplane of the optional terminating action proposed by this AD is estimated to be $72,036; $75,595; or $77,727.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendments 39–8563 (58 FR 27923, May 12, 1993) and 39–8777 (59 FR 1903, January 13, 1994) and by adding a new airworthiness directive (AD), to read as follows:

**Airbus Industrie:** Docket 98–NM–99–AD. Supersedes AD 93–08–15, Amendment 39–8563; and AD 93–25–13, Amendment 39–8777.

*Applicability:* Model A320 series airplanes, certificated in any category, except those on which Airbus Modification 24591 (Airbus Service Bulletin A320–57–1089, dated December 22, 1996; Revision 01, dated April 17, 1997; or Revision 02, dated November 6, 1998) has been accomplished.

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

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

To detect and correct fatigue cracking in certain areas of the rear spar of the wing, which may lead to reduced structural integrity of the wing and the main landing gear (MLG), accomplish the following:

**Restatement of Actions Required by AD 93–08–15**

(a) For airplanes having manufacturer's serial numbers (MSN) 003 through 008 inclusive, and 010 through 021 inclusive: Prior to the accumulation of 12,000 total flight cycles, or within 500 flight cycles after June 11, 1993 (the effective date of AD 93–08–15, amendment 39–8563), whichever occurs later, modify the inner rear spar web of the wing in accordance with Airbus Industrie Service Bulletin A320–57–1004, Revision 01, dated September 24, 1992, or Revision 02, dated June 14, 1993.

**Restatement of Actions Required by AD 93–25–13**

(b) For airplanes having MSN's 002 through 051 inclusive: Prior to the accumulation of 12,000 total flight cycles, or within 2,000 flight cycles after February 14, 1994 (the effective date of AD 93–25–13, amendment 39–8777), whichever occurs later, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD in accordance with Airbus Industrie Service Bulletin A320–57–1060, dated December 8, 1992; or Revision 02, dated December 16, 1994.

(1) Perform a cold expansion of all the attachment holes for the forward pintle fitting of the MLG, except for the holes that are for taper-lok bolts.

(2) Perform a cold expansion of the holes at the actuating cylinder anchorage of the MLG.

**Note 2:** Accomplishment of the cold expansion in accordance with Airbus Service Bulletin A320–57–1060, Revision 01, dated April 26, 1993, is also acceptable for compliance with the requirements of paragraph (b) of this AD.

**New Actions Required by This AD**

(c) For all airplanes: Perform an ultrasonic inspection to detect cracking of the rear spar of the wing, in accordance with Airbus Service Bulletin A320–57–1088, Revision 02, dated July 29, 1999; at the applicable time specified by paragraph (c)(1) or (c)(2) of this AD. Repeat the inspection thereafter at intervals not to exceed 3,600 flight cycles.

(1) For airplanes on which the actions specified by Airbus Service Bulletin A320–57–1004, Revision 02, dated June 14, 1993, or earlier version; and Airbus Service Bulletin A320–57–1060, Revision 02, dated December 16, 1994, or earlier version; have been accomplished: Perform the inspection of all applicable fastener holes within 12,000 flight cycles after accomplishment of the service bulletins, or within 750 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes on which the actions specified by Airbus Modification 20740 and Airbus Service Bulletin A320–57–1060, Revision 02, dated December 16, 1994, or earlier version, have been accomplished; or on which Airbus Modifications 20740, 20741, and 20796 have been accomplished: Perform the inspections at the locations and applicable times specified by paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Perform the inspection of left and right fastener holes 52 to 55, 82, 83, 87, and 88; located in the rear spar of the wing; prior to the accumulation of 17,300 total flight cycles, or within 750 flight cycles after the effective date of this AD, whichever occurs later. If any cracking is found, prior to further flight, accomplish the requirements of paragraph (c)(2)(ii) of this AD.

(ii) Except as required by paragraph (c)(2)(i) of this AD: Perform the inspection of all fastener holes located in the rear spar of the wing that are not identified in paragraph (c)(2)(i) of this AD prior to the accumulation of 20,000 total flight cycles, or within 200 flight cycles after the effective date of this AD, whichever occurs later.

**Note 3:** Accomplishment of the actions specified by Airbus Service Bulletin A320–57–1088, dated September 30, 1996, or Revision 01, dated September 17, 1997, prior to the effective date of this AD is acceptable for compliance with the requirements of the initial inspection required by paragraph (c) of this AD.

(d) If any crack is found during any inspection required by paragraph (c) of this AD: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the DGAC (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

**Optional Terminating Action**

(e) Modification of all specified fastener holes in the rear spar of the wing in accordance with Airbus Service Bulletin A320–57–1089, dated December 22, 1996; Revision 01, dated April 17, 1997; or Revision 02, dated November 6, 1998; constitutes terminating action for the ultrasonic inspections required by this AD. Such modification, if accomplished prior to the accumulation of 12,000 total flight cycles, constitutes terminating action for the actions required by paragraphs (a) and (b) of this AD.

**Alternative Methods of Compliance**

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 93–25–13; amendment 39–8777, are approved as alternative methods of compliance with this AD.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

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

**Note 5:** The subject of this AD is addressed in French airworthiness directive 1999–264–135(B), dated June 30, 1999.

Issued in Renton, Washington, on February 4, 2000.

**Donald L. Riggin,**

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

[FR Doc. 00–3132 Filed 2–9–00; 8:45 am]

BILLING CODE 4910–13–U

## COMMODITY FUTURES TRADING COMMISSION

## 17 CFR Part 1

**RIN 3038–AB51**

## Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers; Amendments to the Restrictions on the Withdrawal of Equity Capital from a Futures Commission Merchant and to the Percentage Deduction (i.e., Haircut) Applied to the Value of Equity Securities Collateralizing Secured Demand Notes Included in Adjusted Net Capital by a Futures Commission Merchant or Introducing Broker

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is proposing to amend several provisions of its Regulation 1.17, which governs the minimum financial requirements imposed upon futures commission merchants (''FCMs'') and introducing brokers (''IBs''). The proposal would: ease the restrictions

imposed upon the withdrawal of equity capital from an FCM; increase the percentage deduction (*i.e.,* ''haircut'') applied to the value of equity securities pledged as collateral for secured demand notes that are included in the adjusted net capital of an FCM or IB; and delete a reference to a section of the Securities and Exchange Commission's (''SEC'') capital rule that has been repealed.

The Commission believes that the current restriction on the withdrawal of equity capital that is based on a percentage of the amount of funds an FCM is required to segregate or set aside for customers may be unnecessary in light of other early warning capital standards and the degree of surveillance carried out by SROs over their member FCMs. The proposed amendment increasing the haircut applied to equity securities pledged as collateral for secured demand notes would provide greater conformity between the Commission's capital rules and the capital rules of the SEC.

**DATES:** Comments must be received on or before March 13, 2000.

**ADDRESSES:** Comments should be mailed to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. In addition, comments may be sent by facsimile to (202) 418–5521, or by electronic mail to *secretary@cftc.gov.* Reference should be made to ''Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers—Equity Capital.''

**FOR FURTHER INFORMATION CONTACT:** Henry J. Matecki, Financial Audit and Review Branch, Commodity Futures Trading Commission, 300 S. Riverside Plaza, Room 1600–N, Chicago, IL 60606; telephone (312) 886–3217; electronic mail *hmatecki@cftc.gov:* or Gary C. Miller, Associate Chief Accountant, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; telephone (202) 418–5461; electronic mail *gmiller@cftc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Restrictions on the Withdrawal of Equity Capital From a Futures Commission Merchant

### *A. Background*

Commission Regulation 1.17(e)[1] prohibits the withdrawal of equity capital from an FCM[2] to redeem or to repurchase shares of stock of the FCM, to pay dividends, or to make an unsecured advance or loan to a stockholder, partner, sole proprietor or employee of the FCM if, after giving effect to the withdrawal and to certain other specified withdrawals and payments, the FCM's adjusted net capital would be less than the greatest of:

(1) $300,000 (120 percent of the $250,000 minimum adjusted net capital requirement);

(2) Seven percent of the customer funds required to be segregated or set aside pursuant to the Commodity Exchange Act (''Act'') and Commission regulations,[3] (hereinafter collectively referred to as the ''customer segregated and secured amount'');

(3) 120 percent of the amount of adjusted net capital required by a registered futures association of which the FCM is a member; or

(4) For an FCM that is also a securities broker or dealer registered with the Securities and Exchange Commission (''SEC''), the amount of net capital specified in SEC Rule 15c3–1(e) (17 CFR 240.15c3–1(e)).

The Joint Audit Committee (''JAC'') has petitioned the Commission to amend the restriction in (2) above to permit the withdrawal of equity capital from an FCM provided that, after giving effect to the withdrawal, the FCM's adjusted net capital is in excess of six percent of the customer segregated and secured amount.[4] The JAC's petition did not address the other withdrawal restrictions listed above.

In its petition, the JAC stated that prohibiting capital withdrawals that result in an FCM having adjusted net capital that is less than seven percent of the customer segregated and secured amount is an unnecessary regulatory burden. In support of its position, the JAC claimed that other provisions of the Commission's regulations also impose effective restraints on the excessive withdrawal of capital from an FCM by an equity holder. Specifically, the JAC noted that: (1) FCMs are required to maintain minimum adjusted net capital of at least four percent of the customer segregated and secured amount funds requirements in order to operate and to handle customer positions and funds; (2) the Commission's ''early warning'' notice and financial reporting requirements provide the Commission and the FCMs' designated self-regulatory organizations (''DSRO'') with the ability to monitor the financial condition and operations, including capital withdrawals, of an FCM that fails to maintain adjusted net capital at a level that exceeds six percent of the customer segregated and secured amount; and (3) the Commission's debt-equity ratio requirement imposes an effective restraint on the excessive withdrawal of equity capital.

Furthermore, the JAC stated that the changes it requested would provide greater harmony between the Commission's capital rules and the capital rules of the SEC. In this regard, the JAC noted that the SEC's capital rules permit withdrawals of capital from a broker or dealer provided that, after giving effect to the withdrawal, the broker's or dealer's net capital equals or exceeds the SEC's early warning level. Each of the reasons set forth by the JAC is discussed below.

### *B. Proposed Rule Amendments*

After careful consideration of the JAC's petition and the issues that the petition presents, the Commission is proposing to amend Regulation 1.17(e) to permit equity capital withdrawals provided that, after giving effect to the withdrawals, the FCM's adjusted net capital is in excess of six percent of the customer segregated and secured amount. The Commission is not proposing to amend any of the other capital withdrawal restrictions set forth in the regulation.

An FCM is required to maintain minimum adjusted net capital of the greatest of: (A) $250,000; (B) four percent of the customer segregated and secured amount; (C) the amount of adjusted net capital required by a registered futures association of which it is a member; or (D) for securities brokers and dealers, the amount of net capital required by SEC Rule 15c3–1(a) (17 CFR

[1] Commission rules cited herein can be found at 17 CFR Ch. I (1999).

[2] The prohibition against withdrawal of equity capital set forth in Regulation 1.17(e) applies to both FCMs and IBs. The restriction requires consideration of both the minimum dollar amount of net capital required for both types of registrants ($250,000 for FCMs and $30,000 for IBs) and, just for FCMs, the amount of funds required to be segregated and set aside for FCMs' customers. For purposes of this proposal, only the restriction on FCMs need be addressed since the change relates only to the percentage applied to the amount of funds required to be segregated and set aside for customers.

[3] Before applying the percentage capital factor, the amount required to be segregated or set aside is reduced by the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade for which the full premiums have been paid: provided, however, that the option premium deduction for each customer is limited to the amount of customer funds and the foreign futures and foreign options secured amounts in such customer's account(s).

[4] The JAC is comprised of representatives of the audit and compliance departments of the self-regulatory organizations (''SROs'') and National Futures Association. The JAC coordinates the industry's audit and ongoing surveillance activities to promote a uniform framework of self-regulation.

240.15c3–1(a)). FCMs that are members of commodity exchanges must comply with the net capital requirements of those exchanges, which are required to be at least as stringent as the Commission's. [5] Generally, FCMs that handle customer accounts are required to maintain adjusted net capital in excess of four percent of the customer segregated and secured amount.

An FCM that is not in compliance with the minimum net capital requirement must transfer all customer accounts and immediately cease doing business as an FCM. [6] Therefore, each FCM must ensure that a capital withdrawal does not cause the FCM's adjusted net capital to fall below four percent of the customer segregated and secured amount.

In addition, the Commission's ''early warning'' notice and financial reporting requirements deter excessive equity withdrawals. Commission Regulation 1.12(b)(2) requires an FCM to notify its DSRO and the Commission in writing if its adjusted net capital does not equal or exceed six percent of the customer segregated and secured amount. These early warning notices must be filed within five business days of the FCM's adjusted net capital falling below the early warning level. Moreover, Commission Regulation 1.12(g)(2) requires an FCM to give the Commission written notice at least two business days prior to a planned withdrawal of equity capital if the withdrawal would reduce excess net capital by 30 percent or more from that most recently reported in a financial report filed with the Commission.

An FCM that hits the early warning trigger is also required to file a financial report on Form 1–FR–FCM with the Commission and its DSRO as of the close of the month during which its adjusted net capital does not exceed the early warning level and for each month thereafter until three successive months have elapsed during which its adjusted net capital is at all times equal to or in excess of the early warning level. [7] This early warning notice is intended to bring to the Commission's and DSRO's attention firms that should be subjected to closer monitoring because of their minimal regulatory capital.

Furthermore, the Commission's ''debt-equity ratio'' requirement also limits the amount of capital that may be withdrawn from an FCM. Commission Regulation 1.17(d) prohibits the withdrawal of capital from an FCM if, after giving effect to the withdrawal, the FCM's equity capital would be less than 30 percent of its debt-equity total. [8]

Finally, setting the capital withdrawal limit at the Commission's early warning level is supported by the capital withdrawal rules adopted by the SEC for securities brokers or dealers that compute their minimum net capital requirement in accordance with the SEC's ''alternative'' method. [9] SEC Rule 15c3–1(e)(2)(vi) (17 CFR 240.15c3–1(e)(2)(vi)) prohibits a capital withdrawal from a broker or dealer that computes its minimum net capital requirement under the alternative method if, after giving effect to the withdrawal, the broker's or dealer's minimum net capital would be less than five percent of the aggregate debit items as determined by the Reserve Formula. The SEC's early warning requirement for such brokers and dealers is also set at five percent of aggregate debit items. [10]

## II. Equity Securities Pledged as Collateral for Secured Demand Notes

### *A. Background*

Commission Regulation 1.17(h) sets forth the minimum requirements for satisfactory subordination agreements. An FCM or IB may enhance its regulatory capital by borrowing cash pursuant to subordinated loan agreements or by accepting secured demand notes. A secured demand note must be collateralized by cash or readily marketable securities. [11] The securities collateralizing a secured demand note are subject to percentage deductions (*i.e.,* haircuts) to provide protection against a potential decrease in the market values of the securities. Commission regulations, however, do not specify the specific haircuts to be applied. Instead, the Commission's regulations provide that an FCM or IB must apply the haircuts that are set forth in SEC Rule 15c3–1(c)(2)(vi) (17 CFR 240. 15c3–1(c)(2)(vi)), which are the haircuts that a broker or dealer must apply to securities that it includes in its capital computation.

When the Commission adopted its current capital rules in September 1978, the haircut for an equity security under SEC Rule 15c3–1(c)(2)(vi) was 30 percent. Therefore, an FCM or IB was required to apply a 30 percent haircut to an equity security collateralizing a secured demand note. [12]

In December 1992, the SEC amended its capital rules. As part of these amendments, the SEC amended Rule 15c3–1(c)(2)(vi) by reducing the haircut on equity securities from 30 percent to 15 percent. [13] Since the Commission's capital rules incorporated the haircuts in SEC Rule 15c3–1(c)(2)(vi), the Commission's capital rules were effectively amended and the haircut applied to equity securities collateralizing a secured demand note was reduced from 30 percent to 15 percent. In the December 1992 amendments, however, the SEC also explicitly retained the 30 percent haircut on equity securities collateralizing secured demand notes included in adjusted net capital by brokers or dealers. Thus, an unintended difference developed between the Commission's capital rules and the capital rules of the SEC. The difference stems from the Commission incorporating the SEC's regulation imposing haircuts on securities that a broker or dealer includes in its capital computation (Rule 15c3–1(c)(2)(vi)) as opposed to the regulation imposing haircuts on securities that a broker or dealer receives as collateral for a secured demand note that was contributed as capital (Rule 15c3–1d) (17 CFR 240.15c3–1(d)).

### *B. Proposed Rule Amendment*

The Commission attempts to maintain, to the extent practicable, uniformity between its capital rules and those of the SEC. Uniform capital rules more readily permit dually-registered FCMs (*i.e.,* FCMs that are also SEC-registered securities brokers or dealers) that comply with the Commission's

[5] See Regulations 1.17(a)(2)(i) and 1.52.

[6] See Regulation 1.17(a)(4).

[7] See Regulation 1.12(b)(4).

[8] Equity capital is defined by Regulation 1.17(d)(1) to include certain loans subject to qualifying satisfactory subordination agreements and the following:

(1) In the case of a corporation, the sum of its par or stated value of capital stock, paid in capital in excess of par, retained earnings, unrealized profit and loss, and other capital accounts;

(2) In the case of a partnership, the sum of its capital accounts of partners (inclusive of such partners' commodity interest and securities accounts subject to the provisions of Rule 1.17(e) concerning restrictions on withdrawals of equity capital), and unrealized profit and loss; and

(3) In the case of a sole proprietorship, the sum of its capital accounts and unrealized profit and loss.

''Debt-equity total'' is defined by Regulation 1.17(d)(2) and encompasses equity capital as defined above plus loans subject to satisfactory subordination agreements that do not qualify as equity capital under Regulation 1.17(d)(1).

[9] SEC Rule 15c3–1(a)(1)(ii) (17 CFR 240.15c3–1(a)(1)(ii)) requires a securities broker or dealer computing its minimum net capital requirement under the alternative method to maintain minimum net capital of not less than the greater of $250,000 or 2 percent of aggregate debit items computed in accordance with the Formula for Determination of Reserve Requirement for Brokers and Dealers (Exhibit A to Rule 15c3–3).

[10] 17 CFR 240.17a–11(c)(2).

[11] The value of the collateral, after applicable haircuts, must exceed the full outstanding face amount of the secured demand note.

[12] 43 FR 39956 (September 8, 1978).

[13] 57 FR 56984 (December 2, 1992).

capital rules to comply with the SEC's capital rules. As set forth above, the Commission's capital rules were originally consistent with the SEC's capital rules with respect to the haircuts to be applied to equity securities collateralizing secured demand notes and the current difference is unintended. Accordingly, in order to provide greater uniformity between the Commission and SEC capital rules, the Commission proposes increasing to 30 percent from 15 percent the haircut on the market value of equity securities pledged as collateral for a secured demand note.

## III. Technical Amendment

Commission Regulation 1.17(c)(5)(v) requires an FCM or IB, in computing its adjusted net capital, to apply haircuts to securities positions carried in the FCM's or IB's proprietary accounts and to securities purchased with customer funds that are required to be segregated or set aside in separate accounts. The regulation directs the FCM or IB to apply the specific haircut percentages that are set forth in SEC Rule 15c3–1(c)(2)(vi) for equity securities and Rule 15c3–1(c)(2)(vii) (17 CFR 240.15c3–1(c)(2)(vii)) for non-marketable securities, or Rule 15c3–1(f) (17 CFR 240. 15c3–1(f)) for dually registered securities brokers or dealers and FCMs that compute their minimum net capital requirements in accordance with the SEC's ''alternative, or aggregate debit items,'' method.

In December 1992, the SEC amended its capital rules by, among other things, revising the securities haircuts that a broker or dealer subject to the alternative capital method had to apply to securities positions in the broker's or dealer's proprietary accounts. Specifically, the amendments made the haircuts consistent regardless of the method that a broker or dealer used in computing its minimum net capital. The SEC effected the revisions by consolidating the haircuts in Rule 15c3–1(f) into Rules 15c3–1(c)(2)(vi) and 15c3–1(c)(2)(vii) and repealing15c3–1(f). Accordingly, the Commission proposes deleting the reference to Rule 15c3–1(f) in its Rule 1.17(c)(5)(v).

## IV. Related Matters

### *A. Regulatory Flexibility Act*

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–611, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The proposed rule amendments discussed herein would affect FCMs and IBs. The Commission has previously determined that, based upon the fiduciary nature of FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of small entity.[14]

With respect to IBs, the Commission stated that it is appropriate to evaluate within the context of a particular rule whether some or all IBs should be considered to be small entities and, if so, to analyze the economic impact on such entities at that time.[15] The proposed technical amendment to Regulation 1.17(c)(5)(v) and the proposed amendment to Regulation 1.17(e) easing the restriction on the withdrawal of equity capital from an FCM do not impose additional requirements on an IB. The proposed amendment to Regulation 1.17(h)(1)(iii) increasing the haircut on equity securities submitted as collateral for a secured demand note may impact an IB's financial operations. The proposal, however, conforms the Commission's rules to those of the SEC and restores the haircut to its previous level prior to the SEC amendment of its capital rules in December 1992. Thus, on behalf of the Commission, the Chairman certifies that the proposed rule amendments will not have a significant economic impact on a substantial number of small entities. The Commission, however, invites comments from registered FCMs or IBs who believe that the proposed amendments would have a significant impact on their operations.

### *B. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* (Supp. I 1995), requires federal agencies (including the Commission) to review rules and rule amendments to evaluate the information collection burden that they impose on the public. The Commission believes that paragraphs (c)(5)(v), (e)(1)(ii), and (h)(1)(iii) of Rule 1.17, as proposed, do not impose an information collection burden on the public.

### List of Subjects in 17 CFR Part 1

Brokers, Commodity futures.

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

[14] 47 FR 18618, 18619–18620 (April 30, 1982).

[15] 48 FR 35248, 35275–78 (August 3, 1983).

## PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

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

2. Section 1.17 is amended by revising paragraphs (c)(5)(v), (e)(1)(ii), and (h)(1)(iii) to read as follows:

**§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.**

* * * * *

(c) * * *

(5) * * *

(v) In the case of securities and obligations used by the applicant or registrant in computing net capital, and in the case of a futures commission merchant with securities in segregation pursuant to Section 4d(2) of the Act and these regulations which were not deposited by customers, the percentages specified in Rule 240.15c3–1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vi)) (''securities haircuts'') and 100 percent of the value of ''nonmarketable securities'' as specified in Rule 240.15c3–1(c)(2)(vii) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vii));

* * * * *

(e) * * *

(1) * * *

(ii) For a futures commission merchant or applicant therefor, 6 percent of the following amount: The customer funds required to be segregated pursuant to the Act and the regulations in this part and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade for which the full premiums have been paid: Provided, however, That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts;

* * * * *

(h) * * *

(1) * * *

(iii) The term ''collateral value'' of any securities pledged to secure a secured demand note means the market value of such securities after giving effect to the percentage deductions specified in Rule 240.15c3–1d(a)(2)(iii) of the Securities

and Exchange Commission (17 CFR 240.15c3–1d(a)(2)(iii)).

* * * * *

Issued in Washington D.C. on February 3, 2000 by the Commission.

**Catherine D. Dixon,**

*Assistant Secretary of the Commission.*

[FR Doc. 00–2917 Filed 2–9–00; 8:45 am]

**BILLING CODE 6351–01–P**

## LIBRARY OF CONGRESS

## Copyright Office

## 37 CFR Part 201

**[Docket No. RM 99–7A]**

## Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Extension of initial comment period and reply comment period. Expansion of file formats acceptable for electronic submission of comments.

**SUMMARY:** The Copyright Office is extending the comment period and the reply comment period in the rulemaking on possible exemptions to the prohibition against circumvention of technological measures that control access to copyrighted works. The Office is also expanding the list of formats in which acceptable comments may be submitted electronically.

**DATES:** Written comments are due February 17, 2000. Reply comments are due March 20, 2000.

**ADDRESSES:** Submissions by electronic mail should be made to ''1201@loc.gov''. *See* **SUPPLEMENTARY INFORMATION** section for file formats and other information about electronic filing. If delivered by hand, comments should be delivered to the Office of the General Counsel, Copyright Office, LM–403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, DC. If delivered by mail, comments should be addressed to David O. Carson, General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. *See* **SUPPLEMENTARY INFORMATION** section for information about formats of submissions.

**FOR FURTHER INFORMATION CONTACT:** David O. Carson, General Counsel, Charlotte Douglass, Principal Legal Advisor, or Robert Kasunic, Senior Attorney Advisor, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380; telefax (202) 707–8366.

**SUPPLEMENTARY INFORMATION:** On November 24, 1999, the Copyright Office published a Notice of Inquiry seeking comment in connection with a rulemaking pursuant to section 1201(a)(1) of the Copyright Act, 17 U.S.C. 1201(a)(1), which provides that the Librarian of Congress may exempt certain classes of works from the prohibition against circumventing a technological measure that controls access to a copyrighted work. 64 FR 66139 (November 24, 1999). Comments were due on February 10, 2000; reply comments were due on March 13, 2000.

The Office has, however, received a request for a one-week extension of the filing deadline for initial comments. Moreover, the Office has already received a number of comments submitted in electronic form, and a number of those comments have not met the format requirements for electronic submissions. The Office has, therefore, decided to extend the deadlines for filing of initial and reply comments by one week in order to accommodate the request for additional time and in order to provide those persons who have submitted comments in unacceptable formats an opportunity to correct their submissions.

The new deadlines are: February 17, 2000 for initial comments and March 20, 2000 for reply comments.

As stated in the Notice of Inquiry, the Office will be placing all comments and reply comments that are submitted in electronic form on its website (http://lcweb.loc.gov/copyright/1201). Because of this, the Office prefers that comments and reply comments be submitted in electronic form. The Office has already received a large number of comments in this form, and many have not been in acceptable formats. The Notice of Inquiry required that comments sent by e-mail must be sent in the form of a MIME attachment to an e-mail message, and the attachment must be in a single file in either (1) Adobe Portable Document File (PDF) format (preferred); (2) Microsoft Word Version 7.0 or earlier; or (3) WordPerfect 7 or earlier. It also stated that comments may be submitted in electronic form on 3.5-inch write-protected diskettes or in traditional written (hard copy print) form.

The Office has received some complaints that restricting electronic comments to these three proprietary formats (Adobe PDF, Microsoft Word and WordPerfect) has created difficulties for some persons who wish to submit comments electronically. The Office is, therefore, expanding the list of acceptable formats for comments in electronic form. If submitted by e-mail, such comments must still be submitted as MIME file attachments to e-mail messages. Whether submitted by e-mail or on diskettes, comments may also be submitted in ASCII text file format or RTF (Rich Text File) format.

Concern has also been expressed about the requirement that comments include not only the name of the person making the submission, but also the submitter's mailing address, telephone number, telefax number and e-mail address. All comments submitted in electronic form will be posted on the Office's website, and some persons making comments may prefer that such personal information not be made available on the Internet. The Office is, therefore, amending the requirements relating to identifying information that must be included in a comment. At the same time it is affirming that the filer's name must be on a comment. Persons submitting electronic comments in electronic form must also include, in the e-mail message to which the comment is attached or in a cover letter accompanying the diskette, all such identifying information. Persons submitting comments in traditional written form should note that the Office may post some or all of those comments on its website; therefore, such persons who do not wish to have such identifying information made available on the website should include that information in a separate cover letter accompanying the comments.

The Office is amending its instructions concerning formats for comments as follows:

Comments and reply comments may be submitted in electronic form, in one of the following formats:

1. *If by electronic mail:* Send to ''1201@loc.gov'' a message containing the name of the person making the submission, his or her title and organization (if the submission is on behalf of an organization), mailing address, telephone number, telefax number (if any) and e-mail address. The message should also identify the document clearly as either a comment or reply comment. The document itself must be sent as a MIME attachment, and must be in a single file in either: (1) Adobe Portable Document File (PDF) format (preferred); (2) Microsoft Word Version 7.0 or earlier; (3) WordPerfect 7 or earlier; (4) ASCII text file format; or (5) Rich Text File (RTF) format.

2. *If by regular mail or hand delivery:* Send, to the appropriate address listed above, two copies of the comment, each on a 3.5-inch write-protected diskette,

labeled with the name of the person making the submission and, if applicable, his or her title and organization. Either the document itself or a cover letter must also include the name of the person making the submission, his or her title and organization (if the submission is on behalf of an organization), mailing address, telephone number, telefax number (if any) and e-mail address (if any). The document itself must be in a single file in either (1) Adobe Portable Document File (PDF) format (preferred); (2) Microsoft Word Version 7.0 or earlier; (3) WordPerfect Version 7 or earlier; (4) ASCII text file format; or (5) Rich Text File (RTF) format.

3. *If by print only:* Anyone who is unable to submit a comment in electronic form should submit an original and fifteen paper copies by hand or by mail to the appropriate address listed above. It may not be feasible for the Office to place these comments on its website.

All written comments (in electronic or nonelectronic form) should contain the name of the person making the submission, his or her title and organization (if the submission is on behalf of an organization), mailing address, telephone number, telefax number (if any) and e-mail address (if any). All written comments must at a minimum contain the name of the person making the submission.

The Office has already received some comments designated as ''reply comments.'' Persons submitting comments should note that a comment should not be designated as a ''reply comment'' unless submitted in response to one or more initial comments made by other persons. Moreover, reply comments, which are now due on March 20, 2000, should not be submitted until after the February 17, 2000 deadline for submission of initial comments.

Dated: February 8, 2000.

**David O. Carson,**

*General Counsel.*

[FR Doc. 00–3200 Filed 2–9–00; 8:45 am]

**BILLING CODE 1410–30–P**

## DEPARTMENT OF DEFENSE

## 48 CFR Part 215

## Defense Federal Acquisition Regulation Supplement; Profit Policy

**AGENCY:** Department of Defense (DoD).

**ACTION:** Advance notice of proposed rulemaking and notice of public meeting.

**SUMMARY:** The Acting Director of Defense Procurement is soliciting comments from both government and industry personnel regarding potential changes to the profit policy specified in the Defense Federal Acquisition Regulation Supplement (DFARS). The changes would increase the emphasis placed on technical risk as a factor in developing objective profit amounts. DoD will conduct a public meeting to discuss the potential changes as well as the comments received in response to this notice.

**DATES:** *Public Meeting:* The public meeting will be conducted at the address shown below on February 23, 2000, from 9:00 a.m. to 12:00 p.m., local time.

*Submission of Names of Expected Attendees:* The names of individuals expected to attend the public meeting should be submitted to the point of contact shown below no later than February 18, 2000, 4:00 p.m., local time.

*Submission of Comments:* Written comments on the potential DFARS changes should be submitted to the address shown below no later than February 17, 2000.

**ADDRESSES:** *Public Meeting:* The public meeting will be conducted at the Headquarters, Defense Logistics Agency, Command Conference Room (Room 2419), 8725 John J. Kingman Road, Fort Belvoir, Virginia.

*Submission of Names of Expected Attendees:* The names of individuals expected to attend the public meeting should be submitted to Mr. Robert Bemben, by telephone, FAX, mail, or e-mail at the phone number or address specified below. Walk-in attendance will be accommodated. However, pre-registration is desired, as the names of pre-registrants will be provided to building security to facilitate building access.

*Submission of Comments:* Interested parties should submit written comments to: Mr. Robert Bemben, PDUSD (AT&L) DP/CPF, 3060 Defense Pentagon, Washington, DC 20301–3060. E-mail comments should be sent to bembenrj&acq.osd.mil. Comments should be accompanied by supporting rationale for any proposed changes.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Bemben, by telephone at (703) 695–9764; by FAX at (703) 693–9616; or by e-mail at bembenrj&acq.osd.mil.

**SUPPLEMENTARY INFORMATION:**

### A. Draft Materials

The potential changes to the DFARS are available in draft form electronically in Microsoft Word 6.0 text format at the Cost, Pricing, and Finance Office Internet Home Page: http://www.acq.osd.mil/dp/cpf.

**Note:** The draft changes do not reflect a proposed rule; they are provided for information and discussion purposes only.

Paper copies may be obtained from the point of contact specified herein.

### B. Background

Section 813 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65) directed the Secretary of Defense to review the DoD profit guidelines to consider whether appropriate modifications, such as placing increased emphasis on technical risk as a factor for determining appropriate profit margins, would provide an increased profit incentive for contractors to develop and produce complex and innovative new technologies.

Section 813 further required the Secretary of Defense to make any changes to the profit guidelines that the Secretary determines to be necessary and to report to Congress on the results of the review.

A review of the DoD profit policy has identified potential changes to the DFARS that would increase the emphasis placed on technical risk as a factor in developing objective profit amounts. The purpose of this notice is to provide the public with a preliminary indication of changes under consideration, and to solicit comments and suggestions on those changes. After consideration of the comments submitted in writing and those offered at the public meeting, the Director of Defense Procurement may submit a draft proposed rule to the Defense Acquisition Regulations (DAR) Council for consideration. The DAR Council will publish any resulting proposed rule for additional public comments.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

[FR Doc. 00–3141 Filed 2–9–00; 8:45 am]

**BILLING CODE 5000–04–M**

## DEPARTMENT OF DEFENSE

## 48 CFR Part 252

**[DFARS Case 99–D025]**

## Defense Federal Acquisition Regulation Supplement; Contract Drawings, Maps, and Specifications

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Acting Director of Defense Procurement is proposing to

amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise a clause used in construction contracts. The revised clause would explicitly allow the Government to furnish drawings and specifications to construction contractors in electronic form and would require construction contractors to reproduce and print contract drawings and specifications as needed.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before April 10, 2000, to be considered in the formation of the final rule.

**ADDRESSES:** Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted via the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 99–D025 in all correspondence related to this proposed rule. E-mail correspondence should cite DFARS Case 99–D025 in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602–0288.

**SUPPLEMENTARY INFORMATION:**

### A. Background

DoD uses the clause at DFARS 252.236–7001, Contract Drawings, Maps, and Specifications, in fixed-price construction contracts. The clause presently states that the Government will provide five sets (unless another quantity is specified) of large-scale drawings and specifications to the contractor without charge; or, at the Government's option, may furnish the contractor with one set of reproducibles, or half-size drawings. This rule proposes to revise the clause to specify that the Government will provide one set of large-scale drawings and specifications to the contractor in electronic or paper media, as chosen by the contracting officer, and that the contractor will reproduce and print contract drawings and specifications as needed.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the reproduction and printing of contract drawings and specifications normally does not constitute a significant cost, and the contractor can include this cost in the contract price. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 99–D025.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Part 252

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, DoD proposes to amend 48 CFR Part 252 as follows:

1. The authority citation for 48 CFR Part 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. Section 252.236–7001 is revised to read as follows:

**252.236–7001 Contract Drawings, Maps, and Specifications.**

As prescribed in 236.570(a), use the following clause:

Contract Drawings, Maps, and Specifications (XXX 2000)

(a) The Government—

(1) Will provide to the Contractor, without charge, one set of large-scale contract drawings and specifications, except publications incorporated into the technical provisions by reference; and

(2) Will provide the drawings and specifications in electronic or paper media, as chosen by the Contracting Officer.

(b) The Contractor shall—

(1) Check all drawings furnished immediately upon receipt;

(2) Compare all drawings and verify the figures before laying out the work;

(3) Promptly notify the Contracting Officer of any discrepancies;

(4) Be responsible for any errors that might have been avoided by complying with this paragraph (b); and

(5) Reproduce and print contract drawings and specifications as needed.

(c) In general—

(1) Large-scale drawings shall govern small-scale drawings; and

(2) The Contractor shall follow figures marked on drawings in preference to scale measurements.

(d) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work. The Contractor shall perform such details as if fully and correctly set forth and described in the drawings and specifications.

(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings:

Title
File
Drawing No.
(End of clause)

[FR Doc. 00–2942 Filed 2–09–00; 8:45 am]

**BILLING CODE 5000–04–M**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[I.D. 020200A]**

## Fisheries of the Northeastern United States; Atlantic Herring Fishery; Scoping Process

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

**ACTION:** Notice of intent to prepare a supplemental environmental impact statement (SEIS) and notice of scoping process; request for comments.

**SUMMARY:** The New England Fishery Management Council (Council) announces its intent to prepare an amendment to the Fishery Management Plan (FMP) for Atlantic Herring (*Clupea harengus*) and to prepare an SEIS, if necessary, to analyze the impacts of any proposed management measures. The Atlantic States Marine Fisheries Commission (Commission), under the authority of the Atlantic Coastal Fisheries Cooperative Management Act, may also prepare an amendment to its Interstate Fishery Management Plan for Atlantic Sea Herring. The Council and the Commission also formally announce a public process to determine the scope of alternatives to be addressed in the SEIS. The purpose of this notification is to alert the interested public of the commencement of the scoping process

and to provide for public participation in compliance with environmental documentation requirements.

**DATES:** The Council and the Commission will discuss and take scoping comments at public meetings in February 2000. For specific dates and times, see **SUPPLEMENTARY INFORMATION.** Written scoping comments must be received on or before 5:00 pm., local time, March 13, 2000.

**ADDRESSES:** The Council and the Commission will take scoping comments at public meetings in Maine, Massachusetts, Rhode Island, and New Jersey. For specific locations, see **SUPPLEMENTARY INFORMATION.** Written comments and requests for copies of the scoping document and other information should be directed to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950, telephone (978) 465–0492, or to Jack Dunnigan, Executive Director, Atlantic States Marine Fisheries Commission, 1444 Eye Street NW., Sixth Floor, Washington, DC 20005, telephone (202) 289–6400. The scoping document is accessible electronically via the Internet at http://www.nefmc.org (Council) and http://www.afmsc.org (Commission). Comments may also be sent via facsimile (fax) to (978) 465–3116. Comments will not be accepted if submitted via e-mail or the Internet.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

**SUPPLEMENTARY INFORMATION:**

## Background

The U.S. Atlantic herring fishery is managed as one stock complex along the east coast from Maine to Cape Hatteras, North Carolina, although evidence suggests that at least two separate biological stocks exist. Generally, the resource has been divided into an inshore Gulf of Maine and an offshore Georges Bank/Nantucket Shoals component. Individual spawning aggregations have been identified, such as the Jeffreys Ledge component of the Gulf of Maine stock, but quantitative data on the relative size of the aggregations are lacking. A peer-reviewed assessment of the Atlantic herring coastal stock complex was last conducted in 1998. This assessment indicated that the stock complex was at a high biomass level but was underexploited in 1997. An update of the assessment based on 1998 landings suggests that these conditions still exist in the fishery.

The Council and the Commission adopted management measures for the herring fishery in state and Federal waters in 1999 and NMFS approved most of the management measures contained in the Federal FMP on October 27, 1999. While the Commission's measures have been adopted by the states, the proposed rule to implement the Federal Atlantic Herring FMP will be published in the **Federal Register** for public comment in the near future. A final rule to implement the Federal FMP will be published shortly after the close of the comment period on the proposed rule. The two management plans contain similar management measures. The plans establish total allowable catches (TACs) levels in each of four management areas. In state waters there are spawning area restrictions (under the Commission plan). Both plans include limits on the size of vessels that can take, catch, or harvest herring. Each plan includes administrative elements such as requirements for vessel, dealer, and processor permits and reporting requirements. A control date of September 16, 1999, was established for the Atlantic herring fishery in Federal waters (64 FR 50266, September 16, 1999). The potential impacts of the control date are discussed in the control date announcement.

While the overall TAC level for herring is more than twice the recent landing levels, the proposed TAC for the inshore Gulf of Maine component is about 60 percent of the landings from this area in 1996 and 1997. Some fishermen believe that harvesting capacity in this area should be restricted to avoid problems that result from excess fishing capacity. One of these problems could be an inefficient ''race to fish'' as increasing numbers of vessels try to catch herring before the TAC is reached. Additionally, the available TAC in this area will likely be taken before the 2000 fishing year is over. This could disrupt the supply of herring for various markets. As more vessels enter the fishery, more fishermen would likely fish for shorter periods of time in this area. In other management areas, recent catches have not approached the proposed TACs. One objective of the management plan is to distribute fishing effort to all management areas. Catches in Management Area 2 (Cape Cod and south) have been relatively stable over recent years. Catches in Management Area 3 (Georges Bank) increased rapidly to 40 percent of the proposed TAC from 1997 to 1998. These areas could absorb more fishing effort.

Management of many fisheries in the Northeast is complicated by excess fishing capacity, which makes it difficult to reduce fishing mortality to levels necessary for stock rebuilding. The development of a controlled access system for the Atlantic herring fishery that would allow new harvesting capacity to target the offshore areas but would prevent (and for one area slow) the development of excess capacity might solve the problems experienced in these fisheries.

### Options Under Consideration

The Council and the Commission are considering a wide range of options for the fishery, from—

(1) Continuing open access in each of the four areas in which the fishery takes place and continuing with the area-specific TACs as the primary control on fishing mortality (the No Action Alternative); to

(2) Introducing one of a variety of controlled access systems in one or more of these areas, coupled with related controls on fishing mortality.

The capacity controls under consideration may work in the following ways: The number of vessels permitted to fish in one or more or all of the Atlantic herring fishery zones could be limited. This may occur gradually as the number of vessels fishing in each area and their catches in that area approach its TAC. Other options that will be examined include closing one or more or all areas to new participants before fishing harvest capacity develops that exceeds the TAC for a given area.

The elements that make up a controlled access system will also be open for comment. One or more kinds of permits may be issued to one or more of the management areas. Qualification criteria will be established to determine who gets a permit to fish in one or more areas. The criteria can take many different forms. For example, it could be based on catches over a period of time, on possession of another permit, or on future performance.

A controlled access system may also contain other means of managing fishing mortality, for example, implementing such limits on fishing effort as the number of days vessels can fish, catch limits, or gear restrictions, each with or without the TACs now in place. Another alternative is to establish an individual quota system. Under this system, a specific share of the TAC is assigned to a vessel, person, or community; in some systems, these shares can be purchased or traded. Because of possible different objectives for each management area, some elements of a controlled access system

for one area might be different from those in another area.

**Comments Requested**

The Council and the Commission are particularly interested in answers to the following questions:

(1) Should there be a limited entry or controlled access system in the Atlantic herring fishery?

(2) If there is a limited entry or controlled access system, should it be adopted for the entire fishery or only for certain management areas?

(3) When should the limited entry or controlled access system become effective? Should it become effective on different dates in different areas?

(4) In a limited entry or controlled access system, what type of qualification criteria should be used to determine who receives a limited entry permit? For example, should permits be issued based on past landings or on a vessel holding another permit?

(5) If past landings are used to determine who qualifies for a permit, what should the level of landings be to qualify? What is the appropriate time period to be examined?

(6) What types of permit categories should be considered? For example, should there be directed fishery permits and incidental catch permits, or different permits for different gear types?

(7) Should permits be freely transferable, or should they be subject to limits?

(8) Should there be upgrading restrictions on permits?

(9) What other management measures, if any, should be included in the limited entry or controlled access system? For example, should days-at-sea limits, trip limits, or gear restrictions be used to further control effort?

(10) Should an individual quota system be part of the controlled access program? (Under current law, an individual quota system may not be submitted to the Secretary for approval and implementation before October 1, 2000.) If an individual quota system is considered,—

(a) How should individual fishing quotas be allocated?

(b) Should they be allocated to vessels, individuals, or communities?

(c) Should there be limits on the transferability of individual fishing quotas?

(d) Should there be limits on how much quota can be obtained by one permit holder?

(e) How should present and historical participation in the fishery be considered?

(f) If an individual fishing quota program is developed, how should effective enforcement, management, and observer coverage be provided, and how should fees to recover actual enforcement and management costs be structured?

(g) If an individual fishing quota is developed, how should a portion of the annual harvest be allocated to entry level fishermen, small vessel owners, and crew members who do not qualify for individual quotas?

(11) What communities do you think would be most affected by a limited entry program for Atlantic herring? How would they be affected?

(12) What social and/or cultural factors within these communities should the Council consider when developing a limited access program for Atlantic herring?

(13) What do you think are the potential social impacts (negative and/or positive) of a limited access program for Atlantic herring?

**Scoping Process**

All persons affected by or otherwise interested in herring fisheries management are invited to participate in determining the scope and significance of issues to be analyzed by submitting written comments (see **ADDRESSES**) or by attending one of the scoping hearings. Scope consists of the range of actions, alternatives, and impacts to be considered. Alternatives include the following: Not amending the management plan (taking no action), developing an amendment that contains such management measures as the ones previously mentioned in this notice, or other reasonable courses of action. Impacts may be direct, individual, or cumulative. The scoping process will also identify and eliminate from detailed study issues that are not significant. If, after the scoping process is completed, the Council proceeds with the development of an amendment to the FMP, the Council will prepare an SEIS or Environmental Assessment, as appropriate, depending on the nature of the amendment to be developed. The Council and the Commission will hold public hearings to receive comments on the draft amendment and on the analysis of its impacts on the human environment.

**Public Hearing Schedule**

The Council and the Commission will discuss and take scoping comments at public meetings as follows:

*Tuesday, February 22, 2000*, 7 p.m., Cape May County Extension Office, 355 Courthouse–South Dennis road, Cape May Courthouse, New Jersey. Telephone (609) 465–5115.

*Wednesday, February 23, 2000*, 1 p.m., Trade Winds Hotel, 2 Park Drive, Rockland, ME 04841. Telephone (207) 596–6661.

*Thursday, February 24, 2000*, 3 p.m., Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886. Telephone (401) 739–3000.

*Tuesday, February 29, 2000*, 3 p.m. King's Grant Inn, Trask Road, Route 128, Exit 21N, Danvers, MA 01923. Telephone (978) 774–6800.

**Special Accommodations**

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to this meeting date.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: February 4, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–3005 Filed 2–9–00; 8:45 am]

BILLING CODE 3510–22–F

---

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 660

**[Docket No. 000124018–0018–01; I.D. 122999A]**

**RIN 0648–AN38**

## Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Advance Notice of Proposed Rulemaking to Establish a Control Date

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

**ACTION:** Advance notice of proposed rulemaking; request for comments.

**SUMMARY:** The Pacific Fishery Management Council (Council) is considering management measures to reduce harvest capacity in the open access portion of the Pacific Coast groundfish fishery in Federal waters off Washington, Oregon, and California. NMFS has previously made a similar announcement relating to the limited entry and recreational portions of the fishery. This document announces a control date for the open access portion of November 5, 1999, and is intended to promote awareness of potential eligibility criteria for future access to the

open access portion of the Pacific Coast groundfish fishery. The announcement is intended to discourage new entries into this fishery and increased fishing effort based on economic speculation while the Council contemplates whether and how access should be controlled.

Vessels entering the fisheries after November 5, 1999, may be subject to restrictions different from those that apply to vessels in the fishery prior to November 5, 1999. If catch history is used as a basis for future participation or allocation, it is likely that participation in the fishery after November 5, 1999, would not count toward future allocations or participation in a limited access scheme. Because potential eligibility criteria for future management measures may be based on historical participation, fishery participants may need to preserve records that substantiate and verify their participation in the groundfish fishery in Federal waters.

**DATES:** Comments may be submitted in writing by March 13, 2000.

**ADDRESSES:** Comments may be mailed to Jim Lone, Chairman, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland OR 97201.

**FOR FURTHER INFORMATION CONTACT:** The Pacific Fishery Management Council at 503–326–6352; or Bill Robinson at 206–526–6140; or Svein Fougner at 562–980–4000.

**SUPPLEMENTARY INFORMATION:** The Pacific Coast Groundfish Fishery Management Plan (FMP) was approved on January 4, 1982 (47 FR 43964, October 5 1982), and has been amended 11 times. Implementing regulations for the FMP and its amendments are codified at 50 CFR Part 660. On November 16, 1992, NMFS published final regulations implementing Amendment 6 to the FMP. Amendment 6 and its implementing regulations established a license limitation program and divided the Pacific Coast commercial groundfish fishery into limited entry and open access segments. The limited entry fishery is comprised of permitted vessels using trawl, longline and/or trap (pot) gear. The open access fishery is comprised of unpermitted vessels that use all other gear, as well as vessels that do not have limited entry permits endorsed for use of longline or trap gear but make small landings with longline or trap gear.

NMFS had previously made an announcement that the Council is considering additional management measures to further limit harvest capacity or to allocate between or within the limited entry commercial and the recreational groundfish fisheries. In order to discourage fishers from intensifying their fishing efforts for the purpose of amassing catch history for any allocation or additional limited access program developed by the Council, the Council announced on April 9, 1998, that any program would not include consideration of catch landed after that date. NMFS announced that the Council was planning to consider catch history through the 1997 season (63 FR 53637, October 6, 1998).

At its April 1999 meeting, the Council reviewed a proposal to create a limited entry program to limit new entrants into the open access fishery. At this same meeting, the Council's Groundfish Advisory Subpanel (GAP) encouraged the Council to move toward the development of an individual quota (IQ) program for the limited entry and open access fisheries as a means of managing harvest capacity. Under Section 303(d)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the Council cannot submit recommendations for an IQ program to the Secretary of Commerce before October 1, 2000, however, the Council is not prohibited from developing such a program.

At its June 1999 meeting, the Council further examined the proposal to create a limited entry program to limit new entrants into the open access fishery. Members of the Council expressed concerns that restricting new entrants into the fishery would not adequately address harvest capacity concerns. Even though the need to limit new entrants into the open access fleet was recognized, this measure did not go forward for further development. Limited access and participation in the open access fisheries were further discussed at the November 1999 Council meeting, resulting in this document.

Because the document published on October 6, 1998, refers specifically to management measures to restrain harvest capacity in the limited entry fishery, the Council saw a need to establish a control date for the open access fishery while management measures to restrain harvest capacity throughout the entire groundfish fishery are being considered. At its November meeting, the Council unanimously recommended that a control date of November 5, 1999, be established and the public be notified that the Council is considering the need to impose additional management measures to restrain harvest capacity in the open access fishery. The Council announced this control date for the open access portion of the Pacific Coast groundfish fishery in its November 1999 newsletter. The newsletter was distributed to the public in the middle of November.

Vessels entering the fishery after November 5, 1999, may be subject to restrictions different from those that apply to vessels in the fishery prior to November 5, 1999. If catch history is used as a basis for participation or allocation, it is likely that participation in the fishery after the control date would not count toward future allocations in a limited access scheme. Fishers are not guaranteed future participation in the groundfish fishery, regardless of their date of entry or level of participation in the fishery.

This action does not commit the Council to develop any particular management regime or to use any specific criteria for determining entry to the fishery. The Council may choose a different control date, or may choose a management program that does not make use of such a date.

Implementation of any management measures for the fishery will require amendment of the regulations implementing the FMP, and may require amending the FMP. Any action will require Council development of a regulatory proposal with public input and a supporting analysis, NMFS approval, and publication of implementing regulations in the **Federal Register**.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: February 4, 2000.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–3150 Filed 2–9–00; 8:45 am]

**BILLING CODE 3510–22–F**

# Notices

Federal Register
Vol. 65, No. 28
Thursday, February 10, 2000

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

### Forest Service

### Information Collection; Request for Comments; Youth Conservation Corps Employment

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intention to reinstate a previously approved information collection. The collected information will help the Forest Service evaluate the employment eligibility of youth 15 to 18 years old through the Youth Conservation Corps Program. Under this Program, the Forest Service cooperates with other Federal agencies to provide seasonal employment for youth.

**DATES:** Comments must be received in writing on or before April 10, 2000.

**ADDRESSES:** All comments should be addressed to Director, Youth Conservation Corps, Senior, Youth and Volunteer Programs, (Mail Stop 1136), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

Comments also may be submitted via facsimile to (703) 605–5115 or by e-mail to syvp/wo@fs.fed.us.

The public may inspect comments at the Office of the Director, Senior, Youth and Volunteer Programs, Forest Service, USDA, Room 1010, 1621 North Kent Street, Arlington, Virginia 22209. Visitors are asked to call ahead to facilitate entrance into the office.

**FOR FURTHER INFORMATION CONTACT:** Ransom Hughes, Youth Conservation Corps, Senior, Youth and Volunteer Programs at (703) 605–4854.

**SUPPLEMENTARY INFORMATION:**

#### Background

Under the Youth Conservation Corps Act of August 13, 1970, as amended (U.S.C. 18701–1706), the Forest Service, U.S. Department of Agriculture and the Fish and Wildlife Service and National Park Service, U.S. Department of Interior cooperate to provide seasonal employment for eligible youth 15 to 18 years old.

These youth, who seek training and employment with the Forest Service through the Youth Conservation Corps, must complete the following forms: FS–1800–18, Youth Conservation Corps Application, and FS–1800–3, Youth Conservation Corps Medical History. Forest Service employees use the information to evaluate the eligibility of each applicant.

The Youth Conservation Corps stresses three important objectives:

- Accomplish needed conservation work on public lands;
- Provide gainful employment for 15 to 18 year old males and females from all social, economic, ethnic, and racial backgrounds; and
- Foster, on the part of the 15 to 18 year old youth, an understanding and appreciation of the Nation's natural resources and heritage.

#### Description of Information Collection

The following describes the information collection to be reinstated:

*Title:* FS–1800–18, Youth Conservation Corps (YCC) Application.

*OMB Number:* 0596–0084.

*Expiration Date of Approval:* October 31, 1997.

*Type of Request:* Reinstatement of an information collection previously approved by the Office of Management and Budget.

*Abstract:* Employees of the Forest Service, U.S. Department of Agriculture and the Fish and Wildlife Service and National Park Service, U.S. Department of Interior will evaluate the data and determine the eligibility of each youth for employment with the Youth Conservation Corps. To be considered for employment with the Corps, each youth must complete FS–1800–18, Youth Conservation Corps Application Form. Applicants are asked to answer questions that include their name, social security number, date of birth, mailing address, and telephone number. The applicant's parent or guardian must sign the form.

Data gathered in this information collection are not available from other sources.

*Estimate of Annual Burden:* 6 minutes.

*Type of Respondents:* Youth 15 to 18 years old.

*Estimated Annual Number of Respondents:* 18,000.

*Estimated Annual Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 1800 hours.

#### Description of Information Collection

The following describes the information collection to be reinstated:

*Title:* FS–1800–3, Youth Conservation Corps Medical History.

*OMB Number:* 0596–0084.

*Expiration Date of Approval:* October 31, 1997.

*Type of Request:* Reinstatement of an information collection previously approved by the Office of Management and Budget.

*Abstract:* To be considered for employment through the Youth Conservation Corps Program, all youth must complete FS–1800–3, Youth Conservation Corps Medical History Form. Applicants are asked to answer questions regarding their personal health. The purpose of FS–1800–3 is to certify the youth's physical fitness to work in the seasonal employment Program. The applicant's parent or guardian must sign the form.

Data gathered in this information collection are not available from other sources.

*Estimate of Annual Burden:* 14 minutes.

*Type of Respondents:* Youth 15 to 18 years old.

*Estimated Annual Number of Respondents:* 18,000.

*Estimated Annual Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 4200 hours.

#### Comment is Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific 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 respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**Use of Comments**

All comments received in response to this notice, including names and addresses when provided, will become a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget.

Dated: February 3, 2000.

**Gloria Manning,**

*Associate Deputy Chief, for Business Operations.*

[FR Doc. 00–3011 Filed 2–9–00; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Meadow Tolan Vegetation Management Project; Bitterroot National Forest, Ravalli County, MT

**AGENCY:** Forest Service, USDA.

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

**SUMMARY:** The USDA Forest Service will prepare an environmental impact statement (EIS) to disclose the environmental effects of management activities proposed in the Meadow-Tolan area on the Sula Ranger District of the Bitterroot National Forest. Proposed management activities include management ignited prescribed fire, timber harvest, reforestation, pre-commercial thinning, aspen restoration, and road reconstruction. The Meadow-Tolan area is located in Ravalli County, Montana, approximately 40 miles southeast of Hamilton. The Meadow-Tolan area includes the Meadow and Tolan Creek drainages and several other tributary drainages between them.

A variety of management activities proposed in the project are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). The purposes of the project are (1) To restore fire and its associated ecological benefits, (2) to harvest merchantable timber, (3) to reduce fuel accumulations, especially in an area adjacent to a rural subdivision, (4) to modify forest stand structure and species composition in order to maintain or restore ecosystem diversity, (5) to reduce motorized travel to comply with Forest Plan standard, (6) to amend the Forest Plan motorized access standards in an area where other resource benefits outweigh the benefits of restricting travel, (7) to thin young stands that are overstocked, and (8) to restore aspen clones that show signs of deterioration. This project level EIS will tier to the Bitterroot National Forest Land and Resource Management Plan (Forest Plan) and Final EIS (September 1987), which provides overall guidance for all land management activities on the Bitterroot National Forest.

**DATES:** Written comments and suggestions should be received by March 24, 2000.

**ADDRESSES:** The Responsible Official is Rodd Richardson, Forest Supervisor, Bitterroot National Forest, 1801 North First, Hamilton MT 59840.

**FOR FURTHER INFORMATION CONTACT:** Written comments and suggestions concerning the scope of the analysis or a request to be included on the project mailing list should be sent to John Ormiston, Acting Resource Team Leader, Sula Ranger District, Bitterroot National Forest, Phone (406) 821–3201.

**SUPPLEMENTARY INFORMATION:** The project area encompasses approximately 45,000 acres of land in west-central Montana on the Bitterroot National Forest. The Meadow-Tolan area includes the Meadow and Tolan Creek drainages and several other tributary drainages of the East Fort Bitterroot River, including Vapor Creek, Swift Creek, Bugle Creek, Kerlee Creek, Springer Creek, Mink Creek, and Bruce Creek. A map and legal descriptions are available on request.

An analysis of the Meadow-Tolan area reveals changes in how the forest vegetation currently looks and functions compared to the past. Natural patterns and stand structures have changed, largely due to the absence of fire during the 1900's in this fire dependent ecosystem. The result is notable changes in plant species composition and density, stand structures, fuels, seral species regeneration, and the health and vigor of forest stands. The primary purposes of prescribed fire and timber harvest in the Meadow-Tolan area is to maintain or restore ecosystem diversity, function, and health. There is also an opportunity to address ecological trends and at the same time utilize surplus biomass for forest products. Maintaining plant community diversity will promote the range of habitats that native plants and animals evolved in. Management prescriptions to promote diversity include low to moderate intensity management ignited prescribed fire; and on some sites prescribed fire in combination with silvicultural treatments. Silvicultural treatments proposed include pre-commercial thinning, timber harvest, and reforestation.

Managing fuels using fire and silvicultural practices would decrease the risk of uncharacteristically intense fires and associated undesirable effects. These activities could also increase the ability of the Forest Service to allow more naturally occurring fires to burn in the adjoining Anaconda-Pintler Wilderness Area by reducing fuels near private property at lower elevations. This would to some degree reduce the risks to private property from natural fires allowed to burn in the wilderness.

Vegetation treatments with commercial timber harvest and management ignited prescribed fire are proposed on approximately 2530 acres and 1430 acres, respectively. Proposed management ignited fire and harvest activities focus primarily on low- to mid-elevations and dry aspects; those considered at ecological risk due to fire absence.

The prescribed fire would focus on the ponderosa pine/Douglas-fir community, which have been most altered due to fire absence. Most of these treated acres will also include slashing of undesired and unmerchantable trees.

Big game forage, including some winter range areas, would be improved in the areas to be understory burned. Intermediate harvests will also be prescribed on about 1100 acres in the ponderosa pine/Douglas-fir communities to open forest canopies, reduce Douglas-fir encroachment, improve overall productivity and health. Following harvest, all areas would be treated with understory burning in order to reduce fuels, prepare sites for regeneration, rejuvenate the shrub component, and maintain fire as an ecosystem process.

Pre-commercial thinning is also needed on about 320 acres of densely stocked submerchantable trees in order to enhance tree growth and vigor. One area of approximately 20 acres will be treated with hand thinning and piling for the purpose of fuel reduction.

Approximately 1210 acres in the moist Douglas-fir forest community would be treated using intermediate harvests to reduce stand densities, increase health and vigor of the residual stand, salvage dead and dying trees from Douglas-fir bark beetle caused mortality or root rot, and increase resilience to other insects and diseases. Approximately 160 acres would be

treated with a regeneration harvest where heavy mortality exists due to the Douglas-fir bark beetle. Douglas-fir beetles have been particularly active on north slopes in the area in the last few years and have reached epidemic population levels on the Sula Ranger District. Because of the uncertainty of future beetle populations, some of the area prescribed for intermediate harvests may require regenerating. About half the area would be understory burned following harvest. Activity fuels in remainder would be limbed and lopped or yarded to the landing to burn.

Due to the current level of beetle caused mortality and the expected future mortality, there are two units needing regeneration that will exceed 40 acres.

Eleven aspen stands on about 60 acres have matured and are showing signs of deterioration in the absence of fire. We propose to remove encroaching conifers by girdling or harvest and apply prescribed fire to restore aspen vigor and presence on the landscape.

We propose to establish a defensible perimeter around a cluster of private dwellings in the Echo Gulch area; thinning, pruning and prescribing fire to reduce fuels and therefore the risk of fire moving rapidly through the perimeter.

The Bitterroot Forest Plan provides guidance for management activities through its goals, objectives, standards, and management area direction. The areas of proposed management activities occur in Management Areas 1, 2, and 3a. Prescribed burning is proposed on lands within Forest Plan Management Areas 1, 2, 3a, and 3b. The management direction for these areas are briefly described, as follows. Management Area 1 emphasizes timber management, livestock and big game forage production, and roaded dispersed recreation activities. Management Area 2 emphasizes elk winter range habitat, allows for timber management and provides roaded dispersed recreation opportunities. Management Area 3a emphasizes visual quality, allows timber management, and provides roaded dispersed recreation opportunities. Management Area 3b emphasizes protection of riparian habitat and water quality and provides for water-related recreation.

Public scoping meetings and opportunities for interested parties to review and comment on the proposals for management were provided in Fall, 1998. Comments received have been retained and will be considered during the preparation of the Meadow Tolan EIS. Public participation is an important part of this analysis, continuing with additional scoping (40 CFR 1501.7), in February and March, 2000. In addition, the public is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action.

Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will be used to identify issues and alternatives to the proposed action. Some public comments have already been received in conjunction with scoping documented in the Meadow-Tolan Project File. The following issues have already been identified: 1. What effects would the proposed timber harvest, road construction, and prescribed fire have on the water and fishery resources in the area? 2. What effects would the proposed actions have on ecosystem health, productivity and forest products. 3. How would road construction, timber harvesting, and prescribed burning affect wildlife species in the area? 4. How would the proposed actions affect the Tolan roadless area and adjacent undeveloped lands? 5. How would the proposed actions affect recreation and motorized access opportunities? 6. How would visual quality be affected? This list may be verified; expanded, or modified based on continued public scoping.

The Forest Service will consider a range of alternatives in the EIS. One of these will be the ''no action'' alternative, in which none of the proposed activities would be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values. The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and scheduled activities on both private and National Forest lands will be considered. The EIS will disclose the analysis of site specific mitigation measures and their effectiveness.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in July, 2000. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in management of the Meadow-Tolan area participate at that time. To be most helpful, comments on the Draft EIS should be as specific as possible. The Final EIS is scheduled to be completed in December, 2000.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the Environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages* v. *Harris,* 490 F. Supp.–1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the scoping comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in developing issues and alternatives.

To assist the Forest Service in identifying and considering issues on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The responsible official for this environmental impact statement is Rodd Richardson, Forest Supervisor, Bitterroot National Forest, 1801 North First, Hamilton, MT 59840. He will decide which, if any, of the proposed actions will be implemented and will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to Forest Service Appeal Regulations.

Dated: February 1, 2000.

**Rodd Richardson,**

*Forest Supervisor, Bitterroot National Forest.*

[FR Doc. 00–3101 Filed 2–9–00; 8:45 am]

BILLING CODE 3410–83–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Upper Desolation Vegetation Recovery Projects Umatilla National Forest, Grant County, OR

**AGENCY:** Forest Service, USDA.

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

**SUMMARY:** The USDA Forest Service will prepare an environmental impact statement (EIS) on a proposed action to implement vegetative recovery projects, designed to restore forest stand structure and composition, within the subwatersheds of the Desolation Creek Watershed and adjacent subwatersheds of surrounding watersheds which were affected by the Bull and Summit Fires of 1996. The project area is located on the North Fork John Day Ranger District, approximately 25 air miles southeast of Ukiah, Oregon.

Proposed project activities consist of planting forest and riparian vegetation; fuels treatments to establish a more natural mosaic of fuel types across the landscape; hydrologic stability projects (road obliteration and road reconstruction); reduction of hazards along open roads; and restoration of forest stand structure and composition through precommercial thinning, commercial thinning, and salvage of timber damaged or killed in the fires. The proposed action is designed to prevent additional degradation of watershed and forest health, accelerate movement toward achieving Forest Plan goals and an ecologically sustainable and resilient system, and provide some economic return to local economies. The proposed projects will be in compliance with the 1990 Land and Resource Management Plan FEIS for the Umatilla National Forest, as amended, which provides overall guidance for management of this area.

**DATE:** Written comments concerning the scope of the analysis should be received on or before March 13, 2000.

**ADDRESS:** Send written comments and suggestions to the Responsible Official, Craig Smith-Dixon, North Fork John Day District Ranger, P.O. Box 158, Ukiah, OR 97880.

**FOR FURTHER INFORMATION CONTACT:** Tim Davis, Project Team Leader, North Fork John Day Ranger District, Phone: (541) 427–3231.

**SUPPLEMENTARY INFORMATION:** The decision area contains approximately 59,700 acres with the Umatilla National Forest in Grant County, Oregon. It includes subwatersheds that were affected by the Bull and Summit Fires of 1996. The Bull Fire burned approximately 8,300 acres, and the Summit Fire burned approximately 8,000 acres on the Umatilla National Forest. Affected subwatersheds include those in the upper part of the Desolation Creek Watershed, and those in the adjacent North Fork John Day River and Granite Creek Watersheds. The legal description of the decision area is as follows: T.7S. R.33 and 34E., T.8S. R.33 and 34E., T.9S. R.33 and 34E., and T.10S. R.34E., W.M. surveyed. All proposed activities are outside the boundaries of any roadless of wilderness areas.

Originally, two separate analyses were proposed for salvage and restoration projects within the Bull and Summit Fire areas. These were: Bull Fire Restoration Project EA and the Olive Salvage CE. In January 1998, the Big Tower Fire Recovery Projects Decision Notice and Environmental Assessment was challenged in court. This analysis was concerned with the salvage and restoration of the 1996 Tower Fire. The outcome of this litigation was that the U.S. 9th Circuit Court of Appeals instructed the Forest Service to conduct an Environmental Impact Statement (EIS) for any further projects within the Tower Fire area. Based on this ruling, the North Fork John Day Ranger District determined that an EIS would be the most appropriate environmental analysis to conduct for restoration efforts on the Bull and Summit Fires.

Planting projects include reforestation in areas proposed for salvage harvest of fire damaged and killed timber, some areas proposed for fuels treatments, previously planted areas burned in the fires, and riparian areas affected by the fires. Fuels treatments could included broadcasting burning, piling and burning, jackpot burning, or mechanical slash treatments on harvested and precommercially thinned areas; as well as cutting, slashing, and burning stands of non-merchantable lodgepole pine killed in the fires. Proposed hydrologic stability projects include 1.5 miles of road obliteration and 7.0 miles of road reconstruction. Roadside hazards would be removed from along approximately 3.0 miles of Forest Road 1010. Stand structure and composition treatments include approximately 1050 acres of salvage harvest, 490 acres of commercial thinning, and 330 acres of precommercial thinning. Approximately 1.1 miles of temporary road construction is proposed to access timber harvest areas (all temporary roads would be obliterated following completion of sale activities).

An estimated 7.3 million board feet of timber would be commercially harvested, using ground based harvesting systems (tractor and harvested/forwarder). Proposed silvicultural treatments are as follows:

*Precommercial Thinning:* Saplings (generally up to 7 inch dbh) would be thinned to a tree per acre variable spacing to promote growth and provide a more sustainable species composition.

*Commercial Thinning:* Stand densities would be reduced to a residual square foot of basal area per acre based on recommended stocking levels appropriate for the plant association to restore a more ecologically sustainable structure and species composition. All stands would remain fully stocked upon completion of harvest activities.

*Salvage Harvest:* Timber damaged or killed in the fires would be removed to facilitate reforestation of these areas and reduce the build-up of fuels. Harvested areas would be reforested with an ecologically sustainable species composition.

Activities which would occur concurrently or in association with timber harvest include subsoiling to mitigate soil compaction, waterbarring, erosion control seeding of skid trails and landings to restore soil productivity, burning of some slash, and treatment of noxious weeds.

Preliminary issues include: effects of proposed activities on water quality; effects of proposed activities on fish and habitat and aquatic Threatened, Endangered, and Sensitive (TES) species; effects of proposed activities on lynx; and ability of proposed activities to restore historic vegetation composition, structure, and pattern.

The Forest Service will consider a full range of alternatives, including a ''no-action'' alternative in which none of the activities proposed above would be implemented. Based on the issues gathered through scooping, the action alternatives will vary in (1) the number, type and location of projects, (2) the silvicultural and post-harvest treatments prescribed, and (3) the amount and location of harvest and thinning. Tentative action alternatives are: the proposed action, a modified proposed action which only treats fire affected stands, and an alternative which excludes any commercial harvest.

Public participation will be especially important at several points during the analysis, beginning with the scooping process (40 CFR 1501.7). Initial scoping began with the project listing in the 2000 Winter Edition of the Umatilla National Forest's Schedule of Proposed Activities. This environmental analysis and decision making process will enable additional interested and affected people to participate and contribute to

the final decision. The public is encouraged to take part in the process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, and other individuals or organizations that may be interested in, or affected by the proposal. This input will be used in preparation of the Draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying major issues to be analyzed in depth.
3. Identifying issues which have been covered by a relevant previous environmental analysis.
4. Considering additional alternatives based on themes which will be derived from issues recognized during scoping activities.
5. Identifying potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available to the public for review by April, 2000. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register.** The comment period on the Draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register.** It is important that those interested in the management of the Umatilla National Forest participate at that time.

The Final EIS is scheduled to be completed by June, 2000. In the Final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the Draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

The Forest Service believes it is important to give reviewers notice, at this early stage, of several court rulings related to public participation in the environmental review process. First, reviewers of Draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 f. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The Forest Service is the lead agency. Craig Smith-Dixon, District Ranger, is the Responsible Official. As the Responsible Official, he will decide which, if any, of the proposed projects will be implemented. He will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: February 1, 2000.

**Craig Smith-Dixon,**

*District Ranger.*

[FR Doc. 00–3056 Filed 2–9–00; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### North Rich Allotment Management Plan, Wasatch-Cache National Forest, Logan Ranger District, Cache and Rich Counties, Utah

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Intent to prepare an Environmental Impact Statement (EIS).

**SUMMARY:** The Logan Ranger District, of the Wasatch-Cache National Forest, will prepare an EIS on a proposal to authorize grazing on the North Rich Allotment at a level and in a manner consistent with direction set forth in the Forest Plan, the Rangeland Health EIS, and other applicable laws.

**DATES:** Comments concerning the scope of the analysis should be received in writing by March 10, 2000.

**ADDRESSES:** Send written comments to Brian Ferebee, District Ranger, 1500 East Highway 89, Logan, Utah 84321.

**FOR FURTHER INFORMATION CONTACT:** Evelyn Sibbernsen, Environmental Coordinator, Logan Ranger District, (435) 755–3620.

**SUPPLEMENTARY INFORMATION:** The Logan Ranger District proposes to authorize grazing on the North Rich Allotment at a level and in a manner consistent with direction set forth in the Forest Plan, the Wasatch-Cache Rangeland Health EIS, and other applicable laws and guidelines. In conjunction, the District proposes to revise the Allotment Management Plan (AMP) and adjust the resource management of lands within the North Rich Allotment to reflect information developed since the Forest Plan (approved in 1985) and to improve resource conditions as needed in several areas.

In an effort to continue moving present rangeland conditions toward desired conditions, select improvement and restoration projects are being proposed. Livestock grazing would be managed under a rotation system, to provide for the longterm health and sustainability of rangeland and riparian ecosystems.

Environmental analysis on the proposal began in the fall of 1998. Preliminary analysis indicated an Environmental Impact Statement would not be required. A scoping letter was mailed to more than 70 individuals, organizations, and local and state government agencies in January, 1999. An open house was held in January and a field trip was held in July, 1999. Data collection and analysis continued through the fall of 1999. In January of 2000, the responsible official and the Forest Service interdisciplinary team decided that an Environmental Impact Statement should be prepared because there may be significant environmental effects associated with the proposal.

Preliminary issues identified by the interdisciplinary team include the effects of grazing on riparian conditions, watershed health, threatened, endangered, and sensitive species, and the effects on dispersed recreation in the area.

A range of alternatives for the allotment will be considered. One of these, no action from the current situation, will be to authorize grazing under the current regime (number and type of livestock, grazing system, and maintenance of improvements). Another alternative will consider no grazing on

this allotment (current permits would be terminated as they expire). Other alternatives will consider grazing under other combinations of number and type of livestock, grazing systems (including a rotation system), season and timing of use, and associated improvements, mitigation, and monitoring.

A decision will be made on whether or not to continue authorizing grazing on the North Rich Allotment, and if so, under what management system and with what improvements. If the decision is made to continue authorizing grazing, term grazing permits, issued by the Logan Ranger District, would authorize this use.

The public is invited to submit comments or suggestions at the address above. Comments from the January 1999 scoping will be incorporated into the analysis and need not be resubmitted. The responsible official is Brian Ferebee, District Ranger. A Draft EIS is expected to be filed in April of 2000 and the final EIS is scheduled to be filed in September of 2000.

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.** It is very important that those interested in this proposed action participate during that time. To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that the reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel,* (9th Circuit, 1986), and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

Dated: January 28, 2000.

**Brian Ferebee,**

*District Ranger.*

[FR Doc. 00–3100 Filed 2–9–00; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Lake Tahoe Basin Federal Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on March 7, 2000, at the Convention Center, Harrah's Lake Tahoe, Highway 50, Stateline, NV. This Committee, established by the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

**DATES:** The meeting will be held March 7, 2000, beginning at 9:00 a.m. and ending at 4:30 p.m.

**ADDRESSES:** The meeting will be held at the Convention Center, Harrah's Lake Tahoe, Highway 50, Stateline, NV.

**FOR FURTHER INFORMATION CONTACT:** Ed Gee or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road Suite 1, South Lake Tahoe, CA 96150, (530) 573–2642.

**SUPPLEMENTARY INFORMATION:** The committee will meet jointly with the Lake Tahoe Basin Executives Committees. Items to be covered on the agenda include: (1) Budget Subcommittee, Communications Subcommittee & Watershed Assessment Subcommittee Reports; (2) California, Nevada and Federal Land Acquisition Processes; (3) Status of Renewing the Charter; (4) Washoe Lake Access; (5) Updating the Environmental Improvement Program (EIP); (6) Open Public Comment; (7) Vehicle Miles Traveled, US Postal Service Master Plan; (8) Status Report on the Lake Tahoe Science Advisory Team; (9) Lake Tahoe Watershed Assessment, Adaptive Management. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: February 4, 2000.

**Maribeth Gustafson,**

*Acting Deputy Forest Supervisor.*

[FR Doc. 00–3130 Filed 2–9–00; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Notice of Proposed Changes to Section 4 of the Iowa State Technical Guide

**AGENCY:** Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

**ACTION:** Notice of availability of proposed changes in the Iowa NRCS State Technical Guide for review and comment.

**SUMMARY:** It has been determined by the NRCS State Conservationist for Iowa that changes must be made in the NRCS State Technical Guide specifically in Section 4, Practice Standards and Specifications #600, Terrace and #620, Underground Outlet to account for improved technology. These practices can be used in systems that treat highly erodible land.

**DATES:** Comments will be received on or before March 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Leroy Brown, State Conservationist, Natural Resources Conservation Service, Federal Building, 210 Walnut Street, Suite 693, Des Moines, Iowa 50309; at 515/284–4260; fax 515/284–4394.

**SUPPLEMENTARY INFORMATION:** Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Dated: January 19, 2000.

**Leroy Brown,**

*State Conservationist.*

[FR Doc. 00–3102 Filed 2–9–00; 8:45 am]

**BILLING CODE 3410–18–M**

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### Notice of Availability of Funding and Requests for Proposals for Guaranteed Loans Under the Section 538 Guaranteed Rural Rental Housing Program; Correction

**AGENCY:** Rural Housing Service, USDA.

**ACTION:** Correction.

**SUMMARY:** The Rural Housing Service (RHS) corrects a notice published December 21, 1999 (64 FR 71601). This action is taken to correct the closing date of the ''early selection pool'' of $40 million from 4:00 Eastern Standard Time on February 21, 2000 to 4:00 Eastern Standard Time on February 22, 2000. This action is being taken because there will be no mail delivery on February 21, 2000 due to the Federal Holiday.

Accordingly, the notice published December 21, 1999 (64 FR 71601), is corrected as follows:

On page 71601 in the second column, in the first sentence under the heading ''DATES,'' the text ''4:00 PM Eastern Time on February 21, 2000'' should read ''4:00 PM Eastern Standard Time on February 22, 2000.''

On page 71602 in the second column, Item III., in the first paragraph, the text ''4 p.m. Eastern Standard Time, February 21, 2000'' should read ''4:00 PM Eastern Standard Time on February 22, 2000.''

On page 71602 in the second column, Item III., in the second paragraph, the text ''4:00 PM, Eastern Standard Time on February 21, 2000'' should read ''4:00 PM Eastern Standard Time on February 22, 2000.''

Dated: February 2, 2000.

**James C. Kearney,**

*Administrator, Rural Housing Service.*

[FR Doc. 00–3042 Filed 2–9–00; 8:45 am]

BILLING CODE 3410–XV–U

## COMMISSION ON CIVIL RIGHTS

### Sunshine Act Meeting

**AGENCY:** U.S. Commission on Civil Rights

**DATE AND TIME:** Friday, February 18, 2000, 9:30 a.m.

**PLACE:** U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

**STATUS:**

*Agenda*

I. Approval of Agenda
II. Approval of Minutes of January 14, 2000 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Report
- Unequal Justice: African Americans In the Virginia Criminal Justice System (Virginia)

VI. Review GPRA Draft Report
VII. Future Agenda Items
10:30 a.m.—Briefing on Zero Tolerance

**CONTACT PERSON FOR FURTHER INFORMATION:** David Aronson, Press and Communications (202) 376–8312.

**Edward A. Hailes, Jr.,**

*Acting General Counsel.*

[FR Doc. 00–3226 Filed 2–8–00; 2:23 pm]

BILLING CODE 6335–01–M

## DEPARTMENT OF COMMERCE

## INTERNATIONAL TRADE ADMINISTRATION

**[A–427–816, A–533–817, A–560–805, A–475–826, A–588–847, A–580–836]**

### Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea

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

**EFFECTIVE DATE:** February 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Howard Smith or Brian C. Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–5193, respectively.

**The Applicable Statute**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations are to the regulations at 19 CFR Part 351 (1999).

**Amendment to the Final Determination**

On December 13, 1999, the Department made its final determinations that certain cut-to-length carbon-quality steel plate products from France, India, Indonesia, Italy, Japan and the Republic of Korea are being, or are likely to be, sold in the United States at less than fair value. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from France*, 64 FR 73143, (*India*) 64 FR 73126, (*Indonesia*) 64 FR 73164, (*Italy*) 64 FR 73234, (*Japan*) 64 FR 73215, and the (*Republic of Korea*) 64 FR 73196 (December 29, 1999) (''Final Determinations''). In December 1999, the Department disclosed its calculations for the final determinations to all interested parties. In December 1999, and January 2000, the Department received timely allegations of ministerial errors in its margin calculations for certain respondents. Specifically, the Department received ministerial error allegations in the final determinations for France, Indonesia, Italy, and the Republic of Korea. After analyzing the ministerial error allegations in accordance with 19 CFR 351.224, we have determined the following:

*France*

In calculating the final margin for the respondent Usinor S.A., the Department improperly calculated the constructed export price (''CEP'') offset where U.S. sales were compared to constructed value. Specifically, the Department failed to include home market inventory carrying costs in the indirect selling expenses used to calculate the CEP offset. For a detailed discussion of the ministerial error allegations for France and the Department's analysis thereof, *see* the Memorandum, *Ministerial Error Allegations Regarding the Final Determination*, to Holly A. Kuga, Acting Deputy Assistant Secretary, AD/CVD Enforcement Group II, from the France Team, dated January 28, 2000. In accordance with 19 CFR 351.224(e), we are amending the final determination of the antidumping duty investigation of certain cut-to-length carbon-quality steel plate products from France. Correcting the ministerial error changes the final weighted-average dumping margin for Usinor S.A. and the ''All Others'' rate from 10.43 percent to 10.41 percent.

*Indonesia*

In calculating the final margin for the respondent PT Gunawan Dianjaya Steel (''Gunawan'')/ PT Jaya Pari Steel Corporation (''Jaya Pari''), the Department (1) incorrectly calculated the indexed, weighted-average costs; (2) failed to incorporate certain adjustments to Gunawan's and Jaya Pari's U.S. sales in the margin calculation; (3) failed to include all of Jaya Pari's U.S. sales in the margin calculation; (4) incorrectly calculated December 1998 current costs by using the incorrect wholesale price

indices for three months; and (5) incorrectly revised the factory overhead expense for certain control number models. For a detailed discussion of the ministerial error allegations for Indonesia and the Department's analysis thereof, *see* the Memorandum, *Ministerial Error Allegations Regarding the Final Determination*, to Louis Apple, Office Director, from the Indonesia Team, dated January 7, 2000. In accordance with 19 CFR 351.224(e), we are amending the final determination of the antidumping duty investigation of certain cut-to-length carbon-quality steel plate products from Indonesia. Correcting the ministerial errors changes the final weighted-average dumping margin for Gunawan/Jaya Pari and the ''All Others'' rate from 42.36 percent to 50.80 percent.

*Italy*

In calculating the final margin for the respondent Palini and Bertoli S.p.A., the Department incorrectly revised home market credit expense. For a detailed discussion of the ministerial error allegation for Italy and the Department's analysis thereof, *see* the Memorandum, *Ministerial Error Allegations Regarding the Final Determination*, to Holly A. Kuga, Acting Deputy Assistant Secretary, AD/CVD Enforcement Group II, from the Italy Team, dated January 20, 2000. In accordance with 19 CFR 351.224(e), we are amending the final determination of the antidumping duty investigation of certain cut-to-length carbon-quality steel plate products from Italy. Correcting the ministerial error changes the final weighted-average dumping margin for Palini and Bertoli S.p.A. and the ''All Others'' rate from 8.97 percent to 7.85 percent.

*The Republic of Korea*

The petitioners alleged that the Department made certain ministerial errors in calculating costs for Dongkuk Steel Mill, Ltd., in the final determination We do not agree that the items identified by the petitioners constitute clerical errors. Thus, we are not amending the final determination of the antidumping duty investigation of certain cut-to-length carbon-quality steel plate products from the Republic of Korea. For a detailed discussion of the ministerial error allegations for the Republic of Korea and the Department's analysis thereof, *see* the Memorandum, *Ministerial Error Allegations Regarding the Final Determination*, to Holly A. Kuga, Acting Deputy Assistant Secretary, AD/CVD Enforcement Group II, from the Korea Team, dated January 20, 2000.

**Scope of Orders**

The products covered by these antidumping duty orders are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in the scope of these orders are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in the scope of these orders are high strength, low alloy (''HSLA'') steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (''HTSUS'') definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these orders unless otherwise specifically excluded. The following products are specifically excluded from these orders: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these orders is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise covered by these orders is dispositive.

**Antidumping Duty Orders**

On February 2, 2000, in accordance with section 735(d) of the Act, the ITC notified the Department that a U.S. industry is materially injured by reason of imports of certain cut-to-length carbon-quality steel plate products from France, India, Indonesia, Italy, Japan, and the Republic of Korea, pursuant to section 735(b)(1)(A) of the Act. In addition, with respect to imports of subject merchandise from Japan, the ITC found that critical circumstances do not exist.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct the United States Customs Service (''U.S. Customs'') to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise for all relevant entries of certain cut-to-length carbon-quality steel plate products from each of the countries named in the above-referenced antidumping duty investigations. These antidumping duties will be assessed on all unliquidated entries of imports of the subject merchandise that are entered, or

withdrawn from warehouse, for consumption on or after July 29, 1999, the date of publication of the preliminary determinations in the **Federal Register**. Because the ITC did not find that critical circumstances exist with respect to imports of subject merchandise from Japan, the Department will direct U.S. Customs to refund all cash deposit amounts collected on imports of certain cut-to-length carbon-quality steel plate products from Japan entered, or withdrawn from warehouse, during the 90-day period prior to the publication of the preliminary antidumping duty determination for Japan (*i.e.*, from April 30, 1999 through July 28, 1999). Moreover, because the Department found a *de minimis* final weighted-average margin for ILVA S.p.A., a respondent in the Italian investigation which received a margin in excess of *de minimis* in the preliminary determination, the Department has directed U.S. Customs to terminate the suspension of liquidation for shipments of certain cut-to-length carbon-quality steel plate products produced/exported by ILVA S.p.A. entered, or withdrawn from warehouse, for consumption on or after July 29, 1999, and to release any bond or other security, and refund any cash deposit obtained in connection with the antidumping duty investigation. Finally, because the Department found a *de minimis* final weighted-average margin for Pohang Iron & Steel Co., Ltd. (''POSCO''), a respondent in the Korean investigation which also received a *de minimis* margin in the preliminary determination, there are no cash deposit requirements for POSCO.

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, cash deposits based on the rates listed below. Where applicable, the Department will reduce the cash deposit rates listed below by the export subsidy rate found in the companion final determination of the countervailing duty investigation.

| Exporter/manufacturer | Margin percentage |
|---|---|
| France: | |
| Usinor | 10.41 |
| All Others | 10.41 |
| India: | |
| SAIL | 72.49 |
| All Others | 72.49 |
| Indonesia: | |
| Gunawan/Jaya Pari | 50.80 |
| PT Krakatau Steel | 52.42 |
| All Others | 50.80 |
| Italy: | |
| Palini and Bertoli S.p.A | 7.85 |
| All Others | 7.85 |
| Japan: | |
| Kawasaki Steel Corporation | 10.78 |
| Kobe Steel, Ltd | 59.12 |
| Nippon Steel Corporation | 59.12 |
| NKK Corporation | 59.12 |
| Sumitomo Metal Industries, Ltd | 59.12 |
| All Others | 10.78 |
| Republic of Korea: | |
| Dongkuk Steel Mill Co., Ltd. | 2.98 |
| All Others | 2.98 |

This notice constitutes the antidumping duty orders with respect to certain cut-to-length carbon-quality steel plate products from France, India, Indonesia, Italy, Japan, and the Republic of Korea, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

These orders are published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: February 3, 2000.

**Holly A. Kuga,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–3119 Filed 2–9–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–427–817, C–533–818, C–560–806, C–475–827, C–580–837]**

### Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate From India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate From France, India, Indonesia, Italy, and the Republic of Korea

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

**EFFECTIVE DATE:** February 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Thirumalai at (202) 482–4087 (France), Robert Copyak at (202) 482–2209 (India), Eva Temkin at (202) 482–1167 (Indonesia), Kristen Johnson at (202) 482–4406 (Italy), and Stephanie Moore at (202) 482–3692 (Korea), Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

**The Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (''the Act''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations codified at 19 CFR Part 351 (1999).

**Scope of Orders**

The products covered by these antidumping duty orders are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in the scope of these orders are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in the scope of these orders are high strength, low alloy (''HSLA'') steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (''HTSUS'') definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is two percent or less, by weight; and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of

lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these orders unless otherwise specifically excluded. The following products are specifically excluded from these orders: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these orders is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise covered by these orders is dispositive.

**Amended Final Determinations**

*India*

On December 29, 1999, the final determination in the countervailing duty investigation of certain cut-to-length carbon-quality steel plate from India was published in the **Federal Register** (64 FR 73131). On January 10, 2000, petitioners in the investigation alleged that the Department made ministerial errors in calculating the estimated net countervailable subsidy rate. We agree with petitioners and have corrected our calculations. As a result, the estimated net countervailable subsidy rate attributable to the Steel Authority of India (''SAIL'') increased from 11.25 percent *ad valorem* to 12.82 percent *ad valorem*; this rate also serves as the ''all others'' rate. These corrections are explained in the memorandum to Holly A. Kuga, Acting Deputy Assistant Secretary, Group II, Import Administration (''Allegations of Ministerial Errors in the Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from India''). The memorandum is on file in public version form in the Central Records Unit (''CRU''), (room B–099 of the Main Commerce Building).

*Republic of Korea*

On December 29, 1999, the final determination in the countervailing duty investigation of certain cut-to-length carbon-quality steel plate from South Korea was published in the **Federal Register** (64 FR 73176). On January 10, 2000, petitioners and respondents in the investigation alleged that the Department made ministerial errors in calculating the estimated net countervailable subsidy rates applicable to certain respondents. We agree that certain ministerial errors were made and we have corrected our calculations. As a result, the estimated net countervailable subsidy rate attributable to Pohang Iron and Steel Company (''POSCO'') decreased from 0.95 percent *ad valorem* to 0.82 percent *ad valorem*, and the estimated net countervailable subsidy rate attributable to Dongkuk Steel Mill, Ltd, (''DSM'') increased from 2.21 percent *ad valorem* to 3.26 percent *ad valorem*; this rate also serves as the ''all others'' rate. These corrections are explained in the memorandum to Holly A. Kuga, Acting Deputy Assistant Secretary, Group II, Import Administration (''Ministerial Errors in the Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from Korea''). The memorandum is on file in public version form in the CRU.

*Countervailing Duty Orders*

In accordance with section 705(d) of the Act, on December 29, 1999, the Department published its final determinations in the countervailing duty investigations of certain cut-to-length carbon-quality steel plate from France (64 FR 73277), India (64 FR 73131), Indonesia (64 FR 73155), Italy (64 FR 73244), and Korea (64 FR 73176). On February 2, 2000, the International Trade Commission (''ITC'') notified the Department of its final determination, pursuant to section 705(b)(1)(A)(i) of the Act, that an industry in the United States suffered material injury as a result of subsidized imports of certain cut-to-length carbon-quality steel plate from France, India, Indonesia, Italy, and Korea.

Therefore, countervailing duties will be assessed on all unliquidated entries of certain cut-to-length carbon-quality steel plate from France, India, Indonesia, Italy, and Korea entered, or withdrawn from warehouse, for consumption on or after July 26, 1999, the date on which the Department published its preliminary affirmative countervailing duty determinations in the **Federal Register**, and before November 23, 1999, the date the Department instructed the U.S. Customs Service to discontinue the suspensions of liquidation in accordance with section 703(d) of the Act, and on all entries and withdrawals of subject merchandise made on or after the date of publication of these countervailing duty orders in the **Federal Register**. Section 703(d) states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Entries of certain cut-to-length carbon-quality steel plate made on or after November 23, 1999, and prior to the date of publication of these orders in the **Federal Register** are not liable for the assessment of countervailing duties due to the Department's discontinuation, effective November 23, 1999, of the suspensions of liquidation.

In accordance with section 706 of the Act, the Department will direct U.S. Customs officers to reinstitute the suspension of liquidation effective the date of publication of this notice in the **Federal Register** and to assess, upon further advice by the Department pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rate for the subject merchandise.

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the countervailable subsidy rates noted below. The All Others rates apply to all producers and exporters of certain cut-to-length carbon-quality steel plate from France, India, Indonesia, Italy, and Korea not specifically listed below. The cash deposit rates are as follows:

| | Net Subsidy Rate |
|---|---|
| **Producer/Exporter: France** | |
| Usinor Group | 5.56 percent ad valorem. |
| GTS Industries S.A. | 6.86 percent ad valorem. |
| All Others | 6.80 percent ad valorem. |
| **Producer/Exporter: India** | |
| Steel Authority of India (SAIL) | 12.82 percent ad valorem. |
| All Others | 12.82 percent ad valorem. |
| **Producer/Exporter: Indonesia** | |
| P.T. Krakatau Steel | 47.71 percent ad valorem. |
| All Others | 15.90 percent ad valorem. |
| **Producer/Exporter: Italy** | |
| ILVA S.p.A. and ILVA Lamiere e. Tubi S.p.A | 26.12 percent ad valorem. |
| All Others | 26.12 percent ad valorem. |
| **Producer/Exporter: Korea** | |
| Dongkuk Steel Mill, Ltd. | 3.26 percent ad valorem. |
| All Others | 3.26 percent ad valorem. |

The Indonesian steel producers P.T. Gunawan Steel and P.T. Jaya Pari are excluded from the Indonesian order because they received a *de minimis* net subsidy of 0.00 percent *ad valorem*. The Italian steel producer Palini and Bertoli S.p.A is excluded from the Italian order because it received a *de minimis* net subsidy of 0.12 percent *ad valorem*. The Korean steel producer POSCO is excluded from the Korean order because it received a *de minimis* net subsidy rate of 0.82 percent *ad valorem*.

This notice constitutes the countervailing duty orders with respect to certain cut-to-length carbon-quality steel plate from France, India, Indonesia, Italy, and Korea, pursuant to section 706(a) of the Act. Interested parties may contact the CRU, for copies of an updated list of countervailing duty orders currently in effect.

These countervailing duty orders and amended final determinations are published in accordance with section 706(a) and 705 of the Act and 19 CFR 351.211 and 351.224.

Dated: February 3, 2000.

**Holly A. Kuga,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–3120 Filed 2–9–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## International Trade Administration

## Export Trade Certificate of Review

**ACTION:** Notice of Issuance of an Export Trade Certificate of Review, Application No. 99–00007.

**SUMMARY:** The Department of Commerce has issued an Export Trade Certificate of Review to John L. Koenig. This notice summarizes the conduct for which certification has been granted.

**FOR FURTHER INFORMATION CONTACT:** Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1999).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

### Description of Certified Conduct

*Export Trade*

1. Products

All goods and services.

2. Technology Rights

All intellectual property rights associated with Products, including, but not limited to: Patents, trademarks, service marks, copyrights, trade secrets and know-how.

3. Export Trade Facilitation Services (as they Relate to the Export of Products and Technology Rights)

Export Trade Facilitation Services, including, but not limited to: consulting; international market research; marketing and trade promotion; trade show participation; insurance; legal assistance; transportation, trade documentation and freight forwarding; communication and processing of export orders; warehousing; foreign exchange; financing; taking title to goods; professional services in areas of government relations and assistance with state and federal programs and foreign trade and business protocol.

*Export Markets*

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

*Export Trade Activities and Methods of Operation*

John L. Koenig may engage in the following activities with respect to the Export Markets:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;

2. Engage in promotion and marketing activities as they relate to exporting Products to the Export Markets;

3. Enter into exclusive and non-exclusive export sales agreements with Suppliers regarding sales of Products in the Export Markets; such agreements may prohibit Suppliers from exporting independently of John L. Koenig;

4. Enter into exclusive and non-exclusive sales and/or territorial agreements with distributors in the Export Markets;

5. Establish the price of Products for sale in the Export Markets;

6. Allocate export orders among Suppliers;

7. Obtain information from individual Suppliers regarding their inventories and near-term production schedules for the purpose of determining the availability of Products for export and coordinating exports with distributors; and

8. Enter into exclusive or non-exclusive agreements with Suppliers, Export Intermediaries, or other persons for licensing Technology Rights in Export Markets.

*Terms and Conditions of Certificate*

1. In engaging in Export Trade Activities and Methods of Operation, John L. Koenig will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. John L. Koenig will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that John L. Koenig's Export Trade, Export Trade Activities, and Methods of Operation continue to comply with the standards of Section 303(a) of the Act.

*Definitions*

1. ''Export Intermediary'' means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. ''Supplier'' means a person who produces, provides, or sells a Product.

*Protection Provided by Certificate*

This Certificate protects John L. Koenig and any employee acting on his behalf from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, l4th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: February 4, 2000.

**Morton Schnabel,**

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 00–3006 Filed 2–9–00; 8:45 am]

**BILLING CODE 3510–DR–U**

---

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

**[I.D. 020200D]**

## Availability of the Record of Decision for the Proposed Modification of a Habitat Conservation Plan With Respect to a Permit Allowing Incidental Take of Threatened and Endangered Species for Plum Creek Timber Company Lands in the Interstate-90 Corridor of King and Kittitas Counties, Washington

**AGENCIES:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce; Fish and Wildlife Service (FWS), Interior.

**ACTION:** Notice of decision.

**SUMMARY:** This notice advises the public that NMFS and FWS (the Services) have decided to approve a request by Plum Creek Timber Company (Plum Creek) to modify the Plum Creek Cascades Habitat Conservation Plan (HCP) incidental take permit (PRT–808398), issued pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended, by incorporating the results of the Interstate-90 Land Exchange Act (I–90LXA). The public is also notified that the Record of Decision for this action is available upon request.

**FOR FURTHER INFORMATION CONTACT:** Individuals wishing copies of the Record of Decision, or other supporting documents regarding this action, should contact William Vogel; U.S. Fish and Wildlife Service; 510 Desmond Drive; Suite 102; Lacey, Washington 98503; telephone (360) 753–9440.

**SUPPLEMENTARY INFORMATION:**

### Background

Plum Creek has requested modification of the HCP to accommodate the new land-base resulting from enactment of the I–90LXA. The Services' decision is to adopt the Preferred Alternative, as described in the Final Supplemental Environmental Impact Statement (FSEIS). This decision is based on a thorough review of the alternatives and their environmental consequences. By adopting the Preferred Alternative with its assurances that the mitigation program and enforcement measures be implemented, all practicable means to avoid or minimize harm have been adopted.

The Proposed HCP Modification, as described in the proposed Modification Document and analyzed in the FSEIS, provides the most comprehensive package of conservation prescriptions and activities of all of the alternatives. None of the other alternatives provide as integrated and comprehensive a package of habitat conservation as the Proposed HCP Modification. The Proposed HCP Modification accommodates the new land-base and applies the prescriptive conservation measures to the newly acquired lands within the HCP Planning Area.

Dated: December 23, 1999.

**William B. Zimmerman,**

*Regional Director, Region 1, U.S. Fish and Wildlife Service, Portland, Oregon.*

Dated: February 4, 2000.

**Wanda L. Cain,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–3002 Filed 2–9–00; 8:45 am]

**BILLING CODE 3510–22–F**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 020100C]**

### Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT); Spring Species Working Group Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Advisory Committee to the U.S. Section to ICCAT announces its spring meeting with its Species Working Groups on March 6 and 7, 2000.

**DATES:** The open sessions of the Committee meeting will be held on March 6, 2000, from 9:15 a.m. to 2:30 p.m., and on March 7, 2000, from 9:00 a.m. to 10 a.m. and from 11:30 a.m. to 5 p.m. Closed sessions will be held on March 6, 2000, from 2:30 p.m. to approximately 6:00 p.m., and on March 7, 2000, from 10 a.m. to 11:30 a.m.

**ADDRESSES:** The meeting will be held at the Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

**FOR FURTHER INFORMATION CONTACT:** Kim Blankenbeker at (301) 713–2276.

**SUPPLEMENTARY INFORMATION:** The Advisory Committee to the U.S. Section to ICCAT will meet in open session to receive and to discuss information on (1) 1999 ICCAT meeting results and U.S. implementation of ICCAT decisions, (2) NMFS and ICCAT research and monitoring activities, (3) the Food and Agriculture Organization's work related to illegal, unregulated, and unreported fishing, (4) the second meeting of ICCAT's Working Group on Allocation Criteria, (5) Advisory Committee operational issues, (6) consultation regarding the identification of countries that are diminishing the effectiveness of ICCAT, (7) the results of the meetings of the Committee's Species Working Groups, and (8) other matters relating to the international management of ICCAT species. The public will have access to the open sessions of the meeting, but there will be no opportunity for public comment.

Sessions of the Advisory Committee's Species Working Groups will not be open to the public, but, as noted earlier, the results of the working group discussions will be reported to the full Advisory Committee during the Committee's afternoon open session on March 7.

#### Special Accommodations

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kim Blankenbeker at (301) 713–2276 at least 5 days prior to the meeting date.

Dated: February 3, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–3003 Filed 2–9–00; 8:45 am]

**BILLING CODE 3510–22–F**

## COMMODITY FUTURES TRADING COMMISSION

### Minneapolis Grain Exchange: Proposed Amendments to the Quality Specifications of the Durum Wheat Futures Contract

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of proposed amendments to contract terms and conditions.

**SUMMARY:** The Minneapolis Grain Exchange (MGE or Exchange) has proposed amendments to the Exchange's durum wheat futures contract. The proposed amendments would revise the futures contract's quality specifications. The proposed amendments were submitted under the Commission's 45-day Fast Track procedures which provides that, absent any contrary action by the Commission, the proposed amendments may be deemed approved on February 24, 2000—45 days after the Commission's receipt of the proposals. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposed amendments is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

**DATES:** Comments must be received on or before February 25, 2000.

**ADDRESSES:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed amendments to the MGE durum wheat futures contract.

**FOR FURTHER INFORMATION CONTACT:** Please contact John Bird of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581, telephone (202) 418–5274. Facsimile number: (202) 418–5527. Electronic mail: jbird@cftc.gov

**SUPPLEMENTARY INFORMATION:** The futures contract currently calls for the delivery of durum wheat meeting specified quality requirements. These existing requirements, with one exception, meet or exceed the standards for U.S. grade No. 2 hard amber durum wheat. In addition, the contract sets forth standards for protein content, falling number, moisture content, dockage, and hard vitreous amber kernels which are not specified in the official U.S. standards for grain. The proposed amendments would make the contract's standards conform to the requirements for U.S. No. 2 hard amber durum wheat and would reduce the contract's standards for protein content, falling number, and hard vitreous kernels. The proposed and current quality specifications are shown in the table below.

| Grade factor or quality standard | Current specification | Proposed specification |
|---|---|---|
| Minimum Test Weight | 60 lbs. per bushel | 58 lbs. per bushel |
| Maximum Heat Damaged Kernels | 0.2% | 0.2% |
| Maximum Total Damaged Kernels | 2.0% | 4.0% |
| Maximum Foreign Material | 1.0% | 0.7% |
| Maximum Shrunken and Broken Kernels | 3.0% | 5.0% |
| Maximum Total Defects | 5.0% | 5.0% |
| Maximum Total Other Classes | 2.0% | 2.0% |

| Grade factor or quality standard | Current specification | Proposed specification |
|---|---|---|
| Minimum Protein Content | 13.0% (12% moisture basis) | 12.5% |
| Minimum Falling Number | 325 | 300 |
| Maximum Moisture Content | 13.5% | 13.5% |
| Maximum Dockage | 1.5% | 1.5% |
| Minimum Hard Vireous Amber Kernels * * * | 85% | 80.0% |

The MGE intends to apply the proposed amendments to existing contract months, commencing with the July 2000 contract month and to all newly listed contract months.

In support of the proposed amendments, the Exchange stated that:

[t]the purpose for amending the rule is to modify the deliverable Durum Wheat contract grade to more closely correspond to the standards for U.S. number 2 Hard Amber Durum Wheat. The Exchange believes the change in par commodity specifications is necessary to enhance participation and trade activity in the contract as well as to expand the available supply for delivery.

The Commission is requesting comments on the proposed amendments.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the Internet at secretary@cftc.gov.

Other materials submitted by the Exchange in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the Exchange, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on February 7, 2000.

**Richard Shilts,**

*Acting Director.*

Bldg. 8449, Fort Polk
Property #:21199640539
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 2093 sq. ft., most recent use—office

[FR Doc. 00–3163 Filed 2–09–00; 8:45 am]

**BILLING CODE 6351–01–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board; Notice of Advisory Committee Meetings

**SUMMARY:** The Defense Science Board (DSB) Task Force on Impact of DoD Acquisition Policies and Practices on the Health and Competitiveness of U.S. Defense Companies will meet in closed session on February 22, 2000; March 7, 2000; and tentatively on March 21–22, 2000; April 5–7, 2000; and April 20–21, 2000. All meetings will be held at TRW Inc., 1001 19th Street North, Suite 800, Arlington, VA 22209.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition. Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Task Force will review the Department of Defense's acquisition policies and regulations governing the primary vendors of military equipment; determine whether these acquisition policies, processes and regulations have supported or weakened rational and economical business practices within the primary vendors of military equipment; and assess the impact of those policies, practices and regulations on the health and competitiveness of U.S. defense companies. The Task Force plans to hold sensitive programmatic discussions with the primary vendors during the course of this effort.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these Defense Science Board meetings, concern matters listed in 5 U.S.C. § 552b(c) (1) and (4) (1994), and that accordingly these meetings will be closed to the public.

Dated: February 4, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–3070 Filed 2–9–00; 8:45 am]

**BILLING CODE 5001–10–M**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Withdrawal of Surplus Land at Military Installations Designated for Realignment: Naval Air Station, Key West, Florida

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** This Notice provides information on withdrawal of surplus property at the Naval Air Station, Key West, Florida.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact Richard A. Engel, Head, BRAC Real Estate Section, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 1000, Washington, DC 20374–5065, telephone (202) 685–9203, or E. R. Nelson, Jr., Director, Real Estate Division, Southern Division, Naval Facilities Engineering Command, P.O. Box 190010, 2155 Eagle Drive, North Charleston, SC 29419–9010, telephone (803) 820–7494.

**SUPPLEMENTARY INFORMATION:** In 1995, the Naval Air Station, Key West, Florida was designated for realignment pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, in April of 1996, approximately 168.14 acres of land and related facilities at this installation were declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize

conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended. Approximately 35 acres of land improved with 10 buildings have been requested for transfer by other federal agencies and was not included within the 168.14 acres. On July 3, 1997, a second determination was made to withdraw approximately 16 acres of improved and unimproved fee simple land at the Naval Air Station, Key West, FL known as the Trumbo Point Annex Tank Farm. A third determination was made on December 20, 1999, to withdraw land and facilities previously reported as surplus that are now required by the federal government. This withdrawal is required to satisfy new military requirements and security concerns. For clarification purposes, the following is a description of land and facilities at the Naval Air Station, Key West that are withdrawn from surplus by the federal government: approximately 3.54 acres of improved and unimproved fee simple land at the Naval Air Station, Key West, FL known as Seminole Battery. Approximately 0.584 of an acre of the Seminole Battery will remain as surplus property. The following is a summary of the improvements located on the above described land. Improvements consist of an above ground 10,000 square foot earthen berm.

Pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the withdrawal of previously reported surplus property at the Naval Air Station, Key West, FL is published in the **Federal Register**.

Dated: February 1, 2000.

**J.L. Roth,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 00–3103 Filed 2–9–00; 8:45 am]

**BILLING CODE 3810–FF–U**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Meeting of the Board of Advisors to the Superintendent, Naval Postgraduate School, Monterey, CA

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice of meeting.

**SUMMARY:** The Board of Advisors to the Superintendent, Naval Postgraduate School, Monterey, California, will meet to elicit the advice of the board on the Navy's Postgraduate Education Program. All sessions will be open to the public.

**DATES:** The meeting will be held on Wednesday, February 16, and Thursday, February 17, 2000, from 8:30 a.m. to 5 p.m.

**ADDRESS:** The meeting will be held at the Sheraton Crystal City Hotel, Arlington, VA.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jaye Panza, Naval Postgraduate School, Monterey, CA 93943–5000, telephone number (831) 656–2514.

**SUPPLEMENTARY INFORMATION:** The board examines the effectiveness with which the Navy's Postgraduate Education School is accomplishing its mission. To this end, the board will inquire into the curricula; instruction; physical equipment; administration; state of morale of the student body, faculty, and staff; fiscal affairs; and any other matters relating to the operation of the Naval Postgraduate School as the board considers pertinent.

Dated: February 1, 2000.

**J.L. Roth,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 00–3104 Filed 2–9–00; 8:45 am]

**BILLING CODE 3810–FF–U**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before April 10, 2000.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 4, 2000.

**William Burrow,**

*Leader Information Management Group Office of the Chief Information* Officer.

**Office of Postsecondary Education**

*Type of Review:* New.

*Title:* First and Second Year Annual Progress Reports for the European Community/US Joint Consortia Program.

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:* Responses: 20, Burden hours: 400.

*Abstract:* First and Second-Year Annual Progress Report Forms: The forms will enable staff to collect information that will promote better program management and allow for better communications among US and European partner institutions. These forms provide the formats for a web-based collection of information from the annual reports.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional

Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–3055 Filed 2–9–00; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Federal Interagency Coordinating Council Meeting (FICC)

**AGENCY:** Federal Interagency Coordinating Council, Education.

**ACTION:** Notice of a public meeting.

**SUMMARY:** This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council (FICC), and invites people to participate. Notice of this meeting is required under section 644(c) of the Individuals with Disabilities Education Act (IDEA) and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities. The FICC will attend to ongoing work including reports from committees and task forces. A Policy Forum on Assessment of Children with Special Needs sponsored by the Maternal and Child Health Bureau (MCH), will be held on Thursday morning from 9 a.m.–12 noon in the Rm 1E110 of US Department of Education, 400 Maryland Ave., SW; Washington, DC 20202. The meeting is open to the Public.

**DATE AND TIME:** FICC Meeting: Thursday, March 2, 2000 from 2 to 5 p.m.

**ADDRESSES:** U.S. Dept. of Education; Barnard Auditorium; 400 Maryland Avenue, SW; Washington, DC 20202 (near the Federal Center Southwest and L'Enfant metro stops).

**FOR FURTHER INFORMATION CONTACT:** Bobbi Stettner-Eaton or Obral Vance—U.S. Department of Education, 330 C Street, SW—Room 3080; Switzer Building; Washington, DC 20202–2644. Telephone: (202) 205–5507. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–9754.

**SUPPLEMENTARY INFORMATION:** The Federal Interagency Coordinating Council (FICC) is established under section 644(c) of the Individuals with Disabilities Education Act (20 U.S.C. 1484a). The Council is established to: (1) Minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

The meeting of the FICC is open to the public and will be physically accessible. Anyone requiring accommodations such as an interpreter, materials in Braille, large print, or cassette please call Obral Vance at (202) 205–5507 (voice) or (202) 205–9754 (TDD) ten days in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C Street, SW, Room 3080, Switzer Building, Washington, DC 20202–2644, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal Holidays.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 00–3001 Filed 2–9–00; 8:45 am]

**BILLING CODE 4000–01–M**

## DEPARTMENT OF EDUCATION

### National Board of the Fund for the Improvement of Postsecondary Education, Department of Education; Notice of Meeting

**SUMMARY:** This notice provides the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

**DATE AND TIME:** February 24, 2000, 9:30 a.m. to 4:00 p.m.

**ADDRESSES:** Marriott at Metro Center, 775 12th Street N.W., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Sandra Newkirk, U.S. department of Education, 1990 K Street N.W., Washington, D.C. 20006–8544. Telephone: (202) 502–7500. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:** The National Board of the Fund for the Improvement of Postsecondary Education is established under title VII, Part B, Section 742 of the Higher Education Amendments of 1998 (20 U.S.C. 1138a). The National Board of the Fund is authorized to recommend to the Director of the Fund and the Assistant Secretary for Postsecondary Education priorities for funding and procedures for grant awards.

The meeting of the National Board is open to the public. The National Board will meet on Friday, February 24 from 9:30 a.m. to 4:00 p.m. to provide an overview of the Fund's program status and special initiatives.

The meeting site is accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device or materials in an alternate format) should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although the Department will attempt to meet a request received after that date, the requested auxiliary aid or

service may not be available because of insufficient time to arrange it.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, 8th Floor, 1990 K Street N.W., Washington, D.C. 20006–8544 from the hours of 8:00 a.m. to 4:30 p.m.

**A. Lee Fritschler,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 00–3129 Filed 2–9–00; 8:45 am]

**BILLING CODE 4000–01–M**

## DEPARTMENT OF ENERGY

### Federal Regulatory Commission

**[Docket No. RP00–176–000]**

### ANR Pipeline Company; Notice of Reconciliation Report

February 4, 2000.

Take notice that on January 31, 2000, ANR Pipeline Company (ANR) tendered for filing this reconciliation report as required by Section 28.1 (a)(3) of the General Terms and Conditions (GT&C) of its Second Revised Volume No. 1 FERC Gas Tariff.

ANR states that the reconciliation report is regarding the recovery of transition costs ANR incurred pursuant to Order NO. 636. ANR reports that it has experienced a slight underrecovery of transition costs ($22,520), which it does not propose to collect from its customers.

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 Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 11, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–3048 Filed 2–9–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–177–000]**

### Maritimes & Northeast Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

February 4, 2000.

Take notice that on February 1, 2000, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, following tariff sheet, to become effective on February 1, 2000:

First Revised Sheet No. 9

Maritimes states that it is filing the above tariff sheet to implement four negotiated rate agreements pursuant to Rate Schedule MN365 and Section 24 of the General Terms and Conditions of Maritimes' FERC Gas Tariff.

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, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–3049 Filed 2–9–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–175–000]**

### Midwestern Gas Transmission Company; Notice of Cashout Report

February 4, 2000.

Take notice that on January 31, 2000, Midwestern Gas Transmission Company (Midwestern) tendered for filing its sixth annual cashout report for the September 1998 through August 1999 period.

Midwestern states that the cashout report reflects a cashout gain during this period of $5,742. Midwestern's cumulative losses from its cashout mechanism are thereby reduced to $191,532. Midwestern states that it will roll forward this loss into its next annual cashout report.

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 Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 11, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–3047 Filed 2–9–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 137–002]**

### Pacific Gas & Electric Company; Notice of Meeting

February 4, 2000.

Take notice the Ecological Resources subgroup of the Mokelumne Relicensing Collaborative will meet on Thursday, February 10, 2000, from 9 a.m. to 6 p.m.; February 23–25, March 1–2, and March 22–23, 2000, from 9 a.m. to 4 p.m.

Take notice the Recreation subgroup will meet on Monday, February 14, and March 21–23, 2000, from 9 a.m. to 4 p.m. The meetings of the Ecological Resources and Recreation subgroups will be held at the PG&E offices, 2740 Gateway Oaks Drive, in Sacramento, California. Expected participants need to give their names to David Moller (PG&E) at (415) 973–4696.

For further information, please contact Diana Shannon at (202) 208–7774.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–3044 Filed 2–9–00; 8:45 am]

**BILLING CODE 60717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP00–59–000]**

## Petal Gas Storage Company; Notice of Meeting

February 4, 2000.

On February 10, 2000, the Commission staff will meet with Petal Gas Storage Company (Petal). This meeting is in response to Petal's February 2, 2000 letter requesting a meeting with Commission staff to discuss a proposed amendment to Petal's pending application in the above referenced proceeding. In its letter Petal states that the proposed amendment would reduce the amount of facilities to be constructed. The meeting will commence at 2:00 PM, in room 72–76 at the Commission's headquarters, 888 First Street NE, Washington, DC.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–3043 Filed 2–9–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP00–73–000]**

## Williston Basin Interstate Pipeline Company; Notice of Application

February 4, 2000.

Take notice that on January 27, 2000, Williston Basin Interstate Pipeline Company (Williston Basin), P.O. Box 5601, Bismarck, North Dakota 58506–5601, filed in Docket No. CP00–73–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA), and Part 157 of the Commission's Regulations thereunder (18 CFR 157.7 and 157.18), for an order permitting and approving the abandonment of a delivery tap, located in Carbon County, Montana, all as more fully set forth in the request which is on file with the Commission and open to public inspection. The application may be viewed on the web at *www.ferc.fed.us* Call (202) 208–2222 for assistance.

Williston Basin states that on December 29, 1999, a fire destroyed the Carbon County Machine Shop (Shop), near Bridger, Montana. Williston Basin owned a delivery tap and riser located approximately eight inches from the outside wall of the shop. this delivery tap had not been used in several years and the shop was served by the local distribution company. Carbon County authorities requested Williston Basin to remove its tap and riser immediately in order to ensure the safety of the Carbon County demolition crew when the building was being demolished and removed. On January 4, 2000, Williston Basin removed the tap, riser and approximately 20 feet of 1-inch diameter pipeline.

Any questions regarding this application should be directed to Keith A. Tiggelaar, Manager, Regulatory Affairs for Williston Basin, P.O. Box 5601, Bismarck, North Dakota 58506–5601, at (701) 530–1560.

Any person desiring to be heard or to make any protest with reference to said application should, on or before February 25, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a protest or a motion to intervene 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. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedures, a hearing will be held without further notice before the Commission on this application if no protest or motion to intervene is filed with the time required herein. At that time, the Commission, on its own review of the matter, will determine whether granting the abandonment is required by the public convenience and necessity. If a protest or motion for leave to intervene is timely field, 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 Williston Basin to appear or to be represented at the hearing.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–3046 Filed 2–9–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EC00–52–000, et al.]**

## Cook Inlet Energy Supply Limited Partnership, et al.; Electric Rate and Corporate Regulation Filings

February 3, 2000.

Take notice that the following filings have been made with the Commission:

### 1. Cook Inlet Energy Supply Limited Partnership

[Docket No. EC00–52–000]

Take notice that on January 28, 2000, Cook Inlet Energy Supply Limited Partnership (Cook Inlet) tendered for filing an application pursuant to Section 203 of the Federal Power Act for authorization of a transfer of interests in Cook Inlet and the conversion of Cook Inlet into a limited liability company.

*Comment date:* February 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 2. Panda Leesburg Power Partners, L.P.

[Docket No. EG00–87–000]

Take notice that on January 28, 2000, Panda Leesburg Power Partners, L.P. (Panda), with its principal offices at 4100 Spring Valley Road, Suite 1001, Dallas, Texas 75244, filed with the Federal Energy Regulatory Commission, an application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's regulations.

Panda is a Delaware limited partnership, which will construct, own and operate a nominal 1,000 MW natural gas-fired generating facility within the region governed by the Florida Reliability Coordinating Council (FRCC) and sell electricity at wholesale.

*Comment date:* February 24, 2000, 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.

**3. Panda Midway Power Partners, L.P.**

[Docket No. EG00–88–000]

Take notice that on January 28, 2000, Panda Midway Power Partners, L.P. (Panda), with its principal offices at 4100 Spring Valley Road, Suite 1001, Dallas, Texas 75244, filed with the Federal Energy Regulatory Commission, an application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's regulations.

Panda is a Delaware limited partnership, which will construct, own and operate a nominal 1,000 MW natural gas-fired generating facility within the region governed by the Florida Reliability Coordinating Council and sell electricity at wholesale.

*Comment date:* February 24, 2000, 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.

**4. CNG Power Services Corporation**

[Docket No. ER94–1554–024]

Take notice that on January 24, 2000, CNG Power Services Corporation filed their quarterly report for the quarter ending December 31, 1999, for information only.

**5. Phibro Power LLC**

[Docket No. ER95–430–023]

Take notice that on January 20, 2000, Phibro Power LLC filed their quarterly report for the quarter ending December 31, 1999, for information only.

**6. Potomac Electric Power Company**

[Docket No. ER00–1256–000]

Take notice that on January 27, 2000, Potomac Electric Power Company (Pepco) tendered for filing a service agreement pursuant to Pepco FERC Electric Tariff, Original Volume No. 4, entered into between Pepco and Cinergy Capital & Trading, Inc.

An effective date of May 27, 1999 for this service agreement, with waiver of notice, is requested.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**7. Potomac Electric Power Company**

[Docket No. ER00–1257–000]

Take notice that on January 27, 2000, Potomac Electric Power Company (Pepco) tendered for filing a service agreement pursuant to Pepco FERC Electric Tariff, Original Volume No. 4, entered into between Pepco and Allegheny Power.

An effective date of May 27, 1999 is requested for this service agreement.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**8. First Electric Cooperative Corporation**

[Docket No. ER00–1258–000]

Take notice that on January 27, 2000, First Electric Cooperative Corporation (First Electric) tendered for filing its Initial Rate Filing for jurisdictional wheeling services that it provides within the State of Arkansas.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Louisiana Generating LLC**

[Docket Nos. ER00–1259–000 and EL00–38–000]

Take notice that on January 27, 2000, Louisiana Generating LLC (Seller), a limited liability company organized under the laws of the State of Delaware, petitioned the Commission for an order: (1) Accepting Seller's proposed Rate Schedule FERC No. 1 (Market-Based Rate Schedule); (2) granting waiver of certain requirements under Subparts B and C of Part 35 of the regulations, and (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates. Seller also requests waiver of Order Nos. 888 and 889 as to certain interconnection facilities Seller intends to acquire. Seller, an indirect subsidiary of Northern States Power Company, is acquiring the non-nuclear generating assets and other miscellaneous assets of Cajun Electric Power Cooperative, Inc.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. Kentucky Utilities Company**

[Docket No. ER00–1260–000]

Take notice that on January 27, 2000, Kentucky Utilities Company (KU) tendered for filing addenda to existing contracts between KU and its wholesale requirements customers.

KU requests an effective date of January 1, 2000 for these contracts.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. New Century Services, Inc.**

[Docket No. ER00–1261–000]

Take notice that on January 27, 2000, New Century Services, Inc. on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies) tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Long Term Firm Point-to-Point Transmission Service between the Companies and Southwestern Public Service Company—Wholesale Merchant Function.

The Companies request that the Agreement be made effective on January 1, 2000.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**12. Alliant Energy Corporate Services, Inc., Consolidated Water Power Company, GEN~SYS Energy, Florida Power & Light Company, Public Service Electric and Gas Company**

[Docket Nos. ER00–1265–000, ER00–1266–000, ER00–1267–000, ER00–1268–000, ER00–1269–000]

Take notice that on January 24, 2000, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending December 31, 1999.

*Comment date:* February 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**13. Southwestern Public Service Company, Riverside Canal Power Company, Monmouth Energy, Inc., Mountainview Power Company, Western Resources, Inc., PP&L, Inc., PDI—New England & PDI—Canada, Southern Companies, Montana Power Company, South Eastern Electric Development Company, Montaup Electric Company**

[Docket Nos. ER00–1270–000, ER00–1272–000, ER00–1273–000, ER00–1274–000, ER00–1275–000, ER00–1276–000, ER00–1277–000, ER00–1278–000, ER00–1279–000, ER00–1280–000, ER00–1281–000]

Take notice that on January 27, 2000, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending December 31, 1999.

*Comment date:* February 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**14. Wolverine Power Supply Cooperative, Inc., Deseret Generation & Transmission Co-operative, GS Electric Generating Cooperative, Inc., Tucson Electric Power Company, Tucson Electric Power Company, Archer-Daniels-Midland Company, El Paso Electric Company, Indeck-Olean Limited Partnership, Golden Spread Electric Cooperative, Inc., Virginia Electric and Power Company, Delmarva Power & Light Company, Mobile Energy Services Company, L.L.C.**

[Docket Nos. ER00–1282–000, ER00–1283–000, ER00–1284–000, ER00–1285–000, ER00–1286–000, ER00–1287–000, ER00–1288–000, ER00–1289–000, ER00–1290–000, ER00–1291–000, ER00–1292–000, ER00–1293–000]

Take notice that on January 27, 2000. the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending December 31, 1999.

*Comment date:* February 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**15. Bridgeport Energy, L.L.C., Casco Bay Energy Company, L.L.C., Central Illinois Light Company, Allegheny Power**

[Docket Nos. ER00–1294–000, ER00–1295–000, ER00–1296–000, ER00–1302–000]

Take notice that on January 27, 2000, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending December 31, 1999.

*Comment date:* February 23, 2000, in accordance with Standard Paragraph F 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, 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 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 (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–3074 Filed 2–9–00; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP00–47–000]**

## Trans-Union Interstate Pipeline, L.P.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Trans-Union Interstate Pipeline Project, Request for Comments on Environmental Issues, and Notice of Site Visit

February 4, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Trans-Union Interstate Pipeline Project involving construction and operation of facilities by Trans-Union Interstate Pipeline, L.P. (Trans-Union) in Claiborne and Union Parishes, Louisiana and Union County, Arkansas.[1] These facilities would consist of about 41.7 miles of 30-inch-diameter pipeline, two mainline values, and launcher/receiver facilities at the beginning and end of the pipeline.

If you are a landowner on Trans-Union's proposed route and receive this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' was attached to the project notice Trans-Union provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain. It is available for viewing on the FERC Internet website (www.ferc.fed.us).

This Notice of Intent (NOI) is being sent to landowners along Trans-Union's proposed route; Federal, state, and local government agencies; elected officials; regional environmental, and public interest groups; Indian tribes that might attach religious and cultural significance to historic properties in the area of potential effects; local libraries and newspapers; and Commission's service list and parties to the proceeding. Government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern. Additionally, with this NOI we are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated Trans-Union's proposal relative to their agencies' responsibilities. Agencies who would like to request cooperating status should follow the instructions for filing comments described below.

**Summary of the Proposed Project**

Trans-Union proposes to construct 41.7 miles of 30-inch-diameter pipeline to transport natural gas from the Sharon Hub in Claiborne Parish, Louisiana to the proposed nonjurisdictional electric power generation facility being developed by Union Power Partners (UPP) in Union County Arkansas. The pipeline would supply 430,000 decatherms per day of natural gas to UPP.

The general location of Trans-Union's proposed facilities is shown on the map attached as appendix 1.[2]

**Land Requirements for Construction**

Construction Of the Trans-Union's proposed facilities would affect about 538 acres of land. Following construction, about 186 acres would be retained as permanent right-of-way. The remaining 352 acres of temporary work space would be restored and allowed to revert to its former use.

Trans-Union proposes to use a pipeline construction right-of-way of 95 feet, including 50 feet which would become permanent right-or-way and 45

[1] Trans-Union's application was filed with the Commission on December 10, 1999, under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

feet of temporary extra work space. There also would be about 22.4 acres used as additional temporary extra work spaces at stream, utility, and road crossings.

**The EA Process**

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. We call this ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this NOI, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, elected officials, affected landowners, regional public interest groups, Indian tribes, local newspapers and libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

**Currently Identified Environmental Issues.**

The EA will discuss impacts that could occur as a result of construction and operation of the proposed project. We have already indentified a number of issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Trans-Union. This preliminary list of issues may be changed based on your comments and our analysis.

- Nonjurisdictional Facilities
  - —Gulf States Pipeline Company's proposal to construct 31.5 miles of 20-inch diameter pipeline in Claiborne County, Louisiana under Section 311(a)(2) of the Natural Gas Policy Act.
- Soils
  - —Crossing about 15.2 miles of soils having a poor revegetation potential.
  - —Crossing about 12.3 miles of erosion prone soils.
- Water Resources and Wetlands
  - —Crossing 32 perennial streams.
  - —Crossing 52 areas classified as wetlands.
- Biological Resources
  - —Impacts on about 360 acres of forest or woodlands.
  - —Impacts on the red-cockaded woodpecker, a Federally listed endangered species.
- Land Use
  - —Permanent loss of timber land as permanent maintained right-of-way.
- Alternatives
  - —Evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

**Public Participation and Site Visit**

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations or routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;
- Reference Docket No. CP00–47–000; and
- Mail your comments so that they will be received in Washington, DC on or before March 6, 2000.

[If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you may be removed from the environmental mailing list.]

On March 9, 2000, the Office of Energy Projects staff will conduct a precertification site visit of the project route and possible reroutes. All parties may attend. Those planning to attend must provide their own transportation.

For further information on attending the site visit, please contact Paul McKee at (202) 208–1088.

**Becoming an Intervenor**

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket # from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–3045 Filed 2–9–00; 8:45 am]

BILLING CODE 6717–01–M

[3] ''Us,'' ''we,'' and ''our'' refer to the environment staff of the FERC's Office of Pipeline Regulation.

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

February 3, 2000.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before March 13, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0647.

*Title:* Annual Survey of Cable Industry Prices.

*Form No.:* Not applicable.

*Type of Review:* Revision to a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 760.

*Estimated Time Per Response:* 8 hours.

*Frequency of Response:* Annual reporting requirement.

*Total Annual Burden:* 6,080 hours.

*Total Annual Cost:* $500.

*Needs and Uses:* Section 623(k) of the Cable Television Consumer Protection and Competition Act of 1992 (?1992 Cable Act?) requires the Commission to publish an annual statistical report on average rates for basic cable service, cable programming service and equipment. The report must compare the prices charged by cable systems subject to effective competition and those not subject to effective competition. The price survey is intended to collect data needed to prepare this report.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–3008 Filed 2–9–00; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

January 31, 2000.

**SUMMARY:** The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before March 13, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0732.

*Title:* Consumer Education Concerning Wireless 911.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; Individuals or households.

*Number of Respondents:* 2,500.

*Estimate Time Per Response:* 0.5 to 1.0 hours.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 1,563 hours.

*Total Annual Costs:* $375,000.

*Needs and Uses:* This information will be used by consumers to determine rationally and accurately the scope of their options in accessing 911 services from mobile handsets.

*OMB Control Number:* 3060–0454.

*Title:* Regulation of International Accounting Rates.

*Form Number:* N/A.

*Type of Review:* Extension of currently approved collection.

*Respondents:* Businesses or other for-profit entities.

*Number of Respondents:* 20.

*Estimated Time Per Response:* 1 hour (38 responses/yr.).

*Frequency of Response:* On occasion reporting requirement; Third party disclosure.

*Total Annual Burden:* 760 hours.

*Total Annual Cost:* $5,700.

*Needs and Uses:* The information will be used by the FCC staff to monitor the international accounting rates of such carriers to ensure consistency with Commission policies and the public interest. The information also enables the Commission to preclude one-way bypass and to safeguard its international settlements policy. Carriers also use the information to monitor accounting and settlement rates for international telecommunications.

*OMB Control Number:* 3060–0901.

*Title:* Reports of Common Carriers and Affiliates.

*Form Number:* N/A.

*Type of Review:* Revision of currently approved collection.

*Respondents:* Businesses or other for-profit entities; Not-for-profit Institutions.

*Number of Respondents:* 20.

*Estimated Time Per Response:* 5 hours (20–212 responses/yr.).

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 5,900 hours.

*Total Annual Cost:* None.

*Needs and Uses:* This information will be used by the FCC staff to monitor the operating agreements of U.S. carriers and their foreign correspondents that possess market power, and, in particular, to monitor the international accounting rates of such carriers to ensure consistency with Commission policies and the public interest. The information also enables the Commission to preclude one-way by-pass and safeguard its international settlements policy.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–3007 Filed 2–9–00; 8:45 am]

BILLING CODE 6712–01–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 February 24, 2000.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Hinton W. and Virginia S. Swearingen, Sedalia, Missouri; to acquire additional voting shares of 1889 Bancshares, Inc., Nevada, Missouri, and thereby indirectly acquire additional voting shares of First National Bank of Nevada, Nevada, Missouri.

Dated: Board of Governors of the Federal Reserve System, February 4, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–3027 Filed 2–9–00; 8:45 am]

BILLING CODE 6210–01–P

## 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. Additional information on all bank holding companies may be obtained from the National Information website at www.ffiec.gov/nic/.

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 March 6, 2000.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervision) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Park National Corporation, Newark, Ohio; to acquire 100 percent of the voting shares of SNB Corp., Greenville, Ohio, and thereby indirectly acquire Second National Bank, Greenville, Ohio.

2. Park National Corporation, Newark, Ohio; to acquire 100 percent of the voting shares of UB Bancshares, Inc., Greenville, Ohio, and thereby indirectly acquire United Bank, National Association, Greenville, Ohio.

Board of Governors of the Federal Reserve System, February 4, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–3028 Filed 2–9–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 24, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Summit Bank Corporation, Atlanta, Georgia; to engage *de novo* through its subsidiary, CashMart, Inc., Atlanta, Georgia (in organization) in providing check cashing services, selling money orders and other consumer-type payment instruments, including prepaid phone cards, pursuant to section 225.28(b)(13) of Regulation Y. See also *Midland Bank,* PLC, 76 Federal Reserve Bulletin 860 (1990) and *Popular, Inc.,* 84 Federal Reserve Bulletin 481 (1998).

Board of Governors of the Federal Reserve System, February 4, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–3029 Filed 2–9–00; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL TRADE COMMISSION

### Advisory Committee on Online Access and Security

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of meeting on February 25, 2000.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. § 10(a)(2), and 16 CFR 16.9(a), notice is hereby given that the Federal Trade Commission Advisory Committee on Online Access and Security will hold a meeting on Friday, February 25, 2000, from 9 a.m. to 5 p.m. in Room 432, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The meeting is open to the public and will include a period for public comment. The purpose of the Advisory Committee is to provide advice and recommendations to the Commission regarding implementation of certain fair information practices by domestic commercial Web sites—specifically, providing online consumers reasonable access to personal information collected from and about them, and maintaining adequate security for that information. Interested parties may submit comments concerning any matter to be considered at the meeting by following the procedures described below.

**DATES:** The Advisory Committee will meet on Friday, February 25, 2000, from 9 a.m. to 5 p.m.

**ADDRESSES:** The meeting will take place in Room 432, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Laura Mazzarella, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Mail Stop 4429, Washington, DC 20580, telephone (202) 326–3424, email lmazzarella@ftc.gov; or Hannah Stires, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Mail Stop 4429, Washington, DC 20580, telephone (202) 326–3178, email hstires@ftc.gov.

**SUPPLEMENTARY INFORMATION:**

**Authority:** 15 U.S.C. 41 *et seq.*; 5 U.S.C. App. §§ 1–15; 16 CFR part 16.

The second meeting of the Federal Trade Commission Advisory Committee on Online Access and Security will be held on Friday, February 25, 2000, in Room 432, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC from 9 a.m. to 5 p.m.

The Advisory Committee will consider the costs and benefits, to both consumers and businesses, of implementing the fair information practices of access and security with respect to personal information collected for and about consumers online. The Advisory Committee will further consider the parameters of reasonable access to personal information and adequate security and will present options for implementation of these information practices in a report to the Commission.

The tentative agenda for the second meeting is as follows:

1. Administrative matters.

2. Discussion of preliminary draft outlines submitted by subgroups on issues relating to ''reasonable access''.

3. Discussion of preliminary draft outlines submitted by subgroups on issues relating to ''adequate security''.

4. Public Comment.

5. Discussion of tasks and assignments.

The meeting is open to the public.

**Submission of Documents**

Interested parties who wish to submit comments on the meeting agenda or questions for consideration by the Advisory Committee should send an original and two copies in advance of the meeting to the Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. All comments and questions should be captioned ''Advisory Committee on Online Access and Security—Comment, P004807.'' To enable prompt review and public access, paper submissions should be accompanied by a version on diskette in ASCII, WordPerfect (please specify version) or Microsoft Word (please specify version) format. Diskettes should be labeled with the name of the submitter, the Advisory Committee caption, and the name and version of the word processing program used to create the document.

Alternatively, comments or questions may be submitted to the following email address: advisorycommittee@ftc.gov; if submitted by email, only one copy of the comment or question is required. The email should contain the name of the submitter, the Advisory Committee caption, and, if a document is attached, the name and version of the word processing program used to create the document.

To ensure that comments are processed properly, individuals submitting comments should be sure to use the above addresses. All comments will be posted on the Advisory Committee's Web page at www.ftc.gov/acoas as soon as reasonably possible, and likely within 5 business days of receipt.

By direction of the Commission.

**Donald S. Clark,**

*Secretary of the Commission.*

[FR Doc. 00–3085 Filed 2–9–00; 8:45 am]

**BILLING CODE 6750–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–00–23]**

### 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 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed 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 Project**

*Preventing Latex Allergy Among Non-Healthcare Workers*—New—The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote ''safety and

health at work for all people through research and prevention.'' In order to carry out this goal effectively and efficiently, NIOSH and the occupational safety and health community implemented the National Occupational Research Agenda (NORA) in 1996. NORA is the first step in an ongoing, synergistic effort by the various institutions of the occupational safety and health community to identify and research the most important workplace safety and health issues. In order to accomplish the NORA objectives in preventing latex allergy, NIOSH is conducting health communication research to determine the most effective means of communicating the NIOSH recommendations for preventing latex allergy.

Allergy to natural rubber latex (NRL) has become a significant health risk among healthcare workers and other persons using latex gloves in the course of their work [NIOSH 1997; Turjanmaa *et al.* 1996; Watts *et al.* 1998]. A number of studies indicate that levels of latex sensitization in healthcare workers ranges from 5–12% [Liss and Sussman 1999]. One study indicated that the prevalence of latex sensitivity among 1,351 healthcare workers was 12.1%; and of that same 1,351 workers, 60% reported work-related symptoms [Liss *et al.* 1997]. Despite the numerous studies performed in this population, little is known about the non-healthcare worker occupations. Occupational asthma and symptoms of latex allergy have been reported in select groups including hairdressers, workers at a latex glove manufacturing plant, and workers at a latex doll manufacturing plant. Prevalence rates up to 11% have been reported in these studies (11% and 9%, respectively, in the latter two studies) [Orfan *et al.* 1994; Tarlo *et al.* 1990; van der Walle and Brunsveld 1995). Although the prevalence rate for other non-healthcare worker populations is unknown, these studies indicate that workers exposed to latex gloves or products containing latex may also be at risk for latex allergy.

In 1997, NIOSH published an ALERT concerning the risk of latex allergy in the workplace [NIOSH 1997]. This Alert provided specific recommendations to workers for the prevention of latex allergy and was distributed to workplaces most likely to contain latex exposure (*i.e.,* care establishments). Since occupations reporting less frequent use of latex gloves or exposure to latex-containing products may also be at risk for latex allergy, it is important to design appropriate health interventions for these occupational groups as well. Therefore, the overall objective of this study is to develop a health intervention that (1) effectively communicates the NIOSH recommendations for preventing latex allergy to the appropriate, at-risk non-healthcare worker occupations and (2) promotes the use of the recommendations through corresponding attitude and behavior change.

To accomplish this task, we propose to conduct a systematic, communication theory-based set of studies with a brochure adapted from the NIOSH Alert on latex allergy as the primary attitude concept. These experiments will be targeted at five non-healthcare worker occupational groups (hair dressers, daycare workers, police officers, food handlers, and housekeeping personnel). The framing postulate of the Prospect Theory and the Elaboration Likelihood Model will serve as the basis of the study [Tversky and Kahneman 1981; Petty and Cacioppo 1986] in which the combined effect of message framing and message expectancy on elaboration likelihood will be assessed. Specifically, participants will be randomly assigned to the conditions of a 2 (message framing: positive vs. negative) ′ 2 (message expectancy: positive vs. negative) ′ 2 (argument quality: strong vs. stronger) factorial design and given a pretest, brochure with the appropriate test variables, and post test. In addition, the participants will be surveyed for a history of latex glove usage, allergy, latex allergy, or dermatitis in either themselves or their family members to determine if a history of allergy or glove usage predisposes them to be highly involved with the subject of latex allergy. Finally, the effect of the intervention on receiver attitude toward latex allergy and corresponding use of NIOSH recommendations one month following the intervention will be determined. The study will include several phases. First, effective communication variables will be identified in the pretesting phase and incorporated into test brochures. In addition, pre-test and post-test surveys will be pretested. A total of 160 participants will be recruited for the pretesting phase. In the second phase, the pilot test, the effect of message framing and message expectancy on elaboration likelihood will be assessed in a small scale, laboratory study. This pilot test will be conducted with a sample of university students (N = 300) who occasionally to intermittently wear latex gloves. Conducting the first study in the laboratory setting allows for consistent control over external variables during message pretesting, implementation, and testing. The knowledge obtained from this study will be used to improve the versions of the brochure to be used in the last phase, one study for each of the five occupational groups (a total of five studies). The goal of each study will be to determine the effect of message framing and message expectancy manipulations in increasing the receiver's elaboration about latex allergy prevention among five different occupational groups (N = 300 per group or 1,500 total participants). In addition, change in attitude and behavior will be assessed one month after exposure to the brochure. These combined studies will test the use of message framing and contrasts in message expectancy in applied health communication research. Specifically, the studies will assess the effectiveness of these communication variables in influencing attitude, intentions, and behavior concerning the prevention of latex allergy. The results and conclusions drawn from this project will be used to develop a health communication template based on message framing and increased systematic message processing.

Overall, this study will contribute significantly to the knowledge concerning application of the message framing theory, provide NIOSH with specific recommendations for effective health communication, and provide a template for future health interventions. In addition, this study will identify effective methods of communicating health and safety messages to those populations not normally reached by NIOSH.

Based on an average hourly wage of $10.00 among all occupational groups combined, the total cost to respondents is $17,450.

| Respondents | Phases | Number of respondents | Number of responses/ respondents | Avg. burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|---|
| Hairdressers, food service personnel, housekeeping personnel, daycare workers, police officers. | Pretesting Phase I ..... | 150 | 1 | .5 | 75 |

| Respondents | Phases | Number of respondents | Number of responses/ respondents | Avg. burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|---|
| Hairdressers, food service personnel, housekeeping personnel, daycare workers, police officers. | Pretesting Phase II | 10 | 1 | 2 | 20 |
| University students | Pilot Testing Phase | 300 | 1 | .5 | 150 |
| Hairdressers, food service personnel, housekeeping personnel, daycare workers, police officers. | Combined Studies | 1,500 | 2 | .5 | 1,500 |
| Totals | | 1,960 | | | 1,745 |

Dated: February 2, 2000.

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–3057 Filed 2–9–00; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control And Prevention

**[60Day–00–21]**

### 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**

*The Role of Positive and Negative Emotion in Promoting Hearing Conservation Behaviors Among Coal Miners*—New—The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote ''safety and health at work for all people through research and prevention.'' NIOSH investigates and identifies occupational safety and health hazards and conducts a variety of activities, including educational programs with workers, to help prevent work-related illness and injury.

One of the most widespread, but often overlooked, occupational hazards is noise. As a result, hearing loss is the most common occupational disease in the United States today. More than 30 million workers are exposed to hazardous noise levels.

The risk of hearing loss is particularly high in certain occupations. Research shows that more than 90 percent of coal miners will experience moderate to significant hearing loss by the time they reach retirement. This level of hearing loss has a number of negative implications for both the affected individual and others: (1) Impaired communication with family members, friends, and coworkers can result in social isolation; (2) unrelenting tinnitus (ringing in the ears) can significantly lower one's quality of life; (3) a diminished ability to monitor the work environment (including warning signals, etc.) increases the risk of accidents and further injury at the workplace; and, finally, (4) there are economic costs that result from workers' compensation and lower productivity.

New noise standards for the mining environment have recently been issued by the Department of Labor and will go into effect in September 2000. The new rules require that mine operators take necessary action to protect miners' hearing when noise levels reach 85 dBA or more over an eight-hour period with additional actions required at 90 dBA. While the new standard establishes mandatory behaviors, such as the wearing of both ear plug and earmuff-type hearing protectors at noise levels of 105 dBA or more over an eight-hour period, there are also voluntary behaviors associated with the new rules. The wearing of hearing protectors at levels below 90 dBA and getting hearing tests as part of a hearing conservation program are both voluntary on the part of the individual miner.

This study is designed to ascertain factors that can be used to encourage adoption of voluntary behaviors among coal miners. The choice of this subset of miners is based upon research that indicates they experience significantly more hearing loss than metal and nonmetal miners. NIOSH proposes working with the United Mine Workers of America and experts in health communication to test the effectiveness of several innovative approaches to communicating hearing loss risk and promoting self-protective behaviors. Different messages will be sent to four different groups of coal miners, and there will be one control group that receives no message. The researchers will follow up with these groups at two different points in time to assess the relative effectiveness of the messages.

The central purpose of this study is to promote hearing conservation among coal miners and encourage the adoption of the voluntary components of the new noise standard. However, NIOSH believes that the results of this study will help in similar efforts with other worker populations. There is no cost to respondents.

| Respondents | Number of respondents | Number of responses/respondent (in hrs.) | Ave. burden per response (in hrs.) | Total burden (in hrs.) |
|---|---|---|---|---|
| Coal miners in pretest | 80 | 1 | 30/60 | 40 |

| Respondents | Number of respondents | Number of responses/respondent (in hrs.) | Ave. burden per response (in hrs.) | Total burden (in hrs.) |
|---|---|---|---|---|
| Coal miners in study | 300 | 2 | 30/60 | 300 |
| Total | | | | 340 |

Dated: February 2, 2000.

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–3058 Filed 2–9–00; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–00–24]**

### 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 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed 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 Project**

*Developing Communication to Reduce Workplace Violence and Assault Against Taxicab Drivers*—New—The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote ''safety and health at work for all people through research and prevention.'' In order to carry out this goal effectively and efficiently, NIOSH and the occupational safety and health community implemented the National Occupational Research Agenda (NORA) in 1996. NORA is the first step in an ongoing, synergistic effort by the various institutions of the occupational safety and health community to identify and research the most important workplace safety and health issues. In order to accomplish the NORA objectives in preventing violence and assault in the workplace, NIOSH is conducting health communication research to determine the most effective means of promoting preventive behavior among taxicab drivers, a high risk occupational group. This research is based upon the following NIOSH publications: ''Alert: Preventing Homicide in the Workplace'' (NIOSH, 1993) and ''Violence in the Workplace—Risk Factors and Prevention Strategies'' (NIOSH, 1996).

Workplace violence is a significant cause of injury and death in the workplace. It was the second leading cause of death in 1997, accounting for approximately 18% of worker fatalities during that year (BLS, 1998). Approximately 85% of occupational homicides involved robberies, and approximately four-fifths of the homicides were the result of shootings. An increased risk of workplace homicide was clustered within certain occupational areas including sales occupations, protective service occupations, and taxicab drivers. Furthermore, 60% of occupational fatalities within taxicab drivers were due to homicide (BLS, 1998). Although these statistics are significant, a limited amount of information is known concerning the level of worker awareness about the risk of workplace violence. In addition, little is known about the level of worker self-efficacy in regard to recommended preventive measures or the current status of the prevention strategies utilized by both the worker and employer. Therefore, the goal of this study is to identify those communication variables that are most effective in increasing the following in regard to workplace violence prevention: worker awareness, comprehension, and use of recommendations in the workplace.

To achieve this goal, this project will assess the combined effect of message framing (gain or loss) and highly involving messages on the elaboration likelihood of the receiver, and the subsequent attention, intention, and behavior change that result (Maheswaran & Levy, 1990; Smith & Petty, 1996). A study will be conducted in which message framing (gain, loss), issue involvement (high, low), and argument quality (strong, stronger) are varied. First, three phases of Message Pretesting will be done (N = 175) to determine the appropriate version of these communication variables to be used in the studies: (1) Selecting appropriate written versions of communication variables; (2) test several formats of the brochure to determine the most effective graphics, design, and presentation; and (3) pretest the combination of the print and visual variables for clarity and manipulation accuracy. Second, a Pilot Study will be conducted with a sample of taxicab drivers (N >> 300). The Pilot Study will be a small scale study in which participants are randomly assigned to the conditions of a 2 (message framing: gain, loss) ′ 2 (issue involvement: high, low) ′ 2 (argument quality: strong, stronger) factorial design. The effect of each variable on elaboration, attitude, and intentions will be determined through pre- and post-surveys. The knowledge obtained in this Pilot Test will be used to improve the version of the brochure to be used in the main Study. The Study will be conducted with taxicab drivers (N >> 1,500 total) in a major US city. The goal of the Study will be to determine the effect of message framing, issue involvement, and argument quality on the participant's level of elaboration, attitude, and intentions. In addition, a follow-up survey at 1, 3, and 6 months will assess any corresponding behavior change over time.

These combined studies will assess the use of message framing and issue involvement in applied health communication research. Specifically, the studies will assess the effectiveness

of incorporating message framing into health interventions and the importance of promoting issue involvement through occupation-specific messages. At an average wage of $10.00/hour, the total cost to respondents is $22,800.

| Respondents | Phase | Number of respondents | Number of responses/ respondent | Avg. burden per response (in hrs.) | Total burden (in hrs.) |
|---|---|---|---|---|---|
| Taxicab drivers | Pretesting Phase I | 60 | 1 | 1 | 60 |
| Taxicab drivers | Pretesting Phase II | 60 | ..... | ..... | 60 |
| Taxicab drivers | Pretesting Phase III | 15 | 1 | 2 | 30 |
| Taxicab drivers | Pilot Test | 300 | 1 | .5 | 150 |
| Taxicab drivers | Study | 1,500 | 4 | .33 | 1,980 |
| Total | ..... | ..... | ..... | ..... | 2,280 |

Dated: February 4, 2000.

**Charles W. Gollmar,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–3061 Filed 2–9–00; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30DAY–15–00]**

### 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.

**Proposed Project**

1. *National Vital Statistics Report Forms (0920–0213)—Revision—National Center for Health Statistics (NCHS).* The compilation of national vital statistics dates back to the beginning of this century and has been conducted since 1960 by the Division of Vital Statistics of the National Center for Health Statistics, CDC. The collection of the data is authorized by 42 USC 242k. The National Vital Statistics Report (renamed from the Monthly Vital Statistics Report in January 1998) provides counts of monthly occurrences of births, deaths, infant deaths, marriages, and divorces following the end of each month. Similar data have been published since 1937 and are the sole source of these data at the national level. The data are used by the Department of Health and Human Services and by other government, academic, and private research organizations in tracking changes in trends of vital events.

Respondents for the Monthly Vital Statistics Report Form are registration officials in each State and Territiory, the District of Columbia, and New York City; in addition, 60 local (county) officials in New Mexico who record marriages occurring and divorces and annulments granted in each county of New Mexico will use this Form. There are no direct costs to respondents; the data are routinely available in each reporting office as a by-product of ongoing activities. Earlier OMB approvals of this data collection involved four separate forms, all of which are combined into a single multi-purpose form for this current approval request. The total annual burden hours are 418.

| Respondents | Number of respondents | Responses/ respondent | Avg. burden/response (in hrs.) |
|---|---|---|---|
| State and Territory Registration Officials | 57 | 12 | 0.2 |
| New Mexico County Officials | 60 | 12 | 0.1 |

Dated: February 2, 2000.

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–3059 Filed 2–9–00; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30DAY–14–00]**

### 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.

**Proposed Project**

1. National Coal Workers' Autopsy Study Consent Release and History Form—(0920–0021)—Extension—National Institute for Occupational Safety and Health (NIOSH)—Under the Federal Coal Mine Health & Safety Act of 1977, PL91–173 (amended the

Federal Coal Mine & Safety Act of 1969), the Public Health Service has developed a nationwide autopsy program (NCWAS) for underground coal miners. The Consent Release and History Form is primarily used to obtain written authorization from the next-of-kin to perform an autopsy on the deceased miner. The study is a service program to aid surviving relatives in establishing eligibility for black lung compensation. Because a basic reason for the post-mortem exam is research (both epidemiological and clinical), included are a minimum of essential information regarding the deceased miner, his occupational history, and his smoking history. The data collected will be used by the staff at NIOSH for research purposes in defining the diagnostic criteria for coal workers' pneumoconiosis (black lung) and will be correlated with pathologic changes and x-ray findings.

It is estimated that only 5 minutes is required for the pathologist to put a statement on the invoice affirming that no other compensation is received for the autopsy. From past experience, it is estimated that 15 minutes is required for the next-of-kin to complete form CDC/NIOSH 2.6. In as much as an autopsy report is routinely completed by a pathologist, the only additional burden is the specific request of abstract of terminal illness and final diagnosis relating to pneumoconiosis. Therefore, only 5 minutes of additional burden is estimated for the autopsy report. The total annual burden hours are 62.5.

| Respondents | Number of respondents | Number of responses/ respondent | Avg. burden of response (in hrs.) |
|---|---|---|---|
| Pathologist: | | | |
| Invoice | 150 | 1 | 5/60 |
| Report | 150 | 1 | 5/60 |
| Next-of-Kin | 150 | 1 | 15/60 |

Dated: February 2, 2000.

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–3060 Filed 2–9–00; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 00033]**

### Childhood Lead Poisoning Prevention Programs (CLPPP); Notice of Availability of Funds

#### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for new State and competing continuation State and local programs to develop and improve Childhood Lead Poisoning Prevention activities which include building Statewide capacity to conduct surveillance of blood lead levels in children. This program addresses the ''Healthy People 2000'' priority area of Environmental Health.

The purpose of this program is to provide the impetus for the development, implementation, expansion, and evaluation of State and local childhood lead poisoning prevention program activities which include Statewide surveillance capacity to determine areas at high risk for lead exposure. Also, this cooperative agreement is to carry out the core public health functions of Assessment, Policy Development, and Assurance in childhood lead poisoning prevention programs.

Funding for this program will be to:

1. Develop and/or enhance a surveillance system that monitors all blood lead levels.

2. Assure screening of children who are potentially exposed to lead and follow-up care for children who are identified with elevated blood lead levels (BLLs).

3. Assure awareness and action among the general public and affected professionals in relation to preventing childhood lead poisoning.

4. Expand primary prevention of childhood lead poisoning in high-risk areas in collaboration with other government and community-based organizations.

As programs shift emphasis from providing direct screening and follow-up services to the core public health functions, cooperative agreement funds may be used to support and emphasize health department responsibilities to screen high risk children and provide appropriate follow-up services. This includes improving coalitions and partnerships; conducting better and more sophisticated assessments; developing and evaluating policies, program performance, and effectiveness based on established goals and objectives.

#### B. Eligible Applicants

Applicant eligibility is divided into Part A (New Applicants), Part B (Competing Continuation), and Part C (Supplemental Funding for Alternative Surveillance Assessment/Screening Recommendation Evaluation) defined in the following section. In the future, CDC plans to shift its program emphasis toward State funding for childhood lead poisoning prevention activities. However, the top five metropolitan statistical areas (SMSAs)/largest cities will be eligible for direct funding for childhood lead poisoning prevention activities indefinitely. They are New York City, Los Angeles, Chicago, Philadelphia, and Houston.

*Part A:* Eligible applicants are State health departments or other State health agencies or departments not currently funded by CDC and any eligible SMSA not currently receiving direct funding from CDC for childhood lead poisoning prevention activities. Also eligible are health departments or other official organizational authority (agency or instrumentality) of the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and all federally-recognized Indian tribal governments. Please note: Local health departments are not eligible to apply for cooperative agreement funding under Part A of this program announcement.

Applicants encouraged to apply under Part A are: Alaska; Arkansas; Georgia; Hawaii; Idaho; Kansas; Kentucky; Mississippi; Nevada; North Dakota; Oklahoma; South Dakota; Tennessee; Texas and Wyoming.

*Part B:* Eligible applicants are those currently funded by the Centers for Disease Control and Prevention whose project period will expire June 30, 2000. These applicants are: Alabama; Arizona; California; Delaware; Detroit, MI; Houston, TX; Indiana; Iowa; Maine; Marion County, IN; Michigan; New Hampshire; Pinellas County, FL; Salt

Lake City, UT; Virginia and Westchester, NY. In the future, CDC plans to shift its program emphasis towards State and large metropolitan statistical areas (SMSAs) which includes Houston, TX funding for childhood lead poisoning prevention activities. Consequently, local applicants eligible for Part B will only receive funding for a two-year project period based on satisfactory program performance. These are Detroit, MI; Marion County, IN; Pinellas County, FL; Salt Lake City, UT; and Westchester, NY.

*Part C:* Eligible applicants are those State applicants that apply under Part B. Funding under Part C will only be considered if the Part B application: (1) Is successful and chosen for funding and (2) has met the program requirement of submitting data to CDC's national surveillance database.

Additional information for all State applicants. If a State agency applying for grant funds is other than the official State health department, written concurrence by the State health department must be provided (for example, the State environmental health agency).

**C. Availability of Funds**

Part A: New Applicants

Up to $2,500,000 will be available in FY 2000 to fund up to 8 new applicants. CDC anticipates that awards for the first budget year will range from $75,000 to $800,000.

Part B: Competing Continuations

Up to $8,000,000 will be available in FY 2000 to fund up to 17 competing continuation applicants. CDC anticipates that awards for the first budget year will range from $75,000 to $1,500,000.

Part C: Supplemental Studies

Up to $400,000 will be awarded in FY 2000 to fund up to 4 assessment/evaluation studies with a three-year project period. These funds will be awarded to support the development of alternative surveillance assessments and/or to conduct evaluation of the impact of lead screening recommendations. Awards are expected to range from $70,000 to $100,000, with the average award being approximately $85,000. Funds will be awarded for assessment/evaluation studies that address one of the following:

1. Alternative Surveillance Assessment—Assessment of lead exposure in a jurisdictional population or sub-population using an approach to surveillance that differs from the Statewide CBLS system described in this announcement.

2. Screening Recommendation Evaluation—Evaluation of the impact of lead screening recommendations on screening for high-risk children.

Funding for State applicants: To determine the type of program activities and the associated level of funding for an individual State applicant for Part A or Part B, please refer to the table below. These are suggested funding guidelines and should not be regarded as absolute funding limits. Addendum 2 in the application package provides an explanation of the factors used to develop categorical funding recommendations. Addendum 3 provides an explanation of the program activities required for each funding category.

**Suggested Funding Categories Based on Projected Level of Effort Required To Provide Prevention and Surveillance Activies to a State Population**

Alabama—2
Alaska—3
Arizona—3
Arkansas—2
California*—1
Colorado—3
Connecticut—2
Delaware—3
Florida*—3
Georgia—2
Hawaii—3
Idaho—3
Illinois—1
Indiana*—3
Iowa—2
Kansas—2
Kentucky*—3
Louisiana—2
Maine—3
Maryland—2
Massasschusette—2
Michigan*—2
Minnesota—2
Mississippi—2
Missouri—2
Montana—3
Nebraska—2
Nevada—3
N. Hampshire—3
New Jersey—2
New Mexico—3
New York*—2
N. Carolina—2
North Dakota—3
Ohio—1
Oklahoma—2
Oregon—3
Pennsylvania—1
Rhode Island—2
S. Carolina—2
South Dakota—2
Tennessee—2
Texas*—1
Utah*—3
Vermont—3
Virginia—2
Washington—2
West Virginia—2
Wisconsin—2
Wyoming—3

*Projected level of effort adjusted to account for currently funded locales.

Funding State Applicants—Part A or Part B: Determine your funding category (Category 1, 2, or 3) according to the table below. The range and average of awards for each funding category follows:

Category 1: $800,000–$1,500,000, average award $1,000,000
Category 2: $250,000–$800,000, average award $520,000
Category 3: $75,000–$250,000, average award $150,000

Awards for Local Applicants (under Part B only): The suggested range of awards for local applicants is $250,000 to $450,000.

Additional Information on Funding for all Applicants for Part A, Part B, and Part C New awards are expected to begin on or about July 1, 2000, and are made for 12-month budget periods within project periods not to exceed 2-years for local programs or 3-years for State programs. Estimates outlined above are subject to change based on the actual availability of funds and the scope and quality of applications received. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds. Awards cannot supplant existing funding for CLPP or Supplemental Funding Initiatives. Funds should be used to enhance the level of expenditures from State, local, and other funding sources.

**Note:** Funds may not be expended for medical care and treatment or for environmental remediation of sources of lead exposure. However, the applicant must provide a plan to ensure that these program activities are carried out.

Not more than 10 percent (exclusive of Direct Assistance) of any cooperative agreement or contract through the cooperative agreement may be obligated for administrative costs. This 10 percent limitation is in lieu of, and replaces, the indirect cost rate.

**D. Program Requirements**

Special Requirement regarding Medicaid provider status of applicants: Pursuant to section 317A of the Public Health Service Act (42 U.S.C. 247b–1), as amended by Sec. 303 of the ''Preventive Health Amendments of 1992'' (Public Law 102–531), applicants AND current grantees must meet the

following requirements: For CLPP program services which are Medicaid-reimbursable in the applicant's State:

Applicants who directly provide these services must be enrolled with their State Medicaid agency as Medicaid providers.

Providers who enter into agreements with the applicant to provide such services must be enrolled with their State Medicaid agency as providers. An exception to this requirement will be made for providers whose services are provided free of charge and who accept no reimbursement from any third-party payer. Such providers who accept voluntary donations may still be exempted from this requirement.

In order to satisfy this program requirement, please provide a copy of a Medicaid provider certificate or Statement as proof that you meet this requirement. Failure to include this information would result in your application being returned. Please place this information immediately behind the budget and budget justification pages.

**Cooperative Activities**

*Part A and Part B: New and Competing Continuations*

To achieve the purpose of this cooperative agreement program, the recipient will be responsible for the activities listed under 1. Recipient Activities and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Establish, maintain, or enhance a Statewide surveillance system in accordance with CDC guidance. For local applicants (under Part B), enhance a data management system that links with the State's surveillance system or develop an automated data management system to collect and maintain laboratory data on the results of blood lead analyses and data on follow-up care for children with elevated BLLs. State recipients should ensure receipt of data from local programs. Local recipients should transfer relevant data to the appropriate State entity in a timely manner for annual submission to CDC.

b. Manage, analyze and interpret individual State surveillance data, and present and disseminate trends and other important public health findings.

c. Develop, implement and evaluate a Statewide/jurisdiction-wide childhood blood lead screening plan consistent with CDC guidance provided in ''Screening Young Children for Lead Poisoning: Guidance for State and Local Public Health Officials''. For local applicants, participate in the Statewide planning process. Make screening recommendations and appropriate local screening strategies available and known to health care providers.

d. Assure appropriate follow-up care is provided for children identified with elevated blood lead levels.

e. Establish effective, well-defined working relationships within public health agencies and with other agencies and organizations at national, State, and community levels (*e.g.,* housing authorities; environmental agencies; maternal and child health programs; State Medicaid Early Periodic Screening, Diagnosis, and Treatment (EPSDT) programs; community and migrant health centers; community-based organizations providing health and social services in or near public housing units, as authorized under Section 330(i) of the PHS Act; State and local epidemiology programs; State and local housing rehabilitation programs; schools of public health and medical schools; and environmental interest groups).

f. For State Programs, provide managerial, technical, analytical, and program evaluation assistance to local agencies and organizations in developing or strengthening their CLPP programs activities.

2. CDC Activities

a. Provide technical, and scientific assistance and consultation on program development, implementation and operational issues.

b. Provide technical assistance and scientific consultation regarding the development and implementation of all surveillance activities including data collection methods and analysis of data.

c. Assist with data analysis and interpretation of individual State surveillance data and release of national reports. Reports will include analysis of national aggregate data as well as State-specific data.

d. Assist cooperative agreement recipients with communication and coordination among Federal agencies, and other public and private agencies and organizations.

e. Conduct ongoing assessment of program activities to ensure the use of effective and efficient implementation strategies.

*Part C: Supplemental Studies*

To achieve the purpose of this program, the recipient will be responsible for the activities listed under 1. Recipient Activities and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Develop and implement a study protocol to include the following: methodology, sample selection, field operation, and statistical analysis. Applicants must provide a means of assuring that the results of the study will be published.

b. Revise, refine, and carry out the proposed methodology for conducting Supplemental Funding Studies.

c. Monitor and evaluate all aspects of the assessment activities.

d. Conduct and evaluate public health programs and/or have access to professionals who are knowledgeable in conducting such activities.

2. CDC Activities

a. Provide technical and scientific consultation on activities related to overall program requirements of supplemental funding activities.

b. Provide technical assistance to program manager and/or principal investigator regarding revision, refinement, and implementation of study design and proposed methodology for conducting supplemental funding activities.

c. Assist program manager and/or principal investigator with data interpretation and analysis issues.

**E. Application Content**

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan:

Applications must be developed in accordance with PHS Form 5161–1.

Part B applicants also competing for Part C funds must submit separate applications.

Application pages must be clearly numbered, and a complete index to the application and its appendices must be included. The original and two copies of the application set must be submitted UNSTAPLED and UNBOUND. All material must be typewritten, double spaced, printed on one side only, with unreduced font (10 or 12 point font only) on 8½″ by 11″ paper, and at least 1″ margins and heading and footers. All graphics, maps, overlays, etc., should be in black and white and meet the above criteria.

A one-page, single-spaced, typed abstract must be submitted with the application. The heading should include the title of the program, project title, organization, name and address, project director, telephone number, facsimile number, and e-mail address.

The main body of the CLPP program application (Parts A or B) must include the following: budget/budget justification; Medicaid certification; progress report (Part B applicants only); understanding the problem; surveillance/data-management activities; Statewide/jurisdiction-wide planning and collaboration; core public health functions; goals and objectives; program management and staffing; and program evaluation.

The main body of the supplemental funding project application (Part C) must include the following: study protocol, project personnel, and project management.

Each application should not exceed 75 pages. The abstract, budget narrative, and budget justification pages are not included in the 75 page limit. Supplemental information should be placed in appendices and is not to exceed 25 pages.

Part B applicants must submit a progress report no longer than 10 pages in their competing continuation application. This report should be placed immediately after the budget and budget justification.

Provide qualified staff, other resources, and knowledge to implement the provisions of the program. Applicants requesting cooperative agreement supported positions must provide assurances that such positions will be authorized to be filled by the applicant's personnel system.

**F. Submission and Deadline**

Submit the original and two copies of the PHS 5161–1 (OMB Number 0937–0189) on or before April 12, 1999. Forms are in the application kit.

Submit the application to: Mattie B. Jackson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Program Announcement 00033, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline date, or (2) sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications which do not meet the criteria above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

**G. Evaluation Criteria**

The review of applications will be conducted by an objective review panel as they relate to the applicant's response to either Part A, Part B, or Part C. The applications will be evaluated according to the following criteria:

*Part A: New Applicants*

1. Understanding of the Problem (15 points)

The extent to which the applicant's description and understanding of the burden and distribution of childhood lead exposure or elevated BLLs in their jurisdiction, using evidence (as available) of incidence and/or prevalence and demographic indicators, including a description of the Medicaid population.

2. Surveillance Activities (20 points)

The applicant's ability to develop a childhood blood lead surveillance system that includes; (a) a flow chart that describes data transfer, (b) a mechanism for tracking lead screening services to children, especially Medicaid children, and (c) a mechanism for reporting data annually to the CDC's national surveillance database. The clarity, feasibility, and scientific soundness of the surveillance approach. Also, the extent to which the proposed time table for accomplishing each activity and methods for evaluating each activity are appropriate and clearly defined. The following elements will be specifically evaluated:

a. How laboratories report Blood Lead Levels (BLLs), including ability to identify and assure reporting from private laboratories which perform lead testing.

b. How data will be collected and managed.

c. How quality of data and completeness of reporting will be assured.

d. How and when data will be analyzed.

e. How summary data will be reported and disseminated on a regular basis (*i.e.,* newsletters, fact sheets, annual reports).

f. Protocols for follow-up of individuals with elevated BLLs.

g. Provisions to obtain denominator data (results of all laboratory blood lead tests, regardless of level).

h. Time line and methods for evaluating the Childhood Blood Lead Surveillance (CBLS) approach.

i. Plans to convert paper-based components of the system to electronic data manipulation.

j. Use of data including evaluation of prevention activities, especially to target screening and prevention efforts.

3. Statewide Planning and Collaboration (20 points)

The applicant's ability to develop Statewide screening recommendations with appropriate local strategies. The following elements will be specifically evaluated:

a. The proposed approach to developing and carrying out an inclusive Statewide screening plan as outlined in ''Screening Young Children for Lead Poisoning: Guidance for State and Local Health Officials''.

b. The extent to which the applicant plans to utilize surveillance and program data to produce a Statewide screening recommendation, with specific attention given to the Medicaid population.

c. The ability of the applicant to involve collaborators in the development of a screening plan and implementation of strategies to strengthen childhood lead poisoning prevention activities.

d. The applicant's demonstrated ability to collaborate with principal partners, including managed-care organizations, State Medicaid agency, child health-care providers and provider groups, insurers, community-based organizations, housing agencies, and banking, real estate, and property-owner interests, must be demonstrated by letters of support, memoranda of understanding, contracts, or other documented evidence of relationships.

4. Capacity To Carry Out Public Health Core Functions (10 points)

The applicant's ability to describe the approach and activities necessary to achieve a balance among health department roles in CLPP, including assessment, program and policy development, and monitoring, evaluating, and ensuring the provision of all necessary components of a comprehensive CLPP activities within their respective categories.

5. Goals and Objectives (15 points)

The extent to which the applicant's goals and objectives relate to the CLPP activities in their respective categories. Objectives must be relevant, specific, measurable, achievable, and time-framed. There must be a formal work plan with a description of methods, a timetable and program staff responsible for accomplishment of each objective, and the evaluation of each proposed objective.

6. Project Management and Staffing (10 points)

The extent to which the applicant has documented the skills and ability to develop and carry out a comprehensive

CLLP program. Specifically, the applicant should:

a. Describe the proposed health department staff roles in CLPP, their specific responsibilities, and their level of effort and time. Include a plan to expedite filling of all positions and assure that requested positions have been or will be approved by applicant's personnel system.

b. Describe the plan to provide training and technical assistance to health department personnel and consultation to collaborators outside the health department, including proposed design of information-sharing systems.

7. Program Evaluation (10 points)

The extent to which the applicant proposes to measure the overall impact of health department CLPP activities. Specific criteria should include:

a. The plan for evaluating the impact or outcome of CLPP activities, including evaluation design, methods, and activities.

b. Description of how the project will assess changes in public policy and measure the effectiveness of collaborative activities.

c. Progress made in childhood lead poisoning prevention which resulted from planned health department strategies.

8. Budget justification (not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

*Part B: Competing Continuations*

1. Understanding of the Problem (15 points)

The extent to which the applicant's description and understanding of the burden and distribution of childhood lead exposure or elevated BLLs in their jurisdiction, using evidence (as available) of incidence and/or prevalence and demographic indicators, including a description of the Medicaid population.

2. Surveillance Activity (20 points)

For State Applicants: The applicant's ability to expand its childhood blood lead surveillance system that includes tracking lead screening for Medicaid children, evaluating the existing system, and reporting data to the CDC's national surveillance database. The clarity, feasibility, and scientific soundness of the surveillance approach. Also, the extent to which the proposed time table for accomplishing each activity are appropriate and clearly defined. The following elements will be specifically evaluated:

a. How laboratories report BLLs, including ability to identify and assure reporting from private laboratories which perform lead testing.

b. How data are collected and managed.

c. How quality of data and completeness of reporting are assured.

d. How and when data are analyzed.

e. How summary data are reported and disseminated on a regular basis (*i.e.,* newsletters, fact sheets, annual reports).

f. Protocols for follow-up of individuals with elevated BLLs.

g. Provisions to obtain denominator data (results of all laboratory blood lead tests, regardless of level).

h. Time line and methods for evaluating the Childhood Blood Lead Surveillance (CBLS) approach.

i. Process used to convert paper-based components of the system to electronic data.

j. Use of data including evaluation of prevention activities, especially to target screening and prevention efforts.

For local applicants (Part B only): The applicant's ability to expand their data management system, including the approach to participating in the State CBLS, if applicable. The clarity, feasibility, and scientific soundness of the approach to data management. Also, the extent to which the proposed schedule for accomplishing each activity and method for evaluating each activity are clearly defined and appropriate. The following elements will be specifically evaluated:

a. How laboratories report Blood Lead Levels (BLL), including ability to identify and assure reporting from private laboratories which perform lead testing.

b. How data are collected and managed.

c. How quality of data and completeness of reporting are assured.

d. How and when data are analyzed.

e. How summary data are reported and disseminated on a regular basis (*i.e.,* newsletters, fact sheets, annual reports).

f. Protocols for follow-up of individuals with elevated BLLs.

g. Provisions to obtain denominator data (results of all laboratory blood lead tests, regardless of level).

h. Time line and methods for evaluating the Childhood Blood Lead Surveillance (CBLS) approach.

i. Process used to convert paper-based components of the system to electronic data.

j. Use of data including evaluation of prevention activities, especially to target screening and prevention efforts.

3. Statewide/Jurisdiction-wide Planning and Collaboration (20 points)

The applicant's ability to develop Statewide/jurisdiction-wide screening recommendations with appropriate local strategies. The following elements will be specifically evaluated:

a. The approach to developing and carrying out an inclusive State-or jurisdiction-wide screening plan as outlined in ''Screening Young Children for Lead Poisoning: Guidance for State and Local Health Officials''.

b. The extent to which the applicant utilized surveillance and program data to produce Statewide/jurisdiction-wide screening recommendations and target the Medicaid population.

c. Description of how collaborations facilitated the development of a screening plan and strengthened childhood lead poisoning prevention strategies.

d. Evidence of collaboration with principal partners, including managed-care organizations, State Medicaid agency, child health-care providers and provider groups, insurers, community-based organizations, housing agencies, and banking, real-estate, and property-owner interests. These collaborations must be demonstrated by letters of support, memoranda of understanding, contracts, or other documented evidence of relationships.

**Note:** For applicants under Part B, describe progress in developing and implementing the screening plan based upon each of the elements listed above.

4. Capacity to Carry Out Public-Health Core Functions (10 points)

The ability to describe the approach and activities taken to achieve a balance among health-department roles in CLPP, including assessment, program and policy development, and monitoring, evaluating, and ensuring the provision of all CLPP activities within their respective categories (for example, Category 3 requires screening plans, surveillance systems, assure follow-up care, and evaluation).

5. Goals and Objectives (10 points)

The extent to which the applicant's goals and objectives relate to the CLPP activities in their respective categories under which they applied. Objectives must be relevant, specific, measurable, achievable, and time-framed. There must be a formal work plan with a description of methods and a timetable and program staff responsible for accomplishment of each objective.

6. Project Management and Staffing (10 points)

The extent to which the applicant has the skills and ability to develop and carry out a comprehensive CLLP program. Specifically the applicant should:

a. Describe the proposed health department staff roles in CLPP, their specific responsibilities, and their level of effort and time. Include a plan to expedite filling of all positions and assure that requested positions have been or will be approved by the applicant's personnel system.

b. Describe the plan to provide training and technical assistance to health department personnel and consultation to collaborators outside the health department, including proposed design of information-sharing systems.

7. Program Evaluation (10 points)

The extent to which the applicant measures the overall impact of health department CLPP activities. Specific criteria should include:

a. Description of the progress made to evaluate the impact and outcome of collective CLPP activities, including the evaluation design, methods, and tasks.

b. Description of the changes in the effectiveness of collaborative activities.

c. Progress made in childhood lead poisoning prevention which resulted from planned health department strategies.

8. Budget Justification (not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

*Part C: Supplemental Funding—Factors To Be Considered*

1. Study Protocol (45 points)

The applicant's ability to develop a scientifically sound protocol (including adequate sample size with power calculations), quality, feasibility, consistency with project goals, and soundness of the evaluation plan (which should provide sufficient detail regarding the way the protocol will be implemented). The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed project. This includes: (a) the proposed plan to include of both sexes and racial and ethnic minority populations for appropriate representation; (b) the proposed justification when representation is limited or absent; (c) a Statement as to whether the design of the study is adequate to measure differences when warranted; and (d) a Statement as to whether the plans for recruitment and outreach for study participants includes establishing partnerships with community-based agencies and organizations. Benefits of the partnerships should be described.

2. Project Personnel (20 points)

The extent to which personnel involved in this project are qualified, including experience in conducting relevant studies. In addition, the applicant's ability to commit appropriate staff time needed to carry out the study.

3. Project Management (35 points)

The applicant's ability to implement and monitor the proposed study to include specific, attainable, and realistic goals and objectives, and evaluation plan.

4. Budget Justification (not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

5. Human Subjects (not scored)

The extent to which the applicant complies with the Department of Health and Human Services regulations (45 CFR Part 46) on the protection of human subjects.

**H. Other Requirements**

*Technical Reporting Requirements*

Provide CDC with the original plus two copies of:

1. Quarterly progress reports, which are required of all grantees. The quarterly report narrative should not exceed 25 pages. Time lines for the quarterly reports will be established at the time of award, but are typically due 30 days after the end of each quarter.

2. Calendar year surveillance data and a written surveillance summary report must be submitted annually to CDC in the approved OMB format to be disseminated to State and local public health officials and congressional personnel. Data must be submitted to CDC by March 31st in the required format for analysis.

3. Financial Status Reports, are due within 90 days of the end of the budget period.

4. Final financial reports and performance reports are due within 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

**Note:** Data collection initiated under this cooperative agreement program has been approved by the Office of Management and Budget under OMB number (0920–0337), ''National Childhood Blood Lead Surveillance System'', Expiration Date: March 31, 2001.

The following additional requirements are applicable to this program. For a complete description of each, see Addendum 1 in the application package.

AR–1 Human Subjects Requirement
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions

**I. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under sections 301(a), 317A and 317B of the Public Health Service Act [42 U.S.C. 241(a), 247b–1, and 247b–3], as amended. Program regulations are set forth in Title 42, Code of Federal Regulations, Part 51b. The Catalog of Federal Domestic Assistance number is 93.197.

**J. Pre-Application Workshop for New and Competing Continuation Applicants**

In addition, for interested applicants, a telephone conference call for pre-application technical assistance will be held on Wednesday, February 16, 2000, from 1:30 p.m. to 3:30 p.m, Eastern Standard Time. The bridge number for the conference call is 1–800–311–3437, and the pass code is 350892. For further information about all workshops, please contact Claudette Grant-Joseph at 404–639–2510.

**K. Where To Obtain Additional Information**

This and other CDC announcements may be downloaded through the CDC homepage on the Internet at http://www.cdc.gov. Please refer to program announcement number 00033 when requesting information. To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name, address, and phone number and will need to refer to Announcement 00033. You will receive a complete program description, information on application procedures, and application forms. CDC will not send application kits by facsimile or express mail.

If you have questions after reviewing the contents of all documents, business management technical assistance may be obtained from: Mattie B. Jackson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, telephone (770) 488–2718, Internet address mij3.@cdc.gov

For programmatic technical assistance, contact: Claudette A. Grant-Joseph, Chief, Program Services Section, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE, Mailstop E–25, Atlanta, GA 30333, telephone (404) 639–2510, Internet address cag4@cdc.gov

Dated: February 4, 2000.

**John L. Williams,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–3062 Filed 2–9–00; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 99N–2250]**

### Agency Information Collection Activities; Announcement of OMB Approval; Current Good Manufacturing Practices for Blood and Blood Components; Notification of Consignees Receiving Blood and Blood Components at Increased Risk for Transmitting HIV Infection

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Current Good Manufacturing Practices for Blood and Blood Components; Notification of Consignees Receiving Blood and Blood Components at Increased Risk for Transmitting HIV Infection'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of November 4, 1999 (64 FR 60212), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0336. The approval expires on January 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: February 3, 2000.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 00–3013 Filed 2–9–00; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 99N–0407]**

### Agency Information Collection Activities; Announcement of OMB Approval; Reclassification Petitions for Medical Devices

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Reclassification Petitions for Medical Devices'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of December 10, 1999 (64 FR 69270), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0138. The approval expires on January 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: February 3, 2000.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 00–3015 Filed 2–9–00; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Nonclinical Studies Subcommittee of the Advisory Committee for Pharmaceutical Science; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Nonclinical Studies Subcommittee of the Advisory Committee for Pharmaceutical Science (formerly the Generic Drugs Advisory Committee).

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA regulatory issues.

*Date and Time:* The meeting will be held on March 9, 2000, 8:30 a.m. to 5:30 p.m.

*Location:* Center for Drug Evaluation and Research conference room 1066, 5630 Fishers Lane, Rockville, MD.

*Contact Person:* Kimberly L. Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane Rockville, MD 20857, 301–827–7001, e-mail: TOPPERK@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* The subcommittee meeting will discuss collaborative approaches to scientific research issues of common interest to the pharmaceutical industry, universities, the public, and FDA. Specific areas of focus will be in the nonclinical studies areas of: (1) Interspecies biomarkers of toxicity and (2) noninvasive imaging.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 25, 2000. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 25, 2000, and

submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 2, 2000.

**Linda A. Suydam,**

*Senior Associate Commissioner for Policy.*

[FR Doc. 00–3014 Filed 2–9–00; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–566]**

### 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:* Extension of a currently approved collection;

*Title of Information Collection:* Medicare, Managed Care Disenrollment Form;

*Form No.:* HCFA–566 (OMB# 0938–0507);

*Use:* This form is used to disenroll from managed care plans. This is to be used in Social Security Field Offices to allow Medicare beneficiaries to disenroll from a managed care plan.;

*Frequency:* On occasion;

*Affected Public:* Individuals or Households, Business or other for-profit, Not-for-profit institutions, and Federal Government;

*Number of Respondents:* 85,000;

*Total Annual Responses:* 85,000;

*Total Annual Hours:* 2,805.

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, 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: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 3, 2000.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 00–3105 Filed 2–9–00; 8:45 am]

**BILLING CODE 4120–03–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are 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 or other forms of information technology.

**Proposed Project**

The Annual Census of Patient Characteristics in State and County Mental Hospital Inpatient Services (0930–0093, extension, no change)—The Census, which is conducted by SAMHSA's Center for Mental Health Services (CMHS), is a complete enumeration of all State and county mental hospitals and collects aggregate information by age, gender, and diagnosis for each State on the number of additions during the year and resident patients who are physically present for 24 hours per day in the inpatient service at the end of the reporting year. First conducted in 1840, the Census has provided information throughout the years that is not available from any other sources. The Census is the primary means within CMHS for assessing de-institutionalization practices of State and county mental hospitals. The annual burden estimate is shown in the table below.

| | Number of respondents | Responses/ respondent | Burden/ response (hrs.) | Annual burden (hrs.) |
|---|---|---|---|---|
| State Statisticians and Superintendents of State Mental Hospitals | 52 | 1 | 2 | 104 |

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 3, 2000.

**Richard Kopanda,**

*Executive Officer, SAMHSA.*

[FR Doc. 00–3063 Filed 2–9–00; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are 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 or other forms of information technology.

**Proposed Project**

*Mandatory Guidelines for Federal Workplace Drug Testing Programs* (0930–0158, revision)—SAMHSA will request OMB approval for the Federal Drug Testing Custody and Control Form for Federal agency and federally regulated drug testing programs which must comply with the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29908) dated June 9, 1994, and for the information provided by laboratories for the National Laboratory Certification Program (NLCP). The Federal Drug Testing Custody and Control Form is used by all Federal agencies and employers regulated by the Department of Transportation to document the collection and chain of custody of urine specimens at the collection site, for laboratories to report results, and for Medical Review Officers to make a determination. The Federal Drug Testing Custody and Control Form is being revised. Major changes include eliminating the split specimen copy, simplifying the chain of custody requirements, revising the outcomes for the laboratory test results, revising the collection instructions, and ensuring that the form follows the sequence of events. Prior to an inspection, a laboratory is required to submit specific information regarding its laboratory procedures to allow inspectors to become familiar with a laboratory's procedures before arriving at the laboratory.

The annual total burden estimates for the Federal Drug Testing Custody and Control Form, the NLCP application, the NLCP inspection checklist, and NLCP recordkeeping requirements is 1,790,664 Hours, as shown below:

| Form/respondent | Burden/response (hrs.) | Number of responses | Total annual burden (hrs.) |
|---|---|---|---|
| Custody and Control Form: | | | |
| Donor | .083 | 7,093,000 | 588,719 |
| Collector | .067 | 7,093,000 | 475,231 |
| Laboratory | .050 | 7,093,000 | 354,650 |
| Medical Review Officer | .050 | 7,093,000 | 354,650 |
| Laboratory Application | 3.000 | 2 | 6 |
| Laboratory Inspection Checklist | 3.000 | 136 | 408 |
| Laboratory Recordkeeping | 250.000 | 68 | 17,000 |
| Total | | | 1,790,664 |

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 3, 2000.

**Richard Kopanda,**

*Executive Officer, SAMHSA.*

[FR Doc. 00–3064 Filed 2–9–00; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration (SAMHSA)

### Center for Mental Health Services; Center for Substance Abuse Prevention; Center for Substance Abuse Treatment; Substance Abuse and Mental Health Services Administration, HHS; Notice of Technical Assistance Workshops

Notice is hereby given of the following workshops for the provision of technical assistance to potential applicants for SAMHSA grants.

The Substance Abuse and Mental Health Services Administration's (SAMHSA's) Center for Mental Health Services (CMHS), Center for Substance Abuse Prevention (CSAP) and Center for Substance Abuse Treatment (CSAT), are offering a series of three, two-day regional Technical Assistance Workshops for prospective applicants. These workshops will be conducted jointly by the three SAMHSA Centers to provide support to prospective applicants in preparing their applications in response to published grant announcements.

It is anticipated that several SAMHSA grant announcements will be featured at the workshop, including:

*Center for Substance Abuse Prevention*

Community-Initiated Prevention Interventions

Cooperative Agreements for Parenting and Family Strengthening Prevention Interventions

The Center for Application of Prevention Technologies
State Incentive Grants

*Center for Substance Abuse Treatment*

Grants to Expand Substance Abuse Treatment Capacity in Targeted Areas of Need
Community Action Grants for Service Systems Change
Grants for the Evaluation of Treatment Models for Persons with Co-occurring Substance Abuse and Mental Health Disorders
Comprehensive Community Treatment Program for the Development of New and Useful Knowledge
Targeted Capacity Expansion —HIV/AIDS

*Center for Mental Health Services*

Community Action Grants for Service Systems Change
Violence Prevention/Resilience Development School and Community Action Grants

These GFAs can be found at the SAMHSA Web Site at www.SAMHSA.gov following publication in the **Federal Register**. Potential participants are strongly encouraged to check these resources and be familiar with the GFAs in which they are interested prior to attending the workshop.

The Technical Assistance Workshops will be held at the following locations: Workshop I—March 2 & 3, Ritz Carlton Hotel Atlanta, GA, 404–659–0400 or 800–241–3333; Workshop II—March 7 & 8, Westin Hotel, Kansas City, MO, 816–474–4400 or 800–228–3000; and Workshop III—March 9 & 10, The Wyndham Emerald, San Diego, CA, 619–239–4500.

Registration and check-in at each site will be at 7:30 a.m.; workshop hours on the first day are 8:30 a.m.–5:00 p.m. On the second day, the grant writing session will take place from 8:30 a.m.–3:30 p.m.

Preliminary Agenda Highlights for the TA Workshops include: (1) Review of SAMHSA programs and priorities; (2) Provision of related resource materials; (3) Technical/practical aspects of the grants application process including application requirements, improving applications, instruction in completing required forms, submission, review, and award procedures; (4) Separate breakout sessions for discussion of specific grant announcements; and (5) Opportunity for questions and answers. Plans are underway to include a brief overview at each of the workshops on the Health Resources and Services Administration and the Centers for Disease Control and Prevention programs. On the second day, there will be a session designed to provide further assistance with grant writing and application preparation.

**TA Workshop Arrangements and Contacts**

There is no registration fee for the workshops. Preregistration is strongly encouraged.

Registrants will be responsible for costs associated with their own travel, meals, and lodging. Workshop confirmation will be faxed. For logistical assistance please contact Lisa Wilder by phone at (301) 984–1471, x–361 or by fax at (301) 984–4416. For information regarding the content of the TA Workshops, please contact Ms. C. Danielle Johnson at (301) 443–1249. SAMHSA suggests that the attendees be those persons having the responsibility for conceptualizing and writing the application.

**Hotel Information**

Participants are responsible for making their own hotel reservations. When calling the hotel, at the numbers listed above, reference the SAMHSA Grantee Workshop. Registrants are urged to make their reservations as soon as possible.

Dated: February 3, 2000.

**Richard Kopanda,**

*Executive Officer, SAMHSA.*

[FR Doc. 00–3012 Filed 2–9–00; 8:45 am]

**BILLING CODE 4162–20–U**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4562–N–01]**

## Notice of Proposed Information Collection for Public Comment: Notice of Funding Availability and Application Kit Alaska Native/Native Hawaiian Institutions Assisting Communities Program

**AGENCY:** Office of the Assistant Secretary for Policy Development and Research, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Public comments on the subject proposal are being solicited.

**DATES:** *Comments Due Date: April 10, 2000.*

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control Number and be sent to: Reports Liaison Officer, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Room 8226, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Jane Karadbil, Office of University Partnerships, Department of Housing and Urban Development, 451 7th Street, Washington, DC 20410; telephone (202) 708–1537 (this is not a toll-free number). Copies of the proposed forms and other available documents to be submitted to OMB may be obtained from Ms. Karadbil.

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Action of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected entities concerning the proposed information collection to: (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; (3) Enhance the quality, utility, and clarity of information to be collected; and (4) Minimize the burden of collection of information on those who are to respond; including through the use of appropriated technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of the Proposal:* Alaska Native/Native Hawaiian Institutions Assisting Communities program (AN/NHIAC).

*Description of the need for the information and proposed use:* The information is being collected to select grantees in this statutorily-created competitive grant program. The information is also being used to monitor the performance of grantees to ensure that they meet statutory and program goals and requirements.

*Members of the affected public:* Alaska Native/Native Hawaiian institutions of higher education undertaking community development activities: 18 applicants and 6 grantees.

*Estimation of the total number of hours needed to prepare the information collection including the number of respondents, frequency of response, and hours of response:* Information pursuant to submitting applications will be

submitted once. Information pursuant to grantee monitoring requirements will be semi-annually and at the completion of the grant.

The following chart details the respondent burden on an annual basis:

| | Number of respondents | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|
| Application | 18 | 18 | 80 | 1,440 |
| Semi-annual Reports | 6 | 12 | 16 | 192 |
| Final Reports | 6 | 6 | 16 | 96 |
| Recordkeeping | 6 | 6 | 16 | 96 |
| Total | | | | 1,824 |

*Status of proposed information collection:* OMB approved an emergency paperwork clearance for this information collection and assigned it OMB Control No. 2528–0206, expiration date March 31, 2000.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 3, 2000.

**Lawrence L. Thompson,**

*Deputy Assistant for Policy Development.*

[FR Doc. 00–3139 Filed 2–9–00; 8:45 am]

BILLING CODE 4210–62–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4564–N–01]**

## Notice of Proposed Information Collection: Notice of Funding Availability (NOFA) for Research To Improve the Evaluation and Control of Residential Lead-Based Paint Hazards

**AGENCY:** Office of Lead Hazard Control, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement concerning the Notice of Funding Availability (NOFA) for Research to Improve the Evaluation and Control of Residential Lead-Based Paint Hazards will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* April 10, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Gail N. Ward, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room P3206, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Eugene A. Pinzer, (202) 755–1785 ext. 120 (this is not a toll-free number) for available documents regarding this proposal.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Notice of Funding Availability (NOFA) for Research to Improve the Evaluation and Control of Residential Lead-Based Paint Hazards.

*OMB Control Number:* 2539–0010.

*Need for the Information and Proposed Use:* This information collection is required in conjunction with the issuance of NOFAs announcing the availability of approximately $1,500,000 for grants for Lead-Based Paint Hazard Research. Grants are authorized under Title X of the Housing and Community Development Act of 1992, Pub. L. 102–550, Section 1011(g) and other legislation.

Results from this research will be used to update the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing. It is anticipated that this targeted research will also increase both the accuracy of residential lead hazard evaluation and the effectiveness of residential lead hazard reduction interventions, while improving the cost-effectiveness of the entire process. This research should contribute to an eventual reduction in the national prevalence of childhood lead poisoning.

*Agency Form Numbers:* None.

*Members of Affected Public:* Potential applicants include academic and not-for profit institutions located in the U.S., State and local governments, and for-profit firms.

*Total Burden Estimate (first year):*

| Task | Number of respondents | Frequency of re-sponses | Hours per response | Burden hours |
|---|---|---|---|---|
| Application Development | 25 | 1 | 103 | 2,575 |
| Award of Grant | 5 | 1 | 25 | 125 |
| Total Estimated Burden Hours | | | | 2,700 |

*Status of the Proposed Information Collection:* This is a renewal of an existing approval.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is amended.

Dated: February 2, 2000.

**David E. Jacobs,**

*Director, Office of Lead Hazard Control.*

FR Doc. 00–3410 Filed 2–9–00; 8:45 am]

**BILLING CODE 4210–01–M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4561–N–01]**

### Submission for OMB Review—HUD Conditions and Appraisal Report, Fee or Roster Designation

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments Due Date: March 13, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0538) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; (202) 395–7316.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

*Title of Proposal*: HUD Conditions and Appraisal Report, Fee or Roster Designation.

*OMB Approval Number*: 2502–0538.

*Form Numbers*: HUD 92563, 92564–VC, 92564–HS, 92564–CN, Fannie May Forms 1004 and 1004B.

*Description of the Need for the Information and its Proposed Use*: The information collection is essential so that HUD can ensure that appraisals of HUD-insured single family properties are conducted by individuals who are qualified, trained and knowledgeable in the real estate appraisal field and that the appraisals of HUD-insured single family properties or prospective insured properties are thorough and independent.

*Respondents*: Individuals or households, Not-for-Profit Institutions, State, Local or Tribal Government.

*Frequency of Submission*: On Occasion.

*Reporting Burden*:

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| VC Forms | 15,000 | | 80 | | .41 | | 502,500 |

*Total Estimated Burden Hours*: 502,500.

*Status*: Reinstatement, with change.

*Contact*: Maynard Curry, HUD (202) 708–2700.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 3, 2000.

**Wayne Eddins,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 00–3138 Filed 2–9–00; 8:45 am]

**BILLING CODE 4210–01–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.*):

PRT–022015

*Applicant:* The Cincinnati Zoo, Cincinnati, OH

The applicant requests a permit to import and export one captive-born male cheetah (*Acinonyx jubatus*) from and to the Toronto Zoo, Toronto, Ontario, Canada, for the purpose of enhancement of the survival of the species through propagation.

PRT–022132

*Applicant:* Triple S Game Farm, Edmond, OK

The applicant requests a permit to import one captive-hatched male Cabot's tragopan (*Tragopan caboti*) from Glen Howe, Ontario, Canada, for the purpose of enhancement of the survival of the species through propagation.

PRT–022370

*Applicant:* International Center for Gibbons Studies, Santa Clarita, CA

The applicant requests a permit to import one captive-born female Java gibbon (*Hylobates moloch*) from the Perth Zoo, Perth, Australia, for the purpose of enhancement of the survival of the species through propagation.

PRT–022426

*Applicant:* Zoological Society of Cincinnati, Cincinnati, OH

The applicant requests a permit to export semen samples collected from one captive-bred Sumatram orangutan (*Pongo oygmaeus abelii*) to the Singapore Zoo, for the purpose of enhancement of the survival of the species through scientific research and propagation.

PRT–022092

*Applicant:* University of Wisconsin Zoological Museum, Madison, WI

The applicant requests a permit to re-export the salvaged skeleton of a brown pelican (*Pelecanus occidentalis*) to the Catholic University, Quito, Ecuador, for the purpose of enhancement of the survival of the species through scientific research.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–022027

*Applicant:* Horst J. Baier, Miami, Fl

The applicant requests a permit to import a sport-hunted polar bear (*Ursus maritimus*) taken in March 1999 from the Beaufort Sea-Poulatuk polar bear population, Northwest Territories, Canada, for personal use.

Written data, comments or requests for copies of these complete applications or requests for a public hearing on these applications should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203. These requests 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 Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: February 4, 2000.

**Margaret Tieger,**

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 00–3081 Filed 2–9–00; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZ–050–00–1150–JB; 6636]**

### Arizona: Availability of the Draft Sonoran Pronghorn Forage Enhancement Project Environmental Assessment (EA), Yuma and Phoenix Field Offices

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability of the draft Sonoran Pronghorn Forage Enhancement Project Environmental Assessment (EA), Yuma and Phoenix Field Offices.

**SUMMARY:** The draft Sonoran Pronghorn Forage Enhancement Project Environmental Assessment (EA) evaluates the environmental impacts of a proposed project to improve habitat for the endangered Sonoran pronghorn on the Barry M. Goldwater Air Force Range. The Sonoran pronghorn was listed as an endangered subspecies in 1967. Since that time, numbers of the animal in the United States have been estimated to fluctuate between 100 and 400 animals. The population appears to be limited by low recruitment of fawns into the population. Most fawns die each year in late June and early July when the availability of green forage decreases. The proposed forage enhancement project would provide forage for pronghorn on up to 14 plots. The plots would provide native forage for pronghorn and a source of free water to aid in digestion. The plots would not be permanently established and are not meant to interfere with the normal seasonal movements of pronghorn. The project would be jointly carried out by the Arizona Game and Fish Department, Luke Air Force Base, Marine Corps Air Station, Yuma, and the Bureau of Land Management.

**DATES:** Comments on the draft Environmental Assessment will be accepted through March 24, 2000.

**ADDRESSES:** Copies of the Environmental Assessment are available upon request to: Field Manager, Bureau of Land Management, 2555 East Gila Ridge Road, Yuma, Arizona 85365. There are also copies available for review at that location and at the Yuma County Library, 350 South Third Avenue, Yuma, Arizona, 85364.

**FOR FURTHER INFORMATION CONTACT:** Wildlife Biologist Susanna Henry, Bureau of Land Management, 2555 East Gila Ridge Road, Yuma, Arizona, 85365, telephone (520) 317–3211.

Dated: January 31, 2000.

**Gail Acheson,**

*Field Manager.*

[FR Doc. 00–3106 Filed 2–9–00; 8:45 am]

**BILLING CODE 4310–32–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–079–00–1020–XQ]**

### Resource Advisory Council Meeting, Butte, MT

**AGENCY:** Butte Field Office, Bureau of Land Management, DOI.

**ACTION:** Notice of meeting.

**SUMMARY:** The Western Montana Resource Advisory Council will convene at 9 a.m., Wednesday, March 1, 2000, at the Butte Field Office, 106 North Parkmont, Butte, Montana. Issues will include the statewide weed management steering committee, the Elkhorns Westslope Cutthroat Restoration Plan, an update on the Montana/Dakotas Off-Highway Vehicle environmental impact statement, and sage grouse habitat management.

The meeting is open to the public and written comments may be given to the Council. Oral comments may be presented to the Council at 11:30 a.m. The time allotted for oral comment may be limited, depending on the number of persons wishing to be heard. Individuals who plan to attend and need further information about the meeting, or who need special assistance, such as sign language or other reasonable accommodations, should contact Jean Nelson-Dean, Resource Advisory Coordinator, at the Butte Field Office, 106 North Parkmont (P.O. Box 3388), Butte, Montana 59702–3388, telephone 406–494–5059.

**FOR FURTHER INFORMATION CONTACT:** Acting Butte Field Manager Tim Bozorth or Jean Nelson-Dean at the above address or telephone number.

Dated: January 28, 2000.

**Tim Bozorth,**

*Acting Field Manager.*

[FR Doc. 00–3107 Filed 2–9–00; 8:45 am]

**BILLING CODE 4310–DN–P–$$**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–030–00–1020–XU: GPO–0108]**

### Notice of Meeting of John Day/Snake Resource Advisory Council

**AGENCY:** Vale District, Bureau of Land Management, Interior.

**ACTION:** Meeting of John Day/Snake Resource Advisory Council: Pendleton, Oregon; March 30 & 31, 2000.

**SUMMARY:** A meeting of the John Day/Snake Resource Advisory Council will be held on March 30, 2000 from 8:00 a.m. to 5:00 p.m. and on March 31, 2000 from 7:30 a.m. to 3:00 p.m. at the Red Lion (formerly Doubletree) Inn, 304 SE Nye Avenue, Pendleton, Oregon. The meeting is open to the public. Public comments will be received at 10:00 a.m. on March 31, 2000. Topics to be discussed by the council will include: John Day River Plan update; Social Circle Map; Hells Canyon Subgroup update; ICBEMP update; status of roadless area review, range program status report for BLM & Forest Service offices; T&E presentation on listing process of lynx, wolf and sage grouse; discuss the need for or benefits of a future joint meeting of the three Oregon/Washington councils; and a 15 minute round table for general issues.

**FOR FURTHER INFORMATION CONTACT:** Juan Palma, Bureau of Land Management, Vale District Office, 100 Oregon Street, Vale, Oregon 97918, Telephone (541) 473–3144.

**Juan Palma,**

*District Manager.*

[FR Doc. 00–3108 Filed 2–9–00; 8:45 am]

**BILLING CODE 4310–33–M**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Native American Graves Protection and Repatriation Review Committee: Nomination Solicitation

**AGENCY:** National Park Service

**ACTION:** Native American Graves Protection and Repatriation Review Committee; Notice of Nomination Solicitation

**SUMMARY:** The Native American Graves Protection and Repatriation Review Committee [P.L. 101-601] became law on November 16, 1990. Section 8 of the Act establishes a review committee to monitor implementation of the statute, facilitate the resolution of disputes, consult with the Secretary of the Interior in the development of regulations, and report to Congress on the status of implementation. The National Park Service is soliciting nominations for two members on this review committee.

**DATES:** Nominations should be received by June 19, 2000.

**ADDRESSES:** Nominations should be sent to the Assistant Director, Cultural Resources Stewardship and Partnerships, 1849 C Street NW- 350 NC, Washington, DC 20240. Nominations should include a brief biography with home and business addresses and telephone number of each nominated individual.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Robbins, Assistant Director, Cultural Resources Stewardship and Partnerships, 1849 C Street NW- 350 NC, Washington, DC 20240; telephone 202/343-3387. A copy of the charter for this review committee is available upon request.

**SUPPLEMENTARY INFORMATION:** Section 8 (b) of the Act stipulates that the review committee is composed of seven members appointed by the Secretary of the Interior as follows:

a. Three members appointed from nominations by Indian tribes, Native Hawaiian organizations, and traditional religious leaders, with at least two such persons being traditional religious leaders. The term traditional religious leader means:

1. a person who is recognized by members of an Indian tribe or Native Hawaiian organization as being responsible for performing cultural duties relating to the ceremonial or religious traditions of that Indian tribe; or

2. a person who has or is exercising a leadership role in an Indian tribe or Native Hawaiian organization based on the tribe's or organization's cultural, ceremonial, or religious practices.

b. Three members appointed from nominations submitted by national museum organizations and scientific organizations; and

c. One member appointed from a list of persons developed and consented to by all of the other members.

The Secretary of the Interior will appoint one member from nominations received from Indian tribes and Native Hawaiian organizations. This particular appointee is not required to be a traditional religious leader.

The Secretary of the Interior will appoint one member from nominations received from national museum organizations and scientific organizations. The Secretary of the Interior may not appoint Federal officers or employees to the review committee.

Dated: February 2, 2000,

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 00–3052 Filed 2–9–00; 8:45 am]

**BILLING CODE 4310–70–F**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Going-to-the-Sun Road Advisory Committee

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of Meeting of Going-to-the-Sun Road Advisory Committee.

**SUMMARY:** This notice announces a scheduled meeting of the Going-to-the-Sun Road Advisory Committee. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

**MEETING DATE AND TIME:** Tuesday, February 29, 2000 (8:00 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m.); Wednesday, March 1, 2000 (8:00 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m.); and Thursday, March 2, 2000 (8:00 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m.)

**MEETING LOCATION:** Cavanaughs at Kalispell Center, 20 N. Main Street, Kalispell, Montana 59901, 406–752–6660.

**AGENDA:** On February 29 National Park Service Regional Director Karen Wade will address the Committee. The rest of the morning will focus on the Committee's purpose and related organizational and procedural matters and desired outcomes. The second two days will be devoted to the Going-to-the-Sun Road including the legislated engineering study and economic analysis based on the desired outcomes discussed the previous day. Project scope, schedule, and responsibilities will be part of these discussions.

The Committee may be addressed at various times by other officials of the National Park Service and the Department of the Interior; and other miscellaneous topics and reports may be covered. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons.

The Committee meeting will be open to the public. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Anyone may file with the Committee a written statement concerning matters to be discussed. The Committee may also permit attendees to address the Committee, but may restrict the length of the presentations, as necessary to allow the Committee to complete its agenda within the allotted time.

Anyone who wishes further information concerning the meeting, or who wishes to submit a written statement, may contact Dayna Hudson, Office of the Superintendent, Glacier National Park, P.O. Box 128, West Glacier, MT 59936 (telephone 406–888–7972).

Draft minutes of the meeting will be available for public information 30 days after the meeting in the Project Manager's Office, Park Headquarters, Glacier National Park, West Glacier, MT.

Dated: February 2, 2000.

**Michael D. Snyder,**

*Acting, Director Intermountain Region.*

[FR Doc. 00–2884 Filed 2–8–00; 8:45 am]

**BILLING CODE 4310–70–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Native American Graves Protection and Repatriation Review Committee: Meeting

**AGENCY:** National Park Service.

**ACTION:** Notice.

Notice is hereby given in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1988), that a meeting of the Native American Graves Protection and Repatriation Review Committee will be held on April 2, 3, and 4, 2000, in Juneau, Alaska.

The committee will meet at the Centennial Hall Convention Center; telephone: 907/586–5283, fax: 907/586–1135, located at 101 Egan Drive, Juneau, Alaska. Meetings will begin at 8:30 a.m. and will end no later than 5:00 p.m. each day.

The Native American Graves Protection and Repatriation Review Committee was established by Public Law 101–601 to monitor, review, and assist in implementation of the inventory and identification process and repatriation activities required under the Native American Graves Protection and Repatriation Act.

The agenda for this meeting will include: recommendations for disposition of culturally unidentifiable human remains, 1999 Report to Congress, discussion of Federal agency compliance, and implementation of the statute in Alaska.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Persons will be accommodated on a first-come, first-served basis. Persons wishing to make a presentation to the committee should submit a request to do so by March 3, 2000. Please submit a written abstract of your presentation and your contact information. Any member of the public may also file a written statement for consideration by the committee by March 13, 2000. Both written requests and statements should be addressed to the committee in care of the Assistant Director, Cultural Resources Stewardship and Partnerships.

A block of lodging rooms has been set aside at the Westmark Baranof (800/764–0017) and the Goldbelt Hotel (888/478–6909) at a significantly reduced rate. Reservations must be booked with these hotels by March 4, 2000, to guarantee the reduced rate. Please reference the National Park Service and mention that you are attending the NAGPRA Review Committee Meeting.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Mr. John Robbins, Assistant Director, Cultural Resources Stewardship and Partnerships, 1849 C St. NW—350 NC, Washington, DC 20240; telephone: 202/343–3387; fax: 202/343–5260. Transcripts of the meeting will be available for public inspection approximately eight weeks after the meeting at the office of the Assistant Director, Cultural Resources Stewardship and Partnerships, 800 North Capitol St., NW, Suite 350, Washington, DC 20013.

Dated: February 2, 2000,

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 00–3051 Filed 2–9–00; 8:45 am]

**BILLING CODE 4310–70–F**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Native American Graves Protection and Repatriation Review Committee: Findings

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** NAGPRA Review Committee Advisory Findings and Recommendations Regarding Human Remains and Associated Funerary Objects in the Control of Chaco Culture National Historical Park.

After full and careful consideration of the information and statements submitted and presented by representatives of the Hopi Tribe and Chaco Culture National Historical Park at its meetings on May 3–5, 1999 and November 18–20, 1999, the Native American Graves Protection and Repatriation Review Committee (Review Committee) considers that:

1. On May 12, 1999, Chaco Culture National Historical Park published a Notice of Inventory Completion regarding 265 Native American human remains and 743 funerary objects. The park determined the human remains and funerary objects to be culturally affiliated with the Hopi Tribe of Arizona; Navajo Nation of Arizona, New Mexico, and Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and the Zuni Tribe of Zuni Reservation, New Mexico.

2. The Hopi Tribe disputed the park's determinations of cultural affiliation, arguing that:

a. Proper tribe-by-tribe consultation was not performed by the park;

b. The park did not apply a rigorous standard in weighing the evidence in making determinations of cultural affiliation; and

c. Determinations of cultural affiliation must be made on an object-by-object basis, rather than globally for the park as a whole.

3. Chaco Culture National Historical Park answered these objections by pointing to a nine-year record of tribal consultations. The park also argued that there is cultural continuity within Chaco Canyon dating to the Archaic Period (pre 1 AD) and that as such, there was no value in assessing cultural affiliation for each site individually. The park defended its determinations of cultural affiliation on the grounds that a broad range of both scientific and traditional evidence had been used. It was also noted that given the complex history of Chaco Canyon, and the strong

traditional attachment that the place held for many tribes, it was not surprising that many groups should be considered culturally affiliated.

On hearing all of the evidence presented, the Review Committee finds that the complaints made by the Hopi Tribe have merit. While the Review Committee recognizes the efforts made in the area of tribal consultation, tribes were not given adequate opportunity to consult on a one-to-one basis and to make their concerns known outside of a public forum. The Review Committee also agrees with the Hopi Tribe that more is needed in the evaluating and weighing of the evidence for establishing cultural affiliation. Rather than a rigorous determination of cultural affiliation, the park seems to have applied a much looser criterion of cultural relationship to geographical place, as a basis for determining culturally affiliated tribes. The park's global approach to the assessment Chaco archeological sites, effectively precluded any realistic assessment of cultural affiliation based on specific site features, dates, or cultural practices. Likewise, sites with virtually no contextual information were treated as culturally affiliated. The global approach to site assessment and affiliation resulted in a determination of cultural affiliation for all Chaco Canyon remains with all groups expressing cultural relationship to the region.

It is the recommendation of the Review Committee that the Chaco Culture National Historical Park withdraw its published Notice if Inventory Completion and reassess its determination of cultural affiliation. The Review Committee recommends that this reassessment specifically consider the following issues:

1. Determination of cultural affiliation should be made on a site-by-site basis, assessing each site based on the specific data available;

2. While collective consultation can be useful, it should not be used in lieu of individual tribal consultation when requested by an Indian tribe;

3. A proper determination of cultural affiliation necessarily requires the critical evaluation and careful weighing of all available evidence. This weighing should emphasize group identity, time period, specific cultural practices, and traceable cultural continuity;

4. The park should take steps to ensure the objective character of the determinations of cultural affiliation of the human remains and other cultural items in the control of the park. The process the park follows in making cultural affiliation determinations also must be seen by others to have been objective. For example, the Review Committee believes that the park should engage a qualified independent contractor to re-evaluate the information from the Chaco sites and offer specific recommendation for cultural affiliation.

Review Committee member James Bradley did not participate in the Review Committee's deliberations nor in the formulation of these advisory findings and recommendations.

These advisory findings and recommendations do not necessarily represent the views of the National Park Service or the Secretary of the Interior. The National Park Service and the Secretary of the Interior have not taken a position on these matters.

Dated: January 10, 2000.

**Martin Sullivan,**

*Chair, Native American Graves Protection and Repatriation Review Committee.*

[FR Doc. 00–3053 Filed 2–9–00; 8:45 am]

**BILLING CODE 4310–70–F**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains From Rockbridge County, VA in the Possession of the Virginia Department of Historic Resources, Richmond, VA

**AGENCY:** National Park Service.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Rockbridge County, VA in the possession of the Virginia Department of Historic Resources, Richmond, VA.

A detailed assessment of the human remains was made by Virginia Department of Historic Resources professional staff in consultation with representatives of the Chickahominy, the Eastern Chickahominy, the Mattaponi, the Monacan Indian Nation, the Nansemond, the Pamunkey, the United Rappahannock, the Upper Mattaponi, all non-Federally recognized Indian groups which are formally recognized by the Commonwealth of Virginia.

In 1901, human remains representing a minimum of 105 individuals were excavated from the Hayes Creek Mound, Rockbridge County, VA by Edward P. Valentine, an amateur archeologist with the Valentine Museum, Richmond, VA. In 1989, these human remains were donated to the Virginia Department of Historic Resources by the Valentine Museum. No known individuals were identified. No associated funerary objects are present.

Based on material culture and archeological evidence, the Hayes Creek Mound site has been identified as a Late Woodland (c. 900–1600 A.D.) occupation. Based on the material culture and condition of the human remains, these individuals have been identified as Native American. Archeological and ethnohistoric research indicates the Monacan and Mannahoac were loosely confederated with each other and linked to the earlier mound-building peoples in the Virginia piedmont and eastern mountain regions generally known as the Lewis Creek Mound Culture. Consultation evidence presented by the present-day Monacan indicates a direct lineal connection with the Monacan and related tribes occupying Rockbridge County in the early 17th century. Based on continuities of mound construction and site arrangement, there appears to be a shared ideology and cultural continuity which underlayed and defined not only the Monacan east of the Blue Ridge, but also includes related groups on the immediate west side of the Blue Ridge.

On October 29, 1999, the Virginia Department of Historic Resources requested a finding from the NAGPRA Review Committee concerning the Monacan Indian Nation's request for repatriation for these 105 individuals listed as ''culturally unidentifiable'' on the Department's NAGPRA inventory. At its November 18–20, 1999 meeting, the NAGPRA Review Committee recommended that the Department proceed with repatriation of these Native American human remains to the Monacan Indian Nation following publication of this Notice of Inventory Completion in the Federal Register.

Based on the above mentioned information, officials of the Virginia Department of Historic Resources have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 105 individuals of Native American ancestry. Officials of the Virginia Department of Historic Resources have determined that, pursuant to 25 U.S.C. 3001 (2), no relationship of shared group identity can be reasonably traced between these Native American human remains and a Federally recognized Indian tribe. However, officials of the Virginia Department of Historic Resources have determined that a relationship of shared group identity can be reasonably traced between these Native American human remains and the Monacan Indian

Nation, a non-Federally recognized Indian group.

This notice has been sent to officials of the Chickahominy, the Eastern Chickahominy, the Mattaponi, the Monacan Indian Nation, the Nansemond, the Pamunkey, the United Rappahannock, the Upper Mattaponi. Representatives of any other Federally recognized Indian tribe or other valid claimant under NAGPRA that believes itself to be culturally affiliated with these human remains should contact M. Catherine Slusser, State Archaeologist, Department of Historic Resources, 2801 Kensington Ave., Richmond, VA 23221; telephone: (804) 367-2323, before March 13, 2000. Repatriation of the human remains to the Monacan Indian Nation may begin after that date if no Federally recognized Indian tribes or other valid claimant under NAGPRA makes a claim.

The National Park Service is not responsible for the determinations within this notice.

Dated: January 19, 2000.

**Francis P. McManamon,**

*Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.*

[FR Doc. 00–3054 Filed 2–9–00; 8:45 am]

**BILLING CODE 4310–70–F**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Prospective Grant of Exclusive Patent License

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I). The Bureau of Reclamation (Reclamation) is contemplating the granting of an exclusive license in the United States to practice the invention embodied in U.S. Patent No. 5,544,973 titled ''Concrete Step Embankment Protection''. The exclusive license is to be granted to Lee Masonary Products, L.L.C., DBA Armortec, having a place of business in Bowling Green, Kentucky. The patent rights in this invention has been assigned to the United States of America.

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. While the primary purpose of this notice is to announce Reclamation's intent to grant an exclusive license to practice the invention listed above, it also serves to publish the availability of this invention for licensing in accordance with law. The prospective license may be granted unless Reclamation receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7

**DATES:** Written evidence and arguments against granting the prospective license must be received by May 10, 2000.

**ADDRESSES:** Inquiries, comments, and other materials relating to the contemplated license may be submitted to Donald E. Ralston, Bureau of Reclamation, Research and Technology Transfer, MS–7620, 1849 C Street, N.W., Washington, D.C. 20240.

A copy of the above-identified patent may be purchased from the NTIS Sales Desk by telephoning 1–800–553–NTIS or by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161.

**FOR FURTHER INFORMATION CONTACT:** Donald Ralston by telephone at (202) 208–5671.

**SUPPLEMENTARY INFORMATION:** The present invention relates to a dam spillway system for embankment dam overtopping protection comprising a layer of freedraining, angular, gravel filter material, a plurality of rows of overlapping, tapered, concrete blocks assembled over the filter material in shingle-fashion, from the toe of the dam, up the slope to the top of the dam, and a plurality of fixed concrete toe blocks located at the toe of the dam, usually beneath the tailwater, and supporting each of the rows of concrete blocks. The invention has particular application to providing erosion protection for embankment dams that may be subject to overtopping flows.

Properly filed competing applications received by Reclamation in response to this notice will be considered as objections to the grant of the contemplated license.

Dated: January 12, 2000.

**Stanley L. Ponce,**

*Director, Research and Technology Transfer.*

[FR Doc. 00–3110 Filed 2–9–00; 8:45 am]

**BILLING CODE 4310–94–M**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### Notice of Proposed Information Collection

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for 30 CFR 783, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

**DATES:** Comments must be submitted on or before March 13, 2000, to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted a request to OMB to renew its approval of the collection of information found at 30 CFR 783, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources. OSM is requesting a 3-year term of approval for this information collection activity.

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 number for this collection of information is listed in 30 CFR Part 783, which is 1029–0038.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on November 30, 1999 (64 FR 66932). No comments were received. This notice provides the public with an additional 30 days in which to comment.

The following information is provided for the information collection: (1) title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information. Where appropriate, OSM has revised burden

estimates to reflect current reporting levels and adjustments based on reestimates of the burden or number of respondents.

*Title:* Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, 30 CFR 783.

*OMB Control Number:* 1029–0038.

*Summary:* Applicants for underground coal mining permits are required to provide adequate descriptions of the environmental resources that may be affected by proposed underground coal mining activities.

*Bureau Form Number:* None.

*Frequency of Collection:* Once at time of application submission.

*Description of Respondents:* Underground coal mining applicants, and State regulatory authorities.

*Total Annual Responses:* 105.

*Total Annual Burden Hours:* 16,918 hours.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence.

**ADDRESSES:** Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503, and to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington DC 20240.

Dated: February 7, 2000.

**Richard G. Bryson, Chief,**

*Division of Regulatory Support.*

[FR Doc. 00–3069 Filed 2–9–00; 8:45 am]

**BILLING CODE 4310–05–M**

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 701–TA–393 and 731–TA–829, 830, 833, 834, 836, and 838 (Final)]**

### Certain Cold-Rolled Steel Products From Argentina, Brazil, Japan, Russia, South Africa, and Thailand

**AGENCY:** International Trade Commission.

**ACTION:** Revised schedule for the subject investigations.

**EFFECTIVE DATE:** Date of commission action.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Haines (202–205–3200), 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 December 1, 1999, the Commission established a schedule for the conduct of the final phase of the subject investigations (**Federal Register** 64 FR 67307, December 1, 1999). The Commission received notification of the Department of Commerce's final determinations in these investigations on January 27, 2000. The Commission, therefore, is revising its schedule to conform with Commerce's notification.

The Commission's new schedule for the investigations is as follows: the Commission will release the staff report to parties on February 18, the final release of information will be on February 25; and final party comments are due on February 29.

For further information concerning these investigations see the Commission's notice cited above and 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:** These investigations are 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: February 2, 2000.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–3018 Filed 2–9–00; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 701–TA–387–391 and 731–TA–816–821 (Final)]**

### Certain Cut-to-Length Steel Plate From France, India, Indonesia, Italy, Japan, and Korea

#### Determinations [1]

On the basis of the record [2] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from France,[3] India, Indonesia, Italy, and Korea of certain cut-to-length steel plate, provided for in headings 7208, 7210, 7211, 7212, 7225, and 7226 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be subsidized by the respective governments. The Commission also determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of such imports from France,[3] India, Indonesia, Italy, Japan, and Korea that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission further determines that critical circumstances do not exist with regard to such imports from Japan.

#### Background

The Commission instituted these investigations effective February 16, 1999, following receipt of petitions filed with the Commission and the Department of Commerce by Bethlehem Steel Corp., Bethlehem, PA; U.S. Steel Group, a unit of USX Corp., Pittsburgh, PA; Gulf States Steel, Inc., Gadsden, AL; IPSCO Steel, Inc., Muscatine, IA; Tuscaloosa Steel Co., Tuscaloosa, AL; and the United Steelworkers of America, Pittsburgh, PA.[4] The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of certain cut-to-length steel plate from France, India, Indonesia, Italy, and Korea were being

[1] Commissioner Okun not participating.

[2] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[3] Commissioner Askey dissenting.

[4] Gulf States is not a petitioner with respect to the investigations on France. Tuscaloosa is not a petitioner with respect to the investigations on France and Italy.

subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and that imports from France, India, Indonesia, Italy, Japan, and Korea were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigations 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. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 15, 1999 (64 FR 50104). The hearing was held in Washington, DC, on December 14, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on February 1, 2000. The views of the Commission are contained in USITC Publication 3273 (January 2000), entitled Certain Cut-to-length Steel Plate from France, India, Indonesia, Italy, Japan, and Korea: Investigations Nos. 701–TA–387–391 and 731–TA–816–821 (Final).

By order of the Commission.

Issued: February 2, 2000.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–3016 Filed 2–9–00; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–419]**

### Certain Excimer Laser Systems for Vision Correction Surgery and Components Thereof and Methods for Performing Such Surgery; Notice of Commission Decision To Review Portions of an Initial Determination

**AGENCY:** International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part the final initial determination (''ID'') issued on December 6, 1999, by the presiding administrative law judge (''ALJ'') in the above-captioned investigation finding that there was no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337.

**FOR FURTHER INFORMATION CONTACT:** Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3152. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

**SUPPLEMENTARY INFORMATION:** This investigation was instituted on March 1, 1999, based on a complaint by VISX, Inc. (''VISX''), 64 Fed. Reg. 10016–17. The respondents named in the investigation are Nidek Co., Ltd., Nidek Inc., and Nidek Technologies, Inc. Complainant alleges importation and sale of certain excimer laser systems for vision correction surgery that infringe claims of U.S. Letters Patent Nos. 4,718,418 (''the '418 patent'') and 5,711,762 (''the '762 patent''). An evidentiary hearing was held from August 18, 1999 to August 27, 1999.

On December 6, 1999, the presiding administrative law judge (''ALJ'') issued her final ID finding that complainant VISX failed to establish the required domestic industry, that there was no infringement of any claim at issue, and that the '762 patent was invalid and unenforceable.

Having examined the record in this investigation, the final ID, the petitions for review, and the responses thereto, the Commission has determined not to review the ID's findings with respect to the '418 patent. The Commission has determined to review the ID's findings with respect to the '762 patent. Review questions and a briefing schedule will be issued following the issuance of this notice.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and sections 210.45–210.51 of the Commission's Rules of Practice and Procedure, 19 CFR 210.45–210.51.

Copies of the public versions of the subject IDs, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000.

Issued: February 2, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–3019 Filed 2–9–00; 8:45 am]

**BILLING CODE 7020–00–P**

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–419]**

### Certain Excimer Laser Systems for Vision Correction Surgery and Components Thereof and Methods for Performing Such Surgery; Schedule for the Filing of Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding; Briefing Questions

**AGENCY:** International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the schedule for filing written submissions on the issues under review in the above-captioned investigation in connection with the Commission's review-in-part of the final initial determination (''ID'') issued on December 6, 1999, by the presiding administrative law judge (''ALJ'') in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–3152. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

**SUPPLEMENTARY INFORMATION:** This investigation was instituted on March 1, 1999, based on a complaint by VISX, Inc. (''VISX''), 64 FR 10016–17. The respondents named in the investigation are Nidek Co., Ltd., Nidek Inc., and Nidek Technologies, Inc. Complainant alleges importation and sale of certain excimer laser systems for vision correction surgery that infringe claims of U.S. Letters Patent Nos. 4,718,418 (''the '418 patent'') and 5,711,762 (''the '762 patent''). An evidentiary hearing was held from August 18, 1999, to August 27, 1999.

On December 6, 1999, the presiding administrative law judge (''ALJ'') issued her final ID finding that complainant VISX failed to establish the required domestic industry, that there was no infringement of any claim at issue, and that the '762 patent was invalid and unenforceable.

On February 2, 2000, the Commission determined not to review the ID's findings with respect to the '418 patent and determined to review all the ID's

findings with respect to the '762 patent. The Commission is particularly interested in receiving briefing on the following points:

(1) The construction of the claimed laser delivery system means element of claim 1 of the '762 patent.

(2) The construction of claim 10 of the '762 patent and the ramifications of that construction under the doctrine of claim differentiation as it relates to claims 1 and 10.

(3) A discussion, including a detailed engineering description, of how VISX's STAR, STAR S2, 20/20A, and 20/20B systems function, and whether those systems practice claims 1, 10, or 12 of the '762 patent, both as those claims are construed by the ALJ and if claim 1 is construed as not requiring a proximity mask.

(4) Whether the accused Nidek device infringes claim 1 of the '762 patent literally or under the doctrine of equivalents if claim 1 is construed as not requiring a proximity mask.

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the 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 acts in the importation and sale of such articles. Accordingly, the Commission is 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, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or 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 Pub. 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 subject to 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. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

**Written Submissions**

The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues under review, and on remedy, the public interest, and bonding. Such submissions should address the January 31, 2000, recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than close of business on February 14, 2000. Reply submissions must be filed no later than the close of business on February 18, 2000. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See § 201.6 of the Commission's rules of practice and procedure, 19 CFR § 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and section 210.45 of the Commission's rules of practice and procedure, 19 CFR § 210.45.

Copies of the public version of the subject ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2000.

By order of the Commission.

Issued: February 3, 2000.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–3020 Filed 2–9–00; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 731–TA–457 A–D (Review)]**

### Heavy Forged Handtools From China[1]

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of full five-year reviews concerning the antidumping duty orders on heavy forged handtools from China.

**SUMMARY:** The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on heavy forged handtools from China would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

**EFFECTIVE DATE:** February 3, 2000.

**FOR FURTHER INFORMATION CONTACT:** Olympia DeRosa Hand (202–205–3182), Office of Investigations, U.S.

[1] Investigation No. 731–TA–457 A covers hammers and sledges with heads over 1.5 kg (3.33 pounds) (''hammers and sledges''); investigation No. 731–TA–457 B covers bars over 18 inches in length, track tools, and wedges (''bars and wedges''); investigation No. 731–TA–457 C covers picks and mattocks (''picks and mattocks''); and investigation No. 731–TA–457 D covers axes, adzes, and similar hewing tools (''axes and adzes'').

International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

On October 1, 1999, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (64 FR 55958, October 15, 1999). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

**Participation in the Reviews and Public Service List**

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

**Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List**

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Staff Report**

The prehearing staff report in the reviews will be placed in the nonpublic record on April 26, 2000, and a public version will be issued thereafter, pursuant to § 207.64 of the Commission's rules.

**Hearing**

The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on May 16, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 8, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 11, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

**Written Submissions**

Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.65 of the Commission's rules; the deadline for filing is May 5, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is May 25, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before May 25, 2000. On June 23, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 27, 2000, but such final comments must not contain new factual information and must otherwise comply with § 207.68 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: February 4, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–3025 Filed 2–9–00; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 731–TA–413–415 and 419 (Review)]**

## Certain Industrial Belts From Germany, Italy, Japan, and Singapore

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of full five-year reviews concerning the antidumping duty orders on certain industrial belts from Germany, Italy, Japan, and Singapore.

**SUMMARY:** The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on certain industrial belts from Germany, Italy, Japan, and Singapore would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and

Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

**EFFECTIVE DATE:** February 3, 2000.

**FOR FURTHER INFORMATION CONTACT:** Joanna Bonarriva (202–708–4083), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 3, 1999, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (64 FR 50106, September 15, 1999). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

**Participation in the Review and Public Service List**

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

**Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List**

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Staff Report**

The prehearing staff report in the reviews will be placed in the nonpublic record on June 7, 2000, and a public version will be issued thereafter, pursuant to § 207.64 of the Commission's rules.

**Hearing**

The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on June 27, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 19, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 23, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing *testimony in camera* no later than 7 days prior to the date of the hearing.

**Written Submissions**

Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.65 of the Commission's rules; the deadline for filing is June 16, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.67 of the Commission's rules. The deadline for filing posthearing briefs is July 7, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before July 7, 2000. On July 28, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before August 1, 2000, but such final comments must not contain new factual information and must otherwise comply with § 207.68 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.
Issued: February 4, 2000.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–3023 Filed 2–9–00; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 701–TA–309–A–B (Review) and 731–TA–528 (Review)]**

## Magnesium From Canada

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of full five-year reviews concerning the countervailing duty order and antidumping duty order on magnesium from Canada.

**SUMMARY:** The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on magnesium from Canada would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

**EFFECTIVE DATE:** February 3, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jeff Clark (202–205–3195), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

**SUPPLEMENTARY INFORMATION:**

## Background

On November 4, 1999, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (64 FR 62690, November 17, 1999). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's web site.

## Participation in the Reviews and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

## Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

## Staff Report

The prehearing staff report in the reviews will be placed in the nonpublic record on April 28, 2000, and a public version will be issued thereafter, pursuant to § 207.64 of the Commission's rules.

## Hearing

The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on May 31, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 23, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 26, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by § 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

## Written Submissions

Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.65 of the Commission's rules; the deadline for filing is May 16, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.67 of the Commission's rules. The deadline for filing posthearing briefs is June 9, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before June 9, 2000. On July 3, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 6, 2000, but such final comments must not contain new factual information and must otherwise comply with § 207.68 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of § 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with § 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: February 4, 2000.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–3024 Filed 2–9–00; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to The Clean Air Act

In accordance with 28 CFR 50.7, 38 FR 19029, notice is hereby given that on January 25, 2000, a proposed consent decree with respect to defendants Harry Grant and Sandalwood Construction Company in *United States* v. *Anthony Dell'Aquila Enterprises and Subsidiaries, Harry Grant, and Sandalwood Construction Company,* Civil Action No. 88–3232 (JCL), was lodged with the United States District Court for the District of New Jersey. The United States' complaint sought injunctive relief and civil penalties under the Clean Air Act (''CAA'') against Anthony Dell'Aquila Enterprises and Subsidiaries (''Dell'Aquila''), Harry Grant, and Sandalwood Construction Company in regard to violations of the National Emission Standards for Hazardous Air Pollutants for asbestos (''asbestos NESHAP'') at a facility that was owned by Dell'Aquila in Hoboken, New Jersey (''Dell'Aquila site''). The consent decree is signed on behalf of Harry Grant and Sandalwood Construction Company. The claim against Dell'Aquila was settled through a previous consent decree entered in the United States District Court for the District of New Jersey.

The consent decree provides that the defendants Harry Grant and Sandalwood Construction Company shall pay a civil penalty of $60,000. The consent decree also provides, *inter alia,* that each of the defendants shall conduct all demolition or renovation operations that either of them may become involved with in the future in compliance with the asbestos NESHAP. In connection with any such demolition or renovation operations, the defendants are required to engage an accredited building inspector and obtain a thorough asbestos identification survey prior to demolition or renovation to determine the presence of asbestos containing materials and to provide EPA with a copy of each survey at least twenty days prior to the commencement of any demolition or renovation.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Anthony Dell'Aquila Enterprises and Subsidiaries, Harry Grant, and Sandalwood Construction Co.,* D.J. Ref. 90–5–2–1–1288.

The proposed consent decree may be examined at the office of the United States Attorney, 970 Broad St., Room 502, Newark, NJ 07102 and at the Region II office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $4.25 payable to the ''Consent Decree Library.''

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment & Natural Resources Division.*

[FR Doc. 00–3113 Filed 2–9–00; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Consent Judgments Pursuant to The Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that a proposed Consent Decree in *United States* v. *Cornell University,* Civ. No. 00–CV–0121 (NAM), DOJ # 90–11–2–2/3, was lodged in the United States District Court for the Northern District of New York on January 21, 2000. The Consent Decree resolves the liability of defendant under section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9607(a), relating to the Pollution Abatement Services Superfund Site in Oswego, New York (the ''Site'').

Under the proposed consent decree, Cornell will cash out its liability for the Site, subjects to reopeners, by paying to the United States the sum of $30,000 in partial reimbursement of EPA's past response costs and paying $335,500 toward future operable unit 3 (''OU3'') Site costs to the responsible parties who are performing OU3 under an earlier consent decree. In exchange for the work and payment of response costs, Defendants will receive a covenant not to sue for response actions at the Site subject to certain reservations of rights.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Cornell University,* Civ. No. 00–CV–0121 (NAM), DOJ # 90–11–2–2/3.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of New York, James Foley U.S. Courthouse, 445 Broadway, Room 231, Albany, New York 12207; and at the Region II Office of the U.S. Environmental Protection Agency, 290 Broadway, New York, New York 10278. Copies of the Consent Decree may be obtained by mail from the consent Decree Library, United States Department of Justice, PO Box 7611 Ben Franklin Station, Washington, DC 20044, (202) 514–1547. In requesting a copy, please enclose a check in the amount of $5.25 (25 cents per page reproduction costs) payable to the Consent Decree Library.

**Joel M. Gross,**

*Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–3114 Filed 2–9–00; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice Of Lodging of Settlement Agreement

Notice is hereby given that on January 18, 2000, a proposed settlement agreement (''Settlement Agreement'') in *In re Raymark Industries, Inc.,* Case No. 98–51540, was lodged with the United States Bankruptcy Court for the District of Connecticut. This proposed Settlement Agreement resolves certain claims among the United States, the Trustee of Raymark Industries, Inc., and Leach Family Holdings, Inc. (''Leach'') with respect to a Site known as the Raymark Industries, Inc. Supefund Site located in Stratford, Connecticut.

The Settlement Agreement provides for a payment, under the conditions specified in the Agreement, to Leach in the amount of up to $ 1.5 million from the proceeds of the sale of the portion of the Raymark Site owned by Raymark Industries, Inc.

The proposed Settlement Agreement may be examined at the office of the United States Attorney for the District of Connecticut, 915 Lafayette Blvd., Room 309, Bridgeport, Ct. 06604; and at the Region I office of the Environmental Protection Agency, 1 Congress St., Boston, Mass. 02114–2023. A copy of the proposed Settlement Agreement may also be obtained by mail from the Consent Decree Library, PO Box 7611,

Washington, DC 20044. When requesting a copy please refer to the referenced case and enclose a check made payable to the Consent Decree Library in the amount of $3.50 (25 cents per page reproduction costs).

**Joel M. Gross,**

*Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–3112 Filed 2–9–00; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Digital Imaging Group, Inc.

Notice is hereby given that, on August 19, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Digital Imaging Group, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Photoloft.com, Campbell, CA; PhotoHighway.com, Monterey, CA; ACD Systems, Victoria, BC, CANADA; Lightsurf Technologies, Inc., Scotts Valley, CA; Seattle Film Works, Seattle, WA; Digitella Technology, Inc., Irvine, CA; Signafy, Inc., Princeton, NJ; Intellectual Protocols, Nannet, NY; RCO, Los Angeles, CA; MediaSec Technologies, Essen, GERMANY; and CNS Development, Colleyville, TX have been added as parties to this venture. Also, PictureVision, Inc., Herndon, VA; AccuSoft, Westborough, MA; Digital Zone International A/S, Aarhus C, DENMARK; and Samsung Electronics Co. Ltd., Suwon, Kyungki-D, SOUTH KOREA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the joint venture. Membership in this joint venture remains open, and Digital Imaging Group, Inc. intends to file additional written notification disclosing all changes in membership.

On September 25, 1997, Digital Imaging Group, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 10, 1997 (62 FR 60530).

The last notification was filed with the Department on June 10 1999. A notice has not yet been published in the **Federal Register**.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–3122 Filed 2–9–00; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—OBI Consortium, Inc.

Notice is hereby given that, on August 23, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), OBI Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, American Management Systems, Fairfax, VA; GEIS (GE Information Systems), Gaithersburg, MD; and Trilogy Buying Chain, Austin, TX have been added as parties to this venture. Also, Texas Instruments, Dallas, TX; and Open Market, Burlington, MA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OBI Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On Saturday 10, 1997, OBI Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 10, 1997 (62 FR 60531).

The last notification was filed with the Department on May 27, 1999. A notice has not yet been published in the **Federal Register**.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–3121 Filed 2–9–00; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Ohio Aerospace Institute Federated Intelligent Product Environment Consortium (''FIPER'')

Notice is hereby given that, on July 17, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Ohio Aerospace Institute Federated Intelligent Product Environment Consortium (''FIPER'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Ohio Aerospace Institute, Cleveland, OH; BFGoodrich Aerospace, Aerostructures Group, Chula Vista, CA; Engineous Software, Inc., Morrisville, NC; GE Aircraft Engines, Cincinnati, OH; Ohio University, Athens, OH; and Parker Hannifin Corporation, Mentor, OH. The nature and objectives of the venture are to conduct research and development directed at reducing design time by intelligently automating elements of the design process in a linked associative environment. The participants are joining together to collaborate to accelerate the development of technology to provide true concurrency between design and manufacturing. Information regarding participation in The Federated Intelligent Product Environment ''FIPER'' Consortium may be obtained from Jake Breland, Ohio Aerospace Institute (OAI), 22800 Cedar Point Rd., Cleveland, Ohio 44142.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–3127 Filed 2–9–00; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Salutation Consortium, Inc.

Notice is hereby given that, on August 12, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Salutation Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Kobe Steel, Ltd., Hyogo-ken, JAPAN; Brother Industries, Ltd., Aichiken, JAPAN; Komatsu Ltd., Kanagawa-ken, JAPAN; Sun Microsystems, Inc., Palo Alto, CA; Cisco Systems, Inc., San Jose, CA; and Adobe Systems, San Jose, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Salutation Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On March 30, 1995, Salutation Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 27, 1995 (60 FR 33233).

The last notification was filed with the Department on May 6, 1999. A notice has not been published in the **Federal Register**.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–3118 Filed 2–9–00; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute (''SwRI'')—Durability and Life Assessment of GTD–111 Buckets

Notice is hereby given that, on April 5, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute (''SwRI'')—Durability and Life Assessment of GTD–111 Buckets has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Aramco Services Company, Houston, TX has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Southwest Research Institute (''SwRI'')—Durability and Life Assessment of GTD–111 Buckets intends to file additional written notification disclosing all changes in membership.

On October 31, 1995, Southwest Research Institute (''SwRI'')—Durability and Life Assessment of GTD–111 Buckets filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 17, 1996 (61 FR 54222).

The last notification was filed with the Department on October 21, 1998. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 19, 1999 (64 FR 13606).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–3124 Filed 2–9–00; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Telematics Suppliers Consortium, Inc. (''Telematics'')

Notice is hereby given that, on August 19, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Telematics Suppliers Consortium, Inc. (''Telematics'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Auvo Inc., Schaumburg, IL; Clarion Co., Ltd., Saitama, JAPAN; ComCARE Alliance, Washington, DC; InfoMove.com, Inc., Redmond, WA; Intelligent Transportation Society of America, Washington, DC; Microsoft, Inc., Redmond, WA; Navigational Technologies, Rosemont, IL; Qualcomm Inc., San Diego, CA; Sony Group, Menlo Park, CA; The Automobile Association, Basingstoke, UNITED KINGDOM have been added as parties to this venture. In addition, the initial notification made by the Consortium is amended to include Alpine Electronics Inc., Tokyo, JAPAN (parent company of Alpine Electronics of America, Inc., Torrence, CA); Tyco International Ltd., Hamilton, BERMUDA (parent company of AMP Inc., Harrisburg, PA); and Lear Corporation, Southfield, MI (parent company of United Technologies Corporation, Hartford, CT) as members.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Telematics Suppliers Consortium, Inc. (''Telematics'') intends to file additional written notification disclosing all changes in membership.

On March 12, 1999, Telematics Suppliers Consortium, Inc. (''Telematics'') filed its original notification pursuant to Section 6(a) of the Act. The last notification was filed with the Department on May 26, 1999. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 14, 1999 (64 FR 69801).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–3125 Filed 2–9–00; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Combinatorial Tools and Advanced Data Analysis Methods for Heterogeneous Catalysis

Notice is hereby given that, on July 20, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), UOP LLC and Nonlinear Dynamics Incorporated (NDI) have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and

objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Nonlinear Dynamics Incorporated (NDI), Ann Arbor, MI; and UOP LLC, Des Plaines, IL. The nature and objectives of the venture are to conduct research for ''Combinatorial Tools and Advanced Data Analysis Methods for Heterogeneous Catalysis''.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–3126 Filed 2–9–00; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on April 20, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Prakash Bare (individual membership), San Jose, CA; EnThink, Inc., Santa Clara, CA; Hantro Products Oy, Oulu, FINLAND; Korea Electronic Technology Institute, Pyung Taek-Si, Kyung Gi-Do, SOUTH KOREA; Massana, Inc., Campbell, CA; TAEUS, Colorado Springs, CO; The Silicon Group, Inc., Austin, TX; and Worldwide Semiconductor Manufacturing Corp., Hsinchu, TAIWAN have been added as parties to this venture. Also, Ambit Design Systems, Inc., Austin, TX; Beijing Intelligent Electronics Co., Ltd., Beijing, PEOPLES REPUBLIC OF CHINA; CAE Plus, Inc., Austin, TX; Cygnus Solutions, Sunnyvale, CA; Duet Technologies, Inc., San Jose, CA; Exemplar Logic, Inc., Fremont, CA; FFC Limited (Fuji Facom Control), Tokyo, JAPAN; Lockheed Martin Advanced Technology Labs, Camden, NJ; LTX Corp., Westwood, MA; Neuw Intellectual Property, Oldham, Lancs., UNITED KINGDOM; SIS Microelectronics, Inc., Longmont, CO; Spinnaker Systems, Inc., Tokyo, JAPAN; Vantis, Sunnyvale, CA; Wipro Ltd., Santa Clara, CA; and Yokogawa Electric Corp., Tokyo, JAPAN have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on February 11, 1999. A notice has not yet been published in the **Federal Register**.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–3123 Filed 2–9–00; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 8, 1999, and published in the **Federal Register** on October 18, 1999, (64 FR 56225), Cedarburg Laboratories, Inc., 870 Badger Circle, Grafton, Wisconsin 53024, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of propiram (9649), a basic class of controlled substance listed in Schedule I.

The firm will manufacture propiram in the process of manufacturing other targeted test compounds for another firm.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Cedarburg Laboratories, Inc. to manufacture propiram is consistent with the public interest at this time. DEA has investigated the company to ensure that the company's registration is coninspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: February 4, 2000.

**John H. King,**

*Deputy, Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–3142 Filed 2–9–00; 8:45 am]

**BILLING CODE 4410–09–M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 1, 1999, and published in the **Federal Register** on October 13, 1999, (64 FR 55489), Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chatanooga, Tennessee 37409, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methamphetamine (1105), a basic class of controlled substance listed Schedule II.

The firm plans to bulk manufacture methamphetamine to produce products for distribution to its customers.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Chattem Chemicals, Inc. to manufacture methamphetamine is consistent with the public interest at this time. DEA has investigated the firm on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR § 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: January 24, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–3143 Filed 2–9–00; 8:45 am]

**BILLING CODE 4410–09–M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Importer of Controlled Substances; Notice of Registration

By Notice dated October 8, 1999, and published in the **Federal Register** on October 18, 1999, (64 FR 52266), Chirex Technology Center, Inc., DBA Chirex Cauldron, 383 Phoenixville Pike, Malvern, Pennsylvania 19355, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import the phenylacetone for the manufacture of amphetamine.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and 952(a), and determined that the registration of Chirex Technology Center, Inc., DBA Chirex Cauldron to import phenylacetone is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated the company to ensure that the company's registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: January 27, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–3144 Filed 2–9–00; 8:45 am]

**BILLING CODE 4410–09–M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 29, 1999, Ganes Chemicals Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Methylphenidate (1724) | II |
| Amobarbital (2125) | II |
| Pentobarbital (2270) | II |
| Secobarbital (2315) | II |
| Glutethimide (2550) | II |
| Methadone (9250) | II |
| Methadone-intermediate (9254) | II |
| Dextropropoxyphene, bulk (non-dosage forms) (9273). | II |

The firm plans to manufacture the controlled substances for distribution as bulk products to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 10, 2000.

Dated: February 2, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–3147 Filed 2–9–00; 8:45 am]

**BILLING CODE 4410–09–M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 24, 1999, High Standard Products, 1100 W. Florence Avenue, #B, Inglewood, California 90301, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Methaqualone (2565) | I |
| Lysergic acid diethylamide (7315) | I |
| Tetrahydrocannabinols (7370) | I |
| 3,4-Methylenedioxyamphetamine (7400). | I |
| 3,4-Methylenedioxy-N-ethylamphetamine (7404). | I |
| 3,4-Methylenedioxymethamphetamine (7405). | I |
| 4-Methoxyamphetamine (7411) | I |
| Heroin (9200) | I |
| 3-Methylfentanyl (9813) | I |
| Amphetamine (1100) | II |
| Methamphetamine (1105) | II |
| Secobarbital (2315) | II |
| Phencyclidine (7471) | II |
| Cocaine (9041) | II |
| Codeine (9050) | II |
| Hydromorphone (9150) | II |
| Diphenoxylate (9170) | II |
| Hydrocodone (9193) | II |
| Methadone (9250) | II |
| Morphine (9300) | II |
| Fentanyl (9801) | II |

The firm plans to manufacture analytical reference standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 10, 2000.

Dated: February 2, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–3148 Filed 2–9–00; 8:45 am]

**BILLING CODE 4410–09–M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 1, 1999, and published in the **Federal Register** on October 13, 1999, (64 FR 55490), Irix Pharmaceuticals, Inc., 101 Technology Place, Florence, South Carolina 29501, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture methylphenidate for demonstration purposes and for dosage form development and stability studies.

DEA has considered the factors in Title 21, United States Code, Section

823(a) and determined that the registration of Irix Pharmaceuticals, Inc. to manufacture methylphenidate is consistent with the public interest at this time. DEA has investigated the firm on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security system, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: February 4, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–3145 Filed 2–9–00; 8:45 am]

**BILLING CODE 4410–09–M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 8, 1999, and published in the **Federal Register** on October 18, 1999, (64 FR 56227), LifePoint, Inc., 10410 Trademark Street, Rancho Cucamonga, California 91730, which has been changed to 10400 Trademark Street, Rancho Cucamonga, California 91730, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Tetrahydrocannabinols (7370) | I |
| Amphetamine (1100) | II |
| Methamphetamine (1105) | II |
| Phencyclidine (7471) | II |
| Benzoylecgonine (9180) | II |
| Morphine (9300) | II |

The firms plans to use gram quantities of the listed controlled substances to manufacture drug abuse test kits.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of LifePoint, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated the firm on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: January 27, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–3146 Filed 2–9–00; 8:45 am]

**BILLING CODE 4410–09–M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[DEA # 186I]**

### Controlled Substances: Established Initial Aggregate Production Quotas for 2000

**AGENCY:** Drug Enforcement Administration (DEA), Justice.

**ACTION:** Notice of aggregate production quotas for 2000.

**SUMMARY:** This notice establishes initial 2000 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA). This notice replaces and supersedes the final order dated December 21, 1999 and published in the **Federal Register** (64 FR 72686). Since the aggregate production quotas listed herein are the same as those published in 64 FR 72686, except as noted below, this will not effect individual manufacturing quotas or procurement quotas previously issued by DEA. Further, this notice corrects two errors in the notice published in 64 FR 72686 as follows: the aggregate production quota of 2 grams for the Schedule I substance codeine-N-oxide was inadvertantly deleted from the notice; and, the aggregate production quotas for hydrocodone (for conversion) and hydromorphone were inadvertantly listed twice. These two corrections are incorporated into the list of aggregate production quotas below.

**EFFECTIVE DATE:** February 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

**SUPPLEMENTARY INFORMATION:** Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by § 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to § 0.104 of Title 28 of the Code of Federal Regulations.

The 2000 aggregate production quotas represent those quantities of controlled substances that may be produced in the United States in 2000 to provide adequate supplies of each substance for: The estimated medical, scientific, research and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks (21 U.S.C. 826(a) and 21 CFR 1303.11). These quotas do not include imports of controlled substances for use in industrial processes.

On October 21, 1999, a notice of the proposed initial 2000 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (64 FR 56809). All interested persons were invited to comment on or object to these proposed aggregate production quotas on or before November 22, 1999.

Six companies commented on a total of 16 Schedules I and II controlled substances within the published comment period. The companies commented that the proposed aggregate production quotas for alfentanial, amphetamine, diphenoxylate, fentanyl, hydromorphone, levorphanol, meperidine, levo-desoxyephedrine, methamphetamine (for sale), methamphetamine (for conversion), methylphenidate, noroxymorphone (for conversion), oxycodone (for sale), oxycodone (for conversion), sufentanil and thebaine were insufficient to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and for the establishment and maintenance of reserve stocks.

In addition, one comment was received after the published comment

period had ended. This comment requested that the aggregate production quota for dihydromorphone be increased to provide for an intermediate in a current manufacturing process. This comment was taken into consideration in determining the established initial 2000 aggregate production quota for dihydromorphine.

DEA has taken into consideration the above comments along with the relevant 1999 manufacturing quotas, current 1999 sales and inventories, 2000 export requirements and research and product development requirements. Based on this information, the DEA has adjusted the initial aggregate production quotas for alfentanil, dihydromorphine, diphenoxylate, fentanyl, hydromorphone, levorphanol, meperidine, levo-desoxyephedrine, methaphetamine (for conversion), noroxymorphone (for conversion), osycodone (for sale), sufentanil and thebaine to meet the legitimate needs of the United States. Significant portions of the increases for alfentanil, diphenoxylate, fentanyl, hydromorphone, levorphanol, noroxymorphone (for conversion) and sufentanil are due to a change in the manner in which manufacturing losses are accounted for by a bulk manufacturer.

In addition, one company requested a hearing to address the aggregate production quota for oxycodone (for sale) or hydromorphone if the aggregate production quotas were not increased sufficiently. The DEA, based on the data provided, has increased the aggregate production quotas for both oxycodone (for sale) and hydromorphone and has determined that a hearing is not necessary.

Regarding amphetamine, methamphetamine (for sale), methylphenidate and oxycodone (for conversion), the DEA has determined that the proposed initial 2000 aggregate production quotas are sufficient to meet the current 2000 estimated medical, scientific, research and industrial needs of the United States.

Pursuant to Section 1303 of Title 21 of the Code of Federal Regulations, the Deputy Administrator of the DEA will, in early 2000, adjust aggregate production quotas and individual manufacturing quotas allocated for the year based upon 1999 year-end inventory and actual 1999 disposition data supplied by quota recipients for each basic class of Schedules I or II controlled substance.

Therefore, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by § 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to § 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administrator hereby orders that the 2000 initial aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

| Basic class | Established initial 2000 quotas |
|---|---|
| **Schedule I** | |
| 2,5-Dimethoxyamphetamine | 10,001,000 |
| 2,5-Dimethoxy-4-ethylamphetamine (DOET) | 2 |
| 3-Methylfentanyl | 14 |
| 3-Methylthiofentanyl | 2 |
| 3,4-Methylenedioxyamphetamine (MDA) | 20 |
| 3,4-Methylenedioxy-N-ethylamphetamine (MDEA) | 30 |
| 3,4-Methylenedioxymethamphetamine (MDMA) | 20 |
| 3,4,5-Trimethoxyamphetamine | 2 |
| 4-Bromo-2,5-Dimethoxyamphetamine (DOB) | 2 |
| 4-Bromo-2,5-Dimethoxyphenethylamine (2–CB) | 2 |
| 4-Methoxyamphetamine | 201,000 |
| 4-Methylaminorex | 3 |
| 4-Methyl-2,5-Dimethoxyamphetamine (DOM) | 2 |
| 5-Methoxy-3,4-Methylenedioxyamphetamine | 2 |
| Acetyl-alpha-methylfentanyl | 2 |
| Acetyldihydrocodeine | 2 |
| Acetylmethadol | 7 |
| Allylprodine | 2 |
| Alphacetylmethadol | 7 |
| Alpha-ethyltryptamine | 2 |
| Alphameprodine | 2 |
| Alphamethadol | 2 |
| Alpha-methylfentanyl | 2 |
| Alpha-methylthiofentanyl | 2 |
| Aminorex | 7 |
| Benzylmorphine | 2 |
| Betacetylmethadol | 2 |
| Beta-hydroxy-3-methylfentanyl | 2 |
| Beta-hydroxyfentanyl | 2 |
| Betameprodine | 2 |
| Betamethadol | 2 |
| Betaprodine | 2 |
| Bufotenine | 2 |
| Cathinone | 9 |
| Codeine-N-oxide | 2 |
| Diethyltryptamine | 2 |
| Difenoxin | 10,000 |
| Dihydromorphine | 508,000 |
| Dimethyltryptamine | 3 |
| Heroin | 2 |
| Hydroxypethidine | 2 |
| Lysergic acid diethylamide (LSD) | 38 |
| Mescaline | 7 |
| Methaqualone | 17 |
| Methcathinone | 9 |
| Morphine-N-oxide | 2 |
| N,N-Dimethylamphetamine | 7 |
| N-Ethyl-1-Phenylcyclohexylamine (PCE) | 5 |
| N-Ethylamphetamine | 7 |
| N-Hydroxy-3,4-Methylenedioxyamphetamine | 2 |
| Noracymethadol | 2 |
| Norlevorphanol | 2 |
| Normethadone | 7 |
| Normorphine | 7 |
| Para-fluorofentanyl | 2 |
| Pholcodine | 2 |
| Propiram | 415,000 |
| Psilocybin | 2 |
| Psilocyn | 2 |
| Tetrahydrocannabinols | 101,000 |
| Thiofentanyl | 2 |
| Trimeperidine | 2 |
| **Schedule II** | |
| 1-Phenylcyclohexylamine | 12 |
| 1-Piperidinocyclohexanecarbonitrile (PCC) | 10 |
| Alfentanil | 8,000 |
| Alphaprodine | 2 |
| Amobarbital | 12 |
| Amphetamine | 9,007,000 |
| Cocaine | 251,000 |
| Codeine (for sale) | 54,504,000 |
| Codeine (for conversion) | 52,384,000 |
| Dextropropoxyphene | 114,078,000 |
| Dihydrocodeine | 268,000 |
| Diphenoxylate | 931,000 |
| Ecgonine | 36,000 |
| Ethylmorphine | 12 |
| Fentanyl | 300,000 |
| Glutethimide | 2 |
| Hydrocodone (for sale) | 20,208,000 |
| Hydrocodone (for conversion) | 20,700,000 |
| Hydromorphone | 1,239,000 |
| Isomethadone | 12 |
| Levo-alphacetylmethadol (LAAM) | 201,000 |
| Levomethorphan | 2 |
| Levorphanol | 27,000 |
| Meperidine | 11,335,000 |
| Metazocine | 1 |
| Methadone (for sale) | 8,347,000 |
| Methadone (for conversion) | 600,000 |
| Methadone Intermediate | 9,503,000 |
| Methamphetamine | 2,049,000 |
| 750,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 1,225,000 grams for methamphetamine for conversion to a Schedule III product; and 74,000 grams for methamphetamine (for sale) | |
| Methylphenidate | 14,957,000 |
| Morphine (for sale) | 14,706,000 |
| Morphine (for conversion) | 97,160,000 |
| Nabilone | 2 |
| Noroxymorphone (for sale) | 25,000 |
| Noroxymorphone (for conversion) | 3,813,000 |
| Opium | 720,000 |
| Oxycodone (for sale) | 29,826,000 |

| Basic class | Established initial 2000 quotas |
|---|---|
| Oxycodone (for conversion) | 271,000 |
| Oxymorphone | 166,000 |
| Pentobarbital | 22,037,000 |
| Phencyclidine | 41 |
| Phenmetrazine | 2 |
| Phenylacetone | 10 |
| Secobarbital | 22 |
| Sufentanil | 1,700 |
| Thebaine | 41,300,000 |

The Deputy Administrator further orders that aggregate production quotas for all other Schedules I and II controlled substances included in §§ 1308.11 and 1308.12 of Title 21 of the Code of Federal Regulations be established at zero.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. Aggregate production quotas apply to approximately 200 DEA registered bulk and dosage form manufacturers of Schedules I and II controlled substances. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: February 3, 2000.

**Donnie R. Marshall,**

*Deputy Administrator.*

[FR Doc. 00–3149 Filed 2–9–00; 8:45 am]

**BILLING CODE 4410–09–M**

## NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

### The U.S. National Commission on Libraries and Information Science (NCLIS); Sunshine Act Meeting

### Correction Notice

**CLOSED MEETING:** (Closing this meeting is taken in accordance with the exemption provided under Title 45, CFR, Part 1703.202(a)(9)), Los Angeles Times Building, 145 South Spring Street, Los Angeles, CA.

**DISCUSSION TOPIC:** The National Award for Library Service.

The time of the closed meeting on February 17, 2000 has been extended.

The meeting will be closed from 8:30 to 11:30 a.m.

For additional information, see Sunshine Meeting Notice published 01/25/00 @ 65 FR 3980.

Dated: January 28, 2000.

**Robert S. Willard,**

*NCLIS Executive Director.*

[FR Doc. 00–3201 Filed 2–8–00; 1:45 pm]

**BILLING CODE 7527–01–M**

## NATIONAL COUNCIL ON DISABILITY

### Establishment of Advisory Committee

**AGENCY:** National Council on Disability (NCD).

**SUMMARY:** This notice announces the establishment of NCD's Youth Advisory Committee.

**FOR INFORMATION CONTACT:** Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, DC 20004–1107; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), mquigley@ncd.gov (e-mail).

### Agency Mission

The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

### Youth Advisory Committee

The purpose of NCD's Youth Advisory Committee is to provide input into NCD activities consistent with the values and goals of the Americans with Disabilities Act.

This committee is necessary to provide advice and recommendations to NCD on disability issues.

We are seeking a balanced, culturally diverse membership representing a variety of disabling conditions and from across the United States. One member will be chosen from each of the 10 federal regions.

Region I states include Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Region II states include New Jersey, New York, Puerto Rico, and the Virgin Islands.

Region III states include Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.

Region IV states include Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

Region V states include Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Region VI states include Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

Region VII states include Iowa, Kansas, Missouri, and Nebraska.

Region VIII states include Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Region IX states include Arizona, California, Guam, Hawaii, and Nevada.

Region X states include Alaska, Idaho, Oregon, and Washington.

Signed in Washington, DC, on February 2, 2000.

**Ethel D. Briggs,**

*Executive Director.*

[FR Doc. 00–3073 Filed 2–9–00; 8:45 am]

**BILLING CODE 6820–MA–M**

## NATIONAL CREDIT UNION ADMINISTRATION

### Agency Information Collection Activities: Submission to OMB for New Collection Information Collection; Comment Request

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** New Collection of Information.

**SUMMARY:** The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. It was originally published on

November 26, 1999 (Vol. 64, No. 227, p. 66507) Five comment letters were received.

**DATES:** Comments will be accepted until March 13, 2000.

**ADDRESSES:** Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

**SUPPLEMENTARY INFORMATION:** Proposal for the following collection of information:

*OMB Number:* Not applicable.

*Form Number:* Not applicable.

*Type of Review:* New collection.

*Title:* Survey on Service to People of Modest Means.

*Description:* NCUA is considering policy changes which could result in substantial impact on credit unions. The results of the survey will be used to guide NCUA in the policy making process.

*Respondents:* Federal credit unions.

*Estimated No. of Respondents/ Recordkeepers:* 6,700.

*Estimated Burden Hours Per Response:* .5 hours.

*Frequency of Response:* One-time.

*Estimated Total Annual Burden Hours:* 3,350.

*Estimated Total Annual Cost:* $55,844.50.

By the National Credit Union Administration Board on February 3, 2000.

**Becky Baker,**

*Secretary of the Board.*

[FR Doc. 00–3039 Filed 2–9–00; 8:45 am]

**BILLING CODE 7535–01–U**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–255]**

### Consumers Energy Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Consumers Energy Company (the licensee) to withdraw its November 9, 1998, application for proposed amendment to Facility Operating License No. DPR–20 for the Palisades Plant, located in Covert, Michigan.

The proposed amendment would have revised the Technical Specifications by deleting the chemical and volume control system (CVCS) operability and surveillance requirements, which the licensee had incorporated into the facility's Operating Requirements Manual (ORM). In its letter of January 13, 2000, the licensee stated that the proposed amendment was no longer needed because (1) the CVCS repairs anticipated at the time of the application for amendment were completed during a subsequent forced outage, and (2) the NRC's subsequent approval of the Improved Technical Specifications (Amendment 189, dated November 30, 1999) deleted the CVCS requirements that the licensee had incorporated into the ORM.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 16, 1998 (63 FR 69337). However, by letter dated January 13, 2000, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated November 9, 1998, and the licensee's letter dated January 13, 2000, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 2d day of February 2000.

For the Nuclear Regulatory Commission.

**Darl S. Hood,**

*Senior Project Manager, Section1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–3095 Filed 2–9–00; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Hydro Resources, Inc.; Notice of Reconstitution

[Docket No. 40–8968—ML; ASLBP No. 95–706–01–ML]

Pursuant to the authority contained in 10 CFR §§ 2.721 and 2.1207, the Presiding Officer in the captioned 10 CFR Part 2, Subpart L proceeding is hereby replaced by appointing Administrative Judge Thomas S. Moore as Presiding Officer in place of Administrative Judge Peter B. Bloch.

All correspondence, documents and other material shall be filed with the Presiding Officer in accordance with 10 CFR § 2.1203 (1997). The address of the new Presiding Officer is: Administrative Judge Thomas S. Moore, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

This Board reconstitution order is issued pursuant to the authority of the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel.

Issued at Rockville, Maryland, this 3rd day of February 2000.

**G. Paul Bollwerk III,**

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. 00–3098 Filed 2–9–00; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–315 and 50–316; License Nos. DPR–58, DPR–74]**

### Indiana Michigan Power Company (Donald C. Cook Nuclear Plant, Units 1 and 2); Confirmatory Order Modifying Post-Three Mile Island Requirements Pertaining to Containment Hydrogen Monitors

**I**

Indiana Michigan Power Company (IM or the licensee) is the holder of Facility Operating License Nos. DPR–58, and DPR–74 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part

50. The licenses authorize the operation of Donald C. Cook Nuclear Plant (CNP), Units 1 and 2, located in Berrien County, Michigan.

**II**

As a result of the accident at Three Mile Island, Unit 2 (TMI–2), the NRC issued NUREG–0737, ''Clarification of TMI Action Plan Requirements,'' in November 1980. Generic Letters 82–05 and 82–10, issued on March 17 and May 5, 1982, respectively, requested licensees of operating power reactors to furnish information pertaining to their implementation of specific TMI Action Plan items described in NUREG–0737. Orders were issued to licensees confirming their commitments made in response to the generic letters. The Confirmatory Order that was issued to IM on March 14, 1983, required the licensee to implement and maintain the various TMI Action Plan Items, including Item II.F.1, Attachment 6 pertaining to monitoring of the hydrogen concentration in the containment following a safety injection.

Significant improvements have been achieved since the TMI accident in the areas of understanding risks associated with nuclear plant operations and developing better strategies for managing the response to potential severe accidents at nuclear power plants. Recent insights pertaining to plant risks and severe accident assessment tools have led the NRC staff to conclude that some TMI Action Plan items can be revised without reducing, and perhaps enhancing, the ability of licensees to respond to severe accidents. The NRC's efforts to understand the risks associated with commercial nuclear power plant operations more effectively and to reduce unnecessary regulatory burden on licensees and the public have prompted the NRC's decision to revise the post-TMI requirement to monitor containment hydrogen concentration.

The Confirmatory Order of March 14, 1983, imposed requirements upon the licensee to have continuous monitoring of containment hydrogen concentration provided in the control room, as described by TMI Action Plan Item II.F.1, Attachment 6. Information about hydrogen concentration supports the licensee's assessments of the degree of core damage and whether a threat to the integrity of the containment may be posed by hydrogen gas combustion. TMI Action Item II.F.1, Attachment 6, states:

> If an indication is not available at all times, continuous indication and recording shall be functioning within 30 minutes of the initiation of safety injection.

This requirement to have monitoring of the hydrogen concentration in the containment within 30 minutes following the start of safety injection has defined both design and operating characteristics for hydrogen monitoring systems at nuclear power plants since the implementation of NUREG–0737. In addition, the technical specifications of most nuclear power plants and NRC regulation 10 CFR 50.44, ''Standards for combustible gas control system in light-water-cooled power reactors,'' require availability of hydrogen monitors.

By letter dated December 22, 1999, IM used the Oconee and Arkansas Nuclear One confirmatory orders of November 29, 1999, and September 28, 1998, respectively, as guidance to request relief for the two CNP units from the requirement to have indication of hydrogen concentration in the containment within 30 minutes of the initiation of safety injection. Specifically, the licensee requested that risk-informed insights be used to determine the functional requirements for monitoring of containment hydrogen concentration that would allow extending the monitoring requirement to more than 30 minutes following initiation of safety injection. The basis for this request was that the additional time would allow the operators to complete their initial accident assessment and mitigation duties before redirecting their attention to the relatively longer-term recovery actions, such as actuating the hydrogen recombiners, that are not needed for at least 24 hours.

Based on the staff's evaluation of the justification provided by the licensee, and improved understanding of insights pertaining to plant risks, severe accident assessment, and emergency planning since the TMI–2 accident, the staff has concluded that the licensee's request should be approved. Giving the licensee the flexibility and responsibility for determining the appropriate time limit for establishing monitoring of containment hydrogen concentration will preclude control room personnel from being distracted from various important tasks in the early phases of accident mitigation, while allowing cognizant personnel, mostly outside the control room, to be aware of hydrogen concentration based on a risk-informed functional assessment at a reasonable time following an accident. Because the appropriate balance between control room activities and longer-term management of the response to severe accidents can best be determined by the licensee, the NRC staff has determined that the licensee may elect to adopt a risk-informed functional requirement in lieu of the current 30-minute time limit for establishing monitoring of the hydrogen concentration as imposed by the Order dated March 14, 1983, and as described by TMI Action Item II.F.1, Attachment 6, in NUREG–0737. The appropriate functional requirement is as follows:

> Procedures shall be established for ensuring that monitoring of hydrogen concentration in the containment atmosphere is available in a sufficiently timely manner to support the implementation of the Donald C. Cook Nuclear Plant Emergency Plan (and related procedures) and related activities such as guidance for severe accident management. Hydrogen monitoring will be initiated based on: (1) the appropriate priority for establishing monitoring of hydrogen concentration within the containment in relation to other activities in the control room, (2) the use of the monitoring of hydrogen concentration by decision makers for severe accident management and emergency response, and (3) insights from experience or evaluation pertaining to possible scenarios that result in significant generation of hydrogen that would be indicative of core damage or a potential threat to the integrity of the containment building. Affected licensing basis documents and other related documents will be appropriately revised and/or updated in accordance with applicable NRC regulations.

The licensee's Post Accident Monitoring Instrumentation Technical Specifications and 10 CFR 50.44 require the licensee to maintain the ability to monitor hydrogen concentration in the containment. However, the details pertaining to design and manner of operation of the hydrogen monitoring system are determined by the licensee.

**III**

Accordingly, pursuant to Sections 103, 104b, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, IT IS HEREBY ORDERED that:

NRC License Nos. DPR–58 and DPR–74 are modified as follows:

> The licensee may elect to either maintain the 30-minute time limit for monitoring of hydrogen in the containment, as described by TMI Action Plan Item II.F.1, Attachment 6, in NUREG–0737 and required by the Confirmatory Order of March 14, 1983, or modify the time limit in the manner specified in Section II of this Order.

The Director, Office of Nuclear Reactor Regulation, may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

**IV**

Any person adversely affected by this Confirmatory Order, other than the licensee, may request a hearing within

20 days of its issuance. Where good cause is shown, consideration will be given to extend the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555–0001. Copies of the hearing request shall also be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, to the Deputy Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532–4351, and to David W. Jenkins, Esquire, Indiana Michigan Power Company, Nuclear Generation Group, One Cook Place, Bridgman, MI 49106, attorney for the licensee. If such a person requests a hearing, that person will set forth with particularity the manner in which his interest is adversely affected by this Order and will address the criteria set forth in 10 CFR 2.714(d).

If the hearing is requested by 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 will be whether this Confirmatory 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 will be 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 will be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland, this 4th day of February 2000.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–3094 Filed 2–9–00; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–423]**

## Northeast Nuclear Energy Company, et al. (Millstone Nuclear Power Station, Unit 3); Order Approving Application Regarding Proposed Merger (Acquisition of CMP Group, Inc., by Energy East Corporation)

### I

Northeast Nuclear Energy Company is authorized to act as agent for the joint owners of the Millstone Nuclear Power Station, Unit 3 (Millstone 3), and has exclusive responsibility and control over the physical construction, operation, and maintenance of the facility as reflected in Facility Operating License No. NPF–49. Central Maine Power Company (Central Maine), one of the joint owners, holds a 2.5-percent possessory interest in Millstone 3. The U.S. Nuclear Regulatory Commission (NRC) issued Facility Operating License No. NPF–49 on January 31, 1986, pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50). The facility is located in New London County, on the southern coast of the State of Connecticut.

### II

By letter dated October 6, 1999, through counsel, Central Maine informed the NRC of a proposed merger involving the acquisition of Central Maine's parent, CMP Group, Inc. (CMP), by Energy East Corporation (Energy East). Central Maine requested that the NRC determine that the proposed merger and acquisition would not, in fact, constitute a transfer of Facility Operating License NPF–49 for Millstone 3, to the extent held by Central Maine in regard to Central Maine's 2.5-percent ownership interest in Millstone 3. Central Maine also requested if the NRC does find that the proposed acquisition of CMP would constitute an indirect transfer of Facility Operating License NPF–49 to the extent it is held by Central Maine, that the NRC consent to the indirect transfer of Central Maine's license to Energy East. The NRC determined that an indirect transfer of the license, to the extent that it is held by Central Maine, would be involved and that approval pursuant to 10 CFR 50.80 would be required. The NRC informed Central Maine of this decision in a letter dated November 15, 1999.

### III

Central Maine is an electric utility primarily engaged in the transmission, sale, and distribution of electricity in the State of Maine and is incorporated in Maine. CMP holds all the common stock of Central Maine and also is incorporated in the State of Maine. Energy East is an investor-owned holding company incorporated in New York. Through its subsidiaries, Energy East is an energy delivery, products, and services company with operations in New York and several other northeastern States.

According to Central Maine's October 6, 1999, submittal (the ''application''), on June 14, 1999, CMP and Energy East signed a definitive merger agreement for the acquisition of CMP by Energy East. To accomplish the acquisition, EE Merger Corporation, a Maine corporation that is a wholly owned subsidiary of Energy East, will merge with and into CMP, with CMP being the surviving corporation. Upon completion of the merger, CMP will become a wholly owned subsidiary of Energy East, with Energy East acquiring all of CMP's common stock. CMP will continue its corporate existence under the laws of the State of Maine, and CMP will continue to own all of Central Maine's common stock. The application notes, however, that in the event that the Securities and Exchange Commission does not permit Energy East to maintain CMP as an intermediate holding company, Energy East plans to hold Central Maine directly.

Whether Central Maine becomes directly or indirectly held by Energy East, Central Maine will continue to hold and to be the licensee for its 2.5-percent ownership interest in Millstone 3. In the case of either direct or indirect ownership by Energy East, an indirect transfer of the license to the extent it is held by Central Maine will occur as a result of the merger.

Approval of the indirect license transfer was requested pursuant to 10 CFR 50.80. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on November 16, 1999 (64 FR 62230). No hearing requests or written comments were filed.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application and other information before the Commission, the NRC staff has determined that the subject merger will not affect the qualifications of Central Maine to hold the Millstone 3 license to the extent currently held, and that the indirect transfer of the license, to the extent effected by the proposed merger,

is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, subject to the conditions set forth below. The foregoing findings are supported by a safety evaluation dated February 4, 2000.

**IV**

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the AEA, as amended, 42 USC §§ 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the license transfer referenced above is approved, subject to the following conditions:

(1) Central Maine shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Central Maine to its current or proposed direct or indirect parent or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent (10%) of Central Maine's consolidated net utility plant, as recorded on Central Maine's books of account.

The foregoing condition shall supersede Condition (1) of the Order dated June 2, 1998, which approved the application regarding the restructuring of Central Maine by establishment of a holding company.

(2) Should the proposed merger of CMP and Energy East not be completed by January 30, 2001, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated October 6, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site *http://www.nrc.gov.*

Dated at Rockville, Maryland, this 4th day of February 2000.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–3093 Filed 2–9–00; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–263]**

## Northern States Power Company, Monticello Nuclear Generating Plant; Notice of Consideration of Approval of Transfer of Facility Operating License and Conforming Amendment, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating License No. DPR–22 for the Monticello Nuclear Generating Plant currently held by Northern States Power Company (NSP) as owner and licensed operator of Monticello. The transfer would be to a newly formed company (referred to herein as ''New NSP''). The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer.

By application dated October 29, 1999, the Commission was informed that NSP entered into an agreement on March 24, 1999, to merge with New Century Energies, Inc. (NCE). Under the agreement, NCE will be merged with and into NSP, which will be renamed Xcel Energy, Inc. (Xcel). At the time of the merger, NSP will transfer all of its existing electric and natural gas utility facilities and responsibility and control over operations to New NSP, which will be a wholly owned subsidiary of Xcel. New NSP would assume title to the facilities following approval of the proposed license transfer, and would become responsible for the operation, maintenance, and eventual decommissioning of Monticello. No physical changes to the facility or operational changes other than the transfer of operating authority to New NSP are being proposed in the application.

The proposed amendment would add a footnote to the license to reflect its transfer from NSP to the newly formed, wholly owned subsidiary.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming 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.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By March 1, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2)

Requests for a hearing and petitions for leave to intervene should be served upon Jay Silberg, Esq., counsel for NSP, at Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037 (tel: 202–663–8063; fax: 202–663–8007; e-mail: jay.silberg@shawpittman.com); and the General Counsel, U.S. Nuclear Regulatory Commission, Washington,

DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by March 13, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated October 29, 1999, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland this 7th day of February 2000.

For the Nuclear Regulatory Commission.

**Claudia M. Craig,**

*Chief, Section Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–3096 Filed 2–9–00; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–282; 50–306; 72–10]**

## Northern States Power Company Prairie Island Nuclear Generating Plant, Units 1 and 2, and Prairie Island Independent Spent Fuel Storage Installation; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Materials License and Conforming Amendment, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 and 10 CFR 72.50 approving the transfer of Facility Operating Licenses Nos. DPR–42 and DPR–60 for the Prairie Island Nuclear Generating Plant, Units 1 and 2, and Materials License No. SNM–2506 for the Prairie Island Independent Spent Fuel Storage Installation (ISFSI) currently held by Northern States Power Company (NSP), as owner and licensed operator of Prairie Island, Units 1 and 2, and Prairie Island ISFSI. The transfer would be to a newly formed company (referred to herein as ''New NSP''). The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer.

By application dated October 29, 1999, the Commission was informed that Northern States Power Company entered into an agreement on March 24, 1999, to merge with New Century Energies, Inc. (NCE). Under the agreement, NCE will be merged with and into NSP, which will be renamed Xcel Energy, Inc. At the time of the merger, NSP will transfer all of its existing electric and natural gas utility facilities and responsibility and control over operations to New NSP. New NSP would assume title to the facilities following approval of the proposed license transfers, and would become responsible for the operation, maintenance, and eventual decommissioning of Prairie Island, Units 1 and 2, and Prairie Island ISFSI. No physical changes to the Prairie Island, Units 1 and 2, or Prairie Island ISFSI facilities or operational changes other than the transfer of operating authority to New NSP are being proposed in the application.

The proposed amendment would add a footnote to the licenses to reflect their transfer from NSP to the newly formed, wholly owned subsidiary.

Pursuant to 10 CFR 50.80 and 10 CFR 72.50, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming 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.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility or the license of an independent spent fuel storage installation which does no more than conform the license to reflect the transfer action, involves respectively, ''no significant hazards consideration'' or ''no genuine issue as to whether the health and safety of the public will be significantly affected.'' No contrary determination has been made with respect to this specific license amendment application. In light of the generic determinations reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By March 1, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In

addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Jay Silberg, Esq., counsel for NSP, at Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037 (tel: 202–663–8063; fax: 202–663–8007; e-mail: jay.silberg@shawpittman.com); and the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by March 13, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated October 29, 1999, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland this 7th day of February 2000.

For the Nuclear Regulatory Commission.

**Claudia M. Craig,**

*Chief, Section Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–3097 Filed 2–9–00; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Nuclear Regulatory Commission.

**DATE:** Weeks of February 7, 14, 21, and 28, 2000.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of February 7**

*Tuesday, February 8*

9:30 a.m.
Discussion of Nuclear Issues in the Former Soviet Union (Closed-Ex. 1 & 9)

*Wednesday, February 9*

10:00 a.m.
Briefing on Status of Research Programs, Performance, and Plans (Including Status of Thermo-Hydraulics) (Public Meeting) (Contact: Jocelyn Mitchell, 301–415–5289)

*Thursday, February 10*

9:25 a.m.
Affirmation Session (Public Meeting) a: INTERNATIONAL URANIUM (USA) CORP. Commission Review of LBP–99–5 (Contact: Ken Hart, 301–415–1659)

9:30 a.m.
Briefing on Status of CFO Programs, Performance, and Plans (Public Meeting) (Contact: Lars Solander, 301–415–6080)

*Friday, February 11*

9:30 a.m.
Briefing on Status of NMSS Programs, Performance, and Plans (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

**Week of February 14—Tentative**

There are no meetings scheduled for the Week of February 14.

**Week of February 21—Tentative**

*Tuesday, February 22*

9:00 a.m.
Briefing on Threat Environment Assessment (Closed-Ex. 1)

11:00 a.m.
Briefing by the Executive Branch (Closed-Ex. 1)

*Wednesday, February 23*

8:55 a.m.
Affirmation Session (Public Meeting) (if needed)

9:00 a.m.
Briefing on Status of Spent Fuel Projects (Public Meeting) (Contact: William Brach, 301–415–8500)

10:45 a.m.
Discussion of Intragovernmental Issues (Closed-Ex. 9)

**Week of February 28—Tentative**

*Tuesday, February 29, 2000*

1:30 p.m.
Briefing on Draft 50.59 Regulatory Guide (Public Meeting) (Contact: Eileen McKenna, 301–415–2189)

*Wednesday, March 1, 2000*

9:00 a.m.
Briefing on Improvements in the Plant Assessment Process (Public Meeting) (Contact: Bill Dean, 301–415–1257)

*Thursday, March 2, 2000*

9:25 a.m.
Affirmation/Discussion and Vote (Public Meeting) (If needed)

9:30 a.m.
Meeting with ACRS on Risk Informing Part 50 (Public Meeting) (Contact: John Larkins, 301–415–7360)

*Friday, March 3, 2000*

9:30 a.m.
Briefing on Calvert Cliffs License Renewal (Public Meeting) (Contact: Chris Grimes, 301–415–1183)

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

**CONTACT PERSON FOR MORE INFORMATION:** Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: February 4, 2000.

**William M. Hill, Jr.,**

*SECY Tracking Officer, Office of the Secretary.*

[FR Doc. 00–3192 Filed 2–8–00; 12:20 pm]

**BILLING CODE 7590–01–M**

## NUCLEAR REGULATORY COMMISSION

### Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued 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 Commission'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.

Regulatory Guide 1.180, ''Guidelines for Evaluating Electromagnetic and Radio-Frequency Interference in Safety-Related Instrumentation and Control Systems,'' endorses design, installation, and testing practices acceptable to the NRC staff for addressing the effects of electromagnetic interference, radio-frequency interference, and power surges on safety-related instrumentation and control systems in a nuclear power plant. The guide endorses, with certain conditions, the design and installation practices described in the Institute of Electrical and Electronics Engineers standard, IEEE Std 1050–1996, ''IEEE Guide for Instrumentation and Control Equipment Grounding in Generating Stations.'' Electromagnetic compatibility testing practices from military and commercial standards are endorsed to address electromagnetic emissions, electromagnetic and radio-frequency interference immunity, and power surge withstand capability.

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. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection or downloading at the NRC's Public Electronic Reading Room at <www.nrc.gov>. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by email to <DISTRIBUTION@NRC.GOV>. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. 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 21st day of January 2000.

For the Nuclear Regulatory Commission.

**Ashok C. Thadani,**

*Director, Office of Nuclear Regulatory Research.*

[FR Doc. 00–3092 Filed 2–9–00; 8:45 am]

**BILLING CODE 7590–01–P**

## RAILROAD RETIREMENT BOARD

### Proposed Collection; Comment Request

**SUMMARY:** In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*Title and purpose of information collection:* Employee Representative's Status and Compensation Reports; OMB 3220–0014.

Under Section 1(b)(1) of the Railroad Retirement Act (RRA), the term ''employee'' includes an individual who is an employee representative. As defined in Section 1(c) of the RRA, an employee representative is an officer or official representative of a railway labor organization other than a labor organization included in the term ''employer,'' as defined in the RRA, who before or after August 29, 1935, was in the service of an employer under the RRA and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, or, any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his or her office. The requirements relating to the application for employee representative status and the periodic reporting of the compensation resulting from such status is contained in 20 CFR 209.10.

The RRB utilizes Forms DC–2a, Employee Representative's Status Report, and DC–2, Employee Representative's Report of Compensation to obtain the information needed to determine employee representative status and to maintain a record of creditable service and compensation resulting from such status. Completion is required to obtain or retain a benefit. One response is requested of each respondent.

Minor editorial changes are proposed to Form DC–2a and Form DC–2. The completion time for Form DC–2 is estimated at 30 minutes per response. The RRB estimates that approximately 65 Form DC–2's are received annually. The RRB estimates that less than 10 Form DC–2a's are received annually.

**ADDITIONAL INFORMATION OR COMMENTS:** To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 00–3128 Filed 2–9–00; 8:45 am]

**BILLING CODE 7905–01–M**

## SECURITIES AND EXCHANGE COMMISSION

### Request for Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549.

Extension: Rule 6e–2, SEC File No. 270–177, OMB Control No. 3235–0177.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') is publishing the following summary of collection for public comment.

Rule 6e–2 [17 CFR 270.6e–2] under the Investment Company Act of 1940 (''Act'') is an exemptive rule which permits separate accounts, formed by life insurance companies, to fund certain variable life insurance products. The rule exempts such separate accounts from the registration

requirements under the Act, among others, on condition that they comply with all but certain designated provisions of the Act and meet the other requirements of the rule. The rule sets forth several information collection requirements.

Rule 6e–2 provides a separate account with an exemption from the registration provisions of section 8 of the Act if the account files with the Commission Form N–6EI–1, a notification of claim of exemption.

The rule also exempts a separate account from a number of other sections of the Act, provided that the separate account makes certain disclosure in its registration statements, reports to contractholders, proxy solicitations, and submissions to state regulatory authorities, as prescribed by the rule.

Paragraph (b)(9) of Rule 6e–2 provides an exemption from the requirements of section 17(f) of the Act and imposes a reporting burden and certain other conditions. Section 17(f) requires that every registered management company meet various custody requirements for its securities and similar investments. Paragraph (b)(9) applies only to management accounts that offer life insurance contracts subject to Rule 6e–2.

Since 1997, there have been no filings under paragraph (b)(9) of Rule 6e–2 by management accounts. Further, all variable life separate accounts that have filed post-effective amendments to their registration statements during this period have been structured as unit investment trusts and thus have not been subject to the requirements of paragraph (b)(9) of the rule. Therefore, since 1997, there has been no cost or burden to the industry regarding the information collection requirements of paragraph (b)(9) of Rule 6e–2.

Written 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 or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W. Washington, D.C. 20549.

Dated: February 3, 2000.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–3032 Filed 2–9–00; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 24278; 812–11562]**

## First American Investment Funds, Inc., et al.; Notice of Application

February 4, 2000.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application under sections 6(c), 10(f), and 17(b) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 10(f) and 17(a)(1) of the Act.

**SUMMARY OF THE APPLICATION:** The requested order would permit certain registered management investment companies to purchase certain securities from an affiliated underwriter and through group orders placed with an underwriting syndicate that includes the affiliated underwriter.

**APPLICANT:** First American Investment Funds, Inc. (''FAIF''); Minnesota Municipal Income Portfolio, Inc.; Minnesota Municipal Term Trust, Inc.; Minnesota Municipal Term Trust, Inc.-II.; U.S. Bank National Association (''U.S. Bank''); and U.S. Bancorp Piper Jaffray Inc. (''Piper Jaffray'').

**FILING DATES:** The application was filed on April 2, 1999 and was amended on December 22, 1999. Applicants have agreed to file an additional amendment, the substance of which is incorporated in this notice, during the notice period.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 29, 2000 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 may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, c/o James D. Alt, Esq., Dorsey & Whitney LLP, 220 South Sixth Street, Minneapolis, MN 55402.

**FOR FURTHER INFORMATION CONTACT:** Rachel H. Graham, Senior Counsel, at (202) 942–0583, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

*Applicants' Representations*

1. FAIF is an open-end management investment company registered under the Act. FAIF offers its shares in several series, including the Minnesota Intermediate Tax Free Fund and the Minnesota Tax Free Fund. Minnesota Municipal Income Portfolio, Inc., Minnesota Municipal Term Trust, Inc., and Minnesota Municipal Term Trust, Inc.-II are closed-end management investment companies registered under the Act. The two named series of FAIF, together with the three closed-end investment companies, collectively are referred to in this notice as the ''Funds.'' The Funds invest primarily in debt securities of the State of Minnesota, its political subdivisions, authorities, agencies, instrumentalities and corporations, the interest on which is exempt from federal and Minnesota personal income taxes (''Minnesota Tax-Exempt Securities'').

2. U.S. Bank, which is exempt from registration as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') pursuant to section 202(a)(11) of the Advisers Act, serves as investment adviser to each Fund. U.S. Bank is a wholly-owned subsidiary of U.S. Bancorp.

3. Piper Jaffray, a registered broker-dealer and investment banking firm, is a wholly-owned indirect subsidiary of U.S. Bancorp. Applicants state that Piper Jaffray is one of the leading underwriters of most types of Minnesota Tax-Exempt Securities based on both dollar volume and number of new issues. In 1998, Piper Jaffray served as underwriter of approximately $2.4 billion in principal amount of Minnesota Tax-Exempt Securities. According to applicants, this amount

represented approximately 46% of the total dollar amount, and approximately 24% of the total number, of new issues of Minnesota Tax-Exempt Securities during that year.

4. Applicants request relief under section 10(f) from section 10(f) and under sections 6(c) and 17(b) from section 17(a)(1) to permit the Funds to purchase Minnesota Tax-Exempt Securities from Piper Jaffray, when Piper Jaffray is the sole underwriter of these securities or these securities are unavailable from other members of an underwriting syndicate. Applicants also request relief under these sections to permit the Funds to purchase Minnesota Tax-Exempt Securities through group orders placed with an underwriting syndicate of which Piper Jaffray is a member. [1] The requested order would not permit transactions between Piper Jaffray and the Funds in other securities or in Minnesota Tax-Exempt Securities sold in the secondary market.

5. Applicants request that any relief granted pursuant to the application also apply to all current and future series of FAIF and to any other registered management investment companies organized in the future that are advised or subadvised by U.S. Bank (or a person controlling, controlled by, or under common control with U.S. Bank) and that invest primarily in Minnesota Tax-Exempt Securities (collectively, ''Future Funds'').[2]

**Applicants' Legal Analysis**

1. Section 10(f) of the Act, in relevant part, prohibits a registered investment company from purchasing securities from an underwriting syndicate in which an affiliated person of the company's investment adviser acts as a principal underwriter. Under section 2(a)(3) of the Act, Piper Jaffray is an affiliated person of U.S. Bank because both entities are under the control of U.S. Bancorp.

2. Section 10(f) further provides that the Commission, by rule or order, may exempt any transaction or class of transactions from section 10(f) to the exempt that the exemption is consistent with the protection of investors. Rule 10f–3 under the Act permits a registered investment company to make purchases otherwise prohibited by section 10(f) under certain conditions. Under the rule, the company may not purchase the securities being offered directly or indirectly from its affiliated underwriter, and purchases of municipal securities may not be designated as group sales or otherwise allocated to the account of the affiliated underwriter.

3. Section 17(a)(1) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from selling securities to the investment company. Under section 17(b) of the Act, the Commission will exempt a transaction from the provisions of section 17(a) if it finds that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company and the general purposes of the Act. Section 6(c) of the Act, in relevant part, permits the Commission to exempt any transaction or class of transactions 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.

4. Applicants assert that the supply of newly-issued Minnesota Tax-Exempt Securities has remained relatively stable over the past several years, while the demand for these securities has been increasing. Applicants state that, in their experience, group orders generally are given priority over designated orders and member orders in underwritings of Minnesota Tax-Exempt Securities.[3] Due to the priority given to group orders, the Funds may not be able to purchase Minnesota Tax-Exempt Securities through designated orders or member orders in an offering that is oversubscribed. Applicants assert that the Funds therefore may be precluded from making purchases in any oversubscribed offering where Piper Jaffray is a member of the underwriting syndicate. As noted above, applicants assert that Piper Jaffray is one of the leading underwriters of most types of Minnesota Tax-Exempt Securities.

5. Applicants assert that the Funds are largely dependent upon the new issue market for Minnesota Tax-Exempt Securities in order to meet their portfolio needs. According to applicants, the availability of Minnesota Tax-Exempt Securities in the secondary market is unpredictable because, among other reasons, a substantial portion of these securities are held to maturity by their original purchasers. Applicants also assert that prices may be higher in the secondary market because of dealer markups and, because secondary market purchases are often made at a discount to par, a portion of the return on the securities purchased may be treated as taxable income.

6. Applicants state that permitting the Funds to buy Minnesota Tax-Exempt Securities directly from Piper Jaffray when the securities are unavailable from another underwriter, or through group orders when Piper Jaffray is a member of the underwriting syndicate for the securities, would benefit the shareholders of the Funds by providing the Funds with adequate access to the new issue market for Minnesota Tax-Exempt Securities. Applicants assert that, as a condition to the requested relief, the Funds, together with all other persons for whom U.S. Bank and its affiliates have investment discretion (collectively, ''Related Purchasers'') would be prohibited from purchasing a majority or more of any class of an issue of Minnesota Tax-Exempt Securities when Piper Jaffray is an underwriter of the securities. This condition would operate in addition to the requirement in rule 10f–3(b)(7)(i) that the aggregate amount of securities of any class of Minnesota Tax-Exempt Securities purchased by the Funds, together with all other investment companies advised by U.S. Bank, may not exceed 25% of the principal amount of the offering of that class. According to applicants, these two requirements would protect the Funds against the dumping of unmarketable securities.

7. Applicants note that, as a further condition to the requested relief, the aggregate value of Minnesota Tax-Exempt Securities held by a fund and acquired pursuant to the order may not exceed 50% of the Fund's total net assets. According to applicants, this condition should ensure that no Fund is operated primarily as a vehicle for purchasing securities in transactions permitted by the order. Applicants state that the order also would be conditioned on certain procedural safeguards designed to protect the independence of U.S. Bank in making investment decisions on behalf of the Funds and to ensure appropriate oversight of all transactions effected in reliance on the order. Applicants further state that the requested order meets the standards for relief set forth in sections 6(c), 10(f), and 17(b) of the Act.

[1] A group order is an order that is allocated to all members of an underwriting syndicate in proportion to their relative participations.

[2] Each Fund that currently intends to rely on the requested order is named as an applicant. Any Future Fund that relies on the requested relief will do so only in compliance with the terms and conditions of the application.

[3] In a designated order, the purchaser designates one or more syndicate members to receive the credit for sale. In a member order, the purchaser places an order directly with a member of the syndicate that retains that portion of the commission not retained by the manager.

**Applicant's Conditions**

Applicants agree that the order will be subject to the following conditions:

1. Transactions effected pursuant to the order will be effected in accordance with all of the provisions of rule 10f–3, other than paragraph (b)(8). At least a majority of any class of an issue of Minnesota Tax-Exempt Securities purchased pursuant to the order must be purchased by persons who are not Related Purchasers. If the aggregate number of securities the Related Purchasers wish to acquire exceeds the permitted amount, the securities acquired will be allocated to each Related Purchaser in the proportion that the number of securities that such Related Purchaser wishes to acquire bears to the total number of securities that all Related Purchasers wish to acquire.

2. Purchases of Minnesota Tax-Exempt Securities directly from Piper Jaffray or from a syndicate manager of an underwriting syndicate of which Piper Jaffray is a member when the purchases are designated as group sales may be effected only in Minnesota Tax-Exempt Securities that, at the time of purchase, have one of the following investment grade ratings from at least one nationally recognized statistical rating organization: (i) One of the two highest investment grade ratings in the case of securities with remaining maturities of one year or less, or (ii) one of the three highest investment grade ratings in the case of securities with remaining maturities greater than one year.

3. Purchases of Minnesota Tax-Exempt Securities directly from Piper Jaffray or from a syndicate manager of an underwriting syndicate of which Piper Jaffray is a member when the purchases are designated as group sales will be limited so that no such transaction will be effected if, as a result, the aggregate value of Minnesota Tax-Exempt Securities held by a Fund and acquired pursuant to the order would exceed 50% of the total net assets of that Fund.

4. Purchases of Minnesota Tax-Exempt Securities directly from Piper Jaffray or from a syndicate manager of an underwriting syndicate of which Piper Jaffray is a member when the purchases are designated as group sales will be effected only when the Minnesota Tax-Exempt Securities to be acquired are otherwise unavailable for purchase. If Piper Jaffray is the sole underwriter of the securities, this condition is automatically fulfilled because there is no other potential seller. When Piper Jaffray is a member of an underwriting syndicate, U.S. Bank will observe the following procedures to determine when the securities are unavailable from other members of the syndicate. Initially, U.S. Bank will determine the aggregate number of securities that the Related Purchasers wish to acquire. Next, U.S. Bank will attempt to purchase as much of this number as possible from members of the syndicate other than Piper Jaffray. After acquiring as many securities as possible from such other members, U.S. Bank will attempt to purchase from Piper Jaffray the number of securities that the Related Purchasers wish to acquire and have been unable to obtain from such other members. The securities acquired from such other members will be allocated first to the Funds to the extent of the number of securities the Funds wish to acquire, or the number of securities the Funds are entitled to acquire based upon the relative needs of the Related Purchasers and the total number of securities purchased from such other members and from Piper Jaffray, whichever is less.

5. When the Funds purchase Minnesota Tax-Exempt Securities from a syndicate manager of an underwriting syndicate of which piper Jaffray is a member, the Funds will not: (i) Submit designated orders to a syndicate manager that are allocated to Piper Jaffray; (ii) submit group orders to a syndicate manager that designate Piper Jaffray to receive any portion of the commission; or (iii) otherwise allocate orders to Piper Jaffray.

6. The exemption will be valid only so long as U.S. Bank and Piper Jaffray operate as separate entities and independent profit centers within the holding company framework of U.S. Bancorp, with separate officers and employees, separate capitalizations, and separate books and records. Employees of Piper Jaffray will not participate with, or seek to influence, U.S. Bank in its investment decisions as investment adviser to the Funds, other than in the normal course of sales activities of the same nature that are being carried out simultaneously with respect to unaffiliated clients of Piper Jaffray. Senior executives of U.S. Bancorp with responsibility for overseeing the operations of various subsidiaries are not precluded from exercising those functions over U.S. Bank because they oversee Piper Jaffray as well, provided that such persons will not have any involvement with respect to transactions effected pursuant to the exemption and will not attempt to influence or control the purchase of securities by the Funds from Piper Jaffray or an underwriting syndicate of which Piper Jaffray is a member.

7. U.S. Bank and Piper Jaffray will adopt a set of guidelines for their respective personnel to make certain that transactions conducted pursuant to the order comply with the conditions set forth in the application and that the parties maintain arm's length relationships. Compliance officers of U.S. Bank and Piper Jaffray will periodically monitor the activities of their respective companies for compliance with such guidelines and with the conditions set forth in the application.

8. The board of directors of each Fund, including a majority of the directors who are not interested persons under section 2(a)(19) of the Act and have no direct or indirect financial interest in the transaction (other than through ownership of Fund shares), will review, no less frequently, each purchase of Minnesota Tax-Exempt Securities directly from Piper Jaffray or from a syndicate manager of an underwriting syndicate of which Piper Jaffray is a member when the purchases are designated as group sales since the last review and will determine that the terms of such transaction were reasonable and fair to the shareholders of the Fund and did not involve overreaching of the Fund or its shareholders on the part of any person concerned. In considering whether the price paid for the security was reasonable and fair, the price of the security will be analyzed with respect to comparable transactions involving similar securities being purchased or sold during a comparable period of time.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–3086 Filed 2–9–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42378; File No. SR–Amex–99–39]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Amending Certain Listing Standards

February 2, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act'' [1] and Rule 19b–4 thereunder, [2] notice is hereby given that on September 28, 1999, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed Amendments No. 1,[3] 2,[4] and 3,[5] to the proposed rule change on December 14, 1999, January 4, 2000, and January 19, 2000, respectively. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain provision of its listing standards to simplify the listing process, eliminate certain outdated processes, and to clarify the Exchange's alternative listing guidelines for domestic companies. The text of the proposed rule change is as follows. Proposed new language is in italic; deletions are in brackets.

* * * * *

**Listing Standards, Policies and Requirements**

**PART 1. Original Listing Requirements—Listing Fees (§§ 101–146)**

**CRITERIA FOR ORIGINAL LISTING (§§ 101–118)**

**Sec. 101. GENERAL**

The approval of an application for the listing of securities is a matter solely within the discretion of the Exchange. To assist companies interested in applying for listing, the Exchange has established certain numerical guidelines, outlined below, which will be considered in evaluating listing eligibility. Other factors which will also be considered include the nature of a company's business, the market for its products, the reputation of its management, its historical record and pattern of growth, its financial integrity, its demonstrated earning power and its future outlook.

The fact that an applicant may meet the Exchange's numerical guidelines does not necessarily mean that its application will be approved. On the other hand, an application may be approved even though the company does not meet all of the numerical guidelines.

[The Exchange will furnish, without charge, a confidential preliminary opinion as to the eligibility of an applicant for listing as described in § 202.]

See §[§'s] 110 [and 115] for special criteria relating to foreign issuers [and member corporations] *and Rules 1000, 1000A, and 1200 for rules relating to portfolio deposit receipts, Index Fund Shares, and Trust Issued Receipts.*

*(a) REGULAR LISTING CRITERIA*

([a]*1*) *Size*—Stockholders' equity of at least $4,000,000.

([b]*2*) *Income*—Pre-tax income of at least $750,000 in its last fiscal year, or in two of its last three fiscal years.

Additional criteria applicable to various classes of securities and issuers are set forth below. Applicants should also consider the policies regarding conflicts of interest, independent directors and voting rights described in §§ 120–125.

*(b) ALTERNATE LISTING CRITERIA [FOR DOMESTIC COMPANIES*

It is recognized that certain financially sound companies are unable to meet fully the Exchange's regular listing criteria because, for example, of the nature of their business, or because of continuing large expenditures of funds for research and development. Such companies may, however, qualify for listing provided they meet the numerical criteria outlined below, have sufficient financial resources to continue operations over an extended period of time, and are otherwise regarded as suitable for Exchange listing.

Among the factors considered by the Exchange in determining a company's listing eligibility are the following:

(a) the nature and scope of the applicant's operations, including its demonstrated ability to acquire or discover and develop new products or properties, the potential or proven market for existing or future products and the company's plans for future development and expansion of its existing resources;

(b) the applicant's financial condition and accounting practices, its ability to service existing debt and other obligations, the availability of financing for currently committed programs and future expansion, and the size of its development expenses in relation to its equity and revenues;

(c) the composition of the applicant's assets including its reserves, royalties, or other rights and patents;

(d) the experience and reputation of the applicant and its management; and

(e) the nature and effect of governmental policies or restrictions on the company's products or properties and the extent of competition and economic conditions within the particular industry.

Numerical Criteria:]

([a]*1*) *History of Operations*—Three years of operations.

([b]*2*) *Size*—Stockholders' equity of at least $4,000,000.

([c]*3*) *Distribution*—See Section 102(a).

([d]*4*) *Aggregate Market Value of Publicly Held Shares*—$15,000,000.

**Sec. 102. EQUITY ISSUES**

(a) *Distribution*—Minimum public distribution * of 500,000, together with a minimum of 800 public shareholders or minimum public distribution of 1,000,000 shares together with a minimum of 400 public shareholders.

**Footnotes:** * The terms ''public distribution'' and ''public shareholders'' as used in the Company Guide include both shareholders of record and beneficial holders, but are exclusive of the holdings of officers, directors, controlling shareholders and other concentrated (*i.e.* [5]*10*% or greater, affiliated or family holdings.

* * * * *

**Sec. 103. PREFERRED STOCK**

(a)–(c) no change

[(d) *Redeemable Issues*—Redeemable issues, if subject to redemption in part, must be redeemable only pro rata or by lot. (See § 902.)]

**Sec. 104. BONDS AND DEBENTURES**

* * * * *

[Redeemable Issues

Redeemable issues, if subject to redemption in part, must be redeemable only pro rata or by lot. (See § 902)]

* * * * *

Issuer or Bond Rating Status

For the Exchange to list a debt security, the security must be characterized by one of the following conditions:

(A) the issuer of the debt security has equity securities listed on the Exchange (or on the New York Stock Exchange *or on the Nasdaq National Market*);

(B) an issuer of equity securities listed on the Exchange (or on the New York Stock Exchange *or on the Nasdaq National Market*) directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security;

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, to Jack P. Drogin, Assistant Director, Division of Market Regulation (''Division''), Commission, dated December 13, 1999 (''Amendment No. 1''). Amendment No. 1 revises Section 1101 of the *Amex Company Guide* to add references to forms filed with the Commission by unit investments trusts and open-end management investment companies.

[4] Letter from Michael J. Ryan, Jr., Chief of Staff, Amex, to Jack P. Drogin, Assistant Director, Division, Commission, dated December 31, 1999 (''Amendment No. 2''). As originally filed, the proposed rule change eliminated the requirement to submit with an original listing application certain corporate documents and an opinion of counsel regarding the legality of the organization, existence of the issuer, and the validity of the securities to be issued. Amendment No. 2 reinstates the requirement to submit these documents. Amendment No. 2 also makes certain technical changes to the proposed rule change.

[5] Letter from Michael J. Ryan, Jr., Chief of Staff, Amex, to Jack P. Drogin, Assistant Director, Division, Commission, dated January 18, 2000 (''Amendment No. 3''). Amendment No. 3 eliminates the requirement to file certain documents with an original listing application, including an issuer's charter and by-laws, as well as an opinion of counsel. In lieu of requiring these documents to be submitted, Amendment No. 3 states that the Exchange will ask issuers specific questions concerning quorum requirements, notice of record dates to schareholders and closing of transfer books. In addition, Amendment No. 3 states that the Exchange will require issuers to (i) furnish the Exchange with copies of opinions of counsel filed in connection with recent public offerings or private placements or (ii) if no opinions of counsel exist, represent to the Exchange that they are duly and validly organized under the laws of their state of incorporation. Finally, Amendment No. 3 reinstates Section 125 of the *Amex Company Guide,* relating to remedies available to bondholders upon default.

(C) an issuer of equity securities listed on the Exchange (or on the New York Stock Exchange *or on the Nasdaq National Market*) has guaranteed the debt security;

* * * * *

**Sec. 105. WARRANTS**

The listing of warrant issues is concerned on a case by case basis. The Exchange will not consider listing the warrant issue of a company unless the common stock or other securities underlying the warrants are listed and in good standing either on the American or New York Stock Exchanges *or on the Nasdaq National Market* and there are at least 200,000 warrants publicly held by not less than 100 public warrantholders. In addition, to be listed, warrant issues are expected to meet the following criteria:

(a) no change

[(b) *Redeemable (callable) Issues*—Warrant, if subject to redemption in part, must be redeemable only pro rata or by lot. The Exchange requires advance notice of the Call Date (if any) as defined in its Warrant Agreement with the warrant agent(s). (See § 902.)]

* * * * *

**[Sec. 112. EXPLORATION AND DEVELOPMENT COMPANIES**

The Exchange generally will not list the securities of companies organized for the exploration and development of natural resources until they have reached the production stage and meet the criteria set forth in § 101.]

* * * * *

**[Sec. 115. MEMBER CORPORATIONS**

The following requirements and procedures will apply to the original listings of securities of publicly-owned member corporations:

**Minimum Standards**:

(a) Size-Stockholders' equity of at least $10 million. In determining a listing applicant's ability to meet this standard, the Exchange will value securities owned by the applicant at less than market value, depending upon the ready marketability of such securities. The applicant shall include in its listing application a list and the amounts of the securities owned by it, the names of the exchanges on which they are listed, and whether there are any restrictions against their sale as in the case of securities acquired for investment (''letter stock'').

(b) Earnings-Pre-tax income of at least $1.5 million for the latest fiscal year.

(c) Historical Operations—A history of satisfactory operations for at least 3 years prior to listing in order to demonstrate the applicant's ability to operate profitability under normal conditions. As in the case of all other listing applicants, all relevant factors regarding a member corporation's operations will be carefully considered, including the period of time in which present management has conducted the corporation's operations and the changes, if any, in management during the three year period under review.

(d) Capital Ratios—A regular capital ratio which has not exceeded 10-to-1 (or an alternate capital ratio which has not been less than 5%) for any period of 15 consecutive days during the six-month period preceding filing of the applicant's listing application.

**Procedures:**

In addition to the usual review procedures applicable to other types of corporations, the following special procedures will apply in reviewing member corporations for listing:

(a) Reports received by the Exchange under FOCUS filing requirements will be reviewed and any problems indicated by such reports will be required to be satisfactorily resolved before listing. FOCUS reports will be required of any member corporation listing applicant not already filing them for a three-month period before consideration of the listing application.

(b) In the case of an applicant which is also a member of the New York Stock Exchange, a copy of the report of the most recent examination by the New York Stock Exchange will be reviewed and any problems disclosed in such report must be satisfactorily resolved before listing.

**Disclosure**:

Any member corporation, which intends to list its securities on the Exchange, will be required to include in its prospectus additional disclosures with respect to certain regulatory actions which the Exchange (or the New York Stock Exchange) may take and which may have an adverse impact on the firm's future income and prospects. Among the actions which such Exchanges may take are:

(a) limiting the opening of new offices, employment of new registered representatives, or opening of new accounts;

(b) requiring an organization to cease business as a clearing organization and become solely an introducing broker;

(c) restricting the types of activities which a member organization performs;

(d) requiring an organization to reorganize or even to liquidate its business; and

(e) requiring a listed member corporation to make timely disclosure of material information concerning its business, financial situation or prospects, or other matters which might have a bearing on its operations.

In addition to publishing quarterly statements of revenues and earnings as required by the rules and regulations of the Exchange, a listed member corporation shall be required to distribute copies of such statements to its stockholders. Such quarterly reports, as well as the annual report, shall also contain a statement regarding the corporation's net capital position in relation to the standards of the Exchange and the New York Stock Exchange.

A listed member corporation shall be required to file with the Exchange copies of its financial statements and questionnaires which it files with the New York Stock Exchange.]

**[Sec. 116. COMPANIES ENGAGED IN GAMING OPERATIONS**

In addition to the many factors considered in the evaluation of any application for original listing (see § 101), the Exchange will give particular attention to the historical record, operating procedures and management personnel of any applicant company which is engaged, to any substantial extent, in gaming operations. An applicant of this nature will be required to demonstrate that it has adequate procedures and management capabilities to detect and appropriately control any of the following:

(a) the association with any person having a criminal background or who would not qualify for a license under any Federal, state or local regulatory requirements under which the applicant company operates;

(b) any misuse of the company's funds or misappropriation of its receipts from gaming operations; or

(c) any activities by persons associated either directly or indirectly with the company designed to promote the company's securities in contravention of the securities laws or to evade the disclosure requirements of the Exchange.

Any of the following factors may be considered by the Exchange as a basis for refusing to approve the application of a company engaged in gaming operations:

(a) if the company (or any predecessor organization that has been responsible for operating such gaming facilities), or any officer, director, controlling stockholder or managerial or supervisory employee of the company or of any such predecessor, or any other person having an association or relationship with the company or such predecessor whereby such person was, or is, in a position to influence management decisions with respect to, or to receive benefits from, the operation of such gaming facilities, has been convicted of any criminal offense relating to gaming or to any other business of the company or such predecessor, or relating to fraud, violation of the securities laws or violation of any Federal or state anti-racketeering or similar statutes, at any time during a period ten (10) years preceding the date of the application for listing;

(b) if any person described in the preceding paragraph has been indicted or cited for violation of any Federal, state or local statute or ordinance relating to gaming or fraud, or has been denied a license or had his license revoked by any Federal, state, or local agency having jurisdiction over gaming operations, or any such person has been identified by an appropriate Federal or state agency as being associated with organized crime or with other persons conspiring to violate gaming or anti-racketeering statutes, at any time during a period of five (5) years preceding the date of the application for listing;

(c) if any investigation (by any appropriate Federal, state or local agency) of the company, or of any predecessor or other person described in the first paragraph above, has disclosed any material violations of any law, rule or regulations applicable to the gaming operations of the company, during a period of five (5) years preceding the date of the application for listing;

(d) if the company has in its employ, or has associated with it in any capacity, any person who, if required to be licensed in any Federal, state or local agency having jurisdiction over gaming operations, is not so licensed or has been denied a license or has been found to be unsuitable to receive a license;

(e) if the company, or any predecessor or other person described in the first paragraph

above, shall have been finally determined to be liable for any income or other tax deficiency based upon an understatement of revenues or income from gaming activities, during a period of five (5) years preceding the date of the application for listing; or

(f) if the company, or any predecessor described in the first paragraph above, shall have failed to received an unqualified opinion of an independent public accountant with respect to the balance sheet and statement of operations of the company or any such predecessor for each of the five (5) fiscal years preceding the date of the application for listing.

In connection with the subsequent filing of any listing application by a company seeking to issue additional securities, the purpose of which is to enable the company to become engaged to a substantial degree in gaming or related activities, the Exchange will apply all of the above standards to the same extent as though the application were for original listing. Moreover, the Exchange will consider the suspension of trading in, or removal from listing or unlisted trading of, the securities of any company which, after the effective date of this policy, takes steps to become engaged in gaming operations to any substantial degree, unless the company can demonstrate that it meets all of the above special requirements for original listing of companies engaged in gaming operations.]

* * * * *

**Sec. 118. INVESTMENT TRUSTS**

* * * * *

A. INVESTMENT TRUSTS BASED ON SECURITIES OF INDIVIDUAL ISSUERS

(a)–(d) no change

[(e) *Trustees*—The requirements of paragraphs (a), (c) and (d) of § 811 of the Guide apply.]

([f]*e*) *Voting*—no change

([g]*f*) *Shareholder Communications*—no change

([h]*g*) *Listing Agreement*—In addition to the above, an investment Trust applying for listing under this section of the Guide shall sign a listing agreement with the Exchange which, among other things, requires compliance with the following Exchange Rules and Regulations regarding:

(i) Additional Listing—(see Part 3 of the Guide);

(ii) Dividends, Stocks Splits and Distributions (see §§ 501–507 and 509 of the Guide);

(iii) [Transfer Facilities, Certificates—(see §§ 801–841 of the Guide);

(iv)] Notification—comply with existing notification requirements of the Exchange.

B. INVESTMENT TRUSTS BASED ON STOCK INDEXES OR DEBT INSTRUMENTS

* * * * *

The eligibility of a Trust for listing is subject to the following:

(a) no change

(b) no change

(c) [Trustees—See § 118A(a).

(d)] Voting—When a share or unit has been divided into separate components, any voting rights accorded the share or unit may be divided between the component securities as specified in the Trust prospectus.

([e]*d*) Listing Agreement—See § 118A([h]*g*).

**CONFLICTS OF INTEREST**

**Sec. 120. POLICIES—CONFLICTS OF INTEREST, INDEPENDENT DIRECTORS AND VOTING RIGHTS (§§ 120–126)**

[The existence of material conflicts of interest between companies and their officers, directors or principal shareholders (or members of their families or concerns controlled by, or affiliated with, them) will be reviewed by the Exchange in considering the eligibility of companies for original listing. In many cases, companies are able to eliminate conflict situations prior to listing or within a reasonable period after listing, and may be asked to do so. Where a conflict cannot be resolved promptly for sound business reasons, the Exchange will consider all pertinent factors.]

*Each company shall conduct an appropriate review of all related party transactions on an ongoing basis and shall utilize the company's Audit Committee or a comparable body of the Board of Directors for the review of potential conflict of interest situations where appropriate.*

* * * * *

**Sec. 125. REMEDIES AVAILABLE TO BONDHOLDERS UPON DEFAULT**

no change

* * * * *

**OTHER REQUIREMENTS (§§ 130–134)**

**Sec. 130. ORIGINAL LISTING APPLICATIONS**

Applicants must register the security to be listed under Section 12(b) of the Exchange Act (§ 210) and submit an original listing application (§ 211). [Before doing so, they should first obtain a preliminary opinion as to eligibility (§ 202) which the Exchange will furnish without charge.]

* * * * *

**Sec. 132. LISTING AGREEMENTS**

In addition to meeting the foregoing criteria, companies applying for listing enter into agreements with the Exchange and become subject to its rules, regulations and policies applicable to listed companies.

Among other things, listed companies are required to:

* * * * *

(e) [*Transfer Facilities*, Certificates—Establish facilities or agencies for the transfer and registry of stock and the payment of principal and interest on, and the registry or exchange of, bond or debenture issues (§§ 801–841.) Requirements for engraving and the form of certificates for listed securities are also described in these sections;

* * * * *

(g)]) *Additional Information*—upon request, furnish to the Exchange such information concerning the Company as the Exchange may reasonable require.

* * * * *

**LISTING FEES (§§ 140–146)**

**Sec. 140. ORIGINAL LISTING FEES**

* * * * *

**Special Shareholder Rights Plans**

[A processing fee of $1,000 will be charged for special shareholder rights plans in lieu of the fees set forth in the above schedules, so long as such rights are neither exercisable nor tradable as a separate security.]

Upon the shareholder rights becoming exercisable and tradabale separately:

- an original fee will be charged based on the number of shareholder rights then outstanding and on additional issuance of rights[, less the $1,000 processing fee;]
- shareholder rights will be subject to the Exchange's continuing annual fee schedule.

**Sec. 141. ANNUAL FEES**

**Stock Issues**

* * * * *

The annual fee is payable in January of each year and is based on the total number of all classes of shares ([including] *excluding* treasury shares) and warrants [outstanding at] *according to information available on Exchange records as of* December 31 of the preceding year. (The above fee schedule also applies to companies whose securities are admitted to unlisted trading privileges.)

In the calendar year in which a company first lists, the annual fee will be prorated to reflect only that portion of the year during which the security has been admitted to dealings and will be payable in December based on the total number of outstanding shares of all classes of stock at the time of original listing.

* * * * *

**Sec. 144. REFUNDS OF LISTING FEES (see also § 141 above)**

(a) *Applications Withdrawn or Not Approved*—If a listing application is not approved by the Exchange or is withdrawn by the applicant, a service charge of $[250]*1,000* is deducted by the Exchange from the listing fee previously paid by the applicant, and the balance is refunded to it. [If an applicant refiles an application after such a service charge has been deducted, the amount deducted is applied as a credit to the listing fee payable on the refiling, with the understanding that if the application is again withdrawn or not approved, a further service charge of $250 will be deducted. This procedure applies to all further refilings.]

(b) *Credits After Approval*—No cash refund of a listing fee is made where an application has been finally approved by the Exchange. If additional unissued shares are authorized for addition to the list ''upon official notice of issuance'' and all of such shares are not issued for the purpose specified in the application, a credit is allowed. The credit may be applied in full or partial payment of fees payable for future listing applications of the same company. The amount of the credit is the difference between the fee paid for the listing of such authorized shares and the fee which would have applied had the applications been initially submitted for the number of shares, which were actually issued and added to the list under the same listing authorization. If a company cancels all listing authorization pursuant to any single application (see § 350), without the issuance

of any such shares, the Exchange makes a minimum charge of $[250]*1,000*.

* * * * *

**PART 2. Original Listing Procedures (§§ 201–222)**

**GENERAL (§§ 201–207)**

**Sec. 201. STEPS**

There are normally [eight] *seven* steps in the listing process:

(a) [company request preliminary listing eligibility opinion and receives favorable opinion;]

(b)–(h) reclassified as (a)–(g)

**[Sec. 202. PRELIMINARY OPINION PRIOR TO PREPARATION OF COMPLETE LISTING APPLICATION**

An applicant should obtain an informal and confidential opinion as to the eligibility of a particular issue for listing before preparing and filing a complete listing application. There is no charge for such opinion. The opinion may be obtained by sending the following data to the Exchange:

(a) three copies of the latest prospectus and proxy statement of the company (if available);

(b) three copies of printed annual reports distributed to shareholders for the last fiscal year and one copy of the annual report for preceding two years (if available) or financial statements for such years; five copies of SEC Form 10–K for latest fiscal year (if available); five copies of SEC Form 10–Q (if available) for interim periods since end of latest fiscal year; and one copy of each SEC Form 8–K filed since the latest Form 10–K;

(c) a certificate showing the extent of the public distribution of the stock, to be furnished on a printed form (Listing Form 2) supplies by the Exchange;

(d) information with respect to personal interests of any officers, directors or principal shareholders in any business arrangements involving the company such as the leasing of property to or from the company, interests in minority-held subsidiaries, interests in businesses that are competitors, suppliers or customers of the company, loans to or from the company, if not included in Form 10–K prospectus or proxy statement; and

(e) information concerning material pending litigation if not included in Form 10–K, prospectus, or proxy statement.]

**[Sec. 203. TIME SCHEDULE**

A preliminary listing eligibility opinion is normally rendered within one to two weeks after the opinion is requested. An additional two weeks is normally required for the complete processing of an application.]

* * * * *

**Sec. 207. [Corporate Relations Manager] Listing Qualifications Analyst**

Each company is assigned to a [Corporate Relations Manager] *Listing Qualifications Analyst*, who serves as the principal liaison between the Exchange and the company on all regulatory and disclosure-related matters.

**PREPARATION OF ORIGINAL LISTING APPLICATIONS (§§ 210–218)**

* * * * *

**Sec. 211. ORIGINAL LISTING APPLICATION—GENERAL**

(a) [*Initial Submission*] form—[No prepared or blank forms are available for the listing application itself. The applicant prepares its own application, in typewritten narrative form, following the instructions outlined below. The Exchange will provide an appropriate sample application and assist in its preparation.]

A [preliminary] typewritten [draft of the] listing application (signed by an executive officer of the applicant), together with all appropriate attachments, as outlined below, and one copy only of each of the required exhibits, should be [initially] filed with the Exchange for examination. If any deficiencies are noted, or any changes are considered necessary in the form or contents of the application and exhibits, the applicant will be notified.

(b) *Incorporation by Reference*—A copy of the following documents should be attached to each original listing application submitted and the information contained therein may be incorporated by reference (see § 212, Item 2):

(i) no change

(ii) no change

(iii) no change

(iv) [a certificate showing the extent of the public distribution of the stock, to be furnished on a printed form (Listing Form 2) supplied by the Exchange; and

(v) information concerning material pending litigation if not included in Form 10–K, prospectus, or proxy statement; and

(vi) a statement that there have been no material developments since the date of the latest SEC filing; and

(vii)] such other information, documents or materials as may be deemed appropriate by the Exchange for inclusion in the applicant's listing application.

(c) *Listing Fee*—A check drawn to the order of ''American Stock Exchange'' should accompany the [initial] submission. (See § 140 for computation of amount.)

(d) *Accounting Review*—no change

[(e) *Final Application*—The listing application need not be printed. Three (3) final copies of the application (with attachments listed in (b) above) shall be submitted with each copy manually signed by a duly authorized officer of the applicant.]

**Sec. 212. CONTENT OF ORIGINAL LISTING APPLICATION—STOCK**

[An application for original listing of a stock issue shall recite, in substantially the order given below, the following:

**Item 1. Title Page,** showing:

(a) name of the applicant, address and telephone number of principal executive officer; and

(b) date of application and formal request for listing; specifying the amount, class and par value of the security applied for.

Application shall be made to list only that part of an issue which is actually issued, including both outstanding and treasury shares. If an additional unissued amount is reserved for issuance for a specific purpose, application may also be made for authority to add that amount to the list, upon official notice of issuance for that specific purpose. The request for authority to list such additional amount should state briefly, but specifically, the purpose of issuance, and that the listing authorization of such shares is effective only if they are issued for that purpose. No additional unissued amount may be applied for, which is not reserved for issuance for a specific purpose by the Board of Directors.

If the applicant has any other classes of stock which are not being listed, the application should indicate how many such shares are outstanding, how many such shares are reserved for future issuance and the purpose thereof.

**Item 2, Attachments.** A statement listing the appropriate documents which are attached to the listing application and incorporated therein by reference (see § 211) and a statement that there have been no material developments since the date of the latest SEC filing.

**Item 3. Certificate.** Certificate and signature of duly authorized officer of the applicant.]

*Each company must submit an application for original listing, in the form prescribed by the Exchange, together with supporting exhibits specified in § 306 (See sample application in Appendix).*

**Sec. 213. EXHIBITS TO BE FILED WITH ORIGINAL LISTING APPLICATION-STOCK**

[The following exhibits must be filed i] *I*n support of the original listing application, *a company must file:*

[**1. Listing Agreement.** O] *o*ne copy of *the Listing* Agreement, executed by an executive officer of the applicant, on Listing Form 1 supplied by the Exchange. *In addition,*

[**2. Certificate of Distribution.** One copy, signed by an executive officer of the applicant, as of a recent date, prepared on Listing Form 2 supplied by the Exchange.

**3. Charter.** One copy each of charter and all amendments to date, with (manually signed) certificate(s) of Secretary of State or corresponding authority covering filing of the original charter and each amendment. In lieu of the foregoing, the applicant may submit a copy of the charter as amended to date, with (manually signed) certificate(s) of Secretary of State or corresponding authority with respect thereto. Photostatic copies are acceptable.

**4. By-Laws.** One copy of the by-laws, as amended to date of application, certified by the secretary or other executive officer of the applicant.

**5. Specimen Certificates.** One specimen copy of each denomination of certificate of class to be listed. If transfer agents(s) and registrar(s) are located in more than one city, furnish one specimen of each denomination of certificates used in each city. Specimens should he accompanied by certificate and agreement of the banknote company as specified under requirements for ''Form of Securities-Engraving'' in the attached Appendix.

**6. Opinion of Counsel.** One copy of opinion of counsel of satisfactory standing, addressed to the Exchange, as to the following: (a) the legality of organization and valid existence of the applicant; (b) the validity of authorization and issuance (or

proposed issuance) of the securities applied for; (c) whether the securities are (or will be) fully paid and non-assessable, and whether personal liability attaches to ownership; and (d) whether the outstanding securities were registered or issued pursuant to an exemption under the Securities Act.

If counsel, or any partner of such counsel (or, if a firm, any member thereof) is an officer, director or shareholder of the applicant, this fact must be disclosed in the opinion and in the listing application.

**7. Contract With Transfer Agent.** One copy of contract with each transfer agent relative to the issuance of additional shares. (Use printed Listing Form 3 supplied by the Exchange.)

**8. Contract With Registrar.** One copy of contract of each registrar relative to the registration of additional shares. (Use printed Listing Form 4 supplied by the Exchange.)

**9. Other Information.** T] the Exchange may request copies of such other documents as are necessary to complete its review of an issuer's eligibility for listing.

**Sec. 214. OIL AND GAS AND MINING COMPANIES—ADDITIONAL PAPERS TO BE FILED**

**Oil and Gas Companies**—In addition to *the* [E] *e*xhibits [1 to 9] required of all applicants, companies which have an interest in oil and gas properties as a material part of their business must submit the following:

[**10.**] **Engineer's Reserve Report.** Report of recent date, of qualified engineer, including estimate of proven reserves. The report shall be accompanied by a signed statement of the engineer's qualifications. The Exchange recommends and may, in fact, require the submission of the report of a qualified independent engineer not in the regular employ of the company.

**Mining Companies**—In addition to *the* [E] *e*xhibits [1 to 9] required of all applicants, companies which own or operate mines as a material part of their business must submit the following:

[**11.**] **Table of Lands.** A tabular list of mineral and other lands (separate lists for producing and non-producing properties), each property designated by number or claim name. If any property is held under lease, specify terms. Submit separate lists for properties held directly and those held through subsidiaries.

[**12.**] **Engineer's Mining and Reserve Report.** Report, of recent date, of qualified engineer. The report shall be accompanied by a signed statement of the engineer's qualifications. (In certain cases, the Exchange may require the submission of the report of a qualified independent engineer not in the regular employ of the applicant.)

In the case of mines which are developing, the engineer's report must contain:

(a) recommendations regarding the development program; (by estimate as to amount of additional funds which will be required to complete the development program as outlined; and (c) estimate of length of time required to complete such development program.

* * * * *

**[Sec. 216. EXHIBITS TO BE FILED WITH ORIGINAL LISTING APPLICATION—DEBT SECURITIES**

Applicants with *no* securities currently listed on the Exchange should submit all exhibits specified in § 213, except for Exhibits 2, 6, 7 and 8, in lieu of which the following should be submitted:

**13. Opinion of Counsel.** One copy of opinion of counsel of satisfactory standing, addressed to the Exchange, as to the following: (a) the legality of organization and valid existence of the applicant; (b) the validity of authorization and issuance of the bonds; (c) the legal, valid and binding nature of the obligations enforceable against the applicant in accordance with the terms of the instrument creating such bonds, with remedies exceptions, if appropriate; and (d) whether the Indenture is qualified under the Trust Indenture Act of 1939. If the bonds are convertible into equity securities of the applicant, an opinion should be given that the securities in to which the bonds are convertible have been duly and validly authorized and reserved for issuance and that they will, when issued, be fully paid and non-assessable, and that no personal liability will attach to ownership. The opinion should also indicate whether the bonds and, if applicable, the securities into which they are convertible, will be registered or issued pursuant to an exemption under the Securities Act.

If counsel, or any partner of such counsel (or, if a firm, any member thereof) is an officer, director or shareholder of the applicant, this fact must be disclosed in the opinion and in the listing application.

**14. Indenture.** One copy of the mortgage, indenture, or equivalent instrument, certified by the trustee.

**15. Trustee's Certificate.** A certificate from the trustee showing acceptance of the trust. (See Appendix for suggested form.)

Applicants with securities already listed on the Exchange should file supporting Exhibits 13–15 above, as well as Exhibits 1 and 5 set forth in § 213.]

* * * * *

**[Sec. 218. EXHIBITS TO BE FILED WITH ORIGINAL LISTING APPLICATION—WARRANTS**

Applicants with *no* securities currently listed on the Exchange should submit all Exhibits specified in §§ 213–214, except for Exhibits 6, 7 and 8, in lieu of which the following should be submitted:

**16. Opinion of Counsel.** One copy of opinion of counsel of satisfactory standing, addressed to the Exchange, as to the following: (a) the legality of organization and valid existence of the applicant; (b) the validity of authorization and issuance of the warrants; and (c) the legal, valid and binding nature of the obligations enforceable against the applicant in accordance with the warrant agreement, with remedies and exceptions, if appropriate. An opinion should be given that the securities for which the warrants are exercisable have been validly authorized and reserved for issuance and that they will, when issued in accordance with the warrant agreement, he validly issued, fully paid and non-assessable, and that no personal liability will attach to ownership. The opinion should also indicate whether the warrants and the securities into which they are exercisable will be registered or issued pursuant to an exemption under the Securities Act.

If counsel, or a partner of such counsel, is an officer, director or shareholder of the applicant, this fact must be disclosed in the opinion and in the listing application.

**17. Contract with Warrant Agent.** One copy of contract from warrant agent(s) on printed Listing Form 5.

**18. Warrant Agreement.** One certified copy of warrant agreement between the issuer and warrant agent(s).

In the case of applicants with securities already listed on the Exchange, the supporting Exhibits shall consist of 16, 17, and 18 referred to above, plus Exhibits 1, 2 and 5 specified in § 213.]

**FOREIGN LISTINGS (§§ 220–222)**

* * * * *

**Sec. 222. EXHIBITS TO BE FILED WITH ORIGINAL LISTING APPLICATION—FOREIGN ISSUERS**

Generally, the exhibits to be filed in support of an original listing application of a foreign issue will be substantially the same as those pertaining to an equivalent domestic issue. [See §§ 213, 216 and 219.)]

Where an application is made to list ADRs, rather than the underlying securities, a copy of the Deposit Agreement and a specimen ADR certificate should also be filed in support of the listing application.

**PART 3. Additional Listings-Requirements and Procedures—Subscription Rights—Possible Application of Original Listing**

* * * * *

**Sec. 304. LISTING OF SHARES PURSUANT TO A STOCK DIVIDEND OR FORWARD SPLIT**

Stock to be issued in a forward split or dividend must be listed prior to the distribution date of such action. A company must complete the Reconciliation Sheet provided in the Exchange's form of application, as of the record date of the scheduled distribution.

If fractional shares are to be paid in cash and the exact number of shares cannot be determined in advance, the company should list the maximum number of shares that can be issued and subsequently request cancellation of the listing of the balance of shares not issued.

[**EXHIBITS**—Exhibits A–2 and A–3 (described in § 306) must be submitted in connection with a stock dividend or forward split listing application.]

**Sec. 305. LISTING OF SHARES PURSUANT TO A REVERSE SPLIT/SUBSTITUTION LISTING**

A substitution listing application is necessary whenever a company engages in a reverse stock split, re-incorporates, proposes to list a new class of securities in substitution for a previously listed class of securities or otherwise engages in a transaction which would require it to file a new Form 8–A [or Form 8–B] with SEC in regard to a previously listed security.

[**EXHIBITS**—Exhibits A–2, A–3, A–4, A–7, If applicable). A–8 and –9 (except in the case of a reverse split) (described in § 306) must be submitted in connection with a reverse split or substitution listing application. In addition, if a company is changing its transfer agent and/or registrar a new Listing Form 3 (Agreement With Transfer Agent) and/or Listing Form 4 (Agreement With Registrar) must be executed and filed with the Exchange (see forms in Appendix).

If a company is listing debt securities in substitution for a previously listed debt issue, it is also required to submit: (i) a specimen certificate of each denomination of security to be listed, with certification from the banknote company as specified in § 823; (ii) a copy of the mortgage, indenture, or equivalent instrument (or amendments thereto) certified by the trustee with amendments; and (iii) a certificate from the trustee showing acceptance of the trust (see Sample Trustee's Certificate in Appendix).

If a company is listing warrants in substitution for a previously listed warrant class, it is also required to submit: (i) a specimen certificate of each denomination of security to be listed, with certification from the banknote company as specified in § 823; (ii) a copy of the contract with each warrant agent on Listing Form 5 (see form in Appendix); and (iii) a certified copy of the warrant agreement.]

**Sec. 306. EXHIBITS TO BE FILED WITH ADDITIONAL LISTING APPLICATIONS**

**A–1 Contract.** A copy of each executed contract, plan or agreement pursuant to which the additional securities applied for are to be issued.

**A–2 [Opinion of Counsel.** An opinion of counsel of satisfactory standing addressed to the Exchange as to the following: (a) the validity of authorization and issuance (or proposed issuance) of the securities applied for; (b) whether the securities are (or will be) fully paid and non-assessable, and whether personal liability attaches to ownership; and (c) whether the securities to be listed will be registered or issued pursuant to an exemption under the Securities Act. If such counsel, (or, if a firm, any member thereof) is an officer, director or stockholder of the applicant, this fact must be disclosed in the opinion.

**A–3 Board Resolutions.** One certified copy of each resolution of the Board of Directors authorizing the issuance for which the listing application is being made, and

**A–4. Amendments to Charter.** One copy of each amendment to the charter not previously filed with the Exchange, or, at the applicant's option, one copy of the charter as amended to date, certified by the Secretary of State or corresponding authority of the state of incorporation.

**A–5] Financial Statements of Acquired Company.** If the securities to be listed are to be issued in connection with the acquisition of a controlling interest in, or of substantially all of the assets subject to the liabilities of, another company, the most recent audited financial statements, supplemented by the latest interim statements. In cases where independently audited financial statements are not available, a manually signed statement certified by the chief accounting officer of such other company must be submitted.

**A–[6]3. Engineering Report.** If the securities applied for are to be issued in acquisition of a stock interest in another company, or properties or other assets, furnish one copy of any engineering, geological or appraisal report which may have been obtained in connection with the proposed acquisition.

**[A–7. Amendments to By-Laws.** One certified copy of each amendment to the by-laws not previously filed with the Exchange. If desired, there may be filed in lieu of such amendments, one certified copy of the by-laws as amended to date.

**A–8. Stock Certificates.** If the form of stock certificate for the listed class of stock has been or is to be changed, furnish one specimen of each denomination of the changed form, with a certification from the banknote company that the security has been prepared in accordance with the printing and engraving requirements of the Exchange, as specified in § 823.]

**A–[9]4. Listing Agreement.** A company must execute a new listing agreement (see Listing Form 1) in support of every substitution listing except in the case of a reverse split.

* * * * *

**SUBSCRIPTION RIGHTS, BACKDOOR LISTING AND PAIRED SECURITIES (§§ 340–343)**

**Sec. 340. SUBSCRIPTION RIGHTS**

A listed company must promptly disclose any action taken by it with respect to the allotment of rights to subscribe or rights or benefits pertaining to the ownership of its listed securities. It is further required to give prompt notice of any such action to the Exchange to afford the holders of such securities a proper period within which to record their interests and exercise their rights. These requirements are further explained in paragraphs (a) through (h) below.

The Exchange will not admit subscription rights to dealings unless the underlying security is or will be listed on the Exchange.

(a) No change

(b) *Establishment of Record, Mailing, and Expiration Dates*—The record date should be no earlier than one day prior to the time the registration statement or offering circular becomes effective.

The mailing of the subscription rights to shareholders should occur as soon after the record date as possible. Most companies have their transfer agents mail the rights on the same date as the record date or, at the latest, on the business day following the record date.

The subscription period should be for at least 14 calendar days following the mailing date. [provided the subscription agent is located in New York City. If the transfer agent (which usually also acts as the subscription agent) is not located in New York City or does not have a New York City ''drop'' (see § 801), such additional number of days as is equal to the mailing distance between New York City and the location of the subscription agent should be added to the 14 day period. For example, if the sole subscription agent is located in Boston, without ''drop'' facilities in New York City, the subscription period should be at least 15 days; in Chicago 16 days; and on the Pacific Coast 18 days. Companies not having a New York City transfer agent (or the equivalent thereof) should consider the advisability of appointing a New York City banking institution to act as subscription agent or co-subscription agent to facilitate the handling of subscriptions in relationship to the minimum subscription period involved.] (See §§ 510–522 for further explanation of ''ex-rights'' rule.)

(c) No change

(d) No change

(e) *Dealings in Rights*—No application is required to be filed with the Exchange for the listing of subscription rights or with the SEC for their registration under the Exchange Act. Under SEC Rule 12a–4, subscription rights are exempt from registration under the Exchange Act. [Listed companies must, however, issue all transferable rights or benefits pertaining to listed securities in a form approved by the Exchange and make the same assignable, exercisable and deliverable in the Borough of Manhattan, City of New York.]

Transferable rights may be admitted to dealings on the Exchange as soon as notice is received that the company's Securities Act registration statement or offering circular has become effective. The normal procedure is to admit the rights to dealings at 10:00 a.m. on the day following the day the registration statement or offering circular has become effective. Accordingly, the company should arrange to have the registration statement or offering circular declared effective as of 4:00 p.m. on the date preceding the anticipated trading date. The company or its attorneys should notify the Exchange *by telephone* as soon as they learn of SEC clearance.

Trading in rights on the Exchange will cease at the close of business on the business day preceding the expiration date thereof, if such rights are exercisable in the New York City metropolitan area, and at such time in advance of the expiration date as may be announced by the Exchange, if such rights are exercisable outside such area. (Exchange Rule 17.) This facilitates open contracts to be settled and rights to be exercised on the final day.

(f) *Ex-Rights Date*—As specified at § 513(a), in general, stocks are quoted ''ex-rights'' the day following the date on which the rights are admitted to dealings. (Exchange Rule 830.) This arrangement allows one full day's trading to take place in the rights to establish their market value for ''ex-rights'' purposes. On the day the stock is quoted ''ex-rights'' all open orders to buy and open stop orders to sell (pursuant to Exchange Rule 132, as amended) on the books of the specialist are reduced by the cash value of the rights as determined by the price of the last sale in the rights the day before the stock sells ex-rights. Purchasers of the stock beginning the fourth business day preceding the record date for a stock transferring in New York City [(and earlier if the stock transfers only outside of New York City)] and to and including the day

before the ''ex-rights'' date for the stock have been paying prices for their stock which include the value of the rights. Since it is not possible for such purchasers to become holders of record on the books of the company by the record date for the offering, the Exchange rules that the purchasers in such transactions (having paid a ''rights on'' price for their stock, i.e., a price including the value of the rights) are entitled to the rights and are, therefore, entitled to receive a due bill for the rights from the sellers of the stock. Such due bills are redeemed by the sellers when they receive their rights from the company.

This arrangement is between the brokers for the purchasers and the sellers of the stock, and does not involve the company. For a further explanation, see §§ 510–522.

(g) No change

(h) No change

* * * * *

**[Sec. 343. SPECIAL SHAREHOLDER RIGHTS PLANS**

The Exchange should be consulted prior to the submission of any application involving securities with special shareholder rights. (See § 140 for discussion of the fee.)]

* * * * *

**PART 4. Disclosure Policies (§§ 401–405)**

**DISCLOSURE (§§ 401–405)**

**Sec. 401. OUTLINE OF EXCHANGE DISCLOSURE POLICIES**

The Exchange considers that the conduct of a fair and orderly market requires every listed company to make available to the public information necessary for informed investing and to take reasonable steps to ensure that all who invest in its securities enjoy equal access to such information. In applying this fundamental principle, the Exchange has adopted the following six specific policies concerning disclosure, each of which is more fully discussed (in a Question and Answer format) in § 402:

(a) *Immediate Public Disclosure of Material Information*—A listed company is required to make immediate public disclosure of all material information concerning its affairs, except in unusual circumstances. When such disclosure is to be made during trading hours, it is essential that the [company's Corporate Relations Manager] *Stock Watch Department* be notified prior to the announcement.

(b)–(f) no change

**Sec. 402. EXPLANATION OF EXCHANGE DISCLOSURE POLICIES**

(a) *Immediate Public Disclosure of Material Information*

* * * * *

Q. When may a company properly withhold material information?

A. Occasionally, circumstances such as those discussed below may arise in which-provided that complete confidentiality is maintained-a company may temporarily refrain from publicly disclosing material information. These situations, however, are limited and constitute an infrequent exception to the normal requirement of immediate public disclosure. Thus, in cases of doubt, the presumption must always be in favor of disclosure.

(i) no change

(ii) When the facts are in a state of flux and a more appropriate moment for disclosure is imminent.

Occasionally, corporate developments give rise to information which, although material, is subject to rapid change. If the situation is about to stabilize or resolve itself in the near future, it may be proper to withhold public disclosure until a firm announcement can be made, since successive public statements concerning the same subject (but based on changing facts) may confuse or mislead the public rather than enlighten it.

For example, in the course of a successful negotiation for the acquisition of another company, the only information known to each party at the outset may be the willingness of the other to hold discussions. Shortly thereafter, it may become apparent to the parties that it is likely an agreement can be reached. Finally, agreement in principle may be reached on specific terms. In such circumstances (and assuming the maintenance of strict confidentiality), a company need not issue a public announcement at each stage of the negotiations, describing the current state of constantly changing facts, but may await agreement in principle on specific terms. If, on the other hand, progress in the negotiations should stabilize at same other point, disclosure should then be made if the information is material.

Whenever material information is being temporarily withheld, the strictest confidentiality must be maintained, and the company should be prepared to make an immediate public announcement, if necessary. During this period, the market action of the company's securities should be closely watched, since unusual market activity frequently signifies that a ''leak'' may have occurred. This is one reason why it is important to keep the company's [Corporate Relations Manager] *Listing Qualifications Analyst* fully apprised of material corporate developments.

**Note:** Federal securities laws may restrict the extent of permissible disclosure before or during a public offering of securities or a solicitation of proxies. In such circumstances (as more fully discussed below), a company should discuss the disclosure of material information in advance with the Exchange and the Securities and Exchange Commission. It is the Exchange's experience that the requirements of both the securities laws and regulations and the Exchange's disclosure policy can be met even in those instances where their thrust appears to be different.

Q. What action is required if rumors occur while material information is being temporarily withheld?

A. If rumors concerning such information should develop, immediate public disclosure becomes necessary. (See also ''Clarification or Confirmation of Rumors and Reports'' on page 4–7.)

Q. What action is required if insider trading occurs while material information is being temporarily withheld?

A. Immediate public disclosure of the information in question must be effected if the company should learn that insider trading, as defined in section 402(f), has taken or is taking place. In unusual cases, where the trading is insignificant and does not have any influence on the market, and where measures sufficient to halt insider trading and prevent its recurrence are taken, exemptions might be made following discussions with the Exchange. The company's [Corporate Relations Manager] *Listing Qualifications Analyst,* through the facilities of the Exchange's Stock Watch Department, can provide current information regarding market activity in the company's securities and help assess the significance of such trading.

* * * * *

(b) *Thorough Public Dissemination*

Q. What specific disclosure techniques should a company employ?

A. The steps required are as follows:

(i) *Prior to Public Disclosure.* The Exchange expects a company to notify [its Corporate Relations Manager] *the Exchange's Stock Watch Department* in advance of public disclosure of information which is non-routine or is expected to have an impact on the market for its securities. The Exchange, with the benefit of all the facts provided by the company, will be able to consider whether a temporary halt in trading, pending an announcement, would be desirable. A temporary halt in trading is not a reflection on the company or its securities, but provides an opportunity for disseminating and evaluating the information released. Such a step frequently helps avoid rumors and market instability, as well as the unfairness to investors that may arise when material information has reached part, but not yet all, of the investing community. Thus, in appropriate circumstances, the Exchange can often provide a valuable service to investors and listed companies by arranging for such a halt.

(ii) *At Time of Public Disclosure.* As a minimum, any public disclosure of material information should be made by an announcement released simultaneously to: [(A)] the national business and financial news-wire services [(Dow Jones, Reuters, and Bloomberg), (B) the national news-wire services (Associated Press and United Press International), (C) The New York Times and The Wall Street Journal, and (D) Moody's Investors Service and Standard & Poor's Corporation. The New York telephone numbers and addresses of these organizations are as follows:

Dow Jones & Company, Inc. (The Wall Street Journal), World Financial Center, 200 Liberty Street, New York, N.Y. 10281, (212) 416–2471

Reuters Ltd., 1700 Broadway, New York, N.Y. 10019, (212) 603–3300

Bloomberg Business News, 499 Park Avenue, New York, N.Y. 10022, (212) 318–2000

Associated Press, 50 Rockefeller Plaza, New York, N.Y. 10020, (212) 621–1500

United Press International, Five Penn Plaza, New York, N.Y. 10001, (212) 560–1100

The New York Times, 229 W. 43rd Street, New York, N.Y. 10036, (212) 556–1234

Standard & Poor's Corporation, 25 Broadway, New York, N.Y. 10004, (212) 208–8377

Moody's Investors Service, Inc., 99 Church Street, New York, N.Y. 10007, (212) 553–0300

Concerns that distribute press releases over private [teletype] networks may be extremely helpful in gaining news coverage. Two such organizations are PR Newswire, [150 E. 58th St., New York, N.Y. 10022 [(212) 832–9400 or (800) 832–5522 (outside New York)],] and Business Wire [, 1133 Avenue of the Americas, New York, N.Y. 10036 [(212) 575–8822 or (800) 221–2462 (outside New York)]].

Companies may also wish to broaden their distribution to other news or broadcast media, such as those in the location of the company's plants or offices, and to trade publications. The information in question should always be given to the media in such a way as to promote publication by them as promptly as possible, i.e., by telephone, telecopy, or in writing (by hand delivery), on an ''immediate release'' basis. Companies are cautioned that some of these media may refuse to publish information given by telephone until it has been confirmed in writing or may require written confirmation after its publication.

Whenever difficulty is encountered or anticipated in having an announcement about a material development published, a company should contact [its Corporate Relations Manager who may frequently] *The Exchange's Stock Watch Department, which may* be able to provide assistance. Finally, if despite all reasonable efforts, the announcement has not been published by one of the national news-wire services or one of the above-mentioned newspapers, the company should attempt to have the announcement disseminated through other media, such as trade, industry or business publications, or local newspapers (especially those in the area where the company's principal offices or plants are located or where its stockholders are concentrated). In cases where the announcement is of particular importance, or where unusual difficulty in dissemination is encountered, the company should consider the use of paid advertisements, a letter to stockholders, or both.

*Companies may also disseminate information over the Internet. Information should not be made available over the Internet before the same information is transmitted to, and received by, the traditional news vendor services.*

Three copies of all public announcements should be sent to the Exchange. [Announcements can be telecopied to the Exchange at (212) 306–1488.]

Q. How does the policy on thorough public dissemination apply to meeting with securities analysts, journalists, stockholders and others?

* * * * *

(c) *Clarification or Confirmation of Rumors and Reports*

no change

(d) *Response to Unusual Market Action*

Q. What is the significance of unusual market activity from the standpoint of disclosure?

A. Where unusual market action (in price movement, trading activity, or both) occurs without any apparent publicly available information which would account for the action, it may signify trading by persons who are acting either on unannounced material information or on a rumor or report, whether true or false, about the company. Most often, of course, unusual market activity may not be traceable either to insider trading or to a rumor or report. Nevertheless, the market action itself may be misleading to investors, who are likely to assume that a sudden and appreciable change in the price of a company's stock must reflect a parallel change in its business or prospects. Similarly, unusual trading volume, even when not accompanied by a significant change in price, tends to encourage rumors and give rise to speculative trading activity which may be unrelated to actual developments in the company's affairs.

Generally, unusual market activity will first be detected by either the Specialist in the company's securities or the Exchange's Stock Watch Department[. This information will then be passed on to the company's Corporate Relations Manager, who], *which* in turn, will contact company officials to apprise them of the activity.

* * * * *

**Sec. 403. CONTENT AND PREPARATION OF PUBLIC ANNOUNCEMENTS**

(a) *Exchange Requirements*

no change

(b) *Securities Laws Requirements*—The requirements of the Federal securities laws must also be carefully considered in the preparation of public announcements. In particular, these laws may impose special restrictions on the extent of permissible disclosure before or during a public offering of securities or a solicitation of proxies. Generally, in such circumstances, while the restrictions of the securities laws may affect the character of disclosure, they do not prohibit the timely disclosure of material factual information. Thus, it is normally possible to effect the disclosure required by Exchange policy.

[Whenever a conflict arises, the company should discuss the matter with the Securities and Exchange Commission, as well as with its Exchange Corporate Relations Manager, who can frequently assist in evaluating the problem.]

(c) *Preparation of Announcements*—The following guidelines for the preparation of press releases and other public announcements should help companies to ensure that the content of such announcements will meet the requirements discussed above:

(ii) no change

(iii) Since skill and experience are important to the preparation and editing of accurate, fair and balanced public announcements, the Exchange recommends that a limited group of individuals within the company be given this assignment on a continuing basis. (Since a press announcement usually must be prepared and released as quickly as possible, however, the group charged with this assignment should be large enough to handle problems that arise suddenly and unexpectedly.) The [company's Corporate Relations Manager] *Exchange's Stock Watch Department* can assist in assessing whether the release satisfies the Exchange's disclosure requirements.

(iv) no change

**Sec. 404. EXCHANGE SURVEILLANCE PROCEDURES**

[As previously noted, the Corporate Relations Managers are primarily responsible for the day-to-day relations with listed companies. They are familiar with the affairs of their assigned companies and are connected by direct wire to the trading floor of the Exchange. They also maintain close contact with the Exchange's Stock Watch Department, which is responsible for monitoring unusual market situations.]

*In many cases,* when unusual market action occurs, [it is reported to the assigned Corporate Relations Managers. In many cases, by checking with] Stock Watch[, the Corporate Relations Managers] is able to trace the reason for the action to a specific cause, such as recently disclosed information, recommendations by advisory services, or rumors. In certain instances, the Exchange's Market Surveillance Department may also be asked to check brokerage firms as to the source and reasons for activity stemming from their particular firms. (This latter information, it should be noted, must remain confidential to the Exchange.) If no explanation of the unusual activity is revealed, [the Corporate Relations Managers] *Stock Watch* may call officials of the company to determine whether the cause of the action is known to them. If the action appears to be attributable to a rumor or report, or to material information that has not been publicly disseminated, the company is requested to take appropriate corrective action, and it may be advisable, after consultation with trading floor officials, to halt trading until such action has been taken.

**[Sec. 405. CONSULTATION WITH EXCHANGE CORPORATE RELATIONS MANAGERS**

A company expecting to make a material corporate announcement should first contact its Corporate Relations Managers who is in a unique position to evaluate disclosure problems as they arise and explain their effect on the public, the company and the Exchange. By means of such advance consultation, effective liaison between companies and the Exchange is maintained, and a company can obtain the benefit of the Representative's experience in the day-to-day application of the Exchange's policies relating to corporate disclosure.]

**PART 5. Dividends and Stock Splits (§§ 501–522)**

**NOTICES, RECORD DATE (§§ 501–509)**

**Sec. 501. NOTICE OF DIVIDEND**

no change

**Sec. 502. RECORD DATE**

A company is not permitted to close its stock transfer books for any reason, including the declaration of a dividend. Rather, it must establish a record date for shareholders entitled. To a dividend which is at least ten days after the date on which the dividend is declared (declaration date). [However, in the

case. Of stock issues that do not have transfer facilities in the New York City metropolitan area, the record date shall not be less than such number of additional days (in excess of ten) after the declaration date as is equal to the mailing time (regular mail) between New York City and the city in which the Transfer Agent is located.

**Note:** *The requirement for additional time between the declaration date and the record date would also apply in cases where there is an intervening holiday or where the record date falls on a weekend.*]

*A company is also required to give the Exchange at least ten days' notice in advance of a record date established for any other purpose, including meetings of shareholders.*

**Sec. 503. FORM OF NOTICE**

Immediately after the board of directors has declared a cash or stock dividend, the company should: (a) release the news to the newspapers and news services, including the news-ticker services operated by Dow Jones & Company, Inc., and Reuters Ltd., (see § 402); and (b) notify the Exchange by telephone[, telegram] or [telecopier] *facsimile* and confirm by letter. The announcement and notice should specify the name of the company, date of declaration, amount (per share) of the dividend, and the record and payment dates.

* * * * *

**EX-DIVIDEND-EX-RIGHTS (§§ 501–522)**

**Sec. 512. EX-DIVIDEND PROCEDURE**

[In the establishment and announcement of ex-dividend dates, the Exchange proceeds as follows:

*Transfer Facilities Located in New York City]* Transactions in stocks (except those made for ''cash'') [for which there exist transfer facilities in New York City (see § 801)] are ex-dividend on the second business day preceding the record date. If the record date selected is not a business day, the stock will be quoted ex-dividend on the third preceding business day. ''Cash'' transactions are ex-dividend on the business day following the record date.

* * * * *

**[Sec. 520. SCHEDULE FOR CUSTOMARY EX-DIVIDEND DATES**

The ''ex-dividend'' date established by the Exchange is based on the location of the transfer facilities either in, or nearest to, New York City. Thus, if an issue transfers both in New York City and outside of New York City, the ''ex'' date is based on the New York City transfer facilities. If an issue does not transfer in New York City, but transfers in two or more cities outside of that area, the ''ex'' date is based on the location of the transfer facilities closest to New York City.

To avoid unnecessary claims for dividends, members receiving deliveries of stocks against ''dividend on'' transactions, are urged to provide for the early mailing of such stocks which transfer out of town, in order to ensure receipt by the transfer agent by the record date.]

**Sec. 521. SPECIAL EX-DIVIDEND RULINGS**

(a) no change

(b) no change

(c) ''*Cash'' Transactions*—The Ex-Dividend Rule of the Exchange specifies that ''cash'' transactions (in which delivery of the security must be made on the date of the transaction) [in the case of stocks transferring in the New York City Metropolitan area,] shall be ''ex-dividend'' on the business day following the record date[, and in the case of stocks transferring only outside of that area shall be ''ex-dividend'' on the business day following the ''equivalent New York record date'']].

* * * * *

**PART 6. According; Annual and Quarterly Reports (§§ 603–624)**

**ACCOUNTING (§ 603, § 604)**

**Sec. 603. CHANGE IN ACCOUNTANTS**

A listed company is required to notify its [Corporate Relations Managers] *Listing Qualifications Analysis* promptly (prior to filing its 8-K) if it changes independent accountants; and must state the reason for such change.

* * * * *

**INTERIM REPORTS (§§ 622–624)**

**[Sec. 622. REQUESTS FOR EXTENSION**

A company should immediately notify its Corporate Relations Manager whenever it files with the SEC a request for extension of time for the filing of its interim statements on SEC Form 12b-25.]

* * * * *

**PART 7. Shareholders' Meetings, Approval and Voting of Proxies (§§ 701–726)**

**SHAREHOLDERS' APPROVAL (§§ 701–706)**

* * * * *

**[Sec. 702. CHARTER AND BY-LAW AMENDMENTS**

A listed company is required to file with the Exchange a copy of any amendment to its charter or by-laws (or equivalent documents), as soon as it becomes effective. Such filing must include:

(a) *in the case of a charter amendment*—a certification by the Secretary of State (or similar authority) that the filing is a true and complete copy of the amendments; and

(b) *in the case of a by-law amendment*—a resolution of the board of directors (certified by an officer of the company) authorizing the by-law amendment.]

* * * * *

**SHAREHOLDERS' APPROVAL (§§ 710–713)**

* * * * *

**Sec. 713. OTHER TRANSACTIONS**

The Exchange will require shareholder approval (pursuant to a proxy solicitation conforming to SEC proxy rules) as a prerequisite to approval of applications to list additional shares to be issued in connection with:

(a) a transaction involving:

(i) the sale, [or] issuance, *or potential issuance* by the company of common stock (or securities convertible into common stock) at a price less than the greater of book or market value which together with sales by officers, directors or principal shareholders of the company equals 20% or more of presently outstanding common stocks; or

(ii) the sale, [or] issuance, *or potential issuance* by the company of common stock (or securities convertible into common stock) equal to 20% or more of presently outstanding stock for less than the greater of book or market value of the stock; or

(b) a transaction which would involve the application of the Exchange's original listing guidelines as described in § 341.

**VOTING BY EXCHANGE MEMBERS, TRANSMISSION OF PROXY MATERIALS (§§ 720–726)**

* * * * *

**Sec. 726. VOTING BY SPECIALISTS (SEE EXCHANGE RULE 186)**

[An] Exchange specialists [is] *are* prohibited from soliciting, directly or indirectly, any proxy on behalf of [himself] *themselves* or any other person in respect of a security in which [he is] *they are* registered as a specialist. [A specialist is] *Specialists are* also prohibited from voting in any proxy contest any such security in which [he has] *they have* a beneficial interest.

**[PART 8. Transfer Facilities; Certificate Requirements (§§ 801–841)**

**TRANSFER AGENTS, REGISTRARS, TRUSTEES (§§ 801–811)**

**Sec. 801. TRANSFER AND REGISTRY FACILITIES**

Listed companies are required to maintain transfer and registry facilities (including facilities for conversion or exchange) for their listed securities, which are satisfactory to the Exchange. Such transfer and registry facilities may be located in New York City or outside of New York City provided, in each case, that the requirements of Rule 891 of the Board of Governors of the Exchange, set forth below, are met.

*Board of Governors Rule 891:*

Requirements in order to qualify as a Transfer Agent for securities listed on the American Stock Exchange (where the listed Company does not act as its own Transfer Agent) in respect of (i) all Transfer Agents located in New York City, and (ii) Transfer Agents located out-of-town where the listed Company has no Transfer Agent in New York City.

1. Office facilities (hereinafter referred to as the ''office'') satisfactory to the Exchange and the issuer to receive and redeliver securities must be located south of Chambers Street in the Borough of Manhattan, City of New York.

2. Routine transfers are to be processed and available for pick-up at the office under normal conditions within 48 hours, *e.g.*, if received before Noon on Monday must be available for pick-up no later than immediately after 1:00 P.M. on Wednesday.

3. The Transfer Agent must assume total responsibility and liability for securities from the time of deposit at the office until delivery at the window. The Transfer Agent must maintain insurance coverage of a least $10,000,000 to protect securities while in transit or in process of transfer, and it must

be in a position to demonstrate that it has a substantial new worth. If the Transfer Agent does not have capital, surplus (both capital and earned), undivided profits and/or capital reserves aggregating at least $3,000,000, it will be required to furnish additional evidence of its ability to meet financial obligations and it may be required to maintain insurance coverage in excess of $10,000,000. In this regard, all relevant factors will be considered such as its past record of operations as a transfer agent, the experience of its management and supervisory personnel, its security and record-keeping procedures, the nature and scope of any other activities in which it is engaged and the amount of its capital in relation to its overall business activities.

4. Out-of-town agents having a drop in New York must make appropriate arrangements to pick up from and deliver to Depositary Trust Company normally within the 48-hour period and framework mentioned above.

5. Personnel at the office must have sufficient experience to respond promptly to inquiries regarding transfers, including legal items.

6. Securities received before the close business at the office on a record date or any other date involving the rights of a security holder must be recorded as of the date so as to establish the transferee's rights.

7. Facilities should be available for expediting transfer service when needed. No objection will be made if a reasonable charge is made for such special service.

8. The Exchange reserves the right to request a company with securities listed on the Exchange to terminate the appointment of its transfer agent in the event of failure of such transfer agent to conform to all of the foregoing requirements.

**Sec. 802. AGREEMENT WITH TRANSFER AGENT**

A company is required to cause its transfer agent or agents to enter into an agreement with the Exchange (Listing Form 3 for common stock and Listing Form 5 for warrants) whereby the transfer agent must notify the Exchange 10 days after the close of each calendar quarter of the number of shares outstanding as of the last business day of the calendar quarter for each security listed on the Exchange. The transfer agent must also notify the Exchange if its services are discontinued.

**Sec. 803. AGREEMENT WITH REGISTRAR**

A company is also required to cause its registrar or registrars to enter into an agreement with the Exchange (Listing Form 4) whereby the registrar agrees to notify the Exchange 10 days after the close of each calendar quarter of the number of shares registered for each security listed on the Exchange. A registrar must also notify the Exchange if its services are discontinued.

**Sec. 804. ADDITIONAL TRANSFER AND REGISTRY FACILITIES**

Transfer and registry agencies maybe maintained in more than one city. However, when shares are transferred in more than one transfer office, the combined amounts of stocks registered in all transfer offices shall not exceed the amount authorized for listing (See also § 829.)

**Sec. 805. ACTING IN DUAL CAPACITY**

A qualified bank, trust company, listed company or other qualified organization may act in the dual capacities of transfer agent and registrar, provided that it countersigns stock certificates in both capacities. All entities which act in the dual capacity of transfer agent and registrar are required to assure the Exchange that such functions are maintained separately and distinctly with appropriate internal controls, subject to an annual review by the agent's independent auditors which shall be provided to the entity's board of directors.

A listed company acting in the dual capacity of transfer agent and registrar for its own securities shall be required to sign an appropriate agreement with the Exchange to, among other things:

1. maintain offices, staffed by qualified personnel, with adequate facilities for the safekeeping of securities in its possession where transfer and registration may be completed within forty-eight hours;

2. be responsible to indemnify purchasers for any loss arising out of over/under issuance of all securities delivered to, or picked up by, it as agent, until such securities are delivered pursuant to instructions; and

3. maintain the transfer agent and registrar functions as separate and distinct with appropriate internal controls, such controls to be reviewed annually by the company's independent auditors.

**Sec. 806. COMPANY ACTING AS OWN TRANSFER AGENT AND/OR REGISTRAR**

If a security is transferred and/or registered at the company's office, the persons who shall be authorized to sign certificates in the capacity of registrar and transfer agent shall be appointed by specific authority of the board of directors and shall not be an officer who is otherwise authorized to sign certificates on the company's behalf.

**Note:** A listed company which acts as transfer agent and/or registrar for the securities of another issuer must comply with Exchange rules pertaining to unaffiliated banks, trust companies or other organizations (see Amex Rule 891).

**Sec. 807. APPOINTMENT OF NEW AGENT**

A company is not permitted to appoint a transfer agent, registrar, or other fiscal agent of a security of the company listed on the Exchange without prior notice to and approval of the Exchange. A registrar must, at the time of its appointment, be acceptable to the Exchange as a registrar for securities listed on the Exchange.

**Sec. 808. SPLIT-UP OF CERTIFICATES AFTER CLOSING TRANSFER BOOKS**

If the transfer books of a company should be closed permanently, the company is required to continue to split-up certificates into smaller denominations in the same name so long as such stock remains listed on the Exchange.

**Sec. 809. AGENT FOR REGISTRATION ON BONDS OR DEBENTURES**

A company applying for the listing (or having listed) registered bonds or debentures on the Exchange is required to maintain in New York City (See § 801) an office or agency, satisfactory to the Exchange, where such bonds or debentures are registerable. In the case of bonds or debentures issued in bearer form, such office or agency must provide for the payment of principal and interest on such indebtedness.

**Sec. 810. AGENT FOR PAYMENT OF DIVIDENDS, INTEREST AND PRINCIPAL**

A listed company is permitted to designate an agent, satisfactory to the Exchange, located in or outside New York City, for the payment of dividends, interest and principal (on bonds or debentures), and other payments with respect to a listed security. If, however, checks for such payments are drawn on a bank located outside New York City, additional arrangements must be made for payment against such checks at a bank, trust company or agency located in New York City; and the details of those arrangements disclosed to the payee.

**Sec. 811. TRUSTEES FOR BOND ISSUES**

(a) *Trustee to be a bank or trust company*—The trustee of a bond issue must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.

(b) *Separate trustee for each issue*—If the company, either at the time of listing or subsequently, should have bonds or other evidences of indebtedness outstanding under more than one mortgage, indenture or deed or trust, each issue shall be represented by a different trustee; provided, however, that separate trustee shall not be required in the case of several issues of bonds issued under one or more indentures that have been qualified under the Trust Indenture Act of 1939, as amended.

(c) *Persons not acceptable as trustees*—The Exchange does not regard as satisfactory to act as a trustee for a listed issue any: (i) officer or director of the issuing company; (ii) trust company, banking institution, or other organization in which an officer of the issuing company is an executive officer; or (iii) organization controlled by, under common control with, or which itself controls, the issuing company.

(d) *Changes in trustees*—No change is to be made in the trustee of a listed issue without prior notice to and approval of the Exchange.

**FORM OF SECURITIES-ENGRAVING (§ § 820–830)**

**Sec. 820. REVIEW BY THE EXCHANGE**

In addition to complying with the requirements set forth below, companies should submit the following to the Exchange for review and approval:

(a) proofs of a security prior to final printing; and

(b) specimens of the security in final form, printed on the bond paper to be used for the definitive security, accompanied by the banknote company agreement described in § 823. No change in the form of a certificate should be made without the approval of the Exchange.

**Sec. 821. ENGRAVED BORDER**

The face of listed securities (stocks and bonds) must be printed from at least one engraved steel border plate produced by a banknote company whose work is acceptable to the Exchange. The company may, at its option, use a second steel engraved face plate.

**Sec. 822. BORDER PLATE ORIGINAL**

The engraved border plate (and engraved face plate, if used) must be original to the banknote company which prepared the security, and the name of such banknote company must appear on the face of all securities and also on the face of coupons and filing panel of each bond.

The border plate shall remain in the permanent possession of the banknote company which produced it. The plate may be used by such banknote company in the production of ''controlled stock'' securities of more than one company, provided that such securities are prepared in their entirety on the premises of such banknote company, which shall furnish the Exchange with the certificate and agreement described in § 823.

**Sec. 823. AGREEMENT OF BANKNOTE COMPANY**

The final specimen submitted to the Exchange must be accompanied by:

(a) a certificate of the banknote company that:

(i) the security has been prepared in accordance with the printing and engraving requirements of the American Stock Exchange; and

(ii) all work done in connection with the preparation and manufacture of the dies, rolls, plates and certificates has been and will be done entirely on the premises of the banknote company, except as may be specifically noted (if there are any exceptions, full details must be given);

(b) an agreement by the banknote company (by its terms binding upon the banknote company, its successors and assigns) that all dies, rolls, plates and other engravings used in connection with the manufacture of certificates of the particular issue will, at all times, be and remain in the possession of the banknote company and, when not actually being used in connection with the manufacture and preparation of certificates, will be kept in a vault on the premises of the banknote company, and all completed certificates of the issue and all certificates in process will, prior to delivery to or upon the order of the issuing company (except when in actual process of manufacture), be kept in such vault. (See Appendix for suggested format.)

**Sec. 824. COLOR**

The printing of securities must be in distinctive colors to make classes and denominations readily distinguishable.

**Sec. 825. PAPER-SIZE**

All paper used for securities must be of an excellent grade of bond paper, of adequate weight and strong enough to withstand the strains and stresses of frequent handling. Stock certificates shall be of the standard size of $8 \times 12$ inches.

**Sec. 826. DENOMINATIONS**

The Exchange has no requirements as to denominations of stock certificates and permits either the sole use of single (unlimited) denomination certificates, or certificates for 100 shares, less than 100 shares and unlimited denominations.

The denomination of 100 shares, less than 100 shares and more than 100 share certificates should be appropriately indicated on the certificate by engraving or surface printing at the option of the company. Companies which do not have a separate certificate for more than 100 shares may alter the certificate for 100 shares or for less than 100 shares by over-printing.

Certificates for other than 100 shares should indicate the exact number of shares by the use of a macerating machine that breaks the paper or a matrix. A company may also use a punchout panel in addition to one of the methods noted above.

**Sec. 827. PAR VALUE**

The par value of common stock may be eliminated from common stock certificates, except where required by law. Par value may also be eliminated from preferred stock certificates, except where the dividend rate is expressed as a percentage of par value. Where a company elects to eliminate par value from its stock certificates, an opinion of counsel as to legality under applicable state law and the company's charter should be filed with the Exchange. Where par value is shown on certificates, either as the result of legal requirements or a company's preference, it may be surface printed rather than engraved.

**Sec. 828. PREFERENCES**

If the stock certificates of a company do not recite the preference of all classes of its stock, the company is required to furnish to its shareholders, upon request and without charge, a printed copy of preferences of all classes of its stock. A reference to the availability of such copy should appear on such certificates.

**Sec. 829. CERTIFICATES TRANSFERRED IN MORE THAN ONE TRANSFER OFFICE**

When shares are transferred in more than one transfer office, certificates should be interchangeably transferable and identical in color and form, except as to names of transfer agent and registrar, and the certificates shall bear a legend naming all cities in which they may be transferred.

**Sec. 830. SUPPLY OF CERTIFICATES**

A company is required to have on hand at all times a sufficient supply of certificates to meet the demands for transfer.

**LOST CERTIFICATES, CUSIP NUMBERS (§§ 840, 841)**

**Sec. 840. REPLACEMENT OF LOST CERTIFICATES**

A company is required to issue new certificates for securities listed on the Exchange replacing lost ones immediately upon notification of loss and receipt of proper indemnity.

In the event of the issuance of any duplicate bond to replace a bond which has been alleged to be lost, stolen or destroyed and the subsequent appearance of the original bond in the hands of an innocent bondholder, either the original or the duplicate bond will be taken up and canceled and the company must deliver to such holder another bond theretofore issued and outstanding.

**Sec. 841. CUSIP IDENTIFICATION NUMBER**

Certificates for listed securities are required to have imprinted thereon the appropriate CUSIP identification number which is provided by Standard & Poor's Corp.

**PART 9. Treasury Shares; Additional Matters (§§ 901–994)**

**TREASURY SHARES, REDEMPTIONS AND REPURCHASES (§§ 901–903)**

* * * * *

**Sec. 901. ACQUISITION OR DISPOSITION OF TREASURY SHARES**

A company is required to report to the Exchange, within ten days after the close of each fiscal quarter, any reacquisition or disposition of its previously issued shares listed on the Exchange made during the quarter. Such reports are to include treasury share transactions for the account of the company, whether direct or indirect, and are to show separate totals for acquisitions and dispositions and the number of treasury shares held by it at the end of the quarter.

A sample form of report is shown below:

**American Stock Exchange**

86 Trinity Place
New York, N.Y. 10006–1881

Dear Sirs: Pursuant to section 901 of the Company Guide, this is to report that the company effected transactions in shares of its previously issued common stock, $1 par value, during the quarter ended (date), as follows:

Treasury shares held as of (date): 60,000
Shares reacquired during quarter ended (date):
Total: 60,000
Shares disposed of during quarter ended (date):
(Date)—Exercise of option: 2,000
(Date)—Exercise of option: 8,000
Total shares disposed of: 10,000
Balance as of (date): 50,000

Very truly yours,
XYZ COMPANY

**Sec. 902. REDEMPTION, CANCELLATION, RETIREMENT**

A company is not permitted to select any of its listed securities for redemption

otherwise than pro rata or by lot, and is required to notify the Exchange at least 15 days in advance of any redemption and to furnish it promptly with any information requested in connection with the redemption.

Bonds, debentures or preferred stocks issued, or to be issued, under an indenture or charter provision not conforming to this requirement are not eligible for listing on the Exchange.

A company is also required to notify the Exchange promptly of any corporate action which will result in the redemption, cancellation or retirement, in whole or in part, of any of its securities listed on the Exchange, and to notify the Exchange as soon as the company has notice of any other action which will result in any such redemption, cancellation or retirement.

Notices under this section should be directed to the attention of the company's Corporate Relations Manager.

**Sec. 903. REPURCHASES OF LISTED COMPANY SECURITIES**

(a) *Private Transactions—Purchase Above Market*—A company is required to notify the Exchange promptly of all facts relating to the purchase, direct or indirect, of any of its securities listed on the Exchange at a price in excess of the market price of such security prevailing on the Exchange at the time of purchase. Such reports should be made by telephone or telex and confirmed by letter.

Since such transactions may involve state and Federal legal considerations, it is recommended that company counsel and officials of the Exchange be consulted prior to effecting a proposed repurchase of listed securities above the market.

It is the policy of the Exchange to make such reports available to the public in its library. In addition, the Exchange may require the company to issue a public announcement and a notice to its shareholders regarding such repurchase.

(b) *Open Market Purchases*.—Rule 10b–18 under the Exchange Act provides a ''safe harbor'' for issuer repurchases of up to 25% of the average daily volume for the preceding four weeks of exchange-traded securities when certain timing, price and broker-dealer conditions are met. Part (c) of such Rule specifically provides, however, that compliance with the conditions is not the exclusive method available to listed companies to effect repurchases in the marketplace.

Companies planning to repurchase their securities in the marketplace, should consult with their Corporate Relations Manager (whether or not they plan to rely on the safe harbor of the Rule) to ascertain the appropriate disclosure necessary for the maintenance of a fair and orderly market.

**Note:** Companies should be aware of the prohibitions on purchases contained in Rule 10b–6 under the Act when they are involved in a non-technical distribution of their securities.

(c) *Purchases on behalf of certain employee plans*—Rule 10b–6 under the Exchange Act exempts purchases by independent agents, as defined, on behalf of certain employee and shareholder plans.

(d) *Tender Offer*—A listed company contemplating the making of a tender offer for any or all of its securities should structure the offer so as to comply with all applicable Federal and state securities laws.

Inasmuch as a tender offer may significantly affect the market for or the continued listing eligibility of the security, the company should consult with its Corporate Relations Manager prior to the announcement and commencement of such offer.

(e) *Odd-lot Tender Offers*—A company intending to make a tender offer to its odd-lot (1 to 99 shares) holders may find the following guidelines helpful:

(i) the use of a retroactive record date (*i.e.*, a date immediately preceding the date of announcement) will enable the company to restrict the offer to existing odd-lot holders.

(ii) the tender offer should remain open for a sufficient period of time to provide all odd-lot holders with ample opportunity to participate; and

(iii) since many odd-lot holdings are in ''street'' or nominee names, the company should provide a mechanism which allows its beneficial holders to participate equally with record holders. In this connection, a company may wish to consider the following:

(A) a ''broker guarantee'' provision which permits the tender of odd-lot holdings that are not readily available for physical delivery within the tender period;

(B) a requirement that holders of record tendering on behalf of a beneficial owner confirm to the company that the securities tendered represent the beneficial owner's entire holdings of that security.]

**RELATIONSHIP WITH SPECIALIST (§ 910)**

**Sec. 910. PROCEDURES, RULES AND REGULATIONS**

From time to time, company officials inquire about Exchange rules or regulations affecting their relationship to the registered specialist in their securities.

(a) *Specialist's Function*—[The specialist is a] *Specialists are* member*s* of the Exchange who performs two basic functions regarding the issues in which [he] *they* specialize[s]. As [a] brokers, [he *they* hold[s] and execute[s] orders entrusted to [him] *them* by other brokers on behalf of their customers. As [a] dealers, [he is] *they are* obliged, insofar as reasonably practicable, to purchase and sell securities for [his] *their* own account in order to help maintain a fair and orderly market. [His] *Their* aim is to provide a continuous auction market throughout the trading day, with minimum price changes between transactions. [The specialist does] *Specialists do* not by [his] *their* own activities determine the trend of stock prices. Rather, the price at any given moment is determined fundamentally by the balance of public buy and sell orders.

(b) *Liaison*—The Exchange recognizes that periodic communication between company officials and their specialists, if appropriately conducted, can be beneficial to both parties. Such communication may provide company officials with a better understanding of the auction market, the specialist system and their own specialist's role in relation to the company's securities. From the specialist's viewpoint, an awareness and understanding of the company and its affairs may aid [him] *specialists* in discharging [his] *their* responsibility for maintaining a fair and orderly market in the company's securities.

(c) *Scope of Permissible Disclosure*—In view of the specialist's central and sensitive role in the auction market, it is essential that Federal securities laws, Exchange rules and a responsible code of conduct be observed in all communications between specialists and company officials. The following summary may serve as a guide as to the scope of permissible disclosure in such communications.

A company may make available to the specialist whatever information it has provided to its stockholders, security analysts or the general public, such as specific data and information concerning general trends relating to the company's business, as well as industry and general economic developments that may influence the company's welfare. It is improper, however, to furnish to the specialist any material information not previously released to the public regarding such matters as earnings, forecasts, anticipated dividend action, a proposed stock split, merger negotiations or any other undisclosed matter which is likely to have a significant effect on the price of the company's securities or influence investment decisions.

While it is not contemplated that a company will be in continuous contact with its specialist, the specialist may from time to time inform company officials of unusual market problems and respond to broad questions about the market in the company's stock. The restrictions imposed on [a] specialist*s* concerning the information [he] *they* may disclose are set forth in paragraph (d)(i) below.

Within this framework, company officials and specialists should feel free to call upon each other so that a mutually beneficial understanding of the problems encountered by each is fostered.

(d) *Exchange Rules Governing Specialist's Activities*—In addition to certain provisions of the Securities Exchange Act of 1934, a number of Exchange regulations place clearly defined limits on a specialist's activities. An awareness of both the intent and spirit of Exchange rules, and the responsibilities the Exchange places on the specialist, will help ensure that contacts between company officials and the specialist are conducted within the framework provided for above.

With respect to any security in which a specialist is registered, Exchange rules prohibit [the] specialist*s* (and, with respect to paragraphs iii through ix, the member firm or member corporation of which the specialist is a member) from:

(i) disclosing, at any time, to any person other than a Floor Official or authorized Exchange Official, any information in regard to orders entrusted to the specialist or the name of a buyer or seller except as may be necessary solely for the purpose of processing a transaction; however, that when requested by a member, member organization, or representative of the issuer of the security involved, [the] specialist*s* shall, to the best of [his] *their* ability, disclose

to such parties the names of buying and selling member organizations in completed Exchange transactions unless specifically directed to the contrary by the member organizations involved;

(ii) effecting transactions for [his] *their* own account, unless such dealings are reasonably necessary to permit [him] *them* to maintain a fair and orderly market;

(iii) acquiring, holding or granting an option in any such security;

(iv) being an officer or director of the issuer of any such security;

(v) nominating, directly or indirectly, any person to be on the board of directors of the issuer of any such security;

(vi) effecting, directly or indirectly, any business transaction with the issuer of any such security or any officer, director or 10% stockholder of any such issuer;

(vii) accepting an order for the purchase or sale of any stock directly from the company issuing such stock; from any officer, director or 10% stockholder of that company; from any pension or profit-sharing fund; or from any bank, trust company, insurance company, investment company, or similar institution;

(viii) soliciting any proxy, directly or indirectly, on behalf of [himself] *the specialist* or any other persons in respect of any such security; and

(ix) voting, directly or indirectly, in any proxy contest involving any such security in which [he] *the specialist* has a beneficial interest.

With respect to any security in which a specialist is registered, Exchange rules require the specialist to report to the Exchange:

(i) unusual activity or price change:

(ii) information which may materially affect the business or financial structure of the issuer of, or the market for, such security;

(iii) the existence of options or selling agreements;

(iv) any unusual transaction in which the specialist participates as a broker or dealer; and

(v) each purchase and sale for the specialists' own account.

[(e) *Corporate Relations Manager*—A company's Corporate Relations Manager may serve as a communications link between a company and the specialist and can be helpful whenever questions about activity in a company's stock or other matters arise (see §§ 207 and 405).] *Director—The company will be assigned a day-to-day contact (Director) who will:*

*(i) respond to questions concerning performance of the company stock;*

*(ii) assist the company in developing customized investor relations programs;*

*(iii) keep company officials abreast of industry—related issues and rule changes; and*

*(iv) serve as liaison between company officials and specialist and generally provide guidance to the company concerning its Exchange listing.*

* * * * *

**CHANGE OF NAME (§ 930, § 931)**

**Sec. 930. CHANGE OF NAME**

A company proposing to change its name should:

* * * * *

(c) As soon as the change in name has been approved by shareholders, notify the Exchange [(by telephone or telex)] of the time when the amendment to the charter will be filed and the change in name will become effective. Confirm this advice by letter.

* * * * *

(e) Notify the Exchange [(by telephone or telex)] as soon as the amendment has actually been filed and confirm this advice by letter.

[(f) As soon as available, furnish the Exchange with a copy of the amendment to the charter covering the change in name certified as to its filing by the office of the Secretary of State. A specimen copy of each denomination of the stock certificates on which the change in name is reflected (in the form in which such certificates will be issued against transfers after the effective date of the change in name) should also be furnished.]

* * * * *

**CHANGE IN PAR VALUE (§ 940)**

**Sec. 940. CHANGE IN PAR VALUE**

A company that changes the par value of a stock issue listed on the Exchange, *without an increase or decrease in the number of shares listed*, is required to follow the procedures and file the papers specified below:

* * * * *

[(d) Immediately after the filing of the charter amendment, the company must furnish the Exchange with the following documents:

(i) A copy of the Certificate of Amendment of the charter effecting the change in par value, certified by the Secretary of State or corresponding authority.

(ii) Specimens of all denominations of the new or changed form of stock certificates reflecting the change in par value. It is advisable to furnish these prior to the filing of the charter amendment.

(iii) Opinion of counsel of satisfactory standing: (A) as to the legality of authorization of the change and the validity of the new par value shares resulting from such change; (B) that the new par value shares are validly issued, fully-paid and non-assessable; and (C) that no personal liability attaches to ownership thereof. If such counsel or any partner of such, counsel (or, if a firm, any member thereof) is an officer, director or shareholder of the company, this fact should be stated in the opinion.]

* * * * *

**APPLICATION AND INTERPRETATION OF REQUIREMENTS (§§ 90–994)**

* * * * *

**Sec. 994. NEW POLICIES**

Copies of new or revised rules, policies, or forms, adopted subsequent to the date of this Guide, will be distributed, following their adoption. Questions concerning new materials, as well as materials contained in this Guide, should be directed to a company's assigned [Corporate Relations manager] *Listing Qualifications Analyst.*

* * * * *

**PART 11. Guide To Filing Requirements (§ 1101, § 1102)**

**Sec. 1101. GENERAL**

A company having a security listed on the Exchange and registered under Section 12(b) of the Securities Exchange Act of 1934 is required to file information, documents and reports with the SEC (or other appropriate regulatory agency) on a timely basis and file original or conformed copies with the Exchange. With the exception of annual reports to shareholders, which must continue to be filed with the Exchange in hard copy, a company which submits such material electronically to the SEC will be deemed to have satisfied this requirement.

The Exchange also requires timely notice and written confirmation of certain additional information, including proposed amendments to and certified copies of the Certificate of Incorporation, By-laws or other similar organization documents and all material sent to shareholders or released to the press. A summary guide to the Exchange's filing requirements following:

* * * * *

| | | | |
|---|---|---|---|
| [Treasury Stock Changes | Within ten days after the end of a quarter in which a change occurred. | 1 | 901] |
| * * * | * * * | * | |
| [Charter or By-Law Amendments | As soon as effective | 1 | 702] |
| * * * | * * * | * | |
| *Form N–SAR (for unit investment trusts and open-end management investment companies).* | *Concurrently with SEC filing* | **1* | *1101* |
| *Form N–30D (for unit investment trusts and open-end management investment companies).* | *Concurrently with SEC filing* | *3* | *1101* |
| *Form 24F–2; Form S–6; Form N–8B–2 (for unit investment trusts).* | *Concurrently with SEC filing* | **1* | *1101* |
| *497 (for open-end management investment companies)* | *Concurrently with SEC filing* | *3* | *1101* |

| | | | |
|---|---|---|---|
| *Form 24F–2 NT (for open-end management investment companies).* | *Concurrently with SEC filing* | *1 | *1101* |

* * * * * * *

**Supplement**

*Emerging Company Marketplace*

The Exchange established the Emerging Company Marketplace to accommodate the listing of companies, domestic or foreign, which are too small to qualify for regular listing. In May 1995 the Exchange determined to discontinue the list of new companies on the ECM. Companies which were listed on the ECM at that time were permitted to continue listed there, subject to all the rules applicable to ECM issues.

**[NUMERICAL CRITERIA**

A. Common Stock

| | Regular | Alternate |
|---|---|---|
| Companies Traded in NASDAQ: | | |
| Total Assets | $2 million | $2 million. |
| Stockholders' Equity | $1 million | $2 million. |
| Aggregate Market Value | $2.5 million | $2.5 million. |
| Public Float* | 250,000 shares | 250,000 shares. |
| Public Shareholders* | 300 | 300. |
| Minimum Price | $1 | Below $1. |
| Companies Not Traded in NASDAQ: | | |
| Total Assets | $4 million | $3 million. |
| Stockholders' Equity | $2 million | $2 million. |
| Aggregate Market Value | $2.5 million | Above $10 million. |
| Public Float* | 250,000 shares | 400,000 shares. |
| Public Shareholders* | 300 | 3,300. |
| Minimum Price | $3 | $2. |

*These terms include both shareholders of record and beneficial holders, but are exclusive of the holdings of officers, directors, controlling shareholders, and other concentrated (*i.e.* 5 or grater), affiliated or family holdings.

B. Preferred Stock

In addition to satisfying the assets, equity and price criteria set forth in A above, the company must (i) appear to be in a financial position sufficient to satisfactorily service the dividend requirements for the issue, and (ii) have at least 100,000 preferred shares publicly held (as defined in A above) with an aggregate market value of at least 2,000,000.

The Exchange will not list convertible preferred issues containing a provision which gives the company the right, as its discretion, to reduce the conversion price for periods of time, or from time to time, unless the company establishes a minimum period of ten business days within which such price reduction will be in effect.* The Exchange also will not consider listing a convertible preferred issue unless the underlying common stock meets all the criteria set forth in Part A above.

The Exchange strongly recommends that each preferred issue listed on the ECM be structured so as to comply with the voting requirements of Section 124 of the Company Guide.

C. Warrants

The listing of warrant issues is subject to all of the numerical criteria set forth in Part A, except for those with respect to price and market value. However, the Exchange will not consider listing warrants exercisable into common stock unless such common stock meets all the criteria set forth in Part A above.*

The Exchange will not list warrant issues containing provisions which give the company the right, at its discretion, to reduce the exercise price of the warrants for periods of time, or from time to time, during the life of the warrants, unless the company establishes a minimum period of ten business days within which such price reduction will be in effect. This policy will not preclude the listing of warrant issues for which regularly scheduled and specified changes in the exercise price have been previously established.

Whenever a company having warrants listed on the Exchange effects a split of 3-for-2 or greater in the underlying shares, the Exchange requires that a corresponding split be made in the warrants.

D. Debt Issues

Companies applying for listing of bonds or debenture issues are expected to meet the following criteria:

(a) The company appears to be in a financial position sufficient to satisfactorily service the debt issue to be listed and meets the assets and stockholders' equity criteria set forth in A above.

(b) Listing will be limited to debt securities of at least $5 million in principal amount/aggregate market value.

(c) The Exchange will not list convertible debt issues containing a provision which gives the company the right, at its discretion, to reduce the conversion price for periods of time, or from time to time, unless the company establishes a minimum period of ten business days within which such price reduction will be in effect.* The Exchange also will not consider listing a convertible debt issue unless the underlying common stock meets all the criteria set forth in Part A above.

E. Units

The Exchange may list units comprised of one or more of the securities enumerated above provided that each of the component parts of the unit would otherwise separately satisfy the applicable listing requirements.

F. Redemption, Cancellation, Retirement

A company is not permitted to select any of its listed securities for redemption otherwise than pro rata or by lot, and is required to notify the Exchange at least 15 days in advance of any redemption and to furnish it promptly with any information requested in connection with the redemption.

G. Listing Procedures

A company which satisfies the original listing criteria may apply for a confidential preliminary listing eligibility opinion which will be furnished without charge as described in § 202.

**Footnotes:** *The Exchange will not consider listing warrants, convertible preferred or convertible debt issues of a company unless current last sale information is available with respect to the underlying security.]

* * * * *

**[LISTING FEES**

There is a one-time original listing fee of $5,000 which is inclusive of all issues which become listed on the ECM. In addition, an annual fee shall be payable, as provided by § 141.]

* * * * *

**CONTINUED LISTING CRITERIA**

Continued listing on the Exchange is dependent upon compliance with the following numerical criteria:

A. Common Stock

no change

[B. Preferred Stock

In addition to satisfying the assets, equity, market value and price criteria set forth in A above, the company will be subject to

delisting if it does not have at least 50,000 preferred shares publicly held (as defined in A above).

C. Warrants

Warrant issues must satisfy all the numerical criteria set forth in Part A, except those with respect to price and market value. In addition if the warrants are exercisable into common stock, the warrants are subject to delisting if the common stock is not in compliance with the numerical criteria set forth in A above.

D. Debt Issues

Continued listing on the Exchange for bond and debenture issues is dependent upon compliance with the criteria specified in §§ 1003 (b)(iii) and (e) of the *Company Guide.*

E. Units

Continued listing on the Exchange of units comprised of one or more of the securities enumerated above is dependent upon compliance by each component part of the unit with the applicable criteria enumerated above.

F. Additional Requirements

Companies with a deficiency in market value or price for 10 consecutive trading days shall have 90 days thereafter in which to comply with the continued listing requirements. Companies with a deficiency in any other criteria shall be immediately subject to delisting in accordance with the procedures set forth in § 1010 of the Company Guide.

In addition, the Exchange shall delist any issue which ''ceases to be an Eligible Security'' pursuant to Section VI(c)(iii) of the Consolidated Tape Plan, and the issues of any company which fails to take appropriate steps to ensure that no ECM-listed securities are sold in its behalf in reliance upon the exemption from state securities registration which is otherwise available to companies listed on the Exchange.

**Appendix: Listing Forms**

* * * * *

**Listing Form 1**

Listing Agreement

—(the ''Company''), in consideration of the listing of its securities, hereby agrees with the American Stock Exchange, Inc. (the ''Exchange''), that it will:

(1) Comply with all Exchange rules, policies and procedures which apply to listed companies as they are now in effect and as they may be amended from time to time, regardless of whether the company's organization documents would allow for a different result.

(2) Notify the Exchange, at least 20 days in advance, of any change in the form or nature of any listed security or in the rights, benefits and privileges of the holders of such security.

(3) File with the Exchange (i) proposed amendments to and certified copies of the Certificate of Incorporation; By-Laws or other similar organization documents; (ii) all SEC filings; and (iii) all material sent to shareholders or released to the press.]

**Listing Form 2**

Distribution and Trading Information

DELETED

**Listing Form 3**

Agreement With Transfer Agent

DELETED

**Listing Form 4**

Agreement With Registrar

DELETED

**Listing Form 5**

Agreement With Warrant Agent

DELETED

**Sample Trustee's Certificate**

DELETED

**Sample Agreement of Banknote Company**

DELETED

* * * * *

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Due to the merger between the National Association of Securities Dealers (''NASD'') and the Amex, the qualifications functions for the Nasdaq Stock Market (''Nasdaq'') and the Amex have been centralized in the Nasdaq-Amex Listing Qualifications Department (''Listing Qualifications''). As a result of this centralization, a number of Exchange rules have been reviewed with the goal of modernizing the Exchange's initial and continued listing process, creating consistent rules and processes across all of the NASD's marketplaces, and reflecting the current business practices and procedures used by Listing Qualifications. This filing addresses those goals and makes other non-substantive changes to reflect changed job titles [6] and responsibilities following the merger, and clarifies the application of certain Exchange rules.

*Application Process*

Currently, Exchange rules encourage issuers to obtain an informal opinion from Amex staff, known as the Preliminary Listing Eligibility Opinion (''PLEO''), as to whether the issuer is eligible to list before formally applying to the Exchange. Because of the time involved for the issuer to prepare for this extra review and for staff to conduct this extra review, the PLEO process causes a delay in the time it takes for a final determination to be made on an issuer's application for listing on the Exchange. This process is also inconsistent with the Nasdaq process in which an application is filed at the outset of the process. As a result, when an issuer initially pursues listing on both markets, the issuer faces a delay in its ability to make a decision as to where to list. In order to streamline the application process, the Exchange proposes to eliminate the PLEO process. Accordingly, the Exchange proposes to delete Sections 202 and 203 of the Listing Standards, Policies and Requirements and modify Sections 101, 130, 201 and 211 to eliminate references to the PLEO process. Under the proposed revision, issuers will only file their completed listing application with the Exchange's staff.

In addition, Exchange rules currently require a number of documents to be submitted with an original listing application. The Exchange proposes to eliminate certain requirements, including the Exchange's Listing Form 2 (Certificate of Distribution), Charter, By-Laws, Specimen Certificates, Trustee Certificates, Form for Indenture, Board Resolutions and certain contracts. Many of these documents are electrically available through an Issuer's public filings, or they are generally available to Listing Qualifications through other means (or upon request by Exchange staff from the issuer). Therefore, the Exchange proposes to remove these general requirements and instead request specific documents as necessary.[7] Specifically, the Exchange proposes to modify Sections 213, 216, 218, 305, 306, and 702 to reflect these changes.

Similarly, the Exchange proposes that issuers no longer be required to obtain an opinion of counsel which, among other things, relates to the legality of the organization and existence of the issuer and the validity of the securities to be listed. These rules were originally enacted to prevent unauthorized securities from entering into the market and to protect the Exchange from legal liability, which might arise from the listing and trading of such securities. Today, however, such concerns are unwarranted. In particular, an issuer's independent auditor reviews the issuance of securities as part of its annual audit and, generally, legal comfort is provided to market participants with respect to most securities issuances, including public offerings. Furthermore, the Exchange is largely protected from legal claims against it by its status as a self-regulatory organization and no

[6] Changes to Part 4 of the Listing Standards reflect the elimination of the Corporate Relations Manager job function and the function and the division of the responsibilities of the former Corporate Relations Manager among the Listing Qualifications, Stock Watch, and Issuer Service Departments.

[7] In the standard comment letter that the Exchange sends issuers after Exchange staff has reviewed the issuer's listing application, the Exchange will ask issuers specific questions concerning quorum requirements, notice of record dates to shareholders and closing of transfer books. Telephone call between Michael S. Emen, Vice President, Listing Qualifications, Amex, Rebekah Liu, Special Counsel, Division, Commission, and Sonia Patton, Attorney, Division, Commission, on January 27, 2000.

recent case has been brought alleging invalid issuance of an Exchange security. Accordingly, the Exchange proposes to delete requirements related to opinions of counsel in Sections 213, 216, 218, and 306 of the Listing Standards.[8]

The Exchange currently requires an application to be submitted by an issuer whenever a shareholder rights plan is established and the underlying rights are registered with the Commission. These rights, commonly known as ''poison pills,'' technically constitute a separate security but trade in tandem with an as part of the issuer's common stock. Upon the occurence of a ''triggering'' such as the announcement of a hostile takeover or the acquisition of a specified percentage of the company's outstanding common stock, the rights would detached from the common stock and become freely tradable as separate securities. At that point, under Exchange rules, the issuer is required to file a listing application with respect to those new securities. Given the listing application requirement upon the occurrence of a triggering event and the fact that until that time the securities are not traded as separate securities, the Exchange believes the requirements of Section 343 are not necessary.

*Criteria for Original Listing*

Sections 104 and 105 of the Listing Standards allow the listing of debt and warrants on the Amex, but only if the issuer is listed on the Amex or the New York Stock Exchange (''NYSE''. This rule is no longer necessary or appropriate, given the level of the listing standards on Nasdaq in comparison to those of the Amex and the NYSE. The Exchange therefore proposes to expand the issues which may be listed on Amex to include debt and warrants of issuers listed on Nasdaq.

Sections 112, 115, and 116 of the Listing Requirements impose more stringent standards on specific types of issuers: exploration and development companies, member corporations, and companies engaged in gaming operations. These rules arose when such companies generally remained private and the listing of companies in such sectors was fairly unusual. The Exchange proposes to eliminate these sector-specific sections since the listing of securities of issuers in these sectors is now fairly common across all markets and issuers in these sectors now operate in highly regulated environments. Specifically, with respect to exploration and development companies, the Exchange notes that detailed disclosures about the issuer's stage of development and prospects are provided to potential investors in required, publicly filed reports. Accordingly, the Exchange does not believe it is appropriate to discriminate against such exploration stage companies seeking to raise capital on the Exchange. With respect to member corporations, the Exchange notes that these issuers are regulated by both the Commission and the membership organization to which the issuer belongs. Finally, with respect to companies engaged in gaming operations, the Exchange notes that these issuers operate in a highly regulated environment and are subject to substantial state and/or federal regulation. Furthermore, the Exchange notes that under its discretionary authority over all issuers, pursuant to Section 101, it has authority to deny listing to issuers based on sector-specific issues in appropriate situations. Accordingly, the Exchange does not believe that the specific rules relating to issuers in these sectors are necessary or appropriate.

The Exchange also proposes to clarify that the alternate listing guidelines contained in Section 101 of the Listing Standards are not limited to issuers in certain sectors. The alternate guidelines were first adopted in 1977 and then modified in 1986 to allow a broader range of companies to qualify. The guidelines referenced as examples, companies that were unable to satisfy the basic criteria due to significant research and development or other similar business development costs. The Exchange proposes changes to Section 101 to clarify that the numerical aspects of the alternate guidelines apply to all issuers, regardless of industry. This change would be consistent with the approach used on Nasdaq, SmallCap Market, and the NYSE, where alternative listing requirements are available to all issuers that meet the quantitative requirements.

*Fees*

Section 144 of the Listing Standards currently imposes a $250 non-refundable service charge that is subtracted from any refund otherwise due an issuer that is not approved for listing or that withdraws after completing the application process. Given the cost incurred by the Exchange in reviewing an application, the Exchange proposes to raise the non-refundable portion of the initial inclusion fee from $250 to $1,000 and to require the payment of this amount in advance of processing the application, in order to timely recoup such costs, especially in situations where these costs are incurred by the Exchange and the application is then withdrawn. The Exchange notes that this proposed change will not affect the listing fees paid by issuers who ultimately list on the Exchange and that this practice is consistent with that followed by Nasdaq. In addition, the Exchange notes that if an issuer applies for listing on both the Exchange and on Nasdaq, only a single $1,000 non-refundable fee would be collected for review of both applications.

The Exchange also proposes to modify the treatment of treasury shares for fee purposes. Under existing Section 141, Amex listing fees are based on all shares outstanding, including treasury shares. The Exchange proposes to modify Section 141 to exclude treasury shares when calculating shares outstanding for fee purposes[9] and to clarify that annual fees billed based on shares outstanding information refers to information available on Exchange records as of December 31, and not shares outstanding information sent to the Exchange by issuers some time in February. This proposed change will result in a decrease in fees for issuers with treasury shares and will not affect other issuers.

Finally, as discussed above, because the Exchange proposes to eliminate Section 343, requiring the submission of an application upon the creation of a shareholder rights plan, the Exchange also proposes to modify Section 140, to eliminate the $1,000 fee associated with the shareholder rights plan application.

*Schedule for Dividends*

The Exchange proposes to eliminate several archaic rules that require additional time between the declaration and dividend date for dividends of issuers that do not have transfer facilities in the New York City area. Given the current state of communication networks and electronic interaction between issuers, transfer agents and investors, these additional time periods are no longer necessary. Accordingly, the Exchange proposes to modify Sections 502, 512, and 521 and to eliminate Section 520 to implement this proposed change.

*Transfer Facilities*

Likewise, the Exchange proposes to remove a variety of rules concerning the qualification of Transfer Agents, Registrars, and Bond Trustees presently contained in Sections 801–811. The Commission regulates the transfer agent industry and, since 1976, has imposed a series of rules over the industry[10] that make many of the Exchange's rules unnecessary. Other Exchange rules relating to transfer agents (as well as Agents for Payment) are archaic, as they limit the ability of agents with physical locations outside of New York to perform these functions. The Exchange also proposes to eliminate the requirements relating to Trustees for Bond Issues in Section 811. The Exchange has never experienced a problem with respect to the qualification of a Bond Trustee and believes that these matters are better left to the individual issuers and applicable state law. Accordingly, the Exchange proposes to delete Sections 801–811 and to make conforming changes to other sections that refer to those sections.

*Certificate Requirements*

The Exchange also proposes to remove requirements relating to the form of securities and lost security holders. The rules relating to the form of securities are antiquated and may impede the use of innovations in this area, such as DTC holdings and book entry methods. Furthermore, the Exchange notes that there are no comparable rules on Nasdaq. Accordingly, the Exchange proposes

[8] Through its standard comment letter, the Exchange will require issuers to (i) furnish the Exchange with copies of opinion of counsel filed in connection with recent public offerings or private placements or (ii) if no opinions of counsel exist, represent to the Exchange that they are duly and validly organized under the laws of their state of incorporation. Telephone call between Michael S. Emen, Vice President, Listing Qualifications, Amex, Rebekah Liu, Special Counsel, Division, Commission, and Sonia Patton, Attorney, Division, Commission, on January 27, 2000.

[9] This is consistent with the approach taken on the Nasdaq, resulting in identical application across all of the NASD's marketplaces.

[10] *See* Exchange Act Rules 17Ad–1 through 17Ad–21T, 17 CFR 240.17Ad–1 through 17 CFR 240.17A21T.

to delete existing Sections 820 through 830, inclusive, and Section 841 of the Listing Standards. Likewise, the Exchange rules governing the replacement of lost certificates in Section 840 are no longer necessary in light of current practices followed by issuers and transfer agents.

*Treasury Shares*

Existing Exchange rules require an issuer to report changes in the number of treasury shares. Given the changes proposed to the fee calculation for issuers, resulting in the exclusion of treasury shares from the fee base, the Exchange no longer needs this information. Accordingly, the Exchange proposes to eliminate Section 901 of the Listing Standards. Furthermore, Section 903, on repurchases of listed company securities, in unnecessary because it does not impose any Exchange requirements, but merely refers issuers to federal securities laws. Finally, the Exchange notes that Section 902 allows an issuer to redeem securities only in a *pro rata* fashion or by lot. The Exchange notes that issuers are governed by state law requirements in the redemption of securities and that as a practical matter, one of these methods is invariably applied. Therefore, the Exchange believes that Section 902 is unnecessary and proposes its deletion and conforming amendments to Sections 103(d), 104, and 105(b).

*Other Changes to the Exchange's Listing Requirements*

The Exchange proposes certain changes to the listing requirements for issuers listed on the Amex. The Exchange proposes to change the definition of ''public distribution'' and ''public shareholders'' as defined in Section 102. Currently, in determining the number of shares in the public, Exchange rules exclude concentrated holdings of 5% or greater. The comparable rules on Nasdaq, as well as the NYSE, only exclude holdings of 10% or greater. The Exchange believes that it is appropriate to exclude holdings of between 5% and 10% from the definition of public distribution and accordingly, proposes to modify Section 102.

Next, the Exchange proposes to modify Section 120, relating to conflicts of interest. The existing Exchange rule states that the Exchange will consider conflicts situations in connection with the original listing of an issuer. The Exchange believes that a broader, ongoing review of related party transactions is appropriate and that the issuer's Audit Committee (or a comparable body) is an appropriate body for conducting such a review. Furthermore, the Exchange notes that under the proposed change, as in all cases, it may review a transaction using the Exchange's general discretionary authority if a transaction involved a conflict that raised public interest concerns. Accordingly, the Exchange proposes to adopt this revised listing requirement to better protect investors.[11]

The Exchange also proposes to amend its rules relating to shareholder approval contained in Section 713 to clarify that shareholder approval is required prior to issuance of a security that has the *potential* to result in the issuance of 20% of the pre-transaction common shares outstanding for less than the greater of book or market value of the stock. While the present language of the rule does not include the word potential, it is fairly implied and Exchange staff has consistently applied the rule to require approval in cases where an issuance may potentially exceed the state threshold. Accordingly, the Exchange proposes to modify the existing rule to clarify that an issuance is not permissible without shareholder approval when there is the potential to issue more than 20% of the pre-transaction common shares outstanding for less than the greater of book or market value of the stock.

*Emerging Company Marketplace*

In May 1995, the Exchange determined to discontinue the listing of new companies on the Emerging Company Marketplace and subsequently received Commission approval.[12] Accordingly, the Exchange proposes to delete from the Supplement the criteria for new listing on the Emerging Company Marketplace given that no new issues are permitted to be listed on that market. Furthermore, the Exchange proposes to delete from the Supplement the continued listing criteria with respect to all issues other than common stock because no existing issuers rely on these provisions and no new issuers can be listed that would rely on these provisions. This conforming change is consistent with the SEC's order approving the elimination of the Energing Company Market.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] which requires, among other things, the Exchange's rules to be designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange did not solicit or receive written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–99–39 and should be submitted by March 2, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–3034 Filed 2–9–00; 8:45 am]

**BILLING CODE 8010–01–M**

---

## SECURITIES AND EXCHANGE COMMISSION

**(Release No. 34–42383; File No. SR–Amex–99–35)**

## Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change To Rescind Exchange Rule 106, ''Substitute Principals''

February 3, 2000.

### I. Introduction

On September 1, 1999, the American Stock Exchange LLC (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or 'Commission'') pursuant to Section

[11] The Exchange notes that this proposed change is consistent with the rules relating to conflicts of interest that apply to Nasdaq issuers and NYSE issuers. *See* NASD Rules 4310(c)(25)(G) and 4460(h) and NYSE Listed Company Manual Section 307.00.

[12] *See* Exchange Act Release No. 36079 (Aug. 9, 1995), 60 FR 42926 (Aug. 17, 1995) (SE–Amex–95–23). Companies that were listed at the time the Emerging Company Marketplace was discontinued were permitted to continue their listing, subject to all the rules applicable to issuers on that Emerging Company Marketplace.

[13] 15 U.S.C. 78f(b)(5).

[14] 17 CFR 200.30–3(a)(12).

19(b)(1) of the Securities Exchange Act of 1934 ('Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to rescind Exchange Rule 106. The proposed rule change was published for comment in the **Federal Register** on October 22, 1999.[3] The Commission did not receive any comment letters with respect to the proposal. This order approves the Exchange's proposal.

**II. Description of the Proposal**

The Amex proposes to delete Exchange Rule 106, ''Substitute Principals.'' Exchange rule 106 currently provides that: ''No party to a contract shall be compelled to accept a substitute principal unless the name proposed to be substituted was declared in, and as part of, the bid or offer giving rise to the contract.'' Rule 106 dates back to the 1921 Constitution of the New York Curb market,[4] a predecessor of the Exchange. The Rule's original purpose appears to be related to the clearance and settlement of trades, specifically, the terms of contracts and the creditworthiness of counterparties. The proposed rule change was filed in response to a recent dispute where an Exchange member invoked Rule 106 in an attempt to renege on a contract. Apparently, the Exchange member's counterparty provided an incorrect give-up at the time of the trade, and later sought to correct the error by substituting the correct clearing member.

**III. Discussion**

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to national securities exchange. In particular, the Commission believes the proposed rule change is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest.[6] The Commission also finds that the proposal may serve to remove impediments to and perfect the mechanism of a free and open market by rescinding Rule 106, which provides a potential basis for parties to Exchange contracts to break trades without appropriate justification.

Since Exchange Rule 106 was adopted in 1921 the process of clearance and settlement has evolved. Broker-dealers no longer compare individual trades as was the case at the time of the inception of Exchange Rule 106. Today, trades executed on the Amex are required to be cleared and settled through a registered clearing agency.[7] Typically, clearing agencies guarantee the completion of a transaction by becoming the counterparty to each side of the transaction. This has substantially reduced the risk of trade default and made concerns about counterparty identity largely irrelevant.

Clearing agencies perform comparison, clearance, and settlement of trades. Clearance activities confirm the identity and quantity of the security being bought or sold, the transaction price and date, and the identity of the buyer and the seller, Settlement is the fulfillment, by the parties to the transaction, of the obligations of the trade.

The largest clearing agency is the National Securities Clearing Corporation (''NSCC''), which acts as the contraside to every trade it processes. The NSCC guarantees the trades of its member participants and incurs the risk of default from the time of the guarantee until the settlement of obligations and payments. Thus, it is the NSCC and not the Exchange member—as was the case in 1921—who assumes counterparty risk. When the NSCC guarantees a trade, it becomes the buyer to every seller and the seller to every buyer. As a result, the clearing corporation incurs the risk that a counterparty to a transaction might default on its obligations.

Rule 106 was adopted in another era, prior to the utilization of modern clearing practices. The total assumption of default risk by clearing agencies has obviated the need for Exchange members to maintain strict control over the identify of trading counterparties. Because clearing corporations like NSCC eliminate the risk of trade default, trades are guaranteed irrespective of the identity of a counterparty. Thus, in light of clearance corporations and modern clearance and settlement practices, Rule 106 no longer serves the purpose of protecting a counterparty from the default risks associated with a trade.

Furthermore, Rule 106 may have the disruptive effect of permitting parties to Exchange contracts to break trades without appropriate justification. This kind of action is contrary to the goals of preserving the public's interest and protecting investors. The Commission therefore believes it is appropriate for the Exchange to rescind Rule 106.

**IV. Conclusion**

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–Amex–99–35) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–3036 Filed 2–9–00; 8:45 am]

**BILLING CODE 8010–01–M**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42010 (Oct. 14, 1999), 64 FR 57167.

[4] Section 7 of the Article XXIV of the 1921 Constitution of the New York Curb Market stated: ''No party to a contract shall be compelled to accept a substitute principal, unless the name proposed to be substituted shall be declared in marking the offer and as a party thereof.''

[5] 15 U.S.C. 78f(b)(5).

[6] In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] *See* American Stock Exchange Constitution, Article X, Section 2.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42379; File No. SR–CBOE–98–27]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 6 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Enhancements to the Exchange's Processing of Live Ammo Orders

February 2, 2000.

**I. Introduction**

On June 16, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending its rule governing the execution of orders on the ''live ammo'' screen. On June 23, 1998, the CBOE submitted Amendment No. 1 to the proposed rule change to the Commission.[3] On July 15, 1998, the CBOE submitted Amendment No. 2 to the proposed rule change to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), SEC, dated June 23, 1998 (''Amendment No. 1'').

Commission.[4] On July 21, 1998, the CBOE submitted Amendment No. 3 to the proposed rule change to the Commission.[5] On August 6, 1998, the proposal was published in the **Federal Register.**[6] On August 11, 1998, the CBOE submitted Amendment No. 4 to the proposed rule change to the Commission.[7] On August 18, 1998, the CBOE submitted Amendment No. 5 to the proposed rule change to the Commission.[8] On January 21, 2000, the CBOE submitted Amendment No. 6 to the proposed rule change to the Commission.[9]

[4] Letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Richard Strasser, Assistant Director, Division, SEC, dated July 10, 1998 (''Amendment No. 2'').

[5] Letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Richard Strasser, Assistant Director, Division, SEC, dated July 20, 1998 (''Amendment No. 3'').

[6] Exchange Act Release No. 40283 (July 30, 1998), 63 FR 42085.

[7] Letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Michael Walinskas, Associate Director, Division, SEC, dated August 7, 1998 (''Amendment No. 4''). In Amendment No. 4, the Exchange proposed to implement the proposed rule change on a pilot basis for 90 days and requested accelerated approval of the proposed rule change, as amended. In addition, the Exchange supplemented the record with data to demonstrate the purpose of the proposed rule change.

[8] Letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Michael Walinskas, Associate Director, Division, SEC, dated August 17, 1998 (''Amendment No. 5''). In Amendment No. 5, the Exchange proposed that the proposed rule change be approved on a pilot basis for six months during which time the Exchange would submit a monthly report on the progress of the implementation of the proposal. The Exchange further proposed to distribute a Regulatory Circular to its members describing the parameters of the live ammo to Retail Automatic Execution System (''RAES'') system.

[9] Letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Richard Strasser, Assistant Director, Division, SEC, dated January 20, 2000 (''Amendment No. 6''). In Amendment No. 6, the CBOE proposed a nine-month pilot. In addition, the CBOE committed to submit a report to the SEC by August 31, 2000, analyzing the degree to which orders accumulate on the live ammo screen during the pilot period. During the pilot period, the Exchange will work on a further systems change that will route live ammo orders directly to RAES without manual intervention. The CBOE further committed to distribute a Regulatory Circular to its members describing the parameters of the ''Live Ammo to RAES'' system and how the proposed changes will be implemented on the floor. The Exchange amended the proposed rule by deleting the phrase that stated that the system may only be used ''when the OBO or the DPM believes that there are unusual market conditions or when there is a large influx of orders to the electronic book screen'' and replaced it with the statement that the system should be used ''when the OBO or the DPM believes there are more orders on the live ammo screen than can be expeditiously handled in open outcry.'' In Amendment No. 6, the Exchange also described its plan to roll out the proposed change over a period of a few weeks to ensure that there are no unforeseen capacity or operational problems. Finally, the CBOE withdrew Amendment Nos. 4 and 5 to the proposed rule change.

The Commission received two comments on the proposed rule change.[10] This notice and order solicits comments from interested persons on Amendment No. 6 and approves the proposal, as amended, on a pilot basis until October 31, 2000.

## II. Description of the Proposal

The CBOE proposes to amend its rule governing the execution of orders by order book officials (''OBO'') or designated primary market makers' (''DPM'') book staff to provide for the electronic execution of certain orders on the ''live ammo'' screen. The proposal will allow an OBO or a DPM to designate orders to be electronically executed against market makers standing in the crowd.

Currently, an OBO or a DPM, acting in his or her capacity as an OBO,[11] represents in the trading crowd the orders that have been placed in the customer limit order book (also known as the Electronic Book or the EBook), which displays all pre-open market orders[12] and customer limit orders. Orders placed in the EBook are represented individually when they become marketable and are traded with the market makers standing in the crowd.

The ''live ammo'' screen, which is an undisplayed portion of the EBook, receives for further processing orders that are market orders or limit orders that improve the market. An order may be routed to the live ammo screen under a number of circumstances. First, if a customer submits a cancel/replace market order to cancel and replace an order already displayed by the Book, the replacement market order will automatically be routed to the live ammo screen rather than returning directly to the displayed portion of the EBook. Second, if a customer submits a cancel/replace limit order and the replacement order has a limit price that betters the same-side market quote for an order displayed on the EBook, the replacement order will automatically be routed to the live ammo screen. Third, market orders received through the Exchange's ''order shoe'' that are manually booked are automatically routed to the live ammo screen. Fourth, limit orders that better the same-side market quote that are received through the order shoe and that are manually booked are automatically routed to the live ammo screen. Fifth, limit orders that better the same-side market quote and that are routed directly to the book when the routing parameters have been set at ''O'' are automatically sent to the live ammo screen.[13] Finally, marketable limit order that are electronically booked from a floor broker's PAR workstation are automatically routed to the live ammo screen.[14]

Orders sent to the live ammo screen are either traded manually in open outcry or sent to the EBook if book eligible, by either the OBO or the DPM, as the case may be.[15] When the live ammo screen experiences a large influx of orders it becomes difficult. according to the Exchange, for the OBO (or the DPM) to represent and execute these orders in a timely fashion, which can cause orders on the live ammo screen to queue. According to the Exchange, these backlogs usually had occurred during the opening rotations when a large number of orders can build up on the live ammo screen,[16] but they also can occur throughout the day during busy trading times.

To address this problem and accelerate the process of executing orders that are on the live ammo screen, the Exchange proposes to implement a new feature created for the live ammo screen, which will allow the OBO (or DPM) to send RAES-eligible orders on the live ammo screen to RAES for automatic execution. Under the proposal, the OBO (or DPM) may select all or any portion of the orders displayed on a live ammo page to be routed to RAES.[17] If fewer than all orders are selected, those orders will be routed based on time priority, pursuant to CBOE Rule 6.45. Orders selected for automatic execution must satisfy RAES requirements. Currently, RAES accepts market and marketable limit orders that meet the applicable size

[10] Letter from David Miller, Managing Director, Salomon Smith Barney, Chairman, CBOE Member Firm Committee, to Michael Walinskas, Associate Director, Division, SEC, dated August 7, 1998; and letter from Jim Brophy, A.G. Edwards, *et al.* to Michael Walinskas, Associate Director, Division, SEC, dated August 13, 1998.

[11] Pursuant to CBOE Rule 8.80, a DPM acts as a market maker, floor broker and OBO in its allocated options classes. Currently, equity options on the CBOE floor have been allocated to DPMs. Index options still utilize OBOs.

[12] After the Exchange opens, the EBook does not display market orders.

[13] The ''O'' parameter is an order routing parameter that may be implemented under high volume situations to route all limit orders to the EBook.

[14] According to the Exchange, approximately 90 percent of orders routed to the live ammo screen are cancel/replacement orders.

[15] A ''book all'' button is currently available to send book eligible orders on the live ammo screen to the EBook.

[16] Since submitting this filing, the Exchange has implemented the Rapid Opening System (''ROS''), which has significantly reduced the opening rotation time period.

[17] A live ammo screen page may contain up to thirteen orders.

requirements.[18] Any market maker who is signed on to RAES at the time the OBO (or DPM) routes the order or orders to RAES for automatic execution will be eligible to be electronically assigned as the contra-party on the trade. Orders on the live ammo screen that are not RAES-eligible will be manually represented.

As proposed, there may be instances when a RAES-eligible live ammo order may be executed before a non-RAES-eligible live ammo order that was received earlier. Therefore, the Exchange proposes to implement this live ammo to RAES feature notwithstanding the provisions of CBOE Rule 6.45. CBOE Rule 6.45 gives priority to some bids and offers, because they were made earlier in time, over other bids and offers.[19] In addition, if CBOE's best bid or offer on the limit order book equals the prevailing market quote, orders on the live ammo screen will be crossed with the orders in the Ebook.[20]

## III. Summary of Comments

The Commission received two comments on the proposal both of which expressed their support.[21] The comment letter from the CBOE Member Firm Committee described the problems caused by backlogs of orders accumulating on the live ammo screen. The comment letter described how it could take the book staff up to 30 minutes to trade orders on the live ammo screen. The commenter detailed how many live ammo backlogs occur during the opening rotation and their belief that the ROS would alleviate some of the problems.[22] The commenter believed that the proposal would be an interim fix until the implementation of ROS. The comment letter from the CBOE member firm community also expressed its strong support for the proposal. The commenter believed that the proposal would be in their best interests as well as the best interests of their customers, who they believed, would receive better service than was currently available.

## IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[23] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[24] which provides, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market, and in general to protect investors and the public interest.

The Commission believes that the proposed rule change should help in providing timely executions of orders on the live ammo screens of the CBOE's EBook. Currently, the OBO (or DPM) must individually represent orders that are displayed on the live ammo screen in the crowd. In periods of high volume or volatility, the OBO (or DPM) may not be able to manually represent these live ammo orders in a timely fashion. According to the Exchange, these marketable orders may stay on the live ammo screen for up to 30 minutes, during which time the market could move significantly away from the market that was quoted at the time the order was routed to the live ammo screen. Thus, investors currently may not be receiving the best price on the CBOE floor when their orders are placed on the live ammo screen.[25]

To address this problem, the Exchange is proposed to implement a new mechanism of the live ammo screen, which will allow the OBO (or DPM) to send RAES-eligible orders to RAES for automatic execution. This feature should help to address the problem of orders being left on the live ammo screen for long periods of time when the OBO (or DPM) is unable to manually represent the live ammo orders in a timely fashion. As a result, customer orders routed to the live ammo screen should receive more timely executions during periods of high volume or volatility on the Exchange. Although non-RAES eligible orders may be executed out of time priority under the proposal, the Commission is hopeful that the proposed rule change will enhance the timely processing of all live ammo orders. That having been said, however, the Commission is concerned that the continued use of the live ammo screen may unfairly disadvantage customer orders. As a result, the Commission is approving this proposal as an interim measure to provide the Exchange with the time to make modifications to its order processing systems to improve the handling of customer orders that currently are routed to the live ammo screen. In particular, the Commission expects that the Exchange will make the necessary systems enhancements to ensure that a maximum number of customer orders in the CBOE system are matched against one another.

Moreover, the Commission expects that the Exchange will develop the necessary systems enhancements to ensure that when there are no opportunities for matching customer orders in the CBOE system, RAES-eligible orders will be routed directly to RAES without the interim step of appearing first on the live ammo screen. The Commission requests that the Exchange submit any proposed rule changes to implement these enhancements by August 31, 2000. The Commission also notes that the Exchange has agreed to provide the Commission with an analysis of the

---

[18] Most equity option classes have an eligible order size for RAES of 50 contracts. *See* Exchange Act Release No. 41821 (September 1, 1999), 64 FR 50313 (September 16, 1999).

[19] For the reasons discussed below, the Exchange believes that instances where the priority of orders would be executed out of sequence would be infrequent. First, the non-RAES-eligible order must be for the same series as the RAES-eligible order that is traded for there to be an interruption of the normal priority principles. Second, for the RAES-eligible order to trade ahead of the non-RAES-eligible order, the limit price of the non-RAES-eligible order must be at the CBOE's quoted market because that is the price at which the RAES-eligible order will be executed. When the limit price for the larger non-RAES-eligible order is at the market, the CBOE book staff will act to execute the order promptly. *See* Amendment No. 3.

[20] The CBOE's Automated Book Priority (''ABP'') system allows orders in live ammo to cross with orders held in the EBook. If the live ammo order is for a size greater than the limit order size displayed on the EBook, the ABP will cross the live ammo order with the EBook and any balance will be routed to RAES (provided it is RAES-eligible) for execution against the market makers signed on to RAES at the book price. Telephone call between Timonthy Thompson and Anthony Montesano, CBOE and Kelly Riley and Heather Traeger, SEC, dated January 14, 2000.

[21] *See* note 10.

[22] The Commission notes that since this proposal was filed the ROS has been implemented on the Exchange. ROS provides for the automated opening of options classes on the Exchange and has significantly shortened the length of time needed for opening each option class. While ROS has mitigated the problems during the opening rotations, it has not had an impact on intraday trading volatility. *See* Exchange Act Release No. 41033 (February 9, 1999), 64 FR 8156 (February 18, 1999.) Telephone call between Timothy Thompson and Anthony Montesano, CBOE and Kelly Riley and Heather Traeger, SEC, on January 14, 2000.

[23] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78f(b)(5).

[25] Delayed execution of customer orders could implicate a broker-dealer's best execution responsibilities. *See* letter from Chairman Arthur Levitt to Michael Kelly, President, First Options of Chicago, Inc., dated April 13, 1999 (''While price is certainly a key element in a quality execution, other factors, such as the ability to obtain a complete and timely fill * * * may also be considered in determining whether a customer is receiving best execution.'')

degree to which live ammo orders accumulate on the live ammo screens during the pilot period.

The Commission finds good cause for approving Amendment No. 6 to the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. In Amendment No. 6, CBOE requests that the proposal be approved on a pilot basis for a nine-month period. Amendment No. 6 also would remove the requirement that the live ammo to RAES feature may only be used in unusual market conditions or when there is a large influx of orders to the Book. As amended, the proposal would permit the OBO (or DPM) to employ the live ammo to RAES feature at any time when the OBO (or DPM) determines that there are more orders on the live ammo screen than can be expeditiously handled in open outcry.[26] The Commission finds good cause for accelerating approval of Amendment No.6 to allow the Exchange to address immediately the order processing problems caused by the live ammo system while developing the needed systems enhancements to eliminate these problems in the future.

**V. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 6, including whether Amendment No. 6 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–98–27 and should be submitted by March 2, 2000.

**VI. Conclusion**

*It Is Therefore Ordered,* pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change, as amended, (SR–CBOE–98–27) is approved on a pilot basis until October 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–3033 Filed 2–9–00; 8:45 am]

**BILLING CODE 8010–01–M**

[26] In Amendment No. 6, the Exchange committed to distribute a Regulatory Circular to announce the changes to its members. The Regulatory Circular will also remind members of the priority principles under CBOE Rule 6.45(a) and (b).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42382; File No. SR–CBOE–99–52]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Amending Its Market-Maker Surcharge Fee Schedule

February 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 2, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Exchange filed Amendment No. 1[3] to the proposed rule change on January 23, 2000. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The CBOE is proposing to make changes to its fee schedule pursuant to CBOE rule 2.40,[4] entitled ''Market-Maker Surcharge for Brokerage.''

*II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change*

1. Purpose

Pursuant to CBOE Rule 2.40, on September 1, 1999, the Exchange's Equity Floor Procedure Committee (''EFPC'') approved the following fees for the following option classes:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Stephanie C. Mullins, Attorney, CBOE, to Sonia Patton, Attorney, Division of Market Regulation (''Division''), Commission, dated January 21, 2000 (''Amendment No. 1''). Amendment No. 1 states that all option classes on Friede Goldman International (FGI), Northwest Airlines Corporation (NAQ), Open Market, Inc. (OQM), Orbital Science Corp. (ORB), Onsale, Inc. (QOL), Prime Medical Services, Inc. (QSI), Synovous Financial Corp. (SNV), Wackenhut Corrections Corp. (WHC), and Zebra Technologies Corp. (ZBQ) were designated to Designated Primary Market-Makers (''DPMs'') on September 7, 1999 and all option classes on The Boeing Company (BA) were designated to DPMs on September 13, 1999. Amendment No. 1 also states that no market-maker surcharges were assessed on these options after their designation to DPMs.

[4] *See* Securities Exchange Act Release No. 41121 (Feb. 26, 1999), 64 FR 11523 (March 9, 1999) (order approving CBOE Rule 2.40). The Exchange imposes a market-maker surcharge to allow the Exchange and its member firms to better compete with other exchanges in floor brokerage and order book rates. The surcharge is used to (i) reimburse the Exchange to the extent that the order book official (''OBO'') brokerage rate is reduced if the reduction is based upon a recommendation of resident market-makers, and (ii) pay stationary floor brokers (''SFBs'') to induce them to reduce the brokerage rates they charge their customers. A resident market-maker is defined under CBOE Rule 2.40(a)(ii) as a market-maker who transacted at least 80% of his market-maker contracts in option classes traded in the trading crowd where the particular option class is traded in the prior calendar month. An SFB is defined under CBOE Rule 2.40(a)(i) as a floor broker who (i) has established a busines in the trading crowd for an option class of accepting and executing orders for members or registered broker-dealers and (ii) transacted at least 80% of his orders for the previous month in the trading crowd at which a particular option class is traded.

| Option class | Market-maker surcharge (per contract) | Order book official brokerage rate (per contract) [5] |
|---|---|---|
| The Boeing Company (BA) | 0.14 | $0.00 |
| Friede Goldman International (FGI) | 0.02 | 0.00 |
| Northwest Airlines Corporation (NAQ) | 0.02 | 0.00 |
| Open Market, Inc. (OQM) | 0.02 | 0.00 |
| Orbital Science Corp. (ORB) | 0.02 | 0.00 |
| Onsale, Inc. (QOL) | 0.02 | 0.00 |
| Prime Medical Services, Inc. (QSI0 | 0.02 | 0.00 |
| Synovous Financial Corp. (SNV) | 0.02 | 0.00 |
| Wackenhut Corrections Corp. (WHC) | 0.02 | 0.00 |
| Zebra Technologies Corp. (ZBQ) | 0.02 | 0.02 |

[5] The market-maker surcharge will be used in reimburse the Exchange for the reduction in the OBO brokerage rate from $0.20 in the relevant option classes. Any remaining funds will be paid to SFBs as proved in Exchange Rule 2.40.

These fees went into effect on Thursday, September 2, 1999. All of the option classes above are currently multiple listed on at least one other exchange. The most recent certification for multiple listing relates to options on The Boeing Company (BA) (''Boeing''), which were listed on the Pacific Exchange (''PCX'') beginning on September 2, 1999. All of the market-maker surcharge fees, except those applicable to Boeing, reflect reductions in former market-maker surcharge fees imposed pursuant to Exchange Rule 2.40.

With respect to options on Boeing, CBOE Rule 2.40(e) requires that an option be listed for trading on another exchange before a market-maker surcharge fee can be assessed. Boeing has been certified by the Options Clearing Corporation to be listed on the PCX. Therefore, the CBOE began assessing the market-market surcharge on September 2, 1999, when Boeing was first listed on the PCX.[6]

The CBOE represents that the market-maker surcharge fees were effective from September 2, 1999 until the options at issue were designated to DPMs—September 7, 1999 for FGI, NAQ, OQM, QOL, QSI, SNV, WHC, and ZBQ, and September 13, 1999 for BA. The fees were eliminated when the options were designated to DPMs.[7]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(4),[9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange did not solicit or receive written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[10] and Rule 19b–4(f)(2) [11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR–CBOE–99–52 and should be submitted by March 2, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–3037 Filed 2–9–00; 8:45 am]

**BILLING CODE 8010–01–M**

[6] The Exchange interprets Rule 2.40 to allow the EFPC to vote on market-maker surcharge before a class has been listed for trading on another exchange. Rule 2.40, however, provides that the market-maker surcharge may not actually be assessed until the class has been listed for trading on another exchange.

[7] Telephone conversation between Stephanie C. Mullins, Attorney, CBOE, and Gordon Fuller, Special Counsel, Division, Commission (December 10, 1999).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 15 CFR 240.19b–4(f)(2).

[12] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42385; File No. SR–MSRB–00–01]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Supervision of Correspondence With the Public

February 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 7, 2000, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board has filed proposed amendments to MSRB Rules G–8, on books and records, G–9, on record retention, and G–27, on supervision (hereinafter referred to as the ''proposed rule change''). The proposed rule change will revise the Board's supervision and record retention rules to provide dealers with flexibility in developing reasonable procedures for the review of correspondence with the public. The amendments are intended to recognize the growing use of correspondence sent and received in electronic format while still providing for effective supervision. The Board has also filed with the Commission a draft notice that will provide guidance to dealers on how to implement these rule changes. The proposed rule change and accompanying notice are modeled after and designed to conform to the rules and guidance of the National Association of Securities Dealers (''NASD''). The text of the proposed rule change is set forth below. Additional are italicized and deletions are bracketed.

* * * * *

**Rule G–8: Books and Records to be made by Brokers, Dealers and Municipal Securities Dealers**

(a) Description of Books and Records Required to be Made. Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extend applicable to the business of such broker, dealer or municipal securities dealer:

(i)–(xix) No Change.

(xx) *Records Concerning Compliance with Rule G–27. Each broker, dealer and municipal securities dealer shall maintain the records required under G–27(c) and G–27(d).*

(b)–(f) No Change.

**Rule G–: Preservation of Records**

(a) No Change.

(b) Records to be Preserved for Three Years. Every broker, dealer and municipal securities dealer shall preserve the following records for a period of not less than three years:

(i)–(vii) No Change.

(viii) the following records, to the extent made or received by such broker, dealer or municipal securities dealer in connection with its business as such broker, dealer or municipal securities dealer and not otherwise described in this rule:

(A)–(B) No Change.

(C) all written *and electronic* communications received and sent, including inter-office memoranda, relating to the conduct of the activities of such broker, dealer or municipal securities dealer with respect to municipal securities;

(D)–(E) No Change.

(ix)–(xiii) No Change.

*(xiv) the records to be maintained pursuant to Rule G–8(a)(xx).*

**Rule G–27: Supervision**

(a)–(b) No change

(c) Written supervisory procedures. Each dealer shall adopt, maintain and enforce written supervisory procedures reasonably designed to ensure that the conduct of the municipal securities activities of the dealer and its associated persons are in compliance as required in section (a) of this rule. Such procedures shall codify the dealer's supervisory system for ensuring compliance and, at a minimum, shall establish procedures

(i)–(vi) No change

(vii) for the prompt review and written approval by a designated principal of:

(A) the opening of each customer account introduced or carried by the dealer in which transactions in municipal securities may be effected; *and*

(B) each transaction in municipal securities on a daily basis, including each transaction in municipal securities effected with or for a discretionary account introduced or carried by the dealer [; and

(C) all correspondence pertaining to the solicitation or execution of transactions in municipal securities].

*(d) Review of Correspondence*

*(i) Supervision of Municipal Securities Representatives. Each dealer shall establish procedures for the review by a designated principal of incoming and outgoing written (i.e., non-electronic) and electronic correspondence of its municipal securities representatives with the public relating to the municipal securities activities of such dealer. Such procedures must be in writing and be designed to reasonably supervise each municipal securities representative. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available, upon request, to a registered securities association or the appropriate regulatory agency as defined in Section 3(a)(34) of the Act.*

*(ii) Review of correspondence. Each dealer shall develop written procedures that are appropriate to its business, size, structure, and customers for the review of incoming and outgoing written (i.e., non-electronic) and electronic correspondence with the public relating to its municipal securities activities. Procedures shall include the review of incoming, written correspondence directed to municipal securities representatives and related to the dealer's municipal securities activities to properly identify and handle customer complaints and to ensure that customer funds and securities are handled in accordance with the dealer's procedures. Where such procedures for the review of correspondence do not require review of all correspondence prior to use or distribution, they must include provisions for the education and training of associated persons as to the dealer's procedures governing correspondence; documentation of such education and training; and surveillance and follow-up to ensure that such procedures are implemented and adhered to.*

*(iii) Retention of correspondence. Each dealer shall retain correspondence of municipal securities representatives relating to its municipal securities activities in accordance with rules G–8(a)(xx) and G–9(b)(viii) and (xiv). The names of the persons who prepared outgoing correspondence and who reviewed the correspondence shall be ascertainable from the retained records and the retained records shall be readily available, upon request, to a registered securities association or the appropriate regulatory agency as defined in section 3(a)(34) of the Act.*

[(d)] *(e)* Deputy to update and review written procedures. Each dealer shall revise and update its written supervisory procedures as necessary to respond to changes in Board or other applicable rules and as other circumstances require. In addition, each dealer shall review, at least on an annual basis, its supervisory system and written supervisory procedures adopted under sections (c) *and (d)* of this rule to determine whether they are adequate and up-to-date and shall ensure that the dealer is in compliance with this rule.

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

i. Background

In May 1996, the Commission issued an Interpretive Release on the use of Electronic Media by the Broker-Dealers,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Transfer Agents, and Investment Advisors for Delivery of Information.[3] That release expressed the views of the Commission with respect to the delivery of information through electronic media in satisfaction of requirements in the federal securities laws, but did not address the applicability of any self-regulatory organization (''SRO'') rules. In the release the Commission did, however, strongly encourage the SROs to work with broker-dealer firms to adopt SRO supervisory review requirements governing communications with customers to accommodate the use of electronic media.[4]

On December 31, 1997, the Commission approved proposed rule changes filed by the NASD[5] and New York Stock Exchange (''NYSE'')[6] to update rules governing supervision of communication with the public. NASD Notice to Members (''NTM'') 98–11 announced approval of the proposed rule change and provided implementation guidance to dealers.

Most of these rules became effective on April 7, 1998.[7] In response to public comment and certain Commission concerns, the NASD subsequently proposed further changes to these rules which were approved by the Commission and became effective on March 15, 1999.[8] NASD NTM 99–03 provided guidance on the further changes.[9]

As amended, NASD Rule 3010(d)(1) provides that procedures for review of correspondence with the public relating to a member's investment banking of securities business be designed to provide reasonable supervision for each registered representative, be described in an organization's written supervisory procedures, and be evidenced in an appropriate manner.

NASD Rule 3010(d)(2), as amended, requires each member to develop written policies and procedures for review of correspondence with the public relating to its investment banking or securities business tailored to its structure and the nature and size of its business and customers. These procedures must also include the review of incoming, written correspondence directed to registered representatives and related to the member's investment banking or securities business to properly identify and handle customer complaints and to ensure that customer funds and securities are handled in accordance with dealer's procedures.

The Board has determined to adopt substantially similar rule changes. The Board believes that conforming its rule language to the language in the NASD rules will help ensure a coordinated regulatory approach to the supervision of correspondence. In addition, in connection with Commission approval of the proposed rule change, the Board will issue a notice to dealers to provide guidance to dealers on how to implement the proposed rule changes. This guidance has been coordinated with NASD NTM 98–11 and NASD NTM 99–03 and is described below.

ii. Description of the Rule as Revised

Supervision of Municipal Securities Representatives

The proposed amendments to MSRB Rule G–27(d), provide, among other things, that a dealer must establish procedures for the review by a designated principal of each municipal securities representative's incoming and outgoing written (*i.e.,* non-electronic) and electronic correspondence with the public relating to the municipal securities activities of such dealer. The procedures must be designed to provide reasonable supervision of each municipal securities representative and must be described in the dealer's written supervisory procedures. Implementation and execution of these procedures must be clearly evidenced, and the evidence must be maintained and be made available upon request to a registered securities association or the appropriate regulatory agency as defined in section 3(a)(34)[10] of the Act.

Procedures for Review of Correspondence

Currently, MSRB Rule 27(c)(vii)(C) provides that each dealer shall establish procedures for the review and written approval by a designated principal of all correspondence pertaining to the solicitation or execution of transactions in municipal securities. Under the proposed MSRB Rule G–27(d)(ii), a review of each item of correspondence will no longer be required. Dealers will be allowed flexibility in developing procedures for the review of correspondence relating to the dealer's municipal securities activities—both incoming and outgoing, written or electronic—tailored to the nature and size of the dealer's business and customers.

With respect to incoming, written (*i.e.,* non-electronic) correspondence directed to municipal securities representatives and related to the municipal securities activities of the dealer, the proposal would require review of the correspondence to properly identify and handle customer complaints and to ensure that customer funds and securities are handled in accordance with the dealer's procedures. The proposed rule change does not require review of all correspondence prior to use or distribution. However, any dealer that does not conduct electronic or manual pre-use review of each item of correspondence will be required to regularly educate and train its associated persons as to the dealer's procedures governing review of correspondence, document such education and training, and monitor to ensure compliance with such procedures.

Retention of Correspondence

The proposed rule change will include amendments to MSRB Rules G–8(a)(xx), G–9(b)(viii) and (xiv), and G–7(d)(i), (ii), and (iii) requiring each dealer to preserve correspondence of municipal securities representatives relating to the municipal securities activities and maintain the records of written supervisory procedures, education and training required under Rule G–27(c) and (d) for three years. The proposed rule change also requires that the names of the persons who prepared and reviewed correspondence must be ascertainable from the retained records and the records must be made available, upon request, to the appropriate enforcement agency (*i.e.,* NASD or federal bank regulatory agency).

Draft Notice-Guidelines for Supervision and Review

The notice to dealers will provide guidance on how to implement the proposed rule change. In particular, the notice states that in adopting review procedures pursuant to Rule G–27(d)(i), dealers must:

- Specify, in writing, the dealer's policies and procedures for reviewing different types of correspondence;
- Identify how supervisory reviews will be conducted and documented;
- Identify what types of correspondence will be pre- or post-reviewed;
- Identify the organizational position(s) responsible for conducting review of the different types of correspondence;

[3] *See* Securities Act Release No. 7288, Exchange Act Release No. 37182, Investment Company Act Release No. 21945, Investment Advisor Act Release No. 1562 (May 9, 1996), 61 FR 24644 (May 15, 1996) (File No. S7–13–96).

[4] *Id.*

[5] *See* Exchange Act Release No. 39510 (December 31, 1997), 63 FR 1131 (January 8, 1998).

[6] *See* Exchange Act Release No. 39511 (December 31, 1997), 63 FR 1135 (January 8, 1998).

[7] *See* Exchange Act Release No. 39866 (April 14, 1998), 63 FR 19778 (April 21, 1998).

[8] *See* Exchange Act Release No. 40372 (August 27, 1998), 63 FR 47059 (September 3, 1998).

[9] *See* NTM 99–03 (January 1999).

[10] 15 U.S.C. 78c(a)(34).

• Specify the minimum frequency of the reviews for each type of correspondence;
• Monitor the implementation of and compliance with the dealer's procedures for reviewing public correspondence; and
• Periodically re-evaluate the effectiveness of the dealer's procedures for reviewing public correspondence and consider any necessary revisions.

The notice also states that in conducting reviews, dealers may use reasonable sampling techniques. As an example of appropriate evidence of review, e-mail related to the dealer's municipal securities activities may be reviewed electronically and the evidence of review may be recorded electronically.

In developing supervisory procedures for the review of correspondence with the public pursuant to Rule G–27(d)(ii), the notice states that each dealer must consider its structure, the nature and size of its business, other pertinent characteristics, and the appropriateness of implementing uniform firm-wide procedures or tailored procedures (*i.e.,* by specific function, office/location, individual, or group of persons).

The notice also provides guidance on adopting review procedures pursuant to Rule G–27(d)(ii), and states that dealers must, at a minimum:

• Specify procedures for reviewing municipal securities representatives' recommendations to customers;
• Require supervisory review of some of each municipal securities representative's public correspondence, including recommendations to customers;
• Consider the complaint and overall disciplinary history, if any, of municipal securities representatives and other employees (with particular emphasis on complaints regarding written or oral communications with clients); and
• Consider the nature and extent of training provided municipal securities representatives and other employees, as well as their experience in using communications media (although a dealer's procedures may not eliminate or provide for minimal supervisory reviews based on an employee's training or level of experience in using communications media).

In addition, the notice provides that supervisory and procedures must also:

• Provide that all customer complaints, whether received via e-mail or in written form from the customer, are kept and maintained;
• Describe any dealer standards for the content of different types of correspondence; and
• Prohibit municipal securities representatives' and other employees' use of electronic correspondence to the public unless such communications are subject to supervisory and review procedures developed by the dealer. For example, the Board would expect dealers to prohibit correspondence with customers from employees' home computers or through third party systems unless the dealer is capable of monitoring such communications.

The notice also states that the method used for conducting reviews of incoming, written correspondence to identify customer complaints and funds may vary depending on the dealer's office structure. Where the office structure permits review of all correspondence, dealers should designate a municipal securities representative or other appropriate person to open and review correspondence prior to use or distribution to identify customer complaints and funds. The designated person must not be supervised or under the control of the municipal securities representative whose correspondence is opened and reviewed. Unregistered persons who have received sufficient training to enable them to identify complaints and funds would be permitted to review correspondence.

Where the office structure does not permit the review of correspondence [11] prior to use or distribution, appropriate procedures that could be adopted include the following:

• Forwarding opened incoming, written correspondence related to the dealer's municipal securities activities to a designated office, or supervising branch office, for review on a weekly basis;
• Maintenance of a separate log for all checks received and securities products sold, which is forwarded to the supervising branch office on a weekly basis;
• Communication to clients that they can contact the dealer directly for any matter, including the filing of a complaint, and providing them with an address and telephone number of a central office of the dealer for this purpose; and
• Branch examination verification that the procedures are being followed.

2. Statutory Basis

The Board believes that the proposed rule change is consistent with Section 15B(b)(2)(C) [12] of the Act, which requires, in pertinent part, that the Board's rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

[11] Amended language per telephone conservation between Carolyn Walsh, Assistant General Counsel, MSRB, and Ira L. Brandriss, the Commission, February 3, 2000.

[12] 15 U.S.C. 78*o*–4(b)(2)(c).

In particular, the Board believes that the proposed rule change is consistent with the Act in allowing dealers to use new technology, such as e-mail and the Internet, while still providing for appropriate supervision and review. In addition, the proposed rule change will make the Board's rules on supervision and record retention substantially similar to the NASD rules. The Board believes that such similar rules by the self-regulatory organizations should facilitate dealer compliance with these requirements.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in the furtherance of the Act's purposes because it would apply equally to all brokers, dealers and municipal securities dealers.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Board consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Board. All submissions should refer to File No. SR–MSRB–00–01 and should be submitted by March 2, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–3038 Filed 2–9–00; 8:45am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42381; File No. SR–NYSE–99–25]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to Exchange Rule 134, Governing Error Accounts, and New Rule 407A, Concerning Floor Member Account Disclosure

February 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on June 15, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, III below, which Items have been prepared by the Exchange. On December 13, 1999, the NYSE filed Amendment No. 1 to the proposed rule change with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to existing rules governing error accounts (Rule 134) and a new rule regarding Floor member account disclosure (Rule 407A).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The substance of Amendment No. 1 is incorporated into this notice.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing a series of initiatives to strengthen the regulation of activities of members on the Floor. The initiatives proposed herein consist of amendments to existing rules governing error accounts and a new rule regarding Floor member account disclosure.[4]

*Error Accounts.* The Exchange is proposing to revise NYSE Rule 134(d) to require that each member maintain an error account. Under the proposed rule change, if a member does not maintain an error account, he or she will not be permitted to transact business on the Floor. Only one error account will be permitted for each member. The error account may be maintained in the member's name or in the name of his or her member organization, or the member may participate in an error account established for a group of members.

At present there is no requirement that a member maintain an error account. The Exchange believes that the amendment to Rule 134 will enhance its ability to monitor and detect potential abuses such as on-Floor trading by members. Error account transaction information will be localized to one place for each member, and not scattered among several accounts which, at present, could be held in the name of another member or member organization.

*Housing Error Accounts.* The proposed rule change, as amended, would require that a member's error account be maintained at a broker or dealer registered in accordance with Section 15(b) [5] of the Act. The Exchange believes that this provision would enable it to use its oversight authority to review error records for the brokers or dealers which are members or member organizations of the Exchange. If the error account is maintained at a non-member broker or dealer, the Exchange represents that it will work through the Intermarket Surveillance Group (''ISG'') to obtain information on errors. The Exchange believes this requirement is necessary to enable review of situations involving errors in an expedited fashion.

*Error Transaction Procedures.* The proposed rule change would require that if a member or member organization acquires or assumes a security position resulting from an error transaction, or initiates a transaction to offset an error transaction, such transaction must be recorded and cleared in the member's or his or her member organization's error account, or in an error account established for a group of members.

This would include situations where the execution was wrong (*e.g.,* wrong side of the market, wrong stock) and where the member ''missed the market'' by failing to execute the order in the prevailing market. If the error can be corrected at a better price at the time the error is discovered, the better price must be offered to the customer. If the customer refuses the superior execution, a record of this must be maintained by the member.

Alternatively, a customer could accept the error, in which case the transaction would be placed in the customer's account. An error transaction could also be accepted by the specialist in the security into his or her organization's account as a trade ''on account of error.''

When a customer accepts an error transaction, a monetary settlement (a ''difference check'') may be made by the member or member organization. If the difference check is for more than $500, the member or member organization involved would be required under the proposal to maintain records detailing the transaction. In some instances, a customer may accept an error, but not wish to receive a difference check for bookkeeping or other reasons. The member or member organization involved would be required to maintain records in these situations, as well.

The proposal further prescribes the way a member would be required to

[4] *See* Exchange Act Release No. 41706 (August 4, 1999), 64 FR 44069 (August 12, 1999) (File No. SR–NYSE–98–25) relating to proposed adoption by the NYSE of new provisions for recording the details of an order in an electronic system prior to representing or executing an order on the Floor. The two rule changes proposed in this filing replace the equivalent proposals that were deleted by amendment from SR–NYSE–98–25. *See* note 4, *id.*

[5] 15 U.S.C. 78*o*(b).

handle an error that is not accepted by a customer. Where the member is representing an order that cannot be executed pursuant to its term,[6] the member would be required to issue an execution report covering the customer's order at the missed market price from his or her error account, the member organization's error account or the specialist's account if the specialist agreed to take in the error. The member would be permitted to confirm such report as an Exchange transaction as long as the position in the error account or specialist's account is liquidated.

The Exchange stipulates that if the order can be executed on its original terms or on better terms, the member or member organization is expected to execute the order pursuant to its terms, as would typically be the case with a ''not held'' order. A member representing a ''not held'' order is not permitted to ''miss the market.'' and must execute the order pursuant to its terms. The member would not be permitted to simply issue a report out of his or her error account.

*Recordkeeping.* The proposed rule change would require the member of his or her member organization to maintain records with respect to all errors. These records would include the audit trail data elements prescribed in NYSE Rule 132, as well as the nature and amount of error, how the member resolved the error with the member or member organization, including a specialist, which cleared the error trade on the member's behalf, and the aggregate amount of liability that the member has incurred and has outstanding as of the time the error is recorded. The Exchange could also require that additional data elements be recorded in circumstances where the Exchange believe that such additional information is necessary for all error transactions, or in particular situations. The Exchange believes that the recordkeeping requirement would enable the Exchange to review and analyze error transactions on a current and consistent basis.

*Profitable Errors.* The Proposal would also establish reporting requirements with respect to certain ''profitable'' errors. These are errors which can be liquidated at a price that is favorable to the position acquired in the member or member organization's error account. Under the proposal, every member not associated with a member organization and every member associated with a member organization that derives at least 75% of its revenue from floor brokerage would be required to report to the Exchange error transactions that result in a profit of more than $500 for any transaction or more than $3,000 in any calendar week. The Exchange believes this will enable it to quickly review these situations for possible violations of Floor Trading rules or procedures.

The Exchange notes that all members and member organizations would be required under the proposal to maintain details of all errors, profitable or not. For members and member organizations that do not act primarily as a Floor broker, these records would be reviewed in connection with the normal oversight activities of the Exchange.

*Reports of Closed Error Accounts.* The proposed rule change would also require each clearing member organization to report to the Exchange whenever it ceases to carry an error account. The notice would be requried in writing immediately, but no later than the opening of the Exchange on the following business day.

*Member Account Disclosure.* Proposed new Rule 407A would provide the Exchange with information on accounts of members. The provision would require a member to report to the Exchange any securities account in which the member has a direct or indirect financial interest or over which the member has discretionary authority. This would include any account at a non-member broker-dealer, investment adviser, bank or other financial institution. In addition, the member would be required to notify the financial institution that carries or services his or her account or an account over which the member has discretionary authority that he or she is a member of the Exchange.

Purchases of securities of a publicly-traded registered investment company directly from the issuer or principal underwriter would not be considered a reportable securities account. However, interests in a non-publicly-traded investment vehicle, including hedge funds, would be reportable.

The Exchange believes that these reporting requirements would provide it with current information on where members carry securities accounts and enhance its ability to investigate quickly the trading of securities by members of the Exchange.

2. Statutory Basis

The Exchange bases the proposed rule change on Section 6(b)(5)[7] of the Act, which requires that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will help accomplish these ends by strengthening the Exchange's ability to surveil the Floor activities of members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

[6] An example of such an order is a ''held'' order to buy with a limit of 20, which cannot be executed pursuant to its terms if the member missed the market and the stock is now trading above 20.

[7] 15 U.S.C. 78f(b)(5).

the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–NYSE–99–25 and should be submitted by March 2, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–3035 Filed 2–9–00; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42384; File No. SR–PCX–99–10]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Amending Its Disciplinary Procedures

February 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''ACT'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 2, 1999, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. On June 25, 1999, the PCX filed with the Commission Amendment No. 1 to the proposed rule change.[3] On January 18, 2000, the PCX filed with the Commission Amendment No. 2 to the proposed rule change.[4] On January 19, 2000, the PCX filed with the Commission Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### 1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to amend its rules on disciplinary proceedings at the Exchange,[6] and in particular, to add new rules to codify the independent function of PCX Regulatory Staff; to clarify what communications are improper in the context of pending investigations or disciplinary proceedings; to provide PCX Regulatory Staff with the ability to issue formal complaints for the alleged violation of Exchange rules; to permit qualified persons who are not members to serve on hearing panels; and otherwise to codify procedures relating to hearing panelists' conflicts of interest. Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

**Rule 10**

**Disciplinary Jurisdiction and Appeals**

**¶6061 Disciplinary Jurisidiction**

Rule 10.1—No change.

**¶6067 Investigations *and Regulatory Cooperation***

Rule 10.2(a). The Exchange *Regulatory Staff will function independently of the commercial interests of the Exchange members and will have the sole discretion to investigate, and will* [shall] investigate, possible violations within the disciplinary jurisdiction of the Exchange. [upon order of the Board of Governors, the Executive Committee, the Ethics and Business Conduct Committee, or the Floor Trading Committees or upon receipt of a complaint alleging such violations filed by a member or by any other person.] *No member of the Board of Governors or the Executive Committee or non-Regulatory Staff may interfere with or attempt to influence the process or resolution of any pending investigation or disciplinary proceeding.* [All such complaints should specify in reasonable detail the facts constituting the violation, including the specific statutes, Exchange Constitutional provisions, Rules, commentaries, resolutions, policies or procedures allegedly violated. A member or person associated with a member is entitled to be represented by counsel during any Exchange investigation.

(b) No member or person associated with a member shall impede or delay an Exchange investigation with respect to possible violations within the disciplinary jurisdiction of the Exchange nor refuse to furnish testimony, documentary materials or other information requested by the Exchange during the course of its investigation. Failure to furnish such testimony, documentary materials or other information requested by the Exchange pursuant to this Rule on the date or within the time period required by the Exchange shall be considered obstructive of an Exchange inquiry or investigation and subject to formal disciplinary action.]

*(b) Any person, any Exchange committee, the Board of Governors or the Executive Committee may submit for investigation a complaint alleging possible violations. Each complaint must specify in reasonable detail the facts constituting the violation and any specific federal statute, rule, regulation or Exchange constitutional provision, rule, commentary, resolution, policy or procedure allegedly violated.*

[(c) A member or member organization shall submit such trade data elements specified in Commentary .01 below in such automated format as may be prescribed by the Exchange from time to time, in regard to such transaction or transactions as may be the subject of a particular request for information made by the Exchange. Failure to submit such data in the required format shall be considered obstructive of an Exchange inquiry or investigation and subject to formal disciplinary action.]

*(c) A member, member organization or associated person is entitled to be represented by counsel during any Exchange investigation.*

[(b)] *(d)* No member, *member organization,* [or person associated with a member] *associated person or other person or entity over whom the Exchange has jurisdiction pursuant to Rule 10.1(b) may* [shall] impede or delay an Exchange investigation with respect to possible violations within the disciplinary jurisdiction of the Exchange nor refuse to furnish testimony, documentary materials or other information requested by the Exchange during the course of its investigation. Failure to furnish such testimony, documentary materials or other information requested by the Exchange pursuant to this Rule on the date or within the time period required by the Exchange [shall] *will* be

[8] 17 CFR 200.3–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to Michael A. Walinskas, Associate Director, Division of Market Regulation, Commission, dated June 24, 1999 (''Amendment No. 1''). In Amendment No. 1, the Exchange withdrew proposed PCX Rule 10.8, *Hearing Panels,* and renumbered two of the proposed rules.

[4] *See* letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to Jennifer Colihan, Attorney, Division of Market Regulation, Commission, dated January 7, 2000 (''Amendment No. 2''). In Amendment No. 2, the Exchange proposed to delete PCX Rule 10.4(f) among other things.

[5] *See* letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to Kelly Riley, Attorney, Division of Market Regulation, Commission, dated January 14, 2000 (''Amendment No. 3''). In Amendment No. 3, the Exchange proposed to make minor word change and change the heading for proposed Rule 10.4(c) from ''Summary Proceedings'' to ''Summary Determinations'' among other things.

[6] The Commission notes that the Exchange has proposed a similar disciplinary structure and procedures for the Pacific Equities, Inc. *See* Exchange Act Release No. 42178 (Nov. 24, 1999) 64 FR 68136 (Dec. 6, 1999) (File No. SR–PCX–99–39).

considered obstructive of an Exchange inquiry or investigation and subject to formal disciplinary action.

[(c)] *(e)* A member or member organization [shall] *must* submit such trade data elements specified in Commentary .01 below in such automated format as may be prescribed by the Exchange from time to time, in regard to such transaction or transactions as may be the subject of a particular request for information made by the Exchange. Failure to submit such data in the required format [shall] *will* be considered obstructive of an Exchange inquiry or investigation and subject to formal disciplinary action.

*Commentary:*

.01—No change.

**[Regulatory Cooperation]**

[(d)] *(f)* No member, member organization, *associated person* [person associated with a member or member organization], or other person or entity over whom the Exchange has jurisdiction pursuant to Rule 10.1(b), [shall] *may* refuse to appear and testify before another exchange or self-regulatory organization in connection with a regulatory investigation, examination, or disciplinary proceeding or refuse to furnish documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange requests such information or testimony in connection with any inquiry resulting from an agreement entered into by the Exchange pursuant to Rule 14.1 The requirements of this Rule [10.2(d)] *10.2(f)* [shall] *will* apply regardless of whether the Exchange has initiated an investigation pursuant to Rule 10.2(a) or a disciplinary proceeding pursuant to Rule [10.3] *10.5.*

*Commentary:*

.01 The terms ''exchange'' and ''self-regulatory organization,'' as used in Rule [10.2(d)] *10.2(f),* [shall] *will* include, but are not limited to, any member or affiliate member of the Intermarket Surveillance Group.

.02 Any person or entity required to furnish information or testimony pursuant to Rule [10.2(d)] *10.2(f)* [shall] *will* be afforded the same rights and procedural protections as that person or entity would have if the Exchange had initiated the request for information or testimony.

***Ex Parte Communications***

*10.3(a) Prohibited Communications. Unless on adequate notice and reasonable opportunity for all parties to participate:*

*(1) No person who is a subject of a pending Exchange investigation (''Subject'') or a Respondent in a pending disciplinary proceeding, or counsel for or a representative of the Subject or the Respondent, with knowledge of a pending Exchange invesgitation or disciplinary proceeding, may make or knowlingly cause to be made an ex parte communication, as defined below, relevant to the facts or allegations of the investigation or the disciplinary proceeding to: (a) a member of the Board of Governors; (b) a member of the Executive Committee; (c) a person who advises the Board of Governors or the Executive Committee; (d) any member or Exchange Regulatory Staff that is not participating in the resolution of the investigation or the disciplinary proceeding; or (e) a member of a Hearing Panel or the disciplinary committee with jurisdiction over the investigation or disciplinary proceeding.*

*(2) No person who is a member of a Hearing Panel or the disciplinary committee with jurisdiction over an investigation or disciplinary proceeding, with knowledge of a pending investigation or disciplinary proceeding, may make or knowingly cause to be made an ex parte communication, as defined below, relevant to the facts or allegations of the investigation or the disciplinary proceeding to: (a) a member of the Board of Governors; (b) a member of the Executive Committee; (c) a person who advises the Board of Governors or the Executive Committee; (d) any member of Exchange Regulatory Staff; or (e) the Subject of a pending Exchange investigation or a Respondent in a pending disciplinary proceeding, or counsel for or a representative of the Subject or the Respondent.*

*(3) No person who is a member of the Board of Governors or the Executive Committee, or any person who advises the Board of Governors or the Executive Committee, with knowledge of a pending investigation or disciplinary proceeding, may knowingly make or cause to be made an ex parte communication, as defined below, relevant to the facts or allegations of the investigation or the disciplinary proceeding to: (a) any member of Exchange Regulatory Staff; (b) the Subject of a pending Exchange investigation or a Respondent in a pending disciplinary proceeding, or counsel for or a representative of the Subject or the Respondent; or (c) a member of a Hearing Panel or the disciplinary committee with jurisdiction over the investigation or disciplinary proceeding.*

*(b) Disclosure of Prohibited Communications. Any person who receives, makes or knowingly causes to be made a communication prohibited by this Rule must promptly submit to Exchange Regulatory Staff for inclusion in the record of the investigation or disciplinary proceeding:*

*(1) All such written communications;*

*(2) Memoranda stating the substance of all such oral communications; and*

*(3) All written responses and memoranda stating the substance of any oral responses to such communications.*

*(c) Remedies. Any member, member organization or associated person who made or knowingly caused to be made a communication prohibited by subsection (a) will be subject to disciplinary action. Furthermore, an Exchange disciplinary committee, to the extent consistent with the interests of justice, may issue to the member, member organization or associated person responsible for the communication or who benefited from the communication an order to show cause why the claim, defense or interest of the member, member organization or associated person should not be adversely affected by reason of such ex parte communication, including but not limited to the entry of an adverse summary decision. All parties to a disciplinary proceeding and Exchange Regulatory Staff will be provided with adequate notice and a reasonable opportunity to respond to any allegations or contentions contained in the prohibited communication and any responses will be included in the record of the investigation or disciplinary proceeding.*

*(d) Permitted Communications. Nothing in this Rule prohibits the members of a disciplinary committee or Exchange Regulatory Staff from discussing a pending investigation or disciplinary proceeding at a meeting of the committee in connection with: (1) The adjudication of the investigation pursuant to the Minor Rule Plan; (2) the determination of whether to impose informal discipline; (3) the determination of whether to authorize a complaint or take no further action; or (4) the determination of whether to accept an offer of settlement.*

*Commentary:*

*.01 ''Ex parte communication'' means an oral or written communication made without notice to all parties, i.e., Exchange Regulatory Staff and the Subjects of investigations or Respondents in disciplinary proceedings. A written communication is ex parte unless a copy has been previously or simultaneously delivered to all interested parties. An oral*

*communication is ex parte unless it is made in the presence of all interested parties except those who, on adequate prior notice, declined to be present.*

*.02 A disciplinary proceeding will be considered to be pending from the date that a Complaint has been issued pursuant to Rule 10.5 until the proceeding, including any appeals, becomes final.*

**¶6073 Complaints [and Answers]**

[Rule 10.4] (Note—Rule 10.4 has been renumbered as Rule 10.5)

Rule [10.3]*10.4(a)* [Whenever it shall appear to the Board of Governors, the Executive Committee, or any standing committee designated by the Board of Governors to review disciplinary proceedings that] *Any standing committee designated by the Board of Governors to review disciplinary proceedings, and Exchange Regulatory Staff designated by the Exchange, has the authority to determine whether* there is probable cause for finding *that* a violation within the disciplinary jurisdiction of the Exchange *has occurred* and that further proceedings are warranted[, the]. *If* the Exchange (''the Complainant'') determines that further proceedings are warranted, then the Exchange [shall] *will* initiate a *formal* disciplinary action by preparing a statement of charges (''the Complaint'') against [the] *any* [person or] *member, member* organization *or associated person* alleged to have committed a violation (''the Respondent'') specifying the acts in which the Respondent is [charged] *alleged* to have engaged in, or which the Respondent is alleged to have omitted, and [setting forth] *alleging* the specific provisions of the Securities Exchange Act of 1934, as amended, rules and regulations promulgated thereunder, Exchange constitutional provisions, rules, commentaries, resolutions, policies or procedures, of which such acts or omissions are *alleged to be* in violation.

*(b) At any time prior to service of the written answer to the Complaint, the Complaint may be amended to allege new matters of fact or law. After service of the written answer, the hearing panel may allow amendment of the Complaint upon submission of a written motion by the Exchange and a showing of good cause.*

The Respondent shall have fifteen business days after service of the charges to file a written answer thereto. The answer shall specifically admit or deny each allegation contained in the charges, and the Respondent shall be deemed to have admitted any allegation not specifically denied. The answer may also contain any defense which the Respondent wishes to submit and may be accompanied by documents in support of his answer or defense. In the event the Respondent fails to file an answer, the charges shall be considered to be admitted.

The time period to file any answer may be extended for such further periods as may be granted by the Exchange, if such request for extension of the filing period is received by the Exchange within five business days prior to the date on which the answer is due.

***Summary Determinations***

*(c)* [Rule 10.5] Notwithstanding the provisions of Rule 10.5, the disciplinary committee with jurisdiction over the proceeding may make a determination without a hearing and may impose a penalty as to such charges which the Respondent has admitted or has failed to answer or which otherwise do not appear to be in dispute. Notice of such summary determination, specifying the violations and penalty, shall be served upon the Respondent.

*Commentary:*

*.01 The term ''probable cause'' means that facts and circumstances establish a reasonable likelihood that the person committed the violation in issue.*

**Hearing**

[Rule 10.5] (Note: Rule 10.5 has been renumbered as Rule 10.4(c))

[Rule 10.4] *Rule 10.5*(a) Upon Respondent's filing an answer, the Respondent may request a hearing. An appropriate Committee of the Exchange (''the Hearing Committee'') shall appoint one or more members to hear the matter (''the Panel''). Parties shall be given at least 15 calendar days notice of the time and place of the hearing and a statement of the matters to be considered therein.

(b) Prior to the hearing, the Parties shall be notified of the composition of the Panel. Any objection to the composition of the Panel must be submitted to the Hearing Administrator within five business days of receipt of the notification regarding the composition of the Panel.

(c) At least five business days prior to the hearing the parties shall submit to the Hearing Administrator a list of witnesses and any documentary evidence or other materials to be presented at the hearing. The Hearing Administrator shall immediately furnish such list of witnesses, documentary evidence or other materials to the other parties.

(d) At the hearing, both the Complainant and the Respondent shall be entitled to be heard in person and to present any relevant matter. Any witnesses, testimony or evidence offered by the Complainant or the Respondent shall be subject to cross-examination by the other party. The Panel shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the hearing. Formal rules of evidence shall not apply. The charges shall be presented by one or more representatives of the Exchange, who along with Respondent and any other party, may present evidence and produce witnesses who shall testify under oath and are subject to being questioned by the Panel and other parties. The Panel, upon its own motion or the motion of the Complainant or Respondent, may request the production of documentary materials and witnesses. No member or person associated with a member shall refuse to furnish relevant testimony, documentary materials or other information requested by the Panel during the course of the hearing. The Respondent and intervening parties are entitled to be represented by counsel who may participate fully in the hearing. A transcript for the hearing shall be made and shall become part of the record.

(e) Any person not otherwise a party may intervene as a party to the hearing upon demonstrating to the satisfaction of the Panel that he has an interest in the subject of the hearing and that the disposition of the matter may, as a practical matter, impair or impede his ability to protect that interest. Also, the Panel may in its discretion permit a person to intervene as a party to the hearing when the person's claim or defense and the main action have questions of law or fact in common. Any person wishing to intervene as a party to a hearing shall file with the Panel a notice requesting the right to intervene, stating the grounds therefor, and setting forth the claim or defense for which intervention is sought. The Panel, in exercising its discretion concerning intervention, shall take into consideration whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

[(f) Except in writing, with copies to the other parties, neither the Complainant, the Respondent, nor any interested party may discuss with the Panel any matter concerning the facts or allegations in the complaint unless the other parties to the action are given

sufficient notice and an opportunity to be heard.]

Rules 10.6–10.14—No change.

* * * * *

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

*Independence of Regulatory Staff.* The Exchange is proposing to modify PCX Rule 10.2 so that it will include new provisions on the independence of PCX Regulatory Staff and its separation from the Exchange's commercial interests. Specifically, the rule is being modified to state that the Exchange's Regulatory Staff will function independently of the commercial interests of the Exchange members and will have the sole discretion to investigate, and will investigate, possible violations within the disciplinary jurisdiction of the Exchange. The proposed rule further states specifically that no member of the Board of Governors or the Executive Committee or non-Regulatory Staff may interfere within or attempt to influence the process or resolution of any pending investigation or disciplinary proceeding.

*Investigations.* The Exchange is proposing to reorganize the provisions on Exchange investigations and to make various technical and housekeeping changes to the text of PCX Rule 10.2, which will now cover both Exchange investigations and regulatory cooperation.[7]

*Ex Parte Communications.* The Exchange is proposing to adopt new PCX Rule 10.3 to codify specific provisions on ex parte communications.[8] This rule change codifies what communications regarding pending investigations and disciplinary proceedings are improper. The Exchange believes that this rule change will serve to assure that the integrity and independence of the Exchange's regulatory function will be protected.

More specifically, proposed Exchange Rule 10.3(a)(1) provides that unless on adequate notice and reasonable opportunity for all parties to participate, no person who is a subject of a pending Exchange investigation (''Subject'') or a Respondent in a pending disciplinary proceeding, or counsel for or a representative of the Subject or the Respondent, with knowledge of a pending Exchange investigation or disciplinary proceeding, may make or knowingly cause to be made an *ex parte* communication, as defined below, relevant to the facts or allegations of the investigation or the disciplinary proceeding to: (a) a member of the Board of Governors; (b) a member of the Executive Committee; (c) a person who advises the Board of Governors or the Executive Committee; (d) any member of Exchange Regulatory Staff that is not participating in the resolution of the investigation or the disciplinary proceeding; or (e) a member of a Hearing Panel or the disciplinary committee with jurisdiction over the investigation or disciplinary proceeding.[9]

Proposed PCX Rule 10.3(a)(2) provides that unless on adequate notice and reasonable opportunity for all parties to participate, no person who is a member of a Hearing Panel or the disciplinary committee with jurisdiction over an investigation or disciplinary proceeding, with knowledge of a pending investigation or disciplinary proceeding, may make or knowingly cause to be made an ex parte communication, as defined below, relevant to the facts or allegations of the investigation or the disciplinary proceeding to: (a) A member of the Board of Governors; (b) a member of the Executive Committee; (c) a person who advises the Board of Governors or the Executive Committee; (d) any member of Exchange Regulatory Staff; or (e) the Subject of a pending Exchange investigation or a Respondent in a pending disciplinary proceeding, or counsel for or a representative of the Subject or the Respondent.[10]

Proposed Rule 10.3(a)(3) provides that unless on adequate notice and reasonable opportunity for all parties to participate, no person who is a member of the Board of Governors or the Executive Committee, or any person who advises the Board of Governors or the Executive Committee, with knowledge of a pending investigation or disciplinary proceeding, may knowingly make or cause to be made an ex parte communication, as defined below, relevant to the facts or allegations of the investigation or the disciplinary proceeding to: (a) Any member of Exchange Regulatory Staff; (b) the Subject of a pending Exchange investigation or a Respondent in a pending disciplinary proceeding, or counsel for or a representative of the Subject or the Respondent; or (c) a member of a Hearing Panel or the disciplinary committee with jurisdiction over the investigation or disciplinary proceeding.[11]

With respect to the disclosure of prohibited communications, proposed PCX Rule 10.3(b) provides that any person who receives, makes or knowingly causes to be made a communication prohibited by this Rule must promptly submit to Exchange Regulatory Staff for inclusion in the record of the investigation or disciplinary proceeding: (1) All such written communications; (2) memoranda stating the substance of all such oral communications; and (3) all written responses and memoranda stating the substance of any oral responses to such communications.[12]

Proposed Exchange Rule 10.3(c) sets forth remedies applicable to situations in which prohibited communications have been made. Specifically, the rule provides that any member, member organization or associated person who made or knowingly caused to be made a communication prohibited by subsection (a) will be subject to disciplinary action. The rule further provides that an Exchange disciplinary committee, to the extent consistent with the interests of justice, may issue to the member organization or associated person responsible for the communication or who benefited from the communication an order to show cause why the claim, defense or interest of the member, member organization or associated person should not be adversely affected by reason of such ex parte communication, including but not limited to the entry of an adverse summary decision. The rule further provides that all parties to a disciplinary proceeding and Exchange Regulatory Staff will be provided with adequate notice and a reasonable opportunity to respond to any allegations or contentions contained in the prohibited communication and any responses will be included in the record of the

[7] The current provisions on regulatory cooperation are set forth in PCX Rule 10.2(d).

[8] These provisions were, in large part, adapted from the NASD Manual—Code of Procedure (''NASD Code of Proc.'') Rule 9143, *Ex Parte Communications.*

[9] *Cf.* NASD Code of Proc. Rule 9143(a)(1).

[10] *Cf.* NASD Code of Proc. Rule 9143(a)(2).

[11] *Cf.* NASD Code of Proc. Rule 9143(a)(1)–1(2)

[12] *Cf.* NASD Code of Proc. Rule 9143(b).

investigation or disciplinary proceeding.[13]

Proposed PCX Rule 10.3(d) clarifies that nothing in the rule on ex parte communications prohibits the members of a disciplinary committee or Exchange Regulatory Staff from discussing a pending investigation or disciplinary proceeding at a meeting of the committee in connection with: (1) The adjudication of the investigation pursuant to the Minor Rule Plan; (2) the determination of whether to impose informal discipline; (3) the determination of whether to authorize a complaint or take no further action; or (4) the determination of whether to accept an offer of settlement.

Proposed Commentary .01 to Exchange Rule 10.3 defines an ''ex parte communication'' as an oral or written communication made without notice to all parties, *i.e.,* Exchange Regulatory Staff and the Subjects of investigations or Respondents in disciplinary proceedings. The Commentary further states that a written communication is ex parte unless a copy has been previously or simultaneously delivered to all interested parties. It further provides that an oral communication is ex parte unless it is made in the presence of all interested parties except those who, on adequate prior notice, declined to be present.[14]

Finally, proposed Commentary .02 to PCX Rule 10.3 states that a disciplinary proceeding will be considered to be pending from the date that a Complaint has been issued pursuant to Rule 10.5 until the proceeding, including any appeals, becomes final. This provision will serve to clarify the scope of statements prohibited by PCX Rule 10.3.[15]

*Complaints.* PCX Rule 10.3, which the PCX proposes to renumber as Rule 10.4, currently provides that formal complaints for alleged violations of Exchange rules (and other provisions) may be authorized by the PCX Board of Governors, by the Executive Committee of the Exchange, or by any standing committee designated by the Board of Governors to review disciplinary proceedings. The Exchange is proposing to modify that provision so that only Exchange Regulatory Staff designated by the Exchange and any standing committee designated by the Board of Governors to review disciplinary proceedings has the authority to determine whether there is probable cause to issue a formal complaint, *i.e.,* probable cause for finding that a violation within the disciplinary jurisdiction of the Exchange has occurred and that further proceedings are warranted. The PCX also proposes to make certain technical changes to the text of current Exchange Rule 10.3 for clarification purposes, *e.g.,* changing the term ''charged'' to ''alleged.''

With regard to amending outstanding Complaints, proposed PCX Rule 10.4(b) provides that at any time prior to service of the written answer to the Complaint, the Complaint may be amended to allege new matters of fact or law. It further provides that after service of the written answer, the hearing panel may allow amendment of the Complaint upon submission of a written motion by the Exchange and a showing of good cause.

Finally, the Exchange is proposing to adopt new Commentary .01 to new PCX Rule 10.4 to provide that the term ''probable cause'' means that facts and circumstances establish a reasonable likelihood that the person committed the violation in issue.

*Summary Determinations.* The Exchange proposes to renumber PCX Rule 10.5 to Rule 10.4(c).

2. Statutory Basis

The PCX believes the proposed rule change is consistent with Section 6(b)[16] of the Act, in general, and furthers the objectives of Section 6(b)(5),[17] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest. The PCX also believes that the proposal is consistent with Section 6(b)(6)[18] of the Act in that it is designed to assure that Exchange members and persons associated with Exchange members are appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the rules of the Exchange.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the PCX.

All submissions should refer to File No. SR–PCX–99–10 and should be submitted by March 2, 2000.

[13] *Cf.* NASD Code of Proc. Rule 9143(c).

[14] *Cf.* Chicago Board Options Exchange (''CBOE'') Rule 17.4, Interpretation and Policy .01.

[15] *See, e.g.,* proposed PCX Rule 10.3(a)(1) (''No person who is * * * a Respondent in a *pending disciplinary proceeding,* may make * * * and *ex parte* communication. * * *'' (emphasis added)). *Cf.* CBOE Rule 17.14, Interpretation and Policy .01(i).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–3087 Filed 2–9–00; 9:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42386; File No. SR–Phlx–98–55]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.: Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Relating to an Increase in Position and Exercise Limits for Certain Broad-Based Index Options

February 4, 2000.

### I. Introduction

On December 21, 1998 the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase broad-based (''market'') index option position and exercise limits on the Value Line Composite Index (''VLE''), the US Top 100 Index (''TPX''), and the National Over-the-Counter Index (''XOC'').[3]

The proposed rule change was published for comment in the **Federal Register** on April 2, 1999.[4] No comments were received on the proposal. On November 10, 1999, the Phlx filed an amendment to the proposed rule change.[5] This order approves the proposal, as amended.

### II. Description

The Phlx proposed to amend Phlx Rule 1001A(a)(i)–(ii) by increasing market index option position limits on the VLE, the TPX, and the XOC.[6] Specifically, the Phlx proposed to triple the current levels of 25,000 contracts total and 15,000 contracts in the nearest expiration month for the VLE and the TPX to 75,000 contracts total and 45,000 contracts in the nearest expiration month. The Phlx also proposed to triple position and exercise limits for the XOC from 25,000 contracts total to 75,000 contracts total.

Exchange exercise limits,[7] which are expressed in Phlx Rule 1002A, are established by reference to position limits, such that any increase in position limits would also increase exercise limits. Accordingly, the Phlx proposed to increase exercise limits to correspond to the proposed increases in position limits.

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6 of the Act.[8] Specifically, the Commission believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Position limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. In the past, the Commission has stated that:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[9]

In general, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits.[10] The Commission has been careful to balance two competing concerns when considering the appropriate level at which to set option position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market in the component securities comprising the indexes. At the same time, the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market.[11]

The Commission has carefully considered the Phlx's proposal. At the outset, the Commission notes that it still believes that the fundamental purposes of position and exercise limits are being served by their existence. Nevertheless, the Commission believes that the Phlx's current experience with the trading of market index options[12] make it

---

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Position limits impose a ceiling on the number of option contracts in each class on the same side of the market (*i.e.,* aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors acting in concert.

[4] *See* Exchange Act Release No. 41216 (March 26, 1999), 64 FR 16019.

[5] *See* Letter from John Dayton, Phlx, to Nancy Sanow, Commission, dated November 9, 1999 (''Amendment No. 1'').

[6] Position limits impose a ceiling on the number of option contracts in each class on the same side of the market (*i.e.,* aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors acting in concert.

[7] Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

[8] *See* 15 U.S.C. 78f(b). In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

[9] Exchange Act Release Nos. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR–CBOE–97–11) (order approving an increase in OEX position and exercise limits); 31330 (October 16, 1992), 57 FR 48408 (October 23, 1992) (SR–Amex–92–13) (order approving an increase in Institutional Index Options position and exercise limits).

[10] Position and exercise limits for the XOC were raised from 17,000 to 25,000 contracts in 1996. Position and exercise limits for the VLE were raised from approximately 13,000 contracts, based on a position limit based on monetary value, to 25,000 contracts in 1988. The US Top 100 Index was created with limits of 25,000 contracts in 1995. *See* Exchange Act Release No. 36745 (January 19, 1996), 61 FR 2561 (January 26, 1996) (SR–Phlx–95–38) (establishing XOC position and exercise limits); Exchange Act Release No. 35591 (April 11, 1995), 60 FR 19423 (April 18, 1995) (SR–Phlx–95–07) (establishing TPX position and exercise limits); Exchange Act Release No. 25644 (May 3, 1988), 53 FR 16829 (May 11, 1988) (SR–Phlx–88–06) (establishing VLE position and exercise limits). *See also* Exchange Act Release Nos. 37676 (September 13, 1996), 61 FR 49508 (September 20, 1996) (order approving SR–CBOE–96–01, increasing position limits for the SPX from 45,000 to 100,000 contracts); 39789 (December 24, 1997), 63 FR 276 (January 5, 1998) (order approving SR–CBOE–97–11, increasing position limits for the OEX from 75,000 to 150,000 contracts). *See also infra* note 19.

[11] *See* H.R. Rep. No. IFC–3, 96th Cong., 1st Sess. At 189–91 (Comm. Print 1978).

[12] The Phlx has been trading market index options sionce 1985. *See* Exchange Act Release No.

permissible to increase position and exercise limits for certain market index options while still ensuring that large positions in such index options will not unduly disrupt the options or underlying cash markets.

The Commission believes that an increase in position and exercise limits for certain market index options is appropriate for several reasons. The Commission notes first that the proposal is limited to options on three market indexes, the VLE, TPX and XOC. The Commission believes that the capitalization of, and relatively deep, liquid markets for, the underlying securities contained in these indexes significantly reduces concerns regarding market manipulation or disruption in the underlying market.[13] Increasing position and exercise limits for these index options may also bring additional depth and liquidity, in terms of both volume and open interest, to the affected index options classes without significantly increasing concerns regarding intermarket manipulations or disruptions of the options or the underlying securities.

Second, increasing position and exercise limits for these specific indexes should better serve the hedging needs of institutions that engage in trading strategies different from those covered under the index hedge exemption policy (*e.g.* delta hedges, OTC vs. listed hedges).

Third, the Commission believes that financial requirements imposed by Phlx and by the Commission adequately address concerns that a Phlx member or its customer may try to maintain an inordinately large unhedged position in a market index option. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer.[14] Phlx also has the authority under its rules to impose a higher margin requirement upon the member or member organization when it determines that market conditions so warrant. Monitoring accounts maintaining large positions should provide the Exchange with the information necessary to determine whether to impose additional margin and/or whether to assess capital charges upon a member organization carrying the account. In addition, the Commission's net capital rule, Rule 15c3–1 under the exchange Act, imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement. The significant increases in unhedged options capital charges resulting from the September 1997 adoption of risk-based haircuts and Phlx's margin requirements applicable to these products under Exchange rules serves as an additional form of protection.[15] The Commission also notes that the OCC will serve as the counter-party guarantor in every exchange-traded transaction.

Fourth, the Commission notes that the index options and other types of index-based derivatives (*e.g.,* forwards and swaps) are not subject to position and exercise limits in the OTC market. The Commission believes that increasing position and exercise limits for the VLE, TPX, and XOC options will better allow Phlx to compete with the OTC market.

Fifth, the Commission believes that Phlx's surveillance procedures will adequately allow it to detect and deter potential trading abuses arising from the increased position and exercise limits for VLE, TPX and XOC options. The absence of any discernible manipulative problems for broad-based index options at existing levels leads the Commission to conclude that the proposed increases are reasonable and that they can be safely implemented. The Commission believes that the Phlx's surveillance program is adequate to detect and deter violations of position and exercise limits, as well as to detect and deter attempted manipulation and other trading abuses through the use of such illegal positions by market participants.[16] In addition, the Phlx has submitted to the Commission a detailed description of enhanced surveillance procedures the Exchange will implement in order to monitor accounts maintaining large positions. The Commission believes that Phlx's new surveillance procedures should enable the Exchange to assess and respond to market concerns at an early stage. Although it is inappropriate to discuss the details of Phlx's enhanced surveillance program, the Commission notes that these enhanced procedures were critical in its determination to approve the proposed rule change.[17]

Sixth, the Commission believes that the enhanced reporting requirements should allow Phlx to detect and deter trading abuses arising from the elimination of position and exercise limits for VLE, TPX, or XOC. These reports should also allow Phlx to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary. Specifically, Phlx will subject VLE, TPX, and XOC to a 60,000 contract reporting requirement. Each member or member organization that maintains a position on the same side of the market in excess of these contract thresholds for its own account or for the account of a customer must file a report that includes, but is not limited to, data related to the option position, whether such position is hedged and if so, a description of the hedge. If applicable, the report must contain information concerning collateral used to carry the position. Exchange Registered Option Traders would be exempt from this reporting requirement.[18]

Seventh, the Commission notes that it recently approved proposed rule changes from the Chicago Board Options Exchange (''CBOE'') and the American Stock Exchange (''Amex''), which were even less restrictive than the Phlx's current proposal. Specifically, those proposed rule changes eliminated position and exercise limits on a pilot basis for certain market index options traded on

22044 (May 17, 1985), 50 FR 21532 (May 24, 1985) (order approving SR–Phlx–84–28, establishing the XOC index option).

[13] VLE is an equally weighted, arithmetically averaged index based on the approximately 1,700 listed and over-the-counter stocks followed and published by Value Line, Inc. in the Value Line Investment Survey. As of September 29, 1999, the total market capitalization for VLE was $14.5 trillion. Telephone call between John Dayton, Phlx, and Christine Richardson, Commission, September 30, 1999. TPX is a capitalization-weighted index composed of the 100 most highly capitalized U.S. corporations, including both listed and Nasdaq National Market System traded securities. As of October 14, 1999, the total market capitalization for TPX was $7.5 trillion. XOC is capitalization-weighted and composed of the common stocks of the 100 largest capitalized corporations whose stocks are traded over-the-counter. As of October 14, 1999, the total market capitalization for XOC was $2.2 trillion. *See* Phlx website at http://www.Phlx.com.

[14] Exchange Act Rule 15c3–1 requires a capital charge equal to the maximum potential loss on a broker-dealer's aggregate index position over a + (−) 10% market move. Exchange margin rules require margin on naked index options, which are in or at-the-money equal to a 15% move in the underlying index; and a minimum 10% charge for naked out-of-the money contracts. At an index value of 9,000 this approximates to a $135,000 to $90,000 requirement per each unhedged contract.

[15] *See* Exchange Act Release No. 38248 (February 6, 1997), 62 FR 6474 (February 12, 1997) Adopting Risk-Based Haircuts); and Phlx Rule 722 *Margins.*

[16] The Commission emphasizes that the Phlx must closely monitor compliance with position and exercise limits and impose appropriate sanctions for failures to comply with the Exchange's position and exercise limit rules.

[17] Disclosure of specific surveillance procedures could provide market participants with information that could aid potential attempts at avoiding regulatory detection of inappropriate trading activity.

[18] *See* Amendment No. 1.

the CBOE and Amex.[19] Although Phlx's VLE, TPX and XOC options are not identical to CBOE's or Amex's, the Commission believes that, given its approval of these proposed rule changes, the Phlx's proposed increase in position and exercise limits to three times their current level is appropriate.

Finally, the Commission believes it appropriate for the Exchange to eliminate language contained in Phlx Rule 1001A and 1101A, concerning the Big Cap Index (''MKT'') since MKT is no longer traded on the Exchange. The Commission also believes it is appropriate for the Exchange to delete all references to options on the Super Cap Index, as these options were delisted from the Exchange on September 29, 1999.[20]

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 provides for a reporting requirement for member firms that should aid the Exchange in monitoring accounts with large positions in VLE, TPX, and XOC. Amendment No. 1 also makes certain minor technical changes. Accordingly, the Commission finds that, consistent with Sections 6(b) and 19(b)(2) of the Act, there is good cause to approve Amendment No. 1 to the proposed rule changes on an accelerated basis.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether the amendments are consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, located at the above address. Copies of such filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All submissions should refer to File No. SR–Phlx–98–55 and should be submitted by March 2, 2000.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–Phlx–98–55) be approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–3088 Filed 2–9–00; 8:45 am]

**BILLING CODE 8010–01–M**

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42388; International Series Release No. 1213; File No. SR–Phlx–99–30]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Respecting Non-Customized Cross-Rate Foreign Currency Option Margin Levels

February 4, 2000.

## I. Introduction

On August 5, 1999, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its method of calculating initial and maintenance customer margin requirements for non-customized cross-rate foreign currency options (''Cross-Rate FCOs''). The Exchange amended the proposal on October 26, 1999.[3] The Commission published notice of the proposed rule change in the **Federal Register** on November 12, 1999.[4] The Exchange filed a second amendment to the proposal on January 19, 2000.[5] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

## II. Description of the Proposal

The Exchange proposes to determine the add-on margin levels for all non-customized Cross-Rate FCOs using the methodology outlined in Commentary .16 to Phlx Rule 722, in lieu of the fixed four percent rate that the Exchange currently uses.

In 1991, the Commission approved the Exchange's proposal to list and trade three non-customized Cross-Rate FCOs—German mark/Japanese yen, British pound/German mark and British pound/Japanese yen options.[6] The Commission's 1991 order approved a four percent add-on margin level for the non-customized Cross-Rate FCOs for a one-year period only, because these products were new products and the Commission was concerned that the volatility in the underlying currencies could change significantly. Accordingly, the Commission stated that the Exchange should further analyze the add-on margin adequacy, and, within nine months, submit the analysis along with a proposed rule change to retain the margin level or establish a new level.

Based on the 1991 Order, the Exchange's customer margin

---

[19] *See* Exchange Act Release Nos. 41011 (February 1, 1999), 64 FR 6405 (February 9, 1999) (order approving File No. SR–Amex–98–38, eliminating position and exercise limits on a two year pilot basis for Institutional Index Options and Major Market Index Options and FLEX options on those index options); 40969 (January 22, 1999), 64 FR 4911 (February 2, 1999) (order approving File No. SR–CBOE–98–23, eliminating position and exercise limits on two year pilot basis for the S&P 500 Index, the S&P 100 Index, and the Dow Jones Industrial Average Index, and FLEX options on those indexes).

[20] *See* Amendment No. 1. This includes references in Phlx Rules 1079(d)(1), 1000A(b)(11), (c); 1047A(a)(i), (d), (f)(iv); and 1101A Commentary .01.

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 8s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange requested that the Commission approve the existing 4% add-on margin for all non-customized cross-rate foreign currency options until February 4, 2000, prior to the thirtieth day after the publication of the notice thereof in the **Federal Register**; provided statistical data to substantiate the proposed rule change; and made substantive changes to the proposed rule text. *See* Letter from Nandita Yagnik, Counsel, Phlx, to Hong-anh Tran, Attorney, Division of Market Regulation (''Division''), Commission, dated October 25, 1999 (''amendment No. 1'').

[4] Securities Exchange Act Release No. 42093 (November 3, 1999), 64 FR 61682 (November 12, 1999) (File No. SR–Phlx–99–30).

[5] In Amendment No. 2, the Exchange made technical changes to the proposed rule text. Specifically, the Exchange proposes to modify the introductory portion of Commentary .16 to Phlx Rule 722 to clarify that the Commentary .16 methodology applies to non-customized Cross-Rate FCOs, but not to customized Cross-Rate FCOs. The Exchange also proposes replacing the word ''currency'' with the term ''currency pair'' throughout Paragraph (c) of Commentary .16, and adding the word ''the'' before the word ''base currency'' in Paragraph (a) of the same commentary. *See* Letter from Nadita Yagnik, Counsel, Phlx, to Hong-anh Tran, Attorney, Division of Market Regulation (''Division''), Commission, dated January 18, 2000 (''Amendment No. 2'').

[6] *See* Securities Exchange Act Release No. 29919 (November 7, 1991), 56 FR 58109 (November 15, 1991) (''1991 Order''). Although the Exchange received approval for the British pound/Japanese yen Cross-rate FCO, the Exchange has not listed such a contract.

requirements for short positions for non-customized Cross-Rate FCOs equaled the add-on margin of four percent of the current market value of the foreign currency underlying the FCO contract, plus 100 percent of the market value of the FCO contract, reduced by any ''out-of-the-money amounts'' [7] but in no event be less than 100 percent of the market value of the FCO contract plus a ''minimum add-on margin amount'' [8] The Exchange represented that this add-on margin level was sufficient to cover each non-customized cross-rate product's historical price volatility over seven-day intervals (for the July 30, 1990 to July 30, 1991 time period) with a confidence level of at least 96 percent.

Due to an oversight, the Exchange did not file the required analysis of the adequacy of the add-on margin nor the proposed rule change within nine months of the 1991 Order. Following this discovery, the Exchange in 1999 filed a proposed rule change to temporarily codify the four percent add-on margin level while it considered a method of determining add-on margin, on a permanent basis, for all non-customized Cross-Rate FCOs.[9] The Commission's order approving that proposed rule change permitted the Exchange to apply a four percent add-on margin level for all non-customized Cross-Rate FCOs for a six-month period until November 4, 1999.

On August 5, 1999, the Exchange filed the current proposed rule change to determine the add-on margin levels for non-customized Cross-Rate FCOs using the methodology outlined in Commentary .16 to Phlx Rule 722, in lieu of the four percent rate that the Exchange currently uses.

The Exchange currently uses the Commentary .16 methodology to calculate the add-on margin for standardized FCOs (where the base currency is denominated in U.S. dollars). The Commentary .16 methodology bases the add-on margin percentage for a foreign currency option on the volatility of the foreign currency underlying the option (the ''underlying currency'') relative to the ''trading currency.'' [10] To implement this change, the Exchange proposes to amend the text of Commentary .16, and the chart in Rule 722, to clarify that the Exchange will set the add-on margin for Cross-Rate FCOs based on all five-day price movements of the base currency vis-a-vis the underlying currency for the contract.

In particular, the Exchange proposes to review five day price movements of the base currency relative to the underlying currency over the most recent three year period and would set the add-on margin level at a level sufficient to cover those price changes at least 97.5 percent of the time. If subsequent quarterly reviews show that the existing add-on margin level for any non-customized cross-rate FCO currency pair provides a confidence level below 97 percent, the Exchange would increase the add-on margin requirement for that currency pair to a level that would have covered those price movements at a 98 percent confidence level. If a subsequent quarterly review shows a confidence level between 97 percent and 97.5 percent, the add-on margin level would remain the same but would be subject to monthly follow-up reviews until the confidence level exceeds 97.5 percent for two consecutive months (then the Exchange would put it back on the quarterly review cycle). If a monthly follow-up review showed that the confidence level dropped below 97 percent, the Exchange would increase the add-on margin level to a 98 percent confidence level. Generally, if any review shows that the confidence level exceeds 98.5 percent, the Exchange would reduce the add-on margin level to a 98 percent confidence level. But to account for the possibility of unexpectedly large price movements, if any review show that a Cross-Rate FCO currency paid had a five-day price movement, either positive or negative, greater than two times the existing add-on margin level, the Exchange would set the add-on margin requirement for that currency pair to a 99 percent confidence level (''Extreme Outlier Test''). In addition to the routine reviews described above, the Exchange would continue to have authority to impose a higher margin level at any time, if market conditions so warrant.

The Exchange filed an amendment to the proposed rule change on October 26, 1999. The amendment requested that the Commission grant accelerated approval to the amendment so that the Exchange could continue to apply the four percent add-on margin for all Cross-Rate FCO products until February 4, 2000. This would provide additional time for the Commission to consider the proposed rule change, while ensuring that trading of these products would continue following November 4, 1999, when the existing four percent add-on margin would have expired.

Based on the data supplied by the Exchange on October 26, 1999 for the three-year period of July 16, 1996 through July 15, 1999, the Commentary .16 methodology would produce add-on margins for British pound/Deutsche mark and Deutsche mark/Japanese yen non-customized Cross-Rates (which are currently listed on the Exchange) of 3.5 percent and 4 percent, respectively, covering 99 percent and 97.5 percent confidence level, respectively. The British pound/Deutsche mark FCO contract would have been margined at a 99 percent confidence level because the extreme outlier test would have applied. The British pound/Japanese yen Cross-Rate contract, which is currently not listed on the Exchange, would have an add-on margin of 5 percent, covering 97.5 percent confidence level.

## III. Discussion

Upon careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] The Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, which requires, *inter alia*, that the rules of an exchange promote just and equitable principles of trade and facilitate transactions in securities.[12] In particular, the proposed rule change will make the required margin on non-customized Cross-Rate FCOs better reflect existing economic circumstances and therefore will better correlate the margin requirement with the risk associated with holding a short position in a non-customized Cross-Rate FCO.

The Exchange proposes to set the add-on margin based on the five-day price movements (excluding weekends) of the underlying currency relative to the base currency over the most recent three-year period, by setting the add-on margin percentage at a level that would cover those price movements at a specified confidence level, typically 97.5 percent.

[7] For foreign currency put options, ''out-of-the-money-amounts'' equal the aggregate exercise price of the option minus the product of units per foreign currency contract and the closing spot price. *See* Phlx Rule 722(d).

For foreign currency call options, ''out-of-the-money-amounts'' equal the product of units per foreign currency contract and the closing spot price minus the aggregate exercise price of the option. *See id.*

[8] The minimum add-on margin on any call carried ''short'' in a customer's account is equal to ¾% of the current market value of the underlying FCO contract; the minimum add-on margin on any such put option contract is equal to ¾% of the option's aggregate exercise price amount. *See id.*

[9] *See* Securities Exchange Act Release No. 41365 (May 4, 1999), 64 FR 25946 (May 13, 1999) SR–Phlx–99–12) (''1999 Order'').

[10] The underlying currency is the currency in which a foreign currency option settles. The base currency is the currency in which premiums are quoted and paid.

The Commission finds that the use of the Commentary .16 methodology to set add-on margins for non-customized Cross-Rate FCOs, in lieu of the fixed four percent requirement the Exchange currently uses, potentially provides a more economically meaningful margin. The currencies involved in the non-customized Cross-Rate FCOs that the Exchange is authorized to list and trade—the British pound, Deutsche mark, and Japanese yen—are all relatively stable currencies and it is reasonable to assume that those currencies' future volatility will be linked to their past volatility. Also, the Exchange has the authority to apply a higher add-on margin than required by the Commentary .16 methodology, when appropriate.[13] Use of the Commentary .16 methodology further would promote efficiency because the Exchange will not have to file a proposed rule change with the Commission each time Commentary .16 methodology changes the add-on margin levels.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 2, the Exchange made two general technical changes to Commentary .16 to Phlx Rule 722, by clarifying that Commentary .16 was applicable to non-customized Cross-Rate FCOs but not to customized Cross-Rate FCSs, and by clarifying that paragraph (c) of Commentary .16 focuses on currency pairs, *i.e.,* movements of currencies vis-a-vis each other. The amendment did not raise any new regulatory issues. Accordingly, the Commission believes that there is good cause to approve Amendment No. 2 to the proposal on an accelerated basis.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether the amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Room. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–99–30 and should be submitted by March 2, 2000.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Phlx–99–30) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–3089 Filed 2–9–00; 8:45 am]

**BILLING CODE 8010–01–M**

[11] In approving this rule, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] *See* Phlx Rule 722(i)(8).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3232, Amdt. 2]**

### State of Kentucky

In accordance with a notice received from the Federal Emergency Management Agency dated January 24, 2000, the above-numbered Declaration is hereby amended to include Hancock and Henderson Counties in the State of Kentucky as a disaster area due to damages caused by tornadoes, severe storms, torrential rains, and flash flooding that occurred on January 3–4, 2000.

In addition, applications for economic injury loans from small businesses located in the contiguous County of Breckinridge, Kentucky, and Perry, Posey, and Vanderburgh Counties in Indiana may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, *i.e.,* the deadline for filing applications for physical damage is March 10, 2000 and for economic injury the deadline is October 10, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 2, 2000.

**Bernard Kulik,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 00–3075 Filed 2–9–00; 8:45 am]

**BILLING CODE 8025–01–P**

## 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. Claimant's Medications—0960–0289. The Social Security Administration (SSA) uses Form HA–4632 to request that applicants for disability benefits provide information to facilitate processing their title II, Old-Age, Survivors and Disability Insurance (OASDI) and Title XVI, Supplemental Security Income (SSI) claims. The form elicits from the claimants an updated list of medications used by the claimants. It enables the Administrative Law Judge hearing the case to fully inquire into medical treatment the claimant is receiving and the effect of medications on the claimant's medical impairments. The respondents are applicants for OASDI and SSI benefits.

*Number of Respondents:* 171,939.

*Frequency of Response:* 1.

*Average Burden Per Response:* 15 minutes.

*Estimated Annual Burden:* 42,985 hours.

2. Statement of Employer—0960–0030. The information collected on Form SSA–7011 is needed by SSA to substantiate allegations of wages paid to workers when those wages do not appear in SSA's records of earnings and the worker does not have proof that payment was made. This information is

used to process claims for social security benefits and to resolve discrepancies in earnings records. The respondents are certain employers who can verify allegations of wages made by the wage earner.

*Number of Respondents:* 925,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 20 minutes.

*Estimated Annual Burden:* 308,333 hours.

3. Request for SSI Benefit Estimate—0960–0492. SSA uses Form SSA–3716 for an SSI beneficiary who wishes to request a 5-month estimate of what their benefits would be if they should return to work in the future. The respondents are SSI recipients.

*Number of Respondents:* 50,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 5 minutes.

*Estimated Annual Burden:* 4,167 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. Vocational Rehabilitation ''301'' Program Development—0960–0282. The information on Form SSA–4290 is used by the Social Security Administration (SSA) to determine an individual's continued entitlement to disability benefits when that individual has medically recovered while allegedly participating in a State or alternate Vocational Rehabilitation (VR) program. The respondents are State or alternate VR agencies serving such beneficiaries.

*Number of Respondents:* 8,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 15 minutes.

*Estimated Annual Burden:* 2,000 hours.

2. Certificate of Election for Reduced Spouse's Benefits—0960–0398. SSA uses the information collected on Form SSA–25 to pay a qualified spouse who elects to receive a reduced benefit at an earlier age. The respondents are entitled spouses seeking reduced benefits.

*Number of Respondents:* 30,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 2 minutes.

*Estimated Annual Burden:* 1,000 hours.

3. Statement of Funds You Provided to Another, Statement of Funds You Received–0960–0481. Forms SSA–2854 & SSA–2855 are used by SSA to collect information in situations where the SSI claimant alleges that money was borrowed on an informal basis from a noncommercial lender, *e.g.,* a relative or friend, etc. These statements are completed by the borrower/claimant and the lender and are required to determine whether the proceeds from the transaction are/are not income to the borrower/claimant. If the transaction constitutes a bona fide loan, the proceeds are not income to the SSI borrower/claimant. The respondents are applicants for and recipients of SSI payments who borrow money on an informal (noncommercial) basis and individuals who lend money informally to SSI applicants and recipients.

*Number of Respondents:* 40,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 10 minutes.

*Estimated Annual Burden:* 6,667 hours.

(SSA Address): Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235

(OMB Address): Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC 20503

Dated: February 3, 2000.

**Frederick W. Brickenkamp,**

*Reports Clearance Office, Social Security Administration.*

[FR Doc. 00–3010 Filed 2–9–00; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF STATE

**[Public Notice No. 3212]**

### Preparatory Meeting for the 2000 International Telecommunication Union World Radiocommunication Conference (WRC–2000); Meeting

The Department of State announces an open meeting for the purpose of forming the United States delegation to the 2000 International Telecommuication Union (ITU) World Radiocommunication Conference (WRC–2000). This meeting will solicit expressions of interest in participating as a member of the U.S. Delegation to WRC–2000 and convey information regarding planned U.S. preparatory activities in advance of the WRC. The meeting will be held from 9:30 to noon on February 16, 2000 in the Dean Acheson Auditorium at the Department of State. Members of the general public may attend these meetings and join in the discussions, subject to the instructions of the Chair. Admission of public members will be limited to seating available. Entrance to the Department of State is controlled; people intending to attend any of these meetings should send a fax to 202–647–7407 not later than 24 hours before the meeting. This fax should provide the name of the meeting, (WRC–2000 Preparatory Meeting) and date of the meeting, your name, social security number, date of birth, and organizational affiliation. One of the following valid photo identifications will be required for admittance: US driver's license, US passport, US Government identification card. Enter from the 23rd Street entrance lobby; in view of escorting requirements, non-Government attendees should plan to arrive not later than 15 minutes before the meeting begins.

Dated: January 28, 2000.

**Richard C. Beaird,**

*Acting, U.S. Coordinator for International Communications & Information Policy, U.S. Department of State.*

[FR Doc. 00–3082 Filed 2–9–00; 8:45 am]

**BILLING CODE 4710–45–P**

## DEPARTMENT OF STATE

**[Public Notice 3218]**

### Meeting of the Cultural Property Advisory Committee

**AGENCY:** United States Department of State.

**ACTION:** Notice of meeting of the Cultural Property Advisory Committee.

The Cultural Property Advisory Committee will meet on Monday, March 13, 2000, from approximately 9 a.m. to 5 p.m., and on Tuesday, March 14, from approximately 9 a.m. to 2 p.m., at the Department of State, Annex 44, Room 840, 301 4th St., SW, Washington, DC. During its meeting the Committee will continue its review and investigation of a foreign government request submitted by the Government of the Republic of Bolivia to the Government of the United States of America filed under Article 9 of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Notification of receipt of this request appeared in the **Federal Register** on October 8, 1999. A second notice pertaining to this request appeared in the **Federal Register** on December 10,

1999. These notices may be found at *http://e.usia.gov/education/culprop.*

Bolivia believes its cultural patrimony to be in jeopardy from pillage. It seeks U.S. import restrictions on Pre-Columbian archaeological material such as artifacts made of stone, metal, ceramic, shell, bone, wood, textiles, featherwork, basketry, and Pre-Columbian human remains; and Colonial period and indigenous ethnological materials such as folklore costumes, textiles, featherwork, stonework, leatherwork, woodwork, metalwork, ceramics, religious imagery, musical instruments, and paintings.

The Committee's review of the request is carried out in accordance with provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*). A copy of the Act may be found at the web address posted above.

During its meeting on March 13, the Committee will hold an open session, 1:30–3:30 p.m., to receive public comment on the Bolivia request. The Committee also invites written comment and requests that both oral and written comments address the determinations that must be made about the Bolivia request pursuant to 19 U.S.C. 2602, Convention on Cultural Property Implementation Act. Other portions of the meeting on March 13–14 will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Written comments may be sent to Cultural Property, Department of State, Annex 44, 301 4th Street, SW, Rm. 247, Washington, DC 20547; or faxed to (202) 619–5177. Persons wishing to attend the open portion of the meeting on March 13, must notify the Cultural Property Office, (202) 619–6612, no later than 5 p.m., Thursday, March 9, 2000, to arrange for admission.

Dated: February 3, 2000.

**Evelyn S. Lieberman,**

*Under Secretary of State for Public Diplomacy and Public Affairs, Department of State.*

### Determination to Close the Meeting of the Cultural Property Advisory Committee, March 13–14, 2000

In accordance with 5 U.S.C. 552b(c)(9)(B), and 19 U.S.C. 2605(h), I hereby determine that portions of the meeting of the Cultural Property Advisory Committee on March 13–14, at which there will be deliberation of information the premature disclosure of which would be likely to significantly frustrate implementation of proposed actions, will be closed.

Dated: February 3, 2000.

**Evelyn S. Lieberman,**

*Under Secretary of State for Public Diplomacy and Public Affairs, Department of State.*

[FR Doc. 00–3084 Filed 2–9–00; 8:45 am]

**BILLING CODE 4710–11–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Aviation Proceedings, Agreements Filed During the Week Ending January 7, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

*Docket Number:* OST–2000–6723.
*Date Filed:* January 4, 2000.
*Parties:* Members of the International Air Transport Association.
*Subject:* PTC COMP 0559 dated 4 January 2000; Mail Vote 056 Resolution 011b—(Amending); Global Indicators; Intended effective date: 1 April 2000; for implementation 1 September 2000.

*Docket Number:* OST–2000–6730.
*Date Filed:* January 5, 2000.
*Parties:* Members of the International Air Transport Association.
*Subject:* PTC23 EUR–SEA 0086 dated 14 December 1999; Expedited Europe-South East Asia Resolution 002o; Intended effective date: 1 February 2000.

*Docket Number:* OST–2000–6742.
*Date Filed:* January 6, 2000.
*Parties:* Members of the International Air Transport Association.
*Subject:* PTC31 N&C/CIRC 0102 dated 26 November 1999 r1–r2; PTC31 N&C/CIRC 0108 dated 10 December 1999 r3–r9; PTC31 N&C/CIRC 0109 dated 10 December 1999 r10–r27; PTC31 N&C/CIRC 0110 dated 10 December 1999 r28–r43; Minutes—PTC31 N&C/CIRC 0013 dated 23 December 1999; Tables—PTC31 N&C/CIRC Fares 0047 dated 26 November 1999; PTC31 N&C/CIRC Fares 0048 dated 17 December 1999; PTC31 N&C/CIRC Fares 0050 dated 17 December 1999; Intended effective date: 1 April 2000.

*Docket Number:* OST–2000–6743.
*Date Filed:* January 6, 2000.
*Parties:* Members of the International Air Transport Association.
*Subject:* PTC31 N&C/CIRC 0111 dated 10 December 1999; TC31 North & Central Pacific—TC3–Central America, South America r1–r17; Tables—PTC31 N&C/CIRC Fares 0050; dated 17 December 1999; Intended effective date: 1 April 2000.

*Docket Number:* OST–2000–6754.
*Date Filed:* January 7, 2000.
*Parties:* Members of the International Air Transport Association.
*Subject:* PTC12 MATL–EUR 0042 dated 3 December 1999; Mid Atlantic-Europe Resolutions r1–r32; Minutes—PTC12 MATL–EUR 0043; dated 21 December 1999; Tables—PTC12 MATL–EUR Fares 0012; dated 17 December 1999; Intended effective date: 1 March 2000.

*Docket Number:* OST–2000–6755.
*Date Filed:* January 7, 2000.
*Parties:* Members of the International Air Transport Association.
*Subject:* Part 1 PTC2 EUR 0286 dated 7 December 1999 r1–r38; PTC2 EUR 0287 dated 7 December 1999 r39–r42; PTC2 EUR 0288 dated 7 December 1999 r43; PTC2 EUR 0289 dated 7 December 1999 r44–r48; TC2 Within Europe Resolutions r1–r48; Minutes—PTC2 EUR 0284 dated 12 November 1999; Part 2 Tables—PTC2 EUR Fares 0038, Part I dated 10 December 1999; Part 3 PTC2 EUR Fares 0038, Part II dated 10 December 1999; Part 4 PTC2 EUR Fares 0038, Part III dated 10 December 1999; Part 5 PTC2 EUR Fares 0038 Attachment B: Notes dated 10 December 1999; Intended effective date: 1 March, 26 March, 31 March and 1 April 2000.

**Dorothy W. Walker,**

*Federal Register Liaison.*

[FR Doc. 00–2555 Filed 2–9–00; 8:45 am]

**BILLING CODE 4910–62–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Controller Pilot Data Link Communications Industry Day

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), (5 U.S.C., Appendix 2), notice is hereby given of an Industry Day to discuss Controller Pilot Data Link Communications (CPDLC), to be held February 29, 2000 from 8:30 a.m. to 3:30 p.m., at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC., in the third floor auditorium. This meeting is sponsored by the FAA Office of Communications, Navigation, and Surveillance Systems.

Presentations will include an overview of the CPDLC project from government and industry representatives. These presentations will provide the aviation community with current information about the status of CPDLC. There will be a panel discussion in the afternoon and time

will be allocated to questions, answers, and general discussions.

Attendance is open to the interested public but limited to space availability. With the approval of the Product Lead for Aeronautical Data Link, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact Mr. James H. Williams, FAA, at (202) 493–4693. Members of the public may present a written statement to the Product Lead at any time.

Issued in Washington, DC, on February 2, 2000.

**Carl P. McCullough,**

*Director, Office of Communications, Navigation and Surveillance Systems.*

[FR Doc. 00–3078 Filed 2–9–00; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA; Special Committee 147; Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 147 meeting to be held February 29–March 1, 2000, starting at 9 a.m. each day. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will include: February 29: (1) Requirements Working Group Meeting. March 1: 9 a.m.–1 p.m. (2) Requirements Working Group Meeting continues; 1 p.m.–5 p.m. (3) Plenary Session: (a) Welcome and Introductory Remarks: (b) Review and Approve Previous Meeting; (c) Report and Discuss Requirements Working Group Activities; (d) Discuss Future SC–147 Activities and Plans; (4) Other Business; (5) Date and Location of Next Meeting; (6) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 4, 2000.

**Janice L. Peters,**

*Designated Official.*

[FR Doc. 00–3079 Filed 2–9–00; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA; Joint Special Committee 190 (Application Guidelines for DO–178B (Software) /EUROCAE Working Group 52

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Joint Special Committee (SC)–190 /EUROCAE Working Group (WG)–52 meeting to be held March 6–10, 2000, starting at 9:00 am. on Monday, March 6. The meeting will be held at The Boeing Long Beach Division, 3855 Lakewood Blvd., Long Beach, California.

The agenda will include the following: March 6: 9 a.m.–3 p.m. (1) Plenary Session; (a) Welcome and Introductory Remarks; (b) Review and Approve Minutes of Previous Meeting; (c) Review New Process; (d) Review Status of Certification Authorities Software Team (CAST) & FAA Notices; (e) Review Reports of Editorial and Executive Committees, Issue List and Matrix, Subgroup Executive Summaries, and CNS/ATM; (f) Preliminary Assessment of Papers (Stand-up Plenary Model); (g) Subgroup working sessions begin. March 7: 8:30 a.m. (2) Subgroup working sessions. March 8: 8:30 a.m. (3) Plenary Session reconvenes: (a) Plenary Approval Vote on Frequently Asked Questions (FAQ) & Discussion Papers (DP) seen Monday: (b) Plenary Assessment of New FAQs & DPs; 1 p.m. (4) Subgroup working sessions reconvene. March 9: (5) Subgroup working sessions continue. March 10: (6) Plenary Approval Process begins; (7) New Business; (8) Review Action Items and Plans; (9) Date and Location of Next Meeting; (10) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC. 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site) or point of contact on-site: Mr. E.W. Piper at (562) 593–1029 (phone); *elmo.w.piper@boeing.com* (email). Members of the public may present a written statement to the committee at any time.

Dated: Issued in Washington, DC, on February 4, 2000.

**Janice L. Peters,**

*Designated Official.*

[FR Doc. 00–3080 Filed 2–9–00; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 33831]**

### Wisconsin Chicago Link Ltd.—Lease Exemption—Pennsylvania Lines LLC

Wisconsin Chicago Link Ltd. (WCLL), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to lease from Pennsylvania Lines LLC (PRR) approximately 1.9 miles of rail line (the Panhandle Line) of the former Pittsburgh Cincinnati, Chicago & St. Louis Railroad Company (PCC&StL) in Chicago, Cook County, IL.[1] The Panhandle Line extends between (1) A connection with CSX Transportation, Inc. (CSXT) via the Altenheim Subdivision of The Baltimore and Ohio Chicago Terminal Railroad Company at Ogden Junction near Rockwell Street (approximately PCC&StL milepost 309.8), and (2) A point (approximately PCC&StL milepost 307.9) 600 feet north of the north bank of the Chicago Sanitary and Ship Canal, near the Ash Street Interlock. WCLL will also obtain incidental, overhead trackage rights extending south from PCC&StL milepost 307.9, a distance of approximately 2 miles, to present or future connections with the rail lines of NS, Canadian National/Grand Trunk Western Railroad, Inc., Illinois Central Railroad Company, Chicago, Central & Pacific

[1] Applicants report that the lease of the rail line was the subject of an October 17, 1997 settlement agreement between Norfolk Southern Corporation and Norfolk Southern Railway Company (NS), which now control and operate PRR, and Wisconsin Central Transportation Corporation (WCTC) and its then-existing carrier affiliates. The Panhandle Line was formerly owned by Consolidated Rail Corporation. Pursuant to a transaction approved by the Board, and consummated by the parties on June 1, 1999, PRR was assigned assets designated to be operated as part of the NS rail system (the PRR-Allocated Assets). *See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation,* STB Finance Docket No. 33388, Decision No. 89 (STB served July 23, 1998). Applicants further report that the lease provides for WCLL's acquisition of a leasehold interest in the Panhandle Line, a portion of the associated right-of-way, and certain incidental overhead trackage rights.

Railroad Company and The Burlington Northern and Santa Fe Railway Company.

WCLL states that the Panhandle Line is currently out of service and that WCLL intends to reconstruct the line and add additional capacity. WCLL further states that, initially, operations on the line will be conducted by NS, CSXT, and Wisconsin Central Ltd. pursuant to trackage rights. WCLL indicates that it anticipates that CSXT will dispatch a portion of the Panhandle Line.

This transaction is related to STB Finance Docket No. 33811, *Wisconsin Central Transportation Corporation—Continuance in Control Exemption—Wisconsin Chicago Link Ltd.,* wherein WCTC has filed a petition for exemption from the requirements of 49 U.S.C. 11323 to control WCLL. The stock of WCLL has been placed in an independent voting trust pursuant to 49 CFR 1013 pending a Board decision in STB Finance Docket No. 33811.

The transaction is scheduled to be consummated on or shortly after February 4, 2000.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33831, 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 William C. Sippel, Esq., Oppenheimer Wolff & Donnelly (Illinois), 180 North Stetson Avenue, Two Prudential Plaza, 45th Floor, Chicago, IL 60601–6710.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: February 3, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–2970 Filed 2–9–00; 8:45 am]

**BILLING CODE 4915–00–P**

## DEPARTMENT OF THE TREASURY

### Customs Service

### Conclusion of the National Customs Automation Program Prototype

**AGENCY:** U.S. Customs Service, Treasury.

**ACTION:** General notice.

**SUMMARY:** This document announces Customs conclusion of the National Customs Automation Program Prototype (NCAP/P). Prototype operations must be discontinued due to the cessation of funding for the NCAP/P automated system. Upon prototype conclusion, NCAP/P participants must cease entering goods and transmitting data under NCAP/P procedures. This document also provides instructions to participants on procedures for processing prototype entries using non-NCAP/P systems.

**DATE:** Termination of the NCAP/P will be effective as of March 13, 2000. No new applications for participation will be accepted as of February 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Comments and requests regarding NCAP/P termination may be directed to Keith Fleming, U.S. Customs Service at (202) 927–1049, or Virginia Noordewier, U.S. Customs Service at (202) 927–3296.

**SUPPLEMENTARY INFORMATION:**

#### Background

The vision of the Automated Commercial Environment (ACE) is to establish a Trade Compliance Process that achieves high levels of compliance and reduces the cycle time required for imports to clear Customs. NCAP/P is the prototype for the first implementation of this automated process.

Customs first announced its intention to implement the NCAP/P in the **Federal Register** on March 27, 1997 (62 FR 14731); the test was modified with updated procedures in a notice published in the **Federal Register** on August 21, 1998 (63 FR 44949) which replaced the previous notice. Customs also published a notice in the **Federal Register** on October 15, 1998 (63 FR 55426), announcing the proposed expansion of the prototype to five additional ports of entry.

The NCAP/P plan called for a four-stage implementation of new cargo processing features over a period of up to three years. The NCAP/P commenced on April 27, 1998 with the implementation of the cargo release stage. Customs implemented the second stage on October 13, 1998, which provided for cargo release with examination. At the time of this termination, the third and fourth stages—entry summary/periodic payment and reconciliation—have not been implemented.

#### Procedures

Upon prototype conclusion, participants must immediately revert to non-NCAP/P processing for all cargo shipments.

A. As of the date 30 days from the date of publication of this document in the **Federal Register**, cargo release must be obtained through existing non-NCAP/P systems or procedures.

B. Cargo releases previously obtained through NCAP/P must be followed up by summary data and payments transmitted through existing non-NCAP/P systems, *e.g.,* the Automated Commercial System.

#### Prototype Evaluation

Upon the conclusion of the NCAP/P, an evaluation of the entire test will be conducted and the results published in the **Federal Register** and the Customs Bulletin.

Dated: February 4, 2000.

**Charles W. Winwood,**

*Assistant Commissioner, Office of Field Operations.*

[FR Doc. 00–3050 Filed 2–9–00; 8:45 am]

**BILLING CODE 4820–02–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 5498–MSA

**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 Form 5498–MSA, MSA or Medicare+Choice MSA Information.

**DATES:** Written comments should be received on or before April 10, 2000 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 form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* MSA or Medicare+Choice MSA Information.

*OMB Number:* 1545–1518.

*Form Number:* 5498–MSA.

*Abstract:* This form is used to report contributions to a medical savings account as required by Internal Revenue Code section 220(h).

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses or other for-profit organizations.

*Estimated Number of Responses:* 41,105.

*Estimated Time Per Response:* 10 min.

*Estimated Total Annual Burden Hours:* 6,988.

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: January 21, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–2989 Filed 2–9–00; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8281

**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 Form 8281, Information Return for Publicly Offered Original Issue Discount Instruments.

**DATES:** Written comments should be received on or before April 10, 2000 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 form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Information Return for Publicly Offered Original Issue Discount Instruments.

*OMB Number:* 1545–0887.

*Form Number:* 8281.

*Abstract:* Internal Revenue Code section 1275(c)(2) requires the furnishing of certain information to the IRS by issuers of publicly offered debt instruments having original issue discount. Regulations section 1.1275–3 prescribes that Form 8281 shall be used for this purpose. The information on Form 8281 is used to update Publication 1212, List of Original Issue Discount Instruments.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses or other for-profit organizations.

*Estimated Number of Responses:* 500.

*Estimated Time Per Response:* 6 hr., 22 min.

*Estimated Total Annual Burden Hours:* 3,180.

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: January 20, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–2990 Filed 2–9–00; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 4684

**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 Form 4684, Casualties and Thefts.

**DATES:** Written comments should be received on or before April 10, 2000 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 form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Casualties and Thefts.

*OMB Number:* 1545–0177.

*Form Number:* 4684.

*Abstract:* Form 4684 is used by taxpayers to compute their gain or loss from casualties or thefts, and to summarize such gains and losses. The data is used to verify that the correct gain or loss has been computed.

*Current Actions:* There are no changes being made to the form at this time.

*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:* 300,000.

*Estimated Time Per Respondent:* 3 hr., 1 min.

*Estimated Total Annual Burden Hours:* 906,000.

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: January 21, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–2991 Filed 2–9–00; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1099–MSA

**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 Form 1099–MSA, Distributions From an MSA or Medicare+Choice MSA.

**DATES:** Written comments should be received on or before April 10, 2000 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 form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Distributions From an MSA or Medicare+Choice MSA.

*OMB Number:* 1545–1517.

*Form Number:* 1099–MSA.

*Abstract:* This form is used to report distributions from a medical savings account as required by Internal Revenue Code section 220(h).

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Responses:* 25,839.

*Estimated Time Per Response:* 10 min.

*Estimated Total Annual Burden Hours:* 4,134.

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: January 21, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–2992 Filed 2–9–00; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 2163(c)

**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 Form 2163(c), Employment—Reference Inquiry.

**DATES:** Written comments should be received on or before April 10, 2000 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 form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

Title: Employment—Reference Inquiry.

*OMB Number:* 1545–0274.

*Form Number:* 2163(c).

*Abstract:* Form 2163(c) is used by the Internal Revenue Service to verify past employment history and to question listed and developed references as to the character and integrity of current and potential Internal Revenue Service employees. The information received is incorporated into a report on which a security determination is based.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, business or other for-profit organizations, non-profit institutions, farms, Federal government, and state, local or tribal governments.

*Estimated Number of Respondents:* 20,000.

*Estimated Time Per Respondent:* 12 mins.

*Estimated Total Annual Burden Hours:* 4,000.

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: January 27, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–2993 Filed 2–9–00; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 6765

**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 Form 6765, Credit for Increasing Research Activies.

**DATES:** Written comments should be received on or before April 10, 2000 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 form(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Credit for Increasing Research Activities.

*OMB Number:* 1545–0619.

*Form Number:* 6765.

*Abstract:* IRC section 38 allows a credit against income tax (Determined under IRC section 41) for an increase in research activities in a trade or business. Form 6765 is used by businesses and individuals engaged in a trade or business to figure and report the credit. The data is used to verify that the credit claimed is correct.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and individuals.

*Estimated Number of Respondents:* 23,947.

*Estimated Time Per Respondent:* 22 hours, 22 minutes.

*Estimated Total Annual Burden Hours:* 535,694.

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: January 28, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–2994 Filed 2–9–00; 8:45 am]

**BILLING CODE 4830–01–U**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 5304-SIMPLE, Form 5305-SIMPLE, and Notice 98–4

**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 Form 5304–SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) (Not Subject to the Designated Financial Institution Rules), Form 5305–SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) (for Use With a Designated Financial Institution), and Notice 98–4, SIMPLE IRA Plan Guidance.

**DATES:** Written comments should be received on or before April 10, 2000 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 collections should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) (Not Subject to the Designated Financial Institution Rules) (Form 5304–SIMPLE); Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) (for Use With a Designated Financial Institution) (Form 5305–SIMPLE); SIMPLE IRA Plan Guidance (Notice 98–4).

*OMB Number:* 1545–1502.

*Form Number:* Form 5304–SIMPLE, Form 5305–SIMPLE, and Notice 98–4.

*Abstract:* Form 5304–SIMPLE is a model SIMPLE IRA agreement that was created to be used by an employer to permit employees who are not using a designated financial institution to make salary reduction contributions to a SIMPLE IRA described in Internal Revenue Code section 408(p). Form 5305–SIMPLE is also a model SIMPLE IRA agreement, but it is for use with a designated financial institution. Notice 98–4 provides guidance for employers and trustees regarding how they can comply with the requirements of Code section 408(p) in establishing and maintaining a SIMPLE IRA, including information regarding the notification and reporting requirements under Code section 408.

*Current Actions:* There are no changes being made to the information collections at this time.

*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:* 600,000.

*Estimated Time Per Respondent:* 3 hr., 33 min.

*Estimated Total Annual Burden Hours:* 2,127,000.

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: January 19, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–2995 Filed 2–9–00; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Revenue Procedure 2000–16

**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 Revenue Procedure 2000–16, Employee Plans Compliance Resolution System.

**DATES:** Written comments should be received on or before April 10, 2000 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 revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Employee Plans Compliance Resolution System.

*OMB Number:* 1545–1673.

*Revenue Procedure Number:* Revenue Procedure 2000–16.

*Abstract:* The information requested in Revenue Procedure 2000–16 is required to enable the Internal Revenue Service to make determinations regarding the issuance of various types

of closing agreements and compliance statements. The issuance of closing agreements and compliance statements allows individual plans to continue to maintain their tax-qualified status. As a result, the favorable tax treatment of the benefits of the eligible employees is retained.

*Current Actions:* There are no changes being made to this revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals, business or other for-profit organizations, not-for-profit institutions, and state, local or tribal governments.

*Estimated Number of Respondents:* 4,242.

*Estimated Time Per Respondent:* 14 hours, 32 minutes.

*Estimated Total Annual Burden Hours:* 61,697.

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: January 27, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–2996 Filed 2–9–00; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Revenue Procedure 2000–20

**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 Revenue Procedure 2000–20, Master and Prototype Plans.

**DATES:** Written comments should be received on or before April 10, 2000 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 revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Master and Prototype Plans.

*OMB Number:* 1545–1674.

*Revenue Procedure Number:* Revenue Procedure 2000–20.

*Abstract:* The master and prototype revenue procedure sets forth the procedures for sponsors of master and prototype pension, profit-sharing and annuity plans to request an opinion letter from the Internal Revenue Service that the form of a master or prototype plan meets the requirements of section 401(a) of the Internal Revenue Code. The issuance of the opinion letter allows the sponsor to make retroactive changes to the form of the plan to conform with recent changes in statutory requirements.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local or tribal governments.

*Estimated Number of Respondents:* 266,530.

*Estimated Time Per Respondent:* 1 hour, 32 minutes.

*Estimated Total Annual Burden Hours:* 408,563.

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: January 24, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–2997 Filed 2–9–00; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[INTL–116–90]**

### 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 notice of proposed rulemaking, INTL–116–90, Allocation of Charitable Contributions (§ 1.861–8).

**DATES:** Written comments should be received on or before April 10, 2000 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 this regulation should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Allocation of Charitable Contributions.

*OMB Number:* 1545–1240.

*Regulation Project Number:* INTL–116–90.

*Abstract:* Section 1.861–8(e) of the regulation provides guidance concerning the allocation and apportionment of deductions for charitable contributions. It would require a taxpayer to allocate a deduction for charitable contributions solely to United States source gross income or solely to foreign source gross income in certain cases. The required records will be used on audit to verify the United States allocation of these deductions.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 500.

*Estimated Time Per Respondent:* 1 hour.

*Estimated Total Annual Burden Hours:* 500 hours.

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: January 19, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–2998 Filed 2–9–00; 8:45 am]

**BILLING CODE 4830–01–U**

---

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

**[INTL–485–89]**

## 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, INTL–485–89 (TD 8400), Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions (Section 988 Transactions) (Sections 1.988–0 through 1.988–5).

**DATES:** Written comments should be received on or before April 10, 2000 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 Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions (Section 988 Transactions).

*OMB Number:* 1545–1131.

*Regulation Project Number:* INTL–485–89.

*Abstract:* Internal Revenue Code sections 988(c)(1) (D) and (E) allow taxpayers to make elections concerning the taxation of exchange gain or loss on certain foreign currency denominated transactions. In addition, Code sections 988(a)(1)(B) and 988(d) require taxpayers to identify transactions which generate capital gain or loss or which are hedges of other transactions. This regulation provides guidance on making the elections and complying with the identification rules.

*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:* 5,000.

*Estimated Time Per Respondent:* 40 minutes.

*Estimated Total Annual Burden Hours:* 3,333.

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: January 21, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–2999 Filed 2–9–00; 8:45 am]

**BILLING CODE 4830–01–U**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Revenue Ruling 2000–8

**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 Revenue Ruling 2000–8, Negative Elections in Section 401(k) Plans.

**DATES:** Written comments should be received on or before April 10, 2000 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 revenue ruling should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Negative Elections in Section 401(k) Plans.

*OMB Number:* 1545–1605.

*Revenue Ruling Number:* Revenue Ruling 2000–8.

*Abstract:* Revenue Ruling 2000–8 describes certain criteria that must be met before an employee's compensation can be contributed to an employer's section 401(k) plan in the absence of an affirmative election by the employee. Generally, before an employer can automatically include its employees in the employer's section 401(k) plan, the employees must be notified by the employer that they can elect out and they must be given a reasonable period of time in which to do so.

*Current Actions:* There are no changes being made to this revenue ruling at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, and not-for-profit institutions.

*Estimated Number of Respondents:* 1,500.

*Estimated Time Per Respondent:* 1 hour, 10 minutes.

*Estimated Total Annual Burden Hours:* 1,750.

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: January 31, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–3000 Filed 2–9–00; 8:45 am]

**BILLING CODE 4830–01–U**

Federal Register

**Thursday,**
**February 10, 2000**

## Part II

# Environmental Protection Agency

**40 CFR Parts 80, 85, and 86**
**Control of Air Pollution From New Motor Vehicles: Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements; Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 80, 85, and 86**

**[AMS–FRL–6516–2]**

**RIN 2060–AI23**

## Control of Air Pollution From New Motor Vehicles: Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements

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

**ACTION:** Final rule.

**SUMMARY:** Today's action finalizes a major program designed to significantly reduce the emissions from new passenger cars and light trucks, including pickup trucks, vans, minivans, and sport-utility vehicles. These reductions will provide for cleaner air and greater public health protection, primarily by reducing ozone and PM pollution. The program is a comprehensive regulatory initiative that treats vehicles and fuels as a system, combining requirements for much cleaner vehicles with requirements for much lower levels of sulfur in gasoline. A list of major highlights of the program appears at the beginning of the **SUPPLEMENTARY INFORMATION** section of this **Federal Register**.

The program we are finalizing today will phase in a single set of tailpipe emission standards that will, for the first time, apply to all passenger cars, light trucks, and larger passenger vehicles operated on any fuel. This set of ''Tier 2 standards'' is feasible and the use of a single set of standards is appropriate because of the increased use of light trucks for personal transportation. The miles traveled in light trucks is increasing and the emissions from these vehicles are thus an increasing problem. This approach builds on the recent technology improvements resulting from the successful National Low-Emission Vehicles (NLEV) program.

To enable the very clean Tier 2 vehicle emission control technology to be introduced and to maintain its effectiveness, we are also requiring reduced gasoline sulfur levels nationwide. The reduction in sulfur levels will also contribute directly to cleaner air in addition to its beneficial effects on vehicle emission control systems. Refiners will generally install additional refining equipment to remove sulfur in their refining processes. Importers of gasoline will be required to import and market only gasoline meeting the sulfur standards. Today's action also introduces an averaging, banking, and trading program to provide flexibility for refiners and ease implementation of the gasoline sulfur control program.

The overall program focuses on reducing the passenger car and light truck emissions most responsible for causing ozone and particulate matter problems. Without today's action, we project that emissions of nitrogen oxides from these vehicles will represent as much as 40 percent of this ozone-forming pollutant in some cities, and almost 20 percent nationwide, by the year 2030.

Today's program will bring about major reductions in annual emissions of these pollutants and also reduce the emissions of sulfur compounds resulting from the sulfur in gasoline. For example, we project a reduction in oxides of nitrogen emissions of at least 856,000 tons per year by 2007 and 1,236,000 by 2010, the time frame when many states will have to demonstrate compliance with air quality standards. Emission reductions will continue increasing for many years, reaching at least 2,220,000 tons per year in 2020 and continuing to rise further in future years. In addition, the program will reduce the contribution of vehicles to other serious public health and environmental problems, including VOC, PM, and regional visibility problems, toxic air pollutants, acid rain, and nitrogen loading of estuaries.

Furthermore, we project that these reductions, and their resulting environmental benefits, will come at an average cost increase of less than $100 per passenger car, an average cost increase of less than $200 for light trucks, and an average cost increase of about $350 for medium-duty passenger vehicles, and an average increase of less than 2 cents per gallon of gasoline (or about $120 over the life of an average vehicle).

**DATES:** This rule is effective April 10, 2000.

The incorporation by reference of certain publications contained in this rule are approved by the Director of the Federal Register as of April 10, 2000.

**ADDRESSES:** *Comments:* All comments and materials relevant to today's action have been placed in Public Docket No. A–97–10 at the following address: U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M–1500, 401 M Street, S.W., Washington, D.C. 20460. EPA's Air Docket makes materials related to this rulemaking available for review at the above address (on the ground floor in Waterside Mall) from 8:00 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260–7548 and by facsimile at (202) 260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR Part 2.

**FOR FURTHER INFORMATION CONTACT:** Carol Connell, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor MI 48105; Telephone (734) 214–4349, FAX (734) 214–4816, E-mail connell.carol@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### Highlights of the Tier2/Gasoline Sulfur Program

*For cars, and light trucks, and larger passenger vehicles, the program will—*

- Starting in 2004, through a phase-in, apply for the first time the same set of emission standards covering passenger cars, light trucks, and large SUVs and passenger vehicles. These emission levels (''Tier 2 standards'') are feasible for these vehicles. The Tier 2 standards are also appropriate because of the increased use of light trucks for personal transportation—the miles traveled in light trucks is increasing and the emissions from these vehicles are thus an increasing problem.
- Introduce a new category of vehicles, ''medium-duty passenger vehicles,'' thus bringing larger passenger vans and SUVs into the Tier 2 program.
- During the phase-in, apply interim fleet emission average standards that match or are more stringent than current federal and California ''LEV I'' (Low-Emission Vehicle, Phase I) standards.
- Apply the same standards to vehicles operated on any fuel.
- Allow auto manufacturers to comply with the very stringent new standards in a flexible way while ensuring that the needed environmental benefits occur.
- Build on the recent technology improvements resulting from the successful National Low-Emission Vehicles (NLEV) program and improve the performance of these vehicles through lower sulfur gasoline.
- Set more stringent particulate matter standards.
- Set more stringent evaporative emission standards.

*For commercial gasoline, the program will—*

- Significantly reduce average gasoline sulfur levels nationwide as early as 2000, fully phased in in 2006. Refiners will generally add refining equipment to remove sulfur in their refining processes. Importers of gasoline will be required to import and market only gasoline meeting the sulfur limits.

• Provide for flexible implementation by refiners through an averaging, banking, and trading program.
• Encourage early introduction of cleaner fuel into the marketplace through an early sulfur credit and allotment program.
• Apply temporary gasoline sulfur standards to certain small refiners and gasoline marketed in a limited geographic area in the western U.S.
• Enable the new Tier 2 vehicles to meet the emission standards by greatly reducing the degradation of vehicle emission control performance from sulfur in gasoline. Lower sulfur gasoline also appears to be necessary for the introduction of advanced technologies that promise higher fuel economy but are very susceptible to sulfur poisoning (for example, gasoline direct injection engines).
• Reduce emissions from NLEV vehicles and other vehicles already on the road.

**Regulated Entities**

This action will affect you if you produce new motor vehicles, alter individual imported motor vehicles to address U.S. regulation, or convert motor vehicles to use alternative fuels. It will also affect you if you produce, distribute, or sell gasoline motor fuel.

The table below gives some examples of entities that may have to comply with the regulations. But because these are only examples, you should carefully examine these and existing regulations in 40 CFR parts 80 and 86. If you have questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

| Category | NAICS codes [a] | SIC Codes [b] | Examples of potentially regulated entities |
|---|---|---|---|
| Industry | 336111 | 3711 | Motor Vehicle Manufacturers. |
| | 336112 | | |
| | 336120 | | |
| Industry | 336311 | 3592 | Alternative fuel vehicle converters. |
| | 336312 | 3714 | |
| | 422720 | 5172 | |
| | 454312 | 5984 | |
| | 811198 | 7549 | |
| | 541514 | 8742 | |
| | 541690 | 8931 | |
| Industry | 811112 | 7533 | Commercial Importers of Vehicles and Vehicle Components. |
| | 811198 | 7549 | |
| | 541514 | 8742 | |
| Industry | 324110 | 2911 | Petroleum Refiners. |
| Industry | 422710 | 5171 | Gasoline Marketers and Distributors. |
| | 422720 | 5172 | |
| Industry | 484220 | 4212 | Gasoline Carriers. |
| | 484230 | 4213 | |

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

**Access to Rulemaking Documents Through the Internet**

Today's action is available electronically on the day of publication from the Office of the Federal Register Internet Web site listed below. Electronic copies of this preamble and regulatory language as well as the Response to Comments document, the Regulatory Impact Analysis and other documents associated with today's final rule are available from the EPA Office of Mobile Sources Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for connecting to the Internet.

Federal Register Web Site: http://www.epa.gov/docs/fedrgstr/epa-air/ (Either select a desired date or use the Search feature.)

Office of Mobile Sources (OMS) Web Site: http://www.epa.gov/oms/ (Look in ''What's New'' or under the ''Automobiles'' 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.

**Outline of This Preamble**

I. Introduction
A. What Are the Basic Components of the Program?
1. Vehicle Emission Standards
2. Gasoline Sulfur Standards
B. What Is Our Statutory Authority for Today's Action?
1. Light-Duty Vehicles and Trucks
2. Gasoline Sulfur Controls
C. The Tier 2 Study and the Sulfur Staff Paper
D. Relationship of Diesel Fuel Sulfur Control to the Tier 2/Gasoline Sulfur Program
II. Tier 2 Determination
A. There Is a Substantial Need for Further Emission Reductions in Order To Attain and Maintain National Ambient Air Quality Standards
B. More Stringent Standards for Light-Duty Vehicles and Trucks Are Technologically Feasible
C. More Stringent Standards for Light-Duty Vehicles and Trucks Are Needed and Cost Effective Compared to Available Alternatives
III. Air Quality Need For and Impact of Today's Action
A. Americans Face Serious Air Quality Problems That Require Further Emission Reductions
B. Ozone
1. Background on Ozone Air Quality
2. Additional Emission Reductions Are Needed To Attain and Maintain the Ozone NAAQS.
a. Summary
b. Ozone Modeling Presented in Our Proposal and Supplemental Notice
c. Updated and Additional Ozone Modeling
d. Results and Conclusions
e. Issues and Comments Addressed
f. 8-Hour Ozone
3. Cars and Light-Duty Trucks Are a Big Part of the $NO_X$ and VOC Emissions, and Today's Action Will Reduce This Contribution Substantially
4. Ozone Reductions Expected From This Rule
C. Particulate Matter
1. Background on PM
2. Need for Additional Reductions to Attain and Maintain the $PM_{10}$ NAAQS
3. $PM_{25}$ Discussion
4. Emission Reductions and Ambient PM Reductions
D. Other Criteria Pollutants: Carbon Monoxide, Nitrogen Dioxide, Sulfur Dioxide
E. Visibility

F. Air Toxics
G. Acid Deposition
H. Eutrophication/Nitrification
I. Cleaner Cars and Light Trucks Are Critically Important to Improving Air Quality
IV. What Are the New Requirements for Vehicles and Gasoline?
A. Why Are We Proposing Vehicle and Fuel Standards Together?
1. Feasibility of Stringent Standards for Light-Duty Vehicles and Light-Duty Trucks a. Gasoline Fueled Vehicles i. LDVs and LDT1s–LDT4s ii. Medium-Duty Passenger Vehicles (MDPVs) b. Diesel Vehicles
2. Gasoline Sulfur Control Is Needed To Support the Proposed Vehicle Standards a. How Does Gasoline Sulfur Affect Vehicle Emission Performance? b. How Large Is Gasoline Sulfur's Effect on Emissions? c. Sulfur's Negative Impact on Tier 2 Catalysts d. Sulfur Has Negative Impacts on OBD Systems
B. Our Program for Vehicles
1. Overview of the Vehicle Program a. Introduction b. Corporate Average NOx Standard c. Tier 2 Exhaust Emission Standard ''Bins' d. Schedules for Implementation i. Implementation Schedule for Tier 2 LDVs and LLDTs ii. Implementation Schedule for Tier 2 HLDTs e. Interim Standards i. Interim Exhaust Emission Standards for LDV/LLDTs ii Interim Exhaust Emission Standards for HLDTs iii. Interim Programs Will Provide Reductions Over Previous Standards f. Generating, Banking, and Trading NOx Credits
2. Why Are We Finalizing the Same Set of Standards for Tier 2 LDVs and LDTs?
3. Why Are We Finalizing the Same Standards for Both Gasoline and Diesel Vehicles?
4. Key Elements of the Vehicle Program a. Basic Exhaust Emission Standards and ''Bin'' Structure i. Why Are We Including Extra Bins? b. The Program Will Phase In the Tier 2 Vehicle Standards Over Several Years i. Primary Phase-in Schedule
ii. Alternative Phase-in Schedule
c. Manufacturers Will Meet a ''Corporate Average'' $NO_X$ Standard
d. Manufacturers Can Generate, Bank, and Trade $NO_X$ Credits
i. General Provisions
ii. Averaging, Banking and Trading of $NO_X$ Credits Fulfills Several Goals
iii. How Manufacturers Can Generate and Use $NO_X$ Credits
iv. Manufacturers Can Earn and Bank Credits for Early $NO_X$ Reductions
v. Tier 2 $NO_X$ Credits Will Have Unlimited Life
vi. $NO_X$ Credit Deficits Can Be Carried Forward
vii. Encouraging the Introduction of Ultra Clean Vehicles
e. Interim Standards
i. Interim Exhaust Emission Standards for LDV/LLDTs
ii. Interim Exhaust Emission Standards for HLDTs
f. Light-Duty Evaporative Emission Standards
g. Passenger Vehicles Above 8,500 Pounds GVWR
C. Our Program for Controlling Gasoline Sulfur
1. Gasoline Sulfur Standards for Refiners and Importers
a. Standards and Deadlines That Refiners/Importers Must Meet
i. What Are the Per-Gallon Caps on Gasoline Sulfur Levels in 2004 and Beyond?
ii. What Standards Must Refiners/Importers Meet on a Corporate Average Basis?
iii. What Standards Must Be Met by Individual Refineries/Importers?
b. Standards and Deadlines for Refiners/Importers Which Provide Gasoline to the Geographic Phase-in Area (GPA)
i. Justification for Our Geographic Phase-in Approach
ii. What Is the Geographic Phase-in Area and How Was It Established?
iii. Standards/Deadlines for Gasoline Sold in the Geographic Phase-in Area
iv. What Are the Per-Gallon Caps on Gasoline Sulfur Levels in the Phase-in Area?
v. How Do Refiners/Importers Account for GPA Fuel in Their Corporate Average Calculations?
vi. How Do Refiners/Importers Apply for the Geographic Phase-in Area Standards?
vii. How Will EPA Establish the GPA in Adjacent States?
c. How Does the Sulfur Averaging, Banking, and Trading Program Work?
i. Generating Allotments Prior to 2004
ii. Generating Allotments in 2004 and 2005
iii. Using Allotments in 2004 and 2005
iv. How Long Do Allotments Last?
v. Establishing Individual Refinery Sulfur Baselines for Credit Generation Purposes
vi. Generating Sulfur Credits Prior to 2004
vii. Generating Sulfur Credits in 2004 and Beyond
viii. Using Sulfur Credits
ix. How Long Do Credits Last?
x. Conversion of Allotments Into Credits
d. How are State Sulfur Programs Affected by EPA's Program?
2. Hardship Provision for Qualifying Refiners
a. Hardship Provision for Qualifying Small Refiners
i. How Are Small Refiners Defined?
ii. Standards That Small Refiners Must Meet
iii. How Do Small Refiners Apply for Small Refiner Status?
iv. How Do Small Refineries Apply for a Sulfur Baseline?
v. Volume Limitation on Use of a Small Refinery Standard
vi. Extensions Beyond 2007 for Small Refiners
vii. Can Small Refiners Participate in the ABT Program?
b. Temporary Waivers From Low Sulfur Requirements in Extreme Unforeseen Circumstances
c. Temporary Waivers Based on Extreme Hardship Circumstances
3. Streamlining of Refinery Air Pollution Permitting Process
a. Brief Summary of Proposal
b. Significant Comments Received
c. Today's Action
i. Major New Source Review
ii. Environmental Justice
D. What Are the Economic Impacts, Cost Effectiveness and Monetized Benefits of the Tier 2 Program?
1. What Are the Estimated Costs of the Vehicle Standards?
2. Estimated Costs of the Gasoline Sulfur Standards
3. What Are the Aggregate Costs of the Tier 2/Gasoline Sulfur Final Rule?
4. How Does the Cost-Effectiveness of This Program Compare to Other Programs?
a. Cost Effectiveness of this Program
b. How Does the Cost Effectiveness of This Program Compare With Other Means of Obtaining Mobile Source $NO_X$+NMHC Reductions?
c. How Does the Cost Effectiveness of This Program Compare With Other Known Non-Mobile Source Technologies for Reducing $NO_X$+NMHC?
5. Does the Value of the Benefits Outweigh the Cost of the Standards?
a. What Is the Purpose of This Benefit-Cost Comparison?
b. What Was Our Overall Approach to the Benefit-Cost Analysis?
c. What Are the Significant Limitations of the Benefit-Cost Analysis?
d. How Was the Benefit-Cost Analysis Changed From Proposal?
e. How Did We Perform the Benefit-Cost Analysis?
f. What Were the Results of the Benefit-Cost Analysis?
V. Other Vehicle-Related Provisions
A. Final Tier 2 CO, HCHO and PM Standards
1. Carbon Monoxide (CO) Standards
2. Formaldehyde (HCHO) Standards
3. Use of NMHC Data To Show Compliance With NMOG Standards; Alternate Compliance With Formaldehyde Standards.
4. Particulate Matter (PM) Standards
B. Useful Life
1. Mandatory 120,000 Mile Useful Life
2. 150,000 Mile Useful Life Certification Option
C. Supplemental Federal Test Procedure (SFTP) Standards
1. Background
2. SFTP Under the NLEV Program
3. SFTP Standards for the Interim and Tier 2 LDVs and LDTs: As Proposed
4. Final SFTP Standards for Interim and Tier 2 LDVs and LDTs
5. Adding a PM Standard to the SFTP Standards
6. Future Efforts Relevant to SFTP Standards
D. LDT Test Weight
E. Test Fuels
F. Changes to Evaporative Certification Procedures to Address Impacts of Alcohol Fuels
G. Other Test Procedure Issues
H. Small Volume Manufacturers
1. Special Provisions for Independent Commercial Importers (ICIs)
2. Hardship Provision for Small Volume Manufacturers
I. Compliance Monitoring and Enforcement

1. Application of EPA's Compliance Assurance Program, CAP2000
2. Compliance Monitoring
3. Relaxed In-Use Standards for Vehicles Produced During the Phase-in Period
4. Enforcement of the Tier 2 and Interim Corporate Average $NO_X$ Standards.
J. Addressing Environmentally Beneficial Technologies Not Recognized by Test Procedures
K. Adverse Effects of System Leaks
L. The Future Development of Advanced Technology and the Role of Fuels
M. Miscellaneous Provisions
VI. Gasoline Sulfur Program Compliance and Enforcement Provisions
A. Overview
B. Requirements for Foreign Refiners and Importers
1. Requirements for Foreign Refiners With Individual Refinery Sulfur Standards or Credit Generation Baselines
2. Requirements for Truck Importers
C. What Standards and Requirements Apply Downstream?
D. Testing and Sampling Methods and Requirements
1. Test Method for Sulfur in Gasoline
2. Test Method for Sulfur in Butane
3. Quality Assurance Testing
4. Requirement to Test Every Batch of Gasoline Produced or Imported
5. Exceptions to the Every-Batch Testing Requirement
6. Sampling Methods
7. Gasoline Sample Retention Requirements
E. Federal Enforcement Provisions for California Gasoline and for Use of California Test Methods to Determine Compliance
F. Recordkeeping and Reporting Requirements
1. Product Transfer Documents
2. Recordkeeping Requirements
3. Reporting Requirements
G. Exemptions for Research, Development, and Testing
H. Liability and Penalty Provisions for Noncompliance
I. How Will Compliance With the Sulfur Standards Be Determined?
VII. Public Participation
VIII. Administrative Requirements
A. Administrative Designation and Regulatory Analysis
B. Regulatory Flexibility
1. Potentially Affected Small Businesses
2. Small Business Advocacy Review Panel and the Evaluation of Regulatory Alternatives
C. Paperwork Reduction Act
D. Intergovernmental Relations
1. Unfunded Mandates Reform Act
2. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
3. Executive Order 13132 (Federalism)
E. National Technology Transfer and Advancement Act
F. Executive Order 13045: Children's Health Protection
G. Congressional Review Act
IX. Statutory Provisions and Legal Authority

## I. Introduction

Since the passage of the 1990 Clean Air Act Amendments, the U.S. has made significant progress in reducing emissions from passenger cars and light trucks. The National Low-Emission Vehicle (NLEV) and Reformulated Gasoline (RFG) programs are important examples of control programs that are in place and will continue to help reduce car and light-duty truck emissions into the near future.

Nonetheless, due to increasing vehicle population and vehicle miles traveled, passenger cars and light trucks will continue to be significant contributors to air pollution inventories well into the future. In fact, the emission contribution of light trucks and sport utility vehicles now matches that of passenger cars. (This is occurring because of the combination of growth in miles traveled by light trucks and the fact that their emission standards are currently less stringent than those of passenger cars). The program we describe below builds on the NLEV and RFG Phase II programs to develop a strong new national program to protect public health and the environment well into the next century. The program, while reducing VOC and other emissions, focuses especially on $NO_X$, because that is where the largest air quality gains can be achieved.

We have followed several overarching principles in developing this final rule:

- Design a strong national program that will assist states in every region of the country to meet their air quality objectives and that will ensure that cars and trucks continue to contribute a fair share to our nation's overall air quality solutions;
- View vehicles and fuels as an integrated system, recognizing that only by addressing both can the best overall emission performance be achieved;
- Establish a single set of emission standards that apply regardless of the fuel used and whether the vehicle is a car, a light truck, or a larger passenger vehicle;
- Provide compliance flexibilities that allow vehicle manufacturers and oil refiners to adjust to future market trends and honor consumer preferences;
- Not preclude the development of advanced low emission or fuel efficient technologies such as lean-burn engines; and
- Ensure sufficient leadtime for phase-in of the Tier 2 and gasoline sulfur program.

With these principles as background, we turn now to an overview of the vehicle and fuel aspects of the program. Sections I and II of this preamble will give you a brief overview of our program and our rationale for implementing it. Subsequent sections will expand on the air quality need, technological feasibility, economic impacts, and provide a detailed description of the specifics of the program. A public participation section reviews the process we followed in soliciting and responding to public comment. The final sections deal with several administrative requirements. You may also want to review our Final Regulatory Impact Analysis (RIA) and our Response to Comments document, both of which are found in the docket and on the Internet. They provide additional analyses and discussions of many topics raised in this preamble.

### *A. What Are the Basic Components of the Program?*

The nation's air quality, while certainly better than in the past, will nevertheless continue to expose tens of millions of Americans to unhealthy levels of air pollution well into the future in the absence of significant new controls on emissions from motor vehicles. EPA is therefore finalizing a major, comprehensive program designed to reduce emission standards for passenger cars, light trucks, and large passenger vehicles (including sport-utility vehicles, minivans, vans, and pickup trucks) and to reduce the sulfur content of gasoline. Under the program, automakers will produce vehicles designed to have very low emissions when operated on low-sulfur gasoline, and oil refiners will provide that much cleaner gasoline nationwide. In this preamble, we refer to the comprehensive program as the ''Tier 2/Gasoline Sulfur program.''

#### 1. Vehicle Emission Standards

Today's action sets new federal emission standards (''Tier 2 standards'') for passenger cars, light trucks, and larger passenger vehicles. The program is designed to focus on reducing the emissions most responsible for the ozone and particulate matter (PM) impact from these vehicles—nitrogen oxides ($NO_X$) and non-methane organic gases (NMOG), consisting primarily of hydrocarbons (HC) and contributing to ambient volatile organic compounds (VOC). The program will also, for the first time, apply the same set of federal standards to all passenger cars, light trucks, and medium-duty passenger vehicles. Light trucks include ''light light-duty trucks'' (or LLDTs), rated at less than 6000 pounds gross vehicle weight and ''heavy light-duty trucks'' (or HLDTs), rated at more than 6000

pounds gross vehicle weight).[1] ''Medium-duty passenger vehicles'' (or MDPVs) form a new class of vehicles introduced by this rule that includes SUVs and passenger vans rated at between 8,500 and 10,000 GVWR. The program thus ensures that essentially all vehicles designed for passenger use in the future will be very clean vehicles.

The Tier 2 standards finalized today will reduce new vehicle $NO_X$ levels to an average of 0.07 grams per mile (g/mi). For new passenger cars and light LDTs, these standards will phase in beginning in 2004, with the standards to be fully phased in by 2007.[2] For heavy LDTs and MDPVs, the Tier 2 standards will be phased in beginning in 2008, with full compliance in 2009.

During the phase-in period from 2004–2007, all passenger cars and light LDTs not certified to the primary Tier 2 standards will have to meet an interim average standard of 0.30 g/mi $NO_X$, equivalent to the current NLEV standards for LDVs and more stringent than NLEV for LDT2s (e.g., minivans).[3] During the period 2004–2008, heavy LDTs and MDPVs not certified to the final Tier 2 standards will phase in to an interim program with an average standard of 0.20 g/mi $NO_X$, with those not covered by the phase-in meeting a per-vehicle standard (i.e., an emissions ''cap'') of 0.6 g/mi $NO_X$ (for HLDTs) and 0.9 g/mi $NO_X$ (for MDPVs). The average standards for $NO_X$ will allow manufacturers to comply with the very stringent new standards in a flexible way, assuring that the average emissions of a company's production meet the target emission levels while allowing the manufacturer to choose from several more- and less-stringent emission categories for certification.

We are also setting stringent particulate matter standards that will be especially important if there is substantial future growth in the sales of diesel vehicles. Before 2004, we are establishing more stringent interim PM standards for most light trucks than exist now under NLEV. With higher sales of diesel cars and light trucks, they could easily contribute between one-half and two percent of the PM10 concentration allowed by the NAAQS, with some possibility that the contribution could be as high as 5 to 40 percent in some roadside situations with heavy traffic. These increases would make attainment even more difficult for 8 counties which we already predict to need further emission reductions even without an increase in diesel sales, and would put at risk another 18 counties which are now within 10 percent of a NAAQS violation. Thus, by including a more stringent PM standard in the program finalized today, we help address environmental concerns about the potential growth in the numbers of light-duty diesels on the road—even if that growth is substantial. The new requirements also include more stringent hydrocarbon controls (exhaust NMOG and evaporative emissions standards). We will also monitor the progress of the development of advanced technologies and the role of fuels.

2. Gasoline Sulfur Standards

The other major part of today's action will significantly reduce average gasoline sulfur levels nationwide. We expect these reductions could begin to phase in as early as 2000, with full compliance for most refiners occurring by 2006. Refiners will generally install advanced refining equipment to remove sulfur during the production of gasoline. Importers of gasoline will be required to import and market only gasoline meeting the sulfur limits. Temporary, less stringent standards will apply to a few small refiners through 2007. In addition, temporary, less stringent standards will apply to a limited geographic area in the western U.S. for the 2004–2006 period.

This significant new control of gasoline sulfur content will have two important effects. The lower sulfur levels will enable the much-improved emission control technology necessary to meet the stringent vehicle standards of today's rule to operate effectively over the useful life of the new vehicles. In addition, as soon as the lower sulfur gasoline is available, all gasoline vehicles already on the road will have reduced emissions—from less degradation of their catalytic converters and from fewer sulfur compounds in the exhaust.

Today's action will encourage refiners to reduce sulfur in gasoline as early as 2000. The program requires that most refiners and importers meet a corporate average gasoline sulfur standard of 120 ppm and a cap of 300 ppm beginning in 2004. By 2006, the cap will be reduced to 80 ppm and most refineries must produce gasoline averaging no more than 30 ppm sulfur. The program builds upon the existing regulations covering gasoline composition as it relates to emissions performance. It includes provisions for trading of sulfur credits, increasing the flexibility available to refiners for complying with the new requirements. We intend for the credit program to ease compliance uncertainties by providing refiners the flexibility to phase in early controls in 2000–2003 and use credits gained in these years to delay some control until as late as 2006. As finalized today, the program will achieve the needed environmental benefits while providing substantial flexibility to refiners.

*B. What Is Our Statutory Authority for Today's Action?*

1. Light-Duty Vehicles and Trucks

We are setting motor vehicle emission standards under the authority of section 202 of the Clean Air Act. Sections 202(a) and (b) of the Act provide EPA with general authority to prescribe vehicle standards, subject to any specific limitations otherwise included in the Act. Sections 202(g) and (h) specify the current standards for LDVs and LDTs, which became effective beginning in model year 1994 (''Tier 1 standards'').

Section 202(i) of the Act provides specific procedures that EPA must follow to determine whether standards more stringent than Tier 1 standards for LDVs and certain LDTs[4] are appropriate beginning between the 2004 and 2006 model years.[5] Specifically, we are required to first issue a study regarding ''whether or not further reductions in emissions from light-duty vehicles and light-duty trucks should be required * * *'' (the ''Tier 2 Study''). This study ''shall examine the need for further reductions in emissions in order to attain or maintain the national ambient air quality standards.'' It is also to consider: (1) The availability of technology to meet more stringent standards, taking cost, lead time, safety, and energy impacts into consideration; and (2) the need for, and cost effectiveness of, such standards, including consideration of alternative methods of attaining or maintaining the national ambient air quality standards. A certain set of ''default'' emission

[1] A vehicle's ''Gross Vehicle Weight Rating,'' or GVWR, is the curb weight of the vehicle plus its maximum recommended load of passengers and cargo.

[2] By comparison, the $NO_X$ standards for the National Low Emission Vehicle (NLEV) program, which will be in place nationally in 2001, range from 0.30 g/mi for passenger cars to 0.50 g/mi for medium-sized light trucks (larger light trucks are not covered). For further comparison, the standards met by today's Tier 1 vehicles range from 0.60 g/mi to 1.53 g/mi.

[3] There are also NMOG standards associated with both the interim and Tier 2 standards. The NMOG standards vary depending on which of various individual sets of emission standards manufacturers choose to use in complying with the average $NO_X$ standard. This ''bin'' approach is described more fully in section IV.B. of this preamble.

[4] LDTs with a loaded vehicle weight less than or equal to 3750 pounds, called LDT1s and LDT2s.

[5] Section 202(b)(1)(C) forbids EPA from promulgating mandatory standards more stringent than Tier 1 standards until the 2004 model year.

standards for these vehicle classes is among those options for new standards that EPA is to consider.

After the study is completed and the results are reported to Congress, EPA is required to determine by rulemaking whether: (1) There is a need for further emission reductions; (2) the technology for more stringent emission standards from the affected classes is available; and (3) such standards are needed and cost-effective, taking into account alternatives. If EPA answers ''yes'' to these questions, then the Agency is to promulgate new, more stringent motor vehicle standards (''Tier 2 standards'').

EPA submitted its report to Congress on July 31, 1998. Today's final rule makes affirmative responses to the three questions above (see Section II below) and sets new standards that are more stringent than the default standards in the Act.

EPA is also setting standards for larger light-duty trucks and MDPVs under the general authority of Section 202(a)(1) and 202(b) and under Section 202(a)(3) of the Act, which requires that standards applicable to emissions of hydrocarbons, $NO_X$, CO and PM from heavy-duty vehicles[6] reflect the greatest degree of emission reduction available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety. We are also setting standards for formaldehyde under our authority in sections 202(a) and (l).

2. Gasoline Sulfur Controls

We are adopting gasoline sulfur controls pursuant to our authority under Section 211(c)(1) of the Clean Air Act.[7] Under Section 211(c)(1), EPA may adopt a fuel control if at least one of the following two criteria is met: (1) The emission products of the fuel cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare; or (2) the emission products of the fuel will significantly impair emissions control systems in general use or which will be in general use were the fuel control to be adopted.

We are adopting gasoline sulfur controls based on both of these criteria. Under the first criterion, we believe that sulfur in gasoline used in Tier 1 and LEV technology vehicles contributes to ozone pollution, air toxics, and PM. Under the second criterion, we believe that gasoline sulfur in fuel will significantly impair the emissions control systems expected to be used in Tier 2 technology vehicles, as well as emissions control systems currently used in LEVs. Please refer to Section IV.C. below and to the Final Regulatory Impact Analysis (RIA) for more details of our analysis and findings. The RIA includes a more detailed discussion of EPA's authority to set gasoline sulfur standards, including a discussion of our conclusions relating to the factors required to be considered under Section 211(c).

*C. The Tier 2 Study and the Sulfur Staff Paper*

On July 31, 1998, EPA submitted its report to Congress containing the results of the Tier 2 study.[8] The study indicated that in the 2004 and later time frame, there will be a need for emission reductions to aid in meeting and maintaining the National Ambient Air Quality Standards (NAAQS) for both ozone and PM. Air quality modeling showed that in the 2007–2010 time frame, when Tier 2 standards will become fully effective, a number of areas will still be in nonattainment for ozone and PM even after the implementation of existing emission controls. The study also noted the continued existence of carbon monoxide (CO) nonattainment areas. It also found ample evidence that technologies will be available to meet more stringent Tier 2 standards. In addition, the study provided evidence that such standards could be implemented at a similar cost per ton of reduced pollutants as other programs aimed at similar air quality problems. Finally, the study identified several additional issues in need of further examination, including the relative stringency of car and light truck emission standards, the appropriateness of identical versus separate standards for gasoline and diesel vehicles, and the effects of sulfur in gasoline on catalyst efficiency. Section IV of this preamble describes the steps we have taken to follow up on the Tier 2 Study.

In addition, on May 1, 1998, EPA released a staff paper presenting EPA's understanding of the impact of gasoline sulfur on emissions from motor vehicles and exploring what gasoline producers and automobile manufacturers could do to reduce sulfur's impact on emissions. The staff paper noted that gasoline sulfur degrades the effectiveness of catalytic converters and that high sulfur levels in commercial gasoline could affect the ability of future automobiles—especially those designed for very low emissions—to meet more stringent standards in use. It also pointed out that sulfur control will provide additional benefits by lowering emissions from the current fleet of vehicles.

*D. Relationship of Diesel Fuel Sulfur Control to the Tier 2/Gasoline Sulfur Program*

In the NPRM, we raised the question of what if any changes to diesel fuel may be needed to enable diesel vehicles to meet the Tier 2 standards or any future heavy-duty diesel engine standards. Specifically, we raised the question of whether diesel sulfur levels need to be controlled. Since diesel fuel controls of any kind would have an impact on the refinery as a whole, and since in some cases (including potential diesel sulfur limits) could have implications for gasoline sulfur control, we requested comment on this issue in our proposal. We also indicated that we planned to release an Advance Notice of Proposed Rulemaking to solicit more information on this subject.

We published the ANPRM on May 13, 1999 (64 FR 26142). We are in the process of considering all of the comments received in response to the ANPRM and plan to issue a Notice of Proposed Rulemaking (NPRM) in early spring of 2000. We received many comments on the subject of diesel fuel control along with the comments submitted on the proposed Tier 2/Gasoline Sulfur regulations. We have prepared brief responses to some of these comments in the Response to Comments document, and will deal fully with these comments as part of the forthcoming NPRM on diesel fuel. We are taking no action on diesel fuel as part of today's action.

**II. Tier 2 Determination**

Based on the statutory requirements described above and the evidence provided in the Tier 2 Study and since its release, as described elsewhere in this preamble, EPA has determined that new, more stringent emission standards are indeed needed, technologically feasible, and cost effective.

[6] LDTs that have gross vehicle weight ratings above 6000 pounds are considered ''heavy-duty vehicles'' under the Act. See section 202(b)(3). For regulatory purposes, we refer to these LDTs as ''heavy light-duty trucks'' made up of LDT3s and LDT4s.

[7] We currently have regulatory requirements for conventional and reformulated gasoline adopted under Sections 211(c) and 211(k) of the Act, in addition to the ''substantially similar'' requirements for fuel additives of Section 211(f). These requirements have the effect of limiting sulfur levels in gasoline to some extent. See the Final RIA for more details.

[8] On April 28, 1998, EPA published a notice of availability announcing the release of a draft of the Tier 2 study and requesting comments on the draft. The final report to Congress included a summary and analysis of the comments EPA received.

*A. There Is a Substantial Need for Further Emission Reductions in Order to Attain and Maintain National Ambient Air Quality Standards*

EPA finds that there is a clear air quality need for new emission standards, based on the continuing air quality problems predicted to exist in future years. As the discussion in Section III.B. illustrates, 26 metropolitan areas are each certain or highly likely to need additional reductions. These areas are distributed across most regions of the U.S., and have a combined population of over 86 million. Section III.B. also shows that an additional 12 areas each has a moderate to significant probability of needing additional reductions, representing another 25 million people. This provides ample evidence that further emission reductions are needed to meet the 1-hour ozone NAAQS.

In addition to these ozone concerns, our analysis of $PM_{10}$ monitoring data and $PM_{10}$ projections indicates that 15 $PM_{10}$ nonattainment counties violated the $PM_{10}$ NAAQS in recent years, and that 8 of them with a 1996 population of almost 8 million have a high risk of failing to attain and maintain without more emission reductions. Eighteen other counties, with a population of 23 million have a significant risk of failing or are within 10 percent of violating the $PM_{10}$ NAAQS. It is also important to recognize that nonattainment areas remain for other criteria pollutants (*e.g.,* CO) and that non-criteria pollution (*e.g.,* air toxics and regional haze) also contributes to environmental and health concerns.

*B. More Stringent Standards for Light-Duty Vehicles and Trucks Are Technologically Feasible*

We find that emission standards significantly more stringent than current Tier 1 and National Low Emission Vehicle (NLEV) levels are technologically feasible. This is true both for the LDVs and LDTs specifically covered in section 202(i) and for the medium-duty passenger vehicles also included in today's final rule. Manufacturers are currently producing NLEV vehicles that meet more stringent standards than similar Tier 1 models. Our analysis shows that mainly through improvements in engine control software and catalytic converter technology, manufacturers can build and are building durable vehicles and trucks, including heavy light-duty trucks, which have very low emission levels.[9] Section IV.A. below discusses our feasibility conclusions in more detail.

Many current production vehicles are already certified at or near the Tier 2 standards. For year 2000 certification (although not yet complete), over 50 vehicle models have emissions at or below Tier 2 levels. In addition, we performed a demonstration program at our EPA laboratory that showed that even large vehicles, which would be expected to face the toughest challenges reaching Tier 2 emission levels, can do so with conventional technology. Others, including the Manufacturers of Emission Controls Association (MECA) and the State of California, have also performed demonstration programs, with similar results. Manufacturers have also certified LDVs and LDTs to NMOG and CO levels as much as 80 percent below Tier 1 standards. Furthermore, for passenger vehicles greater than 8500 lbs GVWR, we believe that by using technologies and control strategies similar to what will be used on lighter vehicles, manufacturers will be able to meet the Tier 2 emission standards.

Thus, we believe that, by the 2004–2009 time frame, manufacturers will be fully able to comply with the new Tier 2 emission standard levels. In addition, to facilitate manufacturers' efforts to meet these new standards, the Tier 2 regulations include a phase-in over several years and a corporate fleet average $NO_X$ standard, which will allow manufacturers to optimize the deployment of technology across their product lines with no loss of environmental benefit. Our analysis of the available technology improvements and the very low emission levels already being realized on these vehicles leads us to find that the standards adopted today are fully feasible for LDVs and LDTs.

*C. More Stringent Standards for Light-Duty Vehicles and Trucks Are Needed and Cost Effective Compared to Available Alternatives*

In this action, we also find that more stringent motor vehicle standards are both necessary and cost effective. As discussed above, substantial further reductions in emissions are needed to help reduce the levels of unhealthy air pollution to which millions of people are being exposed; in particular, we expect that a number of areas will not attain or maintain compliance with the National Ambient Air Quality Standards for ozone and $PM_{10}$ without such reductions. (We describe this further in Section III below and in the RIA.)

Furthermore, mobile sources are important contributors to the air quality problem. As we will explain more fully later in this preamble, in the year 2030, the cars and light trucks that are the subject of today's final rule are projected to contribute as much as 40 percent of the total $NO_X$ inventory in some cities, and almost 20 percent of nationwide $NO_X$ emissions. This situation would have been considerably worse without the NLEV program created by vehicle manufacturers, EPA, the Northeastern states, and others.

These emission reductions are clearly necessary to meet and maintain the 1-hour ozone NAAQS. We project that while the emission reductions of this program will lead to substantial progress in meeting and maintaining the NAAQS, many areas will still not come into attainment even with this magnitude of reductions.

We find that the Tier 2/Gasoline Sulfur program is a reasonable, cost-effective method of providing substantial progress towards attainment and maintenance of the NAAQS, costing about $2000 per ton of $NO_X$ plus hydrocarbon emissions reduced. This program will reduce annual $NO_X$ emissions by about 2.2 million tons per year in 2020 and 2.8 million tons per year in 2030 after the program is fully implemented. By way of comparison, when EPA established its 8-hour NAAQS for ozone, we identified several types of emission control programs that were reasonably cost effective. If all of the controls identified in that analysis costing less than $10,000/ton were implemented nationwide, they would produce $NO_X$ emission reductions of about 2.9 million tons per year. (That is, to achieve about the same emission reductions as the Tier 2/Gasoline Sulfur program, other alternative measures would have a significantly higher cost per ton). These emission reductions are clearly necessary to meet and maintain the one-hour ozone NAAQS. We project that while the emission reductions of this program will lead to substantial progress in meeting and maintaining the NAAQS, many areas will still not come into attainment even with this magnitude of reductions.

In addition, the magnitude of emission reductions that can be achieved by a comprehensive national Tier 2/Gasoline Sulfur program will be difficult to achieve from any other source category. Given the large contribution that light-duty mobile source emissions make to the national emissions inventory and the range of control programs ozone-affected areas

[9] The Final RIA contains a more detailed analysis, and Section IV.A. below has further discussion of the technological feasibility of our standards including detailed discussions of the various technology options that we believe manufacturers may use to meet these standards.

already have in place or would be expected to implement, we believe it will be very difficult, if not impossible, to meet (and maintain) the ozone NAAQS in a cost-effective manner without large emission reductions from LDVs and LDTs. We expect emissions from MDPVs to also play an increasing role.

Furthermore, we project that the Tier 2/Gasoline Sulfur program will significantly reduce direct and secondary particulate matter coming from LDVs, LDTs, and MDPVs—by about 36,000 tons per year of direct PM alone by 2030; large secondary PM reductions from significantly lower $NO_X$ and $SO_X$ emissions will add to the overall positive impact on airborne particles. These reductions will be very cost-effective compared to other measures to reduce PM pollution. Because direct PM emissions from gasoline vehicles are related the presence of sulfur in gasoline, no new emission control devices, beyond what manufacturers are expected to install to meet the $NO_X$ and NMOG standards, will be necessary to provide the reductions expected for these pollutants under the program. The standards will provide valuable insurance against increases in PM emissions from LDVs, LDTs, and MDPVs.

Finally, the Tier 2/Gasoline Sulfur program will significantly reduce CO emissions from LDVs, LDTs, and MDPVs. (See Chapter III of the RIA for an analysis of these reductions.) The technical changes needed to meet the NMOG standards will also result in CO reductions sufficient to meet the CO standards. Thus, these CO reductions will be very cost-effective since they will not require any new emission control devices beyond what manufacturers are expected to install to meet the $NO_X$ and NMOG standards.

We conclude, then, that today's final rule is a major source of ozone precursor, PM, and CO emission reductions when compared to other available options. The discussions of cost and cost effectiveness later in this preamble and in the RIA explain the derivation of cost effectiveness estimates and compares them to the cost effectiveness of other alternatives. That discussion indicates that this program will have a cost effectiveness comparable to both the Tier 1 and NLEV standards and will also be cost effective when compared to non-mobile source programs.

## III. Air Quality Need For and Impact Of Today's Action

In the absence of significant new controls on emission, tens of millions of Americans would continue to be exposed to unhealthy levels of air pollution. Emissions from passenger cars and light trucks are a significant contributor to a number of air pollution problems. Today's action will significantly reduce emissions from cars and light trucks and hence will significantly reduce the health risks posed by air pollution. This section summarizes the results of the analyses we performed to arrive at our determination that continuing air quality problems are likely to exist, that these air quality problems would be in part due to emissions from cars and light trucks, and that the new standards promulgated by today's final rule will improve air quality and mitigate other environmental problems.

### *A. Americans Face Serious Air Quality Problems That Require Further Emission Reductions*

Air quality in the United States continues to improve. Nationally, the 1997 air quality levels were the best on record for all six criteria pollutants. [10] In fact, the 1990s have shown a steady trend of improvement, due to reductions in emissions from most sources of air pollution, from factories to motor vehicles. Despite great progress in air quality improvement, in 1997 there were still approximately 107 million people nationwide who lived in counties with monitored air quality levels above the primary national air quality standards. [11] There are also people living in counties outside of the air monitoring network where violations of the NAAQS could have also occurred during the year. Moreover, unless there are reductions in overall emissions beyond those that are scheduled to be achieved by already committed controls, many of these Americans will continue to be exposed to unhealthy air.

Ambient ozone is formed in the lower atmosphere through a complex interaction of VOC and $NO_X$ emissions. Cars and light trucks emit a substantial fraction of these emissions. Ambient PM is emitted directly from cars and light trucks; it also forms in the atmosphere from $NO_X$, sulfur oxides ($SO_X$), and VOC, all of which are emitted by motor vehicles. When ozone exceeds the air quality standards, otherwise healthy people often have reduced lung function and chest pain, and hospital admissions for people with respiratory ailments like asthma increase; for longer exposures, permanent lung damage can occur. Similarly, fine particles can penetrate deep into the lungs. Results of studies suggest a likely causal role of ambient PM in contributing to reported effects, such as: premature mortality, increased hospital admissions, increased respiratory symptoms, and changes in lung tissue. When either ozone or PM air quality problems are present, those hardest hit tend to be children, the elderly, and people who already have health problems.

The health effects of high ozone and PM levels are not the only reason for concern about continuing air pollution. Ozone and PM also harm plants and damage materials. PM reduces visibility and contributes to significant visibility impairment in our national parks and monuments and in many urban areas. In addition, air pollution from motor vehicles contributes to cancer and other health risks, acidification of lakes and streams, eutrophication of coastal and inland waters, and elevated drinking water nitrate levels. These problems impose a substantial burden on public health, our economy, and our ecosystems.

In recognition of this burden, Congress has passed and subsequently amended the Clean Air Act. The Clean Air Act requires each state to have an approved State Implementation Plan (SIP) that shows how an area plans to meet its air quality obligations, including achieving and then maintaining attainment of all of the National Ambient Air Quality Standards (NAAQS), such as those for ozone and PM. The Clean Air Act also requires EPA to periodically re-evaluate the NAAQS in light of new scientific information. Our most recent re-evaluation of the ozone and PM NAAQS led us to revise both standards (62 FR 38856, July 18, 1997 and 62 FR 38652, July 18, 1997). These revised standards reflected additional information that had become available since the previous revision of the ozone and PM standards, respectively.

On May 14, 1999, a panel of the United States Court of Appeals for the District of Columbia Circuit reviewed EPA's revisions to the ozone and PM NAAQS and found, by a 2–1 vote, that sections 108 and 109 of the Clean Air Act, as interpreted by EPA, represent unconstitutional delegations of Congressional power. *American Trucking Ass'n., Inc. et al.,* v. *Environmental Protection Agency*, 175 F.3d 1027 (D.C. Cir. 1999). Among other things the Court remanded the record

[10] National Air Quality and Emissions Trend Report, 1997, Air Quality Trends Analysis Group, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, N.C., December 1998 (available on the World Wide Web at http://www/epa.gov/oar/aqtrnd97/).

[11] U.S. Environmental Protection Agency, *Latest Findings on National Air Quality: 1997 Status and Trends.* December 1998.

for the 8-hour ozone NAAQS and the $PM_{2.5}$ NAAQS to EPA. On October 29, 1999, EPA's petition for rehearing by the three judge panel was denied, with the exception that the panel modified its prior ruling regarding EPA's authority to implement a revised ozone NAAQS under Part D subpart 2 of Title I. EPA's petition for rehearing en banc by the full Circuit was also denied, although five of the nine judges considering the petition agreed to rehear the case.

As a result of the Court's decision, requirements on the States to implement the new 8-hour ozone standard have been suspended although the standard itself is still in force and the science behind it has generally not been contradicted. The court also did not question EPA's findings regarding the health effects of $PM_{10}$ and $PM_{2.5}$. However, due to the uncertainty regarding the status of the new NAAQS, we will rely on the preexisting NAAQS in determining air quality need under section 202(i) of the Act.

Carbon monoxide (CO) can cause serious health effects for those who suffer from cardiovascular disease, such as angina pectoris. There has been considerable progress in attaining the longstanding NAAQS for carbon monoxide, largely through more stringent standards for CO from motor vehicles. This progress has been made despite large increases in travel by vehicle. In 1997, there were about 9 million people living in three counties with CO concentrations above the level of the CO NAAQS. In the recent past, this figure has fluctuated up and down. At the present time there are 15 counties classified as serious CO nonattainment areas, all with a recent history of NAAQS violations. At this time, prospects for these areas attaining by the serious CO area attainment deadline of December 31, 2000 are uncertain. While violations of the NAAQS have not occurred recently in most of the other 33 counties still classified as nonattainment, even these must demonstrate that they will remain safely below the NAAQS for ten years despite expected growth in vehicle travel and other sources of CO emissions before they can be reclassified to attainment. Because of the large role of motor vehicles in causing high ambient CO concentrations, where there is reason to be concerned about CO attainment and maintenance, local areas look to national emission standards for most of the solution.

As discussed below, EPA has also finalized regulations that regions and states implement plans for protecting and improving visibility in the 156 mandatory Federal Class I areas as defined in Section 162(a) of the Clean Air Act. These areas are primarily national parks and wilderness areas.

To accomplish the goal of full attainment in all areas according to the schedules for the various NAAQS, and to achieve the goals of the visibility program, the federal government must assist the states by reducing emissions from sources that are not as practical to control at the state level as at the federal level. Vehicles and fuels move freely among the states, and they are produced by national or global scale industries. Most individual states are not in a position to regulate these industries effectively and efficiently. The Clean Air Act therefore gives EPA primary authority to regulate emissions from the various types of highway vehicles and their fuels. Our actions to reduce emissions from these and other national sources are a crucial and essential complement to actions by states to reduce emissions from more localized sources.

If we were not to adopt new standards to reduce emissions from cars and light trucks, emissions from these vehicles would remain a large portion of the emissions burden that causes elevated ozone and continued nonattainment with the ozone NAAQS, which in turn would affect tens of millions of Americans. Because the contribution of cars and light trucks to both local emissions and transported pollution would be so great, and the expected emission reduction shortfall in many areas is so large, further reductions from cars and light trucks will be an important element of many attainment strategies, especially for ozone in the 2007 to 2010 time frame. The contribution of these vehicles to PM exposure and PM nonattainment would also remain significant, and would increase considerably if diesel engines are used in more cars or light trucks. Furthermore, without new standards, steady annual increases in fleet size and miles of travel would outstrip the benefits of current emission controls, and would cause ozone-forming emissions from cars and trucks to grow each year starting about 2013.

The standards being promulgated by today's actions will reduce emissions of ozone precursors and PM precursors from cars and light trucks greatly. However, even with this decrease, many areas will likely still find it necessary to obtain additional reductions from other sources in order to fully attain the ozone and PM NAAQS. Their task will be easier and the economic impact on their industries and citizens will be lighter as a result of the standards promulgated by today's actions. Following implementation of the Regional Ozone Transport Rule, states will have already adopted emission reduction requirements for nearly all large sources of VOC and $NO_X$ for which cost-effective control technologies are known. Those that remain in nonattainment therefore will have to consider their remaining alternatives. Many of the state and local programs states may consider as alternatives are very costly, and the emissions impact from each additional emissions source subjected to new emissions controls would be considerably smaller than the emissions impact of the standards being promulgated today. Therefore, the emission reductions from these standards for gasoline, cars, and light trucks will ease the need for states to find first-time reductions from the mostly smaller sources that have not yet been controlled, including area sources that are closely connected with individual and small business activities. The emission reductions from the standards being promulgated today will also reduce the need for states to seek even deeper reductions from large and small sources already subject to emission controls.

We project that today's actions will also have important benefits for carbon monoxide, regional visibility, acid rain, and coastal water quality.

For these and other reasons discussed in this document, we have determined that significant emission reductions will still be needed by the middle of the next decade and beyond to achieve and maintain further improvements in air quality in many, geographically dispersed areas. We also believe that a significant portion of these emission reductions will be obtained by reducing emissions from cars and light trucks as a result of today's actions. We believe that such reductions are necessary (since cars and light trucks are such large contributors to current and projected ozone problems) and reasonable (since these reductions can be achieved at a reasonable cost compared to other alternative reductions).

The remainder of this section describes the health and environmental problems that today's actions will help mitigate and the expected health and environmental benefits of these actions. Ozone is discussed first, followed by PM, other criteria pollutants, visibility, air toxics, and other environmental impacts. The emission inventories and air quality analyses are explained more fully in the Regulatory Impact Analysis for today's actions.

*B. Ozone*

1. Background on Ozone Air Quality

Ground-level ozone is the main harmful ingredient in smog.[12] Ozone is produced by complex chemical reactions when its precursors, VOC and $NO_X$, react in the presence of sunlight.

Short-term (1–3 hours) and prolonged (6–8 hours) exposures to ambient ozone at levels common in many cities have been linked to a number of health effects of concerns. For example, increased hospital admissions and emergency room visits for respiratory causes have been associated with ambient ozone exposures at such levels. Repeated exposures to ozone can make people more susceptible to respiratory infection, result in lung inflammation, and aggravate pre-existing respiratory diseases such as asthma. Other health effects attributed to ozone exposures include significant decreases in lung function and increased respiratory symptoms such as chest pain and cough. These effects generally occur while individuals are engaged in moderate or heavy exertion.

Children active outdoors during the summer when ozone levels are at their highest are most at risk of experiencing such effects. Other at-risk groups include adults who are active outdoors (*e.g.,* outdoor workers), and individuals with pre-existing respiratory disease such as asthma and chronic obstructive lung disease. In addition, longer-term exposures to moderate levels of ozone present the possibility of irreversible changes in the lungs which could lead to premature aging of the lungs and/or chronic respiratory illnesses.

Ozone also affects vegetation and ecosystems, leading to reductions in agricultural and commercial forest yields, reduced growth and survivability of tree seedlings, and increased plant susceptibility to disease, pests, and other environmental stresses (*e.g.,* harsh weather). In long-lived species, these effects may become evident only after several years or even decades, thus having the potential for long-term effects on forest ecosystems. Ground-level ozone damage to the foliage of trees and other plants also can decrease the aesthetic value of ornamental species as well as the natural beauty of our national parks and recreation areas.

Many areas which were classified as nonattainment when classifications were made under the 1990 Clean Air Act Amendments have not experienced violations more recently. However, 50 metropolitan areas had ozone design values above the NAAQS in either or both of the 1995–1997 and the 1996–1998 monitoring periods. In many urban areas, the downward trend in ozone that prevailed earlier has become less strong or stopped in the last few years, even when adjustments are made for meteorological conditions. We believe that one factor that has worked against ozone improvement in the last few years has been the growing use of light trucks with higher emissions than the cars used formerly. The predictions of future ozone concentrations used in developing today's action take account of this growing use of light trucks.

2. Additional Emission Reductions Are Needed To Attain and Maintain the Ozone NAAQS

a. Summary

We have determined that additional emission reductions are needed to attain and maintain the 1-hour ozone NAAQS. This overall conclusion is based on our prediction that 26 metropolitan areas are each certain or highly likely to need additional reductions, and that an additional 12 areas each have a moderate to significant probability of needing them.

To determine whether additional reductions are needed in order to attain and maintain the ozone NAAQS, we used ozone modeling to predict what areas would not attain the NAAQS in the future. We accounted for the emission reductions that have already been achieved, those that will be achieved in the future by actions already underway, and increases in emissions expected from increased use of sources of pollution.

In our May 13, 1999 proposal, we presented information from photochemical modeling we performed to predict what areas would meet the ozone NAAQS in 2007. The year 2007 falls after the expected date of most emission reductions which states are required to achieve or have otherwise committed to achieve, and near the attainment deadline for many ozone nonattainment areas. We presented additional information from the same photochemical modeling work in two supplemental notices, on June 30, 1999 (to better explain the basis for our proposal in light of the Court's ruling on the 8-hour ozone NAAQS), and October 25, 1999 (to explain the implications for our Tier 2/Gasoline Sulfur proposal from our more recent proposal, which we expect to make final shortly, to re-instate the 1-hour ozone NAAQS in many areas). In Response to Comments on these Federal Register notices, we made revisions to our own ozone modeling. We also obtained ozone modeling results from a number of state air planning agencies and from members of the automobile manufacturing industry. We have considered all of this information as part of our determination that the regulations promulgated in this rule are needed and appropriate.

Based on the available ozone modeling and other information, we project that there are 26 metropolitan areas which will be unable to attain and maintain the NAAQS, in the absence of additional reductions. These areas had a combined population of over 86 million in 1996, and are distributed across most regions of the U.S. We have concluded that each is certain or very likely to require additional reductions to attain the NAAQS. Taken together and considering their number, size, and geographic distribution, these areas establish the case that additional reductions are needed in order to attain and maintain the 1-hour standard.

In addition, our analysis suggests there will be other areas that will have problems attaining and maintaining compliance with the one-hour ozone standard in the future. There are 12 additional metropolitan areas with a total 1996 population of over 25 million people in this category. EPA's ozone modeling for 2007 predicts exceedances for each of these areas. However, for six of them local recent monitoring information is not indicating nonattainment. Given how close to nonattainment these areas are, EPA believes it is likely that at least a significant subset of this group of areas will face compliance problems by 2007 or beyond if additional actions to lower air emissions are not taken. This belief is based on historical experience with areas that will undergo economic and population growth over time and that are in larger regions that are also experiencing growth. The other six areas in this group are nonattainment now, and local modeling shows them reaching attainment by 2005 or 2007. Modeling uncertainties and growth beyond the attainment date make it likely that at least some of these areas will also face compliance problems if additional actions to lower air emissions are not taken. This situation further supports our determination that additional reductions in mobile source emissions are needed for attainment and maintenance.

We would like to emphasize that the advantages of the Tier 2/Gasoline Sulfur program will be enjoyed by the whole country. There are important advantages for approximately 30 more metropolitan

[12] Total column ozone, a large percentage of which occurs in the stratosphere and a smaller percentage of which occurs in the troposphere, helps to provide a protective layer against ultraviolet radiation.

areas, with close to 30 million people residing in them, whose ozone levels are now within 10 percent of violating the 1-hour NAAQS.[13] Most of these areas have been in nonattainment in the past. We believe the emission reductions from the Tier 2/Gasoline Sulfur program are an important component of an overall EPA-state approach to enable these areas to continue to maintain clean air given expected growth. EPA believes that the long term ability of the states to continue to meet the NAAQS is extremely important. In the future, EPA will be considering additional approaches for assisting in maintenance of the NAAQS. Also, we believe that the Tier 2/Gasoline Sulfur program has important benefits for other nonattainment areas which our modeling and local modeling show to be on a path to come into attainment in the next eight years. For these areas, the extra emission reductions from the program will take some of the uncertainty out of their plan to attain the standard and give them a head start on developing their plan to stay in attainment.

In every area of the country, the new standards will give transportation planning bodies and industrial development leaders more options within the area's overall emissions constraints. This will allow local and state officials to better accommodate local needs and growth opportunities. With these new standards for vehicles and gasoline, unusually adverse weather or strong local economic growth will be less likely to cause ozone levels high enough to trigger the planning requirements of the Clean Air Act. In addition, by reducing emissions and ozone levels across the nation as a whole, there will be less transport of ozone between areas, reducing the amount of ozone entering downwind areas. This will give the downwind areas a better opportunity to maintain and attain the NAAQS through local efforts.

All of our determinations presented here about the need for the Tier 2/Gasoline Sulfur program take into account the prior $NO_X$ reductions we expect from the Regional Ozone Transport Rule. This rule is now in litigation. If the outcome of that litigation reduces the $NO_X$ reductions that will be achieved, the need for the Tier 2/Gasoline Sulfur program will be even greater.

[13] As measured by ozone design value.

b. Ozone Modeling Presented in Our Proposal and Supplemental Notices

The ozone modeling we presented in our proposal and the two supplemental notices was originally conducted as part of our development of the Regional Ozone Transport Rule. The ''revised budget'' emission control scenario we modeled for the Regional Ozone Transport Rule contained the right set of existing and committed emission controls for it to serve as the starting point for making our determination on the need for additional emission reductions. We added a new ''control case'' to represent the effects of our proposed vehicle and gasoline standards.

This ozone modeling provided predictions of ozone concentrations in 2007 across the eastern U.S., under certain meteorological conditions. Predictions of attainment or nonattainment are based on these predicted ozone concentrations. Two approaches to making attainment predictions have been used or advocated in the past: a rollback approach and an exceedance approach. In the NPRM of May 13, 1999, we presented predictions of attainment and nonattainment using a rollback approach. For the 1-hour standard, we reported that 8 metropolitan areas and two rural counties were predicted to be in nonattainment in 2007 under the rollback method. In the first supplemental notice of June 30, 1999 we presented a prediction that 17 areas would be nonattainment based on the exceedance method, and invited comment on all aspects of the modeling and its interpretation. Our second and last notice on October 27, 1999, presented predictions of violations using the exceedance method for additional areas which we had previously excluded because the 1-hour standard did not apply to them. This was in anticipation of the reinstatement of the 1-hour standard to these areas, which we proposed on October 25, 1999 and expect to complete very soon. 64 FR 57524. We also announced that we were conducting another round of modeling, described below. See the Response to Comments document for more discussion of the rollback and exceedance approaches.

c. Updated and Additional Ozone Modeling

We have updated and expanded our ozone modeling. We updated the ozone modeling so that it is now based on estimates of vehicle emissions that reflect the most recent data and our best understanding of several aspects of emissions estimation.[14] We also changed most of the episodes for which we modeled ozone concentrations, with all of our final episode days coming from a single calendar year. By selecting days from within a single year, we responded to a comment that the original episode periods might together contain an atypically high number of days favorable to ozone formation for some parts of the country. The new episodes are also better at representing conditions that lead to high ozone in areas along the Gulf Coast, whose ozone-forming conditions were not well represented in the episodes used for the original modeling.

While we considered these improvements necessary and appropriate in light of comments and other information available to us, the actual results of the two rounds of modeling with regard to the need for additional reductions have turned out to be similar. The latest round of modeling provided us ozone predictions for 2007 and 2030 in the eastern U.S., and for 2030 in the western U.S. There are some differences in specific results, where and when the two models can be directly compared. However, the same conclusion would be reached from either, namely that there is a broad set of areas with predicted ozone concentrations in 2007 above 0.124 ppm, in the baseline scenario without additional emission reductions.

We have compared and supplemented our own ozone modeling with other modeling studies, either submitted to us as comments to this rulemaking, as state implementation plan (SIP) revisions, or brought to our attention through our consultations with states on SIP revisions that are in development. The ozone modeling in the SIP revisions has the advantage of using emission inventories that are more specific to the area being modeled, and of using meteorological conditions selected specifically for each area. Also, the SIP revisions included other evidence and analysis, such as analysis of air quality and emissions trends, observation based models that make use of data on concentrations of ozone precursors, alternative rollback analyses, and information on the responsiveness of the air quality model. For some areas, we decided that the predictions of attainment or nonattainment from our

[14] While the use of these emissions estimates was new to our baseline ozone modeling in the latest ozone modeling, they were not new to this rulemaking, having already been used in calculations of cost-effectiveness in the draft RIA. We therefore were able to consider public comments on these estimates prior to using them in the latest ozone modeling

modeling were less reliable than conclusions that could be drawn from this additional evidence and analysis. For example, in some areas our episodes did not capture the meteorological conditions that have caused high ozone, while local modeling did so.

d. Results and Conclusions

As discussed in detail below, it is clear that the $NO_X$ and VOC reductions to be achieved through the Tier 2/ Gasoline Sulfur program are needed to attain and maintain compliance with the 1 hour ozone NAAQS. Although the general pattern observed in our modeling indicates improvements in the near term, growth in overall emissions will lead to worsening of air quality over the long term.

Based on our ozone modeling, we have analyzed ozone predictions for 52 metropolitan areas for 1996, 2007, and 2030. In addition, we reviewed ozone attainment modeling and other evidence covering 15 of these areas, from SIP submittals or from modeling underway to support SIP revisions. This local modeling addressed only the current or requested attainment date in each area. We then made attainment and nonattainment predictions from this information.

The general pattern we observed with the baseline scenario, i.e., without new emission reductions, is a broad reduction between 1996 and 2007 in the geographic extent of ozone concentrations above the NAAQS, and in the frequency and severity of exceedances. This is consistent with the national emissions inventory trend between these two years. At the same time, we also found that peak ozone concentrations and the frequency of exceedances in 2030 were generally somewhat higher than in 2007 for most areas analyzed. This too is consistent with our analysis of emission inventory trends, which shows that the total $NO_X$ inventory from all sources will decline from 2007 to about 2015 and then begin to increase due to growth in the activity of emission sources. In 2030, our analysis predicts that $NO_X$ emissions from all sources will be about one percent higher than in 2007. While we did not model ozone concentrations for years between 2007 and 2030, we expect that they would track the national emissions trend by showing a period of improvement after 2007 and then deterioration, although individual areas will vary due to local source mix and growth rates.[15]

Within this general pattern of ozone attainment changes between 1996 and 2030, we have determined that 26 metropolitan areas are certain or highly likely to need additional reductions to attain and maintain the 1-hour ozone NAAQS. These 26 areas are those that have current violations of the 1-hour ozone NAAQS and are predicted by the best ozone modeling we have available to still be in violation without a new federal vehicle program in 2007.[16] Based on the general trends described above, without further emissions reductions many of these areas may also have violations continuously throughout the period from 2007 to 2030, while others may briefly attain and then return to nonattainment on or before 2030. These 26 metropolitan areas are listed in Table III.B–1, along with their 1996 population which totals over 86 million. The sizes of these areas and their geographical distribution strongly support an overall need for additional reductions in order to attain and maintain under section 202(i). Because ozone concentration patterns causing violations of the 1-hour NAAQS are well established to endanger public health or welfare, this determination also supports our actions today under the general authority of sections 202(a)(1), 202(a)(3), and 202(b).

As indicated above, in reaching this conclusion about these 26 areas, we examined local ozone modeling in SIP submittals. These local analyses are considered to be more extensive than our own modeling for estimating whether there would be NAAQS nonattainment without further emission reductions, when interpreted by a weight of evidence method which meets our guidance for such modeling. One of the areas which submitted a SIP revision was a special case. We have recently proposed to approve the 1-hour ozone attainment demonstration for the nonattainment area of Washington, D.C. (but not Baltimore). We have nevertheless included this area on the list of 26 that are certain or highly likely to require further reductions to attain and maintain, because its SIP attainment demonstration assumed emission reductions from vehicles meeting the National Low Emissions Vehicle (NLEV) standards.

However, by its own terms, the NLEV standards would not extend beyond the 2003 model year if we did not promulgate Tier 2 vehicle standards at least as stringent as the NLEV standards. See 40 CFR 86.1701–99(c). Thus, the emission reductions relied upon from 2004 and later model year NLEV vehicles are themselves ''further reductions'' for the purposes of CAA section 202(i).[17] The local modeling indicating attainment with these reductions is therefore strong evidence that further reductions are needed past 2003, beyond those provided by the Tier 1 program. Based on this, and on the fact that our own ozone modeling showed the Washington, DC area to violate the NAAQS in 2007 even with full NLEV emission reductions, we have concluded that it should be included with areas that do require further reductions to attain and maintain the 1-hour ozone NAAQS.

The 1-hour ozone NAAQS presently does not apply in 12 of the 26 areas listed in Table III.B–1, but we have proposed to re-instate it and expect to complete that action shortly. These areas are indicated in the table. Our decision to include these areas on this list is based on the contingency that we will re-instate the 1-hour standard in these areas. However, even if we considered only the 14 areas where the 1-hour standard applies as of the signature date of this notice, we have concluded that our determination would be the same.

TABLE III.B–1.—TWENTY-SIX METROPOLITAN AREAS WHICH ARE CERTAIN OR HIGHLY LIKELY TO REQUIRE ADDITIONAL EMISSION REDUCTIONS IN ORDER TO ATTAIN AND MAINTAIN THE 1-HOUR OZONE NAAQS

| Metropolitan area | 1996 Population (millions) |
|---|---|
| Atlanta, GA MSA | 3.5 |
| Barnstable-Yarmouth, MA MSA[a] | 0.2 |
| Baton Rouge, LA MSA | 0.6 |
| Beaumont-Port Arthur, TX MSA | 0.4 |
| Birmingham, AL MSA | 0.9 |
| Boston-Worcester-Lawrence, MA–NH–ME–CT CMSA[a] | 5.6 |
| Charlotte-Gastonia-Rock Hill, NC–SC MSA[a] | 1.3 |

[15] EPA's modeling presumed that cars and light trucks will continue to meet the emission levels of the National Low Emissions Vehicle (NLEV) program after model year 2003, even though the program will end in model year 2003 or shortly thereafter. Had our modeling not included such levels in its inventory assumptions, trends for ozone concentrations would have shown earlier increases in ozone concentrations.

[16] The date of the predicted violation was 2007 for most areas, 2010 in the case of Los Angeles, CA, and 2030 in the case of Portland-Salem, OR.

[17] With regard to eventual final action on the 1-hour attainment demonstration for Washington, DC, the issue of the continuation of the NLEV standards is mooted by the promulgation of the Tier 2/ Gasoline Sulfur program. A portion of the emission reductions from this program will replace the post-2003 model year NLEV reductions assumed in the SIP.

TABLE III.B–1.—TWENTY-SIX METROPOLITAN AREAS WHICH ARE CERTAIN OR HIGHLY LIKELY TO REQUIRE ADDITIONAL EMISSION REDUCTIONS IN ORDER TO ATTAIN AND MAINTAIN THE 1-HOUR OZONE NAAQS—Continued

| Metropolitan area | 1996 Population (millions) |
|---|---|
| Cincinnati-Hamilton, OH–KY–IN CMSA | 1.9 |
| Dallas-Fort Worth, TX CMSA | 4.6 |
| Houma, LA MSA[a] | 0.2 |
| Houston-Galveston-Brazoria, TX CMSA | 4.3 |
| Huntington-Ashland, WV–KY–OH MSA[a] | 0.3 |
| Indianapolis, IN MSA[a] | 1.5 |
| Los Angeles-Riverside-San Bernardino CA CMSA | 15.5 |
| Louisville, KY–IN MSA | 1.0 |
| Macon, GA MSA[a] | 0.3 |
| Memphis, TN–AR–MS MSA[a] | 1.1 |
| Nashville, TN MSA[a] | 1.1 |
| New York-Northern New Jersey-Long Island, NY–NJ–CT–PA CMSA | 19.9 |
| Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD CMSA | 6.0 |
| Pittsburgh, PA MSA | 2.4 |
| Portland-Salem, OR–WA CMSA[a] | 2.1 |
| Providence-Fall River-Warwick, RI–MA MSA[a] | 1.1 |
| Richmond-Petersburg, VA MSA[a] | 0.9 |
| St. Louis, MO–IL MSA | 2.5 |
| Washington-Baltimore, DC–MD–VA–WV CMSA | 7.2 |
| Total Population | 86.3 |

Notes:
[a] The 1-hour ozone NAAQS does not currently apply, but we have proposed and expect to re-instate it shortly.

There are 12 additional metropolitan areas, with another 25.3 million people in 1996, for which the available ozone modeling suggests significant risk of failing to attain and maintain the 1-hour ozone NAAQS without additional emission reductions. Table III.B–2 lists the areas we put in this second category. Our own ozone modeling predicted these 12 areas to need further reductions to avoid violations in 2007. For six of these areas, recent air quality monitoring data indicate violation, but we have reviewed local ozone modeling and other evidence indicating attainment in 2007.[18] Based on this evidence, we have kept these areas separate from the previous set of 26 areas which we consider certain or highly likely to need additional reductions. However, we still consider there to be a significant risk of failure to attain and maintain in these six areas because this local modeling has inherent uncertainties, as all ozone modeling does. Moreover, the local modeling did not examine the period after initial attainment.

For the other six of the 12 areas, the air quality monitoring data shows current attainment but with less than a 10 percent margin below the NAAQS. This suggests these areas may remain without violations for some time, but we believe there is still a moderate risk of future violation of the NAAQS because meteorological conditions may be more severe in the future.

It is highly likely that at least some of these 12 areas will violate the NAAQS without additional reductions, and it is a distinct possibility that many of them will do so. We consider the situation in these areas to support our determination that, overall, additional reductions are needed for attainment and maintenance. However, we reiterate that our predictions for the 26 areas listed in Table III.B–1, and even our predictions for only the 14 of those 26 for which the 1-hour standard now applies, are a sufficient basis for our determination of an overall need for additional reductions and for our actions today.

TABLE III.B–2.—TWELVE METROPOLITAN AREAS WITH MODERATE TO SIGNIFICANT RISK OF FAILING TO ATTAIN AND MAINTAIN THE 1-HOUR OZONE NAAQS WITHOUT ADDITIONAL EMISSION REDUCTIONS

| Metropolitan area | 1996 Population (millions) |
|---|---|
| Benton Harbor, MI MSA[a] | 0.2 |
| Biloxi-Gulfport-Pascagoula, MS MSA[a] | 0.3 |

[18] The SIP revisions for Chicago and Milwaukee demonstrated that these two areas as well as Benton Harbor and Grand Rapids areas in Michigan (which are maintenance areas but have experienced ozone NAAQS violations recently) would not experience NAAQS violations in 2007, with a strategy that relied only on Tier 1 vehicle emission standards. We have also recently proposed to approve the 1-hour attainment demonstration for Greater Connecticut, covering the Hartford and New London areas, which assumed full NLEV emission reductions. However, Connecticut is committed in its SIP to adopt California vehicle standards if NLEV does end with the 2003 model year if a more stringent federal program is not promulgated. The California standards are more stringent than NLEV. The case of one additional area whose attainment demonstration we recently proposed to approve, Western Massachusetts (Springfield), should be explained here to avoid possible confusion. Our own ozone modeling predicted that Springfield would attain the NAAQS in 2007. Massachusetts has adopted the California vehicle emission standards, so there is no issue of the continuation of the NLEV standards.

TABLE III.B–2.—TWELVE METROPOLITAN AREAS WITH MODERATE TO SIGNIFICANT RISK OF FAILING TO ATTAIN AND MAINTAIN THE 1-HOUR OZONE NAAQS WITHOUT ADDITIONAL EMISSION REDUCTIONS—Continued

| Metropolitan area | 1996 Population (millions) |
|---|---|
| Chicago-Gary-Kenosha, IL–IN–WI CMSA | 8.6 |
| Cleveland-Akron, OH CMSA[a] | 2.9 |
| Detroit-Ann Arbor-Flint, MI CMSA[a] | 5.3 |
| Grand Rapids-Muskegon-Holland, MI MSA[a] | 1.0 |
| Hartford, CT MSA | 1.1 |
| Milwaukee-Racine, WI CMSA | 1.6 |
| New London-Norwich, CT–RI MSA[a] | 1.3 |
| New Orleans, LA MSA[a] | 0.3 |
| Pensacola, FL MSA[a] | 0.4 |
| Tampa, FL MSA[a] | 2.2 |
| Total Population | 25.3 |

Notes:
[a] The 1-hour ozone NAAQS does not currently apply, but we have proposed and expect to re-instate it shortly.

e. Issues and Comments Addressed

We received detailed comments from the automobile industry related to ozone modeling and the need for additional emission reductions in order to attain and maintain. These were of three types.

*Accuracy of modeling ozone concentrations.*—The automobile industry commenters pointed out that in the modeling presented with our proposal, the ozone model and exceedance predicted violations of the NAAQS in 1995 in areas where monitoring data indicated no violations. They cited these cases as examples of model inaccuracy. We have made improvements to our emissions estimates, our episodes, and other aspects of the modeling system. These changes have improved the accuracy of the predicted ozone concentrations. Also, as stated above, our list of 26 areas that support our finding that additional reductions are needed does not include any areas where recent monitoring data shows no violations. The final RIA addresses issues of model accuracy in more depth.

As explained in the final RIA, our very latest estimates of car and light truck emissions without the benefits of our new standards are actually somewhat higher than the estimates used in the final round of ozone modeling, because the most recent data indicate even more serious adverse emissions effects from sulfur in

gasoline. Thus, we think our predictions of ozone nonattainment using emission estimates prepared before this most recent data on sulfur was considered, may be conservative. This topic is discussed in more detail in section III.B.3.

*Prediction of attainment/nonattainment.*—For most areas, we predicted 2007 or 2030 attainment or nonattainment based on the exceedance method. The exceedance method predicts an area to be in attainment only if there are no predicted exceedances of the NAAQS during any episode day. However, for the areas for which we have received 1-hour attainment demonstrations in SIP revisions, our predictions were based on a larger and more robust set of data. When a state's modeling shows an exceedance that would otherwise indicate nonattainment, we allow the state to submit a variety of other evidence and analysis, such as locality specific meteorological conditions, analysis of air quality and emissions trends, observational based models that make use of data on concentrations of ozone precursors, a rollback analysis, and information on the responsiveness of the air quality model. We then make a weight-of-evidence determination of attainment or nonattainment based on consideration of all this local evidence. We did this in forming the set of 26 areas we consider certain or highly likely to need additional reductions to attain or maintain, in some cases concluding that attainment was demonstrated and in others that it was not.

The auto industry commenters recommended the use of rollback as the single method for making attainment and nonattainment predictions from predicted ozone concentrations. They stated that the rollback method would be more consistent than the exceedance method with the NAAQS's allowance of three exceedances in a three year period. They also believed that the rollback method would compensate for what they considered to be model over predictions of ozone concentrations. We believe that the rollback method is not appropriate for use as the sole, or even a primary, test of 1-hour ozone attainment or nonattainment. A rollback analysis may overlook violations that occur away from ozone monitors, and it may inappropriately project the effect of a recent period of favorable weather into the prediction of future attainment. In determining the attainment and maintenance prospects of numerous areas, as here, it is not possible to assemble and consider the full set of local evidence that should accompany any consideration of a rollback analysis. In such a situation, we believe that the exceedance method is the appropriate choice. A fuller explanation of our reasons for considering the exceedance method more appropriate than rollback is given in our Response to Comments document.

We have not completely excluded the rollback approach from the determinations in this rulemaking. We have considered it for those areas for which we had enough information to allow us to consider it in its proper context, i.e., for those areas covered by recent 1-hour SIP submissions. Of these areas, we concluded that some will not attain without additional reductions and some will.

While we disagree with the use of the rollback method, we have conducted a hypothetical analysis of 2007 attainment in all areas based only on our own ozone modeling, applying the rollback method recommended by the commenters. We calculated in this analysis that 15 metropolitan areas and three other counties with nearly 56 million in population in 1996 would violate the NAAQS in 2007. Moreover, these 15 metro areas are geographically spread out [19]. We believe that this result using the rollback method does not fully capture the likely nonattainment that would exist in 2007 in the absence of additional emission reductions. However, even if we were to consider the use of rollback valid, we consider this set of areas to also be an adequate basis for making the same determinations we have made based on the more appropriate exceedance-based analysis. The details of our hypothetical analysis using the rollback method are given in the final RIA and the technical support document for our ozone modeling analyses.

*Ozone modeling and predictions.*—Members of the automobile manufacturing industry submitted two modeling studies: (1) a repetition of our first round of modeling of the 37-state eastern U.S. domain but with their recommendations regarding estimates of motor vehicle emissions in 2007 and with the rollback method used to predict 2007 nonattainment, and (2) finer grid modeling for three smaller domains, also with their recommended estimates of emissions and with nonattainment predicted using a rollback method. Both modeling efforts showed less widespread nonattainment than we have determined and described here. Taken together, these studies predicted 2007 violations by the rollback method in or downwind of New York City, Chicago, Milwaukee, western Michigan, Baton-Rouge, and Houston.

The main difference between the automobile industry's ozone modeling and ours is in the emission estimates. We have reviewed the emissions estimates used in the industry studies. We concluded that the industry's emissions estimates employ inappropriate analytical steps in the calculation. Among the problems are that the adjustments for the benefits of inspection and maintenance programs were not consistent with the base estimate of in-use emissions, and the sales trend towards light trucks and SUVs was not properly captured. Also, as stated, we disagree with the use of the rollback approach as the sole test of attainment. As a consequence, we conclude that the industry's ozone modeling is not an appropriate basis for making predictions of future attainment or nonattainment. The final RIA explains in detail how we have addressed these and other emissions modeling issues in a manner which is more technically consistent and correct,[20] and how we have considered the results from rollback analyses but only as part of broad weight-of-evidence determinations for areas for which this was possible at this time. Our point-by-point review is given in our Response to Comments document.

The material on ozone modeling submitted by the commenters, having been prepared by the rollback method, was difficult to re-interpret according to our preferred exceedance method. However, it appears that if this modeling were interpreted by the exceedance method, it would indicate 2007 nonattainment in Baltimore and Washington, D.C. in addition to New York City, Chicago, Milwaukee, western Michigan, Baton-Rouge, and Houston. Overall, we conclude that the material submitted by the automobile industry does not contradict the facts we have used to make our determinations or the actions we are taking today.

f. 8-Hour Ozone

The predictions of ozone concentrations from the ozone modeling

[19] We did not include the Los Angeles-Riverside-San Bernardino area in this analysis, since it was not covered by our 2007 modeling, but we do believe it is rightly part of the basis for a determination on the need for additional reductions.

[20] As explained in the final RIA, our very lastest estimates of car and light truck emissions without the benefits of our new standards are actually somewhat higher than the estimates used in the final round of ozone modeling, because more recent data indicate even more serious adverse emissions effects from sulfur in gasoline. Thus, we think our predictions of ozone nonattainment may be conservative.

can be used to make predictions of attainment or nonattainment with the 8-hour ozone NAAQS. In our draft RIA, we estimated that 28 metropolitan areas and 4 rural counties with a combined population of 80 million people would violate the 8-hour ozone NAAQS in 2007 without additional emission reductions. Commenters noted differences between exact rollback procedure we had used in this projection and the steps specified in recent draft guidance we have issued on 8-hour ozone modeling. We agree with the commenters that the steps specified in our guidance are the correct ones to use. However, since we are not basing our promulgation of the Tier 2/Gasoline Sulfur Program on the 8-hour ozone NAAQS, we have not made any new predictions of 8-hour ozone nonattainment areas in 2007. Based on our findings in previous analyses of this sort, however, we believe that in the absence of the Tier 2/Gasoline Sulfur program there would be 8-hour nonattainment areas that are not also areas which we have concluded are certain or highly likely to violate the 1-hour NAAQS. If we considered it appropriate to proceed with implementation of the 8-hour standard, these areas would support our determination on the need for emission reductions, and the appropriateness and necessity of the vehicle and gasoline standards we are establishing.

3. Cars and Light-duty Trucks Are a Big Part of the $NO_X$ and VOC Emissions, and Today's Action Will Reduce This Contribution Substantially

Emissions of VOCs and $NO_X$ come from a variety of sources, both natural and man-made. Natural sources, including emissions that have been traced to vegetation, account for a substantial portion of total VOC emissions in rural areas. The remainder of this section focuses on the contribution of motor vehicles to emissions from human sources. Man-made VOCs are released as byproducts of incomplete combustion as well as evaporation of solvents and fuels. For gasoline-fueled cars and light trucks, approximately half of the VOC emissions come from the vehicle exhaust and half come from the evaporation of gasoline from the fuel system. $NO_X$ emissions are dominated by man-made sources, most notably high-temperature combustion processes such as those occurring in automobiles and power plants. Emissions from cars and light trucks are currently, and will remain, a major part of nationwide VOC and $NO_X$ emissions. In 1996, cars and light trucks comprised 25 percent of the VOC emissions and 21 percent of the $NO_X$ emissions from human sources in the U.S.[21] The contribution in metropolitan areas was generally larger.

We have made significant improvements in the analysis used to estimate the emission inventory impacts of this action, including improving the emission factor modeling, using more detailed local modeling input, and using a more conservative (lower) estimate of VMT growth. These changes are detailed in the Regulatory Impact Analysis for this rule. The following discussion is based on this improved analysis.

In addition to the improvements which are incorporated in this analysis, we also made further improvements in the emission factor modeling after analyzing comments which we did not have time to incorporate into the detailed inventory analysis described here. The most notable change is related to data which indicates that $NO_X$ and NMOG emissions are even more sensitive to gasoline sulfur than previously thought. This change and others are described in detail in the Response to Comments. Our early analysis of these changes indicates that incorporating them into this analysis would provide further support for this action because these changes result in both increases in the baseline emissions without Tier 2 and in the reductions that would result from Tier 2. For example, in the detailed inventory analysis we report below, we project nationwide Tier 2/Gasoline Sulfur control $NO_X$ reductions from cars and light trucks of 856,471 tons per year in 2007. Using the version of the emission factor model that incorporates these additional changes increases the estimated Tier 2 reductions to approximately 1.0 million tons per year in 2007 (estimated baseline emissions without Tier 2 increase from 3.1 million tons per year in 2007 to approximately 3.7 million tons per year using the version of the emission factor model that incorporates these additional changes). Therefore, the estimates of the inventory reductions given here (and used as the basis for the ozone air quality analysis) are clearly conservative.

Motor vehicle emission controls have led to significant improvements in emissions released to the air (the ''emission inventory'') and will continue to do so in the near term[22]. In the current analysis, we continue to find that total emissions from the car and light truck fleet would continue to decline for a period, even if we were not establishing the Tier 2/Gasoline Sulfur program. This decline would result from the introduction of cleaner reformulated gasoline in 2000, the introduction of National Low Emission Vehicles (NLEVs) and vehicles complying with the Enhanced Evaporative Test Procedure and Supplemental Federal Test Procedures, and the continuing removal of older, higher-emitting vehicles from the in-use vehicle fleet. On a per mile basis, VOC and $NO_X$ emissions from cars and light trucks combined would have continued to decline well beyond 2015, reflecting the continuing effect of fleet turnover under existing emission control programs. However, projected increases in vehicle miles traveled (VMT) will cause total emissions from these vehicles to increase. With this increase in travel and without additional controls, we project that combined $NO_X$ and VOC emissions for cars and light trucks without the Tier 2/Gasoline Sulfur program would increase starting in 2013 and 2016, respectively, so that by 2030 they would return to levels above or nearly the same as they will be in 2000. In cities experiencing rapid growth, such as Charlotte, North Carolina, the near-term trend towards lower emissions tends to reverse sooner.[23] With additional improvements in the modeling done in Response to Comments, we now estimate that without the Tier 2/Gasoline Sulfur program, there will be a constant increase in these emission over time.

Figure III–1 illustrates this expected trend in car and light truck $NO_X$ emissions in the absence of today's action. The figure also allows the contribution of cars to be distinguished from that of light trucks. The figure clearly shows the impact of steady growth in light truck sales and travel on overall light-duty $NO_X$ emissions; the decrease in overall light-duty emission levels is due solely to reductions in LDV emissions. In 2000, we project that

[21] Emission Trend Report, 1997.

[22] The auto manufacturer and northeastern state commitments to the NLEV program are scheduled to end in 2004 without further EPA action on Tier 2 standards, although continued voluntary compliance by automobile manufacturers and the affected states is a possibility. Our analysis of emission trends and the emission benefits expected from today's action assumes for the base scenario a continuation of the NLEV program past 2004. If the NLEV program does not continue beyond 2004, the reductions resulting from Tier 2 would be larger than what is shown here. It also includes all other control measures assumed to be implemented in local areas, such as reformulated gasoline in all required and opt-in areas and enhanced I/M where required.

[23] Also, if the NLEV program ends in model year 2004 or shortly thereafter, as scheduled, this trend would reverse more quickly in all areas.

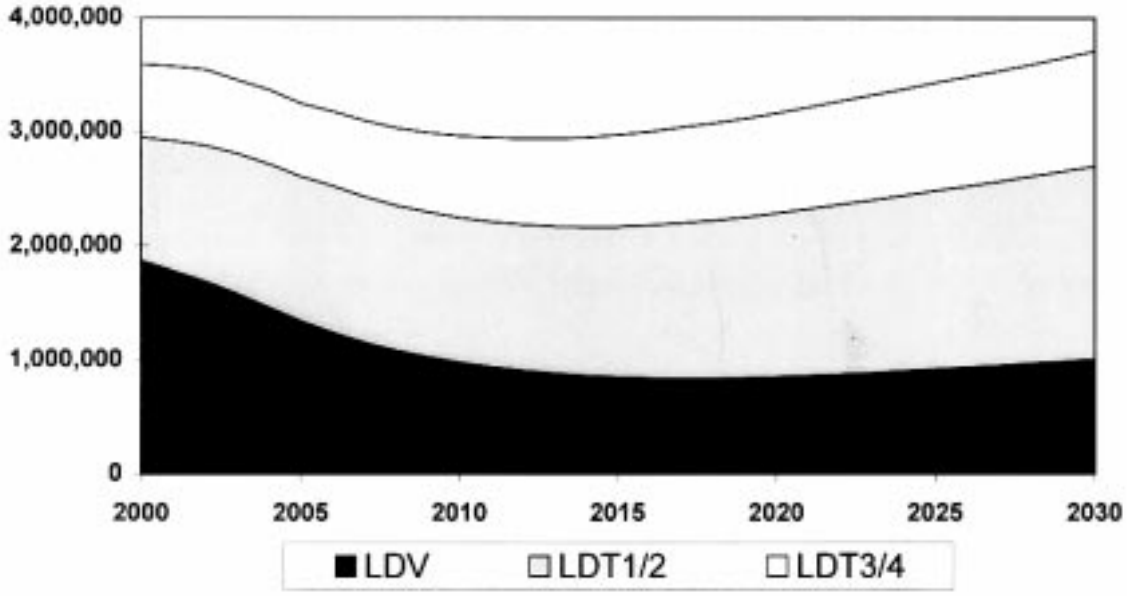
trucks will produce about 50 percent of combined car and light truck $NO_X$ emissions. We project that truck emissions would actually increase after 2000, and over the next 30 years, trucks would grow to dominate light-duty $NO_X$ emissions. By 2010, we project trucks would make up two-thirds of light-duty $NO_X$ emissions; by 2020, nearly three-quarters of all light-duty $NO_X$ emissions would be produced by trucks.

BILLING CODE 6560–50–P

**Figure III-1.**

**Light-Duty NOx Emissions Without Tier 2 (tons per year)**

**[ Estimates exclude California, Alaska, and Hawaii, although reductions will occur in all three states.]**




BILLING CODE 6560–50–C

Today's action will significantly decrease $NO_X$ and VOC emissions from cars and light trucks, and will delay the date by which $NO_X$ and VOC emissions will begin to increase due to continued VMT growth. With Tier 2/Gasoline Sulfur control, light-duty vehicle $NO_X$ and VOC emissions are projected to continue their downward trend past 2020. Table III.B–3 shows the annual tons of $NO_X$ that we project will be reduced by today's action.[24] These projections include the benefits of low sulfur fuel and the introduction of Tier 2 car and light truck standards.

TABLE III.B–3.—$NO_X$ EMISSIONS FROM CARS AND LIGHT TRUCKS AS PERCENT OF TOTAL EMISSIONS, AND REDUCTIONS DUE TO TIER 2/GASOLINE SULFUR CONTROL (TONS PER YEAR) [a]

| Year | Light-duty tons— without tier 2 | Light-duty percent of total without tier 2 | Light-duty tons reduced by tier 2 [c, c] |
|---|---|---|---|
| 2007 | 3,095,698 | 16 | 856,471 |
| 2010 | 2,962,093 | 16 | 1,235,882 |
| 2015 | 2,968,707 | 17 | 1,816,767 |
| 2020 | 3,160,155 | 17 | 2,220,210 |

[24] Today's action for both vehicles and fuels will apply in 49 states and the U.S. territories, excluding only California. There will also be emissions reductions in California from vehicles that relocate or visit from other states. However, much of the emissions inventory analysis for this action was made for a 47-state region which excludes California, Alasks, and Hawaii. The latter two states were not included in the scope of ozone, PM and economic benefits modeling.

TABLE III.B–3.—$NO_X$ EMISSIONS FROM CARS AND LIGHT TRUCKS AS PERCENT OF TOTAL EMISSIONS, AND REDUCTIONS DUE TO TIER 2/GASOLINE SULFUR CONTROL (TONS PER YEAR) [a]—Continued

| Year | Light-duty tons— without tier 2 | Light-duty percent of total without tier 2 | Light-duty tons reduced by tier 2 [b, c] |
|---|---|---|---|
| 2030 | 3,704,747 | 19 | 2,795,551 |

Notes:
[a] Estimates exclude California, Alaska, and Hawaii, although reductions will occur in all three.
[b] Does not include emission reductions from heavy-duty gasoline vehicles.
[c] These numbers represent a conservative estimate of the benefits of the Tier 2/Sulfur program. Based on the updated emission factor model developed in response to comments, the program will result in significantly larger benefits. For example, our new model projects $NO_X$ reductions of 1,100,000 tons in 2007.

The lower sulfur levels in today's action will produce large emission reductions on pre-Tier 2 vehicles as soon as low-sulfur gasoline is introduced, in addition to enabling Tier 2 vehicles to achieve lower emission levels. Among the pre-Tier 2 vehicles, the largest per vehicle emission reductions from lower sulfur in gasoline will be achieved from vehicles which automobile manufacturers will have sold under the voluntary National Low Emission Vehicle program. These vehicles are capable of substantially lower emissions when operated on low sulfur fuel. Older technology vehicles experience a smaller but significant effect.

In 2007, when all gasoline will meet the new sulfur limit and when large numbers of 2004 and newer vehicles meeting these standards will be in use, the combined $NO_X$ emission reduction from vehicles and fuels will be over 850,000 tons per year. After 2007, emissions will be reduced further as the fleet turns over to Tier 2 vehicles operating on low sulfur fuel. By 2020, $NO_X$ emissions will be reduced by 70% from the levels that would occur without today's action. This reduction equals the $NO_X$ emissions from over 164 million pre-Tier 2 cars and light trucks. This reduction represents a 12 percent reduction in $NO_X$ emissions from all manmade sources.

VOC emissions will also be reduced by today's action, with reductions increasing as the fleet turns over. We estimate that the reductions as a percent of emissions from cars and light trucks will be 7 percent in 2007 and grow to 17 percent in 2020.

As discussed earlier, in California, smaller but still substantial reductions in both $NO_X$ and VOC will be achieved because vehicles visiting and relocating to California will be designed to meet these standards. Also, vehicles from California visiting other states will not be exposed to high sulfur fuel. California Air Resources Board staff have estimated that Tier 2/Sulfur will reduce $NO_X$ emissions in the South Coast Air Quality Management District by approximately 4 tons per day in 2007.[25] CARB staff plan to incorporate these reductions in their revised attainment plan for this district, which includes most of the Los Angeles-Long Beach region.

These estimates of emission reductions reflect a mixture of urban, suburban, and rural areas. However, cars and light trucks generally make up a larger fraction of the emission inventory for urban and suburban areas, where human population and personal vehicle travel is more concentrated than emissions from other sources such as heavy-duty highway vehicles, power plants, and industrial boilers. We have estimated emission inventories for three cities using the same methods as were used to project the nationwide inventories, and we present the results for 2007 below in Table III.B–4.

These results confirm that light-duty vehicles make up a greater share of the $NO_X$ emission inventories in urban areas than they do in the nationwide inventory. While these vehicles' share of national $NO_X$ emissions in 2007 is about 16 percent, it is estimated to be about 34 percent in the Atlanta area. There is also a range in VOC contributions, with Atlanta again being the area with the largest car and light truck contribution at 17 percent. In metropolitan areas with high car and light truck contributions, today's action will represent a larger step towards attainment since it will have a larger effect on total emissions.

TABLE III.B–4—Proportion of the Total Urban Area $NO_X$ and VOC Inventory in 2007 Attributable to Light-Duty Vehicles[a]

| Region | $NO_X$ (percent) | VOC (percent) |
|---|---|---|
| Nationwide | 16 | 13 |
| New York urban area | 18 | 6 |
| Atlanta urban area | 34 | 17 |
| Charlotte urban area | 24 | 15 |

Notes:
[a] The estimates reflect continuation of NLEV beyond 2004.

Another useful perspective from which to view the magnitude of the emission reductions from today's proposal is in terms of the additional emission reductions from all human sources that areas will need to attain the 1-hour ozone standard. For this analysis, we reviewed our proposals for action on the 1-hour attainment demonstrations submitted by the states. With these proposals, EPA identified estimates of additional emission reductions (measures in addition to those submitted by the state in their plans) necessary for attainment for some

[25] California Air Resources Board, Executive Order G–99–037, May 20, 1999, Attachment A, 6–7, 10. These $NO_X$ reductions represent a small fraction of the emission reductions needed in the South Coast to attain the NAAQS.

of the areas. These estimates of additional emission reductions are documented in the individual **Federal Register** Notices. Using these estimates and the estimates of Tier 2 reductions developed for today's action, we have determined what portion of these additional emission reductions would be accounted for by today's action. These estimates are reported in Table III.B–5, which shows the contribution of Tier 2/Sulfur $NO_X$ reductions to the additional emission reduction necessary for attainment for three metropolitan areas. For example, for the New York nonattainment area, 89% of the additional $NO_X$ emission reductions needed for attainment are provided for with today's action. This leaves 11% of the additional $NO_X$ emission reductions to be addressed by the State through other local sources.

EPA and the States already have significant efforts underway to lower ozone precursor emissions through national regulations and State Implementation Plans. Table III.B–5 shows the contribution of Tier 2 to the substantial State-led efforts to provide attainment with the ozone NAAQS. Since the Tier 2 program has evolved in the past year after much of the States' efforts were completed, many of the States were unable to estimate the benefits of Tier 2 in their areas. EPA's proposal actions on these SIPs for the ozone NAAQS addresses the need for Tier 2 in many areas. More specifically, Tier 2 is being used to help States identify additional measures, in addition to those in their plans, necessary for attainment.

These estimates are subject to change as the states review and comment on our proposed action on the SIPs. These figures show that today's proposal would make a very substantial contribution to these cities' attainment programs, but that there will still be a need for additional reductions from other sources. The emission reductions from today's proposal would clearly not exceed the reductions needed from an air quality perspective for these areas.

TABLE III.B–5.—CONTRIBUTION OF TIER 2/SULFUR $NO_X$ REDUCTIONS TO OZONE ATTAINMENT EFFORTS OF SELECTED NONATTAINMENT AREAS

| Nonattainment area (attainment date) | Percent of additional $NO_X$ reductions necessary for attainment | |
|---|---|---|
| | From tier 2 | Needed after tier 2 |
| Baltimore (2005) | 100 | 0 |
| New York (2007) | 89 | 11 |
| Philadelphia (2005) | 87 | 13 |

4. Ozone Reductions Expected From This Rule

The large reductions in emissions of ozone precursors from today's standards will be very beneficial to federal and state efforts to lower ozone levels and bring about attainment with the current one-hour ozone standard. The air quality modeling for the final rule shows that improvements in ozone levels are expected to occur throughout the country because of the Tier 2/Gasoline Sulfur program.[26] EPA found that the program significantly lowers model-predicted exceedances of the ozone standard. In 2007 the number of exceedances in CMSA/MSAs is forecasted to decline by nearly one-tenth and in 2030, when full turnover of the vehicle fleet has occurred, the program lowers such exceedances by almost one-third. In these same areas, the total amount of ozone above the NAAQS is forecasted to decline by about 15 percent in 2007 and by more than one-third in 2030. In the vast majority of areas, the air quality modeling predicts that the program will lower peak summer ozone concentrations for both 2007 and 2030. The reduction in daily maximum ozone is nearly 2 ppb on average in 2007 and over 5 ppb on average in 2030. These reductions contribute to EPA's assessment that the program will provide the large set of public health and environmental benefits summarized in Section IV.D of the Preamble. The forecasted impacts of the program on ozone in 2007 and 2030 are further described in the Tier 2 Air Quality Modeling Technical Support Document.

During the public comment period on the proposed rule, EPA received several comments that expressed concern about potential increases in ozone that might occur as a result of this rule. As indicated above, the air quality modeling results indicate an overall reduction in ozone levels in 2007 and 2030 during the various episodes modeled. In addition to ozone reductions, a few areas had predicted ozone increases in portions of the area during parts of the episodes modeled. In most of these cases, we observed a net reduction in ozone levels in these areas due to the program. In the very small number of exceptions to this, the Agency did find benefit from reduction of peak ozone levels. Based upon a careful examination of this issue, including EPA's modeling results as well as consideration of the modeling and analyses submitted by commenters, it is clear that the significant ozone reductions from this rule outweigh the limited ozone increases that may occur. Additional details on this issue are provided in the Response to Comments document and in the Tier 2 Air Quality Modeling Technical Support Document.

Taken together, EPA believes these results indicate that it will be much easier for States to develop State Implementation Plans which will attain and maintain compliance with the one-hour ozone standard. EPA will work with States conducting more detailed local modeling of their specific ozone situation, to ensure that their SIPs will provide attainment. Notably, there are also other upcoming federal measures to lower ozone precursors that will aid these efforts. If the State modeling of local programs shows a need, the Agency will work with states to plan further actions to produce attainment with the NAAQS in order to protect the public's health and the environment. Further details on EPA's modeling results can be found in the Agency's Response to Comments and technical support documents.

*C. Particulate Matter*

The need to control the contribution of cars and light trucks to ambient concentrations of particulate matter (PM) is the basis for our adoption of the new PM emission standards for vehicles. PM is also a supplemental consideration in our promulgation of

[26] EPA assessment of air quality changes for 2007 and 2030 focused on 37 states in the East because these states cover most of the areas with 1-hour nonattainment problems.

the vehicle emission standards for $NO_X$ and VOC, and for the limits on sulfur in gasoline, because SOx, $NO_X$, and VOC are PM precursors.

For cars and for light trucks under 3750 pounds loaded vehicle weight, we are establishing new emission standards under the provisions of CAA section 202(i), which ties our action to the need for additional emission reductions in order to attain and maintain the NAAQS. The NAAQS relevant to the PM emission standards is the $PM_{10}$ NAAQS. The $PM_{10}$ NAAQS also provides additional but not essential support to our promulgation of the $NO_X$ and VOC standards, since these standards are fully supportable on the basis of the 1-hour ozone NAAQS.

For the vehicles not subject to CAA 202(i), and for the gasoline sulfur limits, our actions are tied to determinations regarding public health and welfare risks more broadly, under CAA sections 202(a), 202(b), and 211(c). The role of $NO_X$, VOC, and PM emissions in contributing to atmospheric concentrations of $PM_{10}$ is an important element of the risk that these emissions pose to public health and welfare.

PM also poses risks to public health not fully reflected in the $PM_{10}$ NAAQS. Though EPA has not relied on the adverse health impacts of fine PM to promulgate this rule, it is well established that such impacts exist. A summary of these effects is given in the next section. In addition, based on the available science, EPA's Office of Research and Development has recently submitted to a committee of our Science Advisory Board a draft assessment document which contains a proposed conclusion that diesel exhaust is a likely human cancer hazard and is a potential cause of other nonmalignant respiratory effects. The scientific advisory committee has met to discuss this document, and we are awaiting written review comments from the committee. We expect to submit a further revision of the document to the advisory committee before we make the document final.

1. Background on PM

Particulate matter (PM) represents a broad class of chemically and physically diverse substances that exist as discrete particles (liquid droplets or solids) over a wide range of sizes. The NAAQS that regulates PM addresses only PM with a diameter less than or equal to 10 microns, or $PM_{10}$. The coarse fraction of $PM_{10}$ consists of those particles which have a diameter in the range between 2.5 and 10 microns, and the fine fraction consists of those particles which have a diameter less than or equal to 2.5 microns, or $PM_{2.5}$. These particles and droplets are produced as a direct result of human activity and natural processes, and they are also formed as secondary particles from the atmospheric transformation of emissions of $SO_X$, $NO_X$, ammonia, and VOCs.

Natural sources of particles in the coarse fraction of $PM_{10}$ include windblown dust, salt from dried sea spray, fires, biogenic emanation (*e.g.,* pollen from plants, fungal spores), and volcanoes. Fugitive dust and crustal material (geogenic materials) comprise approximately 80% of the coarse fraction of the $PM_{10}$ inventory as estimated by methods in use today.[27] Manmade sources of these coarser particles arise predominantly from combustion of fossil fuel by large and small industrial sources (including power generating plants, manufacturing plants, quarries, and kilns), wind erosion from crop land, roads, and construction, dust from industrial and agricultural grinding and handling operations, metals processing, and burning of firewood and solid waste. Coarse-fraction $PM_{10}$ remains suspended in the atmosphere a relatively short period of time.

Most of the emission sources listed for coarse particles also have a substantial fine particle fraction. Their share of the $PM_{2.5}$ inventory is somewhat smaller, however, because of the role of other sources that give rise primarily to $PM_{2.5}$. The other sources of $PM_{2.5}$ include carbon-based particles emitted directly from gasoline and diesel internal combustion engines, sulfate-based particles formed from $SO_X$ and ammonia, nitrate-based particles formed from $NO_X$ and ammonia, and carbonaceous particles formed through transformation of VOC emissions. $PM_{2.5}$ particles from fugitive dust and crustal sources comprise substantially less than their share of coarse PM emissions, approximately one-half of the directly emitted $PM_{2.5}$ inventory as estimated by methods in use today. The presence and magnitude of crustal $PM_{2.5}$ in the ambient air is much lower even than suggested by this smaller inventory share, due to the additional presence of secondary PM from non-crustal sources and the removal of a large portion of crustal emissions close to their source. This near-source removal results from crustal PM's lack of inherent thermal buoyancy, low release height, and interaction with surrounding vegetation (which acts to filter out some of these particles).

Secondary PM is dominated by sulfate particles in the eastern U.S. and parts of the western U.S., with nitrate particles and carbonaceous particles dominant in some western areas. Mobile sources can reasonably be estimated to contribute to ambient secondary nitrate and sulfate PM in proportion to their contribution to total $NO_X$ and $SO_X$ emissions.

The sources, ambient concentration, and chemical and physical properties of $PM_{10}$ vary greatly with time, region, meteorology, and source category. A first step in developing a plan to attain the $PM_{10}$ NAAQS is to disaggregate ambient $PM_{10}$ into the basic categories of sulfate, nitrate, carbonaceous, and crustal PM, and then determine the major contributors to each category based on knowledge of local and upwind emission sources. Following this approach, SIP strategies to reduce ambient PM concentrations have generally focused on controlling fugitive dust from natural soil and soil disturbed by human activity, paving dirt roads and controlling soil on paved roads, reducing emissions from residential wood combustion, and controlling major stationary sources of $PM_{10}$ where applicable. The control programs to reduce stationary, area, and mobile source emissions of sulfur dioxide, oxides of nitrogen, and volatile organic compounds in order to achieve attainment with the sulfur dioxide and ozone NAAQS also have contributed to reductions in the fine fraction of $PM_{10}$ concentrations. In addition, the EPA standards for PM emissions from highway and nonroad engines are contributing to reducing $PM_{10}$ concentrations. As a result of all these efforts, in the last ten years, there has been a downward trend in $PM_{10}$ concentrations, with a leveling off in the later years.

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

[27] U.S. EPA (1998) National Air Pollutant Emission Trends Update, 1970–1997. EPA–454/E–98–007. There is evidence from ambient studies that emissions of these materials may be overestimated and/or that once emitted they have less of an influence on monitored PM concentrations (of both $PM_{10}$ and $PM_{2.5}$) than this inventory share would suggest.

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 tend to be in the fine particle range. Fine particles are a special 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 EPA's ''Staff Paper'' and ''Air Quality Criteria Document'' for particulate matter.[28]

EPA first established primary (health-based) and secondary (welfare-based) National Ambient Air Quality Standards for $PM_{10}$ in 1987. The annual and 24-hour primary $PM_{10}$ standards were set at 50 $\mu g/m^3$[33], and 150 $\mu g/m^3$, respectively.[29] In July 1997, the primary standards were revised to add two new $PM_{2.5}$ standards. At the same time, we changed the statistical form of the primary $PM_{10}$ standard and set all the secondary standards to be the same as the primary.

On May 14, 1999, a panel of the U.S. Court of Appeals for the District of Columbia Circuit reviewed EPA's revisions to the ozone and PM NAAQS and found, by a 2–1 vote, that sections 108 and 109 of the Clean Air Act, as interpreted by EPA, represent unconstitutional delegations of Congressional power. *American Trucking Ass'ns, Inc., et al.,* v. *Environmental Protection Agency*, 175 F.3d 1027 (D.C. Cir. 1999). Among other things the Court remanded the record for the 8-hour ozone NAAQS and the $PM_{2.5}$ NAAQS to EPA. On October 29, 1999, EPA's petition for rehearing by the three judge panel was denied, with an exception regarding the revised ozone NAAQS. EPA's petition for rehearing en banc by the full Circuit was also denied, although five of the nine judges considering the petition agreed to rehear the case.

The pre-existing $PM_{10}$ NAAQS remains in effect (except for one area—Boise, ID—where prior to the court's decision we had determined it no longer to apply). We believe that given the uncertain status of the new $PM_{2.5}$ NAAQS, it is most appropriate to rely primarily on the pre-existing $PM_{10}$ NAAQS in establishing the Tier 2/Gasoline Sulfur program's vehicle emission standards and limits on sulfur in gasoline. However, because we believe, and the Court did not dispute, that there are very substantial public health risks from $PM_{2.5}$ and substantial health and economic benefits from reducing $PM_{2.5}$ concentrations, we have conducted analyses of the $PM_{2.5}$ changes likely to occur from the Tier 2/Gasoline Sulfur program. These analyses are summarized in the section of this preamble dealing with the economic benefits of the new standards, section IV.D.5, and corresponding sections of the final RIA.

There is additional concern regarding the health effects of PM from diesel vehicles, apart from the health effects which were considered in setting the NAAQS for $PM_{10}$ and $PM_{2.5}$. Diesel PM contains small quantities of chemical species that are known carcinogens, and diesel PM as a whole has been implicated in occupational epidemiology studies. EPA's Office of Research and Development has considered these studies, and has recently submitted to a committee of our Science Advisory Board a draft conclusion that diesel exhaust is a ''highly likely'' human cancer hazard.[30] Because we are awaiting a formal response from our advisory committee before revising and finalizing our assessment document, we are not relying on the conclusions in this document as formal support for our action today. More information about this aspect of PM air quality is given in section III.F of this preamble.

2. Need for Additional Reductions to Attain and Maintain the $PM_{10}$ NAAQS

The most recent $PM_{10}$ monitoring data indicates that 15 designated $PM_{10}$ nonattainment counties, with a population of almost 9 million in 1996, violated the $PM_{10}$ NAAQS in the period 1996–1998. The areas that are violating do so because of exceedances of the 24-hour $PM_{10}$ NAAQS. No areas had monitored violations of the annual standard in this period. Table III.C–1 lists the 15 counties. The table also indicates the classification for each area and the status of our review of the State Implementation Plan.

TABLE III.C–1.—FIFTEEN $PM_{10}$ NONATTAINMENT AREAS VIOLATING THE $PM_{10}$ NAAQS IN 1996–1998 [a]

| Area | Classification | SIP approved? | 1996 Population (millions) |
|---|---|---|---|
| Clark Co., NV | Serious | No | 0.93 |
| El Paso, TX | Moderate | Yes | 0.67 |
| Gila, AZ | Moderate | No | 0.05 |
| Imperial Co., CA | Moderate | No | 0.14 |
| Inyo Co., CA | Moderate | No | 0.02 |
| Kern Co., CA | Serious | No | 0.62 |
| Mono Co., CA | Moderate | No | 0.01 |
| Kings Co., CA | Serious | No | 0.11 |
| Maricopa Co., AZ | Serious | No | 2.61 |
| Power Co., ID | Moderate | No | 0.01 |
| Riverside Co., CA | Serious | No | 1.41 |
| San Bernardino Co., CA | Serious | No | 1.59 |
| Santa Cruz Co., AZ | Moderate | No | 0.04 |
| Tulare Co., CA | Serious | No | 0.35 |

[28] U.S. EPA, 1996, Air Quality Criteria for Particulate Matter, EPA/600/P–95/001aF. Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information, OAQPS Staff Paper, EPA–452 R–96–013, July 1996.

[29] The annual average PM10 NAAQS is based on a three-year average, and the 24-hour NAAQS is based on expected exceedances over a three-year period.

[30] Health Assessment Document for Diesel Emissions, SAB Review Draft EPA/600/8–90/057D. November 1999. The document is available electronically at http://www.epa.gov/ncea/diesel.htm.

TABLE III.C–1.—FIFTEEN $PM_{10}$ NONATTAINMENT AREAS VIOLATING THE $PM_{10}$ NAAQS IN 1996–1998 [a]—Continued

| Area | Classification | SIP approved? | 1996 Population (millions) |
|---|---|---|---|
| Walla Walla Co., WA | Moderate | Yes | 0.05 |
| Total Population | | | 8.61 |

[a] Although we do not believe that we are limited to considering only designated nonattainment areas in implementing CAA section 202(i), we have focused on the designated areas in the case of $PM_{10}$. An official designation of $PM_{10}$ nonattainment indicates the existence of a confirmed $PM_{10}$ problem that is more than a result of a one-time monitoring upset or a results of $PM_{10}$ exceedances attributable to natural events. In addition to these designated nonattainment areas, there are 15 unclassified counties in 12 geographically spread out states, with a 1996 population of over 4 million, for which the state has reported $PM_{10}$ monitoring data for this period indicating a $PM_{10}$ NAAQS violation. We have not yet excluded the possibility that a one-time monitoring upset or a natural event(s) is responsible for the monitored violations in 1996–1998 in the 15 unclassified counties. We adopted a policy in 1996 that allows areas whose $PM_{10}$ exceedances are attributable to natural events to remain unclassified if the state is taking all reasonable measures to safeguard public health regardless of the source of $PM_{10}$ emissions. Areas that remain unclassified areas are not required to submit attainment plans, but we work with each of these areas to understand the nature of the $PM_{10}$ problem and to determine what best can be done to reduce it. The Tier 2/Gasoline Sulfur program will reduce $PM_{10}$ concentrations in these 15 unclassified counties, because all have car and light truck travel that contributes to $PM_{10}$ and precursor emissions loadings. This reduction will assist these areas in reducing their $PM_{10}$ nonattainment problem, if a problem is confirmed upon closer examination of each local situation. Boise, ID, had also been classified as a $PM_{10}$ nonattainment area at one time and was monitored to have a $PM_{10}$ NAAQS violation in 1996–1998. However, the pre-existing $PM_{10}$ NAAQS does not presently apply in Boise, ID, because in the period between our revision of the old $PM_{10}$ NAAQS and the Court's decision to vacate the revised $PM_{10}$ NAAQS, we determined that Boise was in attainment with the old $PM_{10}$ NAAQS and that it therefore no longer applied in that area.

Because the types and sources of $PM_{10}$ are complex and vary from area to area, the best projections of future $PM_{10}$ concentrations are the local emission inventory and air quality modeling analyses that states have developed or are still in the process of developing for their $PM_{10}$ attainment plans. We do employ a modeling approach, known as the source-receptor matrix approach, for relating emission reductions to $PM_{10}$ reductions on a national scale. This approach is one of our established air quality models for purposes of quantifying the health and welfare related economic benefits of PM reductions from major regulatory actions. One application of this modeling approach was for the Regulatory Impact Analysis for the establishment of the new PM NAAQS [31]. This model is also the basis for the estimates of $PM_{10}$ (and $PM_{2.5}$) concentrations reductions we have used to estimate the economic benefits of the Tier 2/Gasoline Sulfur program in 2030. Its use for this purpose is described in the final RIA. In both applications, we modeled an emissions scenario corresponding to controls currently in place or committed to by states. As such, this scenario is an appropriate baseline for determining if further reductions in emissions are needed in order to attain and maintain the $PM_{10}$ NAAQS.

In the RIA for the establishment of the PM NAAQS, we projected that in 2010 there will be 45 counties not in attainment with the original $PM^{10}$ NAAQS . We cited these modeling results in our proposal for the Tier 2/ Gasoline Sulfur program and in our first supplemental notice. After reviewing public comments on our presentation of these modeling results, we have concluded that while the source-receptor matrix approach is a suitable model for estimating PM concentration reductions for economic benefits estimation, it is not a tool we can use with high confidence for predicting that individual areas that are now in attainment will become nonattainment in the future. However, we believe the source-receptor matrix approach is appropriate for, and is a suitable tool for, determining that a current designated nonattainment area has a high risk of remaining in $PM_{10}$ nonattainment at a future date. Therefore, we have cross-matched the results for 2030 from our final RIA for Tier 2 and the list of current $PM_{10}$ nonattainment areas with monitored violations in 1996 to 1998 shown in Table III.C–1.[32] Based on this, we conclude that the 8 areas shown in Table III.C–2 have a high risk of failing to attain and maintain without further emission reductions. These areas have a population of nearly 8 million. Included in the group are the counties that are part of the Los Angeles, Phoenix, and Las Vegas metropolitan areas, where traffic from cars and light trucks is substantial. California areas will benefit from the Tier 2/Gasoline Sulfur program because of travel within California by vehicles originally sold outside the state, and by reduced poisoning of catalysts from fuel purchased outside of California.

TABLE III.C–2.—EIGHT AREAS WITH A HIGH RISK OF FAILING TO ATTAIN AND MAINTAIN THE $PM_{10}$ NAAQS WITHOUT FURTHER REDUCTIONS IN EMISSIONS

| Area | 1996 population (millions) |
|---|---|
| Clark Co., NV | 0.93 |
| Imperial Co., CA | 0.14 |
| Kern Co., CA | 0.62 |
| Kings Co., CA | 0.11 |
| Maricopa Co., AZ | 2.61 |
| Riverside Co., CA | 1.41 |
| San Bernardino Co., CA | 1.59 |
| Tulare Co., CA | 0.35 |
| Total population | 7.76 |

Table III.C–2 is limited to designated $PM_{10}$ nonattainment areas which both had monitored violations of the $PM_{10}$ NAAQs in 1996–1998 and are predicted to be in nonattainment in 2030 in our $PM_{10}$ air quality modeling. This gives us high confidence that these areas require further emission reductions to attain and maintain, but does not fully

[31] 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.

[32] We used the more recent modeling for 2030 rather than the earlier modeling for 2010, because the modeling the 2030 incorporates more recent estimates of emissions inventories. Our emission estimates in our final RIA indicate that $PM_{10}$ emissions under the basline scenario increase steadily between 1996 and 2030, for 47 states combined and for four specific cities, suggesting that areas in nonattainment in both 1996–1998 and 2030 will be in nonatainment in the intermediate years as well assuming no further emission reductions. A factor tending to make Table III.C–2 shorter is that we have not relied on the source-receptor matrix model's prediction of 24-hour nonattainment, as those predictions on an individual areas basis are less reliable than the predictions of annual average nonattainment.

consider the possibility that there are other areas which are now meeting the $PM_{10}$ NAAQS which have at least a significant probability of requiring further reductions to continue to maintain it. Our air quality modeling predicted 2030 violations of the annual average $PM_{10}$ NAAQS in five additional counties that in either 1997 or 1998 had single-year annual average monitored $PM_{10}$ levels of at least 90 percent of the NAAQS, but did not exceed the formal definition of the NAAQS over the three-year period ending in 1998 [33]. These areas are shown in Table III.C–3. They have a combined population of almost 17 million, and a broad geographic spread. Unlike the situation for ozone, for which precursor emissions are generally declining over the next 10 years or so before beginning to increase, we estimate that emissions of $PM_{10}$ will rise steadily unless new controls are implemented. The small margin of attainment which these areas currently enjoy will likely erode; the PM air quality modeling suggests that it will be reversed. We therefore consider these areas to each individually have a significant risk of failing to maintain the NAAQS without further emission reductions. There is a substantial risk that at least some of them would fail to maintain without further emission reductions. The emission reductions from the Tier 2/Gasoline Sulfur program will help to keep them in attainment.

TABLE III.C–3.—FIVE AREAS WITH A SIGNIFICANT RISK OF FAILING TO ATTAIN AND MAINTAIN THE $PM_{10}$ NAAQS WITHOUT FURTHER REDUCTIONS IN EMISSIONS

| Area | 1996 population (millions) |
|---|---|
| New York Co., NY | 1.33 |
| Cuyahoga Co., OH | 1.39 |
| Harris, Co., TX | 3.10 |
| San Diego Co., CA | 2.67 |
| Los Angeles Co., CA | 8.11 |
| Total population | 16.6 |

Taken together and considering their number, size, and geographic distribution, these 13 areas are sufficient to establish the case that additional reductions are needed in order to attain and maintain the $PM_{10}$ NAAQS. This determination provides additional support for the NOx and VOC standards and for the limits on gasoline sulfur, which are also fully supported on ozone attainment and health effects considerations. The sulfate particulate, sulfur dioxide, $NO_X$, and VOC emission reductions from the Tier 2/Gasoline Sulfur program will help the 8 areas in Table III.C–2 and the 5 areas in Table III.C.–3 to attain and maintain the $PM_{10}$ NAAQS. The new PM standards for gasoline and diesel vehicles are also supported by this $PM_{10}$ determination.

We are also establishing the new PM emissions standard today to avoid the possibility that $PM_{10}$ concentrations in these and other areas do get even worse due to an increase in sales of diesel vehicles, which could create a need for further reductions which would be larger and would affect more areas of the country. At the present time, virtually all cars and light trucks being sold are gasoline fueled. The ambient $PM_{10}$ air quality data for 1996 to 1998 reflects that current situation, and this data was an important factor in what areas are listed in Tables III.C–2 and III.C–3. Also, the predictions of future $PM_{10}$ air quality, used to develop the Tables III.C–2 and III.C–3 lists of areas with high or significant risk of being unable to attain and maintain, are based on an assumption that this will continue to be true. However, we are concerned over the possibility that diesels will become more prevalent in the car and light-duty truck fleet, since automotive companies have announced their desire to increase their sales of diesel cars and light trucks. Because current diesel vehicles emit higher levels of $PM_{10}$ than gasoline vehicles, a larger number of diesel vehicles could dramatically increase levels of exhaust $PM_{10}$, especially if more stringent PM emissions standards are not in place. The new PM emissions standards will ensure that an increase in the sales of diesel cars and light trucks will not increase PM emissions from cars and light trucks so substantially as to endanger $PM_{10}$ attainment and maintenance on a more widespread basis. Given this potential, it is appropriate to establish the new PM emissions standards now on the basis of the increase in sales of diesel vehicles being a reasonable possibility without such standards. Establishing the new PM emissions standards now avoids the public health impact and industry disruption that could result if we waited until an increase in sales of diesels with high PM emissions had already occurred.

In order to assess the potential impact of increased diesel sales penetration on PM emissions, we analyzed the increase in $PM_{10}$ emissions from cars and trucks under a scenario in which the use of diesel engines in cars and light trucks increases. We used projections developed by A.D. Little, Inc. as part of a study conducted for the American Petroleum Institute. The ''Most Likely'' case projected by A.D. Little forecasts that diesel engines'' share of the light truck market will grow to 24 percent by the 2015 model year. Diesel engines' share of the car market would grow somewhat more slowly, reaching 9 percent by 2015. The A.D. Little forecasts did not address the period after 2015; we have assumed that diesel sales stabilize at the level reached in 2015, with the fraction of in-use vehicles with diesel engines continuing to increase through turnover. We believe these projections are more realistic than the scenario of even higher sales of diesels described in the notice for the proposed Tier 2/Gasoline Sulfur program, though the A.D. Little forecasts still show much higher percentages of diesel vehicles in the light-duty fleet than have ever existed historically in the U.S.

The A.D. Little scenario of increased diesels, and even more so the scenario described in our proposal, would result in dramatic increases in direct $PM_{10}$ emissions from cars and light trucks, if there were no change in these vehicles' PM standards. The increase in diesel exhaust $PM_{10}$ emissions would more than overcome the reduction in direct $PM_{10}$ attributable to the sulfur reduction in gasoline. With no change in the existing PM standards for cars and light trucks, our analysis of this scenario shows that direct $PM_{10}$ emissions in 2020 would be approximately 98,000 tons per year, which is nearly two times the 50,000 tons projected if diesel sales do not increase. The portion of ambient $PM_{10}$ concentrations attributable to cars and light trucks would climb steadily. The final RIA presents alternative estimates of the amount by which future $PM_{10}$ concentrations could increase due to such an emissions increase, based on extrapolations from several studies' estimates of the contribution that heavy-duty diesel vehicles have made to recent or $PM_{10}$ concentrations. The increase is estimated to range from 0.6 to 20 μg/m3.

The added $PM_{10}$ emissions from cars and trucks due to an increase in diesel sales without action to reduce $PM_{10}$ from new diesel vehicles would exacerbate the $PM_{10}$ nonattainment problems of the areas listed in Tables

[33] In fact, in two of these areas, New York Co., NY and Harris Co., TX, the average $PM_{10}$ level in 1998 was above the 50 μg/m3 value of the NAAQS. These two areas are not included in the Table III.C–2 list of areas with a high risk of failing to attain and maintain because lower $PM_{10}$ levels in 1996 and 1997 caused their three-year average $PM_{10}$ level to be lower than the NAAQS. Official nonattainment determinations for the annual $PM_{10}$ NAAQS are made based on the average of 12 quarterly $PM_{10}$ averages.

III.C–2 and III.C–3, for which our air quality modeling predicted future nonattainment even without an increase in diesel sales. Moreover, it might cause $PM_{10}$ nonattainment in additional areas. In addition to the counties already listed in Tables III.C–2 and III.C–3, there are other areas for which 1997 and 1998 data indicate that maintenance of the $PM_{10}$ NAAQS is at risk if diesel sales of cars and light truck increase. Table III.C–4 lists additional counties for which either 1997 or 1998 monitoring data, or both, indicated a second-high $PM_{10}$ concentration for the single year within 10 percent of the $PM_{10}$ 24-hour NAAQS or an annual average $PM_{10}$ concentration within 10 percent of the annual average $PM_{10}$ NAAQS. Only counties which are part of metropolitan statistical areas are listed in Table III.C–4, in order to focus on those in which traffic densities are high. Considering both the annual and 24-hour NAAQS, there were 13 areas within 10 percent of the standard. Increases in $PM_{10}$ emissions from more diesel vehicles would put these areas in greater risk of violating the $PM_{10}$ NAAQS, especially if growth in other sources is high or meteorological conditions are more adverse than in the 1996 to 1998 period.

TABLE III.C–4.—THIRTEEN METROPOLITAN STATISTICAL AREA COUNTIES WITH 1997 AND/OR 1998 AMBIENT $PM_{10}$ Concentrations Within 10 Percent of the Annual or 24-Hour the $PM_{10}$ NAAQS [a]

| | 1996 population (millions) |
|---|---|
| **Areas within 10 percent of the annual $PM_{10}$ NAAQS:** | |
| Lexington Co., SC | 0.20 |
| Union Co., TN | 0.02 |
| Washoe Co., NV | 0.30 |
| Madison Co., IL | 0.26 |
| Dona Ana Co., NM | 0.16 |
| El Paso Co., TX | 0.68 |
| Ellis Co., TX | 0.97 |
| Fresno Co., CA | 0.74 |
| Philadelphia Co., PA | 1.47 |
| **Areas within 10 percent of the 24-hour $PM_{10}$ NAAQS:** | |
| Lexington Co., SC | 0.20 |
| El Paso Co., TX | 0.68 |
| Union Co., TN | 0.02 |
| Mobile Co., AL | 0.40 |
| Dona Ana Co., NM | 0.16 |
| Lake Co., IN | 0.48 |
| Philadelphia Co., PA | 1.47 |
| Pennington Co., SD | 0.09 |
| Ventura Co., CA | 0.71 |
| Total Population of all 13 areas | 6.48 |

Notes:

[a] These areas are listed based on their second high 24-hour concentration and annual average concentration in 1997, 1998, or both. Official nonattainment determinations are made based on three years of data, and on estimates of expected exceedances of the 24-hour standard.

Fortunately, the standards included in today's actions will result in a steady decrease in total direct $PM_{10}$ from cars and light trucks even if this increase in the use of diesel engines in these vehicles were to occur. If the A.D. Little ''Most Likely'' scenario for increased diesel engines in light trucks were to occur, today's actions would reduce diesel $PM_{10}$ from cars and light trucks by over 75 percent in 2020. Stated differently, by 2030 today's actions would reduce 98,000 tons of the potential increase in $PM_{10}$ emissions from passenger cars and light trucks. The result would be less direct $PM_{10}$ than is emitted today, because the increase in diesel $PM_{10}$ would be more than offset by the reduction in $PM_{10}$ emissions from gasoline vehicles resulting from lower gasoline sulfur levels.

We are establishing tighter PM standards for cars and light trucks to help avoid the adverse impact of greater diesel PM emissions on $PM_{10}$ attainment and public health and welfare if diesel sales increased in the future without the protection of the tighter standards. Because diesel vehicles will essentially be performing the same functions as the gasoline vehicles they will replace, it is appropriate for the new PM standards to also apply equally to gasoline and diesel vehicles. We expect that gasoline vehicles will need little or no redesign to meet the new PM standards when free of defects and properly operating. However, the new vehicle and gasoline sulfur standards may achieve some reduction in real world PM emissions from gasoline vehicles by encouraging more durable designs and by ensuring that these vehicles are operated on lower-sulfur fuel. The new standards for PM will also prevent any changes in gasoline engine design which would increase PM emissions. These changes would otherwise be possible because the current PM standard is so much higher than the current performance on the gasoline vehicles.

### 3. $PM_{2.5}$ Discussion

We are not basing our promulgation of the Tier 2 vehicle standards on a finding on the need for additional emission reductions in order to attain and maintain the NAAQS for $PM_{2.5}$. We are providing this information to explain that this program will result in substantial benefit in reduction of $PM_{2.5}$ concentrations, to an even broader set of geographic areas than will benefit in terms of $PM_{10}$ attainment.

The annual and 24-hour $PM_{2.5}$ NAAQS set in 1997 are numerically much lower than the corresponding $PM_{10}$ standards: 15 versus 50 $\mu g/m^3$ for the annual average standards and 65 versus 150 $\mu g/m^3$ for the 24-hour average standards. While geographically broad $PM_{2.5}$ monitoring is just now reaching the end of the first of three years of operation needed to determine compliance, our best analysis from the more limited $PM_{2.5}$ conducted in some areas indicates that many areas that are in compliance with the $PM_{10}$ standards will be found to be in violation of the annual average $PM_{2.5}$ standard. Violations of the 24-hour $PM_{2.5}$ standard appear to be infrequent.

Therefore, if we considered it appropriate to proceed with implementing the $PM_{2.5}$ NAAQS, we are confident that there would be a larger set of areas for which we would determine that further reductions in emissions are needed in order to attain and maintain the NAAQS.

Moreover, gasoline and diesel cars and light trucks have a more important contributing role for ambient $PM_{2.5}$ concentrations, and other emission sources that play a major role in ambient $PM_{10}$ concentrations will be relatively less important. Cars and light trucks contribute essentially the same absolute amount to ambient concentrations of $PM_{10}$ and of $PM_{2.5}$. However, most other sources contribute much more to $PM_{10}$ than to $PM_{2.5}$, so the relative contribution from cars and light trucks is larger. In addition, the absolute contribution from cars and light trucks is larger in relationship to the numerically lower $PM_{2.5}$ standard, making them more important to attainment and maintenance. This is also true for the potential contribution that more diesel cars and light trucks would make to ambient $PM_{2.5}$ concentrations.

### 4. Emission Reductions and Ambient PM Reductions

The $NO_X$ and VOC emission reductions from the Tier 2/Gasoline Sulfur program are presented in the ozone section above. The $SO_X$ and PM reductions are presented in our final RIA, and are essentially unchanged from those presented in our proposal, except for the revision of the diesel sales scenario discussed above.

Because virtually all of the PM reduction from the Tier 2/Gasoline

Sulfur program is in the fine fraction of $PM_{10}$, our estimates of the $PM_{2.5}$ and $PM_{10}$ reductions are essentially the same. Estimates of the ambient PM reductions in 2030 in different parts of the nation, after full phase in of the vehicle standards, are presented in the final RIA. The reductions in ambient PM are largest in the parts of the country with more vehicle travel, i.e, larger in the east than in the west and larger in urban areas than in rural areas. In the eastern half of the nation, the reductions in annual average PM concentrations range from 0.2 to over 1.2 micrograms per cubic meter.

*D. Other Criteria Pollutants: Carbon Monoxide, Nitrogen Dioxide, Sulfur Dioxide*

The standards being promulgated today will help reduce levels of three other pollutants for which NAAQSs have been established: carbon monoxide (CO), nitrogen dioxide ($NO_2$), and sulfur dioxide ($SO_2$). As of 1998, every area in the United States has been designated to be in attainment with the $NO_2$ NAAQS. As of 1997, one area (Buchanan County, Missouri) did not meet the primary $SO_2$ short-term standard, due to emissions from the local power plant. There are currently 20 designated CO nonattainment areas, with a combined population of 33 million. There are also 24 designated maintenance areas with a combined population of 22 million. However, the broad trends indicate that ambient levels of CO are declining. In 1997, 6 of 537 monitoring sites reported ambient CO levels in excess of the CO NAAQS.

The reductions in $SO_2$ precursor emissions from today's actions are essentially equal to the $SO_X$ reductions described in Section III.B. and III.C., respectively. The impact of today's actions on $NO_2$ emissions depends on the specific emission control technologies used to meet the Tier 2 vehicle emission standards. However, essentially all of the $NO_X$ emitted by cars and light trucks converts to $NO_2$ in the atmosphere; therefore, it is reasonable to assume that today's actions will substantially reduce ambient $NO_2$ levels by the same proportion. Today's rule also will require light trucks to meet more stringent CO standards. These more stringent standards will help extend the trend towards lower CO emissions from motor vehicles and thereby help the remaining CO nonattainment areas reach attainment while helping other areas remain in attainment with the CO NAAQS. Our analysis of CO reductions from today's program is found in Chapter III of the RIA. The analysis of economic benefits and costs found in Section IV.D.–5. does not account for the economic benefits of the CO reductions expected to result from today's proposal.

*E. Visibility*

Visibility impairment occurs as a result of the scattering and absorption of light by particles and gases in the atmosphere. It is most simply described as the haze that obscures the clarity, color, texture, and form of what we see. The principal cause of visibility reduction is fine particles between 0.1 and 1 μm in size. Of the pollutant gases, only $NO_2$ absorbs significant amounts of light; it is partly responsible for the brownish cast of polluted skies. While the contribution of $NO_2$ to visibility impairment varies from area to area, it is generally responsible for less than ten percent of visibility reduction.

The CAA requires EPA to protect visibility, or visual air quality, through a number of programs. These programs include the national visibility program under Sections 169a and 169b of the Act, the Prevention of Significant Deterioration program for the review of potential impacts from new and modified sources, and the secondary NAAQS for $PM_{10}$ and $PM_{2.5}$. The national visibility program established in 1980 requires the protection of visibility in 156 mandatory federal Class I areas across the country (primarily national parks and wilderness areas). More than 65 million visitors travel each year to these parks and wilderness areas. The CAA established as a national visibility goal, ''the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory federal Class I areas in which impairment results from manmade air pollution.'' The Act also calls for state programs to make ''reasonable progress'' toward the national goal. In addition, a recent national opinion poll on the state of the national parks found that more than 80 percent of Americans believe air pollution affecting these parks should be cleaned up for the benefit of future generations.[34]

There has been improvement in visibility in the western part of the country over the last ten years. However, visibility impairment remains a serious problem in Class I areas. Visibility in the East does not seem to have improved. As one part of addressing this national problem, EPA has required states to adopt and implement effective plans for protecting and improving visibility in Class I federal areas (64 FR 35714, July 1, 1999).

Today's actions will result in visibility improvements due to the reduction in local and upwind PM and PM precursor emissions. Since mobile source emissions contribute to the formation of visibility-reducing PM, control programs that reduce the mobile source emissions of direct and secondary PM would have the effect of improving visibility. The Grand Canyon Visibility Transport Commission's final recommendations report[35] found that reducing total mobile source emissions is an essential part of any program to protect visibility in the Western U.S. The Commission found that motor vehicle exhaust is responsible for about 14 percent of human-caused visibility reduction (excluding road dust). A substantial portion of motor vehicle exhaust comes from cars and light trucks. In light of that impact, the Commission's recommendations in 1996 supported federal Tier 2/Gasoline Sulfur standards, as EPA is proposing today. More recently, a number of Western Governors noted the importance of controlling mobile sources as part of efforts to improve visibility in their comments on the Regional Haze Rule and on the need to protect the 16 Class I areas on the Colorado Plateau. In their joint letter dated June 29, 1998, they stated that, ''* * * the federal government must do its part in regulating emissions from mobile sources that contribute to regional haze in these areas. * * *'' and called on EPA to make a ''binding commitment * * * to fully consider the Commission's recommendations related to the * * * federal national mobile source emission control strategies.'' These recommendations included Tier 2 vehicle standards and reductions in gasoline sulfur levels.

The recent Northern Front Range Air Quality Study provides another indication of how important car and light truck emissions can be to fine PM and visibility. This study reported findings that indicate that cars and light trucks are responsible for 39 percent of fine PM at a site within the metropolitan Denver area, and for 40 percent at a downwind rural site. This contribution includes both direct PM and indirect PM formed from sulfur dioxide and $NO_X$ from these vehicles.

[34] ''National Parks and the American Public: A National Public Opinion Survey on the National Park System,'' Summary Report, National Parks and Conservation Association, June 1998.

[35] ''Recommendations for Improving Western Vistas,'' Report of the Grand Canyon Visibility Transport Commission to the United States Environmental Protection Agency, June 10, 1996.

The analysis of economic benefits and costs found in Section IV.D.5. accounts for the economic benefits of the visibility improvements expected to result from today's actions.

*F. Air Toxics*

Section 202(a) provides that EPA may promulgate standards regulating any air pollutants that in the Administrator's judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. Section 202(l) provides specific provisions for regulation of hazardous air pollutants from motor vehicles and fuels, and states that at a minimum such regulations should apply to emissions of benzene and formaldehyde.

Emissions from cars and light trucks include a number of air pollutants that are known or suspected human or animal carcinogens or that are known or suspected to have other, non-cancer health impacts. These 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 present in exhaust emissions; benzene is also found in evaporative emissions from gasoline-fueled vehicles.

The health effects of diesel particulate matter are of particular relevance to today's actions, because of the possibility for increased diesel-powered truck sales and the more stringent PM standard that will apply to these trucks as a result of today's actions. While we have not finalized our decision about the carcinogenicity of diesel exhaust, we are in the process of addressing this question. The Agency's recently released draft assessment [36] concludes that diesel exhaust is a highly likely human lung cancer hazard, but that the data are currently unsuitable to make a confident quantitative statement of risk. The draft report concludes, however, that this risk is applicable to ambient exposures and that the risk may be in the range of regulatory interest (greater than one in a million over a lifetime). Several other agencies and governing bodies have designated diesel exhaust or diesel PM as a ''potential'' or ''probable'' human carcinogen.[37] The California Air Resources Board (ARB), for example, found that diesel particulate matter constituted a toxic air contaminant and estimated a potency range of $1.3 \times 10^{-4}$ to $2.4 \times 10^{-3}$ per $\mu g/m^3$.[38] The ARB's findings suggest that 130 to 2400 persons in one million exposed to 1 $\mu g/m^3$ of diesel exhaust particulate continuously for their lifetime (70 years) would develop cancer as a result of their exposure.

Because our assessment for diesel exhaust is not complete, we are not presenting absolute estimates of how potential cancer risks from diesel particulate matter could be affected by today's rule. However, we can offer a qualitative or relative discussion of these risks. Diesel engines used in nonroad equipment and heavy-duty highway vehicles currently constitute a far larger source of diesel PM than cars and light-duty trucks, since diesel engines are used in a very small portion of the cars and light-duty trucks in service today. However, engine and vehicle manufacturers have projected that diesel engines are likely to be used in an increasing share of cars and light trucks, and some manufacturers have announced capital investments to build such engines.

If these projections are valid, then the proportion of cars and light trucks powered by diesel engines, and the associated potential health risks from diesel PM, could increase substantially. We modeled the most likely level of increase in light duty diesel engine sales developed for the American Petroleum Institute.[39] We found that the greater diesel engine usage in cars and light trucks resulted in an 80 percent increase in emissions from all diesel-powered highway vehicles by 2020—emissions that have been implicated in potential cancer risks—assuming no change in the current light-duty diesel PM standards.

Today's rule would limit the increase in the potential cancer risks from cars and light trucks associated with any potential increase in light-duty diesel engines. Using the same sales projections discussed above, we have estimated that today's rule would limit the increase in total highway diesel PM emissions in 2020 due to growth in light duty diesels to under 10 percent, in contrast to the 80 percent increase projected to occur without the Tier 2 PM standards. An analogous analysis that accounted for exposure patterns, but that assumed even more widespread use of diesels in the car and light truck fleet, found that today's rule would limit the increase in total highway diesel PM exposure to about 8 percent. This analysis is discussed more fully in Chapter III.F.2 of the Regulatory Impact Analysis. In addition, the VOC emission reductions resulting from today's rule would reduce the potential cancer risk posed by air pollutants other than diesel PM emitted by cars and light trucks, since many of these pollutants are themselves VOCs. Furthermore, the rule would align the formaldehyde standards for all Tier 2 LDVs and LDTs with the formaldehyde standards for LDVs and LDT1s from the NLEV program, thereby helping to harmonize the Federal and California formaldehyde standards.

The analysis of economic benefits and costs found in Section IV.D.5. does not account for the economic benefits of the reduction in cancer risk from air toxics that could result from today's rule. Although we have completed a peer reviewed assessment of the impact of today's rule on exposure to toxic emissions, we have not engaged in a peer-reviewed assessment of the baseline air toxics risks (including a final quantitative risk assessment of the diesel particulate risks) or of the reductions that would be achieved by today's rule.

We plan to complete our analysis of air toxics risks as part of our responsibilities under section 202(l)(2) of the Clean Air Act, which requires EPA to establish regulations for the control of hazardous air pollutants from motor vehicles. The regulations may address vehicle emissions or fuel properties that influence emissions, or both. We plan to issue a proposal to address this requirement in April 2000, and a final rule in December 2000.

---

[36] EPA's diesel health assessment (Health Assessment Document for Diesel Emissions, SAB Review Draft, U.S. Environmental Protection Agency, Washington, DC. EPA/600/8–90/057D, November 1999) can be found at the following EPA website: *http://www.epa.gov/ncea/diesel.htm.*

[37] National Institute for Occupational Safety and Health (1988) Carcinogenic effects of exposure to diesel exhaust. NIOSH Current Intelligence Bulletin 50. DHHS (NIOSH) Publication No. 88–116. Centers for Disease Control, Atlanta, GA.

International Agency for Research on Cancer (1989) Diesel and gasoline engine exhausts and some nitroarenes, Vol. 46. Monographs on the evaluation of carcinogenic risks to humans. World Health Organization, International Agency for Research on Cancer, Lyon, France.

World Health Organization (1996) Diesel fuel and exhaust emissions: International program on chemical safety. World Health Organization, Geneva, Switzerland.

California Environmental Protection Agency, Office of Environmental Health Hazard Assessment: Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Part B Health Risk Assessment for Diesel Exhaust. April 22, 1998.

[38] California Environmental Protection Agency, Office of Environmental Health Hazard Assessment: Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Part B Health Risk Assessment for Diesel Exhaust. April 22, 1998.

[39] ''U.S. Light-Duty Dieselization Scenarios—Preliminary Study'', report to the American Petroleum Institute, July 2, 1999. Prepared by Arthur D. Little, Inc.

*G. Acid Deposition* [40]

Acid deposition, or acid rain as it is commonly known, occurs when $SO_2$ and $NO_X$ react in the atmosphere with water, oxygen, and oxidants to form various acidic compounds that later fall to earth in the form of precipitation or dry deposition of acidic particles. It contributes to damage of trees at high elevations and in extreme cases may cause lakes and streams to become so acidic that they cannot support aquatic life. In addition, acid deposition accelerates the decay of building materials and paints, including irreplaceable buildings, statues, and sculptures that are part of our nation's cultural heritage. To reduce damage to automotive paint caused by acid rain and acidic dry deposition, some manufacturers use acid-resistant paints, at an average cost of $5 per vehicle—a total of $61 million per year if applied to all new cars and trucks sold in the U.S. The general economic and environmental effects of acid rain are discussed at length in the RIA.

Acid deposition primarily affects bodies of water that rest atop soil with a limited ability to neutralize acidic compounds. The National Surface Water Survey (NSWS) investigated the effects of acidic deposition in over 1,000 lakes larger than 10 acres and in thousands of miles of streams. It found that acid deposition was the primary cause of acidity in 75 percent of the acidic lakes and about 50 percent of the acidic streams, and that the areas most sensitive to acid rain were the Adirondacks, the mid-Appalachian highlands, the upper Midwest and the high elevation West. The NSWS found that approximately 580 streams in the Mid-Atlantic Coastal Plain are acidic primarily due to acidic deposition. Hundreds of the lakes in the Adirondacks surveyed in the NSWS have acidity levels incompatible with the survival of sensitive fish species. Many of the over 1,350 acidic streams in the Mid-Atlantic Highlands (mid-Appalachia) region have already experienced trout losses due to increased stream acidity. Emissions from U.S. sources contribute to acidic deposition in eastern Canada, where the Canadian government has estimated that 14,000 lakes are acidic. Acid deposition also has been implicated in contributing to degradation of high-elevation spruce forests that populate the ridges of the Appalachian Mountains from Maine to Georgia. This area includes national parks such as the Shenandoah and Great Smoky Mountain National Parks.

The $SO_X$ and $NO_X$ reductions from today's actions will help reduce acid rain and acid deposition, thereby helping to reduce acidity levels in lakes and streams throughout the U.S. These reductions will help accelerate the recovery of acidified lakes and streams and the revival of ecosystems adversely affected by acid deposition. Reduced acid deposition levels will also help reduce stress on forests, thereby accelerating reforestation efforts and improving timber production. Deterioration of our historic buildings and monuments, and of buildings, vehicles, and other structures exposed to acid rain and dry acid deposition, also will be reduced, and the costs borne to prevent acid-related damage may also decline.

While the reduction in sulfur and nitrogen acid deposition will be roughly proportional to the reduction in $SO_X$ and $NO_X$ emissions, respectively, the precise impact of today's vehicle and fuel standards will differ across different areas. Each area is affected by emissions from different source regions, and the mobile source contribution to the total $SO_X$ and $NO_X$ emission inventory will differ across different source regions. Nonetheless, the projected impact of today's actions on $SO_X$ and $NO_X$ emission inventories provides a rough indicator of the likely effect of the Tier 2/Gasoline Sulfur standards on acid deposition. Our analysis indicates that today's actions will reduce $SO_X$ emissions by 1.8 percent and $NO_X$ emissions by 14.5 percent in 2030.

The analysis of economic benefits and costs found in Section IV.D.5. did not account for the economic benefits of the reduction in acid deposition expected to result from today's actions.

*H. Eutrophication/Nitrification*

Nitrogen deposition into bodies of water can cause problems beyond those associated with acid rain. The Ecological Society of America has included discussion of the contribution of air emissions to increasing nitrogen levels in surface waters in a recent major review of causes and consequences of human alteration of the global nitrogen cycle in its Issues in Ecology series [41]. Long-term monitoring in the United States, Europe, and other developed regions of the world shows a substantial rise of nitrogen levels in surface waters, which are highly correlated with human-generated inputs of nitrogen to their watersheds. These nitrogen inputs are dominated by fertilizers and atmospheric deposition.

Human activity can increase the flow of nutrients into those waters and result in excess algae and plant growth. This increased growth can cause numerous adverse ecological effects and economic impacts, including nuisance algal blooms, dieback of underwater plants due to reduced light penetration, and toxic plankton blooms. Algal and plankton blooms can also reduce the level of dissolved oxygen, which can also adversely affect fish and shellfish populations. This problem is of particular concern in coastal areas with poor or stratified circulation patterns, such as the Chesapeake Bay, Long Island Sound, or the Gulf of Mexico. In such areas, the ''overproduced'' algae tends to sink to the bottom and decay, using all or most of the available oxygen and thereby reducing or eliminating populations of bottom-feeder fish and shellfish, distorting the normal population balance between different aquatic organisms, and in extreme cases causing dramatic fish kills.

Collectively, these effects are referred to as eutrophication, which the National Research Council recently identified as the most serious pollution problem facing the estuarine waters of the United States (NRC, 1993). Nitrogen is the primary cause of eutrophication in most coastal waters and estuaries [42]. On the New England coast, for example, the number of red and brown tides and shellfish problems from nuisance and toxic plankton blooms have increased over the past two decades, a development thought to be linked to increased nitrogen loadings in coastal waters. Airborne $NO_X$ contributes from 12 to 44 percent of the total nitrogen loadings to United States coastal water bodies. For example, approximately one-quarter of the nitrogen in the Chesapeake Bay comes from atmospheric deposition.

Excessive fertilization with nitrogen-containing compounds can also affect terrestrial ecosystems [43]. Research suggests that nitrogen fertilization can alter growth patterns and change the

[40] Much of the information in this section was excerpted from the EPA document, Human Health Benefits from Sulfate Reduction, written under Title IV of the 1990 Clean Air Act. Amendments, U.S. EPA, Office of Air and Radiation, Acid Rain Division, Washington, DC, November 1995.

[41] Vitousek, Peter M., John Aber, Robert W. Howarth, Gene E. Likens, et al. 1997. Human Alteration of the Global Nitrogen Cycle: Causes and Consequences. Issues in Ecology. Published by Ecological Society of America, Number 1, Spring 1997.

[42] Much of this information was taken from the following EPA documenta: Deposition of Air Pollutants to the Great Waters-Second Report to Congress, Office of Air Quality Planning and Standards, June 1997, EPA–453/R–97–011.

[43] Terrestrial nitrogen deposition can act as a fertilizer. In some agricultural areas, this effect can be beneficial.

balance of species in an ecosystem. In extreme cases, this process can result in nitrogen saturation when additions of nitrogen to soil over time exceed the capacity of the plants and microorganisms to utilize and retain the nitrogen. This phenomenon has already occurred in some areas of the U.S.

Deposition of nitrogen from cars and light trucks contributes to these problems. As discussed in Section III.B. above, today's actions will reduce total $NO_X$ emissions by 4.5 percent in 2007 and by 14.5 percent in 2030. The $NO_X$ reductions should reduce the eutrophication problems associated with atmospheric deposition of nitrogen into watersheds and onto bodies of water, particularly in aquatic systems where atmospheric deposition of nitrogen represents a significant portion of total nitrogen loadings. Since air deposition accounts for 12–44 percent of total nitrogen loadings in coastal waters, the reduction in $NO_X$ from today's actions is projected to reduce nitrogen loadings by 0.5–2.0 percent in 2007 and 1.7–6.4 percent in 2030. To put these reductions in perspective, the reductions expected in the Chesapeake Bay area would amount to about 9 percent of the total reduction in nitrogen loading needed to maintain the reduction in nutrient loads agreed to by the signatory states in the Chesapeake Bay Agreement (40 percent of ''controllable nutrient loads'' by the year 2000).

The analysis of economic benefits and costs found in Section IV.D.5. does not account for the economic benefits of reduced eutrophication or reduced terrestrial nitrogen deposition expected to result from today's actions.

*I. Cleaner Cars and Light Trucks Are Critically Important to Improving Air Quality*

Despite continued progress in reducing ozone and PM levels, tens of millions of Americans are still exposed to levels of these pollutants that exceed the National Ambient Air Quality Standards. Our projections show that without further action to reduce these pollutants, tens of millions of Americans will continue to breathe unhealthy air for decades to come. Our projections also show that emissions from cars and light trucks will continue to contribute a substantial share of the ozone and PM precursors in current and projected nonattainment areas, and in upwind areas whose emissions contribute to downwind nonattainment, unless additional measures are taken to reduce their emissions. Cars and light trucks also contribute substantially to ambient concentrations of CO. These vehicles will also continue to contribute to the ambient PM that affects visibility in Class I federal areas and some urban areas. Emissions from cars and light trucks also play a significant role in a wide range of health and environmental problems, including known and potential cancer risks from inhalation of air pollutants (a problem that could become more significant if sales of diesel-powered cars and light trucks were to increase), health risks from elevated drinking water nitrate levels, acidification of lakes and streams, and eutrophication of inland and coastal waters.

Today's actions will reduce $NO_X$, VOC, CO, PM, and $SO_X$ emissions from these vehicles substantially. These reductions will help reduce ozone levels nationwide and reduce the extent and severity of violations of the 1-hour ozone standard. These reductions will also help reduce PM levels, both by reducing direct PM emissions and by reducing emissions that give rise to secondary PM. The CO reductions will help extend the downward trend in carbon monoxide levels, thereby helping the remaining CO nonattainment areas attain the CO standard and helping other areas stay in attainment with the CO standard despite continued increases in vehicle miles traveled. The $NO_X$ and $SO_X$ reductions will help reduce acidification problems, and the $NO_X$ reductions will help reduce eutrophication problems and drinking water nitrate levels. The PM standards included in today's actions will help improve visibility and would help mitigate adverse health effects in the event of increases in light-duty diesel engine sales.

## IV. What Are the New Requirements for Vehicles and Gasoline?

*A. Why Are We Proposing Vehicle and Fuel Standards Together?*

1. Feasibility of Stringent Standards for Light-Duty Vehicles and Light-Duty Trucks.

a. Gasoline Fueled Vehicles

We believe that the standards being promulgated today for gasoline-fueled vehicles are well within the reach of existing control technology. Our determination of feasibility is based on the use of catalyst-based strategies that are already in use and are well proven on the existing fleet of vehicles. In fact, as you will see below, many current engine families are already certified to levels at or below the new final Tier 2 requirements. All of the certification and research testing discussed below was performed on low-sulfur test fuel (nominally 30 ppm).

*i. LDVs and LDT1s–LDT4s*

Certainly, larger vehicles and trucks, which are heavier and have larger frontal areas, will face the biggest challenges in meeting the final Tier 2 standards. However, conventional technology will be sufficient for even these vehicles, especially in light of the extra leadtime we have provided before LDT3s and LDT4s have to meet Tier 2 levels. We are also changing the test conditions for these trucks from ''adjusted loaded vehicle weight'' to ''loaded vehicle weight.'' Adjusted loaded vehicle weight, suitable for commercial truck operation, loads the truck to half of its full payload. Loaded vehicle weight, on the other hand, represents curb weight plus 300 pounds. This change more accurately reflects how these vehicles are used and makes heavy LDT testing consistent with passenger car and light LDT testing. This change is consistent with treating these vehicles as they were designed, *i.e.,* for light-load use.

Emission control technology has evolved rapidly in recent years. Emission standards applicable to 1990 model year vehicles required roughly 90 percent reductions in exhaust HC and CO emissions and a 75 percent reduction in $NO_X$ emissions compared to uncontrolled emissions. Today, some vehicles currently in production are well below these levels, showing even greater overall emissions reductions of all three of these pollutants. These vehicles' emissions are well below those necessary to meet the current federal Tier 1 and even California Low-Emission Vehicle (LEV–I) standards. The reductions have been brought about by ongoing improvements in engine air-fuel management hardware and software plus improvements in catalyst designs, all of which are described fully in the RIA.

The types of changes being seen on current vehicles have not yet reached their technological limits, and continuing improvement will allow both LDVs and LDTs to meet the final standards. The RIA describes a range of specific techniques that we believe could be used. These range from improved computer software and engine air-fuel controls to increases in precious metal loading and other exhaust system/catalyst system improvements. All of these technologies are currently used on one or more production vehicle models. There is no need to invent new approaches or technologies. The focus of the effort is primarily development,

application, and optimization of these existing technologies.

We can gain significant insight into the difficulty of meeting the final new standards by looking at current full-life certification data. There are at least 48 engine family-control systems combinations, out of approximately 400, certified in 1999 at levels below the Tier 2 $NO_X$ standard of 0.07 g/mi. Of these, 35 also have hydrocarbon levels of 0.09 g/mi or below. Looking at a somewhat higher threshold to identify vehicles certified near the final standard, there are an additional 113 car and light truck families certified at levels between 0.07 g/mi and 0.10 g/mi $NO_X$. Although not yet complete at this time, we also examined the 2000 model year certification data and found that there are at least 60 engine family-control systems combinations certified at levels below the Tier 2 $NO_X$ standard of 0.07 g/mi and of those, 52 also have hydrocarbon levels of 0.09 g/mi or below.

All of the above vehicles are already able, or close to being able, to certify to our final standards. The further reductions needed are those to provide a compliance margin, or cushion, between the certified level and the emission standard. The degree of compliance margin required is a function of a variety of factors designed to provide the manufacturer a high confidence that production vehicles will meet the standards in-use over their useful life. Historically, these determinations are manufacturer specific, with cushions generally growing smaller as standards decline (reflecting more precision and repeatability in vehicle performance as more sophisticated controls are developed). The certification data reflects compliance cushions from as little as 20 percent below the standard to as high as 80 percent below the standard.

The manufacturers commented that the most difficult vehicles to bring into compliance with the Tier 2 standards would be the larger light-duty trucks, specifically those trucks currently certified under the LDT3 and LDT4 weight categories. Because of this, we undertook a technology demonstration program aimed at lowering the emissions of several large 1999 light-duty trucks. Two LDT3 Chevrolet Silverado pick-up trucks were tested, one internally and one under contract. Two LDT4 Ford Expedition sport-utility vehicles were also tested, also with one tested internally and one under contract. Both types of vehicles were tested with optional high horsepower engines (270 hp for the Silverado and 230 hp for the Expedition) and were equipped with four-wheel drive. The vehicles had curb weights of 4,500 pounds (GVWR of 6,100 lbs) for the Silverados and 5,800 pounds (GVWR of 7,200 lbs) for the Expeditions.

Figures IV.A.–1 and IV.A.–2 show the results to date of the emissions tests performed during this demonstration program at our National Vehicle and Fuel Emissions Laboratory (NVFEL) and also for emissions tests conducted in parallel by and under contract at Southwest Research Institute (SwRI) using similar Ford Expeditions and GM Chevrolet Silverados. During the evaluation, the trucks were equipped with a variety of catalysts that typically featured higher volume, higher precious metal loading, and higher cell-densities than the original hardware used by the vehicles to meet California LEV–I standards. Details of the catalysts tested are included in the RIA. Different exhaust manifolds featuring an insulating air-gap and low thermal mass were also evaluated. Finally, calibration changes were made to the powertrain control modules [44] to better match engine operating characteristics to the new catalyst systems, and to lower engine-out NOx emissions. The Silverado and Expedition had very similar results. Similar results were also achieved by us and SwRI, but by fairly different methods. The SwRI work on both trucks relied primarily on engine calibration changes and secondary air injection. The advanced catalyst systems used by SwRI contained advanced washcoat formulations with only minor changes to catalyst volume and precious metal content compared to the manufacturer's original configuration. The work we conducted on the Expedition also relied primarily on engine calibration changes with no secondary air injection. The catalyst system also contained advanced washcoat formulations with modest changes to catalyst volume and precious metal content. The work we conducted on the Silverado relied primarily on an advanced catalyst system with volume and precious metal content changes, with only minor changes to engine calibration.

As can be seen in the charts, the emissions of the vehicles tested clearly show the feasibility of the Tier 2 standards on the most difficult to certify vehicle categories. All vehicles reached emission levels well below the Tier 2 full-life NOx and NMOG standards. At the same time, there were no significant impacts on either fuel economy or performance of the vehicles.

Compared to the intermediate (50,000 mile) standards, the Ford Expedition tested at NVFEL consistently emitted NOx at less than one-third of the intermediate useful life standard.[45] NMHC/NMOG emissions were slightly below the intermediate standard level with no use of secondary-air-injection for cold-start hydrocarbon control. The Silverado tested at NVFEL met the intermediate standards with primarily hardware (catalyst) changes and only very minor calibration changes. The trucks tested at SwRI differed from those tested at NVFEL in their combination of emissions control hardware and calibration strategies, but achieved approximately the same emissions levels.

The above results point out that not only are the Tier 2 standards feasible for larger trucks, but there are multiple means that can be taken in order to achieve the necessary emissions levels. All of those paths involve fairly simple enhancements to current technology systems. Furthermore, the testing was conducted with a very limited budget over a limited amount of time. With the interim program for heavy trucks under Tier 2, the manufacturers will have 9 years from the publishing of the Tier 2 rule to bring the largest trucks into compliance with the Tier 2 standards. Manufacturers will also have considerably more resources with respect to calibration changes and hardware design to bring trucks of this type within compliance than were available within this limited, but successful, demonstration.

BILLING CODE 6560–50–P

[44] Powertrain control modules are computers used to control engine, transmission, and other vehicle functions on newer automobiles and trucks. The changes involved software changes in the case of the EPA-NVFEL work, or the use of alternate means of engine control in the case of the SwRI work.

[45] Although this testing was done on vehicles with catalysts aged to 50,000, we belive the overall experiments also strongly suggest that the Tier 2 full-life standards would be achieved by high-mileage vehicles.

**Figure IV.A.-1:**

**Emissions After an Equivalent of 50,000 Miles for Various Tested Configurations of Ford Expedition LDT4 SUVs with 5.4L V8 Engines**

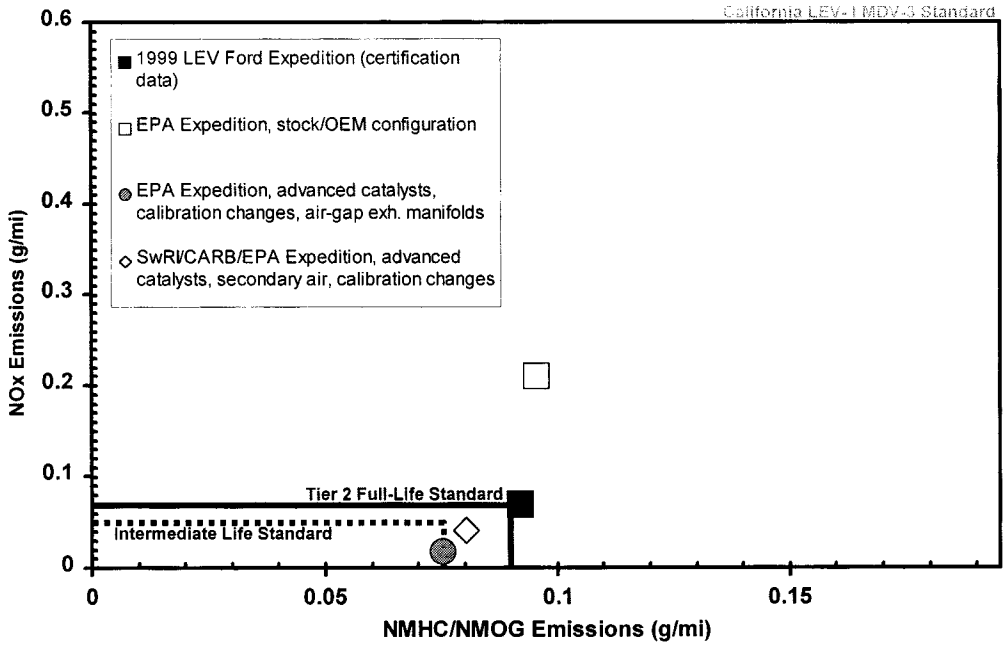
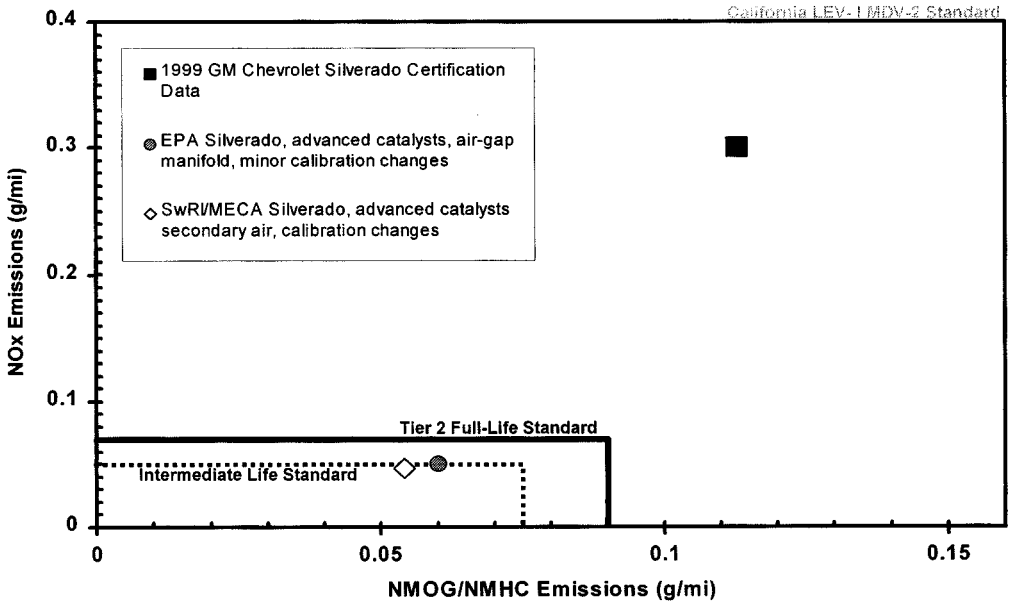


Figure IV.A.-2:

Emissions After an Equivalent of 50,000 Miles for Various Tested Configurations

of 1999 GM Chevrolet Silverado LDT3 Pickups with 5.3L V8 Engines.




BILLING CODE 6560–50–C

The Manufacturers of Emission Controls Association (MECA) sponsored a program that took two LDVs (a Crown Victoria and a Buick LeSabre) and one LDT2 (a Toyota T100) certified to the federal Tier 1 standards and replaced the original catalytic converter systems with more advanced catalytic converters, thermally aged to approximately 50,000 miles. With these systems and some related emission control modifications, the LeSabre and T100 emissions were well below our intermediate (50,000 mile) useful life standards, and the Crown Victoria was well below the NMOG standard and very close to the $NO_X$ standard.

Finally, the California Air Resources Board (ARB) tested five different production LEV light-duty vehicle models. Three of the five models met the Tier 2 standards for NMOG and $NO_X$ prior to any modifications. After installing low mileage advanced catalytic converters and making some minor adjustments to fuel bias, air injection, and spark timing, all of the vehicles had emission levels well below the Tier 2 intermediate useful life NMOG and $NO_X$ standards. ARB also tested several Ford Expeditions (LDT4) equipped with advanced catalytic converters. By adjusting several parameters, they were able to reduce $NO_X$ emissions to 0.06 g/mi and NMOG to 0.07 g/mi with a catalyst aged to 50,000 miles of use.

A more expanded analysis of the feasibility of the Tier 2 standards for gasoline fueled vehicles can be found in the RIA, considering the types of changes that will allow manufacturers to extend effective new controls to the entire fleet of affected vehicles. That analysis includes discussion of gasoline direct-injection engines, as well as the feasibility of the CO, formaldehyde and evaporative emission standards. The conclusion of all of our analyses is that the standards are feasible for gasoline-fueled vehicles. As gasoline-fueled vehicles represent the overwhelming majority of the LDV and LDT population (*i.e.,* over 99%), EPA concludes that the Tier 2 standards are feasible overall for LDVs and LDTs under 8500 lbs GVWR.

*ii. Medium-Duty Passenger Vehicles (MDPVs)*

The technologies and emission control strategies that will be used for LDT3 and LDT4 vehicles with a GVWR less than 8,500 pounds should apply directly to MDPV vehicles that have a GVWR greater than 8,500 pounds. In our LDT technology demonstration program discussed above, we found that a combination of calibration changes and improvements to the catalyst system resulted in emission levels for $NO_X$ well below and NMHC/NMOG approximately at the Tier 2 intermediate useful life standards. The catalyst improvements consisted of increases in volume and precious metal loading, and higher cell-densities than those found in the original hardware. We are confident that the use of secondary-air-injection will greatly help cold-start hydrocarbon control, making the NMOG standards achievable.

The most significant difference between LDT4s less than 8,500 pounds GVWR and MDPVs greater than 8,500 pounds GVWR is that MDPVs have a vehicle weight up to 800 pounds more than LDT4s. MDPVs will also be typically equipped with larger displacement engines. The potential impact of these differences is higher engine-out emissions than LDT4s due to the larger engine displacement and

greater load that the engine will be operated under due to the extra weight. However, neither of these preclude manufacturers from applying the same basic emission control technologies and strategies as used by LDVs and LDTs. The only difference will likely be the need for larger catalysts with higher precious metal loading than found in LDT4s. We are confident that MDPVs will be capable of meeting the final Tier 2 standards.

We are currently testing a Ford Excursion as part of our LDT technology demonstration program. Preliminary baseline results with a 'green'' (*i.e.,* nearly new) catalyst indicate that emission levels are higher than baseline emissions for the Ford Expedition. These results, although with a green catalyst, are well below our interim Tier 2 upper bin standards. In fact, the majority of these vehicles certified on the chassis dynamometer in California have certification levels well below our interim upper bin standards. While this testing is ongoing, we feel that the preliminary results are encouraging since they suggest that the difference in emissions between the Excursion and Expedition suggest that the strategies used on the Expedition can be successful with the Excursion. Therefore, we believe that by using technologies and control strategies similar to what will be used by LDVs and LDTs, combined with larger catalysts, MDPVs will be able to meet our Tier 2 emission standards.

b. Diesel Vehicles

As discussed above, the Tier 2 standards are intended to be ''fuel neutral.'' In today's document, we establish that the Tier 2 standards are technologically feasible and cost-effective for LDVs and LDTs overall, based on the discussion in Section IV.A.1.a. above. Under the principle of fuel neutrality, all cars and light trucks, including those using diesel engines, will be required to meet the Tier 2 standards. Contrary to some of the comments received on our proposal, given that the overwhelming majority of vehicles in these classes are gasoline-fueled, we do not believe it is appropriate to provide less stringent standards for diesel-fueled vehicles. Manufacturers of LDVs and LDTs today provide consumers with a wide choice of vehicles that are overwhelmingly gasoline-fueled. Less stringent standards for diesels would create provisions that could undermine the emission reductions expected from this program, especially given the expectation that some manufacturers may intend to greatly increase their diesel sales.

As with gasoline engines, manufacturers of diesels have made abundant progress over the past 10 years in reducing engine-out emissions from diesel engines. In heavy trucks and buses, PM emission standards, which were projected to require the use of exhaust aftertreatment devices, were actually met with only engine modifications. Indeed, emissions and performance of lighter diesel engine are rapidly approaching the characteristics of gasoline engines, while retaining the durability and fuel economy advantages that diesels enjoy. Against this background of continuing progress, we believe that the technological improvements that would be needed could be made in the time that would be available before diesels would have to meet the new Tier 2 standards.

Manufacturers may take advantage of the flexibilities in today's rulemaking to delay the need for diesel LDVs and LDTs to meet the final Tier 2 levels until late in the phase-in period (as late as 2007 for LDVs/LLDTs and 2009 for HLDTs), giving manufacturers a relatively large amount of leadtime. In a recent public statement, Cummins Engine Company has indicated that the interim Tier 2 standards in effect for vehicles and trucks in the early years of the Tier 2 program are feasible for diesel equipped models through further development of currently available engine and exhaust aftertreatment technology.[46]

While reductions in ''engine-out'' emissions, including incorporation of EGR strategies, may continue to be made, increasing emphasis is being placed on various aftertreatment devices for diesels. We believe that the use of aftertreatment devices will allow diesels to comply with the Tier 2 standards for $NO_X$ and PM.

For $NO_X$ emissions, potential aftertreatment technologies include lean $NO_X$ catalysts, $NO_X$ adsorbers and selective catalytic reduction (SCR). Lean $NO_X$ catalysts are still under development, but generally appear capable of reducing $NO_X$ emissions by about 15–30%. This efficiency is not likely to be sufficient to enable compliance with the final Tier 2 standards, but it could be used to meet the interim standards that would begin in 2004, with current diesel fuel.

$NO_X$ adsorbers appear capable of reaching efficiency levels as high as 90%. Efficiency in this range is likely to be sufficient to enable compliance with the proposed Tier 2 standards. $NO_X$ adsorbers temporarily store the $NO_X$ and thus the engine must be run periodically for a brief time with excess fuel, so that the stored $NO_X$ can be released and converted to nitrogen and oxygen using a conventional three-way catalyst, like that used on current gasoline vehicles.

There is currently a substantial amount of development work being directed at $NO_X$ adsorber technology. While there are technical hurdles to be overcome, progress is continuing and it is our judgement that the technology should be available by the time it would be needed for the final Tier 2 standards.

One serious concern with current $NO_X$ adsorbers is that they are quickly poisoned by sulfur in the fuel. Some manufacturers have strongly emphasized their belief that, in order to meet the final Tier 2 levels, low sulfur diesel fuel would also be required to mitigate or prevent this poisoning problem. In its comments on the NPRM, Navistar indicated that the Tier 2 standards may be achievable given low sulfur fuel and other programmatic changes such as those included in this Final Rule. Navistar has also been quoted publically as describing the Tier 2 standards as ''challenging but achievable'' given appropriate low sulfur fuel.[47] We intend to issue a Notice of Proposed Rulemaking early in the year 2000 intended to reduce sulfur in highway diesel fuel as a step to enable the technology most likely to be used to meet the Tier 2 standards.

SCR has been demonstrated commercially on stationary diesel engines and can reduce $NO_X$ emissions by 80–90%. This efficiency would be sufficient to enable compliance with the proposed Tier 2 standards. However, SCR requires that the chemical urea be injected into the exhaust before the catalyst to assist in the destruction of $NO_X$. The urea must be injected at very precise rates, which is difficult to achieve with an on-highway engine, because of widely varying engine operating conditions. Otherwise, emissions of ammonia, which have a very objectionable odor, can occur. Substantial amounts of urea are required, meaning that vehicle owners would have to replenish their vehicles' supply of urea frequently, possibly as often as every fill-up of fuel. As the engine and vehicle would operate satisfactorily without the urea (only $NO_X$ emissions would be affected), some mechanism would be needed to ensure that vehicle owners maintained their supply of urea. Otherwise, little $NO_X$ emission reduction would be expected in-use.

[46] ''Cummins Sees Diesel Feasible for Early Years of Tier 2''. Hart Diesel Fuel News, Sept. 20, 1999, p.2.

[47] Harts Diesel Fuel News, August 9, 1999, p4.

Regarding PM, applicable aftertreatment devices tend to fall into two categories: Oxidation catalysts and traps. Diesel oxidation catalysts can reduce total PM emissions by roughly 15–30%. They would need to be used in conjunction with further reductions in PM engine-out emissions in order to meet the proposed Tier 2 standards. Diesel particulate traps, on the other hand, can eliminate up to 90% of diesel PM emissions. However, some of the means of accomplishing the regeneration of particulate traps involve catalytic processes that also convert sulfur dioxide in the exhaust to sulfate. These techniques, if used, would also require a low sulfur fuel.

In summary, we believe that the structure of our final program, including the available bins and phase-in periods, will allow the orderly development of clean diesel engine technologies. We believe that the interim standards are feasible for diesel LDV/LDTs, within the bin structure of this rule and without further reductions in diesel fuel sulfur levels. And, as indicated earlier, at least one major diesel engine manufacturer (Cummins) has publicly agreed with this assessment. We further believe that in the long-term, the final standards will be within reach for diesel-fueled vehicles in combination with appropriate changes to diesel fuel to facilitate aftertreatment technologies. Manufacturers have argued that low sulfur diesel fuel will be required to permit diesels to meet the final Tier 2 standards, and we agree. At least one major manufacturer (Navistar) has indicated its belief that the final Tier 2 standards may be achievable for diesel engines with low sulfur diesel fuel.

2. Gasoline Sulfur Control Is Needed to Support the Proposed Vehicle Standards

As we discussed in the previous section, we believe that the stringent standards in this final rule are needed to meet air quality goals and are feasible for LDVs and LDTs. At the same time, we believe that for these standards to be feasible for gasoline LDVs and LDTs, low sulfur gasoline must be made available. The following paragraphs explain why we think gasoline sulfur control must accompany Tier 2 vehicle standards.

Catalyst manufacturers generally use low sulfur gasoline in the development of their catalyst designs. Vehicle manufacturers then equip their vehicles with these catalysts and EPA certifies them to the exhaust emission standards, usually based on testing the manufacturer does using low sulfur gasoline. However, fundamental chemical and physical characteristics of exhaust catalytic converter technology generally result in a significant degradation of emission performance when these vehicles use gasoline with sulfur levels common in most of the country today. This sensitivity of catalytic converters to gasoline sulfur varies somewhat depending on a number of factors, some better understood than others. Clearly, however, as we discuss in the following paragraphs, gasoline sulfur's impact is large, especially in vehicles designed to meet very low emission standards.

This is the reason EPA has decided to adopt a comprehensive approach to addressing emissions from cars and light trucks, including provisions to get low sulfur gasoline into the field in the same time frame needed for Tier 2 vehicles.

a. How Does Gasoline Sulfur Affect Vehicle Emission Performance?

We know that gasoline sulfur has a negative impact on vehicle emission controls. Vehicles depend on the catalytic converter to reduce emissions of HC, CO, and $NO_X$. Sulfur and sulfur compounds attach or ''adsorb'' to the precious metal catalysts that are required to convert these emissions. Sulfur also blocks sites on the catalyst designed to store oxygen that are necessary to optimize $NO_X$ emissions conversions. While the amount of sulfur contamination can vary depending on the metals used in the catalyst and other aspects of the design and operation of the vehicle, some level of sulfur contamination will occur in any catalyst.

Sulfur sensitivity is impacted not only by the catalyst formulation (the types and amounts of precious metals used in the catalyst) but also by factors including the following:

- The materials used to provide oxygen storage capacity in the catalyst, as well as the general design of the catalyst,
- The location of the catalyst relative to the engine, which impacts the temperatures inside the catalyst,
- The mix of air and fuel entering the engine over the course of operation, which is varied by the engine's computer in response to the driving situation and affects the mix of gases entering the catalyst from the engine, and
- The speeds the car is driven at and the load the vehicle is carrying, which also impact the temperatures experienced by the catalyst.

Since these factors vary for every vehicle, the sulfur impact varies for every vehicle to some degree. There is no single factor that guarantees that a vehicle will be very sensitive or very insensitive to sulfur. We now believe that there are not (and will not be in the foreseeable future) emission control devices available for gasoline-powered vehicles that can meet the proposed Tier 2 emission standards that would not be significantly impaired by gasoline with sulfur levels common today.

b. How Large Is Gasoline Sulfur's Effect on Emissions?

High sulfur levels have been shown to significantly impair the emission control systems of cleaner, later technology vehicles. The California LEV standards and Federal NLEV standards, as well as California's new LEV–II standards and our Tier 2 standards, require catalysts to be extremely efficient to adequately reduce emissions over the full useful life of the vehicle. In the NPRM we estimated that, based on data from test programs conducted by EPA and the automotive and oil industries, LEV and ULEV vehicles could experience, on average, a 40 percent increase in NMHC and 134 percent increase in $NO_X$ emissions when operated on 330 ppm sulfur fuel (our estimate in the NPRM of the current national average sulfur level) compared to 30 ppm sulfur fuel. New data generated since the NPRM on similar LEVs and ULEVs show that when these vehicles were driven on high sulfur (330 ppm) fuel for a few thousand miles (as opposed to less than 100 miles for the previous data), the NMHC and $NO_X$ emission increase due to high sulfur fuel increased by 149 percent and 47 percent, respectively. In other words, instead of the previous estimated 40 percent and 134 percent increases in NMHC and $NO_X$ emissions, respectively, more realistic estimates would be 100 percent and 197 percent, respectively.[48] Also, new data generated since the NPRM for late model LEV and ULEV vehicles that meet the federal and California supplemental federal test procedure (SFTP) standards and also have very low FTP emission levels, indicate that, on average, a 51 percent increase in NMHC and a 242 percent increase in $NO_X$ emissions when operated for a short period of time on 330 ppm compared to 30 ppm could be realized.

This level of emissions increase is significant enough on its own to cause a vehicle to exceed the full useful life emission standards when operated on sulfur levels that are substantially higher than the levels required by today's rule, even with the margin of

[48] The air quality impacts discussed above under Section III above do not reflect these new estimates.

safety that auto manufacturers generally include. Average sulfur levels in the U.S. are currently high enough to significantly impair the emissions control systems in new technology vehicles, and to potentially cause these vehicles to fail emission standards required for vehicles up through 100,000 miles (or more) of operation.

For older vehicles designed to meet Tier 0 and Tier 1 emission standards, the effect of sulfur contamination is somewhat less. Still, testing shows that gasoline sulfur increases emissions of NMHC and $NO_X$ by almost 17% when one of these vehicles is operated on gasoline for less than 100 miles containing 330 ppm sulfur compared to operation on gasoline with 30 ppm sulfur. Thus, Tier 0 and Tier 1 vehicles can also have higher emissions when they are exposed to sulfur levels substantially higher than the proposed sulfur standard. This increase is generally not enough to cause a vehicle to exceed the full useful life emission standards in practice, but it can result in in-use emissions increases since the vehicle could emit at levels higher than it would if it operated consistently on 30 ppm sulfur gasoline.

As discussed in the RIA, NLEV and Tier 2 vehicles are significantly more sensitive to sulfur poisoning than Tier 1 and Tier 0 vehicles. Because of this, even in the absence of Tier 2 standards, gasoline sulfur control to 30 ppm would achieve about 700,000 tons of $NO_X$ reductions per year from LDVs and LDTs by 2020. This represents about a third of the national $NO_X$ emission reductions otherwise available from these vehicles. Without these potential emission reductions, many states would face the potentially unmeetable challenge of finding enough other cost-effective sources of $NO_X$ emission reductions to address their ozone nonattainment and maintenance problems.

Sulfur reductions will result in reductions of other pollutants as well. For example, the increase in CO emissions at 330 ppm compared to 30 ppm were very similar to the results above for NMHC. Thus, sulfur reductions would greatly reduce CO emissions. Another example is sulfur reductions will help reduce emissions of particulate matter, providing some benefit to PM nonattainment areas (which may or may not coincide with ozone nonattainment areas) as well as with visibility problems. Sulfur reductions will also have benefits for areas across the country with acid deposition problems. Furthermore, sulfur reduction, by enabling tighter Tier 2 standards and by improving emissions performance of the vehicles already on the road, will lead to fewer NMOG emissions, since, as explained in the RIA, NMOG emissions are also impacted by gasoline sulfur (although to a lesser extent than $NO_X$ emissions). Some of the NMOG emissions reduced are air toxics. As described in Section III above, air toxics, also known as hazardous air pollutants, or HAPs, contribute to a variety of human health problems.

c. Sulfur's Negative Impact on Tier 2 Catalysts

As we discussed in the last section, sulfur contaminates the catalyst. In addition, essentially all vehicles that have been tested show that this effect is not reversible for one or more pollutants. The ability to reverse sulfur's negative effect on catalyst performance is dependent on a number of factors. The same factors that impact sulfur sensitivity also impact the irreversibility of the sulfur effect. For example, the location of the catalyst relative to the engine, the materials used to provide oxygen storage capacity in the catalyst, and the general design of the catalyst and the mix of air and fuel (A/F) entering the engine over the course of operation affect irreversibility, to name a few.

Perhaps the most significant factors for reversibility are the mixture of air and fuel entering the engine and catalyst temperature. The results of numerous studies and test programs show that rich exhaust (absence of oxygen) mixtures in addition to high catalyst temperatures (in excess of 700°C) can remove sulfur from the catalyst. Rich exhaust mixtures can occur intentionally and unintentionally, depending on the level of sophistication of the fuel control system. An intentional rich exhaust mixture is known as fuel ''enrichment.'' There are different types of enrichment. For example, there is ''commanded'' enrichment, which is used to provide extra power when the engine is under a load (*e.g.,* accelerations), as well as a means to cool the catalyst. Also, there is enrichment which results from the normal fluctuations in A/F that occur during typical ''closed-loop'' FTP operating conditions. The amount of enrichment necessary for sulfur removal is a function of several factors: the ''magnitude'' of the enrichment event, the duration of the enrichment event, and the frequency of which the enrichment event occurs.

While the amount of fuel enrichment is critical in the removal of sulfur from the catalyst, high catalyst temperature is equally as important. In order to meet strict Tier 2 standards, manufacturers are going to have to balance tight A/F control with improved catalyst performance, with an eye towards better catalyst thermal management. Many manufacturers are going to have to depend more on the precious metal palladium for oxidation of NMOG and CO emissions, as well as the reduction of $NO_X$, because palladium is more tolerant to high temperatures. Since the vast majority of emissions still occur immediately following a cold start when the catalyst is still cool, further reductions to cold start emissions can be achieved by locating the catalysts very close to the engine. The closer proximity to the engine helps to activate the catalyst sooner by taking advantage of the additional heat supplied to the catalyst by the exhaust manifolds. Palladium is very sensitive to sulfur and, consequentially, catalyst systems that rely heavily on this metal tend to be more sensitive to sulfur and less reversible. The precious metal platinum, although usually a little more effective at oxidizing NMOG and CO and slightly less sensitive to sulfur than palladium, is too sensitive to high temperature to survive the close proximity to the engine and is not anticipated to be used for close-coupled applications.

As discussed above, manufacturers will need to make modifications to their emission system calibrations by optimizing fuel control, spark timing, EGR and other parameters in conjunction with improvements to catalyst systems, in order to meet Tier 2 emission standards. This combination of emission control strategies can result in significant trade-offs between NMOG and $NO_X$ control. There can be considerable uncertainty associated with balancing these trade-offs at very low emissions levels if the vehicle is periodically operated on high sulfur fuels.

Our federal supplemental federal test procedure (SFTP) standards, as well as California's SFTP standards, both of which take effect in the 2001 model year, can further exacerbate this problem. The SFTP standards are intended to better address and control emissions under driving conditions not captured when compliance with our FTP-based exhaust emissions standards is demonstrated, such as operation with the air conditioning turned on or driving at very high rates of acceleration and vehicle speeds (hereafter referred to simply as aggressive driving). This is an important factor in assessing sulfur irreversibility, because Tier 2 vehicles will have to meet more stringent exhaust emission standards and will have to meet these standards over the wider variety of operating conditions

included in the SFTP provisions. Hence, they will have to be designed to meet the emission standards under all such operating conditions; these design changes may influence how irreversible the sulfur effect will be, as explained below.

Since wide variations in the A/F ratio help to remove sulfur from the catalytic surface, there is concern that vehicles which meet the SFTP standards, when driven aggressively, will experience insufficient enrichment to purge sulfur from the catalyst. Currently, when driven aggressively, the A/F ratio for most vehicles (those not certified to SFTP standards) is quite variable. Meeting the SFTP standards will ensure that manufacturers carefully control the A/F ratio over essentially all in-use driving conditions. This absence of widely varying A/F could therefore inhibit the removal of sulfur from the catalyst once operation on high sulfur fuel ceased.

In order to quantify how irreversible the sulfur effect would be when catalysts exposed to high sulfur fuel are then exposed to lower sulfur fuel, several test programs were developed by EPA and industry. The vehicles in these test programs consisted of LDVs and LDTs that met either EPA Tier 1 or California LEV and ULEV emission standards. All of the vehicles were first tested at a low sulfur level (*e.g.,* 30 or 40 ppm) to establish a baseline. The vehicles were then re-tested with high sulfur fuel (*e.g.,* 350 to 540 ppm). After emission results had stabilized, the vehicles were again re-tested with low sulfur fuel. Prior to each of the second series of low sulfur tests, the vehicles were operated over a short driving cycle to help purge (*i.e.,* remove) sulfur from the catalyst. Two different cycles were used to purge sulfur, representing different types of driving: moderate urban conditions and aggressive conditions. The FTP cycle, which represents moderate urban driving, and the REP05 [49] cycle, which represents very aggressive driving (*e.g.,* hard accelerations, high speed cruises), were the two cycles used.

The vehicles tested exhibited a wide range of irreversibility, for reasons that are not fully understood. The data published in the NPRM, showed that the effect of operation on high sulfur fuel was irreversible on one or more pollutants after operation on low sulfur fuel. $NO_X$ emissions were 15 percent irreversible. None of the vehicles were designed or modified to meet either the California or federal SFTP emissions standards. The only data used in an attempt to quantify the effect of aggressive operation on sulfur reversibility was from a catalyst manufacturer that performed some vehicle testing with catalysts which were bench aged with low and high sulfur fuel that appeared to closely approximate the impact aggressive operation would have on sulfur irreversibility. It was this data on which we based our projection of sulfur irreversibility for Tier 2 vehicles at 50 percent for NMHC and $NO_X$ emissions. Subsequent comments on the validity of these estimates after the publishing of the NPRM prompted several additional test programs on sulfur irreversibility.

The sulfur irreversibility test programs that followed the NPRM focused on vehicles that had emission levels that met or were close to Tier 2 emission standards and also met the US06 or aggressive driving portion of the SFTP emission standards. Although numerous vehicles were tested, only four met both of the above criteria. (We had tried to supplement the data base, but we were only able to add a limited number of vehicles.) We also decided to quantify irreversibility for NMHC and $NO_X$ emissions together instead of independently, because per our discussion above, sensitivity and irreversibility of either pollutant appears to be very dependent on the particular strategy chosen to reduce these emissions (particularly engine calibration and catalyst loading of precious metals and oxygen storage).

The new data exhibited a range of variability among vehicles and pollutants, similar to the data presented in the NPRM. The most important distinction between the new FRM data and the old NPRM data was that the new data showed that, on average, NMHC+$NO_X$ emissions in three out of four vehicles were not fully reversible after aggressive driving. Based on this data, we project that NMHC+$NO_X$ emissions will be 20 to 65 percent irreversible for Tier 2 vehicles under typical in-use driving, including aggressive driving.

As discussed above, the combination of calibration changes and emission system hardware modifications needed to meet our stringent Tier 2 emissions standards, can result in significant trade-offs between NMHC/NMOG and $NO_X$ control. There can be considerable uncertainty associated with balancing these trade-offs at very low emissions levels if the vehicle is periodically operated on high sulfur fuels, making the ability to remove sulfur from the catalyst highly uncertain. For example, a given catalyst today may be fully reversible for one pollutant and only partially reversible for another. However, because of the trade-off in NMOG and $NO_X$ performance, the modifications necessary to get that vehicle to meet both emission standards may result in the opposite effect for reversibility; *i.e.,* full reversibility for NMOG and partial reversibility for $NO_X$. There is no technical certainty that both the NMOG and $NO_X$ emission standards can be met without compromising reversibility performance. Therefore, we continue to believe that sulfur's negative impact on Tier 2 catalysts is a substantial concern.

The preceding discussion focused on the irreversibility of the sulfur impact on emissions from current gasoline engine technologies. There are new technologies under development, which could be sold in the U.S. in the middle of the next decade (the same time that Tier 2 vehicles are being introduced), which also appear to be very sensitive to sulfur and largely unable to reverse this sulfur impact. One of these technologies is the direct injection gasoline (GDI) engine. These engines utilize much more air than is needed to burn the fuel, unlike conventional gasoline engines that operate under conditions where only just enough air to completely burn the fuel is introduced into the engine. This GDI technology allows these engines to be up to 25% more fuel efficient than current gasoline engines and to emit up to 20% less carbon dioxide. GDI engines are currently being introduced in both Japan and Europe (which have or will soon require low sulfur gasolines). Because of the significant operating differences with GDI engines, these vehicles will likely require emission control technology substantially different from that used on conventional gasoline engines. For example, a GDI engine may require a $NO_X$ adsorber to meet the proposed Tier 2 $NO_X$ standard. High fuel sulfur levels quickly and permanently degrade the performance of these $NO_X$ adsorbers. Thus, to enable the sale of advanced, high efficiency GDI engines in the U.S. under the Tier 2 standards, it appears that low sulfur gasoline would have to be available nationwide by the time this technology becomes available.

The fuel cell is another promising propulsion system that is being developed for possible introduction to

[49] The FTP (Federal Test Procedure) is the basic driving cycle used for federal emissions testing; the LA4 cycle is a component of the FTP. The REP05 cycle developed by EPA is representative of all driving that occurs outside the LA4 or FTP cycle. All but one of the aggressive accelerations found in the US06 cycle were taken from the REP05. While each segment of the US06 cycle was taken from actual in-use driving, the timing and combination of these segments is not representative of in-use driving in the way REP05 is representative.

consumers early in the next century. Fuel cells are being designed to operate on a variety of fuels, including gasoline and diesel fuel. The basic fuel cell technology is highly sensitive to sulfur. Almost any level of sulfur in the fuel will disable the fuel cell. One possible solution is to install a technology that essentially filters out the sulfur before it enters the fuel cell. However, such sulfur ''guards'' are costly and could not practically be used like a disposable filter (requiring the vehicle owner to change the sulfur guard frequently, much like changing an oil filter) in situations where constant exposure to high sulfur levels occurs. (Even exposure to relatively low sulfur levels will likely require periodic replacement of the sulfur guard to ensure adequate protection for the fuel cell.) Therefore, the amount of sulfur in the fuel must be limited to that which can be removed by one or at most two sulfur guards over the life of the vehicle. Thus, in order for fuel cells operating on gasoline to be feasible in the U.S., low sulfur fuels would have to be available nationwide by the time this technology becomes available.

d. Sulfur Has Negative Impacts on OBD Systems

As discussed in more detail in the RIA, EPA believes that sulfur in gasoline can adversely impact the onboard diagnostic (OBD) systems of current vehicles as well as vehicles meeting the Tier 2 standards. This is an important factor supporting the need for a national sulfur control program. EPA's onboard diagnostics (OBD) regulations require that all vehicles be equipped with a system that monitors, among other things, the performance of the catalyst and warns the owner if the catalyst is not functioning properly. The OBD catalyst monitor is designed to identify those catalysts with pollutant conversion efficiencies that have been reduced to the extent that tailpipe emissions would exceed a specified multiple of the applicable hydrocarbon emissions standard. For California LEV and federal NLEV vehicles, that multiple is 1.75 times the applicable hydrocarbon emissions standard; for federal Tier 1 vehicles, that multiple is 1.5 times the applicable hydrocarbon standard added to the 4,000 mile emission level.

We want to ensure that OBD systems operate correctly, and thus the possibility that gasoline sulfur may interfere with these systems was another consideration when evaluating the need for a national sulfur program. Our evaluation of sulfur's effect on OBD systems was summarized in a staff paper in 1997.[50] We concluded that sulfur can affect the decisions made by the OBD systems. Sulfur appears to affect the oxygen sensor downstream of the catalyst, which is used in the OBD systems, and it is not clear that the conditions that seem to reverse sulfur's effect on the catalyst will also reverse any sulfur impact on the downstream oxygen sensors. Indirectly, sulfur impacts OBD systems because it can impair a catalyst that would otherwise be operating satisfactorily, thereby triggering the OBD warning lights. While this would indicate a properly operating OBD system, auto manufacturers have expressed the concern that consumers using high sulfur fuel may experience OBD warnings much more frequently than they would if operating on low sulfur gasoline, and that this could lead to a loss of consumer confidence in or support for OBD systems. Consumers may then ignore the OBD warning system and drive a potentially high emitting vehicle (which may have nothing to do with exposure to sulfur), contributing even more to air quality problems. Another possible scenario is that the OBD system may be impaired by sulfur in such a way that it does not register an improperly functioning catalyst, even if the catalyst is impaired for reasons unrelated to exposure to sulfur. This would defeat the purpose of OBD systems.

The reduction of sulfur levels for gasoline should resolve any concerns over the ability of the OBD system to make proper decisions. The use of low sulfur fuel should ensure that the OBD warning light goes on when it is supposed to and is not influenced by sulfur contamination of the catalyst and/or OBD system.

*B. Our Program for Vehicles*

The program we are establishing today for cars, light trucks, and large passenger vehicles will achieve the same large $NO_X$ reductions that we projected for the proposed program. The program is very similar to our proposed program in all major respects. We have been able to retain the general structure, stringency, and emissions benefits of the proposal in this final rule. Where we have made adjustments to the proposed program, we have done so in ways that improve the implementation of the program without changing the overall environmental benefits that the program will achieve. And by creating a new category of vehicles subject to the Tier 2 standards, medium-duty passenger vehicles, the final rule will ensure that all passenger vehicles expected to be on the road in the foreseeable future will be very clean.

We have seriously considered the input of all stakeholders in developing our final rule and believe the program finalized below balances the concerns of all stakeholders while achieving the needed air quality benefits. In general, the adjustments we have made are aimed at improving the implementation efficiency of the program by better aligning the federal Tier 2 program with the NLEV program and with California's program especially during the interim program.[51] Extensive comments from manufacturers led us to conclude that better harmony between the two programs would reduce the engineering, testing and certification workload related to our interim program. Where we could make changes to increase the overlap of the two programs while maintaining the $NO_X$ reductions of the proposal, we have done so. These changes are discussed in detail in this section IV.B. and in sections V.A. and V.B.

Our final rule also includes provisions to regulate complete heavy-duty passenger vehicles (primarily SUVs and passenger vans) of less than 10,000 pounds GVWR within the Tier 2 program. Standards for these vehicles were not included in the Tier 2 NPRM, but were proposed in a subsequent NPRM on October 29, 1999 (64 FR 58472). The final provisions for these vehicles are addressed in section IV.B.4.g. These heavier vehicles have been recategorized as medium duty passenger vehicles (MDPVs). They are included in the Tier 2 program starting with model year 2004 and will be treated similarly to HLDTs, unless otherwise noted.

The next sections of the preamble describe our final program in detail and include changes and adjustments from the NPRM that we believe address many concerns raised by the Alliance and others. While these changes ease the burden on manufacturers, they have little or no impact on the air quality benefits of the Tier 2 program.

[50] U.S. EPA, ''OBD & Sulfur Status Report: Sulfur's Effect on the OBD Catalyst Monitor on Low Emission Vehicles,'' March 1997, updated September 1997.

[51] In this section and also in section V, we make various references to the Tier 2 program, the interim program (or standards) and the final Tier 2 standards. The Tier 2 program includes the interim program (or standards) and the final Tier 2 standards. Some discussion is applicable to the entire Tier 2 program, some to the interim program (or standards) only and some is only applicable to the final Tier 2 standards. As the program is complex, we advise you to read carefully to discern the applicability of the text to the proper model years and categories of vehicles.

In a number of places in the following text, we mention that changes are being made ''in response to comments''. For a full summary of the comments and for our responses to those comments, we refer you to the Response to Comments document contained in the docket for this rulemaking or available from the Office of Mobile Sources web site (see web address at the beginning of this document).

1. Overview of the Vehicle Program

The vehicle-related part of today's final rule covers a wide range of standards, concepts, and provisions that affect how vehicle manufacturers will develop, certify, produce, and market Tier 2 vehicles. This Overview subsection provides readers with a broad summary of the major vehicle-related aspects of the rule. Readers for whom this Overview is sufficient may want to move on to the discussion of the key gasoline sulfur control provisions (Section IV.C.). Readers wishing a more detailed understanding of the vehicle provisions can continue beyond the Overview to deeper discussions of key issues and provisions (Sections IV.B.–2, 3, and 4) as well as discussions of additional provisions (Section V.A.). Readers should refer to the regulatory language found at the end of this preamble for a complete compilation of the requirements.

To understand how the program will work, it is useful to review EPA's classification system for light-duty vehicles and trucks. The light-duty category of motor vehicles includes all vehicles and trucks at or below 8500 pounds gross vehicle weight rating, or GVWR (*i.e.,* vehicle weight plus rated cargo capacity). Table IV.B.–1 shows the various light-duty categories and also shows our new medium-duty passenger vehicle (MDPV) category, discussed in section IV.B.4.g.. In the discussion below, we make frequent reference to two separate groups of light vehicles: (1) LDV/LLDTs, which include all LDVs and all LDT1s and LDT2s; and (2) HLDTs, which include LDT3s and LDT4s. We also make mention of MDPVs although the details of our program for those vehicles are deferred to IV.B.4.g. at the end of section IV.B.

TABLE IV.B.—1 LIGHT-DUTY VEHICLES AND TRUCKS AND MEDIUM-DUTY PASSENGER VEHICLES; CATEGORY CHARACTERISTICS

| | Characteristics |
|---|---|
| LDV | A passenger car or passenger car derivative seating 12 passengers or less. |
| Light LDT (LLDT) | Any LDT rated at up through 6,000 lbs GVWR. Includes LDT1 and LDT2. |
| Heavy LDT (HLDT). | Any LDT rated at greater than 6,000 lbs GVWR. Includes LDT3 and LDT4s. |
| MDPV | A heavy-duty passenger vehicle rated at less than 10,000 lbs GVWR. (The inclusion of MDPVs is discussed primarily in Section IV.B.4.g.) |

a. Introduction

Today's final rule incorporates concepts from the federal NLEV program which began phase-in in the 1999 model year for LDV/LLDTs.[52] The program in today's rule takes the corporate averaging concept and other provisions from NLEV but changes the focus from NMOG to $NO_X$ and applies them to all LDVs and LDTs. The final rule is compatible with the California LEV II (CalLEV II) program scheduled to take effect in 2004. The emission standard ''bins'' used for this average calculation are different in several respects from those of the CalLEV II program, yet still allow harmonization of federal and California vehicle technology.

The Tier 2 corporate average $NO_X$ level to be met through these requirements ultimately applies to all of a manufacturer's LDVs and LDTs (subject to two different phase-in schedules) regardless of the fuel used. Meanwhile, until the final Tier 2 standards are completely phased in, separate interim standards apply to LDV/LLDTs and HLDTs.

As proposed in the NPRM and finalized in today's document, the Tier 2 program will take effect in 2004, with full phase in occurring by 2007 for LDV/LLDTs and 2009 for HLDTs. During the phase-in years of 2004–2008, vehicles not certified to Tier 2 requirements will meet interim requirements also using a bins system, but with less stringent corporate average $NO_X$ standards.

In the discussions below, we set forth different Tier 2 phase-in schedules for the two different groups of vehicles (LDV/LLDTs and HLDTs) as well as two different interim fleet average $NO_X$ standards for 2004 and later model year vehicles awaiting phase-in to the Tier 2 standards.

In the NPRM, we set forth separate tables of full life standard bins for the interim programs and the final Tier 2 program, but we proposed that manufacturers could use all bins for interim or Tier 2 vehicles during the phase-in years.[53] We also proposed similar sets of tables for intermediate life standards. In this final rule, for simplicity and to accommodate additional bins, including some suggested by the Alliance, we have combined all of the full life bins into one table and all of the intermediate life bins into one table. The bins system and the choice of the individual bins is discussed in detail below.

*References to California LEV II Program*

Throughout this preamble, we make reference to California's LEV II program and its requirements. The LEV II program was approved by the California ARB at a hearing of November 5, 1998. Numerous draft documents were prepared by ARB staff in advance of that hearing and made available to the public. Those documents were referenced in our NPRM and included in the docket. Some of those documents were modified as a result of changes to the proposed program made at the hearing and due to comments received after the hearing. ARB prepared final documents without significant change. The final program was approved by California's Office of Administrative Law on October 28, 1999 and filed with the Secretary of State to become effective on November 27, 1999.

We have placed copies of the latest available documents, some of which we used in the preparation of this final rule, in the docket. You may also obtain these documents and other information about California's LEV II program from ARB's web site: (www.arb.ca.gov/regact/levii/levii.htm).

In the regulatory text that follows this preamble, we incorporate by reference a number of documents related to LEVII and California test procedures under

[52] The NLEV program is a voluntary program, adopted by all major LDV and LDT manufacturers. It applies only to LDVs, LDT1s and LDT2s. It does not apply to HLDTs.

[53] Throughout this text, the term ''full life'' is used in reference to vehicle standards to mean ''full useful life'' which is currently 10 years/100,000 miles for LDVs and LLDTs, but 11 years/120,000 miles for HLDTs. Similarly, ''intermediate life'' refers to intermediate useful life standards which apply for the period of 5 years/50,000 miles. In this rulemaking we are retaining the current full useful life period for interim LDVs and LLDTs, but raising it for Tier 2 vehicles to 10 years/120,000 miles.

LEVII. These documents are available in the docket for today's rulemaking.

b. Corporate Average $NO_X$ Standard

The program we are finalizing today will ultimately require each manufacturer's average full life $NO_X$ emissions over all of its Tier 2 vehicles to meet a $NO_X$ standard of 0.07 g/mi each model year. Manufacturers will have the flexibility to certify Tier 2 vehicles to different sets of exhaust standards that we refer to as ''bins,'' but will have to choose the bins so that their corporate sales weighted average full life $NO_X$ level for their Tier 2 vehicles is no more than the 0.07 g/mi. (We discuss the bins in the next subsection.)

A corporate average standard enables the program's air quality goals to be met while allowing manufacturers the flexibility to certify some models above and some models below the standard. Manufacturers can apply technology to different vehicles in a more cost-effective manner than under a single set of standards that all vehicles have to meet.

Each manufacturer will determine its year-end corporate average $NO_X$ level by computing a sales-weighted average of the full life $NO_X$ standards from the various bins to which it certified any Tier 2 vehicles. The manufacturer will be in compliance with the standard if its corporate average $NO_X$ emissions for its Tier 2 vehicles meets or falls below 0.07 g/mi. In years when a manufacturer's corporate average is below 0.07 g/mi, it can generate credits. It can trade (sell) those credits to other manufacturers or use them in years when its average exceeds the standard (i.e. when the manufacturer runs a deficit). The averaging program is described in detail in later text.

c. Tier 2 Exhaust Emission Standard ''Bins''

We are finalizing a Tier 2 bin structure having eight emission standards bins (bins 1–8), each one a set of standards to which manufacturers can certify their vehicles. Table IV.B.–2a shows the full useful life standards that will apply for each bin in our final Tier 2 program, i.e. after full phase-in occurs for all LDVs and LDTs. Two additional bins, bins 9 and 10, will be available only during the interim program and will be deleted before final phase-in of the Tier 2 program. Table IV.B.–2b shows all the bins from Table IV.B.–2a and also shows extra bins and higher available standards for certain pollutants that are available prior to full Tier 2 phase-in. An eleventh bin, only for MDPVs is discussed in section IV.B.4.g.

Many bins have the same values as bins in the California LEV II program as a means to increase the economic efficiency of the transition to as well as model availability. Further, we added bins that are not a part of the California program to modestly increase the flexibility of the program for manufacturers without compromising air quality goals. As discussed in Section IV.B.4. below, we believe these extra bins will help provide incentives for manufacturers to produce vehicles with emissions below 0.07 g/mi $NO_X$. The two highest of the ten bins shown in Table IV.B.2b. are designed to provide flexibility only during the phase-in years and will terminate after the standards are fully phased in, leaving eight bins in place for the duration of the Tier 2 program.

The NPRM full life standards contained seven Tier 2 bins as well as two separate tables of bins for interim vehicles. We proposed that manufacturers would be able to use all the bins during the phase in years regardless of whether they were certifying Tier 2 vehicles or interim vehicles.

The program we are finalizing today:

- Combines the bins from the NPRM;
- Omits two bins that were included in the NPRM for harmony with California but which are unlikely to be used; [54];
- Adds 2 bins to increase compliance flexibility without reducing environmental benefits;
- Adds a temporary bin only for MDPVs that expires after 2008. This bin is in addition to the 10 bins shown in tables of bins in this preamble;
- Establishes a PM value for the highest bin available during the interim program (bin 10) that is more stringent than the corresponding standard in the NLEV program;
- Provides temporary higher NMOG standards that expire after 2006 for certain interim LDT2s and LDT4s produced by qualifying manufacturers.

Tables IV.B.–2a and 2b show the bins for full life standards. Table IV.B.–2b is repeated later in the text where intermediate life standards are also shown. These tables omit the temporary bin for MDPVs. This bin is usable only by MDPVs and is addressed separately in section IV.B.4.g.

TABLE IV.B.–2A.—FINAL TIER 2 LIGHT-DUTY FULL USEFUL LIFE EXHAUST EMISSION STANDARDS

[Grams per mile]

| Bin No. | $NO_X$ | NMOG | CO | HCHO | PM |
|---|---|---|---|---|---|
| 8 | 0.20 | 0.125 | 4.2 | 0.018 | 0.02 |
| 7 | 0.15 | 0.090 | 4.2 | 0.018 | 0.02 |
| 6 | 0.10 | 0.090 | 4.2 | 0.018 | 0.01 |
| 5 | 0.07 | 0.090 | 4.2 | 0.018 | 0.01 |
| 4 | 0.04 | 0.070 | 2.1 | 0.011 | 0.01 |
| 3 | 0.03 | 0.055 | 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 |

[54] These bins are unlikely to be used in the Federal program because they contain the same $NO_X$ standard as the Federal bins, but contain more stringent NMOG standards than the Federal bins. These bins, which provide extra opportunity for a manufacturer to gain NMOG credits in California are not needed or useful in the Federal program where there is no NMOG corporate average standard. The two deleted bins are bin 4 from the proposed Tier 2 bins and bin 3 from the proposed interim bins for LDV/LLDTs. Dropping these bins does not affect harmonization with California standards because the federal program includes bins having the same $NO_X$ standard with higher NMOG standards.

TABLE IV.B.–2B.—TIER 2 LIGHT-DUTY FULL USEFUL LIFE EXHAUST EMISSION STANDARDS—INCLUDING BINS APPLICABLE DURING INTERIM PROGRAM ONLY

[Grams per mile]

| Bin No. | $NO_X$ | NMOG | CO | HCHO | PM | Comments |
|---|---|---|---|---|---|---|
| 10 | 0.6 | 0.156/0.230 | 4.2/6.4 | 0.018/0.027 | 0.08 | a b c d |
| 9 | 0.3 | 0.090/0.180 | 4.2 | 0.018 | 0.06 | a b c |
| 8 | 0.20 | 0.125/0.156 | 4.2 | 0.018 | 0.02 | b f |

Notes:
[a] Bin deleted at end of 2006 model year (2008 for HLDTs).
[b] The higher of the two temporary NMOG, CO and HCHO values apply only to HLDTs.
[c] An additional higher temporary bin restricted to MDPVs is discussed in section IV.B.4.g.
[d] Optional temporary NMOG standard of 0.280 g/mi applies for qualifying LDT4s and MDPVs only, see text.
[e] Optional temporary NMOG standard of 0.130 g/mi applies for qualifying LDT2s only, see text.
[f] Higher temporary NMOG value of 0.156g/mi deleted at end of 2008 model year.

The corporate average concept using bins will provide a program that gets essentially the same emission reductions we would expect from a straight 0.07 g/mi standard for all vehicles because all $NO_X$ emissions from Tier 2 vehicles in bins above 0.07 g/mi will need to be offset by $NO_X$ emissions from Tier 2 vehicles in bins below 0.07 g/mile. This focus on $NO_X$ allows NMOG [55] emissions to ''float'' in that the fleet NMOG emission rate depends on the mix of bins used to meet the $NO_X$ standard. However, as you can see by examining the bins, any combination of vehicles meeting the 0.07 g/mi average $NO_X$ standard will have average NMOG levels below 0.09 g/mi. The actual value will vary by manufacturer depending on the sales mix of the vehicles used to meet the 0.07 g/mi average $NO_X$ standard. In addition, there will be overall improvements in NMOG since Tier 2 incorporates HLDTs, which are not covered by the NLEV program. Tier 2 also imposes tighter standards on LDT2s than the NLEV program by making them average with the LDVs and LDT1s. NLEV has separate, higher standards for LDT2s. We did not adopt any bins for LDVs and LDTs with standards higher than we proposed.

d. Schedules for Implementation

We recognize that the Tier 2 standards pose greater technological challenges for larger light duty trucks ( HLDTs) than for LDVs and smaller trucks (LDT1s and LDT2s). We believe that additional leadtime is appropriate for HLDTs. HLDTs have historically been subject to less stringent vehicle-based standards than lighter trucks and LDVs. Also, HLDTs were not subject to the voluntary emission reductions implemented for LDVs, LDT1s and LDT2s in the NLEV program. Consequently we are finalizing as proposed, separate phase-in programs for HLDTs and LDV/LLDTs . Our phase-in approach will provide HLDTs with extra time before they need to begin phase-in to the final Tier 2 standards and will also provide two additional years for them to fully comply. Table IV.B–3 provides a graphical representation of how the phase-in of the Tier 2 program will work for all vehicles. This table shows several aspects of the program:

- Phase-in of the Tier 2 standards;
- Phase-in/phase-out requirements of the interim programs;
- Phase-in requirements of new evaporative standards;
- Years that can be included in alternative phase-in schedules;
- Years in which manufacturers can bank $NO_X$ credits through ''early banking'' and
- ''Boundaries'' on averaging sets in the Tier 2 and interim programs.
- Averaging provisions for MDPVs (see section IV.B.4.g. for discussion)

We discuss each of these topics in detail below and make numerous references to Table IV.B–3.

BILLING CODE 6560–50–P

[55] In the NPRM, we proposed that hydrocarbon standards would be measured in terms of ''non-methane organic gases'' (NMOG) regardless of fuel. For reasons explained elsewhere in this preamble we will permit non-methane hydrocarbons (NMHC) as an option in the final rule for all fuels except alcohol fuels and compressed natural gas . NMHC and NMOG are very similar for gasoline and diesel fuel emissions.

**Table IV.B-3**
**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 % | NOx STD. (g/mi) |
|---|---|---|---|---|---|---|---|---|---|---|
| **LDV/LLDT (INTERIM)** | NLEV | NLEV | NLEV | 75 max | 50 max | 25 max | | | | 0.30 avg |
| **LDV/LLDT (TIER 2 +evap)** | *early banking* [b] [b] [b] | | | 25 | 50 | 75 | 100 | 100 | 100 | 0.07 avg |
| **HLDT (TIER 2 +evap)** | *early banking* [b] [b] [b] [b] [b] [b] [b] | | | | | | | 50 | 100 | 0.07[d] avg |
| **HLDT (INTERIM)** | TIER 1 [b] | TIER 1 [b] | TIER 1 [b] | 25 c,e | 50 e | 75 e | 100 e | 50 max | | 0.20[a,d] avg |
| **MDPVs (INTERIM)** | HDE | HDE | HDE | | | | | | | |
| **MDPVs (TIER 2 + evap)** | *early banking* [b] [b] [b] [b] [b] [b] [b] | | | | | | | 50 | 100 | 0.07[d] avg |

NOTES

a. 0.6 NOx cap applies to balance of LDT3s/LDT4s, respectively, during the 2004-2006 phase-in years

b. 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.

c. Required only for manufacturers electing to use optional NMOG values for LDT2s or LDT4s and MDPV flexibilities during the applicable interim program and for vehicles whose model year commences on or after the fourth anniversary date of the signature of this rule. See discussion in preamble text.

d. HLDTs and MDPVs must be averaged together.

e. Diesels may be engine-certified through the 2007 model year. See discussion in preamble text.

BILLING CODE 6560–50–C

As described in detail in the Response to Comments document, the Alliance proposal would have delayed final implementation of Tier 2 standards until 2011. We are not adopting the Alliance's time schedule, because we believe the shorter schedule we proposed is feasible and that there is no reason to delay the final benefits of the Tier 2 standards. In fact, numerous commenters representing state, environmental and health groups argued that our original proposal gave manufacturers too much time to bring the HLDTs into line with LDVs and LLDTs. We believe the two extra years proposed in the NPRM remain appropriate. HLDTs will face greater challenges than LDVs/LLDTs because their emission control systems will need to be durable under potentially heavier loads and tougher operating conditions than LDV/LLDTs. Their sales are small relative to the rest of the light duty fleet (they will comprise about 14% of the light duty fleet in 2004), and they will benefit from industry experience with the lighter vehicles. In addition, HLDTs will not remain at high Tier 1 levels until they phase-in to Tier 2. Rather, they will have to meet interim standards that impose a $NO_X$ cap of 0.60 g/mi and phase-in a corporate average $NO_X$ standard of 0.20 g/mi. These standards represent a significant reduction from

applicable Tier 1 standards.[56] Interim standards are discussed in detail later in this preamble.

*i. Implementation Schedule for Tier 2 LDVs and LLDTs*

We are finalizing the implementation schedule for the Tier 2 standards as proposed in the NPRM. Thus, the standards will take effect beginning with the 2004 model year for light duty vehicles and trucks at or below 6000 pounds GVWR (LDV/LLDTs). Manufacturers will phase their vehicles into the Tier 2 standards beginning with 25 percent of LDV/LLDT sales that year, 50 percent in 2005, 75 percent in 2006, and 100 percent in 2007. Manufacturers will be free to choose which vehicles are phased-in each year. However, in each year during (and after) the phase-in, the manufacturer's average $NO_X$ for its Tier 2 vehicles must meet the 0.07 g/mi corporate average standard. This phase-in schedule, which is consistent with that of the California LEV II program, provides between four and seven years of leadtime for the manufacturers to bring all of their LDV/LLDT production into compliance. These vehicles constitute about 86 percent of the light duty fleet.

To increase manufacturer flexibility and provide incentives for early introduction of Tier 2 vehicles, we are also finalizing provisions from the NPRM that permit manufacturers to use alternative phase-in schedules that will still require 100 percent phase-in by 2007, but recognize the benefits of early introduction of Tier 2 vehicles, and allow manufacturers to adjust their phase-in to better fit their own production plans. (See section IV.B.4.b.ii. below.)

*ii. Implementation Schedule for Tier 2 HLDTs*

The Tier 2 phase-in schedule for HLDTs is also being finalized as proposed. The phase-in for final Tier 2 standards for HLDTs will start later and end later than that for LDVs and LLDTs. Fifty percent of each manufacturer's HLDTs must meet Tier 2 standards in 2008, and 100 percent must meet Tier 2 standards in 2009. As with the LDV/LLDTs, the Tier 2 HLDTs must meet a corporate average $NO_X$ standard of 0.07 g/mi. This delayed phase-in schedule:

- Provides significant interim emission reductions starting in 2004 (discussed separately below);
- Recognizes the relatively high emission standards that currently apply to HLDTs;
- Provides manufacturers with adequate lead time before they must bring HLDTs into compliance with final Tier 2 standards;
- Provides manufacturers the opportunity to apply and evaluate Tier 2 technology on LDV/LLDTs before having to apply it to HLDTs; and
- Provides manufacturers the opportunity to apply and evaluate Tier 2 technology on HLDTs on a relatively small scale to meet California LEV II requirements before having to apply it to HLDTs nationwide.

As with the LDV/LLDTs above, to encourage early introduction of Tier 2 HLDTs and to provide manufacturers with greater flexibility, we are finalizing provisions to permit manufacturers to generate early Tier 2 $NO_X$ credits and to use alternative phase-in schedules that still result in 100% phase-in by 2009. (See sections IV.B.4.d.iv. and IV.B.4.b.ii, respectively, below.)

e. Interim Standards

The interim standards discussed below are a major source of emission reductions in the early years of the vehicle control program. The $NO_X$ emission standards for LDT2s and LDT4s, which comprise about 40 percent of the fleet, are more stringent than the corresponding standards in the NLEV and CAL LEV I programs. These standards also are important because they set the stage for a smooth transition to the final Tier 2 standards.

The two groups of vehicles (LDV/LLDTs and HLDTs) will be approaching the Tier 2 standards from quite different emission ''backgrounds''. LDV/LLDTs will be at NLEV levels, which require $NO_X$ emissions of either 0.3 or 0.5g/mi on average,[57] while HLDTs will be at Tier 1 levels facing $NO_X$ standards of either 0.98 or 1.53 g/mi, depending on truck size. These Tier 1 $NO_X$ levels for HLDTs are very high (by a factor of 14–22) relative to our 0.07 g/mi Tier 2 $NO_X$ average. To address the disparity in emission ''backgrounds'', while gaining air quality benefits from vehicles during the phase-in period, we proposed and are finalizing separate interim average $NO_X$ standards for the two vehicle groups during the phase-in period. The provisions described below will apply in 2004 for all LDVs and LDTs not certified to Tier 2 standards. The relationship of the interim programs to the final Tier 2 standards is shown in Table IV.B–3.

Interim vehicles will certify to the same bins as Tier 2 vehicles. As described earlier in this preamble, we have merged the tables of bins from the NPRM for simplicity and added a few bins. Bins 9 and 10 were drawn from the tables of interim bins in the NPRM, and are intended only for use during the phase-in years. Therefore, these two bins will be discontinued after 2006 (2008 for HLDTs).

*i. Interim Exhaust Emission Standards for LDV/LLDTs*

Beginning with the 2004 model year, all new LDVs, LDT1s and LDT2s not incorporated under the Tier 2 phase-in will be subject to an interim corporate average $NO_X$ standard of 0.30 g/mi. This is effectively the LEV $NO_X$ emission standard for LDVs and LDT1s under the NLEV program.[58] This interim program will hold LDVs and LLDTs to NLEV levels if they are not yet subject to Tier 2 standards during the phase-in. By implementing these interim standards for LDVs and LLDTs we will ensure that the accomplishments of the NLEV program continue. Additionally, this program will bring about substantial and important $NO_X$ emission reductions from LDT2s in the early years of the program. LDT2s will be held to a 0.3 g/mi $NO_X$ average in contrast to a 0.5 g/mi average in the NLEV program.

Because the Tier 2 standards are phased-in beginning in the 2004 model year, the interim standards for LDVs and LLDTs apply to fewer vehicles each year, *i.e.,* they are ''phase-out'' standards. Table IV.B–2 shows the maximum percentage of LDVs and LLDTs subject to the interim standards each year— 75% in 2004, 50% in 2005, 25% in 2006 and 0% in 2007.

As mentioned above, the interim program for LDV/LLDTs is designed to hold these vehicles to the NLEV $NO_X$ level for LDVs and LDT1s, and a few of our bins are derived from the NLEV program. Our proposal to bring LDT2s into line with the LDVs and LDT1s during the interim program by requiring all LDVs, LDT1s and LDT2s to meet the same average $NO_X$ standard (0.30) g/mi was of concern to industry commenters. In the final rule, we are retaining this requirement, but we are providing an optional NMOG standard of 0.130 for LDT2s certified to bin 9 when the manufacturers of those LDT2s elect to bring all of their 2004 model year

[56] Under Tier 1 standards, LDT3s are subject to a 0.98 g/mi $NO_X$ standard while LDT4s are subject to an even higher $NO_X$ standard of 1.53 g/mi.

[57] The NLEV program imposes NMOG average standards that translate into full useful life $NO_X$ levels of about 0.3 g/mi for LDV/LDT1s and 0.5 g/mi for LDT2s.

[58] The NLEV program does not impose average $NO_X$ standards, but the NMOG average standards that it does impose will lead to full useful life $NO_X$ levels of about 0.3 g/mi for LDV/LDT1s.

HLDTs under our interim program and phase 25% of those HLDTs into the 0.20 g/mi average $NO_X$ standard. (See ii. below). These provisions are discussed in detail below and also in the Response to Comments document.

*ii. Interim Exhaust Emission Standards for HLDTs*

Our interim standards for HLDTs will begin in the 2004 model year similar to our proposal in the NPRM. The Interim Program for HLDTs will require compliance with a corporate average $NO_X$ standard of 0.20 g/mi that will be phased in between 2004 and 2007. The interim HLDT standards, like those for LDV/LLDTs will make use of the bins in Tables IV.B. –4 and –5. We believe that our interim standards, which start in 2004, will produce significant emission reductions from HLDTs produced during the interim period. For example, HLDTs will have to reduce emissions in the interim program relative to the NLEV program. These standards, by themselves, represent a major reduction in emission standards and we believe it is likely that some manufacturers will apply their Tier 2 technology to HLDTs in order to comply with the interim standards.

As shown in Table IV.B.–3, the phase-in schedule for HLDTs to the 0.20 g/mi corporate average $NO_X$ standard will be 25 percent in the 2004 model year (except as noted below), 50 percent in 2005, 75 percent in 2006, and 100 percent in 2007. As for the Tier 2 standards, alternative phase-in schedules (see Section IV.B.4.b.ii.) will be available. The interim program will remain in effect through 2008 to cover those HLDTs not yet phased into the Tier 2 standards (a maximum of 50%). Interim HLDTs not subject to the interim corporate average $NO_X$ standard during the applicable phase-in years (2004–2006 or 2005–2006) will be subject to the least stringent bins so their $NO_X$ emissions will be effectively capped at 0.60 g/mi. These vehicles will be excluded from the calculation to determine compliance with the interim 0.20 g/mi average $NO_X$ standard.

This approach will allow more time for manufacturers to bring the more difficult HLDTs to Tier 2 levels while achieving real reductions from those HLDTs that may present less of a challenge.

Due to statutory leadtime considerations, we were not able to finalize the HLDT standards to be in effect by the time the 2004 model year begins. For this reason, we are providing incentives for HLDTs to comply with the Tier 2 standards for all 2004 model year HLDTs. This change and the leadtime issue are discussed further under section IV.B.4.e. below and also in the Response to Comments document.

*iii. Interim Programs Will Provide Reductions Over Previous Standards*

As is the case with the primary Tier 2 standard structure, the interim programs will focus on $NO_X$ but will also provide reductions in NMOG beyond the NLEV program. This is because the interim programs will reduce emissions from LDT2s and HLDTs compared to their previous standards. Without the interim standards, HLDTs could be certified to the Tier 1 NMHC levels (0.46 g/mi or 0.56 g/mi). With the interim standards, however, exhaust NMOG [59] should average approximately 0.09 g/mi for all non-Tier 2 LDV/LLDTs and 0.24 g/mi or less for HLDTs. CO under Tier 1 could be as high as 7.3 g/mi for LDT4s. Under the interim program, CO standards for most bins will be well below 7.3 g/mi.

f. Generating, Banking, and Trading $NO_x$ Credits

As proposed in the NPRM and finalized in this notice, manufacturers will be permitted to average the $NO_X$ emissions of their Tier 2 vehicles and comply with a corporate average $NO_X$ standard. In addition, when a manufacturer's average $NO_X$ emissions fall below the corporate average $NO_X$ standard, it can generate $NO_X$ credits for later use (banking) or to sell to another manufacturer (trading). $NO_X$ credits will be available under the Tier 2 standards, the interim standards for LDVs and LLDTs, and the interim standards for HLDTs. These $NO_X$ credit provisions will facilitate compliance with the fleet average $NO_X$ standards and be very similar to those currently in place for NMOG emissions under California and federal NLEV regulations.

A manufacturer with an average $NO_X$ level for its Tier 2 vehicles in a given model year below the 0.07 gram per mile corporate average standard can generate Tier 2 $NO_X$ credits that it can use in a future model year when its average $NO_X$ might exceed the 0.07 standard. Manufacturers must calculate their corporate average $NO_X$ emissions at year end and then compute credits generated based on how far below 0.07 g/mi the corporate average falls.

Manufacturers will be free to retain any credits they generate for future use or to trade (sell) those credits to other manufacturers. Credits retained or purchased can be used by manufacturers with corporate average Tier 2 $NO_X$ levels above 0.07 g/mi. Under provisions described in Section IV.B.4.d.iv., manufacturers can implement $NO_X$ emission reductions as early as the 2001 model year and earn early Tier 2 $NO_X$ credits to help LDVs and LLDTs meet Tier 2 standards. Similarly, manufacturers can earn early credits for HLDTs as early as the 2001 model year. In model years up through 2005, manufacturers can earn extra credits when they certify vehicles to bins 1 or 2.

Banking and trading of $NO_X$ credits under the interim non-Tier 2 standards will be similar to that under the Tier 2 standards, except that a manufacturer must determine its credits based upon the 0.30 or 0.20 gram per mile corporate average $NO_X$ standard applicable to vehicles in the interim programs. As we proposed in the NPRM, interim credits from LDVs/LLDTs and interim credits from HLDTs will not be permitted to be used interchangeably due to the differences in the interim corporate average $NO_X$ standards. As proposed in the NPRM, there will be no provisions for early banking under the interim standards and manufacturers will not be allowed to use interim credits to address the Tier 2 $NO_X$ average standard. This is because we remain concerned that credits can be generated relatively easily under less stringent standards (the Tier 1 or interim standards) and then used in such a way to delay implementation of the Tier 2 standards.

Banking and trading of $NO_X$ credits and related issues are discussed in greater detail in Section IV.B.4.d. below.

2. Why Are We Finalizing the Same Set of Standards for Tier 2 LDVs and LDTs?

Before we provide a more detailed description of the vehicle program, we want to review two overarching principles of today's rule. The first is our goal to bring all LDVs and LDTs under the same set of emission standards. Historically, LDTs—and especially the heavier trucks in the LDT3 and LDT4 categories—have been subject to less stringent emission standards than LDVs (passenger cars). In recent years the proportion of light truck sales has grown to approximately 50 percent. Many of these LDTs are minivans, passenger vans, sport utility vehicles and pick-up trucks that are used primarily or solely for personal transportation; *i.e.,* they are used like passenger cars.

As vehicle preferences have increasingly shifted from passenger cars to light trucks there has been an

[59] In the Tier 1 program, exhaust hydrocarbon standards are in terms of NMHC, not NMOG. However, as we have explained elsewhere in this preamble, NMHC and NMOG results are very similar for gasoline and diesel-fueled vehicles.

accompanying increase in emissions over what otherwise would have occurred because of the increase in miles traveled by LDTs and the less stringent standards for LDTs as compared to LDVs. As Section III. above makes clear, reductions in these excess emissions (and in other mobile and stationary source emissions) are seriously needed. Since both LDVs and LDTs are within technological reach of the standards in the Tier 2 bin structure, and since none of the comments have been persuasive that manufacturers can not meet the standards, we are finalizing our proposal to equalize the regulatory useful life mileage for LDVs and LDTs and apply the same Tier 2 exhaust emission standard bins to all of them. This program will ensure that substantial reductions occur in all portions of the light-duty fleet and that the movement from LDVs to LDTs will not counteract these reductions.

Once the phase in periods end for all vehicles in 2009, manufacturers will include all LDVs and LDTs together in calculating their corporate average $NO_X$ levels.[60] As mentioned above and described in more detail in Section IV.B.–4. below, manufacturers can choose the emission bin for any test group of vehicles provided that, on a sales weighted average basis, the manufacturer meets the average $NO_X$ standard of 0.07 g/mi for its Tier 2 vehicles that year.

Some manufacturers have suggested that a program with different requirements is needed for heavy LDTs. Recognizing that compliance will be most challenging for HLDTs, the delay in the start of the phase-in and the additional phase-in years for those vehicles will allow manufacturers to delay the initial impact of the Tier 2 standards until the 2008 model year. This represents four additional model years of leadtime beyond the time when passenger cars and LDT1s and LDT2s will achieve Tier 2 standards in substantial numbers. We believe this phase-in and other provisions of this rule respond to these concerns. Note that in the NPRM, we requested comments on the need for different hydrocarbon standards for these vehicles recognizing that a tradeoff often exists between HC and $NO_X$ emissions. We also proposed that several bins have higher hydrocarbon standards for HLDTs during the interim program. We are finalizing these bins as proposed. Also, as an option, we are permitting the use of NMOG values similar to those in the NLEV program for bins 9 and 10 only for certain LDT2s and LDT4s during the interim program (see section IV.B.1.e.ii. above for details).

We are not adopting the Alliance's proposed phase-in schedule which would have provided a phase-in lasting until 2011. At the end of the Alliance's proposed phase-in, all vehicles would comply with an average $NO_X$ standard of 0.07 g/mi. A fixed 0.09 NMHC standard would apply to LDVs and LLDTs while a fixed 0.156 NMHC standard would apply to HLDTs.[61] Our final program provides HLDTs until 2008 before any have to meet 0.07 g/mi on average and permits them to be averaged with LDV/LLDTs beginning in 2009, when all must meet 0.07 g/mi $NO_X$ on average. We believe that eight years is a significant amount of leadtime to apply Tier 2 technology. We heard clearly from the public hearings and written comments that the public sees no justification for and does not want even more time provided for HLDTs. Furthermore, we see no technological need for more time than we proposed. Indeed, many believe that HLDTs should meet the Tier 2 standards in step with the LDV/LLDTs.

We are not promulgating the fixed NMHC standards suggested by the Alliance, but are sticking with the concept of bins containing lower NMOG standards connected to lower $NO_X$ (and other) standards. We believe that providing final exhaust emission standards for HLDTs that deviate from those for LDV/LLDTs would violate one of the overarching principles of the Tier 2 program, i.e. that all LDVs and LDTs should be subject to the same exhaust emission standards. Further, the idea of NMOG values that differ from California's runs counter to other arguments raised by the Alliance that EPA should align bins with California's to promote 50 state certification of test groups.

3. Why Are We Finalizing the Same Standards for Both Gasoline and Diesel Vehicles?

The second overarching principle of our vehicle program is the use of the same Tier 2 standards for all LDVs and LDTs, regardless of the fuel they are designed to use. The same exhaust emission standards and useful life periods we are finalizing today will apply whether the vehicle is built to operate on gasoline or diesel fuel or on an alternative fuel such as methanol or natural gas. Diesel powered LDVs and LDTs tend to be used in the same applications as their gasoline counterparts, and thus we believe they should meet the same standards. Less stringent standards for diesels could create incentives for manufacturers to build more diesel vehicles, thus endangering the emission reductions expected by this program.

Manufacturers have expressed concerns that diesel-fueled vehicles would have difficulty meeting $NO_X$ and particulate matter levels like those contained in today's rule. Clearly, these standards will be challenging. As discussed in Section IV.A.–1. above, we expect that the Tier 2 $NO_X$ and NMOG standards will be challenging for gasoline vehicles, but that major technological innovations will not be required. For diesels, however, the final Tier 2 $NO_X$ and PM standards will likely require applications of aftertreatment, most likely accompanied by changes in diesel fuel as such devices are sensitive to diesel fuel quality, particularly sulfur content. We do not believe such devices will be necessary to meet the top bin for our interim standards.[62] Given the small percentage of diesel vehicles and the phase-in of the standards, that bin should be sufficient for any manufacturer to market diesels and still comply with the interim program. We anticipate that manufacturers that choose to build diesel vehicles for the final Tier 2 standards will adopt aftertreatment technologies such as $NO_X$ adsorber catalysts and continuously regenerating particulate traps to meet Tier 2 requirements. We issued an Advanced Notice of Proposed Rulemaking to seek input on potential diesel fuel quality changes on May 13, 1999 (64 FR 26142). We anticipate issuing a Notice of Proposed Rulemaking to reduce the sulfur limit on diesel fuel in the spring of 2000 followed by a final rule in late 2000. Our goal in that rulemaking is to have low sulfur diesel fuel available which will allow diesel vehicles to meet the Tier 2 standards, within the bin structure, by the time the Tier 2 standards are required for the entire fleet.

[60] Because of the different phase-in percentages and phase-in schedules for the two groups, during the duration of the phase-in (through 2008), manufacturers will average Tier 2 LDV/LLDTs separately from HLDTs.

[61] The Alliance proposed NMHC standards in lieu of the NMOG standards we proposed and are finalizing today. We are including a provision in the final rule to accept NMHC results, subject to an adjustment factor, to demonstrate compliance with NMOG standards, although we are not adopting the fixed standards proposed by the Alliance.

[62] The interim PM standard in this new bin, which represents a reduction from the NLEV PM standards, should be feasible without aftertreatment. The technologies needed to meet the PM standard we proposed for this bin would likely have required low sulfur diesel fuel, which may not be widely available during the interim program. This change is also discussed in section V.A.

Today, diesels comprise less than one-half of one percent of all LDV/LDT sales. While this is a small fraction, the potential exists for diesels to gain a considerable market share in the future. All one need do is review the dramatic increase in recent years of diesel engine use in the lightest category of heavy duty vehicles (8500–10,000 pounds GVWR) to see the potential for significant diesel engine use in LDTs, and perhaps LDVs, in the future. Just ten years ago, diesels made up less than 10 percent of this class of vehicles. In 1998, this fraction approached 50 percent.

The potential impact of large-scale diesel use in the light-duty fleet underscores the need for the same standards to apply to diesels as other vehicles. Given the health concerns associated with diesel PM emissions (see Section III. above), we believe that it is prudent to address PM emissions from diesel LDVs and LDTs while their numbers are relatively small. In this way the program can minimize the PM impact that would accompany significant growth in this market segment while allowing manufacturers to incorporate low-emission technology into new light-duty diesel engine designs.

4. Key Elements of the Vehicle Program

The previous subsections IV.B.–1.2. and 3. provide an overview of the Tier 2 vehicle program and the two key principles it is built on. This subsection elaborates on the major vehicle-related elements of today's rule. Later in this preamble, Section V.A. discusses the rest of the vehicle provisions.

a. Basic Exhaust Emission Standards and ''Bin'' Structure

Our final Tier 2 program contains a basic requirement that each manufacturer meet, on average, a full useful life $NO_X$ standard of 0.07 g/mi for all its Tier 2 LDVs and LDTs. Manufacturers will have the flexibility to choose the set of standards that a particular test group [63] of vehicles must meet. For a given test group of LDVs or LDTs, manufacturers will select a set of full useful life [64] standards from the same row (''emission bin'' or simply ''bin'') in Table IV.B.–4. below. Each bin contains a set of individual NMOG, CO, HCHO, $NO_X$, and PM standards. For technology harmonization purposes, our proposed emission bins include or otherwise cover all of those adopted in California's LEV II program.[65,66]

In the NPRM, we proposed that interim vehicles and Tier 2 vehicles (except for those Tier 2 vehicles in the lowest bins) would also have to meet intermediate useful life standards, *i.e.,* standards that apply for 5 years or 50,000 miles. We are finalizing these intermediate useful life standards as proposed. Where we have added new full life bins, we have included corresponding intermediate life bins as appropriate. Our intermediate life standards are generally aligned with California's, they only impact the higher bins, and we do not believe they add substantial burden to the program. Further, they provide a check on the allowed emission deterioration during the life of the vehicle. For the final rule, we have made two changes involving intermediate life standards. First, we are providing that diesel vehicles, which will likely certify to bin 10 during the interim program, may opt not to meet the intermediate life standards associated with this bin. Low sulfur diesel fuel may be needed for diesels to meet our interim intermediate life standards and it is not likely to be widely available during the time frame of the interim program. Secondly, for all vehicles, we are finalizing a provision that will make intermediate life standards optional for any test group that is certified to a full useful life of 150,000 miles. This provision is described in more detail with other useful life issues in section V.B.

TABLE IV.B–4.—TIER 2 LIGHT–DUTY FULL USEFUL LIFE EXHAUST EMISSION STANDARDS

[Grams per mile]

| Bin No. | $NO_X$ | NMOG | CO | HCHO | PM | Comments |
|---|---|---|---|---|---|---|
| 10 | 0.6 | 0.156/0.230 | 4.2/6.4 | 0.018/0.027 | 0.08 | (a,b,c,d) |
| 9 | 0.3 | 0.090/0.180 | 4.2 | 0.018 | 0.06 | (a,b,e) |
| The above temporary bins expire in 2006 (for LDVs and LLDTs) and 2008 (for HLDTs) | | | | | | |
| 8 | 0.20 | 0.125/0.156 | 4.2 | 0.018 | 0.02 | (b,f) |
| 7 | 0.15 | 0.090 | 4.2 | 0.018 | 0.02 | |
| 6 | 0.10 | 0.090 | 4.2 | 0.018 | 0.01 | |
| 5 | 0.07 | 0.090 | 4.2 | 0.018 | 0.01 | |
| 4 | 0.04 | 0.070 | 2.1 | 0.011 | 0.01 | |
| 3 | 0.03 | 0.055 | 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 | |

Notes:
[a] Bin deleted at end of 2006 model year (2008 for HLDTs).
[b] The higher temporary NMOG, CO and HCHO values apply only to HLDTs and expire after 2008.
[c] An additional temporary higher bin restricted to MDPVs is discussed in section IV.B.4.g.
[d] Optional temporary NMOG standard of 0.280 g/mi applies for qualifying LDT4s and MDPVs only.
[e] Optional temporary NMOG standard of 0.130 g/mi applies for qualifying LDT2s only, see text.
[f] Higher temporary NMOG standard is deleted at end of 2008 model year.

[63] A ''test group'' is the basic classification unit for certification of light-duty vehicles and trucks under EPA certification procedures for the CAP2000 program. ''Test group'' is a broader classification unit than ''engine family'' used prior to the implementation of the CAP2000 program. We discuss the CAP2000 program in more detail in section V.A.9. of this preamble.

[64] The regulatory ''useful life'' value for Tier 2 vehicles is specifically addressed in Section V.A.2. of this preamble. Full useful life will be 10 years or 120,000 miles for all vehicles except LDT3s and LDT4s, for which it is 11 years or 120,000 miles. Intermediate useful life, where standards are applicable, is 5 years or 50,000 miles.

[65] EPA's current standards for Clean Fuel Vehicles are less stringent than the Tier 2 standards. *See* 40 CFR 88.104–94. The Tier 2 standards will supercede the current CFV standards, and the Agency intends to undertake a rulemaking to revise the CFV standards accordingly.

[66] In some cases our bins do not match California's exactly, because they have higher NMOG standards. These bins ''cover'' the California bin in that a vehicle certified to the California standards will comply with the standards in these bins.

TABLE IV.B.–5.—LIGHT-DUTY INTERMEDIATE USEFUL LIFE (50,000 MILE) EXHAUST EMISSION STANDARDS

[Grams per mile]

| Bin No. | $NO_X$ | NMOG | CO | HCHO | PM | Comments |
|---|---|---|---|---|---|---|
| 10 | 0.4 | 0.125/0.160 | 3.4/4.4 | 0.015/0.018 | | [a,b,c,d,f,h] |
| 9 | 0.2 | 0.075/0.140 | 3.4 | 0.015 | | [a,b,e,h] |
| The above temporary bins expire in 2006 (for LDVs and LLDTs) and 2008 (for HLDTs) | | | | | | |
| 8 | 0.14 | 0.100/0.125 | 3.4 | 0.015 | | [b,g,h] |
| 7 | 0.11 | 0.075 | 3.4 | 0.015 | | [h] |
| 6 | 0.08 | 0.075 | 3.4 | 0.015 | | [h] |
| 5 | 0.05 | 0.075 | 3.4 | 0.015 | | [h] |

Notes:
[a] Bin deleted at end of 2006 model year (2008 for HLDTs).
[b] The higher temporary NMOG, CO and HCHO values apply only to HLDTs and expire in 2008.
[c] An additional higher temporary bin restricted to MDPVs is discussed in section IV.B.4.g.
[d] Optional temporary NMOG standard of 0.195 g/mi applies for qualifying LDT4s and MDPVs only.
[e] Optional temporary NMOG standard of 0.100 g/mi applies for qualifying LDT2s only, see text.
[f] Intermediate life standards are optional for diesels certified to bin 10.
[g] Higher temporary NMOG value deleted at end of 2008 model year.
[h.] Intermediate life standards are optional for any test group certified to a 150,000 mile useful life (if credits are not claimed).

Under a ''bins'' approach, a manufacturer may select a set of emission standards (a bin) to comply with, and a test group must meet all standards within that bin. Ultimately, the manufacturer must also ensure that the emissions of a targeted pollutant—$NO_X$ in this case—from all of its vehicles taken together meet a ''corporate average'' emission standard. This corporate average emission standard ensures that a manufacturer's production yields the required overall emission reductions. (See Section IV.B.–4.c. below for more discussion of the corporate average $NO_X$ standard.)

In addition to the Tier 2 standards described above, we are also finalizing an interim average $NO_X$ standard derived from the LDV/LDT1 NLEV program to cover all non-Tier 2 LDVs and LLDTs during the Tier 2 phase-in. We are finalizing a separate interim average $NO_X$ standard for HLDTs. As in the Tier 2 program, manufacturers will select bins from Table IV.B.–4 to use to comply with the interim standards. Bins with $NO_X$ values at or above 0.07 g/mi also have associated intermediate life standards which are shown in Table IV.B.–5. (We describe the interim standards in detail in Section IV.B.4.e. below.)

*i. Why Are We Including Extra Bins?*

Compared to the CalLEV II program, our Tier 2 proposal included additional bins. The California program contains no bins that will allow $NO_X$ levels above the 0.07 g/mi level. Therefore, under the California program, no engine family can be certified above 0.07 g/mi, even with the application of offsetting credits. We proposed to add two bins (with $NO_X$ values of 0.15 and 0.20) above the 0.07 bin and another below (with a $NO_X$ value of 0.04) to provide manufacturers with additional flexibility. Based upon comments received from the Alliance and others that additional bins provide important added flexibility, we are finalizing a total of three bins above the LEV level (the additional bin has a $NO_X$ value of 0.10 g/mi) and are adding one more below the LEV level (this additional bin has a $NO_X$ value of 0.03 g/mi). Due to the $NO_X$ averaging requirement of this rule, these bins will not result in any increase in $NO_X$ emissions. Further, these bins will address concerns raised by some that a wider variety of bins, and bins with higher $NO_X$ values, are needed to avoid a situation where the Tier 2 program discourages the development of advanced technology high fuel economy vehicles, which may, at least in their earliest years, have $NO_X$ emissions higher than more conventional vehicles.

In our NPRM we proposed that during the Tier 2 phase-in years (through 2006 for LDV/LLDTs and 2008 for HLDTs), bins from the applicable interim program would be available to enhance the flexibility of the program by providing manufacturers with additional bins having $NO_X$ standards above 0.07 g/mi. In the NPRM, we showed the interim bins in separate tables for LDV/LLDTs and HLDTs. There was considerable overlap across the two tables and with the Tier 2 bins. In this final rule, we have consolidated the interim bins and the Tier 2 bins into one table for simplicity and ease of reference. The interim programs for non-Tier 2 vehicles are described in detail in section IV.B.4.e.

While some commenters were concerned about the existence of bins above $NO_X$ = 0.07 g/mi, we believe that the additional higher bins actually provide incentive for manufacturers to produce vehicles below 0.07 g/mi of $NO_X$. We believe this incentive exists because manufacturers will have some vehicles (especially larger LDTs) that they might find more cost effective to certify to levels above the 0.07 g/mi average standard. However, to do this they will have to offset those vehicles in our $NO_X$ averaging system with vehicles certified below 0.07 g/mi. The bins at $NO_X$ = 0.04 g/mi and $NO_X$ = 0.03 g/mi will provide greater opportunity to do this. Thus, the extra bins serve two purposes; they provide additional flexibility to manufacturers to address technological differences and costs, and they provide those manufacturers with incentives to produce cleaner vehicles and thus advance emission control technology.

We are finalizing a bins approach with the bins shown in Tables IV.B.4 and 5 to provide adequate and appropriate emission reductions and manufacturer flexibility. This structure will help to accelerate technological innovation. We requested comment on whether we should include up to two additional bins between $NO_X$ = 0.07 and $NO_X$ = 0.15. Based upon manufacturer comment, we have added an additional bin (bin 6 ) with $NO_X$ = 0.10. This bin will provide greater flexibility for manufacturers who may find it more cost-effective to produce some vehicles slightly above 0.07 but have difficulties meeting a 0.07 g/mi average $NO_X$ standard if they must certify them to a $NO_X$ level of 0.15 g/mi.

We requested comment on whether our Tier 2 bin in the NPRM with $NO_X$ = 0.20 (our final bin 8) should be eliminated when the Tier 2 phase-in is completed (after 2007 for LDV/LLDTs

and after 2009 for HLDTs). Numerous commenters argued that our highest bins were too lenient. Comments from manufacturers were opposed to eliminating bin 8 and we see little downside to having bins higher than the 0.07 $NO_X$ standard, given that, for all of the vehicles that will use this bin, manufacturers will have to offset the excess emissions by selling vehicles certified below 0.07 g/mi $NO_X$ under the averaging requirement. Thus, we are retaining bin 8.

b. The Program Will Phase in the Tier 2 Vehicle Standards Over Several Years

*i. Primary Phase-In Schedule*

We are finalizing as proposed our plan to phase in the Tier 2 standards for LDV/LLDTs over a four year period beginning in 2004 and we are also finalizing as proposed a delayed two year phase-in beginning in 2008 for HLDTs. These phase-in schedules are shown in Table IV.B.–2 and are also shown separately in Tables IV.B.–6 and 7. We believe the flexibility of this dual phase-in approach is appropriate because the Tier 2 program will encompass all light-duty vehicles and trucks and will result in widespread applications of upgraded and improved technology across the fleet. The program will require research, development, proveout, and certification of all light-duty models, and manufacturers may need longer lead time for some vehicles, especially HLDTs. Also, manufacturers may wish to time compliance with the Tier 2 standards to coincide with other changes such as the roll out of new engines or new models. In order to begin the introduction of very clean vehicles as soon as possible while avoiding imposing unnecessary inefficiencies on vehicle manufacturers, we believe this practical but aggressive phase-in schedule effectively balances air quality, technology, and cost considerations.

In each year, manufacturers will have to ensure that the specified fraction of their U.S. sales: [67]

- Meets Tier 2 standards for exhaust emissions, including Supplemental Federal Test Procedure (SFTP) standards (discussed in Section V.A.–3. below);
- Meets Tier 2 standards for evaporative emissions (discussed in Section IV.B.–4.f. below); and
- Meets the corporate average Tier 2 $NO_X$ standard.

[67] For Tier 2 vehicles (and for interim vehicles), the term ''U.S. sales'' means, for a given model year, those sales in states other than California and any states that have adopted the California program.

Manufacturers will have to meet the Tier 2 exhaust requirements (i.e., all the standards of a particular bin plus the SFTP standards) using the same vehicles. Vehicles not covered by the Tier 2 standards during the phase-in years (2004–2008) will have to meet interim standards described in Section IV.B.4.e. below and the existing evaporative emission as well as the applicable SFTP standards.

Manufacturers can elect to meet the percentage phase-in requirements for evaporative and exhaust emissions using two different sets of vehicles. We believe that because of interactions between evaporative and exhaust control strategies, manufacturers will generally address the Tier 2 evaporative phase-in with the same vehicles that they use to meet the exhaust phase-in. However, the primary focus of today's proposal is on exhaust emissions, and the flexibility for manufacturers to use different sets of vehicles in complying with the phase-in schedule for evaporative standards and for the exhaust standards will have no environmental down side that we are aware of. It is possible that some exhaust emission improvements might even occur sooner than they otherwise would if a manufacturer is able to move ahead with the roll-out of a model with cleaner exhaust emissions without having to wait for the development of suitable evaporative controls to be completed for that model.

TABLE IV.B.–6.—PRIMARY PHASE-IN SCHEDULE FOR SALES OF TIER 2 LDVS AND LLDTS

| Model year | Required percentage of light-duty vehicles and light light-duty trucks (percent) |
|---|---|
| 2004 | 25 |
| 2005 | 50 |
| 2006 | 75 |
| 2007 | 100 |

TABLE IV.B.–7.—PRIMARY PHASE-IN SCHEDULE FOR SALES OF TIER 2 HLDTS

| Model year | Required percentage of heavy light-duty trucks (percent) |
|---|---|
| 2008 | 50 |
| 2009 | 100 |

We are finalizing our proposed phase-in approach, in which vehicle sales will be determined according to the ''point of first sale'' method outlined in the NLEV rule. Vehicles with points of first sale in California or a state that has adopted the California LEV II program (if any) will be excluded from the calculation. The ''point of first sale'' method recognizes that most vehicle sales will be to dealers and that the dealers' sales will generally be to customers in the same geographic area. While some sales to California residents (or residents of states that adopt California standards) may occur from other states and vice-versa, we believe these sales will be far too small to have any significant impact on the air quality benefits of the Tier 2 program or the manufacturers' ability to demonstrate compliance.

*ii. Alternative Phase-In Schedule*

We are finalizing, as proposed, that manufacturers may introduce vehicles earlier than required to earn the flexibility to make offsetting adjustments, on a one-for one basis, to the phase-in percentages in later years. However, they will still need to reach 100% of sales in the 2007 model year (2009 for HLDTs). Manufacturers will have the option to use this alternative to meet phase-in requirements for LDV/LLDTs and/or HLDTs. They can use separate alternative phase-in schedules for exhaust and evaporative emissions, or an alternative phase-in schedule for one set of standards and the primary (25/50/75/100% or 50%/100%) schedule for the other.

Under these alternative schedules, manufacturers will have to introduce vehicles that meet or surpass the 0.07 g/mi Tier 2 $NO_X$ average standard before they are required to do so, or else introduce vehicles that meet or surpass the 0.07 standard in greater quantities than required. Alternative phase-in schedules essentially credit the manufacturer for its early or accelerated efforts and allow the manufacturer greater flexibility in subsequent years during the phase-in. Thus, the alternative phase-in schedule provisions provide incentive and flexibility to manufacturers to introduce Tier 2 vehicles before 2004 (or 2008 for HLDTs).

As outlined in the NPRM, an alternative phase-in schedule will be acceptable if it passes a specific mathematical test. We have designed the test to provide manufacturers benefit from certifying to the Tier 2 standards early while ensuring that significant numbers of Tier 2 vehicles are introduced during each year of the alternative phase-in schedule. To test an alternative schedule, a manufacturer

must sum its yearly percentages of Tier 2 vehicles beginning with model year 2001 and compare the result to the sum that results from the primary phase-in schedule. If an alternative schedule scores as high or higher than the base option, then the alternative schedule is acceptable. The mathematical technique to evaluate alternative phase-in schemes is somewhat similar to that used in our NLEV rule and in California rules.

For LDV/LLDTs, the final sum of percentages must equal or exceed 250—the sum that results from a 25/50/75/100 percent phase-in. For example, a 10/25/50/65/100 percent phase-in that begins in 2003 will have a sum of 250 percent and is acceptable. In this example, assuming constant levels of production, each Tier 2 vehicle sold early (*i.e.* in 2003) will permit the manufacturer to sell one less Tier 2 vehicle in the last phase-in year (2006). A 10/20/40/70/100 percent phase-in that begins the same year has a sum of 240 percent and is not acceptable. For HLDTs, the sum must equal or exceed 150 percent.

To ensure that significant numbers of Tier 2 vehicles are introduced in the 2004 time frame, manufacturers will not be permitted to use alternative phase-in schedules that delay the implementation of the Tier 2 LDV/LLDT requirements, even if the sum of the phase-in percentages meets or exceeds 250. Such a situation could occur if a manufacturer delayed implementation of its Tier 2 production until 2005 and began a 75/85/100 percent phase-in that year. To protect against this possibility, we are finalizing the proposed requirement that for any alternative phase-in schedule, a manufacturer's phase-in percentages from the 2004 and earlier model years sum to at least 25%. In the final rule we are including an additional measure of flexibility to the requirements for alternative phase-in schedules. We will permit manufacturers to achieve a 2004 phase-in of less than 25%, but no less than 20%, provided that in 2005 they make up the shortfall in a two-for-one manner. So, as an example, a manufacturer that phased in 5% in 2003 and 15% in 2004 would achieve a total of 20% through the 2004 model year and would need to comply with Tier 2 requirements for at least 60% of its LDV/LLDTs in 2005. We believe that this flexibility is appropriate because the required response for 2005 model year vehicles more than makes up for the environmental loss from the 2004 model year vehicles.

We requested comment on whether alternative phase-in schedules should be structured to permit manufacturers to extend phase in past the final year of the primary phase-in schedule (2007 or 2009). While the Alliance proposal and comments clearly support phase-ins that run past 2007 and 2009, other commenters were opposed to any extensions of the phase-in period. In fact most commenters who addressed the length of the phase-in indicated, as previously discussed, that the phase-in for HLDTs should be moved ahead to 2007 to coincide with LDV/LLDTs. We are not finalizing any provisions that will permit alternative phase-in schedules to provide additional time for manufacturers to meet any final 100% compliance year.

In the NPRM, we pointed out that phase-in schedules, in general, add little flexibility for manufacturers with limited product offerings because a manufacturer with only one or two test groups can not take full advantage of a 25/50/75/100 percent or similar phase-in. For manufacturers meeting EPA's definition of ''small volume manufacturer,'' we proposed to exempt those manufacturers from the phase-in schedules and require them to simply comply with the final 100% compliance requirement. We are finalizing this provision for small volume manufacturers. This provision is only intended to apply to small volume manufacturers and not to small test groups of larger manufacturers.

For larger manufacturers having a limited product line, we recognize that our phase-in schedule may lack flexibility, however, we are not including any provisions to address this issue as we are for small volume manufacturers because we do not believe these manufacturers need the relief and we do not want to sacrifice any air quality benefits of the program.

c. Manufacturers Will Meet a ''Corporate Average'' $NO_X$ Standard

While the manufacturer will be free to certify a test group to any applicable bin of standards in Table IV.B.–2, it will have to ensure that the sales-weighted average of $NO_X$ standards from all of its test groups of Tier 2 vehicles meet a full useful life standard of 0.07 g/mi.[68] Using a calculation similar to that for the NMOG corporate average standard in the California and NLEV programs, manufacturers must determine their compliance with the corporate average $NO_X$ standard at the end of the model year by computing a sales weighted average of the full useful life $NO_X$ standards from each bin. Manufacturers must use the following formula:

$$\text{Corporate Average } NO_X = \frac{\sum(\text{Tier 2 } NO_X \text{ std for each bin}) \times (\text{sales for each bin})}{\text{total Tier 2 sales}}$$

Manufacturers must exclude vehicles sold in California or states adopting California LEV II standards from the calculation. As indicated above, manufacturers must compute separate $NO_X$ averages for LDV/LLDTs and HLDTs through model year 2008.

The corporate average $NO_X$ standards of the primary Tier 2 program and the interim programs for LDV/LLDTs and HLDTs will ensure that expected fleet-wide emission reductions are achieved. At the same time, the corporate average standards allow us to permit the sale of some vehicles above the levels of the average standards to address the greater technological challenges some vehicles face and to reduce the overall costs of the program. We discuss how manufacturers can generate, use, buy and sell $NO_X$ credits under the interim and Tier 2 programs in the next subsection.

Given the corporate average $NO_X$ standards, we do not believe a corporate average NMOG standard as used by California is essential because meeting the corporate average $NO_X$ standard will automatically bring the NMOG fleet average to approximately 0.09 g/mi or below.

d. Manufacturers Can Generate, Bank, and Trade $NO_X$ Credits

*i. General Provisions*

As mentioned in the Overview above, we are finalizing our proposal that manufacturers with year-end corporate average $NO_X$ emissions for their Tier 2 vehicles below 0.07 g/mi can generate Tier 2 $NO_X$ credits. Credits can be saved (banked) for use in a future model year

[68] For interim vehicles, this average $NO_X$ standard will be 0.20 for HLDTs and 0.30 for LDV/LLDTs. Compliance with these interim average standards will be calculated in the same manner as compliance with the 0.07 standard.

or for trading (sale) to another manufacturer. Manufacturers can use credits if their corporate average $NO_X$ emissions are above 0.07 g/mi.

As proposed, the Tier 2 standards will apply regardless of the fuel the vehicle is designed for, and there will be no restrictions on averaging, banking or trading of credits across vehicles of different fuel types. Consequently, a gasoline fueled LDV might help a manufacturer generate NOx credits in one year that could be banked for the next year when they could be used to average against $NO_X$ emissions of a diesel fueled LDT within the appropriate averaging structure.

Because of the split phase-in and the different interim programs we are finalizing for the two different groups of vehicles (LDV/LLDTs and HLDTs), we are also finalizing the proposed requirement that manufacturers compute their corporate Tier 2 $NO_X$ averages separately for LDV/LLDTs and HLDTs through 2008. As we proposed, credit exchanges between LDVs/LLDTs and HLDTs will not be allowed nor will credit exchanges across the interim programs or between the interim programs and the final Tier 2 program be allowed. These restrictions will end with the 2009 model year at which time both phase-ins and all interim standards will have ended and the program will permit free averaging across all Tier 2 vehicles. As noted in the NPRM, we are concerned that allowing cross-trading between interim and Tier 2 vehicles will reduce the expected benefits of the program and delay fleet turnover to Tier 2 emission levels. For this reason we did not propose and are not finalizing to permit such exchanges.

*ii. Averaging, Banking, and Trading of $NO_X$ Credits Fulfills Several Goals*

We explained in the NPRM why we believe the provisions for averaging, banking, and trading of $NO_X$ credits (ABT) will be valuable. In short:

- An ABT program is an important factor that EPA takes into consideration in setting emission standards that are appropriate under section 202 of the Clean Air Act. ABT allows us to consider a more stringent emission standard than might otherwise be appropriate under the CAA, since ABT reduces the cost and improves the technological feasibility of achieving the standard;
- ABT enhances the technological feasibility and cost effectiveness of the proposed standard and allows the standard to be attainable earlier than might otherwise be possible;
- ABT provides manufacturers with additional product planning flexibility and the opportunity for a more cost effective introduction of product lines;
- ABT creates incentive for early introduction of new technology, allowing certain engine families to act as trail blazers for new technology;

We view the ABT provisions in today's rule as environmentally neutral because the use of credits by some vehicles is offset by credits generated by other vehicles. However, when coupled with the new standards, ABT will have environmental benefits because it allows the new standards to be implemented earlier than would otherwise be appropriate.

*iii. How Manufacturers Can Generate and Use $NO_X$ Credits*

Manufacturers will determine their year-end corporate average $NO_X$ emission level by computing a sales-weighted average of the $NO_X$ standard from each bin to which the manufacturer certifies any LDVs or LDTs. Tier 2 $NO_X$ credits will be generated when a manufacturer's average is below the 0.07 gram per mile corporate average $NO_X$ standard, according to this formula:

$NO_X$ Credits=(0.07 g/mi − Corporate Average $NO_X$)×Sales

The manufacturer can use these $NO_X$ credits in future years if its corporate $NO_X$ average is above 0.07, or it can trade (sell) the credits to other manufacturers. Tier 2 credits can be generated via this mechanism beginning in the first phase-in year, *i.e.,* 2004 for LDV/LLDTs and 2008 for HLDTs. The use of $NO_X$ credits will not be permitted to address Selective Enforcement Auditing or in-use testing failures.

The enforcement of the $NO_X$ averaging standard will occur through the vehicle's certificate of conformity. A manufacturer's certificate of conformity will be conditioned upon compliance with the averaging provisions. The certificate will be void *ab initio* if a manufacturer fails to meet the corporate average $NO_X$ standard and does not obtain appropriate credits to cover its shortfall in that model year or in the next three model years (see deficit carryforward provision below). Manufacturers will need to track their certification levels and sales unless they produce only vehicles certified to bins containing $NO_X$ levels of 0.07 g/mi or below and do not plan to bank $NO_X$ credits.

*iv. Manufacturers Can Earn and Bank Credits for Early $NO_X$ Reductions*

In the NPRM, we proposed that to the extent a manufacturer's corporate average $NO_X$ level of its ''early Tier 2'' vehicles was below 0.07 g/mi, the manufacturer could bank $NO_X$ credits for later use. We recognize (and the comments assert) that this provision may be lightly used, because it requires a large reduction from prior standards to produce any credits. However, our goal is to bring vehicles to Tier 2 levels as quickly as possible and we are concerned that any other approach could provide credits for reductions manufacturers would make relatively easily from previous, higher standards. Such credits would then be used to delay the impact of the 0.07 g/mi $NO_X$ standard. Further, we believe that our provision for alternative phase-in schedules provides what is essentially a supplemental, or perhaps even primary, early banking program, in that it permits manufacturers to trade-off earlier phase-in percentages for later phase-in percentages. To provide manufacturers with greater flexibility and with incentives to certify, produce and sell Tier 2 vehicles as early as possible, we are finalizing the alternative phase-in provisions. (See IV.B.4.b.ii above.) Under such schedules, a manufacturer can certify vehicles to an average $NO_X$ level of 0.07 g/mi or below in years prior to the first required phase-in year and then phase its remaining vehicles in over a more gradual phase-in schedule that will still lead to 100% compliance by 2007 (2009 for HLDTs).

Thus, we are finalizing our provision for early $NO_X$ credits essentially as proposed. To the extent that a manufacturer's corporate average $NO_X$ level of its ''early Tier 2'' vehicles is below 0.07 g/mi, the manufacturer can bank $NO_X$ credits for later use. Manufacturers will compute these early credits by calculating a sales-weighted corporate average $NO_X$ emission level of their Tier 2 vehicles, as in the basic Tier 2 program described above. In section IV.B.4.d.vii. below, we describe provisions we are adding to the final rule that will enable manufacturers to generate extra credits from vehicles certified to very low levels. In addition to encouraging production of very clean vehicles, these provisions, which apply beginning in 2001, will enhance the abilities of manufacturers to generate early credits.

Early Tier 2 credits will have all the same properties as credits generated by vehicles subject to the primary phase-in schedule. We proposed that these credits could not be used in the NLEV, Tier 1 or interim program for non-Tier 2 vehicles in any way. We are finalizing this restriction as proposed. We are also finalizing as proposed that the NMOG emissions of these vehicles (LDVs and LLDTs only) can be used in the

calculation of the manufacturer's corporate average NMOG emissions under NLEV through 2003.

To provide manufacturers with maximum flexibility in the period prior to 2004, when LDV/LLDT useful lives will still be at 100,000 miles, we proposed and are finalizing that manufacturers may choose between the Tier 2 120,000 mile useful life or the current 100,000 mile useful life requirement for early Tier 2 LDV/LLDTs. (HLDTs already have a 120,000 mile useful life.) Early LDV/LLDT $NO_X$ credits for 100,000 mile useful life vehicles will have to be prorated by 100,000/120,000 (5/6) so that they can be properly applied to 120,000 mile Tier 2 vehicles in 2004 or later.

We proposed to restrict early banking of HLDT Tier 2 $NO_X$ credits to the four year period from 2004–2007. This restriction was due to a concern about excessive credits generation if a longer credit generation period was available. Based on our review of the comments and from reconsideration of the restrictive nature of our approach for early credits, we are much less concerned that allowing generation of early HLDT Tier 2 credits in years prior to 2004 will result in excessive credits. Prior to 2004, manufacturers will only be required to meet the Tier 1 standards which are much higher than the final Tier 2 standards. Manufacturers will have to make large cuts in emissions to bank the small amount of credits offered by our early banking provision. Further, we recognize that vehicles that meet the Tier 2 standards early provide an environmental benefit, and the earlier that benefit occurs, the earlier that areas can use such benefits to reach or come close to attainment. Lastly, we believe it is appropriate to match the period of early credit generation with the years in which we will permit alternative phase-in schedules. Consequently, we are finalizing our provisions for early banking such that manufacturers may bank early Tier 2 $NO_X$ credits in model years 2001–2007.

We recognize that vehicles generating early Tier 2 $NO_X$ credits may be doing so without the emissions benefit of low sulfur fuel, and thus these vehicles may not achieve the full in-use emission reduction for which they received credit. When these credits are used to permit the sale of higher-emitting vehicles, there may be a net increase in emissions. For the most part, this is a problem anyway, since NLEV vehicles are also sensitive to gasoline sulfur. We believe that the benefits of early introduction of Tier 2 technology described above are significant enough that they are worth the risk of some emission losses that might occur if and when the early credits are used. Also, we believe that some fuel sulfur reductions will occur prior to 2004 as refiners upgrade their refineries or bring new refining capacity on stream in anticipation of the 2004 requirements and take advantage of the phase-in proposed in the gasoline sulfur ABT program (described in Section IV.C. below).

*v. Tier 2 $NO_X$ Credits Will Have Unlimited Life*

We discussed in the preamble to the NPRM why we did not propose to apply the California schedule of discounting unused credits adopted for NMOG credits in the NLEV program. This schedule serves to limit credit life throughout the program by reducing unused credits to 50, 25 and 0 percent of their original number at the end of the second, third and fourth year, respectively, following the year in which they were generated. We agree that such a scheme may be appropriate in the California program with its declining NMOG average standard, but in the federal program, once the phase-in period ends in model year 2009, all LDVs and LDTs will comply on average with a fixed Tier 2 $NO_X$ standard.

Credits allow manufacturers flexibility to meet standards cost effectively and to address unexpected shifts in sales mix. When matched with a $NO_X$ average standard, credits provide flexibility constrained by the requirement that all vehicles, on average, must comply with a fixed standard. Defined bins of standards prevent any one vehicle from having extremely high emissions, while the need to offset higher vehicles with lower vehicles to meet an average $NO_X$ standard prevents large numbers of vehicles from utilizing the higher bins.

We requested comment in the NPRM on the need for discounting of credits or limits on credit life and what those discount rates or limits, if any, should be. The 0.07 $NO_X$ emission standard in the Tier 2 program is quite stringent and does not present easy opportunities to generate credits. The degree to which manufacturers invest the resources to achieve extra $NO_X$ reductions provides environmental benefit for years to come and it is appropriate that the manufacturer get credits. We do not want to take measures to reduce the incentive for manufacturers to bank credits nor do we want to take measures to encourage unnecessary credit use. Consequently we are finalizing our proposal that Tier 2 $NO_X$ credits, including early credits, have unlimited lives.

*vi. $NO_X$ Credit Deficits Can Be Carried Forward*

When a manufacturer has a $NO_X$ deficit at the end of a model year—that is, its corporate average $NO_X$ level is above the required corporate average $NO_X$ standard—we proposed that the manufacturer could carry that deficit forward into the next model year. Such a carry-forward could only occur after the manufacturer used any banked credits. If the deficit still existed and the manufacturer chose not to or was unable to purchase credits, the deficit could be carried over. At the end of that next model year, according to our proposal, the deficit would need to be covered with an appropriate number of $NO_X$ credits that the manufacturer generated or purchased. Any remaining deficit would be subject to an enforcement action. To prevent deficits from being carried forward indefinitely, the manufacturer would not be permitted to run a deficit for two years in a row.[69]

Manufacturers made the persuasive case that by the time they can tabulate their average $NO_X$ emissions for a particular model year, the next model year is likely well underway and it is too late to make calibration, marketing or sales mix changes to adjust that year's credit generation. Therefore, based upon comments, we are finalizing a modified approach to credit deficits such that a manufacturer having a credit deficit in the interim or Tier 2 program can carry that deficit forward for a total of three years, but the manufacturer must apply all its available credits to that deficit on a one-for-one basis in each of the first two succeeding model years. If the deficit is not covered by the third model year, the manufacturer must apply credits at a rate of 1.2:1. No deficit may be carried into the fourth year. In order to accommodate this modification to our proposal, we must also modify our proposed provision that would have prevented manufacturers from running a deficit in two consecutive model years so that deficits can not be shifted from one year to the next and thus carried forward indefinitely. Because we are permitting, in this final rule, deficits to be carried forward for as long as three years we are finalizing that manufacturers can not run a deficit in any year in which it is paying off a deficit from a previous year. The effect of this provision is the same as that in

[69] Because of the limited duration of the interim programs, we proposed that a manufacturer could carry a credit deficit in the interim program forward until the 2006 model year (2008 for HLDTs). The interim program, in its entirety, lasts only five years and therefore we saw little risk of prolonged deficits.

the NPRM— to keep manufacturers from shifting deficits forward indefinitely.

We note that under our modified final approach, manufacturers will have the flexibility to carry deficits from the interim program forward into the final Tier 2 program. This feature is likely to be used only in an extreme situation since the Tier 2 credits needed to offset the interim credit deficit will be more difficult to generate. Consequently, we do not believe this provision is inconsistent with our approach of segregating interim and Tier 2 credits. In fact, manufacturers electing to cover an interim credit deficit with Tier 2 credits will likely have to accelerate the introduction of Tier 2 vehicles to get the necessary credits to cover the deficit.

We are finalizing that small volume manufacturers may not use the credit deficit carryforward provision until they have been in compliance with the relevant average $NO_X$ standard for one model year. In section V of this preamble we explain that we are not requiring small volume manufacturers to comply with intermediate phase-in requirements under our interim or Tier 2 phase-ins. Rather, they will just have to comply for all of their vehicles in the last phase-in year. Because they do not have to comply with intermediate phase-in requirements, small volume manufacturers effectively get more time to comply (as much as three years). We do not want to create a situation where they could get even more time to comply by using the credit deficit carryforward provision.

*vii. Encouraging the Introduction of Ultra-Clean Vehicles*

We requested comment in the NPRM as to whether we should provide additional $NO_X$ credits for vehicles that certify to very low levels. We stated in the NPRM that we believe it is appropriate to provide inducements to manufacturers to certify vehicles to very low levels and that these inducements may help pave the way for greater and/or more cost effective emission reductions from future vehicles. We believe it is important in a rule of this nature to provide extra incentive to encourage manufacturers to produce and market very clean vehicles. We believe this is especially important in the earliest years of the program when manufacturers must make resource commitments to technologies and vehicle designs that will have multi-year life spans. We believe this program provides a strong incentive for manufacturers to maximize their development and introduction of the best available vehicle/engine emission control technology, and this in turn provides a stepping stone to the broader introduction of this technology soon thereafter. Early production of cleaner vehicles enhances the early benefits of our program and vehicles certified to these lowest bins produce not just lower $NO_X$ but also lower NMOG, CO and HCHO emissions. If a manufacturer can be induced to certify to a lower bin by the promise of reasonable extra credits, the benefits of that decision to the program may last for many years.

We are finalizing provisions to permit manufacturers, at the beginning of the program, to weight LDV/Ts certified to the lowest two bins more heavily when calculating their fleet average $NO_X$ emissions. Under this provision, which applies through the 2005 model year, manufacturers may apply a multiplier to the number of LDV/Ts sold that are certified to bins 1 and 2 (ZEVs and SULEVs in California terms). This adjusted number will be used in the calculation of fleet average $NO_X$ emissions for a given model year and will allow manufacturers having vehicles certified to these bins to generate additional credits (or use fewer credits) that year.

The multipliers that manufacturers may use are found in Table IV.B.–8 below:

TABLE IV.B.–8.—MULTIPLIERS FOR ADDITIONAL CREDITS FOR BIN 1 AND 2 LDV/T

| Bin | Model year | Multiplier |
|---|---|---|
| 2 | 2001, 2002, 2003, 2004, 2005 | 1.5 |
| 1 | 2001, 2002, 2003, 2004, 2005 | 2.0 |

e. Interim Standards

*i. Interim Exhaust Emission Standards for LDV/LLDTs*

The NLEV program referenced throughout this discussion is a voluntary program in which all major manufacturers have opted to produce LDVs and LLDTs to tighter standards than those required by EPA's Tier 1 regulations. Under the NLEV program, manufacturers must meet an NMOG average outside of California that is equivalent to California's current intermediate-life LEV requirement—0.075 g/mi for LDVs and LDT1s (0.10 g/mi for LDT2s). NLEV requirements apply only to LDVs and LLDTs, not to HLDTs.

The NLEV program is effective beginning in the northeastern states in 1999 and in the remaining states in 2001, except that the program does not apply to vehicles sold in California or in states that adopted California's LEV program. The program runs at least through model year 2003 and can run through model year 2005.

Under the Tier 2 phase-in we are finalizing today, not all LDV/LLDTs covered under NLEV will be subject to Tier 2 standards in the 2004 to 2006 period. Without a program for full Tier 2 compliance in 2004 (*i.e.,* because of the phase-in), these vehicles could revert to Tier 1 standards. The NLEV program, moreover, is a voluntary program that contains several provisions that restrict EPA's flexibility and that could lead to a manufacturer or a covered Northeastern state leaving the program in or prior to 2004. To resolve these concerns we are finalizing the proposed interim program for all non-Tier 2 LDV/LLDTs for the 2004–2006 model years. Our interim program will replace the NLEV program, which will terminate at the end of 2003. The transition from NLEV to the interim program should be smooth because the interim program will employ several bins derived from the NLEV standards for LDVs, LDT1s and LDT2s. The interim program will ensure that all LDVs, LDT1s and LDT2s that are not certified to Tier 2 levels during the 2004–2006 phase-in period remain at levels at least as stringent, on average, as NLEV levels. The interim program will also bring the emission standards for LDT2s more into line with those for the LDVs and LDT1s by requiring that they be averaged under the same $NO_X$ standard rather than under separate standards as is the case in the NLEV program.

In the NPRM, we included separate sets of bins for the interim program and Tier 2 program. However, we indicated that manufacturers could use either set for interim vehicles. In today's final rule we have combined all bins into one table for simplicity. We have also added two new bins having $NO_X$ values of 0.03 g/mi and 0.10 g/mi.

In the NPRM, we proposed that, for LDV/LLDTs, all bins with $NO_X$ values over 0.20 g/mi would expire at the end of the 2006 model year when there are no longer any interim LDV/LLDTs. Table IV–B.–4 shows that the two highest bins, bins 9 and 10, which were derived from NLEV and included to smooth the transition from NLEV to the interim program will be unuseable for LDV/LLDTs after 2006—the last year of the LDV/LLDT phase-in. Otherwise all bins will remain viable for the duration of the Tier 2 program unless altered by another rulemaking.

We proposed to align the useful life periods for interim standards with those of the Tier 2 standards (full useful life of 120,000 miles), as discussed in Section V.B. below. The end result of this proposal would have been that all LDV/LLDTs—whether in the Tier 2 program or interim program—would go from 100,000 mile useful lives to 120,000 mile useful lives in 2004. However, manufacturers were extremely concerned about the certification workload burden for 2004. They commented that they would be unable to carry any of their LDV/LLDTs over from 2003 and that they would have to recertify all of their vehicles in 2004 and then likely recertify them again as they were phased into the Tier 2 standards. Therefore, based upon comments, we are finalizing that useful lives of the interim LDV/LLDTs may remain at 100,000 miles. Our reasons for this change are discussed in greater detail in Section V.B.

We are finalizing as proposed a corporate average full useful life $NO_X$ standard of 0.30 g/mi for this interim program. This standard is derived from the NLEV program and represents the full useful life $NO_X$ standard in NLEV that is associated with LEV LDVs and LDT1s. LDVs and LDT1s will already be at this level, on average, under the NLEV program. LDT2s are subject to standards that effectively impose a $NO_X$ average standard of 0.5 g/mi under NLEV, but we believe they should readily be able to meet the 0.30 g/mi average especially since they can be averaged with the LDVs and LDT1s. To aid LDV/LLDTs in meeting the 0.30 g/mi corporate average $NO_X$ standard in the interim program, we are providing an optional NMOG value for LDT2s certifying to bin 9 (where the $NO_X$ standard=0.3 g/mi). This option is only for LDT2s, and only for those produced by manufacturers that elect to comply with the interim requirements for all of their HLDTs for the 2004 model year (see next section). The optional NMOG values for qualifying LDT2s are 0.130 g/mi at full useful life and 0.100 at intermediate useful life.

The 0.30 g/mi corporate average $NO_X$ standard will apply only to non-Tier 2 (interim) LDV/LLDTs and only for the 2004–2006 model years. Manufacturers will compute, bank, average, trade, account for, and report interim $NO_X$ credits via the same processes and equations described in this preamble for Tier 2 vehicles, substituting the 0.30 g/mi corporate average standard for the 0.07 g/mi corporate average standard in the basic program. Also, EPA will condition the certificates of conformity on compliance with the corporate average standard, as described for Tier 2 vehicles. These $NO_X$ credits will be good only for the 2004–2006 model years and will only apply to the interim non-Tier 2 LDV/LLDTs. Credits will not be subject to any discounts, and credit deficits can be carried forward as described under Section IV.B.4.d.vi. above.

NMOG credits from the NLEV program can not be used in this interim program in any way. $NO_X$ credits generated under this interim program will not be applicable to the Tier 2 $NO_X$ average standard of 0.07 g/mi because of our concern that a windfall credit situation could occur. This could happen because credits are relatively easy to generate under a 0.30 g/mi standard compared to generating credits under a 0.07 g/mi standard. As we indicated in the preamble to the NPRM we believe the application of credits earned under the interim standard to the Tier 2 standards could significantly delay the fleet turnover to Tier 2 vehicles. We do not believe there is a need or that it would be appropriate to allow such a delay. The requirements of the interim program will be monitored and enforced in the same fashion as for Tier 2 vehicles.

For the reasons cited above, we believe it is appropriate to extend interim, NLEV-like standards beyond 2003 as a mandatory program and to bring all LDVs and LLDTs within its scope. Manufacturers have already demonstrated their ability to make LDVs and LLDTs that comply at levels well below these standards. As the interim standards for LDV/LLDTs are essentially 'phase-out'' standards, we did not propose and are not finalizing early banking provisions for the interim LDV/LLDTs.

*ii. Interim Exhaust Emission Standards for HLDTs*

We believe these interim standards are necessary and reasonable for HLDTs. While these trucks make up a fairly small portion of the light-duty fleet (about 14%), their current standards under Tier 1 are far less stringent than the NLEV standards that apply to current model year LDVs and LLDTs. Given the delayed phase-in we are finalizing for HLDTs, we believe it is appropriate to require some interim reductions from these vehicles. Further, manufacturers have already demonstrated their ability to meet these interim standards with HLDTs. These standards are a reasonable first step toward the Tier 2 program and will provide meaningful reductions in the near term relative to current certification levels under the Tier 1 emission standards.

We also proposed interim standards to begin in 2004 for HLDTs. These vehicles are not included in the NLEV program and will be subject only to the Tier 1 standards prior to today's rule taking effect. Tier 1 standards permit $NO_X$ emissions of 0.98 g/mi for LDT3s and 1.53 g/mi for LDT4s. We are finalizing these standards generally as proposed; to address statutory lead time requirements, we are offering two options for the phase-in of HLDTs to the interim standards. Manufacturers can choose between either of these two options:

(Option 1) Like we proposed in the NPRM, manufacturers must bring their entire production of 2004 model year HLDTs under the interim requirements and phase 25% of them into the 0.20 g/mi fleet average $NO_X$ requirement, followed by 50% in 2005, 75% in 2006, and then 100% in 2007; or

(Option 2) We are including this option to address statutory lead time requirements for HLDTs. In the case of 2004 model year test groups whose model years commence *before the fourth anniversary* of the signature date of today's rule, the manufacturer may exclude those test groups from the interim HLDT provisions of the rule. In the case of 2004 model year test groups whose model years commence *on or after the fourth anniversary* of this rule's signature, the manufacturer must bring all such HLDTs under the requirements of our interim program, and all such vehicles or 25% of the manufacturer's sales of 2004 model year HLDTs, whichever is less, must comply with the corporate average $NO_X$ standard of 0.20 g/mi. The manufacturer must then bring all of its HLDTs into the interim requirements beginning with the 2005 model year including a 50%, 75%, 100% phase-in to the 0.20 g/mi fleet average $NO_X$ standard beginning that year. The beginning of a test group's model year is determined under section 202(b)(3) of the Act and 40 CFR Part 85 Subpart X.

Our final rule is consistent with the requirements of the Act because manufacturers won't have to phase-in HLDTs until the model year that commences four years from the signature of this rule if they don't want to. However, to provide incentive for manufacturers to comply with the interim requirements for all of their HLDTs beginning with the 2004 model year, *i.e.* to elect Option 1, we are finalizing a provision to permit those manufacturers to use higher NMOG values in two situations. Manufacturers electing to meet the interim requirements for all of their 2004 model year HLDTs including the 25% phase-in number must so declare in their 2004 model year HLDT certification applications. They may then:

- Use a full useful life NMOG value, through the 2008 model year, of 0.280 g/mi for LDT4s certified to bin 10 (0.195 g/mi at intermediate life); and
- Use a full useful life NMOG value, through the 2006 model year, of 0.130 g/mi for LDT2s certified to bin 9 (0.100 g/mi at intermediate life). [70]

In the case of the LDT4s, the optional NMOG standard will enable manufacturers to more easily meet our interim HLDT $NO_X$ standards, the highest of which (0.6 g/mi) is one-third tighter than what will be required in California under Cal LEV I through 2006. For the LDT2s, the optional NMOG standard will help manufacturers certify more LDT2s to bin 9 (0.3 g/mi) than they likely would otherwise (they would probably certify some LDT2s to bin 10 where $NO_X$=0.6 g/mi). Therefore, both of these optional standards are consistent with our goal to achieve important early $NO_X$ benefits from our program.

Except for the application of the new option described above, the interim standards for HLDTs will apply as proposed, and will phase-in through the 2007 model year, as shown in Table IV.B.–2. We are finalizing the proposed corporate average full-life $NO_X$ standard of 0.20 g/mi for interim HLDTs.

[70] Manufacturers must cite this declaration in their LDT2 certification applications for the 2004–2006 model years and in their LDT4 applications for the 2004–2008 model years. If manufacturers employ alternate phase-in schedules that begin prior to 2004, they must also make the declaration in each applicable year before 2004.

Manufacturers will comply with the corporate average HLDT $NO_X$ standard by certifying their interim HLDTs to any of the full useful life bins shown in Table IV–B.–4. Where applicable, manufacturers will also comply with the intermediate useful life standards shown in Table IV.B.–5. Interim HLDTs not needed to meet the phase-in percentages during model years 2004–2006 will have to be certified to the standards of one of the bins in Table IV.B.–4 (and –5), and $NO_X$ will thus be capped at 0.60 g/mi. These trucks will not be included in the calculation to demonstrate compliance with the 0.20 g/mi average.

At the end of each model year, manufacturers will determine their compliance with the 0.20 $NO_X$ standard by calculating a sales weighted average of all the bins to which they certified any interim HLDTs, excluding those not needed to meet the applicable phase-in requirements during 2004–2006. The excluded trucks must comply with the standards from one of the bins in Table IV-B–4 (and –5) which effectively caps their emissions at 0.60 g/mi.

For HLDT test groups that are not subject to the phase-in in model year 2004 under Option 2 above, the same requirements as described above apply except that there are no new standards for these vehicles in the 2004 model year. Also, the optional higher NMOG values for LDT2s and LDT4s do not apply for any manufacturer that uses Option 2.

Given that the interim HLDT standards are ''phase-in'' standards through 2007 (as opposed to the interim LDV/LLDT standards, which are ''phase-out'' standards), we are including provisions that manufacturers may employ alternative phase-in schedules as proposed for the Tier 2 standards and described in detail in section IV.B.4.b.ii. of this preamble. These schedules provide manufacturers with greater flexibility and we believe they also provide incentive for manufacturers to introduce advanced emission control technology at an earlier date. Alternative phase-in schedules will have to provide 100% phase-in by the same year as the primary phase-in schedule (2007). Manufacturers will be eligible for alternate phase-in schedules to the extent that they produce HLDTs that meet or surpass the $NO_X$ average standard for interim HLDTs of 0.20 g/mi in 2001–2003 or to the extent that they produce more HLDTs than required that meet the 0.20 average standard in 2004 or later.

Where manufacturers elect not to meet the phase-in requirements for all of their 2004 model year HLDTs, as discussed above under Option 2, they may still employ alternate phase-in schedules, but the sum of 225 percent is required rather than the 250 percent required for alternate phase-ins described in section IV.B.4.b.ii. In this case, the sum of phase-in percentages up through the 2005 model year must total to at least 50%. Also, manufacturers must raise the 225% value to the extent that any of their 2004 HLDTs' model years commence on or after the fourth anniversary of the signature date of this rule and are brought into compliance with the 0.20 g/mi average $NO_X$ standard.

Lastly, note that for bin 10, which is only usable during the interim program, we have established a PM standard of 0.08 g/mi, which is more stringent than the Tier 1 standard previously in effect for these vehicles. We do not expect low sulfur diesel fuel to be widely available during the time frame of the interim program but we expect that bin 10 levels can be reached by diesel technology on current diesel fuel. As a part of this overall approach, we are making the intermediate life standards optional for diesels for this bin.

f. Light-Duty Evaporative Emission Standards

We are finalizing as proposed a set of more stringent evaporative emission standards for all Tier 2 light-duty vehicles and light-duty trucks. The standards we are finalizing are shown in Table IV.B.–9 and represent, for most vehicles, more than a 50% reduction in diurnal plus hot soak standards from those that will be in effect in the years immediately preceding Tier 2 implementation. The higher standards for HLDTs provide allowance for greater non-fuel emissions related to larger vehicle size.

TABLE IV.B.–9.—FINAL EVAPORATIVE EMISSION STANDARDS

[Grams per test]

| Vehicle class | 3 day diurnal +hot soak | Supplemental 2 day diurnal +hot soak |
|---|---|---|
| LDVs and LLDTs | 0.95 | 1.2 |
| HLDTs | 1.2 | 1.5 |

Evaporative emissions from LDVs and LDTs represent nearly half of the light duty VOC inventory projected for the 2007–2010 time frame, according to MOBILE5 projections. Manufacturers are currently certifying to levels that are, on average, about half of the current standards, and in many cases, much less than half the standards. Thus, meeting these standards appears readily feasible. Even though manufacturers are already certifying at levels much below the current standard, we believe that reducing the standards will result in emission reductions as all manufacturers seek to certify with adequate margins to allow for in-use deterioration. Further, we believe that tighter standards will prevent ''backsliding'' toward the current standards as manufacturers pursue cost reductions.

As mentioned in section IV.B.–4.b above, we will phase in the Tier 2 evaporative standards by the same mechanism as the Tier 2 exhaust standards; *e.g.,* 25/50/75/100 percent beginning in 2004 for LDV/LLDTs and 50/100 percent beginning in 2008 for HLDTs (as shown in Table IV.B.–2). As for the exhaust standards, alternative phase-in plans will also be available.

The evaporative emission standards we proposed and are finalizing today are the same as those that manufacturers' associations proposed during the development of California's LEV II proposal. California ultimately opted for more stringent standards; we believe that our standards are appropriate for federal vehicles certified on higher-volatility federal test fuel.

g. Passenger Vehicles Above 8,500 Pounds GVWR

Historically, we have categorized all vehicles above 8,500 pounds GVWR as heavy-duty vehicles regardless of their application and they have been subject to standards and test procedures designed for vehicles used in heavier work applications. [71] In the Tier 2 NPRM, we requested comment on whether some portion of vehicles above 8,500 pounds GVWR should be included in the Tier 2 program, based on vehicle use or design characteristics. The Tier 2 proposals, however, applied to light-duty vehicles and light-duty trucks and did not cover any vehicles above 8,500 pounds GVWR.

On October 29, 1999, after carefully considering all of the comments on this issue, we proposed to include all personal use passenger vehicles (both gasoline and diesel fueled) between 8,500 and 10,000 pounds GVWR in the Tier 2 program. This group of vehicles would include large SUVs and passenger vans and may include other types of ''crossover'' multipurpose vehicles in the future, depending on new vehicle designs. We proposed this Tier 2 program change in our NPRM concerning emissions standards for 2004 and later heavy-duty vehicles and engines, (64 FR 58472).

Specifically, we proposed to revise the definition of light-duty truck to include any complete vehicle between 8,500 and 10,000 pounds GVWR that is designed primarily for the transportation of persons and has a capacity of not more than 12 persons. We expected that this definition would exclude vehicles that have been designed for a legitimate work function as their primary use, such as the largest pick-up trucks, 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. We requested comment on whether the proposed definition would adequately exclude these vehicles, or whether additional criteria may be needed and how that criteria might be used.

Today, we are finalizing Tier 2 standards for passenger vehicles above 8,500 pounds GVWR. These vehicles are included in the Tier 2 program beginning in 2004 and are required to meet the final Tier 2 standards in 2009 and later. As we intended in the proposal, these vehicles will generally be subject to the same requirements as HLDTs. We have made modifications to the program, primarily in response to comments we received in two areas: (1) Changing the definition of light-duty truck and (2) the interim program requirements.

*New Vehicle Category: Medium-Duty Passenger Vehicles (MDPVs)*

The mechanism we proposed to bring the passenger vehicles over 8,500 pounds into the Tier 2 program, was to modify the definition of light-duty truck to include those vehicles. The objective of this proposal was to have these vehicles treated as HLDTs within Tier 2. We are finalizing requirements which remain consistent with our objective of including these vehicles in Tier 2 beginning in 2004. However, the approach we are finalizing is somewhat different than that proposed.

Rather than finalizing the revised definitions for light-duty truck as we proposed, we are creating a new category of heavy-duty vehicles termed ''medium-duty passenger vehicles'' (MDPVs). These vehicles will generally be grouped with and treated as HLDTs in the Tier 2 program. The MDPV category is defined along the lines of the proposed definition change for the LDT category, with some modification, as described below. Our decision to create a new sub-category of heavy-duty vehicles rather than modify the existing LDT definition does not, in and of itself, change the way in which Tier 2 standards are applied to the vehicles.

We decided upon the above approach because section 216 of the CAA establishes the definition for LDT as having the meaning contained in the CFR as of 1990. We received several comments that EPA may not change the definition and must instead devise a way to categorize the vehicles for purposes of Tier 2 which does not change the definition of light-duty truck. Rather than adopt a change to the LDT definition that would be questionable from a legal perspective, we are adopting an approach that we believe is clearly legally acceptable. Under this approach (as with the proposed approach), the standards for these vehicles are promulgated under

[71] The heavy-duty definition also includes vehicles that weigh over 6000 lbs curb weight regardless of their GVWR. We are not aware that any vehicles currently produced have curb weights above 6,000 lbs, but GVWRs of 8,500 lbs or less. Nevertheless, this discussion and our requirements includes such vehicles.

section 202(a)(3), which applies to heavy-duty vehicles/engines.

We are defining medium-duty passenger vehicles as any complete heavy duty vehicle less than10,000 pounds GVWR designed primarily for the transportation of persons including conversion vans (*i.e.,* vans which are intended to be converted to vans primarily intended for the transportation of persons. The conversion from cargo to passenger use usually includes the installation of rear seating, windows, carpet, and other amenities). We are not including any vehicle that (1) has a capacity of more than 12 persons total or, (2) that is designed to accommodate more than 9 persons in seating rearward of the driver's seat or, (3) has a cargo box (*e.g.,* a pick-up box or bed) of six feet or more in interior length. We would consider vehicles designed primarily for passenger use to be those that have seating available behind the driver's seat. We have added the rear passenger seating capacity criterion to exclude large passenger vehicles which are primarily used in heavy-load passenger applications. We do not believe vehicles designed primarily for personal use passenger transportation would be equipped with rear seating for more than 9 passengers. [72]

We have added the pick-up bed length criterion to the definition to clearly distinguish standard pick-ups from other vehicles meeting the GVWR and seating capacity criteria. We received several comments that although the proposal clearly states our intention not to include heavy-duty pick-up trucks in the Tier 2 program, the proposed regulatory definition was unclear. Currently, heavy-duty pick-ups have beds in excess of six feet. Any future offerings of vehicles that are equipped with significantly shorter beds would be included in the MDPV category, if the vehicle also met the weight and seating capacity criteria. EPA is making a distinction based on bed length because a vehicle introduced with a shorter bed would have reduced cargo capacity and would likely have increased seating capacity relative to current pick-ups, making it more likely to be used primarily as a passenger vehicle.

*Interim Standards*

As noted above, the MDPVs and HLDTs must meet the final Tier 2 standards by 2009 at the latest. Prior to 2009, HLDTs and MDPVs are required to meet interim standards. The interim standards, as described earlier in section IV.B.4, are based on a corporate average full life $NO_X$ standard of 0.20 g/mile which is phased in 25/50/75/100 percent in 2004–2007. MDPVs must be grouped with HLDTs for the interim standards phase-in.

We received several comments from manufacturers that requiring these larger vehicles to meet a new, unique standard prior to phase-in to the interim program would worsen the workload burden created by the Tier 2 program. Manufacturers do not currently have facilities available for chassis-testing diesel vehicles and there is not enough time to fold diesel vehicles into a chassis-based program by 2004.[73]

To address this situation, we are providing the following temporary additional flexibilities for MDPVs. We are finalizing an additional upper bin for MDPVs for the interim program (effective in model years 2004 through 2008). This bin would only be available for MDPVs. The bin, shown in Table IV.B–10, is equivalent to the California LEV I standards that are applicable to these vehicles prior to 2004. Vehicles certified to this bin must be tested at adjusted loaded vehicle weight (ALVW), consistent with California program testing requirements.[74] Including this upper bin provides manufacturers with the ability to carry over their California vehicles to the federal program prior to their phase-in to the interim and final Tier 2 standards. Once phased in to the interim standards manufacturers may continue to use the upper bin but the vehicles must be included in the 0.20 g/mi $NO_X$ average. The upper bin is not available to manufacturers for the final Tier 2 program.

TABLE IV.B.–10.—TEMPORARY INTERIM EXHAUST EMISSION STANDARDS BIN FOR MDPVS [a]

| | $NO_X$ | NMOG | CO | HCHO | PM |
|---|---|---|---|---|---|
| Full Useful Life (120,000 mile) | 0.9 | 0.280 | 7.3 | 0.032 | 0.12 |

Notes:
[a] Bin expires after model year 2008.

We proposed that HLDTs not needed to meet the phase-in percentages for the interim program during model years 2004—2006 would be required to meet one of the interim bins. Such vehicles, however, would not be included in the calculation to demonstrate compliance with the 0.20 g/mile average. Thus, we proposed that the emissions of all interim HLDTs would be capped at a $NO_X$ value of 0.6 g/mile. We are retaining the bin structure and requirements which effectively cap $NO_X$ emissions at 0.6 g/mile for all HLDTs below 8,500 pounds GVWR, as described in section IV.B. Similarly, for MDPVs, the 0.9 g bin described above is the highest bin available and acts as the cap for vehicles not yet phased-in to the interim standards.

In addition, for diesel MDPVs prior to 2008, we are allowing manufacturers the option of meeting the heavy-duty engine standards in place for the coinciding model year. Diesels meeting the engine-based standards would be excluded from the interim program averaging pool. In 2008, the manufacturers must chassis certify diesel vehicles and include them either in the interim program or in the final Tier 2 program. In 2009 and later, all MDPVs, including diesels, must be brought into the final Tier 2 program. As with the higher bin of chassis-based standards, the purpose of this diesel provision is to provide the option of carry-over of vehicles until they are brought into the Tier 2 program. We believe these modifications to the program will substantially ease the workload concerns of manufacturers in the interim years by allowing them to carry-over vehicle models and engine families. The provisions also remain consistent with EPA's goal of including the vehicles in the overall Tier 2 program structure.

[72] Vehicles that are ''designed'' to accommodate more than nine passengers in the rearward seating area in their standard configuration but that have some of the standard rear seating removed to accommodate two or more wheel chair tie downs would usually not be considered MDPVs.

[73] Currently, diesel heavy-duty engines are certified to heavy-duty engine standards rather than vehicle standards.

[74] ALVW is the average of curb weight and GVWR. The test weight is sometimes refered to as ''half payload''.

For diesel engines that are engine certified and used in MDPVs, as allowed through model year 2007, we are requiring those engines to comprise a separate averaging set under the averaging, banking and trading requirements applicable to heavy-duty diesel engines. We are permitting engine-based certification for these diesel vehicles to provide time and flexibility for manufacturers who may have limited experience with chassis certifying vehicles containing such engines. However, we do not want to create a situation where engines above applicable engine standards could be used in these vehicles, when other MDPVs are being brought under stringent standards. Therefore we believe it is appropriate to constrain the application of credits to these engines. We note that we are not permitting credits from other programs (like NLEV) to be applied in any way to Tier 2 or interim vehicles.

For LDT4s, we have finalized an optional higher NMOG level of 0.280 g/mile for bin 10 (0.6 g/mile $NO_X$), as described in section IV.B.4.a of the preamble. MDPVs placed in bin 10 may also certify to the higher NMOG level of 0.280 g/mile. This provision provides manufacturers with the incentive of selecting the lower $NO_X$ bin for MDPVs, since the NMOG level is not an obstacle to compliance.

As described in section IV. B.4.e.ii., manufacturers have two options for the start of the program requirements. In Option 1, the program begins with the 2004 model year for 25 percent all vehicles. In Option 2, manufacturers can exempt 2004 model year vehicle test groups whose model years begin on or after the fourth anniversary of this rule's signature. These options are also available for MDPVs for the same reasons we are providing them for HLDTs. However, the additional 0.9 g bin contained in Table IV.B.–10, the optional higher NMOG standard of 0.280 g/mile for bin 10, and the option of certifying to the engine-based standards for diesels are available only with Option 1.

*Other Emission Control Requirements*

We are requiring all non-diesel MDPVs to be OBDII compliant beginning in 2004. California requires OBDII for their LEV I program and therefore, the new OBDII requirements are consistent with the approach of allowing vehicles to be carried over from California. [75] Diesel vehicles which are carried over from the California program are required to be equipped with the OBD system as the system is certified in California. Diesel vehicles not carried over from California are not required as part of this rulemaking to be equipped with OBDII. However, we have proposed OBDII requirements for heavy-duty diesel engines in our heavy-duty engines NPRM (64 FR 58472). If OBDII requirements are finalized for heavy-duty engines and vehicles as part of that rulemaking the OBDII requirements would likewise apply to diesels in the MDPV category.

As proposed, we are applying Tier 2 evaporative emissions standards and existing HLDT ORVR requirements to MDPVs. MDPVs must be grouped with HLDTs for purposes of phasing in to the Tier 2 evaporative emission standards contained in this rule. We have added somewhat higher standards for the MDPVs to account for their larger fuel tanks and vehicle sizes.[76] However, the stringency of the standards remains similar to that for HLDTs. These standards are described in section IV.B.4.f of the preamble. ORVR requirements currently exist for HLDTs and are to be phased-in through model years 2004–2006.[77] We proposed to apply the same standards and phase-in requirements to vehicles over 8,500 pounds GVWR. We are finalizing these ORVR requirements for MDPVs, which must be grouped with HLDTs for purposes of phased-in to the ORVR requirements.

For those manufacturers electing option 2, OBD is required when the vehicle family is covered under these new requirements (*i.e.,* 2004 or 2005 depending on when certification occurs). For ORVR, the situation is similar. The phase-in is 40 percent of any 2004 certifications which occur four years after this rule is promulgated, 80 percent in 2005, and 100 percent in 2006. As before, the vehicles covered by these phase-ins must be combined with those in the LDT3/4 phase-in for purposes of calculating compliance.

We are finalizing Cold CO and Certification Short Test requirements for Tier 2 MDPVs. However, we are not finalizing SFTP standards for MDPVs in today's rulemaking. Currently, SFTP standards do not apply to any vehicles above 8,500 pounds GVWR, including those in the California LEV I and LEV II programs. We are concerned, therefore, that finalizing SFTP requirements in today's rulemaking would prevent manufacturers from carrying over vehicle models during the phase-in years of the program. We are currently contemplating a new SFTP rulemaking which would consider ''Tier 2'' SFTP standards for all vehicles, including MDPVs. California is also interested in developing more stringent SFTP standards within the context of their LEV II program and we are coordinating with California on these new SFTP standards.

*Sustained Severe Use; In-Use Testing of MDPVs*

While we are confident that MDPVs can comply in-use with the standards we are finalizing, manufacturers are concerned about in-use liability for MDPVs that are in sustained severe-use. In our in-use emission testing program, we generally screen vehicles for proper maintenance and use and delete vehicles that we believe may have been misused or malmaintained. Also, in the regulations for manufacturer in-use testing, we permit manufacturers to delete vehicles from samples if they have been used for ''severe duty (trailer towing for passenger cars, snow plowing, racing)'', and we provide that vehicles may be deleted for other reasons upon EPA approval.

We recognize that MDPVs will be marketed and used for carrying many passengers, carrying heavy loads and trailer towing. While it is not our intention to exempt vehicles from in-use liability that have been used for their intended purposes, we understand that some MDPVs may be subject to sustained severe service applications, such as frequent overloading or frequent towing beyond manufacturer's advertised capacity and could not be considered to be representative of properly maintained and used vehicles. Furthermore, we would not necessarily consider to be representative MDPVs which are routinely or regularly used in heavy-load hauling application or towing even within the manufacturers limits. Thus, for example, an SUV MDPV used on a daily basis to haul a work crew and tow equipment to a distant work site may not be representative while the same SUV used to haul the family and tow a boat to the lake on weekend excursions would be representative. MDPVs in sustained severe operations should not be included in manufacturer or EPA in-use test programs, while those that see less frequent severe operation should be included.

[75] As with HLDTs, the California OBDII compliance option is available for MDPVs.

[76] For Tier 2 MDPVs, evaporative standards will be 1.4 g/test for the 3 day diurnal+hot soak test and 1.75 g/test for the supplemental 2 day diurnal+hot soak test.

[77] ORVR requirements are phased in for HLDTs, at 40/80/100 percent in 2004–2006 (see 40 CFR 86.1810–01 (k)).

*C. Our Program for Controlling Gasoline Sulfur*

As with our program for vehicles, the program we are establishing today for reducing sulfur levels in commercial gasoline will achieve the same large $NO_X$ reductions that we projected for the proposed program. Here, too, the final program is very similar to our proposed program. Adjustments we have made to the proposed program will smooth the refining industry's transition to the low-sulfur requirements and encourage earlier introduction of cleaner fuel.

With today's action, we are requiring substantial reductions in gasoline sulfur levels nationwide. As we explained in Section IV.A, because sulfur significantly inhibits the ability of automotive catalysts to control emissions, we had to consider sulfur's impact in setting the Tier 2 standards. We knew at the time of proposal that newer catalysts were more sensitive to sulfur than older technologies, and projected that Tier 2 catalysts would be as or even more sensitive than those used in today's NLEV vehicles. Furthermore, we believed that the sulfur build-up on Tier 2 catalysts may be irreversible. Since the proposal, additional data we've collected have confirmed and strengthened our concerns. It now appears that the catalysts expected to be used in Tier 2 vehicles will be even more sensitive to sulfur than we originally estimated, and that this sulfur impact will be approximately 45 percent irreversible under typical driving conditions. Thus, the gasoline sulfur standards we finalize today will enable the stringent tailpipe emission standards we're implementing for Tier 2 vehicles and will help to ensure that these low emission levels will be realized throughout the life of the vehicle. Furthermore, since vehicles already on the road, including NLEV vehicles, are in many cases quite sensitive to sulfur, gasoline sulfur control will also help to reduce emissions of pollutants that endanger public health and welfare from these vehicles.

In developing this gasoline sulfur control program, we gave substantial consideration to the ability of the refining industry to meet these requirements. We proposed a set of standards applying to refiners and to individual refineries combined with a sulfur averaging, banking, and trading (ABT) program intended to provide flexibility in meeting the standards. We concluded that our proposal was reasonable and cost-effective based on our projections regarding the number of refineries that would (1) need to reduce sulfur levels each year as the standards tightened, (2) need sulfur ABT credits to meet the 30 ppm refinery average standard in 2004 and/or 2005 to defer installation of desulfurization equipment, and (3) install desulfurization equipment prior to 2004, generating the needed sulfur credits. This analysis formed our picture of the industry's investment stream—a year-by-year estimate of how many refineries would be constructing new equipment and what technologies these refineries would choose. We assumed that any investments would be in the new, lower cost technologies, and that these technologies would be available and adequately demonstrated to allow refiners to select them as early as the year 2000 to begin operation (and thus, credit generation) as early as 2002. Based on these assumptions, our analysis showed that sufficient credits would be generated before 2004 to enable a number of refineries to delay construction and use credits to meet the 30 ppm standard in 2004, and in some cases, even in 2005. Overall, we believed our analysis represented a reasonable and balanced rate of investment by the industry over a several year time period.

In response to our proposal, we received many comments which raised concerns about the feasibility of our program. Some comments suggested that our proposed declining cap (300 ppm cap for 2004 and a reduced cap of 180 ppm for 2005) could be an additional and burdensome expense for most refiners to meet. Specifically, these commenters believed that the declining cap would be more constraining than compliance with the corporate average or even the refinery average standards (as long as the ABT program produced sufficient credits). Because refiners probably would not make multiple investments in such a short time, the 180 ppm cap could force some refiners to install the equipment needed to get to the 80 ppm cap earlier than otherwise needed. The commenters argued that this would force all of the industry's investments into the first years of the program rather than allowing for a smoother transition over several years as we had originally envisioned. Many comments also suggested that since there have not been long-term commercial demonstrations of the newer gasoline desulfurization technologies, refiners would not consider these technologies to be viable and, if faced with our proposed 30 ppm standard in 2004, may select the more traditional, higher cost sulfur reduction processes. Some of these commenters suggested that we should delay the 30 ppm standard, and recommended a range of suggested deadlines (2005–2007).

We also received many comments which suggested that the ABT program restricted the generation of credits, and provided no certainty that credits would be generated prior to 2004. Commenters stated that two features in particular—the delay in establishing each refinery's sulfur baseline due to 1997–98 data review and the strict 150 ppm ''trigger'' for generating credits—caused them to question whether adequate sulfur credits would be available. If credits could not be guaranteed early enough to forestall investment decisions, refiners would be forced to begin construction earlier than we had projected. Under such a scenario, the costs of the program would be substantially greater, and many commenters suggested that, regardless of cost, it would be impossible for the entire industry to meet the deadline (due to limitations on engineering design and construction resources as well as the time required to obtain permits).

Finally, we received many comments which argued that not all refineries would be able to concurrently comply with the proposed standards in the time period provided, given the competition for engineering resources and the time needed for construction of desulfurization equipment. These comments focused specifically on small refineries (owned by both small and large corporations) and refineries that were relatively isolated geographically (such as many refineries in the Rocky Mountain region) which had little access to other sources of gasoline should they have difficulty in complying with our requirements. The commenters generally argued that these refiners needed more time than the rest of the industry to meet our proposed standards. Some of the commenters also argued that the standards applicable to many of these refiners should be less stringent because of their belief that the environmental needs of the states where these refineries were located and/or marketed gasoline were small relative to the needs of other states. Suggestions for temporary and permanent regional programs which provided less stringent control in the Western half of the country were included with many of these comments.

Based on what we've learned from the comments received and additional information we've gathered, we have revised our analysis of when refiners will invest in desulfurization equipment and how the sulfur ABT program can

best help to distribute these investments over several years while maintaining the original goals of the program. The following is a brief summary of our new analysis; a more complete explanation of our assumptions can be found in the RIA.

About 15 percent of current domestic gasoline production already meets the gasoline sulfur standard, or can do so with very little additional capital investment, and at most a small increase in operating cost. The remainder of the industry—the majority of U.S. refineries—will have to install at least one desulfurization processing unit to lower gasoline sulfur to the required levels. Furthermore, many of these refineries will need to make changes to their operations in advance of 2004 simply to comply with the 300 ppm cap standard, even if they can obtain sufficient ABT credits to delay compliance with the 30 ppm refinery average standard. Refiners facing this situation will need to make their decisions within a year or at most two from today's action. From the comments we received and discussions we've had with refiners and technology vendors, we acknowledge that some of the newer, more promising processes may not be in operation for sufficient time to gain valuable operating experience (one to two years of operation) until 2002 or later. Hence, we now believe that some refiners may choose from one of the traditional, commercially-demonstrated desulfurization processes, even though these technologies may be more costly, to meet our standards.

However, we continue to believe that the majority of refiners will delay construction (taking advantage of the sulfur ABT program and perhaps making modest operational changes in the interim) and will have a wide range of technological options to choose from, at reduced capital investment and operating costs compared to the more traditional approaches. Examples of these technologies are CDHydro and CDHDS (licensed by the company CDTECH), Octgain 125 and Octgain 220 (licensed by Mobil Oil), S Zorb (licensed by Phillips), IRVAD (licensed by Black & Veatch), and others. These technologies generally use conventional refining processes combined in new ways, with improved catalysts and other design changes that minimize the undesirable impacts (such as a substantial loss in octane) and maximize the effectiveness of the desulfurization approach. Since these processes provide less costly ways to reduce gasoline sulfur, we have based our economic assessment (summarized in Section IV.D. below) on the presumption that the majority of refiners will elect to use one of these processes to meet the 30 ppm standard, even if it requires delaying compliance (through the purchase of ABT program credits) until 2006.

However, after considering the data available to us about current refinery sulfur levels and the ability of refiners to reduce sulfur levels to meet the standards, we have made several modest changes to the program. These changes will not affect the environmental performance of the proposed program. We agree that the declining cap had the unintended consequence of forcing investments earlier than desired for an orderly transition to the 80 ppm cap. Thus, we have changed the program from the proposal, establishing a 300 ppm per-gallon cap in 2004 and 2005. We do not expect this change to have an impact on the environment (or on the Tier 2 vehicles that will be introduced in this interim period) since average sulfur levels will be required to decrease due to the declining corporate average, which begins in 2004. We kept the corporate average standards proposed for 2004 and 2005, but are permitting inter-company trading around these standards. We believe this change will provide further flexibility to the industry in allowing some refineries to delay construction and encourage others to move forward sooner. Having now concluded that many refiners would benefit from an additional year to evaluate and consider the technological options before having to install equipment to meet the 30 ppm standard, we have delayed this standard for one year. In acknowledgment that some areas of the country have less urgent environmental needs for the emissions reductions that this program will bring, and that many of the refiners that supply gasoline to these areas are ones which will have the most difficulty in meeting the standards, we have finalized a geographic phase-in of the standards to complement the temporal phase-in applicable to the rest of the industry. Thus, in certain states in the West, refiners have the option of meeting interim standards while delaying compliance with the 30 ppm average until 2007. Finally, we have made changes to the sulfur baseline requirements and the credit trigger to help ensure that the sulfur ABT program functions as we originally envisioned it would.

These changes will encourage reductions in gasoline sulfur levels beginning as early as 2000, while providing enough flexibility to require the majority of refineries to meet a 30 ppm average sulfur standard by 2006. Overall, the industry will be able to spread the needed investments over several years rather than having to comply as a whole by 2004, and will be able to maximize the use of the most efficient and lowest cost technologies. While we have provided additional flexibility for the industry, we have done so without compromising the environmental benefits of the program in 2004 and beyond when compared to our proposal.

The following sections summarize the requirements for gasoline refiners and importers, including our geographic phase-in requirements; special provisions for small refiners, and our plans to facilitate the construction permitting process to enable refiners to install gasoline desulfurization technology in a timely manner. Section VI provides additional information about the compliance and enforcement provisions that will accompany these requirements. More detailed information in support of the conclusions presented here is found in the RIA and in our RTC document.

### 1. Gasoline Sulfur Standards for Refiners and Importers

This section explains who must comply with the gasoline sulfur control requirements, the standards and deadlines for compliance, and how refiners can use the ABT program to meet the standards. The last section discusses how individual state gasoline sulfur programs are affected by today's action. Standards specific to eligible small refiners are presented in Section IV.C.2.

#### a. Standards and Deadlines that Refiners/Importers Must Meet

Anyone who produces gasoline for sale in the U.S. must comply with these regulations. This includes anyone meeting our definition of a refiner (including blenders, in most instances) and importers. Certain refiners may qualify for temporarily less stringent standards and deadlines because these companies either (1) market gasoline in the temporary geographic phase-in area (explained in section b below), or (2) they qualify under our definition of small refiner (explained in section IV.C.2 below). Foreign refiners may also have separate requirements, if they qualify as small refiners.

These requirements will apply to all gasoline sold in the U.S., including Alaska, Hawaii, Puerto Rico, American Samoa, the Virgin Islands, Guam, and

the Northern Mariana Islands.[78] This national approach is appropriate, based on our conclusions that vehicle emissions must be reduced nationwide to adequately protect public health and the environment and Tier 2 vehicles require protection from the harmful impacts of gasoline sulfur regardless of where they are operated.

Table IV.C.–1. summarizes the standards for gasoline refiners and importers. There are three standards which refiners and importers must meet. In 2004 and beyond, every gallon of gasoline produced is limited by a per-gallon maximum or ''cap.'' The cap standard becomes effective January 1, 2004 (and January 1 of subsequent years as the cap standard changes). Also, in 2004 and 2005, each refiner must meet an annual-average standard for its entire corporate gasoline pool. Finally, each individual refinery is subject to a refinery average standard, beginning in 2005. Refineries that do not take advantage of the sulfur ABT program will have actual sulfur levels averaging 30 ppm beginning in 2005. Additional details about the requirements for meeting these standards is found in the following sections.

TABLE IV.C.–1.—GASOLINE SULFUR STANDARDS FOR REFINERS, IMPORTERS, AND INDIVIDUAL REFINERIES

[Excluding Small Refiners and GPA Gasoline]

| Compliance as of— | 2004 [a] | 2005 | 2006+ |
|---|---|---|---|
| Refinery Average, ppm [b] | ..... | 30 | 30 |
| Corporate Pool Average, ppm [c] | 120 | 90 | ..... |
| Per-Gallon Cap,[d] ppm | 300 | 300 | 80 |

NOTES:

[a] We project that the pool averages will actually be below 120 ppm in 2004. For a discussion of how the program gets early sulfur reductions before 2004, see section IV.C.1.c.

[b] The refinery average standard can be met through the use of sulfur credits or allotments from the sulfur ABT program, as long as the applicable corporate pool average and per-gallon caps are not exceeded, as explained in Section IV.C.1.c.viii.

[c.] The corporate pool average standard can be met through the use of corporate allotments obtained from other refiners, if necessary, as explained in Section IV.C.1.c.iii.

[d] In 2004, exceedances up to 50 ppm beyond the 300 ppm cap are allowed. However, in 2005, the cap for all batches will be reduced by the magnitude of the exceedance.

*i. What Are the Per-Gallon Caps on Gasoline Sulfur Levels in 2004 and Beyond?*

To reduce the potential for permanent damage to the emission controls of Tier 2 vehicles and later NLEV vehicles, we are implementing caps on the sulfur content of every batch of gasoline produced or imported into the country beginning in 2004. As shown in Table IV.C.–1, a cap of 300 ppm is first implemented in 2004. This cap remains in 2005. In 2006 and beyond, the cap is lowered to 80 ppm. These caps apply at the refinery gate. Sulfur caps are also applied to gasoline downstream of the refinery; see Section VI for additional discussion of downstream cap standards. These downstream caps will facilitate compliance and enforcement without changing the way the distribution system currently functions.

Several commenters suggested the rule should also include a provision to address the occasions when refiners must temporarily take processing units out of operation so that planned, recurring maintenance can be performed, commonly termed ''turnarounds,'' or if processing units are unexpectedly taken out of operation due to accident or malfunction, commonly termed ''upsets.'' These commenters expressed particular concern that the gasoline produced at a refinery may not meet the sulfur cap standards when a refinery's desulfurization unit is not operating. These commenters contended that the regulations should allow refiners to produce gasoline that exceeds the cap standard for a limited time where the excess sulfur is due to a turnaround or upset. However, they also suggested that the refiner should be required to meet the refinery average standard with the high sulfur gasoline included in its average calculation in order to create an incentive for refiners to limit the volume and sulfur content of high sulfur gasoline.

Today's rule does not grant relief to refiners because of turnarounds or upsets. While the concern raised by the commenters is reasonable, the solution they suggested would nevertheless result in distribution of gasoline exceeding the cap standards. The cap standards are necessary because gasoline with higher sulfur levels will significantly harm or destroy the emission controls used in Tier 2 vehicles.

We believe there are strategies refiners can use to mitigate or eliminate the difficulties associated with turnarounds and upsets. For example, some refiners schedule turnarounds for a number of refinery processing units at the same time when the refinery largely stops producing gasoline, thereby avoiding the need to produce any high sulfur gasoline. In other situations it may be possible for a refiner to store high sulfur products until the desulfurization unit is operating or to transfer high sulfur products to a neighboring refinery for desulfurization.

We commit to continue evaluating the turnaround issue especially as new technologies are introduced. Based on our evaluation, if a problem is evident and if an appropriate solution can be devised, we will act at that time.

In 2004, if any batch of gasoline[79] exceeds the 300 ppm cap (up to 350 ppm), then the cap for all batches produced by the refinery in 2005 will be reduced by the magnitude of the exceedance. For example, if any given batch of gasoline has a cap of 325 ppm (a 25 ppm exceedance) in 2004, then the cap becomes 275 ppm for all batches of gasoline produced by that refinery in 2005. However, at no time in 2004 can a batch be higher than 350 ppm sulfur. We have made this adjustment to accommodate those refiners who would have to invest in control technologies to meet the 300 ppm cap in 2004 (perhaps at a higher cost than they would incur if they could delay the investment a year) but could otherwise meet a slightly higher cap through operational changes which would not require new equipment.

[78] Gasoline sold in California is exempt from meeting these Federal standards, due to our belief that California gasoline already meets or exceeds these requirements. See Section VI for more discussion on this issue.

[79] Including gasoline produced for use in the geographic phase-in area and small refiner gasoline.

*ii. What Standards Must Refiners/Importers Meet on a Corporate Average Basis?*

Refiners and importers must meet annual-average, volume-weighted sulfur standards for their entire corporate gasoline pool in 2004 and 2005. In 2004, this standard is 120 ppm; in 2005, it is reduced to 90 ppm. In 2006 and beyond, there will no longer be a corporate pool average standard, since each refinery and importer will be held to its own single refinery average standard, as discussed in the next section.

These standards represent the maximum allowable sulfur levels, on an annual average basis, for each refiner/importer, volume-weighted across all refineries owned and operated by that refiner (or all gasoline imported by the importer in the calendar year), rather than at each individual refinery or by each batch of gasoline. Thus, a refiner's gasoline may exceed the average standard of 120 ppm at one refinery, if sufficient gasoline below that standard is produced at its other refinery(ies), such that its corporate, volume-weighted average sulfur level does not exceed 120 ppm. Alternatively, allotments may be used to meet this requirement. This requirement does not apply to small entities or to corporations that do not have to meet the pool average standard in the GPA program. For compliance with this corporate averaging requirement, as well as with the other requirements of this subpart, we consider a parent corporation owning wholly-owned subsidiaries that also own refineries to be the refiner of these facilities. Thus, the parent corporation must comply with refiner corporate average requirements. In its compliance calculations, the refiner must include the gasoline produced at the refineries it owns, plus the gasoline produced at the refineries owned by its wholly-owned subsidiaries.

For purposes of compliance, we proposed that a joint venture, in which two or more refiners collectively own and operate one or more refineries, be treated as a separate refining corporation under the gasoline sulfur requirements. Hence, a refinery owned by a joint venture would have been included in the corporate pool calculations of the joint venture, and could not have been included in calculations with other refineries solely owned by one of the parties to the joint venture. Based on comments we received on this issue which argued that a company with majority ownership in the joint venture should be allowed to count the jointly held refinery in its corporate average, we have revised our treatment of refineries owned by joint ventures. Each joint venture must separately meet the corporate pool average standard, whether the joint venture owns one or multiple refineries. If a joint venture fails to meet the corporate pool average standard, then each partner in the joint venture is jointly and severally liable for the violation. However, if one partner to a joint venture refinery includes the joint venture refinery in its corporate pool, and that corporate pool meets the corporate pool average standard, then the joint venture will be considered by EPA to be in compliance (if the joint venture owns only the one refinery). If the joint venture owns multiple refineries and only one or some of the refineries is included in the corporate pool calculations of one partner, compliance by the joint venture with the corporate pool average standard will be judged based on the average sulfur levels of the remaining refinery(ies) owned by the joint venture.

In meeting the corporate average stds in 2004 and 2005, refiners and importers may use allotments as discussed in IV.C.1.c below.

*iii. What Standards Must be Met by Individual Refineries/Importers?*

Beginning in 2005, every refinery must meet an average standard of 30 ppm sulfur at the refinery gate on an annual, volume-weighted basis. Similarly, every importer must meet the 30 ppm average standard beginning in 2005. (These requirements do not apply to small entities or to GPA gasoline). In meeting this standard, individual refineries and importers may use credits generated or purchased under the provisions of the sulfur ABT program discussed below in Section IV.C.1.c, and/or, in 2005 (only), sulfur allotments (as described in the previous section) obtained from a refiner who has excess allotments to sell, if they are unable to comply based on their actual gasoline sulfur levels. Hence, the actual average sulfur levels for gasoline produced at some refineries can be higher than 30 ppm in 2005, but only if refiners use (1) credits generated from cleaner gasoline produced early and/or (2) allotments generated by a refiner which produces gasoline averaging, on a corporate basis, lower than 90 ppm in 2005. However, the corporate pool average standards and per-gallon caps will limit the degree to which gasoline can exceed 30 ppm on average.

We allow refiners to use either sulfur allotments or ABT credits to meet the 30 ppm standard in 2005 for several reasons. First, this is an environmentally neutral approach because the national pool in 2005 will still average no greater than 90 ppm, since every refiner must meet the corporate average standard before applying allotments to the compliance of any refineries with the 30 ppm standard. Second, it provides refiners who have excess allotments in 2005 an additional market for those allotments, thus giving refiners an incentive to exceed the 90 ppm corporate average standard in 2005. In either case, the reductions will have occurred and thus the allotments and credits have very similar purposes and thus should be interchangeable.

In 2006 and beyond, the 30 ppm refinery average standard continues to be a requirement for every refinery or importer. The sulfur credits generated in the ABT program may be used by refineries or importers to comply with this requirement. However, because of the 80 ppm cap in these years, we expect that the majority of refiners/importers will average 30 ppm, although some individual refineries/importers could average slightly more or less (if the refineries/importers bank, sell, or purchase credits to meet this standard, as explained in the ABT discussion below). Furthermore, the majority of credits will expire at the end of 2006.

b. Standards and Deadlines for Refiners/Importers Which Provide Gasoline to the Geographic Phase-In Area (GPA)

As indicated above, certain refiners may qualify for temporarily less stringent standards and deadlines for some or all of their gasoline because these companies either (1) produce gasoline to be sold in the temporary geographic phase-in area (GPA) or (2) qualify under our definition of small refiner. In this section, we explain the geographic phase-in area of our program and the interim standards and deadlines for compliance in that area. The provisions that apply to qualifying small refiners are described in section IV.C.2., below.

*i. Justification for Our Geographic Phase-In Approach*

In addition to phasing in our national gasoline sulfur program temporally from 2004–2006, we are phasing in our program geographically. In response to our proposal, we received many comments from the refining industry regarding timely implementation of our proposed gasoline sulfur program. Commenters argued that not all refineries would be able to concurrently comply with the proposed standards in the time period provided, given the competition for engineering resources and the time needed for construction of

desulfurization equipment. In consideration of these comments, we have made some modifications to enhance the timing of our program without compromising the environmental benefits we expected from our proposal.

As part of our assessment we also examined other phase-in approaches which might enhance the orderly introduction of refining technology without jeopardizing the environmental benefits of our program. As a result of this assessment, we have concluded that many states in the Great Plains and Rocky Mountain areas of the United States have a somewhat less urgent environmental need for ozone precursor reductions in the near term. Moreover, their gasoline supply is dominated by that produced by small capacity, geographically-isolated refineries located therein. As a general rule, refineries in this area will have the most difficult time of all refineries nationwide in competing for the vendor, supply, engineering, and construction resources needed to modify their refineries to comply with the standards. Based on 1998 Department of Energy data, over 80 percent of the gasoline sold in this area is produced by the relatively small refineries located within the region.[80] Similarly, Alaska faces a less urgent environmental need for reductions in ozone precursors and has refineries which are challenged and geographically isolated.

A more orderly and cost-efficient phase-in of the 30 ppm standard could be achieved if all gasoline sold in this area was subject to somewhat less stringent standards than those in the rest of the country for a short time. This approach will allow the refineries producing gasoline for use in this area more compliance flexibility, more time to install and prove out the equipment needed for compliance, and thus a greater opportunity to reduce their overall costs. As described below, this approach results in only a minimal loss in emission reduction benefits. By stretching out demand for design, engineering, construction and other related services during the 2000–06 period, these provisions should also help to reduce the overall costs of the gasoline sulfur program.

The remainder of this section is divided into two parts. The first describes the rationale for development of this approach and how we identified the appropriate area, and the second provides a description of the requirements for refiners and importers that produce fuel for sale in the area.

*ii. What Is the Geographic Phase-in Area (GPA) and How Was it Established?*

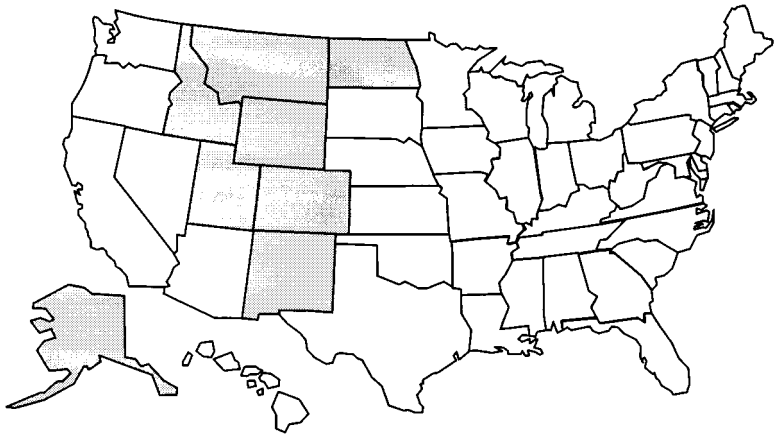
As we considered the geographic phase-in approach, we aimed to minimize the environmental losses which could occur from exposing Tier 2, NLEV, (and other) vehicles to higher gasoline sulfur levels when the gasoline sulfur standards are being phased in nationwide. We used two criteria to develop and evaluate this approach: (1) relative environmental need and (2) the ability of U.S. refiners and the distribution system to provide compliant gasoline.

The states we have identified for the GPA are shown in Figure IV.C–1.[81]

BILLING CODE 6560–50–P

**Figure IV.C.-1:**

**Geographic Phase-In Area (GPA)**



BILLING CODE 6560–50–C

The first and primary criterion we considered in defining this area was environmental need. In defining the GPA, we identified those states that have somewhat less urgent environmental need in the near term for reductions in ozone precursors and whose emissions are less important in terms of ozone transport concerns. This area includes some states that are located in the Great Plains and the Rocky Mountains, as well as Alaska. Most states within the Rocky Mountains and Great Plains do not have a compliance problem with the 1-hour ozone standard in the near term, although they do have concerns in terms of maintaining compliance with the particulate matter standard. However, there are two states (Arizona and Nevada) in the Rocky Mountain vicinity that do have ozone air quality concerns. These states have instituted local fuel quality programs (in Phoenix, AZ and Las Vegas, NV) to reduce ozone precursor emissions. In addition, as shown in Table III.C–2, Arizona and Nevada are projected to have concerns with PM10 compliance in the future. Given these factors, we excluded them

[80] Much of this gasoline is produced by small volume refineries that are not owned by small businesses, and are therefore not afforded the flexibility of the small refiner provisions described in Section IV.C.2.

[81] Alaska, Colorado, Idaho, Montana, New Mexico, North Dakota, Utah, and Wyoming

from the phase-in area and its temporarily less stringent standards except as described below in Section IV.C.1.b.vii for counties and tribal lands in adjacent states.

We also defined the phase-in area based on the relative difficulty of producing or obtaining complying gasoline. The refining industry in the GPA is dominated by relatively low capacity, geographically-isolated refineries many of which are owned by independent companies. Such refineries face special challenges in complying with the requirements of the national program by 2004 because their crude capacity, corporate size, and location make it difficult for them to compete for the design, engineering, and construction resources needed to comply by 2004.

Furthermore, an assessment of 1998 gasoline production and use data and information on the products pipeline system shows that states in the GPA and portions of several adjoining states are solely or predominantly dependent on gasoline produced by these refineries and have limited or no access to gasoline from other parts of the country. Based on this analysis, we concluded that several states and portions of other states meeting our first criterion (less urgent environmental need for ozone precursor emission reductions) also face the likelihood of a supply shortage of low sulfur gasoline. Providing low sulfur gasoline to these states and adjoining areas is expected to be more difficult and costly in the near term. Section IV.C.1.b.vii below, discusses how the adjoining areas (counties/tribal lands) will be identified.

Thus, we believe it is appropriate to phase in the 30 ppm average, 80 ppm cap standards in these areas by allowing an additional year compared to the rest of the country, rather than delaying implementation of the standards nationwide to accommodate these states. Under this approach, the areas with the most urgent need for the ozone reduction benefits associated with low sulfur gasoline will realize them as soon as is feasible, and other areas will experience them shortly thereafter.

On the other hand, much of the area in the adjoining states has significant pipeline, rail, barge, and truck access to gasoline which will be capable of meeting the standards in Table IV.C–1 beginning in 2004. Even if these states have less environmental need in the near term, there are health benefits (particulate and air toxic emission reductions) as well as performance benefits for vehicle emission control systems (including avoidable irreversible sulfur effects) which need not be foregone. Therefore, we concluded that since it will not be more difficult to send gasoline to these adjoining areas through the distribution system, the significant environmental benefits of requiring low sulfur gasoline as early as is feasible justifies excluding these states from the GPA.

Some might argue that there are other states which should be considered under this program. However, based on our criteria of environmental need (including ozone transport and irreversibility concerns) challenged refineries, and limited access to complying gasoline we could identify no other states or territories which to include.

*iii. Standards/Deadlines for Gasoline Sold in the Geographic Phase-in Area*

While the states in the GPA may have less of an environmental need for ozone precursor reductions in the near term, there are significant environmental reasons to make the program as stringent as possible, still enabling a smooth transition to low sulfur gasoline nationwide. Toward that end, we are establishing the following requirements for gasoline sold in the GPA, which we view as the appropriate balance between these two factors.

The GPA provision covers all gasoline produced or imported for use in the GPA, whether refined there or brought in by pipeline, truck, rail, etc.[82] Foreign refiners are involved in this program through the importers, who are, in fact, the regulated entities. Refineries and importers must meet a 150 ppm average and a 300 ppm cap for all gasoline produced or imported for the GPA under this program beginning January 1, 2004. However, if a refinery's/importer's 1997–98 average sulfur level is less than 150 ppm, then that refinery's/importers gasoline has a standard of its baseline plus 30 ppm but in no case greater than 150 ppm. For example, a refinery with a baseline of 100 ppm would have a sulfur standard of 130 ppm for its GPA gasoline, a refinery with a baseline sulfur level of 140 ppm would have a standard of 150 ppm for its GPA gasoline, and a refinery with a baseline of 200 ppm would have a standard of 150 ppm for its GPA gasoline. Furthermore, if under the ABT provisions discussed below and in section IV.C.1.c, a refinery/importer generates credits (in 2000–2003) and/or allotments (in 2003) by dropping its refinery/imported gasoline average below 150 ppm then the baseline for that refinery is set at the new level and the standard becomes baseline plus 30 ppm but not greater than 150 ppm. This is to ensure that refineries and importers who already are lower than the 150 ppm standard on average maintain current sulfur levels. The 30 ppm factor is intended to allow some flexibility for refineries and importers whose 1997 and 1998 levels are an aberration from normal operations or who face changes in crude slates in future years.

Corporate pool average standards apply in the national gasoline sulfur program for calendar years 2004 and 2005. Most refiners/importers producing gasoline for use in the GPA market the majority of their gasoline outside of the GPA where they compete with many other refineries. Since the phase-in of the national program expects compliance with the 120/90 ppm corporate pool average standards in 2004 and 2005, we are requiring that refiners/importers who market the majority (greater than 50 percent of production volume) of their gasoline outside of the GPA to account for the sulfur levels of their GPA gasoline in their calculation for compliance with the corporate pool average standards.

To provide additional flexibility during this phase-in, refiners may use sulfur ABT credits and allotments (as explained in IV.C.1.c) to meet these standards. Refineries producing GPA gasoline can generate credits beginning in 2000 under the provisions of the national program (described in section IV.C.1.c). Also, refineries/importers marketing gasoline in the GPA may through extraordinary measures be able to generate credits in 2004–2006. To qualify they must achieve levels below 150 ppm or their more stringent baseline levels as discussed above whichever is less. Under these circumstances, these refineries/importers can earn credits for the GPA gasoline they produce during 2004–06. Credits generated under the GPA program are fully fungible with national credits and are subject to the same regulatory requirements.

The national program includes provisions which permit refiners/importers to generate allotments for use in 2004 and 2005. Refiners and importers marketing gasoline in the GPA may only generate sulfur allotments in 2004 or 2005 if their corporate average sulfur level meets the corporate pool average standards for each year (as indicated in Table IV.C.1), including gasoline produced for the GPA, if applicable. Refiners not compelled to meet the corporate pool

[82] As discussed below, refiners can supply gasoline not designated as GPA gasoline to the GPA, provided it meets the standards in Table IV.C.–2. Also, the GPA standards do not apply to gasoline produced by small refiners that is used in the GPA.

average standards under the GPA may not generate allotments.

The temporary provisions for the GPA apply for three years, 2004 through 2006. Since the low sulfur standards for the rest of the country require compliance with a 30 ppm refinery average standard and an 80 ppm gallon cap in 2006, the geographic phase-in provides an additional year to reach those standards. This extra year and the somewhat less stringent standards during the phase-in will provide the refining industry the opportunity for more orderly transition to the 30/80 ppm standards by 2007.

Requirements for gasoline sold in the GPA are summarized in Table IV.C.–2, below. Gasoline produced by refiners subject to the small refiner standards described in Section IV.C.2. of this notice is not subject to the provision of the geographic phase-in, since the small refiner provisions apply to eligible refiners regardless of geographic location. Gasoline produced by such refiners can be sold nationwide, including in the GPA.

TABLE IV.C.–2.—GASOLINE SULFUR STANDARDS FOR THE GEOGRAPHIC PHASE-IN AREA

[Excludes Small Refiners]

| Compliance as of— | 2004 | 2005 | 2006 |
|---|---|---|---|
| Refinery GPA Gasoline Average [a], ppm | 150 | 150 | 150. |
| Corporate Pool Average [b], ppm | 120 | 90 | Not Applicable. |
| Per-Gallon Cap [c], ppm | 300 | 300 | 300. |

Notes:

[a] The refinery average standard for GPA gasoline is the more stringent of: 150 ppm; the refinery 1997–1998 baseline plus 30 ppm; or the sulfur level from which early credits were generated plus 30 ppm. Refiners can use credits or allotments to meet the average.

[b] Applies only to refiners/importers which sell >50% of their gasoline outside the GPA.

[c] As discussed above, in 2004 both GPA and Non-GPA gasoline may have a sulfur content as high as 350 in which case the refinery or importer becomes subject to a correspondingly more stringent cap standard in 2005.

*iv. What Are the Per-Gallon Caps on Gasoline Sulfur Levels in the Phase-in Area?*

The sulfur level caps for gasoline sold in the phase-in area and the rest of the nation are the same in 2004 and 2005, but in 2006 the cap remains at 300 ppm in this area while it declines to 80 ppm for the rest of the country. To assure that compliance at the refinery gate is correct regardless of where the gasoline is ultimately sold, as gasoline intended for the GPA moves in the distribution system to or through the geographic area it must be identified as phase-in area gasoline in product transfer documents and must remain segregated from gasoline intended for use outside this area. In addition, use of phase-in area gasoline is prohibited outside the GPA, but the converse is allowed, i.e., gasoline designated for use outside the GPA can be used in this area. For all three years, refiners and importers must meet the requirements described in Tables IV–C.1 and IV–C.2, as applicable, and therefore must maintain refinery or import records as applicable as to where a gasoline batch is sold. [83]

We recognize that this higher standard/cap for one year could create the incentive for those not marketing gasoline in the GPA today to seek a market to sell higher sulfur gasoline and for others to seek to increase market share. While this is indeed allowable under our program and is perhaps to be anticipated in a free market system, in all likelihood the incentives are small. Such refiners/importers would still have to meet the 150 ppm average and would perhaps face increased shipping and marketing costs. Nonetheless, we plan to monitor market developments to assess whether such a provision creates significant market shifts or the potential for increases in average sulfur levels in the GPA gasoline.

*v. How Do Refiners/Importers Account for GPA Fuel in Their Corporate Average Calculations?*

Those refiners or importers that sell all of their gasoline to the GPA (*i.e.,* they produce no fuel for use outside the GPA), regardless of whether they are located within or outside of the area, have refinery/importer standards that are equal to the least of 1) 150 ppm, 2) the refinery's or importer's 1997–98 average sulfur level plus 30 ppm or 3) the refinery's or importer's lowest actual annual sulfur level plus 30 ppm in any year 2000–2003 if credits are generated. Because the refiners produce *all* of their fuel for use in the GPA, they are exempt from the corporate average standards in Table IV.C–1.

Furthermore, any refiner/importer which certifies 50 percent or more of its gasoline production volume for sale as GPA gasoline in 2004 and 2005 is not required to meet the corporate pool average for that year for its entire gasoline pool. Not only would it be difficult to comply on average (if it were assumed that the GPA gasoline was 150 ppm and non-GPA gasoline was 30 ppm), but also it would undermine the achievement of the basic goal of a more orderly and efficient phase-in of low sulfur gasoline since the flexibility afforded by the GPA could be diminished.

Otherwise, those who produce less than 50 percent of their gasoline for the GPA (which is the majority of those refiners which market in both locations), must meet the corporate pool average standards in 2004 and 2005 for their entire gasoline pool. Thus, such refiners must compensate for the higher sulfur levels of their GPA gasoline by producing non-GPA gasoline that averages sufficiently less than 120 ppm in 2004 and 90 ppm in 2005 to ensure that their corporate average meets the corporate pool average standard for each year. Importers who provide less than 50 percent of their gasoline to the GPA must also include their GPA gasoline in their overall corporate pool average calculation. Alternatively, the refiner can use sulfur allotments to meet the corporate pool average standard for its total gasoline production, including gasoline sold inside and outside the phase-in area. Since most refiners which sell gasoline both in and outside the GPA sell the vast majority outside the GPA the additional flexibility provided for gasoline sold in the phase-in area should not significantly affect compliance with the corporate pool average standard for a refiner's nationwide production.

*vi. How Do Refiners/Importers Apply for the Geographic Phase-in Area Standards?*

As part of program administration, we are requiring that any refiner/importer

[83] These segregation and designation requirements do not apply to gasoline produced by refiners subject to the small refiner standards described in Section IV.C.2. This is because small refiner gasoline can be sold anywhere in the country, and is not subject to different standards depending on where it is sold.

expecting to sell gasoline in this area during the phase-in period (2004–2006) make application to EPA in writing by December 31, 2000. This application would provide the minimum information needed by EPA to characterize a refiner's/importer's participation, establish the applicable standards if the 1997–98 average is less than 150 ppm, and establish our enforcement program for refiners/importers in this area for gasoline entering or leaving the area. Participation on the part of any refinery or importer is voluntary. At any time, a refiner/importer who previously opted into the GPA program may produce gasoline meeting the standards in Table IV.C–1 in the GPA, or may cease producing gasoline for the GPA (and produce gasoline meeting the standards in Table IV.C–1 solely outside of the GPA). Such a decision would affect the averages/caps which apply to the gasoline sold in the GPA. Gasoline sold in the GPA that is not designated as GPA gasoline is considered Non-GPA gasoline for purposes of compliance with the corporate pool average requirement and refinery average requirements.

*vii. How Will EPA Establish the GPA in Adjacent States?*

EPA is establishing a geographic phase-in area that encompasses eight states (MT, ND, ID WY, CO, UT, NM, AK). In addition, counties and tribal lands in states immediately adjacent to these which received a majority of their gasoline in calendar year 1999 from a refinery(ies) located within the GPA will be covered by the phase-in area provisions. The criteria to identify these additional counties and tribal areas are designed to identify areas whose gasoline distribution system is closely tied to the eight states such that they share the same characteristics of gasoline supply. Therefore, dispensing outlets (retail and private) in such areas will continue to have access to that gasoline in most cases. Distribution and production of gasoline in these additional areas will be subject to the same standards and requirements as gasoline in the eight states identified above.

At this time, EPA is not able to identify all the counties and tribal lands that would be included in the phase in area. In light of the air quality benefits of introducing low sulfur gasoline as quickly as possible, we want to ensure that the phase-in area is accurately identified and that including any areas outside these eight states will not have a significant adverse air quality impact on any counties or tribal lands that are included in the phase-in area. EPA will be working with interested stakeholders will to conduct an assessment to determine which counties/tribal lands within the immediately adjacent states meet the criteria as described in the regulatory text. EPA expects to complete action on this assessment by December 31, 2000. c. How Does the Sulfur Averaging, Banking, and Trading Program Work?

The sulfur ABT program provides flexibility to refiners by giving them more time to bring all of their refineries into compliance with the corporate averages in 2004 and 2005 as well as the 30 ppm individual refinery standard in 2005 and beyond. ABT will provide the opportunity for reduced costs by allowing the industry the flexibility to average sulfur levels among different refineries, between companies, and across time. With ABT, some refineries will be able to delay installation of desulfurization equipment, because other refineries will generate sulfur allotments and credits through early sulfur reductions. In this way, installation of desulfurization technology will be spread out over a longer period of time than would be the case without ABT. Since, with the banking provisions, reductions in annual average sulfur levels which occur as early as 2000 have a value during program implementation, the ABT program provides an incentive for technological innovation and the early implementation of refining technology.

The ABT program also provides the opportunity for meaningful emissions reductions in 2004 because it allows the Tier 2 standards to be implemented earlier than might otherwise have been possible (if the Tier 2 standards were delayed to provide the refining industry more time to comply), and because it provides direct environmental benefits even in the years before Tier 2 vehicles are introduced. One benefit is related to the effect of gasoline sulfur on exhaust emissions, as discussed in the Regulatory Impact Analysis. This benefit will result both from older vehicles on the road (Tier 0 and Tier 1 emission control technologies, which have some degree of sulfur sensitivity and will benefit from sulfur reductions which occur prior to implementation of the refiner and refinery standards summarized in Table IV.C–1) and from NLEV vehicles (which are more sensitive to sulfur than earlier technologies) which will continue to be sold while Tier 2 vehicles are phased-in. Another environmental benefit is the reduction in atmospheric sulfur loads as a direct result of reduced gasoline sulfur levels, leading to reduced emissions of sulfur-containing compounds from motor vehicles.

The following sections explain the requirements for participation in the sulfur ABT program for allotments and credits.

**Sulfur Allotment Program**

*i. Generating Allotments Prior to 2004*

To provide additional incentive for early sulfur reductions and to enhance the overall feasibility and cost effectiveness of the gasoline sulfur control program, we are implementing a sulfur allotment program. While few commenters supported the sulfur allotment concept in the NPRM, a number suggested that greater flexibility for compliance in the early years would be helpful. The program described below is in addition to the early sulfur credit program described elsewhere.

For 2003, refineries can generate sulfur allotments (in ppm-gallons) by producing gasoline containing less than 60 ppm sulfur on an annual-average basis. This 60 ppm ''trigger'' was chosen to reward refineries who demonstrate compliance using technology designed to meet the 30 ppm standard before 2005. Once this 60 ppm trigger is reached, allotments will be calculated based on the amount of reduction from 120 ppm.[84] However, these allotments may be discounted depending on the actual sulfur level. If a refinery fully demonstrates compliance by producing gasoline with an annual average sulfur level of 0 to 30 ppm, the allotments retain their full value—they are not discounted at all. For actual sulfur levels of 31–60 ppm, which are indicative of a partial demonstration of compliance with the ultimate low sulfur standard, the allotments are discounted 20 percent. For example, consider a refinery that has an average sulfur level of 50 ppm at the end of 2003. That refinery would have generated 56 sulfur allotments [(120 ppm − 50 ppm) × 0.8 × Volume (in gallons)] to be used or sold in 2004. If that same refinery instead produced fuel with an average sulfur level of 20 ppm at the end of 2003, then it would have generated 100 sulfur allotments [(120 ppm − 20 ppm) × volume (in gallons)] to be used or sold in 2004.

*ii. Generating Allotments in 2004 and 2005*

For 2004 and 2005, refiners or importers (but not individual refineries)

[84] If a refinery has a baseline sulfur level higher than 120 ppm (as described below in IV.C.1.c.v.), then credits are generated from the baseline to 120 ppm and allotments from 120 ppm to the new sulfur level (and discounted 20 percent if applicable).

can generate allotments by producing gasoline that has a sulfur level below the annual corporate average standard (120 ppm and 90 ppm). The number of allotments generated is equal to the difference between 120 ppm (or 90 ppm) and the corporate average sulfur level. Allotments generated by refiners or importers in 2004 and 2005 are not discounted, unlike some of those that are generated by refineries in 2003. Refiners that sell fuel to the GPA may also generate allotments by producing fuel that is cleaner than the corporate average standards, regardless of the volume of fuel that is produced for use in the GPA. On the other hand, as explained in Section IV.C.2., gasoline produced by small refiners who are complying with the standards in Table IV.C.–3 cannot be used to generate sulfur allotments since these producers are not required to meet a corporate average standard.

*iii. Using Allotments in 2004 and 2005*

Refiners and importers can use sulfur allotments that they generate or purchase from other refiners/importers to demonstrate compliance with the 120 ppm corporate standard in 2004 and the 90 ppm corporate standard in 2005. Each refiner's sulfur allotment for 2004 and 2005 will be calculated based on the total volume of gasoline imported and produced at their refineries (or only imported gasoline in the case of companies that only import gasoline) and the corporate pool average standard for that year. In anticipation of exceeding or falling short of the standard for any one year, companies may trade sulfur allotments, either in the compliance year or earlier (as early as the year 2000). For example, a refiner that expects to produce a total of 2.5 billion gallons of gasoline in 2004 has a sulfur allotment of 300 billion ppm-gallons (120 ppm $\times$ 2.5 billion gallons). If its corporate pool average is actually 200 ppm in 2004, it will exceed its 2004 allotment by 200 billion ppm-gallons (since 200 ppm $\times$ 2.5 billion gallons = 500 ppm-gallons), and must obtain sulfur allotments from another refiner to offset this increase. Similarly, if this refiner expects to average 80 ppm in 2004, it has an excess of 100 billion ppm-gallons to trade to other refiners. However, if a refiner trades away part of its allotment, the refiner must still comply with the corporate standard, just as another refiner has to do if it does not trade allotments.

In 2005, refiners must comply both with the corporate average standard and the refinery average standard for each of their refineries. Once a refiner has established compliance with the 90 ppm corporate average standard (with or without the use of allotments), each of its refineries can then establish compliance with the 30 ppm refinery standard through actual production of 30 ppm gasoline or through the use of *excess* allotments and/or sulfur credits. Once compliance with the 90 ppm corporate pool average standard is established, the refiner would use 90 ppm as each of its refineries actual sulfur level, then apply an appropriate number of credits or allotments to meet the 30 ppm refinery average standard for each refinery. (See discussion below for an explanation of how a refiner can use both sulfur ABT credits and allotments to comply with the refinery average standard in 2005.)

*iv. How Long Do Allotments Last?*

We expect most refiners will trade sulfur allotments well before the end of each compliance year so they will have the needed certainty of compliance with the corporate average standard. Our program allows such trades to occur at any time during the year, although the refiner is liable for any shortfall in compliance resulting from having traded away too many allotments. A refiner may also carry over excess 2004 allotments (those generated in 2003 or 2004) for compliance with the 90 ppm corporate standard for 2005. However, those allotments must be discounted by 50 percent. This 50 percent discount factor is needed to equalize the emission impact of sulfur control between 2004 and 2005. In 2005, there is an extra model year of NLEV/Tier 2 vehicles relative to 2004. In addition, the NLEV/Tier 2 fleet is one year older in 2005 than 2004. This increased age translates into higher vehicle emissions due to general deterioration. Since sulfur acts on a percentage basis, the absolute emission increase due to sulfur impacts on vehicle emission control systems in 2005 is higher than in 2004.

As discussed below in section IV.C.1.c.x, a refiner or importer may convert allotments into credits in 2004 and 2005 for compliance with the refinery average standards in 2005 and beyond. All transactions between refiners involving sulfur allotments must conclude by the last day of February in the calendar year following the compliance year in which the allotments are to be used.[85]

[85] Allotments used for GPA gasoline compliance may be retained until February 2007. Allotments used for small refiner gasoline compliance may be retained until February 2008.

**Sulfur Credit Program**

*v. Establishing Individual Refinery Sulfur Baselines for Credit Generation Purposes*

The purpose of establishing a sulfur baseline for each refinery is to provide a starting point for determining sulfur credits for reductions in gasoline sulfur levels. We proposed that refiners would have to establish a sulfur baseline for each individual refinery, by submitting to us data establishing their annual average gasoline sulfur level based on the average of their 1997 and 1998 operations. We would review the data and, barring any discrepancies, approve a sulfur baseline for each refinery. We received comments supporting this option as well as comments stating that the time involved for this application and approval process would delay the refiner's ability to plan for and begin construction of gasoline desulfurization technology. Refiners would want the certainty of an approved sulfur baseline before making investment decisions, and thus would wait to obtain EPA's approval before proceeding. We also received comments about what year(s) would be most appropriate to use to establish a sulfur baseline. Some of these comments argued for the use of existing, approved 1990 baselines, or some adjusted version of 1990 baselines, rather than new data, to expedite the process of establishing sulfur baselines.

We also proposed a different sulfur baseline for reformulated gasoline (RFG) produced in the summer for those refineries which produce reformulated gasoline. While the conventional gasoline sulfur baseline (and the baseline for winter RFG) was proposed to be tied to current sulfur levels, the baseline for summer reformulated gasoline was proposed to be 150 ppm, the approximate level we expect summer reformulated gasoline to contain in 2000 and beyond because of the Phase II reformulated gasoline requirements, which take effect in 2000. We argued that winter RFG did not have any de facto sulfur restrictions, and thus winter RFG should be counted with conventional gasoline for the purpose of credit generation relative to the refinery's conventional gasoline sulfur baseline.

Since the proposal, we have learned that overall gasoline sulfur levels (conventional plus reformulated) are significantly lower than they were in 1990. As explained in the Regulatory Impact Analysis, national average sulfur levels when both conventional and reformulated gasolines are considered dropped to 306 ppm in 1997 and 268 ppm in 1998, compared to the 1990

national gasoline sulfur average of 339 ppm, decreases of 10 and 21 percent, respectively. The substantial drop between 1997 and 1998 seems to be related to the mandatory use of the Complex Model, which began in 1998 and had implications for both reformulated and conventional gasoline compliance. Thus, we have become convinced that the most appropriate sulfur baseline would be based on data which establish current sulfur levels, not on data which are nearly ten years old. We considered reducing all 1990 baselines by 21 percent to reflect the national average decrease since 1990, but determined that this approach would be inappropriate because some refiners have reduced levels substantially more than 10–21 percent since 1990, and would thus be eligible to generate a very large number of credits for reductions that have already been made.

Furthermore, as we proposed, and some commenters argued, we have concluded that averaging data from two years is the most appropriate approach, because averaging over two years will help to account for any unusual variations in operations that may have occurred at individual refineries in either of these years. We concluded that averaging data from 1998 and 1999 is not feasible, because the 1999 data will not be fully available to EPA until after the reporting deadline of May 2000. Hence, we believe it is preferable to use 1997 and 1998 data, rather than delaying the time baselines are established. We do not expect significant changes in 1999 sulfur levels relative to 1998 levels, so we believe the use of the 1997–1998 data provides a reasonable representation of current sulfur levels.

We have also learned that summer reformulated gasoline is already averaging close to our expected sulfur level for the year 2000. Winter RFG does not show this same decrease, presumably because refiners are shifting high sulfur blendstocks out of RFG in the summer but back into RFG in the winter to maintain compliance with the conventional gasoline antidumping requirements. Thus, it appears that if we held summer RFG to a lower baseline, as proposed, we would have to raise the winter RFG baseline commensurately to reflect actual refinery operations. The net environmental impact would be no different than if we had a single sulfur baseline applying to all RFG, or to all gasoline produced at the refinery, since the annual pool sulfur levels are constant even while there may be seasonal variations. Therefore, we are not finalizing a separate sulfur baseline for summer RFG, but rather combined conventional and reformulated gasoline sulfur levels.

Having considered the comments we received and the new data available to us, we have concluded that refiner sulfur baselines should be established from 1997 and 1998 operating data. Hence, we are requiring refiners which wish to generate sulfur credits prior to 2004 to establish a 1997–98 sulfur baseline for each refinery at which they intend to generate credits. We believe the process we have defined will minimize the burden to the industry and the time it will take for us to review and approve the sulfur baselines. Specifically, refiners which plan to generate sulfur credits must submit to us information which establishes the batch report numbers, sulfur levels, and volumes of each batch of gasoline produced in 1997 and 1998, as well as the annual average sulfur level calculated from these data. Within 60 days, we will review the application and notify the refiner of approval or of any discrepancies we find in the data submitted. If we do not respond within 60 days, the baseline should be considered to be approved.

While we expect most refiners will apply for a sulfur baseline in the near future (to maximize the time that they can generate credits before 2004), there is no cut-off date for applying for a sulfur baseline. However, if the refiner wishes to generate credits for a given calendar year, we must receive his baseline application no later than September 30 of that year to provide us adequate time to review the baseline prior to the end of the year (at which time any credits generated in that year would be assessed and reported by the refiner). We believe that this approach for establishing sulfur baselines meets our goal of providing a workable ABT program that refiners can take advantage beginning in the year 2000, without sacrificing the environmental benefits of the sulfur standards.

Foreign refiners which have already established an individual refinery baseline with us, and thus have submitted reports on all batches of gasoline sent to the U.S. in 1997 and 1998, may follow this same procedure if they wish to generate sulfur credits prior to 2004. Foreign refiners which have not reported 1997–98 gasoline qualities to us must follow an alternate approach. Specifically, they must follow the general requirements of our protocol for establishing individual refinery baselines (see §§ 80.91–94 and also § 80.410) by providing sufficient data to establish the volume of gasoline imported to the U.S. from each refinery in 1997–98 and the annual average sulfur level of that gasoline. If the test method used to identify the sulfur level differs from the one specified in today's action, the refiner must provide sufficient information about the test method to allow us to evaluate the appropriateness of the alternative. Because this information will be new to us, we may require more time to review and approve their 1997–98 sulfur baseline. But, consistent with our previous handling of foreign refiner submissions, once we have determined that the submission is complete and the protocol has been followed, they may use the baseline while waiting for our formal approval. However, the refiner will be held to the baseline that is ultimately approved. A foreign refiner who is unable to generate adequate data to establish a 1997–98 sulfur baseline will not be permitted to generate sulfur credits in 2000–2003.

Small refiners that plan to request small refiner standards (as provided in Section IV.C.2 below) which also want to generate early sulfur ABT credits will use the same data required to define their small refiner baseline to determine their baseline for the ABT program. In other words, if a refiner becomes a small refiner under our definition and procedures, credits generated by that refinery would be calculated relative to the refinery's actual 1997–98 sulfur average. The trigger for generating sulfur credits under the ABT program (discussed in the next section) would still apply for small refiners generating credits prior to 2004 relative to their 1997–98 sulfur average. In addition, the applicable interim sulfur standard for small refiners who generate credits through sulfur reductions prior to 2004 will be calculated based on the reduced sulfur level, rather than the 1997–98 baseline level, as explained below in Section IV.C.2.

Importers and gasoline blenders will not be assigned a sulfur baseline because they are not eligible to generate early credits (prior to 2004) under the ABT program. This includes gasoline refiners who are also importers; such parties cannot generate sulfur credits prior to 2004 on the basis of their imported gasoline but may only generate credits based on the gasoline produced by their refinery(ies). It also includes oxygenate blenders, who, as discussed in Section VI below, are not subject to the sulfur standards but are responsible for compliance with the downstream provisions.[86] For importers

[86] Refiners may, however, include oxygen added downstream of the refinery when determining

Continued

and most gasoline blenders, this represents a change from our proposal, but one we believe is appropriate and necessary to ensure that the environmental benefits of the ABT program are maintained. The ABT program allows the refining industry to trade off early sulfur reductions (2000–2003) for slight delays in complying with the 30 ppm refinery average standard in 2005–2006.[87] We have designed the ABT program to ensure that sufficient credits can be generated by refiners (domestic or foreign) to enable a smooth transition to the 30 ppm standard. Importers and blenders do not have the same need for the ABT program that refiners have because they will not have to make the same level of investment in desulfurization technology and thus do not need credits generated before 2004 to help their transition to the 30 ppm average standard after 2004. Furthermore, credits could be generated by importers without the overall pool of imported gasoline becoming incrementally cleaner. For example, say that Importer A had a 1997/98 sulfur baseline of 600 ppm and Importer B had a sulfur baseline of 100 ppm. In 2002, Importer B could transfer/sell its 100 ppm gasoline to Importer A prior to unloading the fuel at the port of entry. Once the import transaction was completed, Importer A will have generated 500 ppm (multiplied by the fuel volume) credits without any fuel becoming incrementally cleaner. We are concerned that if importers and blenders were allowed to generate early credits, they would generate far more credits than needed to make the ABT program work, without necessarily achieving early environmental benefits—credits which either importers or refiners would be able to use to delay compliance with the 30 ppm standard in 2005 and beyond. This would delay the environmental benefits of our program by prolonging the industry's transition to the 30 ppm standard.

In the proposal, we also discussed the need for a baseline gasoline volume as well as a baseline sulfur level. This stemmed from the design of our current conventional gasoline anti-dumping program, which requires a baseline volume so that we can confirm that conventional gasoline is no dirtier now than it was in 1990. However, for the gasoline sulfur ABT program, we have determined that there is no need to restrict refineries' sulfur baselines (against which they can generate sulfur credits) to a specific volume of gasoline. The purpose of the ABT program is to encourage early sulfur reductions by some refineries, and we see no need to limit the amount of credits such a refinery can generate on the basis of a historic volume of gasoline production. In fact, additional volumes of cleaner gasoline should achieve additional early environmental benefits.

*vi. Generating Sulfur Credits Prior to 2004*

In our proposal, we discussed a credit generation trigger of 150 ppm for early credit generation (2000–2003), arguing that we wanted to encourage investment in desulfurization technologies that refineries ultimately need to get to a 30 ppm average. Many comments we received argued that the 150 ppm trigger was too restrictive, requiring capital investments that most refiners could not make earlier than 2004 (due to construction limitations, among other reasons). Thus, few credits would be generated, and without sufficient certainty that credits would be generated, refiners would not be able to count on the flexibility that the ABT program was intended to provide when planning their compliance strategies for 2004 and beyond.

Having considered these comments and reanalyzed the ability of the industry to comply with the standards in 2004 (as we discussed above at the introduction to section IV.C.1), we have concluded that the proposed 150 ppm trigger would inappropriately limit the credits available. While we want to encourage refiners to make reductions early, we do not want to preclude refiners from making less capital intensive sulfur reductions in the short term while they prepare to reach the 30 ppm average in the long term. At the same time, we believe that a refinery should be required to demonstrate that the sulfur reduction was real and not just a consequence of national variations from year to year. Hence, we are establishing a trigger which we believe represents a sulfur reduction that requires action above and beyond simple annual or even seasonal fluctuations in crude oil sulfur level or product slate variations that could have a very small impact on annual sulfur average.

During the period 2000–2003, credits can be generated annually by any refinery that produces gasoline averaging at least 10 percent lower than that refinery's baseline sulfur level. In other words, to generate credits, the refinery's annual average sulfur level for all of its gasoline on average must be 0.9 × (baseline sulfur level). Once this ''trigger'' is reached, credits will be calculated based on the amount of reduction from the refinery's sulfur baseline. For example, if in 2002 a refinery reduced its annual average sulfur level from a baseline of 450 ppm to 150 ppm (well below the trigger of 0.9×450=405 ppm), its sulfur credits will be determined based on the difference in annual sulfur level (450–150=300 ppm) multiplied by the volume of gasoline produced in 2002. Similarly, foreign refineries with an individual sulfur baseline can generate credits in these years as long as the annual average sulfur level of the gasoline imported to the U.S. from that refinery is lower than 90 percent of the baseline sulfur level.

Although by adopting a more modest trigger for credit generation we are enabling more credits to be generated, the environment will still benefit from our program. Although the use of a more modest trigger keyed to each refinery's sulfur baseline may allow more credits to be generated, we believe this will only occur because the credit program is providing incentives to refineries to reduce sulfur levels earlier than they would have otherwise, particularly with a strict 150 ppm trigger. Thus, more lower sulfur gasoline will be in the marketplace prior to 2004 than would otherwise have occurred, given our understanding of the state of desulfurization technologies and the likely pattern of investments by the industry. With our corporate average and cap standards, sulfur levels will continue to decrease after 2004, even if individual refineries take an added year or two to meet the 30 ppm standard.

We had also proposed that credit generation prior to 2004 would be different for reformulated gasoline than for conventional gasoline, because reformulated gasoline's assigned sulfur baseline was proposed to be 150 ppm. Thus, we proposed that credits could only be generated from reformulated gasoline if the sulfur level averaged below 150 ppm, and that the credits would be calculated based on the difference between 150 ppm and the new, lower average. Since we have not finalized a separate baseline for reformulated gasolines, we are not adopting a different process for generating credits from reformulated gasoline. All gasoline produced at the refinery in 2000 (and beyond) is considered in calculating the annual average sulfur level, compliance with the 90 percent trigger, and the sulfur credits earned, if any.

compliance with the sulfur standards and the provisions of the ABT program. This is consistent with existing provisions for reformulated and conventional gasolines.

[87] As explained in Section IV.C.1.c.ix, credits generated before 2004 expire in 2006, except for small refiners and credits used for GPA gasoline compliance.

Several states have adopted or are considering adopting gasoline sulfur control programs (see discussion at section IV.C.1.d below on state sulfur programs). While we had proposed to exclude this gasoline from sulfur credit generation, we have reconsidered our position. Gasoline produced in response to state [88] requirements can be included in the refinery's calculation of sulfur credits generated in a given year. However, this gasoline will be included in the total volume of gasoline produced by that refinery, requiring the annual average sulfur level for total gasoline produced at that refinery to exceed the trigger specified above to generate any credits at all.

*vii. Generating Sulfur Credits in 2004 and Beyond*

In 2004 and beyond, refineries, blenders, and importers can generate credits, but only if the actual annual sulfur level of all gasoline produced or imported averages below 30 ppm, and only for the difference between the standard and the actual annual sulfur average. (For example, a refinery producing gasoline in 2005 that averages 25 ppm can generate 30–25=5 ppm sulfur credits on the total volume of gasoline produced at that refinery.) However, since in 2004 and beyond importers are the regulated party responsible for ensuring that imported gasoline meets the sulfur standards, foreign gasoline would in effect generate sulfur credits through the importer beginning in 2004. Foreign refineries which want to send gasoline containing less than 30 ppm sulfur to the U.S. would still benefit from doing so by making appropriate arrangements with importers, which are subject to all of our standards.

*viii. Using Sulfur Credits*

Refineries, blenders, and importers can use sulfur credits to demonstrate compliance with the 30 ppm annual average refinery standard in 2005 and beyond, if they are unable to meet the standard with actual gasoline production. During 2005 and 2006 only, refineries may use credits banked by that refinery in 2000–2003 as a result of early sulfur reductions, or credits purchased from other refineries which have banked early sulfur credits. Blenders and importers can purchase credits from refiners (including any foreign refiners which generated early credits), or use credits they generated in 2004 and beyond. All transactions will have to be concluded by the last day of February after the close of the annual compliance period (2005, 2006, etc.).

As discussed above, 2005 is the only year when averaging and trading against the corporate average and averaging, banking, and trading against the refinery average are both allowed. In that year, sulfur credits may only be used against the 30 ppm standard for each refinery once the refiner has demonstrated compliance with the corporate pool average standard. The refiner must meet his corporate average based on actual sulfur levels or through a trade for sulfur allotments if it falls short of the 90 ppm corporate average standard. At that point, each of his refineries is evaluated for compliance with the 30 ppm refinery average standard. Those refineries that are not producing gasoline averaging 30 ppm sulfur must obtain sulfur credits generated in 2005 or earlier and/or sulfur allotments to bring the refinery's sulfur average from the actual level (a maximum of 90 ppm for each refinery, since by meeting the corporate average, even if in part through the use of allotments, each refinery in the company will be considered to average no more than 90 ppm) down to 30 ppm.

Refineries or importers which sell some or all of their gasoline in the GPA (and which have elected to participate in the phase-in) may also use sulfur credits to meet their refinery averages in 2004–2006. However, because this gasoline must be designated for sale in the GPA, they must account separately for compliance with the 150 ppm refinery average for gasoline sold in the phase-in area and with the 30 ppm refinery average for gasoline sold outside of that area. Thus, in 2004, such refiners/importers may use sulfur credits to establish compliance with the 150 ppm standard for gasoline sold in the phase-in area, if required. In 2005 and 2006, they may use credits to meet the 150 ppm standard for gasoline sold in the area and/or use credits to meet the 30 ppm standard for gasoline sold outside of the area.

As explained in section IV.C.1.b., some of the refiners participating in the GPA are exempt from the corporate average standards, but may use either sulfur credits or sulfur allotments in 2004–2006 to establish compliance with the 150 ppm refinery average standard. Those that are not exempt from the corporate average standards may use sulfur allotments only to meet the corporate average standards. For such refiners, compliance with the corporate average standard will be measured first (using allotments if needed), then compliance with the refinery average standard (using credits and/or allotments as needed) in the same manner as described above for refiners who sell all of their gasoline outside of the GPA.

Foreign refineries are not required to comply with the 30 ppm refinery standard in 2005 and beyond; instead, compliance for foreign gasoline is required by the importer. Sulfur credits generated by foreign refineries prior to 2004 will still have value, since these refineries can sell sulfur credits to U.S. refineries, blenders, or importers who need credits to meet the standard in 2005 or beyond. In fact, foreign refiner's credits could simply be transferred to the importer which is importing that refinery's gasoline into the U.S. For example, a foreign refiner could send gasoline exceeding 30 ppm on average to an importer and transfer the appropriate amount of sulfur credits it generated prior to 2004 to allow the importer to meet the 30 ppm standard. Similarly, after 2004 a foreign refiner may send gasoline containing less than 30 ppm to the U.S. through an importer, and the importer would benefit from generating credits (and presumably would include the value of these credits in the financial transaction with the foreign refinery).

As explained in Section IV.C.3.b. above, in 2005 no batch of domestically produced or imported gasoline can exceed 300 ppm, and a refiner's/importer's annual corporate pool average sulfur level cannot exceed 90 ppm, except for gasoline sold in the GPA or by small refiners complying with the standards in Table IV.C.–3. In 2006 and beyond, sulfur is capped at 80 ppm and there is no longer a corporate pool average standard. These standards (as well as the 300 ppm cap and corporate pool averages) cannot be met through the use of credits generated under the ABT program. As described above, credits may only be applied to demonstrate compliance with the 30 ppm refinery standard, not to the corporate pool average or the cap. Given the limitations that the 80 ppm cap places on sulfur levels in 2006 and beyond, we do not expect many sulfur credits to be used in future years of this program (since, even with the use of credits, no gasoline may exceed 80 ppm in these years).

We allow an individual refinery that does not meet the 30 ppm standard in a particular year to carry forward the credit debt one year. Under this provision, the refinery will have to make up the credit deficit and come into compliance with the 30 ppm standard the next calendar year, or face penalties. This provision will in no way absolve the refiner from having to meet the

[88] Excluding California.

applicable per-gallon cap standard or, when applicable, the corporate average standard. This provision will provide some relief for refiners faced with an unexpected shutdown or that otherwise were unable to obtain sufficient credits to meet the 30 ppm standard. This provision is only available through 2010. After that time, we expect many refineries to be able to consistently operate below 30 ppm, generating a pool of credits which other refineries could purchase in the event of an unforeseen upset. However, in no circumstances after 2005 can the refinery produce gasoline exceeding the 80 ppm per-gallon cap standard (with the exception of small refiners, as discussed in Section IV.C.2 below). The carry-forward provision does not apply to compliance with the 150 ppm refinery average standard applicable in the GPA.

We have some concern that the potential exists for credits to be generated by one party and subsequently purchased or used in good faith by another, and later found to have been calculated or created improperly or otherwise determined to be invalid. For this reason, we proposed that both the seller and purchaser would have to adjust their sulfur calculations to reflect the proper credits and either party (or both) could be deemed in violation of the standards and other requirements if the adjusted calculations demonstrate noncompliance with an applicable standard. One commenter, representing a number of refiners, objected to this approach.

Nevertheless, our strong preference is to hold the credit or allotment seller liable for the violation, as opposed to the credit or allotment purchaser. As a general matter we would expect to enforce a shortfall in compliance calculations (caused by the good faith purchase of invalid credits) against a good faith purchaser only in cases where we are unable to recover valid credits from the seller to cover the compliance shortfall. Moreover, in settlement of such cases we would strongly encourage the seller to purchase credits to cover the good faith purchaser's credit shortfall. Under the deficit provisions of section 80.205(e), for compliance periods through 2010, a credit shortfall may be corrected if the conditions of that section are met. EPA will consider covering a credit deficit through the purchase of valid credits a very important factor in mitigation of any case against a good faith purchaser, whether the purchase of valid credits is made by the seller or by the purchaser.

Some commenters stated that sulfur credits should be transferred directly from the refiner or importer that generated them to the party that will use them, as we had proposed. We believe that this helps to ensure that parties purchasing credits will be better able to assess the likelihood that the credits will be valid, and aids compliance monitoring. Therefore, the final rule adopts this provision, with the exception that where a credit generator transfers credits to a refiner or importer who cannot use all the credits, that transferee may transfer the credits to another refiner or importer. That second transferee cannot again transfer the credits; they must either be used or terminated by the second transferee. Nevertheless, there is nothing in the final rule that would prevent a person who is not a refiner or importer from facilitating the transfer of credits from parties that have generated them to parties who need them for compliance, *e.g.,* a broker who would act like a real estate broker. Therefore, under today's rule, any person may act as a credit or allotment broker, whether or not such person is a refiner or importer, so long as the title to the credits or allotments are transferred directly from the generator to the user. Furthermore, any party (*e.g.,* refiner, importer, or blender) who can generate and hold credits may also resell them.

*ix. How Long Do Credits Last?*

The ABT program is designed to encourage sulfur reductions earlier than the standards require, by providing a market for credit generation. The emissions benefits of these early reductions are most valuable in the early years of the ABT program when national average levels remain substantially higher than the final 30 ppm average standard. At the same time, these emissions reductions are offset in time by higher emissions incurred by later vehicles which use gasoline with a higher sulfur level. Because the overall intention of the gasoline sulfur program is to enable and protect Tier 2 vehicles and provide time for refiners to select and construct desulfurization equipment, sulfur credits should have a limited life to limit the degree to which later Tier 2 vehicles are exposed to higher sulfur levels.

The ABT program is also designed to ease implementation of the new standards, particularly the refinery average standard, and the credits will be of their greatest value to refineries during the first few years of the program. ABT is not intended to permit a refinery to operate substantially above the standard for a protracted time period. While limiting credit life may reduce the incentive to generate credits for some refineries, the credit program will be of relatively small value to any refinery/importer that held credits for a protracted period of time and did not need to use them. This is particularly true in 2006 and beyond, when the 80 ppm cap limits the need for and value of any credits the refinery may possess.

Hence, we are finalizing limitations on the life of credits which differ somewhat from our proposal. Credits generated prior to 2004 must be used for compliance purposes and calculations with respect to gasoline produced on or before December 31, 2006. These credits can be used to meet the 30 ppm standard in 2005 or 2006. This expiration date applies to credits used by the refinery which generated the credits, as well as credits transferred to another refinery. While the proposal presented a life through 2007 for credits generated early, we have shortened this life span one year to reflect the fact that early credits are intended to enable and ease compliance with the 30 ppm standard in the first years of the program, allowing refiners to spread out investments without compromising the environmental benefits of the program. At the beginning of 2006, all gasoline (except that produced by small refiners and that marketed in the GPA) will be capped at 80 ppm, and by the end of 2006, every refinery should be capable of producing gasoline that meets the 30 ppm standard. Hence, the value of the early credits diminishes greatly. It should be noted that early credits can be used for GPA certified gasoline through 2006 and for small refiner gasoline through 2007.

Credits generated in 2004 and beyond will have to be used within five years of the year in which they were generated. If these credits are traded to another party during that five year period, they will have to be used by the new owner within that same five years, regardless of when the transfer occurs. This is a change from our proposal, which provided for a potential maximum ten-year life for credits that were generated and then traded in the fifth year to another party. However, we believe this approach is more consistent with our environmental goals of keeping sulfur levels averaging 30 ppm in 2006 and beyond. With the 80 ppm cap, refiners will be able to use only very few credits if they are unable to meet the 30 ppm average in 2006 or beyond. Therefore, limiting credit life to five years will likely have minimal impact on the actual use of credits. A longer credit life will make tracking and enforcement difficult, and could have negative environmental consequences. Hence, we have limited credit life to

five years. Consistent with our other recordkeeping and reporting requirements, the five-year expiration date will be assessed as of the last day of February after the five year deadline. Hence, for example, credits generated in 2005 will expire as of the last day of February, 2011. Again, no third-party transfers are allowed.

*x. Conversion of Allotments Into Credits*

A refiner or importer may convert allotments into credits for compliance with the refinery average standards in 2005 and beyond. Allotments that are generated by reducing gasoline sulfur levels to 30 ppm or higher (defined as Type ''A'' allotments) are equivalent to credits generated in 2000–2003. These allotments may be (1) used as allotments by a refiner for compliance with the corporate average standard in 2004 and 2005 or (2) converted into credits to be used by the refiner's refineries for compliance with the refinery average standard in 2005 and 2006.

Allotments that are generated by reducing gasoline sulfur levels to lower than 30 ppm (defined as Type ''B'' allotments) are equivalent to credits generated in 2004 and beyond (by producing gasoline with less than 30 ppm sulfur). Similar to Type ''A'' allotments, these allotments may be (1) used as allotments by a refiner for compliance with the corporate average standard in 2004 and 2005 or (2) converted into credits to be used by the refiner's refineries for compliance with the refinery average standard in 2005 and beyond.

Allotments or credits that are used by refiners for compliance with the GPA gasoline standards must be used by the last day of February 2007. Allotments or credits used by small refiners for compliance with the small refiner standards must be used by the last day of February 2008. Any allotments, whether Type ''A'' or ''B'', that are carried over for compliance with the corporate and refinery average standards for 2005 must be discounted by 50 percent as discussed in above. Any allotments that are converted to credits (*e.g.,* in 2004) and then carried over to 2005 are not discounted. However, once the conversion and carry-over has taken place (such that the allotments have become credits), the conversion cannot be reversed without applying the discount factor. That is to say, once a 2003 or 2004 allotment is converted to a credit and carried over to 2005, the credit can only be re-converted into an allotment that is discounted 50 percent.

d. How Are State Sulfur Programs Affected by EPA's Program?

Section 211(c)(4)(A) of the CAA prohibits states [89] from prescribing or attempting to enforce controls or prohibitions respecting any fuel characteristic or component if EPA has prescribed a control or prohibition applicable to such fuel characteristic or component under section 211(c)(1). This preemption applies to all states except California, as explained in section 211(c)(4)(B). For states other than California, the Act provides two mechanisms for avoiding preemption. First, section 211(c)(4)(A)(ii) creates an exception to preemption for state prohibitions or controls that are identical [90] to the prohibition or control adopted by EPA. Second, states may seek EPA approval of SIP revisions containing fuel control measures, as described in section 211(c)(4)(C). EPA may approve such SIP revisions, and thereby ''waive'' preemption, only if it finds the state control or prohibition ''is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements.''

We are adopting the sulfur standards pursuant to our authority under section 211(c)(1). Thus, we believe that today's action results in the clear preemption of future state actions to prescribe or enforce fuel sulfur controls. [91] States with fuel sulfur control programs not already approved into their SIPs will therefore need to obtain a waiver from us under the provisions described in section 211(c)(4)(C) for all state fuel sulfur control measures, unless the state standard is identical to our sulfur standard.

Section 211(c)(4)(A) preempts state fuel controls if EPA has ''prescribed'' federal controls. We read this language to preempt non-identical state standards on the date of promulgation of the standards, as opposed to the date the standards become enforceable. Thus, today's action preempts state actions as of December 21, 1999, even though the standards will not require sulfur reductions until 2004. This interpretation is consistent with EPA actions applying other federal fuel measures. *See* 54 Fed. Reg. 19173 (May 4, 1989) (noting preemption of Massachusetts state RVP measure before start of first control period for federal RVP). We also believe this interpretation is consistent with the intent behind section 211(c)(4)(A). Though the standards are not immediately enforceable, they will have an immediate impact on refiners' investment decisions. We believe, by adopting 211(c)(4)(A), Congress intended to limit state fuel controls that differ from the federal programs, for example, in the judgments as to level of the standard or its stringency. The lead time to implement a standard should be treated the same way.

Aside from the explicit preemption in Section 211(c)(4)(A), a court could also consider whether a state sulfur control is implicitly preempted under the Supremacy Clause of the U.S. Constitution. Courts have determined that a state law is preempted by federal law where the state requirement actually conflicts with federal law by preventing compliance with both federal and state requirements, or by standing as an obstacle to accomplishment of Congressional objectives. A court could thus consider whether a given state sulfur control is preempted, notwithstanding waiver of preemption under 211(c)(4)(C), if it places such significant cost and investment burdens on refiners that refiners cannot meet both state and federal requirements in time, or if the state control would otherwise meet the criteria for conflict preemption.

2. Hardship Provision for Qualifying Refiners

This section describes various provisions for certain qualifying refiners who may face hardship circumstances.

a. Hardship Provision for Qualifying Small Refiners

In developing our gasoline sulfur program, we evaluated the need and the ability of refiners to meet the 30/80 standards as expeditiously as possible. This analysis is described in detail in the RIA. As a part of this analysis, we found that while the majority of refiners would be able to meet the needed air quality goals in the 2004–2006 time frame, there would be some refiners who would face particularly difficult circumstances which would cause them to have more difficulty, in comparison

[89] The term ''state'' or ''states'' includes political subdivisions thereof.

[90] In evaluating whether a state fuel prohibition or control is ''identical'' to a prohibition or control adopted by EPA, EPA might consider but is not limited to the following factors in comparing the measures: (1) The level of an emission reduction or pollution control standard; (2) the use of ''per gallon'' or ''averaged'' amounts in setting that level; (3) the effect on that level (if averaged) of the use of different averaging pools; (4) the lead time allowed to the affected industry for compliance; and (5) the test method(s) and sampling requirements used in determining compliance.

[91] In addition, EPA notes that there are existing federal $NO_X$ performance standards which apply to RFG and conventional gasoline and that state controls respecting $NO_X$ performance are also preempted under 211(c)(4)(A).

to the industry as a whole, in meeting the standards.

In order to ensure that the vast majority of the program could be implemented reasonably quickly in order to achieve the air quality benefits sooner, rather than basing the time frame on the lowest common denominator we have provided an extended phase-in for a small group of refiners that represents less than four percent of the overall gasoline volume, and a much smaller percentage in the areas of greatest environmental need. As described in more detail below, and in Chapter VIII of the RIA, we concluded that refineries owned by small businesses face unique hardship circumstances, compared to larger companies.

The primary reason for this consideration is that small businesses lack the resources available to large companies which enable the large companies (including those large companies that own small volume refineries) to raise capital for investing in desulfurization equipment. The small businesses are also likely to have insufficient time to secure loans, compete for engineering resources, and complete construction of the needed desulfurization equipment in time to meet the standards adopted today which begin in 2004.

The emissions benefits of low sulfur gasoline are needed as soon as possible, for two primary reasons: (1) To reduce ozone and other harmful air pollutants, and (2) to enable vehicle emissions control technology for Tier 2 vehicles. Since our analysis showed that small businesses in particular face hardship circumstances, we are adopting temporary, interim standards that will provide refineries owned by small businesses additional time to meet the ultimate 30 ppm refinery average and 80 ppm per gallon cap standards. This approach allows us to achieve the needed emission reductions in the 2004–2007 time frame because hardship circumstances are expected to be faced by only a small portion of the refining industry.

We believe that these temporary, interim standards are an effective way to phase in the low sulfur standards as expeditiously as is feasible thereby achieving significant air quality benefits in an expeditious manner. This section describes the special provisions we are offering small businesses to mitigate the impacts of our program on them and generally explains the process we undertook to analyze those impacts. Please refer to the RTC document for a detailed discussion of comments received on these provisions, and to the RIA for a more detailed discussion of our analysis of small refiner circumstances.

As explained in the regulatory flexibility analysis in Section VIII.B. of this document and in Chapter 8 of the RIA, we considered the impacts of our proposed regulations on small businesses. We have historically, as a matter of practice, considered the potential impacts of our regulations on small businesses, as discussed in more detail in Section IV.C.2.a.ii., below. The analysis of small business impacts conducted for this rulemaking was performed in conjunction with a Small Business Advocacy Review (SBAR) Panel we convened, pursuant to the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). We believe that the temporary, interim standards we are adopting for small refiners contributed to our development of a framework to achieve significant environmental benefits from lower sulfur gasoline in the most expeditious manner that is reasonably practicable. In the SBREFA amendments, Congress stated that ''uniform Federal regulatory * * * requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting, and consulting costs upon small businesses * * * with limited resources[,]'' and directed agencies to consider the impacts of certain actions on small entities. The final report of the Panel is available in the docket. Through the SBREFA process, the Panel provided information and recommendations regarding:

- The significant economic impact of the proposed rule on small entities;
- Any significant alternatives to the proposed rule which would ensure that the objectives of the proposal were accomplished while minimizing the economic impact of the proposed rule on small entities;
- The projected reporting, recordkeeping, and other compliance requirements of the proposed rule; and,
- Other relevant federal rules that may duplicate, overlap, or conflict with the proposed rule.

In addition to our participation in the SBREFA process, we conducted our own outreach, fact-finding, and analysis of the potential impacts of our regulations on small businesses. Many of the small refiners with whom we and the Panel met indicated their belief that their businesses may close due to the substantial costs, capital and other, of meeting the 30/80 standard without additional time. Based on these discussions and our data analysis, the Panel and we agree that small refiners would likely experience a significant and disproportionate economic hardship in reaching the objectives of our gasoline sulfur reduction program. However, the Panel also noted that the undue burden imposed upon the small refiners by our sulfur requirements could be alleviated with additional time for compliance. We agree with the Panel on both of these points.

For today's action, we have structured a temporary, interim compliance flexibility for qualifying small refiners, both domestic and foreign, based on the factors described below. Specifically, we structured this provision to address small refiner hardship while achieving air quality benefits expeditiously and ensuring that the reductions needed in gasoline sulfur coincide with the introduction of Tier 2 vehicles.

First, the compliance deadlines in the program, combined with flexibility for small refiners, will achieve the air quality benefits of the program quickly, while ensuring that small refiners will have adequate time to raise capital for infrastructure changes. Many, if not most, small refiners have limited, if any, additional sources of income beyond their refinery for financing the equipment necessary to produce low sulfur gasoline. Because these small refiners typically do not have the financial backing that larger and generally more integrated companies have, they need additional time to secure capital financing from their lenders.

Second, we believe that allowing time for sulfur-reduction technologies to be proven-out by larger refiners before small refiners have to put them in place would reduce the risks incurred by small refiners who utilize these technologies to meet the standards. The added time would likely allow for costs of these desulfurization units to decrease, thereby limiting the economic consequences for small refiners. Small refiners are disadvantaged by the economies of scale that exist for the larger refining companies—capital costs and per-barrel fixed operating costs are generally higher for them.

Finally, providing small refiners more time to comply would ensure that adequate engineering and construction resources would be available. Since most large and small refiners will need to install additional processing equipment to meet the sulfur requirements, there will be a tremendous amount of competition for technology services, engineering manpower, and construction management and labor. Our analysis

shows that there are limitations to the elasticity of these resources. In addition, vendors will be more likely to contract their services with the major companies first, as their projects will offer larger profits for the vendors.

Providing this flexibility to allow small refiners to deal with hardship circumstances enables us to go forward with the phase-in of the 30 ppm sulfur standard beginning in 2004. Without this flexibility, it is possible that the benefits of the 30 ppm standard would not be achieved as quickly. By providing temporary relief to those refiners that need additional time, we are able to adopt a program that reduces gasoline sulfur levels expeditiously and in a way that is feasible for the industry as a whole.

In addition, we believe the volume of gasoline that will be eligible for the interim standards is small. We estimate that small refiners produce approximately four percent of all gasoline used in the U.S., excluding California. In most cases, gasoline produced by refiners is mixed with substantial amounts of other gasoline prior to retail distribution (due to the nature of the gasoline distribution system). This mixing generally results in only marginal increases in overall sulfur levels. Thus, the sulfur level of gasoline actually used by Tier 2 vehicles should generally be much lower than that produced by individual small refineries under this provision.

*i. How Are Small Refiners Defined?*

*How We Defined ''Small'' Refiner in the Proposal*

In identifying the small refiners most susceptible to the economic challenge of meeting the low-sulfur requirements, we closely examined the Small Business Administration's (SBA) definition of small refiner for the purposes of regulation. In that assessment we concluded that the SBA definition provided a reasonable metric for identifying small refiners that would be significantly impacted by the sulfur program requirements. By adopting the SBA definition we could expeditiously provide certainty of small refiner status to refiners who applied for the temporary compliance flexibility. Specifically, we proposed a definition where any petroleum refining company having no more than 1,500 employees throughout the corporation as of January 1, 1999 could apply for the temporary compliance flexibilities. This proposed employee limit included any subsidiaries, regardless of the number of individual gasoline-producing refineries owned by the company or the number of employees at any given refinery.

While we proposed a definition based on corporate employment, in light of the SBA definition and the SBAR Panel's recommendations, we also sought comment on alternative definitions of a small refiner. Such alternatives included definitions based on volume of crude oil processed (at a given refinery and/or corporate-wide) or volume of gasoline produced, with the understanding that any relief offered to refiners must not substantially reduce the program's environmental benefits.

*Our Revised Small Refiner Definition*

Based on comments received on the proposal, we are making two changes to our definition of a small refiner: we are (1) revising the employee number criterion; and, (2) adopting a cap on the corporate crude oil capacity for a refining company to qualify as a small business under today's regulations.

In regard to the employee number criterion, we are modifying how the employee number is determined, based on comments received from SBA. As mentioned above, our proposed definition applied to any petroleum refining company having no more than 1,500 employees throughout the corporation as of January 1, 1999. We selected that date to prevent companies from ''gaming'' the system. However, as SBA pointed out in its comments, the Small Business Act regulations specify that, where the number of employees is used as a size standard, as we proposed for small refiners, size determination is based on the average number of employees for all pay periods during the preceding 12 months.

Since we intended to use SBA's size standard in our proposal, we are incorporating that definition correctly in today's action. It is also worth mentioning that SBA shares our concerns about preventing companies from gaming the system and that it solved this problem specifically by using the average employment over 12 months. In effect, this approach helps to prevent companies from applying for and receiving small refiner status in bad faith. An example of an inappropriate application for small refiner status would be a refiner that temporarily reduced its workforce from 1600 employees to 1495 employees immediately before January 1, 1999 and then immediately rehired those employees after that cutoff date. Furthermore, the averaging concept was designed to properly address firms with seasonal fluctuations, according to SBA.

Second, we're amending the small refiner definition to include a corporate crude oil capacity cap. We believe such a corporate volume limitation is necessary to ensure that only truly small businesses benefit from the relaxed interim standards. Refineries that process large amounts of crude are likely to be better able to install desulfurization equipment to meet the national standards in 2004. In addition to ensuring that the interim standards target the appropriate group of refiners that need additional time, the volume limit also serves to ensure that the volume of gasoline subject to such standards is not significant. In addition, we received many comments that we should adopt a threshold based on crude capacity as specified in the Clean Air Act and used in past EPA fuel programs.

In the lead phase-down program for gasoline, we used a definition of ''small refinery'' that Congress adopted in 1977 specifically for the lead phase-down program. The definition was based on crude oil or feedstock capacity at a particular refinery (less than or equal to 50,000 barrels per calendar day (bpcd)), combined with total crude oil or feed stock capacity of the refiner that owned the refinery (less than or equal to 137,500 bpcd). In 1990, the lead phase-down program was complete and Congress removed this provision from the Act.

Shortly before the Act was amended in 1990, we set standards for sulfur content in diesel fuel, including a two-year delay for small refineries. We used the same definition of small refinery as we used in the lead phase-down program. This two-year delay, like many of the small business flexibilities in our gasoline sulfur proposal, was aimed at problems that small refineries faced in raising capital and in arranging for refinery construction.

In the 1990 amendments to the Clean Air Act, Congress rejected this small refinery provision, and instead allocated allowances to small diesel refineries under the Title IV Acid Rain program. (See CAA Section 410(h).) This approach was also aimed at helping small refineries solve the problem of raising the capital needed to make investments to reduce diesel sulfur. Congress provided allowances to small refineries that met criteria similar to that used in the lead phase-down provision—based on the crude oil throughput at a particular refinery, combined with the total crude oil throughput of the refiner that owned the refinery.

As mentioned above, the CAA definition was based on crude oil or feedstock capacity at a particular refinery, combined with total crude oil

or feed stock capacity of the refiner that owned the refinery (less than or equal to 137,500 bpcd). However, given the mergers, acquisitions, and other changes that have transpired throughout the refining industry in the past few years, we believe the appropriate boundary today is a corresponding corporate crude capacity less than or equal to 155,000 bpcd.

Therefore, in consideration of the above, a refiner must meet both of the following criteria to qualify for the special small refiner provisions described in the next section:

- No more than 1500 employees corporate-wide, based on the average number of employees for all pay periods from January 1, 1998 to January 1, 1999; and
- A corporate crude capacity less than or equal to 155,000 bpcd for 1998.

*ii. Standards That Small Refiners Must Meet*

Upon careful review of the comments received on the proposal as well as the recommendations of the SBAR Panel, we have determined that regulatory relief in the form of delayed compliance dates is appropriate to allow small refiners, both foreign and domestic, to comply with our regulations without disproportionate burdens. From 2004 to 2007, when U.S. refiners must meet the 30/80 standard or the standards listed in Table IV.C–1 if they are participating in our ABT program, refiners meeting the corporate employee and capacity limits prescribed above are allowed to comply with somewhat less stringent requirements. These interim annual-average standards for qualifying small refiners are shown in Table IV.C–3 below.

TABLE IV.C–3.—TEMPORARY GASOLINE SULFUR REQUIREMENTS FOR SMALL REFINERS IN 2004–2007

| Refinery baseline sulfur level (ppm) | Temporary Sulfur Standards (ppm) | |
|---|---|---|
| | Average | Cap |
| 0 to 30 | 30 ppm | 300 ppm. |
| 31 to 200 | Baseline Level | 300 ppm. |
| 201 to 400 | 200 ppm | 300 ppm. |
| 401 to 600 | 50% of baseline | Factor of 1.5 times the average standard. |
| 601 and above | 300 | 450. |

The cap standards for the first two ''bins'' of refineries (that is those with baseline sulfur levels from zero to 30 and 31 to 200) have been relaxed somewhat from the proposal based on comments that the proposed standards for these two bins were more stringent than the options under discussion for all other refiners. We believe that these small refiners should be able to meet the average standards without much, if any, change to their operations but the more lenient cap will give them some flexibility for turnarounds or unexpected equipment ''upsets''.

Compliance with the standards in Table IV.C–3 is based on a refiner's demonstration that it meets our specific small refiner criteria. Refiners who qualify as a small refiner under our definition must establish a sulfur baseline for each of their participating refineries. The following sections explain these requirements in more detail to supplement the information presented above. We also explain how small refiners can apply for an extension of up to two additional years of the applicable small refiner standards, based on a variety of factors such as technology availability or financial hardship.

*iii. How Do Small Refiners Apply for Small Refiner Status?*

Refiners seeking small refiner status under our gasoline sulfur program must apply to us in writing no later than December 31, 2000, requesting this status. This application for small refiner status must contain the information described below.

Companies [92] seeking small refiner status must provide us with the following information:

**Employment Information**

- A listing of the name and address of each location where any employee of the company worked during the 12 months preceding January 1, 1999.
- The average number of employees at each location based upon the number of employees for each of the company's pay periods for the 12 months preceding January 1, 1999.
- The type of business activities carried out at each location.

**Crude Capacity Information**

- The total corporate crude oil capacity of the refiner as reported to the Energy Information Administration (EIA) of the U.S. Department of Energy (DOE).

For refineries owned by joint ventures, the total employment of both (all) companies must be considered in determining whether the 1,500 employee limit is met. In addition, a refiner who reactivates a refinery that was shut down or non-operational between January 1, 1998 and January 1, 1999, may apply for small refiner status no later than June 1, 2002. In this case, we will consider the information provided to determine the correct period for judging compliance with the 1500 threshold. Where appropriate we will look at the most recent 12 months of employment information.

Refiners seeking small refiner status must also provide us with the total crude capacity of their corporation (the sum of all individual refinery capacities for multiple-refinery companies, including any and all subsidiaries) as reported to EIA for 1998 (published by EIA in 1999). The information submitted to EIA is presumed to be correct. However, in cases where a company disputes this information, we will allow 60 days after the company submits its application for small refiner status for that company to petition the Agency with the appropriate data to correct the record. For reactivated refineries owned by a small refiner, we will consider the information provided to determine the correct period for judging compliance with the corporate capacity threshold. Where appropriate, we will look at the most recent year of crude capacity information.

If a refiner with approved small refiner status later exceeds the 1,500 employee threshold without merger or acquisition or the corporate capacity of 155,000 bpcd, its refineries could keep their individual refinery standards. This is to avoid stifling normal company growth and is subject to our finding that the company did not apply for and receive the small refiner status in bad faith.

[92] Company means the business structure of the refinery whether privately or publicly owned.

*iv. How Do Small Refineries Apply for a Sulfur Baseline?*

A qualifying small refiner, domestic or foreign, may apply for an individual sulfur baseline by December 31, 2000 for any refinery owned by the company by providing the following information:

- A calculation of the refinery's sulfur baseline using its average gasoline sulfur level based on 1997 and 1998 production data, [93] and
- The average volume of gasoline (including conventional and reformulated) produced in these two years.

As we proposed, baseline sulfur levels and gasoline volumes are averaged over two years (1997 and 1998) to account for any production-related anomalies that may have occurred in 1997 or 1998. For the overall program, however, we are only using 1997 and 1998 data for the reasons described in Section IV.C.1, above. For any refiner who reactivates a refinery that was shut down or non-operational between January 1, 1998 and January 1, 1999, we will use the most recent information available for baseline establishment purposes.

The regulations specify the information to be submitted to support the baseline application. The baseline calculations should include any oxygen added to the gasoline at the refinery. This application would be submitted at the same time the refiner applies for small business status; confirmation of small business status would not be required to apply for an individual sulfur baseline. Pending refinery baseline approval, we will assign standards to each of the company's refineries in accordance with Table IV.C.–3.

Oxygenate blenders, regardless of their size, are not eligible for the small refiner individual baselines and standards because they would not experience circumstances similar to those of small refining companies. That is, oxygenate blenders do not have the burden of capital costs to install desulfurization equipment, which is the primary reason for allowing small refiners to have a relaxed compliance schedule.

*v. Volume Limitation on Use of a Small Refinery Standard*

Except as noted below, the volume of gasoline subject to a small refinery's individual standards is limited to the average volume of gasoline the refinery produced from crude oil during the baseline years (1997 and 1998), excluding the volume of gasoline produced using blendstocks produced at another refinery and exports.[94] Under this approach, the baseline volume for a small refinery would reflect only the volume of gasoline produced from crude oil during the 1997 and 1998 baseline years.

However, to ensure that the overall sulfur in gasoline from small refiners does not greatly increase under the terms of the small refiner extension and result in overall gasoline pool sulfur levels higher than anticipated, the volume would be limited beginning in 2004 to the volume of gasoline that is the lesser of: (1) 105 percent of the baseline volume, or (2) the volume of gasoline produced during the year from crude oil. Any volume of gasoline produced during an averaging period in excess of this limitation is subject to the corporate average standards that apply to all other refiners (*i.e.,* the corporate average standards listed in Table IV.C.–1).

In 2006 and 2007, the refinery averages of Table IV.C.–1 will apply. In this case, the small refinery's annual average standard will be adjusted based on the excess volume in a manner similar to the compliance baseline equation for conventional gasoline under Section 80.101(f) of Part 40 of the Code of Federal Regulations. However, the small refinery's per-gallon cap standard will not be adjusted.

This limitation assures that small refineries receive relief only for gasoline produced from crude oil, that is the portion of the refinery operation requiring capital investment to meet lower sulfur standards.

*vi. Extensions Beyond 2007 for Small Refiners*

Beginning January 1, 2008, all small companies' refineries must meet the national sulfur standard of 30 ppm on average and the 80 ppm cap, except small refineries under IV.C.2.i. that apply for and receive an extension of their small refiner status and unique standards. An extension will provide a given small refinery up to an additional two years to comply with the national standards. An extension must be requested in writing and must specify the factors that demonstrate a significant economic hardship to qualify the refinery for such an extension. Factors considered for an extension could include, but are not limited to, the refinery's financial position; its efforts to procure necessary equipment and to obtain design and engineering services and construction contractors; the availability of desulfurization equipment, and any other relevant factors.

In order for us to consider an extension, a refiner must submit a detailed request for an extension by January 1, 2007, demonstrating that it has made best efforts to obtain necessary financing, and must provide detailed information regarding any lack of success in obtaining financing. This information shall include, but may not be limited to copies of loan applications for the necessary financing for the construction of appropriate sulfur reduction technology as well as the application of financing for other equipment procurements or improvements in this time frame. If financing has been disapproved or is otherwise unsuccessful, the refiner shall provide documents supporting the basis for that disapproval and evidence of efforts to pursue other means of financing. If we determine that the refiner has made the best efforts possible to achieve compliance with the national standards by January 1, 2008, but has been unsuccessful for reasons beyond its control, we will consider granting the hardship extension initially for the 2008 averaging period. If further relief is appropriate for good reasons, we will consider a further extension through the 2009 averaging period but in no case will this relief be provided unless the refiner can demonstrate conclusively that it has financing in place and that it will be able to complete construction and meet the national gasoline sulfur standards no later than December 31, 2009.

*Compliance Plans for Demonstrating a Commitment To Produce Low Sulfur Gasoline*

This final rule includes a compliance plan provision for those refiners who may seek a hardship extension of their approved interim standards. This provision requires that those refiners with approved interim standards who seek a hardship extension must submit a series of reports to EPA discussing and describing their progress toward producing gasoline that meets the 30/80 ppm standards by January 1, 2008. We expect that small refiners will need to begin preparations to meet the national standards in 2008 by 2004. However, we understand that the potential exists for some small refiners to face additional hardship circumstances that will warrant more time to meet the standards. For this reason, we have adopted provisions (see above) allowing

[93] Includes batch number, volume, and sulfur content for each batch of gasoline produced in 1997 and 1998.

[94] In addition to gasoline produced from crude oil, a small refinery's baseline volume would include gasoline produced from purchased blendstocks where the blendstocks are substantially transformed using a refinery processing unit.

refiners subject to the interim standards to petition us and make a showing that additional time is needed to meet the national standards. To properly evaluate these hardship applications, we are requiring demonstrations of good faith efforts towards assessing the economic feasibility, along with the business and technical practicality of ultimately producing low sulfur gasoline. Such progress reports must be submitted for a refiner to receive consideration in any future determinations regarding hardship extensions. However, these reports are not required from refiners who will not be seeking a hardship extension.

By June 1, 2004, such refiners would need to submit preliminary information in the form of a report outlining its time line for compliance and a project plan discussing areas such as permits, engineering plans (*e.g.,* design and construction), and capital commitments for making the necessary modifications to produce low sulfur gasoline. Documents showing activities and progress in these areas should be provided if available.

By no later than June 1, 2005, these small refiners would need to submit a report to us stating in detail progress to date based on their time line and project plan. This should include copies of approved permits for construction of the equipment, contracts for design and construction, and any available evidence of having secured the necessary financing to complete the required construction. If any difficulties in meeting this requirement are anticipated, the refiner must submit a detailed report of all efforts to date and the factors that may cause delay, including costs, specification of engineering or other design work still needed and reasons for delay, specification of equipment needed and any reasons for delay, potential equipment suppliers and history of negotiations, and any other relevant information. If unavailability of equipment is a factor, the report must include a discussion of other options considered, and the reasons these other options are not feasible.

In addition, the small refiner would need to provide evidence by June 1, 2006, that on-site construction has begun at its refinery(s) and that absent unforeseen circumstances or problems, they will be producing complying gasoline (30/80 ppm) by January 1, 2008. While the submission of these progress reports is evidence of a refiner's good faith efforts to comply by 2008, it does not bind the refiner to make gasoline in 2008. There are several reasons why a refiner may choose to exit the gasoline-production business in 2008 that go beyond the low sulfur gasoline requirement.

As a result of a refiner's efforts in moving toward compliance with the 2008 standards, for market, economic, business, or technical reasons, the company could choose not to make gasoline in 2008. Although we do not believe this will be the likely outcome for small refiners, we cannot preclude it. Any refiner that makes such a determination in its progress reports will have until 2008 to transition out of gasoline production, but will not be considered for a extension of hardship relief.

*vii. Can Small Refiners Participate in the ABT Program?*

As described in IV.C.1.c.i above, any refinery (including those owned by small refiners) can generate sulfur allotments (in ppm-gallons) in 2003 by producing gasoline containing less than 60 ppm sulfur on an annual-average basis. Once this 60 ppm trigger is reached, allotments will be calculated based on the amount of reduction from 120 ppm [95]. However, these allotments may be discounted depending on the actual sulfur level. If a refinery fully demonstrates compliance by producing gasoline with an annual average sulfur level of 0 to 30 ppm, the allotments retain their full value—they are not discounted at all. For actual sulfur levels of 31–60 ppm, which are indicative of a partial demonstration, the allotments are discounted 20 percent.

During the period 2000–2003, refineries owned by small refiners can also generate credits by producing gasoline averaging at least 10 percent lower than that refinery's baseline sulfur level. In other words, to generate credits, the refinery's annual average sulfur level for all of its gasoline on average must be $0.9 \times$ (baseline sulfur level). Once this ''trigger'' is reached, credits will be calculated based on the amount of reduction from the refinery's sulfur baseline. For example, if in 2002 a refinery reduced its annual average sulfur level from a baseline of 450 ppm to 150 ppm (well below the trigger of $0.9 \times 450 = 405$ ppm), its sulfur credits would be determined based on the difference in annual sulfur level (450—150 = 300 ppm) multiplied by the volume of gasoline produced in 2002. Similarly, small foreign refiner-owned refineries with an individual sulfur baseline can generate credits in these years as long as the annual average sulfur level of the gasoline exported to the U.S. from that refinery is lower than 90 percent of the baseline sulfur level.

During the period 2004–2007, refineries owned by small refiners will be permitted to generate credits but only if their actual annual sulfur level of all gasoline produced or imported averages below their refinery standard, and only for the difference between the standard and the actual annual sulfur average.

A refinery (owned by a small refiner) wishing to participate in the ABT program can sell credits beginning as soon as January 1, 2000 but may wait until December 31, 2000 to apply for small refiner status. However, the standards assigned to that refinery (as presented in Table IV.C–3 above) will be based on the sulfur level from which credits were generated, not the baseline sulfur level, since the refiner would have already demonstrated the ability to meet the lower sulfur level. For compliance purposes and to give refineries certainty regarding the gasoline sulfur standards to which they will be held during 2004–2007, the standards for a small refiner refinery participating in ABT will be set based on the refinery's lowest sulfur average for any year between 1999 and 2003.

Using the example above, a refinery (owned by a refiner with small refiner status) with a 1997–98 baseline sulfur level of 450 ppm would have an interim average standard of 450/2 = 225 ppm and a cap of $225 \times 1.5 = 338$ ppm. If that refinery generated 300 sulfur credits in 2002 by producing gasoline with 150 ppm sulfur, then that refinery's average sulfur standard for 2004–2007 would be ratcheted down to 150 ppm with a cap of 300 ppm. However, that refinery would still be able to use the 300 credits that it had generated and banked in 2002 for compliance with its 150 ppm standard.

Based on the comments received on our proposal, we are allowing small refineries to use credits and/or allotments that they generated and/or to purchase credits and/or allotments from another refinery to meet their average standard during 2004–2007. We solicited comment on whether small refiners subject to the interim standards should be permitted to use credits towards meeting those standards, and several small refiners who already produce very clean gasoline commented that the special small refiner standards do not benefit them in any way. These refiners argued that if they could generate sufficient sulfur credits in 2000–2003, or could obtain such credits

[95] If a refinery has a baseline sulfur level higher than 120 ppm (as described below in IV.C.1.c.v.), then credits are generated from the baseline to 120 ppm and allotments from 120 ppm to the new sulfur level (and discounted 20 percent if applicable).

through purchases from other refiners, they would not participate in the small refiner program but would instead participate in the sulfur ABT program. But since they are not positioned to generate credits (due to their already low sulfur levels), and have little certainty of being able to purchase credits, they need the relief provided by the small refiner provisions. We concur with these concerns and thus permit small refiners to use ABT credits and allotments. Small refiners may only use ABT credits and/or allotments to comply with their refinery average standard, not the per-gallon caps applied to their gasoline.

At any time, a small refiner can choose to ''opt out'' of the small refiner program and, beginning the next calendar year, comply with the standards in Table IV.C–2. The refiner would have to notify us of this change in its compliance program. Once a small refiner leaves the small refiner program, however, it would not be eligible to re-enter the small refiner program.

b. Temporary Waivers From Low Sulfur Requirements in Extreme Unforeseen Circumstances

In the final rule, EPA is adopting a provision permitting refiners to seek a temporary waiver from the sulfur standards in certain circumstances. Such waivers will be granted at EPA's discretion. Under this provision a refiner may seek permission to distribute gasoline that does not meet the applicable low sulfur standards for a brief time period, based on the refiner's inability to produce complying gasoline because of extreme and unusual circumstances outside the refiner's control that could not have been avoided through the exercise of due diligence. This provision is similar to a provision in EPA's RFG regulations, and is intended to provide refiners short-term relief in unanticipated circumstances such as an accidental refinery fire or a natural disaster. The short-term waiver provision is intended to address unanticipated circumstances that cannot be reasonably foreseen at this time or in the near future

The conditions for obtaining such a waiver that are similar to those in the RFG regulations. These conditions are necessary and appropriate to ensure that any waivers that are granted are limited in scope, and that refiners do not gain economic benefits from a waiver. Therefore, refiners seeking a waiver must show that the waiver is in the public interest, that the refiner was not able to avoid the nonconformity, that it will make up the air quality detriment associated with the waiver, as well as any economic benefit from the waiver, and that it will meet the applicable sulfur standards as expeditiously as possible.

c. Temporary Waivers Based on Extreme Hardship Circumstances

In addition to the provision for short-term relief in unanticipated circumstances, we are adopting a provision for relief based on extreme hardship circumstances. In developing our sulfur program, we considered whether any refiners would face particular difficulty in complying with the standards in the lead time provided. As described in Section IV.C.2.a., we concluded that refineries owned by small businesses would experience more difficulty in complying with the standards on time because, as a group, they have less ability to raise capital necessary for refinery investments, face proportionately higher costs because of economies of scale, and are less able to successfully compete for limited engineering and construction resources. However, it is possible that other refiners who do not meet our criteria for the interim standards also face particular difficulty in complying with the sulfur standards on time. Therefore, we are including in the final rule a provision allowing us, at our discretion, to grant temporary waivers from the sulfur standards based on a showing of extreme hardship circumstances. We do not anticipate, nor do we expect there is a need for, granting temporary waivers that apply to more than approximately one percent of the national gasoline pool in any given year. This provision would allow refiners (domestic and foreign) to request a waiver from the sulfur standards based on a showing of unusual circumstances that result in extreme hardship and significantly affect the ability to comply by the applicable date. As with the small refiner interim standards, this provision furthers our overall environmental goals of achieving low sulfur gasoline nationwide as soon as possible. By providing short-term relief to those refiners that need additional time because they face hardship circumstances, we can adopt a program that reduces gasoline sulfur beginning in 2004 for the majority of the industry that can comply by then.

As described above, EPA understands that this program will require significant economic investments by the refining industry. We have adopted a program with sufficient flexibilities (including an ABT program, allotment trading, a geographic phase-in, and interim standards for qualifying small refiners) to make these investments reasonable and feasible over the time frame in which the standards are phased in. Because the refining industry encompasses a wide variety of individual circumstances, and our program phases in based on the lead time we believe is reasonable for the industry as a whole, there may be unusual circumstances that impose extreme hardship and significantly affect an individual refinery's ability to comply in the lead time provided. However, we do not intend for this waiver provision to encourage refiners to delay planning and investments they would otherwise make in anticipation of receiving relief from the applicable requirements. In addition, we want to limit the environmental impact of any hardship waivers from compliance with the standards. Thus, we anticipate that hardship waivers will only be granted in rare circumstances.

Because of the significant environmental benefits of lowering sulfur in gasoline, we will administer this provision in a manner consistent with continuing to ensure the environmental objectives of the regulation. In our analysis of the interim small refiner standards, we concluded that only a minimal portion of the national gasoline pool would potentially be impacted by the less stringent interim standards, due to the relatively small production volume of these facilities. To limit the potential environmental impact of this hardship provision, we reserve the discretion to deny applications where we find that granting a waiver would result in an unacceptable environmental impact. While this determination will be made on a case-by-case basis, we do not expect there is a need for, nor do we anticipate, granting waivers that apply to more than approximately one percent of the total national pool of gasoline in any given year, or to more than a minimal percentage of the gasoline supply of an area known to have significant air quality problems.

There are several factors we will consider in evaluating a petition for additional time to comply. This could include refinery configuration, severe economic limitations, and other factors that prevent compliance in the lead time provided. Applications for a waiver must include information that will allow us to evaluate all appropriate factors. EPA will consider whether the refinery configuration or operation is unique or atypical, how much of a refinery's gasoline is produced using an FCC unit, its hydrotreating capacity relative to its total crude capacity, total reformer unit throughput capacity relative to total production, gasoline

production in proportion to other refinery products, and other relevant factors. A refiner may also face severe economic limitations that result in a demonstrated inability to raise capital to make necessary investments to comply in time, which can be shown by an unfavorable bond rating, inadequate resources of the refiner and its parent and/or subsidiaries, or other relevant factors. In addition, we will look at the total crude capacity of the refinery and its parent corporation. Finally, we will consider where the gasoline will be sold in evaluating the environmental impacts of granting a waiver.

This provision is intended to address unusual circumstances that we expect will be foreseeable now or in the immediate future, such as unique and atypical gasoline refinery operations or a demonstrated inability to raise capital. These kinds of circumstances should be apparent at this time or in the near future, so refiners seeking additional time under this provision must apply for relief by September 1, 2000. A refiner seeking a waiver must show that unusual circumstances exist that impose extreme hardship and significantly affect its ability to meet the standards on time, and that it has made best efforts to comply with the standards, including efforts to obtain credits and/or allotments towards compliance. Applicants for a hardship waiver must also submit a plan demonstrating how the standards will be achieved as expeditiously as possible. In submitting the plan, it must include a timetable for obtaining the necessary capital, contracting for engineering and construction resources, and obtaining permits. EPA will review and act on applications, and, if a waiver is granted, will specify a time period, not to extend beyond January 1, 2008 (the date by which all gasoline is expected to meet the 30 ppm refinery average and 80 ppm per gallon cap standards), for the waiver.

If a waiver is granted, EPA will impose as a condition of the waiver other reasonable requirements, including antibacksliding requirements to ensure no deterioration in the sulfur level of gasoline and interim sulfur standards that the refiner must meet. This is appropriate since some refiners who may qualify for a waiver can achieve some sulfur reductions, and even reductions to levels above 30 ppm will result in some environmental benefits. While this provision allows EPA to waive the per gallon standards as well as the average standards, EPA would not allow gasoline sulfur to exceed the highest per gallon cap applicable to a refiner under the interim small refiner standards described in Section IV.C.2. Once all applications have been received, EPA will consider the appropriate process to follow in reviewing and acting on applications, including whether to conduct a notice and comment decision-making process.

3. Streamlining of Refinery Air Pollution Permitting Process

a. Brief Summary of Proposal

Industry commenters expressed concern over the ability to obtain permits to construct and operate the facility modifications needed to meet the Tier 2 rule requirements by the end of 2004. As part of the preamble to the proposed rule, we outlined possible approaches to provide greater certainty and to expedite potentially applicable permit processes. In general, we solicited comments on whether and how policy options might be designed so as to exempt Tier 2 projects from major New Source Review (NSR) and/or to expedite the processing of permits where such requirements would apply. In particular, we solicited comment on whether the major NSR process could be expedited if: (1) EPA provided guidance on Lowest Achievable Emission Rate (LAER) requirements or Best Available Control Technology (BACT) determinations; (2) emissions reductions could be made available or designated for offsetting Tier 2 activities; (3) EPA developed model permits, or (4) EPA assisted the States in resolving source-specific permitting issues as they would arise. The Agency also solicited comments on how the title V operating permit requirements, where applicable, might need to be integrated with the relevant NSR process.

In proposing various mechanisms to expedite the permitting of Tier 2 projects, we recognized that a combination of measures might be needed, since the situations could vary widely among individual refineries due to differences in such factors as available equipment capacity, amount of sulfur in the crude oil, and applicable State regulations. Source-specific analyses are also necessary to establish what sulfur reduction techniques can be applied, to determine the applicable permitting requirements, and to evaluate what controls will be necessary as a result of these requirements. We indicated our intent to offer assistance where needed.

b. Significant Comments Received

The most significant comments received on the proposal concerning the timing impacts due to air permit requirements are presented below. These commenters focused exclusively on the requirements to obtain a preconstruction permit under the NSR program. Generally, commenters only concerns regarding the title V operating permit program were that the States' ongoing efforts to issue these permits might create a backlog which could delay the issuance of NSR permits for Tier 2 projects. A more detailed discussion of comments received on the proposal and EPA's response are contained in the Response To Comments document and is filed in the Docket for this action.

We received written and oral comments from refineries about the permit requirements associated with Tier 2 projects. Refiners emphasized the need for certainty. They pointed out the need to secure preconstruction permits within 18 months (*e.g.,* 6 months to prepare and file NSR applications and another 12 months to issue the permit) and the need for permitting authorities to commit appropriate resources to meet this time frame. State and local air pollution control agencies did not support providing exemptions from emissions control and permitting requirements. Rather, agency commenters stated that they could accomplish the permitting requirements in the necessary time frames, provided that complete permit applications were received in a timely manner and refiners conferred with their regulatory agencies soon after the Tier 2 requirements are promulgated. They also indicated that the major NSR process could be expedited and have more certainty (i.e., permits could be processed in 6 to 9 months) if EPA would provide guidance on emissions controls, emissions monitoring, and offsets. In general, environmental and community groups pointed out that the remedies under traditional permitting practices should be exhausted before additional flexibility is granted for Tier 2 projects.

c. Today's Action

Based on the comments and other information received in response to the proposal, EPA believes that it is not necessary or appropriate to explore further the development of possible options which would exempt Tier 2 projects from the normally applicable preconstruction review process. This position is supported by: (1) The comments of States that industry can, in general, apply and receive NSR permits in time to comply with Tier 2; and (2) the recognition of industry's potential ability to use emissions reductions to net Tier 2 projects out of major NSR which would otherwise be applicable. Nonetheless, we believe that actions

should be taken to facilitate early compliance, to add certainty to the anticipated permitting actions and schedules, and to minimize the possibility of delay. Accordingly, EPA is taking two types of actions to promote these objectives.

First, as previously discussed, we have structured the final gasoline sulfur program to allow additional lead time for many refiners (i.e., certain refineries would be able to make desulfurization changes later than the proposed 2004 compliance date to meet Tier 2 requirements). This approach will help address the concerns over the availability of necessary new equipment and permitting backlogs caused by many refineries acting to obtain permits and order equipment within relatively the same time period.

Second, we intend to take several actions (described in more detail below) to expedite and impart greater certainty in obtaining necessary major NSR permits. As a result of comments received on the proposal, and the lead time provided in the final gasoline sulfur program, we believe that the vast majority of permits can be issued within the necessary time frames, provided that refineries submit their preconstruction applications in a timely manner and regulatory authorities prioritize the issuance of these permits. We also intend to assist States and refiners on a case-by-case basis in their efforts to address any unique permitting problems that might arise and, thus, remedy potential problems that could cause unanticipated delays. In the unlikely event permitting delays occur, EPA will work with refiners and the state/local permitting agencies on a case-by-case basis, where a refinery has unique circumstances that necessitate unique treatment.

While today's strategy will help expedite the permitting process, refineries that trigger major NSR as a result of producing low sulfur gasoline will still have to install the stringent level of emissions control technology required by the Act. However, we intend to issue guidance to assist states in making decisions about the levels of control technology, as described more below. In addition, the Agency wishes to clarify that, in our efforts to provide greater certainty and to facilitate more expeditious permitting, we are in no way shortcutting existing opportunities for public participation. We recognize the importance of public participation in making permitting decisions and intend that the measures adopted to address permitting concerns will not diminish the opportunities for public participation.

*i. Major New Source Review*

The major NSR program, as it applies to existing major stationary sources of air pollution, requires that a preconstruction permit be issued before a source makes a physical change or change in its method of operation of any project that would result in a significant net emissions increase. As described in the proposal, the steps taken by certain refineries to implement gasoline sulfur reductions to meet today's rule could result in emissions increases in one or more pollutants which may trigger the requirements for this type of preconstruction permit. A number of the refineries are located in areas designated as nonattainment for at least one pollutant. The nonattainment NSR requirements pursuant to part D of the Act would apply to any such refinery undergoing a major modification. For those refineries located in attainment or unclassifiable areas, permit requirements for the prevention of significant deterioration (PSD) of air quality must be met for major modifications.

The EPA recognizes the importance of timely major NSR (as applicable) permit actions for refineries to proceed with necessary changes to meet the new low sulfur gasoline standard. We encourage refineries to begin discussions with permitting authorities and to submit permit applications—as early as possible. In addition, based on comments received, we believe that there are a few key areas in which assistance would be useful toward helping States issue timely permits to the applicable refineries:

• *Federal guidance on emissions control technology requirements.*

Refineries subject to major NSR review will be required to undergo a source-specific evaluation to apply either BACT or LAER, depending upon the applicable program requirements. For example, the evaluation for BACT is case-by-case and takes into account the alternative technologies available to control pollution from a particular emissions unit or process, and considers the energy, environmental, economic and other costs associated with each technology. We intend to issue guidance setting out a level of emissions that, in our view, would be expected to satisfy the requirements for BACT for certain emissions units associated with refinery desulfurization projects. While States would not be required to use the results to establish BACT for a particular refinery subject to review and EPA's guidance on a control technology may not be appropriate where there exists unusual site-specific circumstances, such guidance would add the certainty of EPA's expectations.

Since negotiation of an appropriate BACT level often is one of the most time consuming aspects of permitting, we believe this EPA guidance will significantly expedite the process. The federal guidance on BACT, by including an evaluation of the most stringent control levels currently being achieved or required, will also provide federal guidance on LAER. The EPA plans to make a draft of this guidance available for public review and comment in January 2000. Final guidance would then be prepared, after relevant comments are considered, in time for States, refiners, and the public to consider in preparing and reviewing permit applications and proposed permits.

• *Availability of offsets.*

Refineries located in nonattainment areas must offset any proposed significant emissions increases with an equal or greater amount of emissions reductions from other sources, usually coming from within the same nonattainment area. We believe that vehicle emissions reductions resulting from the use of low sulfur gasoline can be used as offsets for the refineries, as long as the statutory and regulatory criteria for creditable offsets are satisfied and States decide to provide for this opportunity in their SIP attainment demonstration. We believe generally that this option should be available to States since only a small fraction of the total vehicle emissions reductions in any county would be needed to offset refinery emissions increases resulting from implementation of gasoline desulfurization projects. Generally, the reductions must also occur in the same nonattainment area as the location of the refinery for which the offsets are required. The EPA plans to issue the appropriate guidance early in the year 2000 to help a State to determine whether and to what extent it may wish to use vehicle emissions reductions as offsets for Tier 2 projects.

• EPA refinery permitting teams.

We intend to assemble special EPA teams, comprised of Headquarters and Regional Office experts, that will track the overall progress in permit issuance and will be available to assist State and local permitting authorities, refineries, and the public upon request to resolve site-specific permitting issues. These teams will be comprised of persons who are knowledgeable about permitting programs and refinery operations and can provide expert assistance to troubleshoot permitting issues that may arise. As appropriate, the teams will work with stakeholders on a case-by-

case basis to evaluate site-specific approaches to regulatory compliance within existing policy and regulations.

*ii. Environmental Justice*

The Tier 2/gasoline sulfur rule will help achieve significant nationwide reductions in the emissions of nitrogen oxides (NOx), volatile organic compounds (VOC), particulate matter (PM), and sulfur dioxide ($SO_2$). These reductions will improve air quality across the country and will provide increased protection to the public against a wide range of health effects, including chronic bronchitis, respiratory illnesses, and aggravation of asthma symptoms. Furthermore, the Tier 2/gasoline sulfur rule will achieve environmental benefits in the local areas where refineries are located, due to reductions in tail pipe emissions from vehicles driven in those areas. Although we expect residual emissions increases at some refineries even after installing the stringent level of emissions controls required under the Act, for the vast majority of areas, we believe that these potential refinery emissions increases will be very small compared to the Tier 2 benefits in those same local areas.

We believe it is important to understand and address concerns relating to potential localized emissions increases from refineries that make significant process changes to meet the requirements of the Tier 2 rule. We believe that, among other things, the keys to addressing any potential concerns are as follows:

- Providing meaningful community involvement early and throughout the process;
- Determining what information and actions would eliminate concerns; and
- Determining what EPA, States, and industry can do to make the permitting process smoother by ensuring ongoing community involvement in the decision making process and by building trust among stakeholders.

To this end, the Agency has already taken some actions to try to mitigate potential environmental justice concerns. First, EPA's Office of Air and Radiation and the Alternative Dispute Resolution Team within EPA's Office of the Administrator implemented a national convening process which was designed to bring together a broad spectrum of stakeholders to explore with them their perceptions and views of issues associated with Tier 2 permitting and to assess the potential for a collaborative process to address specific implementation issues at some time in the future. The convening was carried out by an outside neutral party who conducted interviews with representatives from selected EPA offices, States, industry, environmental groups, and environmental justice organizations. Second, EPA held informational briefings and provided background materials to the National Environmental Justice Advisory Council's (NEJAC) [96] Air and Water Subcommittee and Enforcement Subcommittee to provide an opportunity for them to provide feedback and recommendations to the Agency. Finally, in October 1999, we met with both national environmental groups and environmental justice advocacy representatives, to discuss their views on the permitting aspects of the proposed rule.

The EPA is committed to continue working with all stakeholders to resolve specific Environmental Justice issues if and when they arise. To fulfill this commitment, we plan to undertake additional actions in the future, including providing education and outreach about the rule and its impacts in local communities, developing permitting guidance through a public process and addressing Title VI petitions if they arise.

*D. What Are the Economic Impacts, Cost Effectiveness and Monetized Benefits of the Tier 2 Program?*

Consideration of the economic impacts of new standards for vehicles and fuels has been an important part of our decision making process for this final rule. The following sections describe first the costs associated with meeting the new vehicle standards and the new fuel standards. This will be followed with a discussion of the cost effectiveness of the rule. Lastly, we will discuss the results of a benefit-cost assessment that we have prepared.

Full details of our cost analyses, including information not presented here, can be found in the RIA associated with this rule. Also, our response to comments on the cost, cost effectiveness, and monetized benefits analyses are contained in the Response to Comments document for this rule.

1. What Are the Estimated Costs of the Vehicle Standards?

To perform a cost analysis for the standards, we first determined a package of likely technologies that manufacturers could use to meet the standards and then determined the costs of those technologies. In making our estimates we have relied on our own technology assessment which included publicly available information, such as that developed by California, as well as confidential information supplied by individual manufacturers, and the results of our own in-house testing.

In general, we expect that the Tier 2 standards will be met through refinements of current emissions control components and systems rather than through the widespread use of new technology. Furthermore, smaller lighter-weight vehicles and trucks will generally require less extensive improvements than larger vehicles and trucks. More specifically, we anticipate a combination of technology upgrades such as the following:

- Improvements to the catalyst system design, structure, and formulation plus in some cases an increase in average catalyst size and loading;
- Air and fuel system modifications including changes such as improved microprocessors, improved oxygen sensors, leak free exhaust systems, air assisted fuel injection, and calibration changes including improved precision fuel control and individual cylinder fuel control;
- Engine modifications, possibly including an additional spark plug per cylinder, an additional swirl control valve, or other hardware changes needed to achieve cold combustion stability;
- Increased use of fully electronic exhaust gas recirculation (EGR); and
- Increased use of secondary air injection for 6 cylinder and larger engines.

The costs for MDPVs have been included here with the LDT4 cost estimates. We expect that the technologies needed to meet the Tier 2 standards for the MDPVs will be very similar to those for LDT4s. However, the MDPVs cost estimates are somewhat higher than for LDT4s. Vehicles over 8,500 pounds GVWR are currently certified to heavy-duty engine emissions standards using the heavy-duty test procedures. This, at least in part, has led to differences in baseline technologies compared to current LDT4s. Vehicles above 8,500 pounds, for example, are currently equipped with technologies such as close coupled catalysts and secondary air injection to a lesser extent. Therefore, we expect higher incremental costs for the MDPVs compared to LDT4s. There is further information on the costs for MDPVs in the RIA.

[96] The NEJAC was chartered in 1993 expressly to give the EPA Administrator independent advice, consultation, and recommendations on environmental justice matters. NEJAC members come from state, tribal, and local governments; tribal and indigenous citizen's organizations; business and industry; academia; and environmental advocacy and grassroots community groups.

Using a typical mix of changes for each group, we projected costs separately for LDVs, the different LDT classes, and for different engine sizes (4, 6, 8, 10-cylinder) within each class. For each group we developed estimates of both variable costs (for hardware and assembly time) and fixed costs (for R&D, retooling, and certification).

Cost estimates based on the current projected costs for our estimated technology packages represent an expected incremental cost of vehicles in the near-term. For the longer term, we have identified factors that would cause cost impacts to decrease over time. First, since fixed costs are assumed to be recovered over a five-year period, these costs disappear from the analysis after the fifth model year of production. Second, the analysis incorporates the expectation that manufacturers and suppliers will apply ongoing research and manufacturing innovation to making emission controls more effective and less costly over time. Research in the costs of manufacturing has consistently shown that as manufacturers gain experience in production and use, 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.[97] These reductions in production costs are typically associated with every doubling of production volume. Our analysis incorporates the effects of this ''learning curve'' by projecting that the variable costs of producing the Tier 2 vehicles decreases by 20 percent starting with the third year of production. We applied the learning curve reduction only once since, with existing technologies, there would be less opportunity for lowering production costs than would be the case with the adoption of new technology.

We have prepared our cost estimates for meeting the Tier 2 standards using a baseline of NLEV technologies for LDVs, LDT1s, and LDT2s, and Tier 1, or current technologies for LDT3s, LDT4s and MDPVs. These are the standards that vehicles would be meeting in 2003.[98] We have not specifically analyzed smaller incremental changes to technologies that might occur due to the interim standards between the baseline and Tier 2. In most cases, we believe these changes will not be significant based on current certification levels and manufacturers will maximize carry-over. For others, manufacturers can use averaging and other program flexibilities to avoid redesigning vehicles twice within a relatively short period of time. We believe this is likely to be an attractive approach for manufacturers due to the savings in R&D and other resources.

For the total annual cost estimates, we projected that manufacturers will start the phase-in of Tier 2 vehicles with LDVs in 2004 and progress to heavier vehicles until all LDT2s meet Tier 2 standards in 2007. For LDT3s and LDT4s, we projected some sales of Tier 2 LDT3s prior to 2008 for purposes of averaging in the interim program and that the phase-in of Tier 2 vehicles would end with LDT4s and MDPVs in 2009.

Finally, we have incorporated what we believe to be a conservatively high level of R&D spending at $5,000,000 per vehicle line (with annual sales of 100,000 units per line). We have included this large R&D effort because calibration and system optimization is likely to be a critical part of the effort to meet Tier 2 standards. However, we believe that the R&D costs may be generous because the projection ignores the carryover of knowledge from the first vehicle lines designed to meet the standard to others phased-in later.

The evaporative emissions standards we are finalizing today for LDVs, LDTs and MDPVs are feasible with relatively small cost impacts. We estimate the cost of system improvements to be about $4 per vehicle, for all vehicle classes. This incremental cost reflects the cost of moving to low permeability materials, improved designs or low-loss connectors. R&D for the evaporative emissions standard is included in the R&D estimates given above for the tailpipe standards. We have included no projections of learning curve reductions for the evaporative standard.

Table IV.D.–1 provides our estimates of the per vehicle increase in purchase price for LDVs, LDTs, and MDPVs. The near-term cost estimates in Table IV.D.–1 are for the first years that vehicles meeting the standards are sold, prior to cost reductions due to lower productions costs and the retirement of fixed costs. The long-term projections take these cost reductions into account. We have sales weighted the cost differences for the various engine sizes (4-, 6-, 8-, 10-cylinder) within each category.

TABLE IV.D.–1.—ESTIMATED PURCHASE PRICE INCREASES DUE TO TIER 2 TAILPIPE STANDARDS

| | LDV | LDT1 | LDT2 | LDT3 | LDT4/ MDPVs [a] |
|---|---|---|---|---|---|
| Tailpipe standards: | | | | | |
| Near-term (year 1) | $78 | $70 | $125 | $245 | $258 |
| Long-term (year 6 and beyond) | 49 | 45 | 97 | 199 | 208 |
| Evaporative Standard | 4 | 4 | 4 | 4 | 4 |

Notes:
[a] Weighted average.

We did not receive comments disagreeing with the technology projections or technology cost estimates contained in the proposal. We have, however, revised our cost estimates somewhat based on new information available since the proposal. We moderately lowered our cost estimates due to adjustments we have made in our technology projections. Based on the results of our vehicle testing program described above in section IV.A.1., we now believe that a few of the hardware changes we had anticipated are not likely to be needed to meet the standards. Albeit there is always fluctuation, the spot prices of precious metals have increased somewhat since the proposal and we have adjusted our analysis to reflect those changes.

Overall, the cost estimates are within 5 percent of those in the proposal for LDVs and LLDTs. The changes noted above moderately lowered the costs for HLDTs compared to the proposal. The cost increase due to the inclusion of MDPVs offsets most of the lowered costs

[97] ''Learning Curves in Manufacturing,'' Linda Argote and Dennis Epple, Science, February 23, 1990, Vol. 247, pp. 920–924.

[98] Even though the NLEV program ends in the Tier 2 timeframe, we have not included the NLEV program costs or benefits in our analysis, since EPA analyzed and adopted NLEV previously.

for the LDT4 category. The resulting cost estimate for the LDT4/MDPVs tailpipe standards is also within 5 percent of the cost estimates for LDT4s contained in the proposal. The detailed technology and cost analyses are available in the RIA.

We are also finalizing OBD II requirements and onboard vapor recovery (ORVR) requirements for MDPVs. We have estimated that OBD II will cost about $80, which includes the costs of additional sensors and system improvements. We have estimated ORVR system costs to be about $10. The $10 cost for ORVR does not include any fuel cost savings over the life of the vehicles due the recover of fuel vapor during refueling. ORVR provides a fuel cost savings because the vapors are captured, and burned in the engine, rather than escaping to the atmosphere. We estimate the savings over the life of the vehicle to be about $6. These costs are not reflected in Table IV.D.–1.

2. Estimated Costs of the Gasoline Sulfur Standards

As we explained at the beginning of Section IV.C, we expect that most refiners will have to install capital equipment to meet the gasoline sulfur standard. Presuming that refiners will want to minimize the cost involved, the majority of refiners are expected to desulfurize the gasoline blendstock produced by the fluidized catalytic cracker (FCC) unit, although a few may choose to desulfurize the feed to the FCC unit. Recent advances have led to significant improvements in the hydrotreating technologies used for FCC gasoline desulfurization. Since these improved technologies represent the lowest cost options and are expected to be used by most refiners needing to install desulfurization equipment, we have based our cost estimates primarily on their use. However, in acknowledgment that some refiners, particularly those which make investment decisions in the near term, are likely to select more traditional approaches using proven technologies, we have included the costs for currently proven desulfurization technologies in our analysis, as well. This is different from the analysis we did in support of our proposal, where we assumed that all refiners would take advantage of the most improved technologies we were aware of at that time.

For our analysis of the costs of controlling gasoline sulfur, we estimated the costs in five different regions of the country (Petroleum Administration Districts for Defense, or PADDs) for reductions from the current PADD average gasoline sulfur level down to a 30 ppm average. We then combined the regional costs to develop an average national individual refinery cost, and used this figure to calculate national aggregate capital and operating costs. In our proposal we estimated a single cost for desulfurizing gasoline, using as an assumption for the purpose of analysis that all refiners would upgrade their refineries by 2004 and that all would choose one of two improved technologies we knew of at the time. We then reduced this cost over time to reflect expected cost reductions due to further technology advancements and reduced operating costs due to improved understanding of the technologies and refinery debottlenecking. Based on improved information about the availability of technologies, we have now analyzed the costs of controlling sulfur on a year-by-year basis beginning with 2004, to be consistent with our analysis of the rate at which the industry would invest in desulfurization technologies over the first years of the program and the changing technology selections (and costs) that would accompany this phase-in (discussed in Section IV.C.1 above). A detailed description of our calculations can be found in the Regulatory Impact Analysis; the reader can refer to the draft RIA released with the proposed rule for more information on our prior analysis.

We estimate that, on average, refineries which install equipment to meet the 30 ppm average standard will invest about $44 million for capital equipment and spend about $16 million per year for each refinery to cover the operating costs associated with these desulfurization units. Since this average represents many refineries diverse in size and gasoline sulfur level as well as a mix of desulfurization technologies, some refineries will pay more and others less than the average costs. When the average per-refinery cost is aggregated for all the gasoline expected to be produced in this country in 2008 (the first year that all refiners will be required to meet the 30 ppm standard, unless any small refiners are granted a extension of hardship relief), the total investment for desulfurization processing units (spread between 2003 and 2007) is estimated to be about $4.3 billion, and operating costs for these units is expected to be about $1.3 billion per year.

Using our estimated capital and operating costs for domestic refineries, we calculated the average per-gallon cost of reducing gasoline sulfur down to 30 ppm for each year as the program is implemented. Using a capital cost amortization factor (based on a seven percent rate of return on investment) and including no taxes, we estimated the average national cost for desulfurizing gasoline to be about 1.7–1.9 cents per gallon as the program is phased in. This cost is the cost to society of reducing gasoline sulfur down to 30 ppm that we used for estimating cost effectiveness. Table IV.D.–2 below summarizes our estimates of per-gallon gasoline cost increases for select years.

TABLE IV.D.–2.—ESTIMATED PER-GALLON COST FOR DESULFURIZING GASOLINE IN FUTURE YEARS

| Year | Cost (cents/gallon) |
|---|---|
| 2004 | 1.9 |
| 2005 | 1.9 |
| 2006 | 1.7 |
| 2007 | 1.7 |
| 2008–2018 | 1.7 |
| 2019+ | 1.3 |

Although the costs shown here are slightly higher than we projected in the proposal, overall, we believe our revised costs are consistent with those in the proposal and that our improved methodology and information are the source of the differences. As stated earlier in this section, we believe this analysis more accurately reflects the actual investment decisions of individual refiners over the years in which the industry is phasing down sulfur levels. Furthermore, we have also made a number of other adjustments to our analysis of capital and operating costs for each individual technology based on new information received from the technology vendors and information we obtained during the comment period. For example, we now include eight different technologies in our analysis, including some more traditional approaches, whereas in the proposal we only considered two new technologies. Hence, the range of costs is broader. In addition, as explained in the RIA, we now believe we underestimated the capital costs of desulfurization slightly in the proposal based on our calculation of the costs of providing hydrogen to the processes. We believe our analysis now reflects the most up-to-date information about the costs of installing and operating the various desulfurization technologies included in our analysis. These adjustments are explained in detail in the Regulatory Impact Analysis.

We still believe that over time, particularly in 2006–8 when the last refineries will be making investments, the costs of gasoline desulfurization equipment will be significantly lower

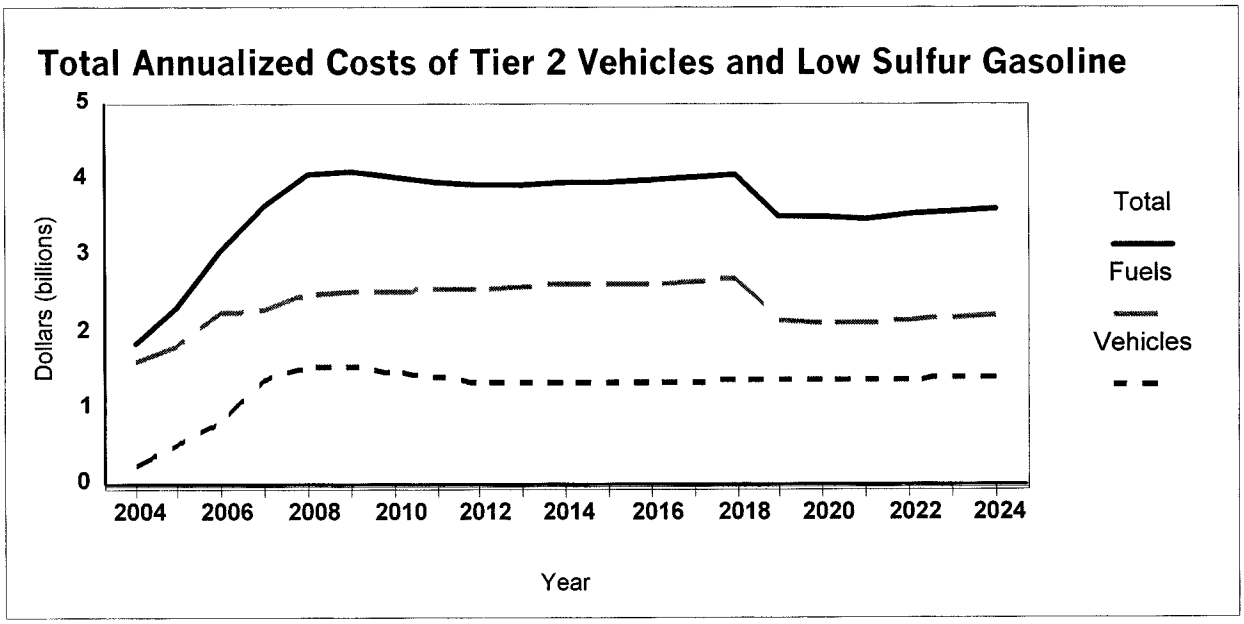
than it is today. Some of the technologies expected to be selected in this time frame (specifically, the new adsorption technologies which we didn't know about when we proposed these requirements) are projected to cost about half of what the older technologies cost. Furthermore, with time refiners will have to replace existing desulfurization equipment (as equipment ages), and by then they will have a number of low cost alternatives to choose from. Thus, as Table IV.D.–2 shows, the long term estimated costs for gasoline desulfurization are lower than those we projected in our proposal.[99]

3. What Are the Aggregate Costs of the Tier 2/Gasoline Sulfur Final Rule?

Using current data for the size and characteristics of the vehicle fleet and making projections for the future, the per-vehicle and per-gallon fuel costs described above can be used to estimate the total cost to the nation for the emission standards in any year. Figure IV.D.–1 portrays the results of these projections.[100]

BILLING CODE 6560–50–P

# Figure IV.D. -1




BILLING CODE 6560–50–C

As can be seen from the figure, the annual cost starts out at about $1.9 billion per year and increases over the phase-in period to about $4.1 billion in 2008. Total annualized costs are projected to remain at about $4 billion through 2018. After 2018, annualized fuel costs are projected to decrease somewhat due to the use of new technologies which would enable refiners to produce low sulfur fuel at a lower cost. The gradual rise in costs long term is due to the effects of projected growth in vehicle sales and fuel consumption. The RIA provides further detail regarding these cost projections.

4. How Does the Cost-effectiveness of This Program Compare to Other Programs?

This section summarizes the cost-effectiveness analysis conducted by EPA and its results. The purpose of this analysis is to show that the reductions from the vehicle and fuel controls being finalized today are cost-effective in comparison to alternative means of attaining or maintaining the NAAQS. This analysis involves a comparison of our program not only to past measures, but also to other potential future measures that might be employed to attain and maintain the NAAQS. Both EPA and states have already adopted numerous control measures, and remaining measures tend to be more expensive than those previously employed. As we employ the most cost-effective available measures first, more expensive ones tend to become necessary over time.

The emission reductions used to calculate the cost-effectiveness levels reported here are based on those reductions used for our air quality analysis modeling and benefits analysis. This was done to maintain consistency in the analyses. As noted in Section III.B. above, we have updated our inventory model since the air quality modeling inventories were calculated. In Chapter III of our RIA, Table III.A.–3 compares the updated Tier 2 model with the air quality analysis modeling and shows that the emission reductions expected from Tier 2/gasoline sulfur will be substantially greater than the amounts originally calculated. If the

[99] For a sensitivity analysis of our cost estimates using alternative assumptions, please see Chapter V of the RIA.

[100] Figure IV.D.–1 is based on the amortized costs from Tables IV.D.–1 and IV.D.–2. Actual capital investments, particularly important for fuels, would occur prior to and during the initial years of the program, as described above in section IV.D.2.

updated numbers were incorporated into our cost-effectiveness we would expect the results to be improved over those shown in this section.

We received a number of comments on our cost-effectiveness analysis in response to our NPRM. Our responses to these comments can be found in the Response To Comments document.

a. Cost-Effectiveness of This Program

We have calculated the cost-effectiveness of the exhaust emission/gasoline sulfur standards and the evaporative emission standards, based on two different approaches. The first considers the net present value of all costs incurred and emission reductions generated over the life of an average Tier 2 vehicle. This per-vehicle approach focuses on the cost-effectiveness of the program from the point of view of the Tier 2 vehicles which will be used to meet the new requirements, and is the method used in our proposal. However, the per-vehicle approach does not capture all of the costs or emission reductions from the Tier 2/gasoline sulfur program since it does not account for the use of low sulfur gasoline in pre-Tier 2 vehicles. Therefore, we have also calculated an aggregate cost-effectiveness using the net present value of costs and emission reductions for all in-use vehicles over a 30-year time frame.

As described earlier in the discussion of the cost of this program, the cost of complying with the new standards will decline over time as manufacturing costs are reduced and amortized capital investments are recovered. To show the effect of declining cost in the per-vehicle cost-effectiveness analysis, we have developed both near term and long term cost-effectiveness values. More specifically, these correspond to vehicles sold in years one and six of the vehicle and fuel programs. Vehicle cost is constant from year six onward. Fuel costs per gallon continue to decline slowly in the years past year six; however, the overall impact of this decline is small and we have decided to use year six results for our long term cost-effectiveness. Chapter VI of the RIA contains a full description of this analysis, and you should look in that document for more details of the results summarized here.

The aggregate approach to calculating the cost-effectiveness of our program involves the net present value of all nationwide emission reductions and costs for a 30-year period beginning with the start of the program in 2004. This timeframe captures both the early period of the program when very few Tier 2 vehicles will be in the fleet, and the later period when essentially all vehicles in the fleet will meet Tier 2 standards. We have calculated the aggregate cost-effectiveness using the net present value of the nationwide emission reductions and costs for each calendar year. These emission reductions and costs are summarized in Sections III.B, III.C, and IV.D.3, and are given for every calendar year in the RIA. For more information on how the aggregate cost-effectiveness was calculated please refer to the RIA.

Our per-vehicle and aggregate cost-effectiveness values are given in Tables IV.D.–3 and IV.D.–4. Table IV.D.–3 summarizes the per-vehicle, net present value lifetime costs, NMHC+$NO_X$ emission reductions, and resulting cost-effectiveness results for our Tier 2/gasoline sulfur program using sales weighted averages of the costs (both near term and long term) and emission reductions of the various vehicle classes affected. Table IV.D.–4 provides the same information from the program aggregate perspective. It includes the net present value of the 30-year stream of vehicle and fuel costs, NMHC+$NO_X$ emission reductions, and the resulting aggregate cost-effectiveness. For simplicity, we have used the midpoint of our estimated range of 20 to 65 percent for the irreversibility effect. The full range of irreversibility would only cause the cost-effectiveness values to differ from those in Table IV.D–3, for example, by $60/ton to $100/ton. Note that, even though we are setting new standards for PM, those standards are already being met, so there is no cost associated with the new PM standard and therefore no separate cost-effectiveness analysis for PM.

Tables IV.D.–3 and IV.D.–4 also display cost-effectiveness values based on two approaches to account for the reductions in $SO_2$ and tailpipe emitted sulfate particulate matter (PM) associated with the reduction in gasoline sulfur. While these reductions are not central to the program and are therefore not displayed with their own cost-effectiveness, they do represent real emission reductions due to our program. The first set of cost-effectiveness numbers in the tables simply ignores these reductions and bases the cost-effectiveness on only the NMHC+$NO_X$ reductions from Tier 2/gasoline sulfur. The second set accounts for these ancillary reductions by crediting some of the cost of the program to $SO_2$ and PM reduction. The amount of cost allocated to $SO_2$ and PM is based on the cost-effectiveness of $SO_2$ and PM emission reductions that could be obtained from alternative, potential future EPA programs.

TABLE IV.D–3.—PER-VEHICLE COST-EFFECTIVENESS OF THE STANDARDS

| Cost basis | Discounted lifetime vehicle & fuel costs | Discounted lifetime NMHC + $NO_X$ reduction (tons) | Discounted lifetime cost-effectiveness per ton | Discounted lifetime cost-effectiveness per ton with $SO_2$ and direct PM credit [a] |
|---|---|---|---|---|
| Near term cost (production year 1) | $243 | 0.110 | $2,211 | $1,717 |
| Long term cost (production year 6) | 205 | 0.110 | 1,863 | 1,368 |

Notes:
[a] $51 credited to $SO_2$ ($4,800/ton), $4 to direct PM ($10,000/ton).

TABLE IV.D–4.—AGGREGATE COST-EFFECTIVENESS OF THE STANDARDS

| Discounted aggregate vehicle & fuel costs | Discounted aggregate NMHC + $NO_X$ reduction (tons) (millions) | Discounted aggregate cost-effectiveness per ton | Discounted aggregate cost-effectiveness per ton with $SO_2$ and direct PM credit [a] |
|---|---|---|---|
| $48.1 billion | 23.5 | $2,047 | $1,311 |

Notes:
[a] $13.8 billion credited to $SO_2$ ($4,800/ton), $3.5 billion to direct PM ($10,000/ton).

b. How Does the Cost-Effectiveness of This Program Compare With Other Means of Obtaining Mobile Source $NO_X$ + NMHC Reductions?

In comparison with other mobile source control programs, we believe that our program represents the most cost-effective new mobile source control strategy currently available that is capable of generating substantial $NO_X$ + NMHC reductions. This can be seen by comparing the cost-effectiveness of today's program with a number of mobile source standards that EPA has adopted in recent years. Table IV.D.–5 summarizes the cost-effectiveness of several recent EPA actions.

TABLE IV.D.–5.—COST-EFFECTIVENESS OF PREVIOUSLY IMPLEMENTED MOBILE SOURCE PROGRAMS

| Program | $/ton [a] $NO_X$+NMHC |
|---|---|
| 2004 Highway HD Diesel stds | 204–399 |
| Nonroad Diesel engine stds | 410–650 |
| Tier 1 vehicle controls | 1,980–2,690 |
| NLEV | 1,859 |
| Marine SI engines | 1,128–1,778 |
| On-board diagnostics | 2,228 |

Notes: [a] Costs adjusted to 1997 dollars.

We can see from the table that the cost-effectiveness of the Tier 2/gasoline sulfur standards falls within the range of these other programs. Engine-based standards (the 2004 highway heavy-duty diesel standards, the nonroad diesel engine standards and the marine spark-ignited engine standards) have generally been less costly than Tier 2/gasoline sulfur. Vehicle standards, most similar to today's program, have values comparable to or higher than Tier 2/gasoline sulfur.

The values in Table IV.D.–5 might imply that further reductions in $NO_X$ and VOC from heavy-duty engines could be more cost-effective than the reductions that will be produced from our Tier 2/gasoline sulfur program. However, we do not believe that to be the case. While we are indeed developing a proposal for further control from heavy-duty engines, we expect that substantial further emission reductions will require advanced after-treatment devices. These devices will be more costly than methods used to meet our past standards, and will have difficulty functioning properly without changes to diesel fuel. We therefore expect that the cost effectiveness of future heavy-duty standards is not likely to be significantly less than the cost effectiveness of today's rule.

On the light-duty vehicle side, the last two sets of standards were Tier 1 and NLEV, which had cost-effectiveness comparable to or higher than Tier 2/gasoline sulfur. Compared to engines, these levels reflect the advanced (and more expensive) state of vehicle control technology, where standards have been in effect for a much longer period than for engines. Considering the increased stringency of the Tier 2 standards, it is noteworthy that the cost-effectiveness of Tier 2/gasoline sulfur is in the same range as these actions. Based on these results, Tier 2/gasoline sulfur is a logical and consistent next step in vehicle control.

In conclusion, we believe that the Tier 2/Gasoline Sulfur program is a cost-effective program for mobile source $NO_X$ + NMHC control. We are unable to identify another mobile source control program that would be more cost-effective than Tier 2/gasoline sulfur while also producing equivalent reductions in $NO_X$ and NMHC emissions in the same timeframe as our program.

c. How Does the Cost-Effectiveness of This Program Compare With Other Known Non-Mobile Source Technologies for Reducing $NO_X$ + NMHC?

In evaluating the cost-effectiveness of the Tier 2/Gasoline Sulfur program, we also considered whether our program is cost-effective in comparison with alternative means of attaining or maintaining the NAAQS other than mobile source programs. As described below, we have concluded that Tier 2/Gasoline Sulfur is cost-effective considering the anticipated cost of other technologies that will be needed to help attain and maintain the NAAQS.

In the context of the Agency's rulemaking to revise the ozone and PM NAAQS, [101] the Agency compiled a list of additional known technologies that could be considered in devising new emission reductions strategies.[102] Through this broad review, over 50 technologies were identified that could reduce $NO_X$ or VOC. The cost-effectiveness of these technologies averaged approximately $5,000/ton for VOC and $13,000/ton for $NO_X$. These values clearly indicate that not only are future emission control strategies likely to be more expensive (less cost-effective) than past strategies, but the cost-effectiveness of our Tier 2/Gasoline Sulfur program falls at the lower end of the range for potential future strategies.

In addition, our Tier 2/Gasoline Sulfur program will deliver critical further reductions that are not readily obtainable by any other means known to the Agency. If all of the technologies modeled in the NAAQS analysis costing less than $10,000/ton were implemented nationwide, they would produce $NO_X$ emission reductions of about 2.9 million tons per year. The Tier 2/Gasoline Sulfur program by itself will generate about 2.8 million tons per year once fully implemented. Given the continuing need for further emission reductions, we believe that Tier 2/Gasoline Sulfur control is clearly a cost-effective approach for attaining and maintaining the NAAQS.

We recognize that the cost-effectiveness calculated for Tier 2/Gasoline Sulfur is not strictly comparable to a figure for measures targeted at nonattainment areas, since Tier 2/Gasoline Sulfur is a nationwide program. However, there are several additional considerations that have led us to conclude that Tier 2/Gasoline Sulfur is cost-effective considering

[101] This rulemaking was remanded by the D.C. Circuit Court on May 14, 1999. However, the analyses completed in support of that rulemaking are still relevant, since they were designed to investigate the cost-effectiveness of a wide variety of potential future emission control strategies.

[102] ''Regulatory Impact Analyses for the Particulate Matter and Ozone National Ambient Air Quality Standards and Proposed Regional Haze Rule,'' Appendix B, ''Summary of control measures in the PM, regional haze, and ozone partial attainment analyses,'' Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC, July 17, 1997.

alternative means of attaining and maintaining the NAAQS.

First of all is the fact that the cost effectiveness of Tier 2/Gasoline Sulfur is so much better than the numbers developed for the NAAQS analysis. It is only 20 percent as costly per ton as the $10,000 per ton upper limit employed in that analysis for selecting suitable strategies even though, as noted above, Tier 2/Gasoline Sulfur will produce almost the same level of emission reduction. Furthermore, as a national program, Tier 2/Gasoline Sulfur can be implemented as a single unified rule without the need for individual action by each of the states.

In dealing with the question of comparing local and national programs, it is also relevant to point out that, because of air transport, the need for $NO_X$ control is a broad regional issue not confined to non-attainment areas only. To reach attainment, future controls will need to be applied over widespread areas of the country. In the analyses supporting the recent $NO_X$ standards for highway diesel engines,[103] we looked at this question in some detail and concluded that the regions expected to impact ozone levels in ozone nonattainment areas accounted for over 85% of total $NO_X$ emissions from a national heavy-duty engine control program. Similarly, $NO_X$ emissions in attainment areas also contribute to particulate matter nonattainment problems in downwind areas. Thus, the distinction between local and national control programs for $NO_X$ is less important than it might appear.

Finally, the statute indicates that in considering the cost-effectiveness of Tier 2/Gasoline Sulfur EPA should consider not only attainment, but also maintenance of the standards. Tier 2/Gasoline Sulfur—unlike nonattainment area measures—will achieve attainment area reductions that, among other effects, will help to maintain air quality that meets the NAAQS. These reductions relate not only to the ozone and PM NAAQS, but also to $SO_2$ and $NO_2$, and to CO.

In summary, given the array of controls that will have to be implemented to make progress toward attaining and maintaining the NAAQS, we believe that the weight of the evidence from alternative means of providing substantial $NO_X$ + NMHC emission reductions indicates that the Tier 2/Gasoline Sulfur program is cost-effective. This is true from the perspective of other mobile source control programs or from the perspective of other stationary source technologies that might be considered.

5. Does the Value of the Benefits Outweigh the Cost of the Standards?

While relative cost-effectiveness is the principal economic policy criterion established for these standards in the Clean Air Act (see CAA § 202(i)), further insight regarding the merits of the standards can be provided by benefit-cost analysis. The purpose of this section is to summarize the methods we used and results we obtained in conducting an analysis of the economic benefits of the Tier 2 program, and to compare these economic benefits with the estimated costs of the rule. In summary, the results of our analysis using the EPAs preferred approach to valuing premature mortality indicate that the economic benefits of the Tier 2/gasoline sulfur standards will likely exceed the costs of meeting the standards by about $20 billion (1997$).

a. What Is the Purpose of This Benefit-Cost Comparison?

Benefit-cost analysis (BCA) is a useful tool for evaluating the economic merits of proposed changes in environmental programs and policies. In its traditional application, BCA estimates the economic ''efficiency'' of proposed changes in public policy by organizing the various expected consequences and representing those changes in terms of dollars. Expressing the effects of these policy changes in dollar terms provides a common basis for measuring and comparing these various effects. Because improvement in economic efficiency is typically defined to mean maximization of total wealth spread among all members of society, traditional BCA must be supplemented with other analyses in order to gain a full appreciation of the potential merits of new policies and programs. These other analyses may include such things as examinations of legal and institutional constraints and effects; engineering analyses of technology feasibility, performance and cost; or assessment of the air quality need.

In addition to the narrow, economic efficiency focus of most BCAs, the technique is also limited in its ability to project future economic consequences of alternative policies in a definitive way. Critical limitations on the availability, validity, or reliability of data; limitations in the scope and capabilities of environmental and economic effect models; and controversies and uncertainties surrounding key underlying scientific and economic literature all contribute to an inability to estimate the economic effects of environmental policy changes in exact and unambiguous terms. Under these circumstances, we consider it most appropriate to view BCA as a tool to inform, but not dictate, regulatory decisions such as the ones reflected in today's rule.

Despite the limitations inherent in BCA of environmental programs, we consider it useful to estimate the potential benefits of today's action both in terms of physical changes in human health and welfare and environmental change, and in terms of the estimated economic value of those physical changes.

b. What Was Our Overall Approach to the Benefit-Cost Analysis?

The basic question we sought to answer in the BCA was: ''What are the net yearly economic benefits to society of the reduction in mobile source emissions likely to be achieved by the final Tier 2 program?'' In designing an analysis to answer this question, we selected a future year for analysis (2030) that is representative of full-implementation of the program (*i.e.,* when the U.S. car and light truck population is virtually only Tier 2 vehicles). We also adopted an analytical structure and sequence similar to that used in the ''section 812 studies'' [104] to estimate the total benefits and costs of the entire Clean Air Act. Moreover, we used many of the same models, and assumptions actually used in the section 812 studies, and other Regulatory Impact Analyses (RIA's) prepared by the Office of Air and Radiation. By adopting the major design elements, models, and assumptions developed for the section 812 studies and other RIA's, we have largely relied on methods which have already received extensive review by the independent Science Advisory Board, by the public, and by other federal agencies.

c. What Are the Significant Limitations of the Benefit-Cost Analysis?

Every BCA examining the potential effects of a change in environmental protection requirements is limited to some extent by data gaps, limitations in model capabilities (such as geographic coverage), and uncertainties in the underlying scientific and economic

[103] Final Regulatory Impact Analysis: Control of Emissions of Air Pollution from Highway Heavy-Duty Engines, September 16, 1997.

[104] The ''section 812 studies'' refers to (1) US EPA, Report to Congress: The Benefits and Costs of the Clean Air Act, 1970 to 1990, October 1997 (also known as the ''section 812 Retrospective); and (2) the first in the ongoing series of prospective studies estimating the total costs and benefits of the Clean Air Act (see EPA report number: EPA–410–R–99–001, November 1999).

studies used to configure the benefit and cost models. Deficiencies in the scientific literature often result in the inability to estimate changes in health and environmental effects, such as potential increases in premature mortality associated with increased exposure to carbon monoxide. Deficiencies in the economics literature often result in the inability to assign economic values even to those health and environmental outcomes which can be quantified, such as changes in visibility in residential areas. While these general uncertainties in the underlying scientific and economics literatures are discussed in detail in the RIA and its supporting documents and references, the key uncertainties which have a bearing on the results of the BCA of today's action are:

- The exclusion of potentially significant benefit categories (*e.g.,* health and ecological benefits of incidentally controlled hazardous air pollutants),
- Errors in measurement and projection for variables such as population growth,
- Variability in the estimated relationships of health and welfare effects to changes in pollutant concentrations.

In addition to these uncertainties and shortcomings which pervade all analyses of criteria air pollutant control programs, a number of limitations apply specifically to the BCA of today's action. Though we used the best data and models currently available, we were required to adopt a number of simplifying assumptions and to use data sets which, while reasonably close, did not match precisely the conditions and effects expected to result from implementation of the standards. For example, to estimate the effects of the program at full implementation we projected vehicle miles traveled and populations in the year 2030. These assumptions may play a significant role in determining the magnitude of the benefits estimate. In addition, although the emissions data sets used for this analysis have been updated from those used in the proposal, they may not anticipate the emissions reductions realized by other future actions and by expected near-future control programs. For example, it is possible that the Tier 2/gasoline sulfur standards will not be the governing vehicle emissions standards in 2030. In the years before 2030, the benefits from the Tier 2 program will be less than those estimated here (significantly less in the early years), because the Tier 2 fleet will not be fully phased in.

Finally, the implementation period for phasing-in the rule requirements is a critical period that deserves careful evaluation. The benefit-cost analysis for 2030 is not significantly affected by alternative phase-in decisions, the primary impact of which will occur in the 2005–2015 time frame. As a result, the analysis of phase-in alternatives must rely on other types of analysis (*e.g.,* cost-effectiveness analysis).

The key limitations and uncertainties unique to the BCA of the final rule, therefore, include:

- Uncertainties in the estimation of future year emissions inventories and air quality,
- Uncertainties associated with the extrapolation of air quality monitoring data to some unmonitored areas required to better capture the effects of the standards on affected populations, and
- Uncertainties associated with the effect of potential future actions to limit emissions.

Despite these uncertainties, which are discussed in more detail or referenced in the RIA, we believe the BCA provide a reasonable indication of the expected economic benefits of the Tier 2 program in 2030 under one set of assumptions. This is because the analysis focuses on estimating the economic effects of the *changes* in air quality conditions expected to result from today's action, rather than focusing on developing a precise prediction of the *absolute* levels of air quality likely to prevail in 2030. An analysis focusing on the changes in air quality can give useful insights into the likely economic effects of emission reductions of the magnitude expected to result from today's rule.

d. How Has the Benefit-Cost Analysis Changed From Proposal?

We significantly improved the analysis that was presented at proposal. For the final rule, EPA updated the emissions inventory from 1990 to 1996 using updated models, refined the projections of the effects of the rule when it is fully implemented, and updated our air quality modeling to reflect new programs issued since 1990. In addition, we also updated our assumptions for estimating physical effects and monetary benefits based on recommendations from the EPA's Science Advisory Board (SAB) during the summer of 1999. Details on these recommendations can be found in the advisory statements published by the SAB.[105] All of the changes made since the analysis at proposal serve to update and improve the analysis.

e. How Did We Perform the Benefit-Cost Analysis?

The analytical sequence begins with a projection of the mix of technologies likely to be deployed to comply with the new standards, and the costs incurred and emissions reductions achieved by these changes in technology. The Tier 2 program has various cost and emission related components, as described earlier in this section. These components would begin at various times and in some cases would phase in over time. This means that during the early years of the program there would not be a consistent match between cost and benefits. This is especially true for the vehicle control portions of the program, where the full vehicle cost would be incurred at the time of vehicle purchase, while the fuel cost along with the emission reductions and benefits would occur throughout the lifetime of the vehicle.

To develop a benefit-cost number that is representative of a fleet of Tier 2 vehicles, we need to have a stable set of cost and emission reductions to use. This means using a future year where the fleet is fully turned over and there is a consistent annual cost and annual emission reduction. For the Tier 2 program, this stability would not occur until well into the future. For this analysis, we selected the year 2030. The resulting analysis represents a snapshot of benefits and costs in a future year in which the light-duty fleet consists almost entirely of Tier 2 vehicles. As such, it depicts the maximum emission reductions (and resultant benefits) and among the lowest costs that would be achieved in any one year by the program on a ''per mile'' basis. (Note, however, that net benefits would continue to grow over time beyond those resulting from this analysis, because of growth in population and vehicle miles traveled.) Thus, based on the long-term costs for a fully turned over fleet, the resulting benefit-cost ratio will be close to its maximum point (for those benefits which we have been able to value).

To present a BCA, we designed the cost estimate to reflect conditions in the same year as the benefit valuation. Costs are, therefore, developed for the year 2030 fleet. For this purpose we used the long term cost once the capital costs have been recovered and the manufacturing learning curve

[105] Full documentation of the SAB recommendations can be found at their website (*www.epa.gov/sab*) under the following references: EPA–SAB–COUNCIL–ADV–98–003, 1998; EPA–SAB–COUNCIL–ADV–99–05, 1999; EPA–SAB–COUNCIL–ADV–99–012, 1999; EPA–SAB–COUNCIL–ADV–00–001, 1999; and EPA–SAB–COUNCIL–ADV–00–002, 1999.

reductions have been realized, since this will be the case in 2030.

We also made adjustments in the costs to account for the fact that there is a time difference between when some of the costs are expended and when the benefits are realized. The vehicle costs are expended when the vehicle is sold, while the fuel related costs and the benefits are distributed over the life of the vehicle. We resolved this difference by using costs distributed over time such that there is a constant cost per ton of emissions reduction and such that the net present value of these distributed costs corresponds to the net present value of the actual costs.

The resulting adjusted costs are somewhat greater than the expected actual annual cost of the program, reflecting the time value adjustment. Thus, the costs presented in this section do not represent expected actual annual costs for 2030. Rather, they represent an approximation of the steady-state cost per ton that would likely prevail in that time period. The benefit cost ratio for the earlier years of the program would be expected to be lower than that based on these costs, since the per-vehicle costs are larger in the early years of the program while the benefits are smaller.

In order to estimate the changes in air quality conditions which would result from these emissions reductions, we developed two separate, year 2030 emissions inventories to be used as inputs to the air quality models. The first, baseline inventory, reflects the best available approximation of the county-by-county emissions for $NO_X$, VOC, and $SO_2$ expected to prevail in the year 2030 in the absence of the standards. To generate the second, control case inventory, we first estimated the change in vehicle emissions, by pollutant and by county, expected to be achieved by the 2030 control scenario described above. We then took the baseline emissions inventory and subtracted the estimated reduction for each county-pollutant combination to generate the second, control case emissions inventory. Taken together, the two resulting emissions inventories reflect two alternative states of the world and the differences between them represent our best estimate of the reductions in emissions which would result from our control scenario.

With these two emissions inventories in hand, the next step was to ''map'' the county-by-county and pollutant-by-pollutant emission estimates to the input grid cells of two air quality models and one deposition model. The first model, called the Urban Airshed Model (UAM), is designed to estimate the tropospheric ozone concentrations resulting from a specific inventory of emissions of ozone precursor pollutants, particularly $NO_X$ and NMHC. The second model, called the Climatological Regional Dispersion Model Source-Receptor Matrix model (S–R Matrix), is designed to estimate the changes in ambient particulate matter and visibility which would result from a specific set of changes in emissions of primary particulate matter and secondary particulate matter precursors, such as $SO_2$, $NO_X$, and NMHC. Also, nitrogen loadings to watersheds were estimated using factors derived from previous modeling from the Regional Acid Deposition Model (RADM). By running both the baseline and control case emissions inventories through these models, we were able to estimate the expected 2030 air quality conditions and the changes in air quality conditions which would result from the emissions reductions expected to be achieved by the Tier 2 program.

After developing these two sets of year 2030 air quality profiles, we used the same health and environmental effect models used in the section 812 studies to calculate the differences in human health and environmental outcomes projected to occur with and without the proposed standards. Specifically, we used the Criteria Air Pollutant Modeling System (CAPMS) to estimate changes in human health outcomes, and the Agricultural Simulation Model (AGSIM) to estimate changes in yields of a selected few agricultural crops. In addition, the impacts of reduced visibility impairment and estimates of the effect of changes in nitrogen deposition to a selection of sensitive estuaries were estimated using slightly modified versions of the methods used in the section 812 studies. Several air quality-related health and environmental benefits, however, could not be calculated for the BCA of today's proposed standards. Changes in human health and environmental effects due to changes in ambient concentrations of carbon monoxide (CO), gaseous sulfur dioxide ($SO_2$), gaseous nitrogen dioxide ($NO_2$), and hazardous air pollutants could not be included. In addition, some health and environmental benefits from changes in ozone and PM could not be included in our analysis (*i.e.,* commercial forestry benefits).

To characterize the total economic value of the reductions in adverse effects achieved across the lower 48 states,[106] we used the same set of economic valuation coefficients and models used in the section 812 studies, as approved by the SAB. The net monetary benefits of the Tier 2 program were then calculated by subtracting the estimated costs of compliance from the estimated monetary benefits of the reductions in adverse health and environmental effects.

The last step of the analysis is to characterize the uncertainty surrounding our estimate of benefits. Again, we follow the recommendations of the SAB for the presentation of uncertainty. They recommend that a primary estimate should be presented along with a description of the uncertainty associated with each endpoint. At proposal, our characterization of uncertainty was based on an estimated range of benefits which might occur if important but uncertain underlying factors were allowed to vary. This approach, however, is criticized by the SAB because while the low- or high-end estimates provided for individual endpoints was ''plausible,'' the probability of all of the assumptions in these estimates occurring simultaneously was likely to be small.

Therefore, for the final Tier 2/gasoline sulfur rule, the benefit analysis adopts an approach similar to the section 812 study. Our analysis first presents our estimate for a primary set of benefit endpoints followed by a presentation of ''alternative calculations'' of key health and welfare endpoints to characterize the uncertainty in this primary set. However, the adoption of a value for the projected reduction in the risk of premature mortality is the subject of continuing discussion within the economic and public policy analysis community within and outside the Administration. In response to the sensitivity on this issue, we provide estimates reflecting two alternative approaches for mortality benefits: the EPAs preferred approach using the value of a statistical life, and an alternative approach using the value of a statistical life years. These are discussed further in section f. of this presentation. The presentation of the alternative calculations for certain endpoints seeks to demonstrate how much the overall benefit estimate might vary based on the value EPA has given to a parameter (which has some uncertainty associated with it) underlying the estimates for human health and environmental effect incidence and the economic valuation

[106] Though California is included based on the expectation that reductions in surrounding states will achieve some benefits in California, this analysis does not assume additional reductions in California emissions beyond those already achieved by prevailing standards.

of those effects. These alternative calculations represent conditions that are possible to occur, however, EPA has selected the best supported values based on current scientific literature for use in the primary estimate. The alternate calculations include:

- Presentation of an estimated confidence interval around the Primary estimate of benefits to characterize The standard error in the C-R and valuation studies used in developing benefit estimates for each endpoint;
- Valuing PM-related premature mortality based on a different C-R study;
- Value of avoided premature mortality incidences based on statistical life years;
- Consideration of reversals in chronic bronchitis treated as lowest severity cases;
- Value of visibility changes in all Class I areas;
- Value of visibility changes in Eastern U.S. residential areas;
- Value of visibility changes in Western U.S. residential areas;
- Value of reduced household soiling damage; and
- Avoided costs of reducing nitrogen loadings in east coast estuaries.

For instance, the study by Dockery, et al. estimates of the relationship between PM exposure and premature mortality is a plausible alternative to the Pope, et al. study used for the Primary estimate of benefits. The SAB has noted that ''the study had better monitoring with less measurement error than did most other studies'' (EPA–SAB–COUNCIL–ADV–99–012, 1999). The Dockery study had a more limited geographic scope (and a smaller study population) than the Pope, et al. study and the Pope study appears more likely to mitigate a key source of potential confounding. The Dockery study also covered a broader age category (25 and older compared to 30 and older in the Pope study) and followed the cohort for a longer period (15 years compared to 8 years in the Pope study). For these reasons, the Dockery study is considered to be a plausible alternative estimate of the avoided premature mortality incidences associated with the final Tier 2/gasoline sulfur rule. The alternative estimate for mortality can be substituted for the valuation component in our primary estimate of mortality benefits to observe how the net benefits of the program may be influenced by this assumption. Unfortunately, it is not possible to combine all of the assumptions used in the alternate calculations to arrive at different total benefit estimates because, it is highly unlikely that the selected combination of alternative values would all occur simultaneously. Therefore, it is better to consider each alternative calculation individually to assess the uncertainty in the estimate.

In addition to the estimate for the primary set of endpoints and alternative calculations of benefits, our RIA also presents an appendix with supplemental benefit estimates and sensitivity analyses of other key parameters in the benefit analysis that have greater uncertainty surrounding them due to limitations in the scientific literature. Supplemental estimates are presented for premature mortality associated with short-term exposures to PM and ozone, asthma attacks, occurrences of moderate or worse asthma symptoms, and an estimate of the avoided incidences of premature mortality in infants.

Even with our efforts to fully disclose the uncertainty in our estimate, this uncertainty presentation method does not provide a definitive or complete picture of the true range of monetized benefits estimates. This approach, as implemented in this BCA, does not reflect important uncertainties in earlier steps of the analysis, including estimation of compliance technologies and strategies, emissions reductions and costs associated with those technologies and strategies, and air quality and deposition changes achieved by those emissions reductions. Nor does this approach provide a full accounting of all potential benefits associated with the Tier 2/gasoline sulfur standards, due to data or methodological limitations. Therefore, the uncertainty range is only representative of those benefits that we were able to quantify and monetize.

f. What Were the Results of the Benefit-Cost Analysis?

The BCA for the Tier 2 program reflects a single year ''snapshot'' of the yearly benefits and costs expected to be realized once the standards have been fully implemented and non-compliant vehicles have all been retired. Near-term costs will be higher than long-run costs as vehicle manufacturers and oil companies invest in new capital equipment and develop and implement new technologies. In addition, near-term benefits will be lower than long-run benefits because it will take a number of years for Tier 2-compliant vehicles to fully displace older, more polluting vehicles. However, as described earlier, we have adjusted the cost estimates upward to compensate for some of this discrepancy in the timing of benefits and costs and to ensure that the long-term benefits and costs are calculated on a consistent basis. The resulting adjusted long-term cost value is given in Table IV.D.–5a. Because of the adjustment process, the cost estimates should not be interpreted as reflecting the actual costs expected to be incurred in the year 2030. Actual program costs can be found in Section IV.D.3.

TABLE IV.D.–5A.—ADJUSTED COST OF THE TIER 2/GASOLINE SULFUR RULE FOR COMPARISON TO BENEFITS

| Cost basis | Adjusted cost (billions of dollars) |
|---|---|
| Long term[a] ..... | 5.3 |

Notes:
[a] Note that this estimate of cost is only for purposes of comparing with our 2030 benefits estimate. See Figure IV.D.–1 for our portrayal of total annualized cost of the rule.

With respect to the benefits, several different measures of benefits can be useful to compare and contrast to the estimated compliance costs. These benefit measures include (a) the tons of emissions reductions achieved, (b) the reductions in incidences of adverse health and environmental effects, and (c) the estimated economic value of those reduced adverse effects. Calculating the cost per ton of pollutant reduced is particularly useful for comparing the cost-effectiveness of the new standards or programs against existing programs or alternative new programs achieving reductions in the same pollutant or combination of pollutants. The cost-effectiveness analysis presented earlier in this preamble provides such calculations on a per-vehicle basis. Considering the absolute numbers of avoided adverse health and environmental effects can also provide valuable insights into the nature of the health and environmental problem being addressed by the rule as well as the magnitude of the total public health and environmental gains potentially achieved by the rule. Finally, when considered along with other important economic dimensions —including environmental justice, small business financial effects, and other outcomes related to the distribution of benefits and costs among particular groups— the direct comparison of quantified economic benefits and economic costs can provide useful insights into the potential magnitude of the estimated net economic effect of the rule, keeping in mind the limited set of effects we are able to monetize.

Table IV.D.–6 presents the EPAs preferred approach to estimate the benefits of both the estimated reductions in adverse effect incidences and the estimated economic value of

those incidence reductions. Specifically, the table lists the avoided incidences of individual health and environmental effects, the pollutant associated with each of these endpoints, and the estimated economic value of those avoided incidences. For several effects, particularly environmental effects, direct calculation of economic value in response to air quality conditions is performed, eliminating the intermediate step of calculating incidences. As the table indicates, we estimate that the Tier 2 program will produce 2300 fewer cases of chronic bronchitis, and we also see significant improvements in minor restricted activity days (with an estimated 6,255,500 fewer cases). Our estimate also incorporates significant reductions in impacts on children's health, showing reductions of 7,900 cases of acute bronchitis, 87,200 fewer cases of lower respiratory symptoms, and 86,600 fewer cases of upper respiratory symptoms in asthmatic children.

Total monetized benefits, however, are driven primarily by the estimated 4300 fewer premature fatalities. The adoption of a value for the projected reduction in the risk of premature mortality is the subject of continuing discussion within the economic and public policy analysis community within and outside the Administration. In response to the sensitivity on this issue, we provide estimates reflecting two alternative approaches. The first approach—supported by some in the above community and preferred by EPA—uses a Value of a Statistical Life (VSL) approach developed for the Clean Air Act Section 812 benefit-cost studies. This VSL estimate of $5.9 million (1997$) was derived from a set of 26 studies identified by EPA using criteria established in Viscusi (1992), as those most appropriate for environmental policy analysis applications.

An alternative, age-adjusted approach is preferred by some others in the above community both within and outside the Administration. This approach was also developed for the Section 812 studies and addresses concerns with applying the VSL estimate—reflecting a valuation derived mostly from labor market studies involving healthy working-age manual laborers—to PM-related mortality risks that are primarily associated with older populations and those with impaired health status. This alternative approach leads to an estimate of the value of a statistical life year (VSLY), which is derived directly from the VSL estimate. It differs only in incorporating an explicit assumption about the number of life years saved and an implicit assumption that the valuation of each life year is not affected by age.[107] The mean VSLY is $360,000 (1997$); combining this number with a mean life expectancy of 14 years yields an age-adjusted VSL of $3.6 million (1997$).

Both approaches are imperfect, and raise difficult methodological issues which are discussed in depth in the recently published Section 812 Prospective Study, the draft EPA Economic Guidelines, and the peer-review commentaries prepared in support of each of these documents. For example, both methodologies embed assumptions (explicit or implicit) about which there is little or no definitive scientific guidance. In particular, both methods adopt the assumption that the risk versus dollars trade-offs revealed by available labor market studies are applicable to the risk versus dollar trade-offs in an air pollution context.

EPA currently prefers the VSL approach because, essentially, the method reflects the direct, application of what EPA considers to be the most reliable estimates for valuation of premature mortality available in the current economic literature. While there are several differences between the labor market studies EPA uses to derive a VSL estimate and the particulate matter air pollution context addressed here, those differences in the affected populations and the nature of the risks imply both upward and downward adjustments. For example, adjusting for age differences may imply the need to adjust the $5.9 million VSL downward as would adjusting for health differences, but the involuntary nature of air pollution-related risks and the lower level of risk-aversion of the manual laborers in the labor market studies may imply the need for upward adjustments. In the absence of a comprehensive and balanced set of adjustment factors, EPA believes it is reasonable to continue to use the $5.9 million value while acknowledging the significant limitations and uncertainties in the available literature. Furthermore, EPA prefers not to draw distinctions in the monetary value assigned to the lives saved even if they differ in age, health status, socioeconomic status, gender or other characteristic of the adult population.

[107] Specifically, the VSLY estimate is calculated by amortizing the $5.9 million mean VSL estimate over the 35 years of life expectancy associated with subjects in the labor market studies. The resulting estimate, using a 5 percent discount rate, is $360,000 per life-year saved in 1997 dollars. This annual average value of a life-year is then multiplied times the number of years of remaining life expectancy for the affected population (in the case of PM-related premature mortality, the average number of $ life-years saved is 14.

Those who favor the alternative, age-adjusted approach (i.e. the VSLY approach) emphasize that the value of a statistical life is not a single number relevant for all situations. Indeed, the VSL estimate of $5.9 million (1997 dollars) is itself the central tendency of a number of estimates of the VSL for some rather narrowly defined populations. When there are significant differences between the population affected by a particular health risk and the populations used in the labor market studies—as is the case here—they prefer to adjust the VSL estimate to reflect those differences. While acknowledging that the VSLY approach provides an admittedly crude adjustment (for age though not for other possible differences between the populations), they point out that it has the advantage of yielding an estimate that is not presumptively biased. Proponents of adjusting for age differences using the VSLY approach fully concur that enormous uncertainty remains on both sides of this estimate—upwards as well as downwards—and that the populations differ in ways other than age (and therefore life expectancy). But rather than waiting for all relevant questions to be answered, they prefer a process of refining estimates by incorporating new information and evidence as it becomes available.

In addition to the presentation of mortality valuation, this table also indicates with a ''B'' those additional health and environmental benefits which could not be expressed in quantitative incidence and/or economic value terms. A full listing of the benefit categories that could not be quantified or monetized in our estimate are provided in Table IV.D.–8. For instance, visibility is expected to improve in all areas of the country, with the largest improvements occurring in heavily populated residential areas (*e.g.,* 21% of the metropolitan areas show an improvement of 0.5 deciviews or more). However, due to limitations on sources to value these effects, we include a ''B'' in the primary estimate table for this category. Likewise, the Tier 2/gasoline sulfur rule will also provide progress for some estuaries to meet their goals for reducing nitrogen deposition (*e.g.,* nitrogen loadings for the Albemarle/Pamlico Sound are reduced by 27% of their reductions goal), however, this endpoint is also displayed with a ''B'' in the table. A full appreciation of the overall economic consequences of the Tier 2/gasoline sulfur standards requires consideration of all benefits and costs expected to result from the new standards, not just those benefits and

costs which could be expressed here in dollar terms.

In summary, the VSL approach—the approach EPA prefers—yields a monetized benefit estimate of $25.2 billion in 2030. The alternative, age-adjusted VSLY approach (presented in Table IV.D.7) yields monetary benefits of approximately $13.8 billion in 2030.

TABLE IV.D.–6.—EPA PREFERRED ESTIMATE OF THE ANNUAL QUANTIFIED AND MONETIZED BENEFITS ASSOCIATED WITH IMPROVED AIR QUALITY RESULTING FROM THE TIER 2/GASOLINE SULFUR RULE IN 2030

| Endpoint | Pollutant | Avoided incidence[c] (cases/year) | Monetary benefits[d] (millions 1997$) |
|---|---|---|---|
| Premature mortality[a, b] (adults, 30 and over) | PM[b] | 4,300 | $23,380 |
| Chronic asthma (adult males, 27 and over) | Ozone | 400 | 10 |
| Chronic bronchitis | PM | 2,300 | 730 |
| Hospital Admissions from Respiratory Causes | Ozone and PM | 2,200 | 20 |
| Hospital Admissions from Cardiovascular Causes | Ozone and PM | 800 | 10 |
| Emergency Room Visits for Asthma | Ozone and PM | 1,200 | <1 |
| Acute bronchitis (children, 8–12) | PM | 7,900 | <1 |
| Lower respiratory symptoms (LRS) (children, 7–14) | PM | 87,100 | <5 |
| Upper respiratory symptoms (URS) (asthmatic children, 9–11) | PM | 86,500 | <5 |
| Shortness of breath (African American asthmatics, 7–12) | PM | 17,400 | <1 |
| Work loss days (WLD) (adults, 18–65) | PM | 682,900 | 70 |
| Minor restricted activity days (MRAD)/Acute respiratory symptoms | Ozone and PM | 5,855,000 | 270 |
| Other health effects[c] | Ozone, PM, CO, HAPS | $U_1+U_2+U_3+U_4$ | $B_1+B_2+B_3+B_4$ |
| Decreased worker productivity | Ozone | | 140 |
| Recreational visibility (86 Class I Areas) | PM | | 370 |
| Residential visibility | PM | | $B_5$ |
| Household soiling damage | PM | | $B_6$ |
| Materials damage | PM | | $B_7$ |
| Nitrogen Deposition to Estuaries | Nitrogen | | $B_8$ |
| Agricultural crop damage (6 crops) | Ozone | | 220 |
| Commercial forest damage | Ozone | | $B_9$ |
| Other welfare effects[e] | Ozone, PM, CO, HAPS | | $B_{10}+B_{11}+B_{12}+B_{13}$ |
| Monetized Total[f, g] | | | $25,220+B |

Notes:

[a] Premature mortality associated with ozone is not separately included in this analysis. It is assumed that the Pope, et al. C–R function for premature mortality captures both PM mortality benefits and any mortality benefits associated with other air pollutants. Also note that the valuation assumes the 5 year distributed lag structure described earlier.

[b] PM reductions are due to reductions in $NO_X$ and $SO_2$ resulting from the Tier 2/Gasoline Sulfur rule.

[c] Incidences are rounded to the nearest 100.

[d] Dollar values are rounded to the nearest 10 million.

[e] The Ui are the incidences and the Bi are the values for the unquantified category i. A detailed listing of unquantified PM, ozone, CO, and HAPS related health and welfare effects is provided in Table IV.D.–8.

[f] B is equal to the sum of all unmonetized categories, i.e. $B_1+B_2+ * * * +B_{13}$.

[g] These estimates are based on the EPA preferred approach for valuing reductions in premature mortality, the VSL approach. This approach and an alternative, age-adjusted approach—the VSLY approach—are discussed more fully in section f above.

TABLE IV.D.–7.—TIER 2/GASOLINE SULFUR RULE: 2030 MONETIZED BENEFITS ESTIMATES FOR ALTERNATIVE PREMATURE MORTALITY VALUATION APPROACHES

[Millions of 1997 dollars]

| Premature mortality valuation approach | PM mortality benefits | Total benefits |
|---|---|---|
| Value of statistical life (VSL) ($5.9 million per life saved)[a] | $23,380 | $25,220 + B |
| Value of statistical life-years (VSLY) ($360,000 per life-year saved, which implies $3.6 million per life saved, based on the mean of 14 life years saved)[a,b]. | 11,900 | 13,790 + B |

Notes:

[a] Premature mortality estimates are determined assuming a 5 year distributed lag, which applies 25 percent of the incidence in year 1 and 2, and then 16.7 percent of the incidence in years 3, 4, and 5.

[b] The VSLY estimate is calculated by amortizing the $5.9 million mean VSL estimate over the 35 years of life expectancy associated with subjects in the labor market studies used to obtain the VSL estimate. The resulting estimate, using a 5 percent discount rate, is $360,000 per life-year saved in 1997 dollars. This approach is discussed more fully in section f above.

TABLE IV.D.–8.—ADDITIONAL, NON-MONETIZED BENEFITS OF THE TIER 2/GASOLINE SULFUR STANDARDS

| Pollutant | Unquantified effects |
|---|---|
| Ozone Health | Premature mortality.[a] |
| | Increased airway responsiveness to stimuli. |
| | Inflammation in the lung |
| | Chronic respiratory damage |
| | Premature aging of the lungs |
| | Acute inflammation and respiratory cell damage |
| | Increased susceptibility to respiratory infection |
| | Non-asthma respiratory emergency room visits |
| | Reductions in screening of UV–b radiation |
| Ozone Welfare | Decreased yields for commercial forests |
| | Decreased yields for fruits and vegetables |
| | Decreased yields for non-commercial crops |
| | Damage to urban ornamental plants |
| | Impacts on recreational demand from damaged forest aesthetics |
| | Damage to ecosystem functions |
| PM Health | Infant mortality |
| | Low birth weight |
| | Changes in pulmonary function |
| | Chronic respiratory diseases other than chronic bronchitis |
| | Morphological changes |
| | Altered host defense mechanisms |
| Nitrogen and Sulfate Deposition Welfare | Impacts of acidic sulfate and nitrate deposition on commercial forests |
| | Impacts of acidic deposition to commercial freshwater fishing |
| | Impacts of acidic deposition to recreation in terrestrial ecosystems |
| | Reduced existence values for currently healthy ecosystems |
| | Impacts of nitrogen deposition on commercial fishing, agriculture, and forests |
| | Impacts of nitrogen deposition on recreation in estuarine ecosystems |
| CO Health | Premature mortality [a] |
| | Behavioral effects |
| | Hospital admissions—respiratory, cardiovascular, and other |
| | Other cardiovascular effects |
| | Developmental effects |
| | Decreased time to onset of angina |
| | Non-asthma respiratory ER visits |
| HAPS Health | Cancer (benzene, 1,3-butadiene, formaldehyde, acetaldehyde) |
| | Anemia (benzene) |
| | Disruption of production of blood components (benzene) |
| | Reduction in the number of blood platelets (benzene) |
| | Excessive bone marrow formation (benzene) |
| | Depression of lymphocyte counts (benzene) |
| | Reproductive and developmental effects (1,3-butadiene) |
| | Irritation of eyes and mucus membranes (formaldehyde) |
| | Respiratory irritation (formaldehyde) |
| | Asthma attacks in asthmatics (formaldehyde) |
| | Asthma-like symptoms in non-asthmatics (formaldehyde) |
| | Irritation of the eyes, skin, and respiratory tract (acetaldehyde) |
| HAPS Welfare | Direct toxic effects to animals |
| | Bioaccumlation in the food chain |

[a] Premature mortality associated with ozone and carbon monoxide is not separately included in this analysis. It is assumed that the Pope, et al. C–R function for premature mortality captures both PM mortality benefits and any mortality benefits associated with other air pollutants.

In addition, in analyzing the present rule, we recognized that the benefits estimates were subject to a number of uncertainties with other parameters. In Table IV D–9, we present alternative calculations representing the effect of different assumptions on individual elements of the benefits analysis and on the total benefits estimate. For example, this table can be used to answer questions like ''What would total benefits be if we were to use the Dockery, et al. C–R function to estimate avoided premature mortality?'' This table also displays some assumptions that can be made to value some of the categories that are indicated with a ''B'' in the primary estimate. Overall, this table provides alternative calculations both for valuation issues (e.g., the correct value for a statistical life saved) and for physical effects issues (e.g., how reversals in chronic illnesses are treated). We show how the alternative assumption being valued would change the resulting total primary estimate, and the percentage change from the primary estimate associated with the alternative calculation. This table is not meant to be comprehensive. Rather, it reflects some of the key issues identified by EPA or commenters as likely to have a significant impact on total benefits.

TABLE IV.D.–9.—ALTERNATIVE BENEFITS CALCULATIONS FOR THE TIER 2 GASOLINE SULFUR RULE IN 2030

| Alternative calculation | Impact on primary benefit estimate (million 1997$) |
|---|---|
| 5th percentile of ''measurement'' uncertainty distribution | −$20,300 (−81%) |
| 95th percentile of ''measurement'' uncertainty distribution | +33,900 (+134%) |
| PM-related premature mortality based on Dockery et al. | +30,200 (+120%) |
| Value of avoided premature mortality incidences based on statistical life years. | −11,500 (−46%) |
| Reversals in chronic bronchitis treated as lowest severity cases | +280 (+1%) |
| Value of visibility changes in all class I areas | +180 (+1%) |
| Value of visibility changes in eastern U.S. residential areas | +420 (+2%) |
| Value of visibility changes in western U.S. residential areas | +130 (+1%) |
| Household soiling damage | +110 (+1%) |
| Avoided costs of reducing nitrogen loadings in east coast estuaries | +160 (+1%) |

The estimated adjusted cost of implementing the final Tier 2 program is $5.3 billion (1997$), while the estimate of monetized benefits using EPA's preferred approach for monetizing reductions in PM-related premature mortality—the VSL approach—are $25.2 billion (1997$). Monetized net benefits using EPA's preferred method for valuing avoided incidences of premature mortality are approximately $19.9 billion (1997$). Using the alternative, age-adjusted approach—the VSLY approach—total monetized benefits are projected to be around $13.8 billion (1997$). Monetized net benefits using this approach are approximately $8.5 billion (1997$). Therefore, implementation of the Tier 2 program will provide society with a net gain in social welfare. Tables VI.D.–10a and IV.D.–10b summarize the costs, benefits, and net benefits for the two alternative valuation approaches.

TABLE IV.D.–10A.—2030 ANNUAL MONETIZED COSTS, BENEFITS, AND NET BENEFITS FOR THE FINAL TIER 2/GASOLINE SULFUR RULE: EPA PREFERRED ESTIMATE USING THE VALUE OF STATISTICAL LIVES SAVED APPROACH TO VALUE REDUCTIONS IN PREMATURE MORTALITY [a]

| | Billion 1997 (dollars) |
|---|---|
| Adjusted compliance costs | $5.3 |
| Monetized PM-related benefits [b]. | 24.7+$B_{PM}$ |
| Monetized Ozone-related benefits [b]. | 0.5+$B_{Ozone}$ |
| Monetized net benefits [c,d] | 19.9+B |

Notes:

[a] For this section , all costs and benefits are rounded to the nearest 100 million. Thus, figures presented in this chapter may not exactly equal benefit and cost numbers presented in earlier sections of the chapter.

[b] Not all possible benefits or disbenefits are quantified and monetized in this analysis. Potential benefit categories that have not been quantified and monetized are listed in Table IV.D.–8. Unmonetized PM-and ozone-related benefits are indicated by $B_{PM}$. And $B_{Ozone}$, respectively.

[c] B is equal to the sum of all unmonetized benefits, including those associated with PM, ozone, CO, and HAPS.

[d] These estimates are based on the EPA preferred approach for valuing reductions in premature morality, the VSL approach. This approach and an alternative, age-adjusted approach—the VSLY approach—are discussed more fully in section f above.

Table IV.D.–10b.—2030 Annual Monetized Costs, Benefits, and Net Benefits for the Final Tier 2/ Gasoline Sulfur Rule: Alternative Estimates Using the Value of Statistical Life Years Saved Approach to Value Reductions in Premature Mortality [a]

| | Billion 1997 (dollars) |
|---|---|
| Adjusted compliance costs | $5.3 |
| Monetized PM-related benefits [b]. | $13.3+$B^{PM}$ |
| Monetized Ozone-related benefits [b]. | $0.5+$B^{Ozone}$ |
| Monetized net benefits [c, d] | $8.5+B |

Notes:

[a] For this section, all costs and benefits are rounded to the nearest 100 million. Thus, figures presented in this chapter may not exactly equal benefit and cost numbers presented in earlier sections of the chapter.

[b] Not all possible benefits or disbenefits are quantified and monetized in this analysis. Potential benefit categories that have not been quantified and monetized are listed in Table IV.D.–8. Unmonetized PM-and ozone-related benefits are indicated by $B_{PM}$. And $B_{Ozone}$, respectively.

[c] B is equal to the sum of all unmonetized benefits, including those associated with PM, ozone, CO, and HAPS.

[d] The VSLY estimate is calculated by amortizing the $5.9 million mean VSL estimate over the 35 years of life expectancy associated with subjects in the labor market studies used to obtain the VSL estimate. The resulting estimate, using a 5 percent discount rate, is $360,000 per life-year saved in 1997 dollars. This approach is discussed more fully in section f above.

## V. Other Vehicle-Related Provisions

The section describes several additional provisions of today's final rule that were not previously discussed in this preamble.[108]

### *A. Final Tier 2 CO, HCHO and PM Standards*

Tables IV.B.–4 and –5 in Section IV.B.4.a. above presented the Tier 2 standards for carbon monoxide (CO), formaldehyde (HCHO), and particulate matter (PM). The following paragraphs discuss our selection of these specific standards.

#### 1. Carbon Monoxide (CO) Standards

Beyond aligning carbon monoxide (CO) standards for all LDVs and LDTs, and harmonizing with California vehicle technology, reduction in CO emissions is not a primary goal of the Tier 2 program. However, we note that more than three-fourths of CO emissions in 1997 came from mobile sources and that there are currently 20 officially designated CO nonattainment areas in the U.S. These areas include 47 counties with a combined population of 34 million. In addition, there are 23 officially designated maintenance areas also with a combined population of 34 million. Further, CO is a deadly gas that leads to accidental poisoning fatalities and injuries. Also, CO may play a role in ozone formation by increasing the reactivities of VOCs in the atmosphere.

Although there remain many areas of nonattainment and maintenance for the

[108] Generally the provisions of this section V that apply to HLDTs also apply to MDPVs. See section IV.B.4.g for a thorough discussion of the main program elements and how they impact MDPVs.

CO NAAQS, and those areas include large populations, the broad trends indicate that ambient levels are being reduced and the amount of further reductions needed to meet the CO NAAQS will not be as substantial as for the ozone NAAQS. The reductions in this program will help ensure that emissions and ambient levels of CO continue to decline, which will contribute to the attainment and maintenance of the CO NAAQS in current nonattainment areas. These standards will also ensure that CO levels do not increase in the future, which could exacerbate any CO attainment and maintenance concerns. Our analysis estimating of the tons of CO reduction due to the Tier 2/Gasoline Sulfur program is found in Chapter III of the RIA.

Thus the CO standards we are finalizing for all Tier 2 LDVs and LDTs are essentially the same as those from the NLEV program for LDV/LLDTs. These standards will harmonize with CalLEV II CO standards except at California's SULEV level (EPA Bin 2). This lone divergence will not pose additional burden to manufacturers because the federal Tier 2 CO standards for these vehicles will be less stringent than California's. Bins applicable during the interim programs will include CO values from the NLEV program for LDV/LLDTs and from the Cal LEV I program for HLDTs.[109] In our NPRM, we proposed tighter CO standards than California for certain higher bins. Based upon comment, we are aligning our CO standards with those of California to help ensure that carry over between the two programs can occur.[110] This alignment is consistent with our goal of bringing all LDVs and all categories of LDTs under common standards that allow for technology to be harmonized to the extent possible with California. Despite these minor changes, we still expect the standards in today's rule to lead to CO reductions.

2. Formaldehyde (HCHO) Standards

Similar to our approach to CO standards, we are aligning all Tier 2 LDVs and LDTs under the formaldehyde standards from the NLEV program or CalLEV II program. HLDTs, which are not subject to the NLEV program, will become subject to federal formaldehyde standards for the first time under the provisions of this rulemaking.

Formaldehyde is a hazardous air pollutant and EPA is required to regulate motor vehicle formaldehyde under section 202(l) of the Act. The standards finalized today are primarily of concern for methanol and methane (compressed natural gas or CNG)-fueled vehicles, because formaldehyde is chemically similar to methanol and methane and is likely to be produced when methanol or methane are not completely burned in the engine. HLDTs are not included under the NLEV program and will therefore not face formaldehyde standards as LDVs and LLDTs will in 2001 (1999 in the northeast states). We believe it is appropriate to bring HLDTs under HCHO standards in this rulemaking. Applying formaldehyde standards to HLDTs will be consistent with our goals of aligning standards for all LDVs and LDTs regardless of fuel type and harmonizing technologically with California standards wherever possible and reasonable and the burden will be minimal. Consequently, we are including formaldehyde standards for HLDTs under the Tier 2 program as well as under the interim programs.

3. Use of NMHC Data To Show Compliance with NMOG Standards; Alternate Compliance With Formaldehyde Standards

In response to comments, we are finalizing a provision to allow manufacturers to demonstrate compliance with the interim and Tier 2 NMOG standards using NMHC data (non-methane hydrocarbons) for gasoline and diesel vehicles. For these vehicles, NMOG and NMHC emissions are very similar and testing for NMHC is considerably simpler and cheaper than measuring NMOG. Data available to us show that NMHC emissions at levels expected from interim and Tier 2 LDVs and LDTs can be adjusted to represent NMOG emissions by a small multiplicative factor. We are finalizing to accept NMHC test results to demonstrate compliance with the NMOG standards, but are requiring that the NMHC results be multiplied by 1.04. We will permit the use of other adjustment factors based upon comparative testing.

A drawback to NMHC testing is that NMHC testing does not yield formaldehyde results as NMOG testing does. We noted in the NPRM that HCHO is actually a component of NMOG and that we expect that all vehicles able to meet the proposed Tier 2 or interim standards (including methanol and CNG-fueled vehicles) will readily comply with the HCHO standards. In fact, based upon a review of certification data, we believe that gasoline and diesel vehicles will be far below the HCHO standards, perhaps by as much as 90%. (See the Response to Comments document for details)

To reduce testing costs while harmonizing with the CalLEV II standards we are finalizing a provision that will permit manufacturers of gasoline and diesel vehicles to demonstrate compliance with the formaldehyde standards based on engineering judgement. This provision will apply only to diesel and gasoline fueled vehicles and will require manufacturers to make a demonstration in their certification application that vehicles having similar engine and vehicle size and engine and aftertreatment technologies have been shown to exhibit compliance with the applicable formaldehyde standard for their full useful life. This demonstration will be similar to that currently required for gasoline vehicles to demonstrate compliance with the particulate matter standard (see 40 CFR 86.1829(b)(1)), and should be readily available from California vehicles where NMOG testing is required and formaldehyde data is routinely generated.

4. Particulate Matter (PM) Standards

We proposed to adopt tighter PM standards. For Tier 2 vehicles, we proposed PM bin values such that PM would consistently be 0.01 g/mi or less. To provide manufacturers with flexibility, we proposed a 0.02 g/mi PM standard for vehicles that certify to the highest Tier 2 bins. As we have indicated elsewhere in this preamble, we anticipate that low sulfur diesel fuel will be available by 2007 to enable diesel vehicles to utilize advanced diesel technologies and meet these PM standards.

For the interim standards we proposed a PM standard of 0.06 g/mi for the highest bins. We received considerable comment from manufacturers and others about the PM standards we proposed. In the final rule, we are raising the PM standard to 0.08 g/mi for bin 10. For HLDTs, manufacturers would likely have had to use advanced diesel technologies to attain our proposed interim standards and these technologies require low sulfur diesel fuel. Since we do not expect that fuel to be widely available until the 2006–2007 timeframe, we are raising the PM standard so that diesels are not barred from the interim program by a fuel situation beyond their manufacturers' control.

PM standards are primarily a concern for diesel-cycle vehicles, but they also apply to gasoline and other otto-cycle

[109] We recognize that the standards we are finalizing for interim LDT4s are more stringent than for equivalent vehicles (MDV3s) under Cal LEV I. Still our interim HLDT standards harmonize with Cal LEV I standards applicable to MDV2s.

[110] Ibid.

vehicles. We will continue to permit otto-cycle vehicles to certify to PM standards based on representative test data from similar technology vehicles.

*B. Useful Life*

The ''useful life'' of a vehicle is the period of time, in terms of years and miles, during which a manufacturer is formally responsible for the vehicle's emissions performance. For LDVs and LDTs, there have historically been both ''full useful life'' values, approximating the average life of the vehicle on the road, and ''intermediate useful life'' values, representing about half of the vehicle's life. We proposed and are finalizing several changes to the current useful life provisions for LDVs and LDTs.

1. Mandatory 120,000 Mile Useful Life

We are finalizing our proposal to equalize full useful life values for all Tier 2 LDVs and LDTs at 120,000 miles. Congress, in directing EPA to perform the Tier 2 study, also directed EPA to consider changing the useful lives of LDVs and LDTs. Manufacturers have made numerous advances in quality, materials and engineering that have led to longer actual vehicle lives and data show that each year of a vehicle's life, people are driving more miles. Current data indicate that passenger cars are driven approximately 120,000 miles in their first ten years of life. Trucks are driven further. Current regulatory useful lives are 10 years/100,000 miles for LDV/LLDTs and 11 years/120,000 miles for HLDTs. We project, based on our Tier 2 model, that approximately 13 percent of light-duty $NO_X$ and 11 percent of light-duty VOCs is produced between 100,000 and 120,000 miles. Given the trend toward longer actual vehicle lives and increases in annual mileage, we believe that it is reasonable to extend the regulatory useful life requirements California, in its LEV II program, has adopted full useful life standards for all LDVs and LDTs of 10 years or 120,000 miles, whichever occurs first. The time period for federal LDV/LLDTs will be 10 years, but will remain at 11 years for HLDTs consistent with the Clean Air Act. Intermediate useful life values, where applicable, will remain at 5 years or 50,000 miles, whichever occurs first. Where manufacturers elect to certify Tier 2 vehicles for 150,000 miles to gain additional $NO_X$ credits, as discussed below, the useful life of those vehicles will be 15 years and 150,000 miles. We are not harmonizing with California on the mandatory useful life for evaporative emissions of 15 years and 150,000 miles, but rather this useful life will be mandatory for evaporative emissions only when a manufacturer elects optional 150,000 mile exhaust emission certification.

We proposed to extend the useful life of interim LDV/LLDTs to 10 years/120,000 miles beginning in 2004. Based upon extensive comment, we are not finalizing that provision and the useful lives of interim LDV/LLDTs will remain unchanged to help facilitate their carryover from the NLEV program into the interim program. Commenters provided persuasive argument that the proposed provision, along with others, would impose a large workload burden on manufacturers because they would be unable to carry over certification data from 2003 and would have to recertify virtually all of their LDV/LLDTs in 2004. Manufacturers stressed that this would be an especially unproductive use of their resources because these vehicles would all have to be recertified again as they were phased into the Tier 2 standards between 2005 and 2007. This change in the final rule will have only minimal impact on the benefits of our program.

2. 150,000 Mile Useful Life Certification Option

We are adopting as proposed a provision to provide additional $NO_X$ credit in the fleet average calculation for vehicles certified to a useful life of 150,000 miles. A manufacturer certifying a test group to a 150,000 mile useful life will incorporate those vehicles into its corporate $NO_X$ average as if they were certified to a full useful life standard 0.85 times the applicable 120,000 mile $NO_X$ standard. To use this option, the manufacturer will have to agree to (1) certify the engine family to the applicable 120,000 mile exhaust and evaporative standards at 150,000 miles for all pollutants; and (2) increase the mileage on the single extra-high mileage in-use test vehicle from a minimum of 90,000 miles to a minimum of 105,000 miles.

Today's vehicles are lasting longer and being driven farther than those built in past years and we believe it is reasonable to encourage the development of more durable emission control systems. Consequently we believe it is appropriate to provide incentives to manufacturers to certify their vehicles to extended useful lives beyond 120,000 miles. This is why we proposed and are today finalizing additional $NO_X$ credits for Tier 2 vehicles certified to a useful life of 150,000 miles.

In the final rule we are adding an option that, for a test group certified to a 150,000 mile useful life, the manufacturer may choose between the additional credits or a waiver of intermediate life standards. Commenters suggested that some vehicles would be discriminated against by our intermediate life standards, because they might have flat deterioration curves, and could meet our full life standards, but not the lower intermediate life standards. We are reluctant to give up our intermediate life standards, because we believe they provide an additional measure of certainty that vehicles will meet standards. Nonetheless, we believe that certification to a longer useful life is an important goal and that manufacturers who do so will likely use technologies that have very flat deterioration curves. This option provides manufacturers with the flexibility to certify vehicles without having to comply with intermediate life standards. In exchange they must comply with full life standards for considerably longer mileage.

**C. Supplemental Federal Test Procedure (SFTP) Standards [111]**

1. Background

Supplemental Federal Test Procedure (SFTP) standards require manufacturers to control emissions from vehicles when operated at high rates of speed and acceleration (the US06 test cycle) and when operated under high ambient temperatures with air conditioning loads (the SC03 test cycle). The existing light duty SFTP requirements begin a three year phase-in in model year 2000 for Tier 1 LDV/LLDTs.[112] For HLDTs, SFTP requirements begin a similar phase-in in 2002. Intermediate and full useful life SFTP standards exist for all categories of Tier 1 vehicles except that SFTP standards do not apply to diesel fueled LDT2s and HLDTs. Table V.A.–1 shows the full useful life federal SFTP requirements applicable to Tier 1 vehicles.

[111] SFTP requirements do not apply to MDPVs. We plan to address the applicability of SFTP standards and test procedures to MDPVs in a future rulemaking.

[112] For vehicles included in the NLEV program, this phase-in becomes a four year phase-in beginning in 2001.

TABLE V.A.–1.—FULL USEFUL LIFE FEDERAL SFTP STANDARDS APPLICABLE TO TIER 1 VEHICLES

| Vehicle category | NMHC + $NO_X$ (weighted g/mi) [a] | CO (g/mi) [b] | | |
|---|---|---|---|---|
| | | US06 | SC03 | Weighted |
| LDV/LDT1 (gasoline) | 0.91 | 11.1 | 3.7 | 4.2 |
| LDV/LDT1 (diesel) | 2.07 | 11.1 | — | 4.2 |
| LDT2 | 1.37 | 14.6 | 5.6 | 5.5 |
| LDT3 | 1.44 | 16.9 | 6.4 | 6.4 |
| LDT4 | 2.09 | 19.3 | 7.3 | 7.3 |

Notes:
[a] Weighting for NMHC+$NO_X$ and optional weighting for CO is 0.35x(FTP)+0.28x(US06)+0.37x(SC03).
[b] CO standards are stand alone for US06 and SC03 with option for a weighted standard.

2. SFTP Under the NLEV Program

The NLEV program includes SFTP requirements for LDVs, LDT1s and LDT2s. These requirements impose the Tier 1 intermediate and full useful life SFTP standards on Tier 1 and TLEV vehicles, but impose only 4000 mile standards adopted from California LEV I program on LEVs and ULEVs.[113]

NLEV SFTP standards for LEVs and ULEVs are shown in Table V.A.–2. Table V.A.–2 also includes the California LEV I SFTP standards for LDT3s and 4s. The standards in that table do not provide for a weighted standard for NMHC+ $NO_X$ or for CO, but rather employ separate sets of standards for the US06 and SC03 tests. Also, while the NLEV and CAL LEV I SFTP standards apply to gasoline and diesel vehicles, they do not include a standard for diesel particulates (PM).

TABLE V.A.–2.—SFTP STANDARDS FOR LEVS AND ULEVS IN THE NLEV/CAL LEV I PROGRAM

[4000 Mile Standards]

| | US06 | | SC03 | |
|---|---|---|---|---|
| | NMHC+$NO_X$ (g/mi) | CO (g/mi) | NMHC+$NO_X$ (g/mi) | CO (g/mi) |
| LDV/LDT1 | 0.14 | 8.0 | 0.20 | 2.7 |
| LDT2 | 0.25 | 10.5 | 0.27 | 3.5 |
| LDT 3 (Calif MDV 2) | 0.4 | 10.5 | 0.31 | 3.5 |
| LDT 4 (Calif MDV 3) | 0.6 | 11.8 | 0.44 | 4.0 |

3. SFTP Standards for Interim and Tier 2 LDVs and LDTs: As Proposed

Since no significant numbers of vehicles certified to SFTP standards will enter the fleet until 2001, manufacturers raised concerns during the development of the NPRM regarding significant changes to the SFTP program before its implementation. We stated in the NPRM that it was reasonable not to increase SFTP stringency beyond NLEV/CalLEV I levels for the Tier 2 program, but we proposed to include SFTP standards adjusted for intermediate and full useful life deterioration where there are currently only 4000 mile standards.

Full useful life standards for Tier 2 vehicles are consistent with our mandate under the Clean Air Act. We derived the full and intermediate useful life standards in the NPRM by applying deterioration allowances from our draft MOBILE 6 model to the existing 4000 mile standards for LDVs and LLDTs. For HLDTs we applied similarly derived deterioration allowances to California's LEV I SFTP standards for MDV2s and MDV3s, which are the corresponding categories to LDT3s and LDT4s in the California LEV I program. The full and intermediate useful life SFTP standards we proposed would have applied to all Tier 2 vehicles including Tier 2 LDT3s and LDT4s. Further, since our interim standards are derived from NLEV and Cal LEV I standards, we proposed that our full life SFTP standards would apply to all interim LDV/LLDTs beginning in 2004.[114]

4. Final SFTP Standards for Interim and Tier 2 LDVs and LDTs

Based upon extensive comment from manufacturers, we are persuaded that our proposed intermediate and full life SFTP standards need more review and should possibly be reexamined in a separate rulemaking. Manufacturers were quite concerned that the technique we used to obtain the intermediate and full life SFTP standards led to standards that were overly stringent. They argued that they have little experience with SFTP compliant vehicles given the current infancy of the program and they do not know whether SFTP emissions can be reasonably be expected to deteriorate like FTP emissions. Consequently, in today's notice, we are finalizing a program that will adopt the existing NLEV/Cal LEV I 4000 mile standards and utilize adjusted full life standards from the Tier 1 program, instead of values derived by applying the draft MOBILE 6 model.

These standards will apply to all Tier 2 vehicles and to all interim LDV/LLDTs. We proposed and are finalizing that interim HLDTs meet Tier 1 SFTP standards which do not finish their phase-in until the 2004 model year.

With regard to intermediate and full life SFTP standards, the preamble to the final rule implementing the SFTP program for the Tier 1 SFTP emission standards (61 FR 54856) provided a formula for computing SFTP standards to apply under more stringent future

[113] This disparity arose because neither EPA nor CARB had full useful life SFTP standards for LEVs or ULEVs when the NLEV program was adopted. Since a major requirement of the NLEV program was harmony with California standards, EPA adopted the California SFTP standards in place for the NLEV time frame (2001 and later).

[114] Except that, we proposed to permit TLEV vehicles (EPA interim Bin 10 in Table IV.B.–4), which are not subject to new SFTP standards under NLEV, to continue to meet Tier 1 SFTP standards, and to permit HLDTs under the interim programs to continue to meet Tier 1 SFTP standards that do not fully phase in until the 2004 model year.

FTP standards. In the Tier 1 program, SFTP standards represent a weighted average of FTP, US06 and SC03 standards. The three components are weighted by factors of 0.35, 0.28, and 0.37 respectively. The formula simply adjusts the Tier 1 *SFTP* weighted average standards downward to reflect the decrease in the component *FTP* standards. The weighting factors remain the same and the US06 and SC03 standards remain the same, but the SFTP standard becomes tighter because the FTP component becomes smaller. These standards will take effect for all LDV/LLDTs beginning in 2004 and will phase in with the Tier 2 standards for HLDTs in 2008 and 2009. The formula is as follows:

New SFTP Standard = Old SFTP Standard − [0.35 × (Tier 1 FTP standard − New FTP Standard)]

In today's final rule, we will employ this formula to compute full useful life SFTP standards for all Tier 2 vehicles and for interim LDV/LLDTs. Because we are also adopting the California 4000 mile SFTP standards for these vehicles, we are not adopting intermediate life SFTP standards, so as to avoid the burden of three sets of SFTP standards.

LDT3 and LDT4 SFTP standards do not currently apply to diesels. Further, the standards applicable to Tier 1 diesel LDVs and LDT1s are less stringent than gasoline standards and do not apply to the SC03 cycle. There are no SFTP standards under Tier 1 for diesel LDT2s. In this final rule, we are applying the same approach we are using with other standards in this document to the Tier 2 and interim SFTP standards. Consequently, we are finalizing that Tier 2 vehicles and interim LDV/LLDTs with diesel or gasoline engines must comply with the same NMHC+$NO_X$ and CO SFTP limits. Thus, in computing Tier 2 SFTP full life standards for diesel LDVs and LDT1s from Tier 1 values, the values for diesels must be determined from the standards applicable to gasoline vehicles of the same category.

Because we lack certainty as to whether diesel vehicles can comply with the 4,000 mile SFTP standards for gasoline vehicles that we are adopting from the NLEV and Cal LEV I programs, we are providing an option that diesel LDV/LLDTs may comply with intermediate life SFTP standards instead.[115] Manufacturers must calculate intermediate life standards using the same approach described for full life standards, but must substitute appropriate intermediate life values in the equation above. This provision will only apply through model year 2006, and thus will likely only impact interim non-Tier 2 vehicles, given the very small market share that diesels occupy and given our expectation that they will be the last LDV/LLDTs phased into Tier 2 standards. We noted above that interim non-Tier 2 HLDTs will have the option of meeting Tier 1 SFTP standards. Thus diesel HLDTs will not have to comply with the 4,000 mile standards in the interim years and the option we are providing for LDV/LLDTs is not needed for HLDTs.

5. Adding a PM Standard to the SFTP Standards

We requested comment on the appropriate SFTP PM standards for diesel vehicles. We suggested it would be appropriate to establish a margin above the applicable FTP PM standard to serve as the SFTP standard. EPA has implemented such margins in recent consent decrees, under which heavy-duty engine manufacturers have agreed not to exceed emission levels 1.25 times the applicable exhaust standards (including PM standards) when engines are operated over a wide range of operating conditions. We received comments in favor of an SFTP PM standard of 1.25 times the FTP standard and we received many comments from manufacturers against setting any SFTP PM standard until more data become available.

We believe it is reasonable to include an SFTP standard for PM. However, we are uncertain as to the technical appropriateness of the 1.25 value for passenger vehicles. Further, the 1.25 value would lead to an SFTP standard for PM that would not match the stringency of the other SFTP standards we are finalizing. Consequently, we are finalizing a procedure for computing diesel PM standards that is nearly identical to the procedure for computing weighted SFTP standards for NMHC+$NO_X$ and CO described above. We believe standards computed in this way will be readily feasible for both gasoline and diesel vehicles.

To compute the SFTP PM standards, manufacturers will use the same formula described above for NMHC+$NO_X$ and CO. Where that formula calls for the Tier 1 *SFTP* standard to be inserted, manufacturers must insert the Tier 1 *FTP* standard. This is because, under Tier 1 standards, there is no SFTP standard for PM. However, the Tier 1 weighted SFTP standards are equal to the Tier 1 FTP standards (or the sum of the Tier 1 FTP standards in the case of NMHC+$NO_X$). Using the Tier 1 FTP PM standards in this way will lead to a Tier 2 SFTP PM standard whose stringency is appropriately matched to the other pollutants.

For HLDTs , we proposed and are finalizing that Tier 1 SFTP standards would apply through the interim program. because of the late start of SFTP phase-in for Tier 1 vehicles. We see no reason to impose SFTP PM standards on these vehicles during the interim period when their manufacturers will be under pressure to develop diesel vehicles to comply with the Tier 2 standards. Also, if we were to impose an FTP PM standard on the interim vehicles, it would likely be matched to the interim phase in for HLDTs and manufacturers would simply defer compliance for diesels until the last phase-in year (2007). The manufacturers would then have to recertify to the Tier 2 standards by 2009. Given the relatively small number of diesel vehicles, we believe the most reasonable approach is to defer SFTP PM standards for HLDTs until the Tier 2 phase-in. Consequently, we are finalizing that Tier 2 HLDTs will have to comply with an SFTP PM standard computed as described above.

For LDV/LLDTs we are also including the SFTP PM standard for the Tier 2 vehicles. There are only a few diesel LDV/LLDTs currently produced and no large increase in their numbers is expected. We see little environmental benefit in imposing the SFTP PM standard on interim vehicles.

6. Future Efforts Relevant to SFTP Standards

We are very concerned about ''off cycle'' emissions, *i.e.* those emissions that occur under vehicle operational modes that are not captured in the FTP. SFTP standards help to address our concerns and we believe that they should apply to all vehicles, regardless of fuel. Our final rule essentially promulgates Tier 1 SFTP standards that are reduced to represent the reduction in the FTP component standards. As we indicate under our discussion of SFTP for medium duty passenger vehicles (see section IV.B.4.g) we expect to conduct a rulemaking to establish appropriate ''Tier 2'' SFTP standards for all Tier 2 vehicles. In that rule, we expect to reexamine the US06 and SC03 test cycles and their applicability to vehicles using different fuels and technologies,

[115] The 4,000 mile standards under NLEV are phased-in in such a way that diesels would not likely be subject to them until the 2004 model year, given their very small market share. Today's rulemaking effectively supercedes the NLEV program beginning with the 2004 model year. In other words, while NLEV contains 4,000 mile SFTP standards for diesels, they are not likely to ever impact diesel LDV/LLDTs.

including whether these cycles are the most appropriate ones for diesels. We will also examine whether it is necessary to have different sets of standards for different vehicle sizes or whether it is possible to establish one set of standards for all vehicles.

*D. LDT Test Weight*

Historically, HLDTs (LDT3s and LDT4s) have been emission tested at their adjusted loaded vehicle weight (ALVW), while LDVs, LDT1s, and LDT2s have been tested at their loaded vehicle weight (LVW). ALVW is equivalent to the curb weight of the truck plus half its maximum payload, while LVW is equivalent to the curb weight of the truck plus a driver and one adult passenger (300 pounds). As we are equalizing standards and useful lives across LDVs and all categories of LDTs, we believe it is appropriate to test all the vehicles under the same conditions. Therefore, we are finalizing as proposed to test HLDTs at their loaded vehicle weight. We believe this is appropriate because the standards we are imposing on HLDTs under Tier 2 are considerably more stringent than the Tier 1 standards. Further, one of our reasons for bringing HLDTs under the same standards as passenger cars is that these trucks include many vans and sport utility vehicles that are often used as passenger cars with just one or two passengers. Lastly, we note that testing HLDTs at LVW is consistent with the way they have been tested for fuel economy purposes for many years. Consequently, we believe it is appropriate to test them at LVW.

The NPRM proposed that all HLDTs would certify using LVW beginning in the 2004 model year. Based upon comments, the final rule will allow the certification of HLDTs based on ALVW until those vehicles are phased into the Tier 2 standards in 2008 and 2009 at which time they must be tested at LVW. This will enhance carryover of California vehicles to the Federal interim program in cases where the California vehicles meet our interim standards.

*E. Test Fuels*

As discussed elsewhere in this preamble, the NLEV program was adopted virtually in its entirety from California's program. Because California's standards were developed around the use of California Phase II reformulated gasoline (RFG) as the exhaust emission test fuel, we adopted California Phase II test fuel as the exhaust emission test fuel for gasoline-fueled vehicles in the federal NLEV program, although we recognized at the time that vehicles outside of California would be unlikely to operate on that fuel in use. In the NPRM we proposed interim programs that were derived from NLEV (for LDV/LLDTs) and the CAL LEVI program (for HLDTs), and we proposed to accept certification test results generated on California fuel, but indicated that we might test or require in-use testing on federal fuel.

Based upon comment we are finalizing provisions to permit, for interim vehicles, that if a test group has been certified to the exhaust emission standards using California fuel and is being carried into the interim program from NLEV or is being carried across from California LEV I certification, then we will not test or require in-use exhaust testing on federal fuel. This change is intended to help address recertification workload concerns raised by manufacturers. For new certification not carried across from California LEV I or carried over from NLEV, and for any Tier 2 vehicles, we will accept exhaust certification test results based on California fuel for 50 state vehicles only, but we will reserve the right to perform or require certification confirmatory testing and in-use testing on federal test fuel.

We recognize that manufacturers may want to perform calibration changes on vehicles carried across from the California LEV I program or carried over from NLEV program. These calibration changes will likely be aimed at certifying the test group to the lowest possible $NO_X$ value. We believe that these calibration changes would be appropriate, provided they can still be covered by the existing worst case durability data vehicle. We will perform or require certification confirmatory testing and in-use emission testing on these vehicles using California fuel.

Because differences exist between the California and federal evaporative emission testing procedures, we proposed to continue to require the use of federal certification fuel as the test fuel in evaporative emission testing. Under current programs, where California and federal evaporative emission standards are essentially the same, California accepts evaporative results generated on the federal procedure (using federal test fuel), because available data indicates the federal procedure to be a ''worst case'' procedure. The evaporative standards California has adopted for their LEV II program are more stringent than those we are finalizing in this document. In the NPRM, we requested comment and supporting emission test data on whether vehicles certified to CalLEV II evaporative standards using California fuels will necessarily comply with the federal Tier 2 evaporative standards, including ORVR standards, when tested with federal test fuel. While we got comments from manufacturers advocating that we accept the results of California evaporative testing to demonstrate compliance with the federal evaporative standards, we received no supporting data. Still, given the fairly large difference between California and federal evaporative standards, it seems reasonable that a vehicle meeting the California standards under California fuels and test conditions might also meet federal standards under federal fuels and conditions. We believe it may be possible for manufacturers to establish a relationship between the two sets of standards, fuels and conditions that would enable us to grant federal certification based upon data showing conformity with the California standards under California fuels and conditions. Consequently, we are including a provision in the certification regulations to enable manufacturers to obtain federal evaporative certification based upon California results, if they obtain advance approval from EPA. EPA will review test data from manufacturers to establish whether it is appropriate to accept California data to demonstrate compliance with federal standards.

*F. Changes to Evaporative Certification Procedures To Address Impacts of Alcohol Fuels*

Current certification procedures, including regulations under the new CAP2000 program,[116] allow manufacturers to develop their own durability process for calculating deterioration factors for evaporative emissions. The regulations (§ 86.1824–01) permit manufacturers to develop service accumulation (aging) methods based on ''good engineering judgement''. The manufacturer's durability process must be designed to predict the expected evaporative emission deterioration of in-use vehicles over their full useful lives. We proposed and are finalizing requirements that these aging methods include the use of alcohol fuels to address concerns that alcohol fuels increase the permeability and thus the evaporative losses from hoses and other evaporative components. Based upon comment, we are also finalizing an option to the requirement that the manufacturer use the alcohol fuel. Under this option, the manufacturer may demonstrate to EPA using good engineering judgement

[116] The Compliance Assurance Program, (64 FR 23906) takes effect in the 2000 model year.

acceptable to EPA that its durability process for calculating evaporative emission deterioration factors accurately predicts deterioration under prolonged exposure to alcohol fuels.

We have reviewed data indicating that the permeability, and therefore the evaporative losses, of hoses and other evaporative components can be greatly increased by exposure to fuels containing alcohols.[117] Alcohols have been shown to promote the passage of hydrocarbons through a variety of different materials commonly used in evaporative emission systems. Data from component and fuel line suppliers indicate that alcohols cause many elastomeric materials to swell, which opens up pathways for hydrocarbon permeation and also can lead to distortion and tearing of components like ''O'' ring seals. Ethers such as MTBE and ETBE have a much smaller effect. Alcohol-resistant materials such as fluoroelastomers are available and are currently used by manufacturers to varying extents.

Alcohols do not impact evaporative components and hoses immediately, but rather it may take as long as one year of exposure to alcohol fuels for permeation rates to stabilize. The end result is higher permeation and increased in-use evaporative emissions.[118]

Today, roughly 10% of fuel sold in the U.S. contains alcohol, mainly in the form of ethanol, and such fuels are often offered in ozone nonattainment areas. We believe it is appropriate to ensure that evaporative certification processes expose evaporative components to alcohols and do so long enough to stabilize their permeability. Therefore, we are finalizing our proposal to the evaporative certification requirements to require manufacturers to develop their deterioration factors using a fuel that contains the highest legal quantity of ethanol available in the U.S.

To implement this change, we are modifying the Durability Demonstration Procedures for Evaporative Emissions found at § 86.1824–01. The amendments will require manufacturers not using an approved option, to age their systems using a fuel containing the maximum concentration of alcohols allowed by EPA in the fuel on which the vehicle is intended to operate, *i.e.,* a ''worst case'' test fuel. (Under current requirements, this fuel would be about 10% ethanol, by volume.) We are also modifying the Durability Demonstration Procedures to require manufacturers to ensure that their aging procedures are of sufficient duration to stabilize the permeability of the fuel and evaporative system materials. These modifications will take place as vehicles are phased into the evaporative emission standards contained in this final rule.

We requested comment on alternative ways by which manufacturers could document or demonstrate that their components are made of materials whose permeability is not significantly affected by alcohols. We received no comments responsive to this request, but we did receive comments that EPA should not change the CAP2000 provision allowing manufacturers to develop their own durability process for calculating evaporative emission deterioration factors ''using good engineering judgement''. We do not wish to foreclose the possibility that an alternative method may exist or may arise in the future. Consequently, in the final rule we will permit manufacturers to use an optional method based on good engineering judgement acceptable to EPA. As an example, one method would be for the manufacturer to show that it is exclusively using materials documented in the technical literature to have low permeability in the presence of alcohols.

*G. Other Test Procedure Issues*

California's LEV II program implements a number of minor changes to exhaust emissions test procedures. We have evaluated these changes and found that, for tailpipe emissions, the California test procedures fall within ranges and specifications permitted under the Federal Test Procedure.

With regard to hybrid electric vehicles (HEVs) and zero emission vehicles (ZEVs), we believe that these vehicles will be predominantly available in California, or that they will typically be first offered for sale in California, because of California's ZEV requirement, which promotes the sale of HEVs and ZEVs. Where manufacturers market HEVs or ZEVs outside of California, it is likely that they will market the same vehicles in California. Consequently, we are finalizing our proposal to incorporate by reference California's exhaust emission test procedures for HEVs and ZEVs.[119]

In the NLEV program, we provided a specific formula used by California that could be used to compute an HEV contribution factor to NMOG emissions. This formula took into consideration the range without engine operation of various types of HEVs and had the effect of reducing the NMOG emission standard for a given emission bin (for HEV vehicles only). This would have obvious beneficial effects on a manufacturer's calculation of its corporate NMOG average.

The technology of HEVs is under rapid change and we do not believe that we can design a formula now that will accurately predict the impact of HEVs on corporate average $NO_X$ emissions in the Tier 2 time frame. Consequently, we are finalizing the proposed provision by which manufacturers could propose HEV contribution factors for $NO_X$ to EPA. If approved, these factors can be used in the calculation of a manufacturer's fleet average NOx emissions and will provide a mechanism to credit an HEV for operating with no emissions over some portion of its life.

These factors will be based on good engineering judgement and will consider such vehicle parameters as vehicle weight, the portion of the time during the test procedure that the vehicle operates with zero emissions, the zero emission range of the vehicle, $NO_X$ emissions from fuel-fired heaters and any measurable $NO_X$ emissions from on-board electricity production and storage.

The final NLEV rule (*See* 62 FR pg 31219, June 6, 1997) incorporated by reference California's NMOG measurement procedure and adopts California's approach of using Reactivity Adjustment Factors (RAFs) to adjust vehicle emission test results to reflect differences in the impact on ozone formation between an alternative-fueled vehicle and a vehicle fueled with conventional gasoline. As has been discussed elsewhere in this preamble, the NLEV program is a special case in which California standards and provisions were adopted virtually in their entirety. In the preamble to the final NLEV rule (*See* 62 FR 31203), we expressed our reservations about the use of RAFs. We also addressed our reservations about the use of reactivity factors developed in California in a program that spans a range of climates and geographic locations across the United States in the final rule on reformulated gasoline (RFG) (see 59 FR 7220). We continue to be concerned about the validity of RAFs to predict ozone formation nationwide and asked the National Academy of Sciences to

[117] Numerous SAE papers examine the permeability of fuel and evaporative system materials as well as the influence of alcohols on permeability. See, for example SAE Paper #s 910104, 920163, 930992, 970307, 970309, 930992, and 981360, copies of which are in the docket for this rulemaking.

[118] *Ibid.*

[119] California Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Zero-Emission Vehicles, and 2001 and Subsequent Model Hybrid Electric Vehicles. In the Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes; adopted August 5, 1999.

look at the scientific evidence in support of the use of these factors nationwide. While we have recently received a report from NAS,[120] we have not yet developed a final position on how RAFs should be treated in federal regulations. We are finalizing as proposed not to permit the use of RAFs in the Tier 2 program.

The issue of RAFs is relevant primarily to alcohol and CNG-fueled vehicles. RAFs are not relevant at all if a manufacturer elects to use NMHC data to show compliance with the NMOG standards. While, in our final rule, alcohol and CNG vehicles will have to comply with NMOG standards beginning in 2004 and while we desire to harmonize with California when practical and reasonable, we will not permit the use of RAFs for Tier 2 vehicles and interim non-Tier 2 vehicles. We note that we are finalizing a provision from the NPRM that permits dual fueled and flexible fueled vehicles to elect an NMOG value from the next higher bin when they are tested on an alternative fuel. This provides flexibility in compliance with applicable NMOG standards for these vehicles. We do not believe that dedicated alcohol or CNG vehicles should have any problems complying with the NMOG standards we are finalizing and consequently the relief these vehicles might get when RAFs are employed is unnecessary.

In its LEV II program, California is also implementing a number of changes to evaporative emission test procedures.[121] Many of these changes address the evaporative emission testing of hybrid electric vehicles. We proposed not to adopt California's changes, because California uses different test temperatures and different test fuel in its evaporative emission testing of gasoline vehicles than we use in the federal program. The preamble to the final NLEV rule (*See* 62 FR 31227) explains that California and EPA are reviewing an industry proposal to streamline and reconcile the California and federal procedures. That work has not been completed. However, where California adopts procedures specific to HEVs and ZEVs, we are adopting those procedures, except that our testing will occur at lower temperatures, and use a fuel determined by EPA to be representative of federal usage (for HEVs only).

[120] Ozone-Forming Potential of Reformulated Gasoline, May 1999. National Academy of Sciences; National Academy Press. Available from the NAS web site: http://www.nap.edu.

[121] California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles. Adopted August 5, 1999.

*H. Small Volume Manufacturers*

Our final rule includes the following flexibilities intended to assist all manufacturers in complying with the stringent proposed standards without harm to the program's environmental goals as presented in the NPRM:

- A four year phase-in of the standards for LDV/LLDTs;
- A delayed phase-in for HLDTs;
- The freedom to select from specific bins of standards;
- A standard that can be met through averaging, banking and trading of $NO_X$ credits;
- Provisions for $NO_X$ credit deficit carryover; and,
- Provisions for alternative phase-in schedules.

These flexibilities apply to all manufacturers, regardless of size, and in general we believe they eliminate the need for more specific provisions for small volume manufacturers.[122] However, we proposed and are finalizing one additional flexibility for small volume manufacturers. Today's rule exempts small volume manufacturers from the 25%, 50% and 75% Tier 2 phase-in requirements applicable to the 2004, 2005 and 2006 LDV/LLDTs and the 50% phase-in requirement applicable to 2008 HLDTs. Instead, small volume manufacturers will simply comply with the appropriate Tier 2 100% requirement in the 2007 and 2009 model year. In the phase-in years, small volume manufacturers will simply comply with the appropriate interim standards for all of their vehicles, except that we will also exempt small volume manufacturers from the 25%, 50% and 75% phase-in requirements for the 0.20 g/mi corporate average $NO_X$ standard applicable to interim HLDTs in 2004–2006. Small volume HLDT manufacturers must simply comply with the interim standards, including the corporate average $NO_X$ standard, in 2007 for 100% of their vehicles. During model years 2004–2006, these same small volume manufacturers must comply with any of the applicable bins of standards for 100% of their HLDTs.[123, 124] Provisions to deal with the leadtime issue related to HLDTs and outlined in section IV.B. apply to small volume manufacturers. Therefore unless the small volume manufacturer wants to use the optional NMOG standards for interim LDT2s and LDT4s, it may optionally meet the Tier 1 standards for its 2004 model year HLDTs, provided it commences its model year for those vehicles before the fourth anniversary date of today's rulemaking.

As explained in the NPRM, we will continue to apply the federal small volume manufacturer provisions, which provide relief from emission data and durability showing and reduce the amount of information required to be submitted to obtain a certificate of conformity. In addition, the CAP2000 program contains reduced in-use testing requirements for small volume manufacturers.

Exempting small volume manufacturers from the Tier 2 and interim HLDT phase-in requirements eliminates a dilemma that phase-in percentages can pose to a manufacturer that has a limited product line, *i.e.,* how to address percentage phase-in requirements if the manufacturer makes vehicles in only one or two test groups. We have implemented similar provisions for small entities in other rulemakings. Approximately 15–20 manufacturers that currently certify vehicles, many of which are independent commercial importers (ICIs), will qualify. These manufacturers represent just a fraction of one percent of LDVs and LDTs produced. We do not believe that this provision will have any measurable impact on air quality.

1. Special Provisions for Independent Commercial Importers (ICIs)

We requested comment in the NPRM as to whether ICIs should be exempted from the interim and Tier 2 fleet average $NO_X$ standards. We explained that ICIs may not be able to predict their sales and control their fleet average emissions because they may be dependent upon vehicles brought to them by individuals attempting to import uncertified vehicles. We noted that the NLEV program is optional for ICIs and that ICIs are specifically prohibited, under existing regulations, from complying with the fleet average NMOG standard under the NLEV program. (*See* 40 CFR 85.1515(c)). Also, the existing regulations specifically bar ICIs from participating in any emission related averaging, banking or trading program. (*See* 40 CFR 85.1515(d)). We expressed our concern that if we do not amend this provision, ICIs would likely just pick the least stringent bin available to certify their vehicles. This would create an inequity for other manufacturers,

[122] We define small volume manufacturers to be those with total U.S. sales of less than 15,000 highway units per year. Independent commercial importers (ICIs) with sales under 15,000 per year are included under this term.

[123] For a graphical illustration of the phase-ins through time, see Table IV.B.–2.

[124] 2005–2006 for vehicles where the small volume manufacturer commences its 2004 model year for all its 2004 vehicles before the fourth anniversary date of the signature of this rule.

especially other small volume manufacturers that must comply with the fleet average $NO_X$ standards.

Since we do not believe it is wise to finalize a provision that could lead to an inequity like this, and since averaging may not be workable for ICIs, we are finalizing that ICIs must comply with the standards from the bin that contains the relevant fleet average $NO_X$ standard, *e.g.,* in model years 2007 and later an ICI would have to use bin 5 or below for all of its LDV/LLDTs. However, if an ICI is able to purchase credits or to certify to bins below the one containing the fleet average $NO_X$ standard, we will permit the ICI to bank credits for future use. Where an ICI desires to certify to bins above the fleet average standard, we will permit them to do so if they have adequate and appropriate credits. Where an ICI desires to certify to bins above the fleet average standard and does not have adequate or appropriate credits to offset the vehicles, we will permit the manufacturer to obtain a certificate for vehicles using those bins, but will condition the certificate such that the manufacturer can only produce vehicles if it first obtains credits from other manufacturers or from other vehicles certified to lower bins during that model year.

We do not believe that ICIs can predict or estimate their sales of various vehicles well enough to participate in a program that will allow them leeway to produce some vehicles to higher bins now, knowing that they will sell vehicles from lower bins later. We also do not believe that we can reasonably assume that an ICI that certifies and produces vehicles one year, will certify or even be in business the next, consequently, we are also not permitting ICIs to utilize the deficit carryforward provisions of the rule.

Essentially, ICIs will be allowed the major benefits of the averaging, banking and trading program, but will be constrained from getting into a situation where they can ever produce vehicles to higher bins that they can not cover with credits at the time they produce the vehicles.

2. Hardship Provision for Small Volume Manufacturers

The panel convened under the Small Business Regulatory Enforcement Fairness Act recommended that we seek comment on the inclusion of a hardship provision. We requested comment on whether we should include such a provision in the NPRM. Based upon comment, we are including a limited hardship provision in the final rule that will be applicable to small volume manufacturers.

Small volume manufacturers include companies that independently import motor vehicles (Independent Commercial Importers or ICIs), companies that modify vehicles to operate on alternative fuels, companies that produce specialty vehicles by modifying vehicles produced by others, and companies that produce small quantities of their own vehicles, but rely on major manufacturers for engines and other vital emission related components. In these businesses, predicting sales is difficult and it is often necessary to rely on others for technology.

This provision will provide limited relief in the case where a small volume manufacturer is unable to comply with the phase-in dates or average $NO_X$ standard. The manufacturer will need to provide evidence that, despite its best efforts, it cannot meet implementation dates or required $NO_X$ averages.

Appeals for hardship relief must be made in writing, must be submitted before the earliest date of noncompliance, must include evidence that the noncompliance will occur despite the manufacturer's best efforts to comply and must include evidence that severe economic hardship will be faced by the company if the relief is not granted. Hardship relief will only be granted for the first year after a new standard is finally implemented. For small volume manufacturers, which are already exempted from the phase-in schedules for the interim and Tier 2 programs, this means that relief would be available for the final phase-in year for the LDV/LLDT Tier 2 phase-in (2007), for the final phase-in year for the interim HLDT phase-in (2007), and the final phase-in year for the Tier 2 HLDT phase-in (2009). Relief will also be available for manufacturers that did not opt into NLEV and must meet our interim standards for all their LDV/LLDTs in 2004, and relief will be available for HLDTs and MDPVs which must be brought under our interim program in the 2004 model year.

We will work with the applicant to ensure that all other remedies available under this rule, e.g., use of banked or purchased credits, are exhausted before granting additional relief, and will limit the period of relief to one year. Note that in our discussion of the credit deficit carryforward provision in section IV.B.4.d.vi, we indicate that we are not permitting small volume manufacturers to carry deficits forward until they have demonstrated compliance with the $NO_X$ averaging provisions for one year. This is to prevent small volume manufacturers, that have already received additional time due to the waiver of the phase-in requirements, from gaining even more time to finally comply through the credit deficit carryforward provisions.

To avoid this provision creating a self-implementing problem, by which the very existence of the hardship provision prompts small volume manufacturers to delay development, acquisition and application of new technology, we want to make clear that we expect this provision to be rarely used. Our final rule contains numerous flexibilities for all manufacturers and it waives the phase-in steps for small volume manufacturers, which effectively provides them more time. We expect small manufacturers, to prepare for the applicable implementation dates in today's rule.

*I. Compliance Monitoring and Enforcement*

1. Application of EPA's Compliance Assurance Program, CAP2000

The CAP2000 program (64 FR 23905, May 14, 1999) streamlines and simplifies the procedures for certification of new vehicles and will also require manufacturers to test in-use vehicles to monitor compliance with emission standards. The CAP2000 program was developed jointly with the State of California and involved considerable input and support from manufacturers. As the name implies, it can be implemented as early as the 2000 model year.

We are finalizing our proposal that the Tier 2 and the interim requirements will be implemented subject to the requirements of the CAP2000 program. Certain CAP2000 requirements are being slightly modified to reflect changes to useful lives, standard structure and other aspects of the Tier 2 program, but we proposed no major changes to fundamental principles of the CAP2000 program, and we are not adding any major changes with today's final rule.

Although we proposed changes to useful lives, we did not propose to amend the 50,000 mile minimum mileage used in manufacturer in-use verification testing or in-use confirmatory testing under the CAP2000 program at this time. The CAP2000 in-use program is not yet implemented and we believe it is appropriate to allow manufacturers to gain experience with procuring and testing vehicles at the 50,000 mile level before making significant changes. However, where one vehicle from each in-use test group would have a minimum mileage of 75,000 miles under the CAP2000 program, we proposed and are finalizing, consistent with California, to

change that figure to 90,000 miles for Tier 2 vehicles.

We may, in our own in-use program, procure and test vehicles at mileages higher than 50,000 and pursue remedial actions (e.g., recalls) based on that data. We may also use that data as the basis to initiate a rulemaking to make changes in the CAP2000 in-use requirements, if the data indicate significant non-conformity at higher mileages.

We are finalizing certification test fuel specifications consistent with our final fuel sulfur requirements. Given the phase-in for low sulfur fuel we are finalizing in this rulemaking, we recognize that 2004 to 2007 vehicles (and vehicles certified in earlier model years to bank early $NO_X$ credits) may be exposed to higher sulfur levels early in their lives. Because of this sulfur exposure, these vehicles could experience problems with OBD indicator light illuminations.

Consistent with our approach under the NLEV program, we will consider requests from manufacturers to permit OBD systems that function properly on low sulfur fuel, but exhibit sulfur-induced passes when operated on higher sulfur fuel. For OBD systems that exhibit sulfur-induced indicator light illumination, we will consider requests to modify such vehicles on a case-by-case basis.

2. Compliance Monitoring

We plan no new compliance monitoring activities or programs for Tier 2 vehicles. These vehicles will be subject to the certification and manufacturer in-use testing provisions of the CAP2000 rule. Also, we expect to continue our own in-use testing program for exhaust and evaporative emissions. We will pursue remedial actions when substantial numbers of properly maintained and used vehicles fail any standard in either in-use testing program.

Consistent with our approach under NLEV we will consider requests, prior to manufacturer or EPA in-use testing to permit preconditioning procedures designed solely to remove the effects of high sulfur gasoline on vehicles produced through the 2007 model year.

We retain the right to conduct Selective Enforcement Auditing of new vehicles at manufacturer's facilities. In recent years, we have discontinued SEA testing of new LDVs and LDTs, because compliance rates were routinely at 100%. We recognize that the need for SEA testing may be reduced by the low mileage in-use testing requirements of the CAP2000 program. However, we expect to re-examine the need for SEA testing as standards tighten under the NLEV, interim, and Tier 2 programs.

We have established a data base to record and track manufacturers' compliance with NLEV requirements including the corporate average NMOG standards. We expect to monitor manufacturers' compliance with the Tier 2 and interim corporate average $NO_X$ standards in a similar fashion and also to monitor manufacturers' phase-in percentages for Tier 2 vehicles.

3. Relaxed In-Use Standards for Vehicles Produced During the Phase-in Period

The Tier 2 standards will be challenging for manufacturers to achieve, and some vehicles will pose more of a challenge than others. Not only will manufacturers be responsible for assuring that vehicles can meet the standards at the time of certification, they will also have to ensure that the vehicles comply when self-tested in-use under the provisions of the CAP2000 program, and when tested by EPA under its in-use (''Recall'') test program.

With any new technology, or even with new calibrations of existing technology, there are risks of in-use compliance problems that may not appear in the certification process. In-use compliance concerns may discourage manufacturers from applying new technologies or new calibrations. Thus, we proposed and are finalizing, relaxed in-use standards for those bins most likely to require the greatest applications of effort, to provide assurance to the manufacturers that they will not face recall if they exceed standards by a specified amount.

For the first two years after a test group meeting a new standard is introduced, that test group will be subject to more lenient in-use standards. These ''in-use standards'' will apply only to bin 5 and below, only for the pollutants indicated, and only for the first two model years that a test group is certified under that bin. The in-use standards will not be applicable to any test group first certified to a new standard after 2007 for LDV/LLDTs or after 2009 for HLDTs.

The temporary in-use standards are shown in Table V.A.–3 below.

TABLE V.A.–3.—IN-USE COMPLIANCE STANDARDS (G/MI)

[Certification standards shown for reference purposes]

| Bin | Durability period (miles) | $NO_X$ In-use | $NO_X$ certification | NMOG in-use | NMOG certification |
|---|---|---|---|---|---|
| 5 .. | 50,000 | 0.05 | | n/a | 0.075 |
| 5 .. | 120,000 | 0.10 | 0.07 | n/a | 0.090 |
| 4 .. | 120,000 | 0.06 | 0.04 | n/a | 0.070 |
| 3 .. | 120,000 | 0.05 | 0.03 | 0.09 | 0.055 |
| 2 .. | 120,000 | 0.03 | 0.02 | 0.02 | 0.010 |

Because we are concerned that diesel vehicles may require low sulfur fuel to comply with our interim requirements and that such fuel may not be widely available until the 2006–2007 timeframe, we are providing in-use standards specifically for diesel vehicles certified to bin 10 standards. These standards will be determined by multiplying the applicable $NO_X$ and PM certification standards by factors of 1.2 and 1.35, respectively. These multipliers can be used only for years during which bin 10 is viable, only for diesels and only for the pollutants indicated.

We believe manufacturers should and will strive to meet certification standards for the full useful lives of the vehicles, but we recognize that the existence of such in-use standards poses some risk that a manufacturer might aim for the in-use standard in its design efforts rather than the certification standard, and thus market less durable designs. We do not believe that risk to be significant. We believe that such risks are more than balanced by the gains that can result from earlier application of new technology or new calibration techniques that might occur in a scenario where in-use liability is slightly reduced. Further, we believe that the in-use standards will be of short enough duration that any risks are minimal.

4. Enforcement of the Tier 2 and Interim Corporate Average $NO_X$ Standards

We are finalizing, as proposed, that manufacturers can either report that they meet the relevant corporate average $NO_X$ standard in their annual reports to the Agency or they can show via the use of $NO_X$ credits that they have offset any exceedance of the corporate average $NO_X$ standard. Manufacturers will also have to report their $NO_X$ credit balances or deficits.

The averaging, banking and trading program will be enforced through the certificate of conformity that the manufacturer must obtain in order to introduce any regulated vehicles into commerce. The certificate for each test group will require all vehicles to meet the applicable Tier 2 emission standards from the applicable bin of the Tier 2 program, and will be conditioned upon the manufacturer meeting the corporate average $NO_X$ standard within the required time frame. If a manufacturer fails to meet this condition, the vehicles causing the corporate average $NO_X$ exceedance will be considered to be not covered by the certificate of conformity for that engine family. A manufacturer will be subject to penalties on an individual vehicle basis for sale of vehicles not covered by a certificate. These provisions will also apply to the interim corporate average standards.

As outlined in detail in the preamble to the final NLEV rule, EPA will review the manufacturer's sales to designate the vehicles that caused the exceedance of the corporate average $NO_X$ standard. We will designate as nonconforming those vehicles in those test groups with the highest certification emission values first, continuing until a number of vehicles equal to the calculated number of noncomplying vehicles as determined above is reached. In a test group where only a portion of vehicles are deemed nonconforming, we will determine the actual nonconforming vehicles by counting backwards from the last vehicle produced in that test group. Manufacturers will be liable for penalties for each vehicle sold that is not covered by a certificate.

During phase in years, the certificates will also require manufacturers to meet the applicable phase-in requirements. Compliance with the phase-in requirements will be enforced in the same manner as for the corporate average $NO_X$ standard. For the optional phase-in requirement for HLDTs for model year 2004, manufacturers must declare in their application for certification whether they intend to comply with the interim requirements for all of their HLDTs and initiate phase-in to the interim corporate average $NO_X$ standard in 2004 and receive the benefits of that phase-in (less stringent NMOG standards for certain LDT2s and LDT4s). Compliance with this phase-in requirement and the fleet average $NO_X$ standard will be enforced just like compliance with any other average $NO_X$ standard and phase-in requirement of today's program.

We will also condition certificates to enforce the requirements that manufacturers not sell $NO_X$ credits that they have not generated. A manufacturer that transfers $NO_X$ credits it does not have will create an equivalent number of debits that it must offset by the reporting deadline for the same model year. Failure to cover these debits with $NO_X$ credits by the reporting deadline will be a violation of the conditions under which EPA issued the certificate of conformity, and nonconforming vehicles will not be covered by the certificate. EPA will identify the nonconforming vehicles in the same manner described above.

In the case of a trade that results in a negative credit balance that a manufacturer could not cover by the reporting deadline for the model year in which the trade occurred, we proposed, and are finalizing, to hold both the buyer and the seller liable. This is consistent with other mobile source rules, except for the NLEV rule as discussed below. We believe that holding both parties liable will induce the buyer to exercise diligence in assuring that the seller has or will be able to generate appropriate credits and will help to ensure that inappropriate trades do not occur.

In the NLEV program we implemented a system in which only the seller of credits would be liable. In the preamble to the final NLEV rule (*See* 62 FR 31216), we explained that a multiple liability approach would be unnecessary in the context of the NLEV program given that the main benefit to a multiparty liability approach would be to ''protect against a situation where one party sells invalid credits and then goes bankrupt, leaving no one liable for either penalties or compensation for the environmental harm.'' Our preamble stated further that EPA would not necessarily take the same approach for ''other differently situated trading programs.''

The NLEV program was implemented to be a relatively short duration program, during which time we could expect relative stability in the industry. Also, given that NLEV is a voluntary program of lower than mandated standards, we did not expect that the smallest manufacturers would opt in. These are the companies whose stability is most in jeopardy in a dynamic and very competitive worldwide business.

We currently believe that the Tier 2 program and its framework will remain for many years. We note that the program is not scheduled for complete phase-in for almost nine years after the publication of today's rule. All manufacturers, large and small, will ultimately have to meet the Tier 2 standards. We cannot predict that in the Tier 2 timeframe there will not be companies that leave the market or are divided between other companies in mergers and acquisitions. Thus we believe it is prudent to implement a program to provide inducements to the seller to assure the validity of any credits that it purchases or contracts for.

*J. Addressing Environmentally Beneficial Technologies Not Recognized by Test Procedures*

Compliance with the current and proposed EPA motor vehicle emission standards is based on the emission performance of a vehicle over EPA's prescribed test procedure. While this test procedure addresses many of the aspects of a vehicle's impact on air quality, it does not address all such impacts. EPA is aware of two developing technologies which have potential to improve ozone-related air quality, but that would not do so over the current EPA test procedure.

The first example is a device that removes ozone from the air as the vehicle is driven. A major producer of automotive catalysts, Englehard, has developed a catalytic coating for vehicle radiators (called PremAir) that converts ambient ozone to oxygen. ARB has been working with Englehard for some time to develop a procedure which would grant PremAir and other direct ozone reducing technologies a NMOG credit under its LEV I and LEV II programs. ARB issued on December 20, 1999 a Manufacturers Advisory Circular outlining procedures for establishing such a NMOG credit.

Englehard submitted substantial comments to the Tier 2 NPRM, including ozone modeling results for five cities (Los Angeles, Houston, Atlanta, New York City, and Chicago). This ozone modeling compared the ozone reductions from reduced exhaust VOC and $NO_X$ emissions to that from using PremAir. As a result of this modeling, Englehard requested that EPA grant a typical PremAir system a NMOG or $NO_X$ emission credit of 0.015 g/mi. This credit would be adjusted based the exact design and performance of the system and vehicle being certified.

The second example is an insulated catalyst. The insulation retains heat for extended periods of time, increasing the catalyst temperature when the engine is started and reducing the time required for the catalyst to reach an operational temperature. This technology can reduce cold start emissions for engine off times (called soaks) of 24 hours or less. The vast majority of engine soaks in-use are less than 24 hours. However, EPA's test procedure only tests emissions at two fairly extreme soak times: 10 minutes and 12–36 hours. The 10 minute soak is so short that even an uninsulated catalyst is warm enough to quickly begin working upon restart. The 36 hour soak is beyond the practical limit of cost-effective insulating techniques. As a result of the Tier 2 NPRM, EPA received a number of inquiries from potential manufacturers of insulated catalysts, requesting further information about emission credits, test procedures and certification requirements.

EPA believes that both of these technologies, as well as other potential technologies, will reduce regulated emissions and/or ambient ozone levels, as long as they operate as designed in-use. EPA will work with the developers of such technologies to establish regulatory procedures to determine whether it is appropriate to grant emission credit for particular technologies. This process will involve the opportunity for public notice and comment.

With regard to Englehard's PremAir technology, EPA specifically requested comments on ARB's proposed approach to determining an NMOG credit and received no adverse comment on granting this type of technology a VOC emission credit. Thus, EPA is promulgating today procedures very similar to ARB's for certifying such technologies and determining the appropriate VOC emission credit. The only difference between EPA's and ARB's procedures involve assessing the effectiveness of VOC emission reductions and ozone reducing devices in areas outside of California.

In summary, the ozone reductions associated by both the ozone reducing technology, such as PremAir, and exhaust VOC emission reductions will be estimated using urban airshed modeling, using up-to-date chemical and meteorological simulation techniques. Four local areas shall be modeled: New York City, Chicago, Atlanta and Houston. The ozone episodes to be modeled shall be those selected by the states for use in their most recent ozone SIPs. Emissions shall be projected for calendar year 2007. Baseline emissions will include the benefits of the Tier 2 and sulfur standards being promulgated today, as well as all other emission controls assumed in EPA's ozone modeling of the benefits of the Tier 2 and sulfur standards described above. The ozone benefit of VOC emission reductions will be modeled by assuming that Tier 2 LDVs and LDTs meet a 0.055 g/mi exhaust NMOG standard instead of a 0.09 g/mi NMOG standard. The relationship between changes in exhaust NMOG emission standards and in-use VOC emissions shall be determined by modeling LDV+LDT emission in 2030 assuming that all Tier 2 vehicles meet a 0.055 g/mi exhaust NMOG standard instead of a 0.09 g/mi NMOG standard. All emission modeling shall utilize the updated Tier 2 emission model developed by EPA as part of this rule, or MOBILE6, once it is available. The measure of ozone to be used in calculating VOC emission equivalency will be the peak one-hour ozone level anywhere in the modeled region on the day when ozone is at its highest. The NMOG credit will be determined by averaging the NMOG credit determined in each of the four local areas.

Simulation of the benefits of the direct ozone reducing device will assume that ozone levels immediately around the roadway will be 40% less than that existing in the broader grid. The performance aspects of the direct ozone reducing device can be simulated by any reasonable values, since the appropriate NMOG credit for any specific application of this technology will be scaled to the performance of the specific application.

The manufacturer wishing to obtain an NMOG credit for use of this technology must demonstrate its effectiveness to EPA as part of the certification process. This will involve demonstrating the air flow through the device, its ozone destruction capability under conditions analogous to those photochemically modeled, the durability of this capability over the useful life of the vehicle and the method to be used to diagnose its effectiveness in-use.

Regarding the insulated catalyst technology, less information has been received to date on its performance. We are not promulgating regulations for determining the appropriate credit for such technology today. However, when we were developing our SFTP standards, EPA developed a methodology to assess the emission benefits of insulated catalysts or other techniques which reduced emissions after the vehicle soaks between 10 minutes and 12–36 hours. Thus, EPA expects to use this methodology as a starting point in assessing the benefit of insulated catalysts and will continue to assess development of options in this area. Because an insulated catalyst operates essentially like a typical catalyst, we do not expect that the test procedures for its certification would differ from those applicable to typical Tier 2 vehicles. The primary difference will be an assessment of its effectiveness relative to conventional catalyst technology over a range of vehicle soak times between 10 minutes and 36 hours. Then, it will be necessary to estimate the average effectiveness in-use relative to conventional technology using the in-use frequency of vehicle soak times.

*K. Adverse Effects of System Leaks*

The standards set forth in today's final rule are very stringent. They require extremely tight control of air/fuel ratios and also tight control of the inputs to the catalyst(s). A sealed exhaust system is crucial to the proper operation and emission control of current vehicles and even more so to the expected Tier 2 vehicles. Because a given point in the exhaust system intermittently sees negative pressure, exhaust leaks can permit air to enter the exhaust system. Even tiny amounts of air entering this way can have large impacts on the output of the oxygen sensor. If the output of the oxygen sensor is affected, then the exhaust output of the cylinders will be affected. Consequently, an exhaust leak can lead to both excess $NO_X$ and NMOG emissions. Air entering through exhaust leaks can also impact the $NO_X$ conversion efficiency of catalysts.

In the preamble to the NPRM, we expressed our concerns about the impact of small exhaust leaks and requested comment on design or on-board monitoring measures we could finalize to ensure that exhaust systems were manufactured and installed in such a way that leaks are prevented. We also asked for comment on whether we should implement a provision that would require manufacturers to demonstrate through engineering analysis or design that the possibilities of exhaust leaks have been addressed.

Manufacturers indicated in their comments that they believe addressing exhaust leaks is unnecessary. We believe otherwise. Data we have seen suggest that very large emission effects can occur due to very small leaks. Consequently, we are finalizing a provision in today's rule that will require, as part of the certification process, for manufacturers to indicate that they have conducted an engineering analysis of the exhaust system. This

analysis must cover the entire exhaust system, including air injection systems, from the engine block exhaust manifold gasket surface to a point beyond the last catalyst or oxygen sensor. This analysis must determine whether the exhaust system has been designed to facilitate leak-free assembly, installation, repair and operation for the full useful life of the vehicle.

With regard to the concept of ''facilitating leak-free repair'', we intend that manufacturers should ascertain that the exhaust system can be removed in a dealership or repair shop for repairs to the exhaust system itself or to other components of the vehicle and be able to be reassembled and reinstalled in a leak free manner using commonly available tools. It is not our intention that the concept of ''facilitating leak-free repair'' apply to situations of gross misuse, tampering or serious vehicle damage.

*L. The Future Development of Advanced Technology and the Role of Fuels*

The EPA staff will continue to assess the emission control potential of vehicles powered by technologies such as lean-burn and/or fuel-efficient technologies, including diesel engines equipped with advanced aftertreatment systems, gasoline direct injection engines, and other technologies that show promise for significant advances in fuel economy and meeting the Tier 2 standards in the post-2004 time frame. In this assessment, we will maintain a ''systems'' perspective, considering the progress of advanced vehicle technologies in the context of the role that sulfur in fuels plays in enabling the introduction of these advanced technologies or maximizing their effectiveness.

*M. Miscellaneous Provisions*

We are finalizing, as proposed, to continue existing emission standards from Tier 1 and NLEV that apply to cold CO, certification short testing, refueling, running loss, and highway $NO_X$. We are discontinuing, as proposed, the 50 degree (F) standards and testing included in the NLEV program. The 50 degree standards are a part of the NLEV program because that national program adopted California requirements virtually in their entirety. These standards had not previously been part of any federal program. We are also discontinuing idle CO standards for LDTs, based upon comment. These standards are adequately covered by the certification short test standards.

## VI. Gasoline Sulfur Program Compliance and Enforcement Provisions

*A. Overview*

The gasoline sulfur program promulgated today has many of the same features as the reformulated gasoline/conventional gasoline (RFG/CG) program, including refinery averaging, refinery and downstream level caps, and the generation and use of credits. These features raise similar compliance issues for both programs. As a result, the enforcement mechanisms of the gasoline sulfur rule generally track those of the RFG/CG rule, where applicable. Because low sulfur gasoline is necessary to avoid significant impairment of Tier 2 motor vehicle emissions technology, we believe measures are needed to assure that gasoline meets the standards promulgated in today's rule at the time the gasoline leaves the refinery gate or is imported, and to assure that the quality of the gasoline is maintained downstream of the refinery.

More specifically, today's rule includes the following provisions:

- Refiners and importers must test each batch of gasoline produced or imported for sulfur content and maintain testing records and retain test samples;
- Refiners and importers must submit reports regarding compliance with the average standards and credit provisions;
- Attest procedures [125] similar to those of the RFG/CG rule will be applied to the sulfur standards and credit provisions;
- Refiners and importers are prohibited from using, selling or purchasing invalid sulfur credits, and are required to adjust compliance calculations if invalid credits have been used, sold or purchased;
- Small foreign refiners subject to the small refiner standards described in section IV.C. above must comply with the rule's small refiner compliance requirements and other requirements to ensure the separation of such foreign gasoline from all other gasoline to the U.S. port of entry; any foreign refiners participating in the early credit generation program must also meet certain provisions concerning credit generation, including reporting and recordkeeping;
- All regulated parties in the gasoline distribution system who are downstream from the refiner or importer must comply with downstream sulfur cap standards;
- Regulated parties are subject to presumptive liability for violations at a party's own facility and for violations at other facilities that could have been caused by the regulated party; branded refiners are subject to liability for violations occurring at branded facilities.
- Refiners and distributors may implement downstream quality assurance testing to assure compliance and to establish an element of defense against presumptive liability.

As in other fuels programs, the sulfur standards apply to all motor vehicle fuel that meets the definition of gasoline, except for aviation fuel and racing gasoline, as was proposed in the NPRM. See 40 CFR 80.2(c). Gasoline sulfur standards apply, however, to gasoline that is ultimately used in nonroad equipment or marine engines.

As we noted in the NPRM, we are aware there are certain fuels, such as aviation fuel and racing fuel, that are generally segregated from gasoline throughout the distribution system. Where such fuels are segregated from motor vehicle gasoline and not made available for use in motor vehicles, the fuel is not subject to sulfur rule standards. However, if such fuels are not segregated throughout the distribution system, but are used as motor vehicle gasoline or are commingled with motor vehicle gasoline, then any person who introduces such fuels into the gasoline distribution system is a refiner, subject to all the refiner requirements of today's regulations, including registration, reporting, testing and meeting the national refiner average and cap standards for the volume of gasoline that person added to the distribution system. Today's rule adopts the provisions concerning fuel used for racing vehicles as proposed.

One commenter suggested that racing gasoline or aviation gas should be allowed to be used as motor vehicle gasoline by downstream parties so long as the racing gasoline or aviation gas does not exceed the applicable downstream cap standard. We disagree. Racing gas that meets the applicable downstream sulfur cap would nevertheless not be subject to the refinery gate cap or averaging standards, and may not meet such standards. Allowing such fuels to be distributed for motor vehicle use would thus circumvent the intent of the rule.

The rule promulgated today clarifies the definition of ''refinery'' at 40 CFR 80.2(h), as was proposed in the NPRM. We received no comments on this clarifying change. Specifically, section 80.2(h) now provides that ''refinery''

[125] 40 CFR Part 80, subpart F.

means any facility, including a plant, tanker truck or vessel where gasoline or diesel fuel is produced, including any facility at which blendstocks are combined to produce gasoline or diesel fuel, or at which blendstock is added to gasoline or diesel fuel. This is consistent with all current EPA fuels rules, interpretations, policies and question and answer documents.

*Oxygenate Blenders*

In the NPRM we proposed that oxygenate blenders [126] would not be subject to the refiner sulfur standard like other blenders, because we felt it unlikely that oxygenates will have sulfur levels that will raise the sulfur content of the gasoline. This approach also was proposed because gasoline is the denaturant normally used to produce denatured ethanol. However, we received comments that denatured ethanol may contain as much as 50 ppm sulfur, which could result in significant increases in sulfur content from ethanol blending alone.

While it is true that some of today's gasoline has a sulfur content as high as 1,000 ppm which if used as an ethanol denaturant results in ethanol having a sulfur content of 50 ppm, the average sulfur content of gasoline is about 300 ppm which if used as an ethanol denaturant results in ethanol with a sulfur content of 15 ppm. In addition, when the gasoline sulfur standards being promulgated today are in effect, the average sulfur levels of gasoline will be significantly reduced, which will further reduce the sulfur content of denatured ethanol to very low levels. For this reason, we are finalizing the regulation as proposed that oxygenate blenders are not subject to refiner sulfur standards.

However, if gasoline blendstock instead of finished gasoline is used as a denaturant for ethanol the oxygenate blender who adds the ethanol would become a ''refiner,'' who is required to demonstrate compliance with the sulfur standards for the denatured ethanol added to gasoline. This is because the oxygenate blender would be adding a blendstock along with the ethanol, which subjects the blendstock blender to refiner standards and requirements. Moreover, if the blendstock has a high sulfur content the denatured ethanol could have a sulfur content greater than 30 ppm, or even greater than 80 ppm, which could make compliance by such a ''refiner'' difficult or impossible. In addition, as discussed above, in certain cases ethanol is included in the refinery compliance calculations of the refiner who produced the gasoline or RBOB with which the ethanol is blended. Refiners assume this ethanol has no sulfur content, an assumption that could be incorrect if high sulfur blendstock is used as the denaturant.

For these reasons we believe it is important that ethanol blenders use denatured ethanol with a sulfur content of 30 ppm or less, which would occur if the current practice of using finished gasoline as ethanol denaturant continues. In order to ensure this result, the regulations include a provision that prohibits ethanol blenders from using denatured ethanol with a sulfur content greater than 30 ppm. We believe ethanol blenders can comply with this requirement through commercial arrangements with their ethanol suppliers, that specify the maximum sulfur content of denatured ethanol. In addition, ethanol blenders can assure compliance with this requirement by testing to determine the sulfur content of denatured ethanol received.

*Gasoline Treated as Blendstock (GTAB)*

One commenter suggested that the Agency policy under the RFG/CG rule that allows certain imported gasoline to be treated as a blendstock by importer-refiners should be applied to today's rule. The GTAB policy was originally issued in the RFG Question and Answer document, and was subsequently published as part of a proposed RFG rulemaking in 1997.[127] We intend to address GTAB issues in that RFG rulemaking, including issues regarding compliance with today's rule.

*Transmix*

We are aware that when gasoline meeting the requirements finalized in today's rule is transported through pipelines, there will be some situations where adjacent distillate product in the pipeline will mix with a portion of the gasoline to create an interface product, commonly referred to as transmix. This transmix may not be blended into the diesel fuel because the gasoline in the transmix may result in diesel fuel performance problems. Historically, this type of transmix product has either been blended into the gasoline, in limited concentrations, or the transmix has been separated into its gasoline and distillate components at a reprocessing plant. However, the practice of blending the transmix into gasoline may result in violations of the downstream standards for RFG, and such blending could violate the downstream sulfur caps finalized in today's rule, because many distillates have a very high sulfur content. Therefore, we believe regulatory provisions are needed to resolve these issues. We have not addressed transmix issues in today's rule because we have already proposed regulations regarding transmix blending and processing in another rulemaking.[128] We plan to address transmix issues, including issues regarding compliance with today's rule, in that rulemaking, which we plan to finalize in the near future.

*Inability To Produce Conforming Gasoline in Extraordinary Circumstances*

Several commenters suggested the rule should include a provision, similar to the RFG rule provision at 40 CFR 80.73, to address situations where, due to extraordinary circumstances, a refiner or importer cannot produce or distribute conforming gasoline. Section 80.73 applies to refiners, importers and oxygenate blenders. Today's rule has adopted the provisions of section 80.73 for RFG and CG, for importers and refiners, but not for oxygenate blenders. This is because the gasoline sulfur program does not include provisions that would be expected to require oxygenate blender relief.

In the remainder of this section we discuss enforcement issues regarding today's rule that are not covered in this Overview or in section IV.C., above.

*B. Requirements for Foreign Refiners and Importers*

In the NPRM we proposed that standards for gasoline produced by foreign refineries that are not subject to small refiner individual refinery standards would be met by the importer. Standards for gasoline produced by a foreign refinery subject to an individual sulfur rule standard would be met by the foreign refinery, with certain limited exceptions as provided in the foreign refinery provisions. The rule promulgated today adopts the provisions as proposed, except for several changes aimed at clarifying the proposed requirements, changes relating to the temporary relief provision, and changes relating to foreign refiners' participation in the early credit program. These provisions are very similar to the foreign refinery provisions of the RFG/CG rule.

[126] The term ''oxygenate blenders'' includes ''ethanol elnders.''

[127] Reformulated Gasoline and Anti-dumping Questions and Answers, (11/12/96); Proposed Rule for Modifications to Standards and Requirements for Reformulated and Conventional Gasoline; 62 FR 37337 et seq. (July 11, 1997).

[128] 62 FR 37337 et seq. (July 11, 1997) (proposed 40 CFR 80.84).

1. Requirements for Foreign Refiners With Individual Refinery Sulfur Standards or Credit Generation Baselines

Under the RFG/CG rule, EPA promulgated regulations [129] addressing the establishment and implementation of individual baselines for CG produced by certain foreign refiners. The purpose of these regulations is to ensure the compliance of gasoline supplied from foreign refineries with individual compliance baselines. It includes comprehensive controls, requirements and enforcement mechanisms to monitor the movement of gasoline from the foreign refinery to the U.S., to monitor gasoline quality and to provide for enforcement as necessary.

In the NPRM, we proposed similar requirements for compliance with the applicable sulfur standards that would apply to any foreign refiner who demonstrates that it meets the sulfur program's small refiner criteria. We proposed that foreign refinery baselines would be based on annual average sulfur levels and the volume of gasoline imported to the U.S. during the same baseline period as would be applicable to domestic small refiners. In today's final rule we have also adopted provisions for foreign refiners to establish baselines to participate in the early credit generation program, and to request temporary relief. Any foreign refiner who obtains a foreign refinery gasoline sulfur baseline would be subject to the same requirements as domestic refiners with individual refinery baselines under today's rule. Additionally, provisions similar to the provisions at 40 CFR 80.94 would apply, which include:

- Segregating gasoline produced at the small refinery until it reaches the U.S.;
- Refinery registration;
- Controls on product designation;
- Load port and port of entry testing;
- Attest requirements; and
- Requirements regarding bonds and sovereign immunity.

The rationale for these enforcement provisions is discussed more fully in the Agency's preamble to the final RFG/CG foreign refineries rule (62 FR 45533 (Aug. 28, 1997)).

Several commenters suggested that the rule should have even stronger enforcement provisions concerning foreign refiners, including criminal provisions against foreign individuals who violate the requirements of the rule. While we agree that the rule's enforcement provisions pertaining to foreign refiners must be effective, we believe the proposed enforcement provisions are sufficient, and that attempts to further strengthen them would not significantly increase their overall effectiveness. Today's rule imposes various requirements on foreign refiners not required of domestic refiners, as noted above, which we believe are more effective for ensuring environmental compliance than criminal provisions would be for foreign individuals, in light of the potential difficulties of enforcing sanctions against foreign individuals. EPA's experience to date with the similar RFG/CG requirements under section 80.94 of the RFG/CG rule does not indicate the provisions are inadequate.

Therefore, today's rule generally retains these provisions as proposed. The final rule makes several technical changes, including changes regarding baselines for foreign refiners, to be consistent with the requirements for domestic small refiners and refiners generating early credits finalized in today's rule. The rule's foreign refiner enforcement provisions now also apply to foreign refiners participating in the early credits program, and to the use of credits by foreign small refiners.

One commenter stated that the language of the proposed § 80.410(n) would be too broad in that prohibiting any ''person'' from combining certified small foreign refiner gasoline with non-certified small foreign refiner gasoline or with certified small foreign refinery gasoline produced at a different refinery would prohibit even retail level commingling of such products. This was not intended and today's rule clarifies that such commingling can occur subsequent to importation.

Under the proposal, when the small refiner standards sunset (and additionally under today's rule, when the temporary refiner relief provisions sunset),[130] all gasoline would be subject to a single national averaged standard and one national refinery level cap. Thereafter, standards for all imported gasoline would be met by U.S. importers. We have retained this provision as proposed. With a single national average standard and cap standard, gasoline sulfur content can most readily be monitored at the U.S. importer level, since there will no longer be a special class of gasoline with different standards that would need to be monitored.

2. Requirements for Truck Importers

Today's final rule adopts the proposed requirement for importers to sample and test each batch of gasoline imported. However, as noted in the preamble to the NPRM, for parties that import gasoline into the U.S. by truck, the every-batch testing requirement would include testing the gasoline in each truck compartment, or if the gasoline is homogeneous, testing the gasoline in the truck.

In the NPRM we recognized that this every-batch testing requirement may not be feasible for truckers hauling many small loads of gasoline, and we therefore proposed a limited alternative approach for truck importers in lieu of every-batch testing. The proposed alternative approach is based on the importer meeting the 30 ppm sulfur standard on a per-gallon basis. Under this alternative approach, the importer would be allowed to rely on the sulfur results based on sampling and testing conducted by the operator of the foreign truck loading terminal. Because, in most cases, the terminal operator will not be subject to United States laws, we also proposed safeguards intended to ensure that the gasoline in fact meets the applicable standard. This includes the requirement that the importer conduct a quality assurance sampling and testing program independent from the sampling and testing conducted by the terminal. Under this approach the reporting requirements would be minimized since no averaging would be required. The environmental consequences of this approach would be neutral, because by meeting the 30 ppm sulfur standard on an every-gallon basis the standard also would be met on average.

One commenter stated that the 30 ppm per-gallon standard would be difficult for truck importers to meet due to the fact that Canadian terminals may not always have gasoline with a sulfur content no greater than 30 ppm. The commenter suggested that truck importers be allowed to rely on testing conducted by the foreign gasoline terminal, as discussed above, to meet the average and cap standards like other importers.

We agree that truck importers may have difficulty obtaining gasoline that meets the 30 ppm sulfur standard on a per-gallon basis. Under Canadian regulations, Canadian refiners will be subject to a 150 ppm average standard and a 300 ppm cap in 2004, and in 2005 Canadian refiners will be subject to a 30 ppm average standard and an 80 ppm

[129] 40 CFR 80.94.

[130] Small refiner and temporary refiner hardship individual refinery standards sunset January 1, 2008, except for any small refineries that receive a hardship extension not to exceed two years.

cap.[131] This means that truck importers should be able to meet the standards applicable to other importers, including the ultimate average standard and cap standard under today's rule (30 ppm average and 80 ppm cap), without great difficulty. However, meeting a per-gallon cap of 30 ppm might be difficult since the sulfur content of gasoline in the storage tanks of Canadian terminals, like those of U.S. terminals, will likely exceed 30 ppm at times, even after the 30/80 standards are implemented. We have concluded that we can address this concern by providing additional flexibility to truck importers, and still assure compliance.

While today's rule retains the proposed alternative, with some modifications, it also provides a second alternative approach. Under this second approach, truckers are allowed to meet the national average and cap applicable to other importers, and rely on testing conducted by the foreign gasoline terminal so long as all the other requirements applicable to the proposed alternative approach are complied with. In addition, truckers using this second alternative approach will be subject to more extensive reporting than required for the proposed alternative, since the importer will have to demonstrate compliance with the annual average sulfur standard applicable to other importers.

One commenter urged that truckers should be subject only to the national downstream cap. We cannot agree to this approach as it is not environmentally neutral relative to the national standards in effect for other importers and refiners. If truck importers were required to meet only the downstream cap, sulfur levels for their imported gasoline could be substantially higher than for other importers, which could have a detrimental environmental consequence.

One commenter stated that the 30 ppm per-gallon standard for truck importers should not go into effect until the 30 ppm standard becomes the national average standard for refineries and other importers. We agree. Under today's rule, the per-gallon standards applicable to truck importers under the proposed alternative will be the same sulfur level as the sulfur average standard that applies to other importers (in 2004 there is no average standard; however, truck importers using this alternative compliance approach must meet the corporate pool standard on a per-gallon basis).[132] Under the second alternative approach, the truck importer will be subject to the same average standard and cap standard applicable to other importers.[133]

Similar provisions as provided above apply to truck importers for gasoline subject to the geographic phase-in area (GPA) standards (see section IV.C. of this preamble for a discussion of GPA standards). However, because of the small volumes of truck-imported gasoline, and the consequent difficulty in meeting corporate pool averages for a trucker who imports gasoline into both the GPA and areas outside the GPA, today's rule requires that for truck importers using the averaging option, the corporate pool average does not have to be met. The 150 ppm average standard and the 300 ppm cap standard apply to gasoline imported by truck into the GPA in 2004 through 2006. For truck importers meeting the per-gallon standard option for gasoline imported into the GPA, the per-gallon standards are 150 ppm for 2004 through 2006.

*Truck Import of Foreign Small Refiner Gasoline*

The NPRM addressed issues associated with gasoline produced by a foreign small refinery with an individual baseline and certified as subject to the refinery's individual interim standard (S–FRGAS), and imported by truck. The proposed requirements for S–FRGAS included segregating the gasoline from all other gasoline from the refinery gate to the U.S., so that compliance with standards can be tracked. For ordinary, non-truck importers, each batch of certified S–FRGAS must be tested at the load port and port of entry. Today's rule finalizes these proposed requirements for S–FRGAS.

However, in the case of gasoline imported by truck, the NPRM acknowledged that the testing and other procedures proposed for certified S–FRGAS may not be feasible. As a result, we proposed an alternative to the requirement for testing every truckload of imported certified S–FRGAS, and to other importer requirements. This alternative approach includes a requirement that small foreign refiners producing any S–FRGAS that will be imported by truck submit a petition to EPA that includes a plan which is designed to ensure that certified S–FRGAS remains segregated from all other gasoline from the refinery to the U.S. Rather than specifying the precise requirements of such a plan in the regulations, we proposed to allow the refiner to develop its own procedures for ensuring that S–FRGAS remains segregated. However, the plan must contain certain elements, such as product transfer documents which identify the origin of the gasoline and prohibit its commingling with any product other than certified S–FRGAS from that refinery.

This approach also requires the refiner of such truck-imported gasoline to receive and maintain all such product shipment documents, including U.S. import documents, for five years and review these to ensure that segregation is maintained until reaching the U.S. To ensure that refiners conduct this review, we proposed to require the refiner's plan to include attest audit procedures to be conducted annually by an independent third party.

We received no comments on this proposal for ensuring the integrity of S–FRGAS imported by truck. Today's final rule adopts the petitioning provision to permit alternative segregation procedures for S–FRGAS imported by truck as proposed since we continue to believe that it will provide flexibility to foreign refiners and to importers and will adequately assure enforceability.

*C. What Standards and Requirements Apply Downstream?*

We proposed per-gallon cap standards that would apply to all parties in the distribution system downstream of the refinery and importer level, including pipelines, terminals, oxygenate blenders, distributors, carriers, retailers and wholesale purchaser-consumers. We believe that downstream cap standards and compliance monitoring based on downstream standards are needed to ensure that the sulfur level of gasoline remains below the cap level when dispensed for use in motor vehicles, to avoid adverse emissions consequences that would be caused by the use of gasoline having a sulfur content above the cap level. The following discussion addresses downstream standards generally, downstream standards and requirements for gasoline produced by refineries subject to standards under § 80.240 and 80.270, and downstream standards and requirements for gasoline produced or imported for the geographic phase-in area (GPA).

[131] Vol. 133 23/6/99 C. Gaz. II, 23 June 99 (pp. 1469 *et seq.*)

[132] In 2004, a 120 ppm cap; In 2005 and beyond, a 30 ppm cap. See Table IV.C.–1.

[133] In 2004, a 120 ppm average standard and a 300 ppm cap; In 2005, a 30 ppm average standard, a corporate pool average no greater than 90 ppm, and a 300 ppm cap; In 2006 and beyond, a 30 ppm average standard and a 80 ppm cap. See Table IV.C.–1.

*Determination of Downstream Cap Standards*

We proposed that the downstream standards would be more lenient than the refinery-level cap standards so that refiners and importers can produce gasoline that equals the refinery-level cap standard. We did so because it has been EPA's experience that if a refiner produces gasoline that equals, or almost equals a standard, that gasoline may be shown to violate the standard when subsequently tested at a location downstream of the refinery due to testing variability. As a result, parties downstream of the refinery (primarily pipelines) set commercial specifications for the quality of the gasoline they will accept that are more stringent than the standard that applies to the downstream party. This, in effect, forces refiners to produce gasoline that is ''cleaner'' than the refinery-level standard.

In other fuels programs (for example, the benzene per-gallon standard for RFG) we resolved this concern by announcing enforcement tolerances for fuels standards that apply downstream of the refinery-level, thereby reducing the need for pipelines to set specifications more stringent than the refinery level standards. We believe that having more lenient downstream standards will have the same effect as enforcement tolerances.

In the NPRM we proposed that the values of the downstream cap standards would reflect the testing variability that could reasonably be expected when different laboratories test gasoline for sulfur content; that is, lab-to-lab variability, or reproducibility. Industry commenters supported this approach, and today's rule adopts this approach. For gasoline subject to the 80 ppm refinery-level sulfur cap, the downstream maximum standard is 95 ppm. This difference reflects the reproducibility established by the American Society for Testing and Materials (ASTM).[134] For gasoline subject to refinery-level sulfur caps higher than 80 ppm, which will be the case for gasoline produced before 2006 and for gasoline produced by certain small refineries through 2007, the downstream cap is similarly established by using ASTM reproducibility data. The national downstream cap is 378 in 2004, when the refinery level cap can be as high as 350 ppm. The national downstream cap in 326 in 2005, when the refinery level cap is 300.

[134] ASTM standard method D 2622–98, entitled 'Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry.''

Because these downstream caps are based on sulfur test reproducibility, we intend to amend the rule in the future if improvements in test precision are made for the designated method. We may also consider amending the rule to make some other method the designated method if a more precise method is available in the future.

*The Proposed Downstream Standards Compliance Scheme*

Under the proposal, if gasoline produced by a small refiner with a less stringent cap standard is mixed in the distribution system with gasoline subject to the national cap standard, the entire mixture would then be subject to the higher cap standard, even though most of the gasoline, at the refinery level, would be subject to the more stringent national cap standard. We proposed that during the period that small refinery individual standards are in effect, for gasoline that is comprised, in whole or in part, of small refiner gasoline with a higher sulfur cap standard than the national cap standard, product transfer documents (PTDs) would specify that the gasoline is small refiner gasoline and the level of the downstream cap applicable to the gasoline.

The purpose of the proposed provisions was to make it possible to determine the standard that applies to any gasoline downstream of the refinery. If the gasoline contains no small refiner gasoline, the downstream standard would be based on the national cap. If the gasoline is comprised, in whole or in part, of small refiner gasoline subject to a less stringent cap standard, the downstream standard would be based on this less stringent cap standard. As gasoline is mixed and remixed in the fungible distribution system, the percentage of gasoline that is small refinery gasoline will progressively diminish until the fungibly mixed gasoline meets the national downstream cap. Therefore, we proposed in the NPRM that a downstream party may no longer classify gasoline as containing small refiner gasoline if a test result shows the sulfur content of the gasoline is below the applicable national (i.e., not small refiner) downstream cap.

Several commenters suggested that this tracking scheme would be unworkable. Some of these comments were based on the belief that the proposal intended to require segregation of the small refiner gasoline through the distribution system. The proposal was not intended to require that small refiner gasoline must be segregated, and under today's final rule there is no requirement that small refiner gasoline must be segregated from gasoline produced by other refiners. Some commenters also believed that testing by downstream parties would be required under the proposed rule. These commenters were concerned that a downstream testing requirement could be costly and could delay distribution of gasoline. This latter point is addressed later in this discussion. Some commenters stated that the proposed PTD provisions of the downstream enforcement scheme were too complex and that some means other than changing PTD designations should be found to track small refiner gasoline.

Other commenters, including automobile manufacturer trade associations, stated they believed that EPA enforcement and testing downstream of the refinery is necessary to assure that gasoline complies with standards at the retail gasoline pump.

We have carefully considered the comments and we have concluded that the tracking scheme as proposed would not be effective because most pipeline shipments are expected to include some small refiner gasoline (although the amount of small refiner gasoline may comprise less than 1% of the shipment) and therefore, most of the gasoline in the nation might be classified as small refiner gasoline, even though only a small fraction of the supply will actually be small refiner gasoline. Therefore, a downstream cap much less stringent than the national downstream cap would attach to most gasoline produced to meet the national refinery standards, and the scheme would not be effective in monitoring whether the quality of most gasoline is maintained after it enters the gasoline distribution system.

The proposed scheme could lead to other unintended results. The gasolines contained in a fungible mixture in the distribution system may not be fully mixed and homogenous. As a result, a distinct, unmixed, portion of gasoline within a fungible mixture could be small refiner gasoline with a sulfur content above the national downstream cap, while other parts of the fungible mixture would meet the national downstream cap. This is especially true for fungible mixtures in pipelines and could also be true for gasoline in storage tanks. If a test result for a sample collected from part of such a fungible mixture in a pipeline shows compliance with the national downstream cap, under the proposed rule the entire mixture would become subject to the national downstream cap, and the pipeline PTDs could not classify the gasoline as small refiner gasoline. Thus,

under the proposal, parties downstream of the pipeline could be subject to liability because they might receive small refiner gasoline not meeting the national standard even where a pipeline PTD does not represent that the gasoline is small refiner gasoline. That was not intended by the proposal.

Because of these difficulties, we concluded that the proposed scheme must be modified to address these concerns, in order for there to be effective enforcement of the downstream standards. We are concerned that the quality of gasoline will be affected downstream of the refinery. Gasoline may be contaminated with high sulfur blendstocks or other high sulfur products such as distillates after it leaves the refinery gate. There is likely to be an economic incentive for some downstream parties to sell or use gasoline or blendstocks that have a higher sulfur content than the national downstream standard. The inability to monitor downstream compliance would result in environmental degradation that is not intended by the rule, and in an inability to assure a level playing field for all parties in the gasoline distribution industry.

*Tracking Gasoline Downstream of the Refinery*

We believe that an effective downstream compliance and enforcement scheme is necessary in order to achieve the full emissions reduction benefits of the rule. Today's rule modifies the proposed tracking scheme so that compliance with the program can be monitored.

Under today's rule, all gasoline downstream of the refiner or importer is subject to the national downstream standard unless a different downstream standard, based on the highest sulfur content of any small refiner/temporary refiner relief gasoline in the gasoline mixture (as determined by the small refiners' batch testing), is supported by PTDs and a test result confirming the presence of small refiner/temporary refiner relief gasoline. The test result must be for gasoline sampled from the downstream facility classifying the gasoline as small refiner gasoline, unless the facility is a trucker, retailer or wholesale purchaser-consumer. We have concluded that this requirement is necessary to monitor compliance with the downstream standards during the period that small refiner/temporary refiner relief standards are in effect, because the vast majority of the gasoline transported by pipelines will be gasoline produced to comply with the national cap,[135] even though most of those pipeline shipments will be classified as small refiner gasoline.[136]

We believe that the ability to track small refiner gasoline is made even more important due to the geographic phase-in area (GPA) gasoline provisions finalized today.[137] GPA gasoline is subject to less stringent refiner/importer standards than gasoline produced for use in other parts of the country. Therefore, its use is limited to the GPA states. However, it may be produced or imported at any location in the country before it is transported for use in the GPA. EPA would have little ability to assure GPA-designated gasoline is only being used in the GPA if it cannot determine if gasoline at a downstream location outside the GPA that exceeds the applicable downstream cap for non-small refiner gasoline, is in fact small refiner gasoline or if it may include gasoline that was designated for use in the GPA but has been diverted for use elsewhere. The tracking requirements for small refiner gasoline will help us to make that determination.

The only parties required to perform testing in order to demonstrate that a shipment, or tank, of gasoline contains small refiner gasoline are gasoline pipelines and terminals. Where a terminal properly classifies gasoline in its storage tank as small refiner gasoline, and subsequently receives a load of gasoline into that tank, it may not continue to classify the gasoline as small refiner gasoline unless the tank is sampled, and a test demonstrates that the tank still contains small refiner gasoline and the gasoline sulfur content exceeds the national refinery level cap. In 2004 the test result would have to exceed 350 ppm; in 2005, 300 ppm; and starting with 2006, 80 ppm. In the GPA, the test result would have to exceed 350 ppm in 2004, and 300 ppm in 2005 and 2006.

We have concluded that the pipeline and terminal testing provisions are necessary for effective enforcement. We believe that terminals and pipelines will be able to perform sampling and testing that will enable them to identify the presence of small refiner gasoline in a cost-effective manner. These parties have knowledge regarding the mixing of gasoline as it moves from the pipeline and into the terminal tank, and knowledge of the distribution system, that will enable them to make judgments regarding the extent of testing that may be needed to demonstrate whether gasoline meets the national downstream cap. Further, a terminal operator may take additional tests if it believes a tank may contain a stratified portion of small refiner gasoline, despite a test result showing the tank complies with the national downstream cap.

Many terminals may have sufficient reason to believe they are receiving only gasoline meeting the national cap such that they will not normally test each receipt of gasoline. Additionally, even for terminals who receive small refiner gasoline, we do not believe the sampling and testing will be burdensome. This is partly because many terminals already conduct periodic sampling, or even sampling after every delivery of gasoline into storage tanks, at least in the summer VOC or RVP season, to test gasoline for various parameters, which may already include sulfur testing in RFG areas. Field test instruments already exist that are adequate for this testing in 2004 and 2005 when the national downstream cap is 378 ppm and 326 ppm, respectively. Moreover, we believe that because of today's rule, better field test instruments for sulfur analysis at lower levels are likely to be developed in the next few years. Therefore, it will not be necessary for quality assurance samples to be sent to a laboratory for testing. Thus, we do not believe shipments will be held up while terminals await a test result. We also believe that it is likely that these instruments will be available for a cost that will be far less than most laboratory instruments available today.

Under today's rule, retailers are not required to conduct testing. The retailer can demonstrate that the gasoline is properly designated small refiner gasoline subject to a less stringent downstream standard by maintaining PTDs from its suppliers that demonstrate a terminal classified gasoline supplied to the retailer's storage tank as small refiner gasoline.

*Downstream Standards and Requirements for GPA Gasoline*

Consistent with the way today's rule sets downstream sulfur standards for other gasoline, the GPA program downstream standard is determined by adding the ASTM reproducibility applicable to the refinery level sulfur

[135] For example, most pipeline shipments are expected to contain small refiner gasoline in the two U.S. pipelines that carry the highest volume of gasoline. However, in most shipments the small refiner gasoline is expected to account for substantially less than 5% of the total volume of gasoline in the shipment.

[136] For purposes of this discussion, ''small refiner gasolne'' includes any gasoline from a refiner to whom EPA grants relief based on a showing of extreme hardship.

[137] See section IV.C. of this preamble for refiner/importer standards and the discussion below regarding downstream compliance and enforcement provisions.

cap to that refinery level cap, which for GPA gasoline is as high as 350 ppm in 2004, and 300 ppm in 2005 and 2006. This results in downstream standards for GPA gasoline of 378 ppm in 2004, and 326 ppm in 2005 and 2006.

Because GPA gasoline must be used only within the GPA states,[138] today's rule requires that refiners and importers producing or importing gasoline subject to the GPA standards must designate each such batch of gasoline as GPA gasoline and segregate such batches from all other gasoline. Product transfer documents must identify the gasoline as GPA gasoline so that all downstream parties will be aware that it must be sold or distributed for use only in the GPA.

Gasoline produced for use in all areas of the country outside the GPA may be sold for use in the GPA, including gasoline subject to small refiner standards under section 80.240 of today's rule.

Where GPA gasoline is commingled with other gasoline, the commingled gasoline must be classified as GPA gasoline and used only in the GPA states. Where GPA gasoline is commingled with S–RGAS, the applicable downstream sulfur standard for that gasoline is the greater of the GPA downstream standard or the applicable small refiner/temporary refiner relief standard as determined under section 80.210 of the rule.

Lead-Time for Downstream Compliance With New Standards

Some commenters stated that there should be a lead-time of several months between the implementation date of a new refinery level sulfur standard and the implementation date of the corresponding downstream standard. Based on our experience with other fuels programs, we believe that a one-month lead time will be adequate for gasoline at the terminal level to meet new standards. An additional one month for retailers will give them ample time to comply. Therefore, under today's rule, the 378 ppm downstream sulfur standard (or any applicable small refiner downstream cap standard) is effective February 1, 2004 at the terminal level and March 1, 2004 at the retail level. The 326 ppm downstream sulfur standard is effective February 1, 2005 at the terminal level and March 1, 2005 at the retail level. The 95 ppm downstream standard is effective February 1, 2006 at the terminal level and March 1, 2006 at the retail level (or February 1, 2007, and March 1, 2007, respectively, in the case of gasoline at facilities in the GPA).

Retail Gasoline Pump Labeling

EPA believes gasoline advertised as being ''low sulfur gasoline'' when sold at retail outlets should have a sulfur content of no more than 95 ppm because this is the maximum sulfur level of gasoline at retail outlets that would protect the emission controls of Tier 2 vehicles. We are stating this to inform refiners and other regulated parties, when making advertisement decisions regarding gasoline, that it is EPA's position that effective January 1, 2004, if any retailer represents that gasoline is low sulfur gasoline, or representations to the same effect, the gasoline sulfur content should be no greater than 95 ppm.

*D. Testing and Sampling Methods and Requirements*

1. Test Method for Sulfur in Gasoline

We proposed ASTM standard method D 2622–98, ''Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry,'' as the primary method for testing sulfur in gasoline by refiners and importers. This is the designated method under the RFG/CG rule.[139] We also requested comment on adopting other methods as the primary method, in particular, ASTM method D 5453–93, ''Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence,'' and ASTM D 4045, ''Standard Test Method for Sulfur in Petroleum Products by Hydrogenolysis and Rateometric Colorimetry,'' which is used under the California fuels program for sulfur levels below 10 ppm. We also proposed ASTM D 5453 as an alternative method for determining the sulfur content of gasoline and we requested comment on this proposal.

Most comments supported the continued use of ASTM D 2622 as the designated method for testing sulfur in gasoline under the various fuels rules, including today's rule. Commenters indicated that most refineries outside of California are currently using ASTM D 2622. Under the California fuels regulations, California refineries currently use ASTM D 5453, as well as ASTM D 2622 and ASTM D 4045. Comments were generally favorable to the proposed use of ASTM D 5453 as an alternate method. However, one California refinery, an automobile manufacturers association and a manufacturer of analytical equipment stated that ASTM D 5453 should be the primary method, primarily due to its greater precision at low sulfur levels. Favorable comments were received to the use of ASTM D 4045, especially for gasoline sulfur content of 10 ppm or less. One commenter suggested that ASTM D 5623–94 should be allowed; one commenter suggested that ASTM D 3120 should be allowed, and one commenter suggested that ASTM D 6428 should be allowed. Several commenters stated that we should utilize a performance based criteria system to determine what test methods can be used.

We have considered the comments carefully. We believe there are a number of test methods for determining the sulfur content of gasoline that may eventually be shown to be as good as, or better than, ASTM D 2622. We also considered that the Agency is likely to issue a proposed rulemaking for a performance-based test method approach that would apply to motor vehicle fuel parameters. This rule, once promulgated, would set forth criteria for determining whether an alternative analytical test method could be used instead of the designated analytical test method for a given fuel parameter and would set forth criteria for correlating alternative analytical test methods to the designated analytical test method.

We believe it is appropriate that alternate analytical methods should be qualified and correlated to the regulatory method according to standardized criteria. Today's rule therefore provides that ASTM D 2622, the recognized standard analytical method for determining sulfur in gasoline, is the sole regulatory method, anticipating that a performance-based testing rule may be issued before 2004, and that under its terms anyone will be able to qualify and correlate additional testing methods. We do not believe this will result in undue hardship for several reasons. First, our current fuels rules already provide that ASTM D 2622 is the sole regulatory method for determining the sulfur content of gasoline. Second, California refiners currently using ASTM D 5453 or ASTM D 4045 will not face any hardship because today's rule allows the use of approved California test methods by California refiners.[140] Third, today's rule allows continued use of composite samples for sulfur testing for CG during the period of early credit generation, and therefore refiners currently using outside labs to test composite samples,

[138] As stated in section IV.C. of this preamble, the GPA states are Alaska, Idaho, Montana, North Dakota, Wyoming, Utah, Colorado and New Mexico.

[139] See 40 CFR 80.46(a). Today's rule updates the former designated test method, ASTM D 2622–94.

[140] See preamble discussion in section VI.E., below.

but who may elect to conduct testing in-house when the every-batch sulfur testing requirement is implemented, will not need to determine whether a less expensive alternative to ASTM D 2622 is available for several years. Last, if a performance-based test method rule is not issued by the Agency in the near future, then we may reconsider this issue in a subsequent rulemaking.

We also believe that a standardized approach for determining the appropriateness of alternate test methods, correlation methodology and quality control criteria for alternate test methods would be the most fair approach to the test equipment manufacturers and to the purchasers of testing equipment. It should result in a level playing field for competition among manufacturers of test equipment. We already know that ASTM D 5453 can be purchased for about half the price of ASTM D 2622 equipment, and competition may result in even less expensive equipment.

Some commenters suggested that where a refiner or importer uses ASTM D 2622 to test gasoline, and where the test result is less than 10 ppm, the refiner or importer should be able to report a test result of zero or perhaps use a default value of 5 ppm. This sort of approach has been allowed under the RFG and Anti-dumping Question and Answer Document. However, we disagree with the commenters that this practice is appropriate under the sulfur rule. Under the sulfur rule, with a refiner average standard of 30 ppm, it is important whether a bias is consistently drawn in favor of zero ppm as opposed to 10 ppm. This could artificially increase the number of credits earned or could allow more batches to be produced by the refiner that are near the 80 ppm cap. We believe that any imprecision of sulfur values derived from analysis using ASTM D 2622, will, over the course of numerous batches, average out to near zero. Further, we believe that the precision of ASTM D 2622 is likely to be improved by 2004. Also, by 2004 there may be other methods that will be shown to be precise at low sulfur levels that may be made available for use under a performance-based test method rule. Under today's rule the refiner or importer must report the test result that the test method provides, so long as the result is not less than zero (in which case a result of zero would be reported).

If alternative methods are ultimately made available for use under a performance based rule, refiners and importers who are producing or importing gasoline with low levels of sulfur may desire to use an alternative test method for low sulfur levels, especially if ASTM D 2622 is less precise at such levels. Under today's rule, if any approved alternative method is used for this purpose, a party could not choose to use the test result from ASTM D 2622 when its result is lower, and the test result from the alternative method when its result is lower. For any alternative test method that is eventually approved, if the party uses it for a certain range of sulfur concentrations, and ASTM D 2622 for another range, it must be consistent in such use. For example, if the alternate method were used for test results below 10 ppm, its result would always have to be used for sulfur levels below 10 ppm and ASTM D 2622 would always have to be used for sulfur levels greater than 10 ppm.

2. Test Method for Sulfur in Butane

We proposed the use of ASTM standard test method D 5623–94 [141] as the designated method for testing the sulfur content of butane and requested comment on whether this method should be the designated method. Although some butane suppliers or refiners currently use this method, several commenters stated that many refiners do not have ready access to ASTM D 5623 and that it is not necessarily the most precise method for determination of low levels of sulfur in butane. Commenters suggested at least three other methods are equal to ASTM D 5623. These are ASTM D 2784, ASTM D 4468, and ASTM D 3246.[142] One commenter also suggested that ASTM D 3227–92,[143] should be allowed. Several commenters requested that EPA at least allow alternative test methods for quality assurance testing.

We have reviewed the suitability of ASTM D 5623 and agree that it is not the best method for testing for sulfur content in butane. ASTM D 5623 measures sulfur compounds rather than total elemental sulfur, and the current ASTM 5623 method is specified for liquid fuels, not gaseous fuels.

ASTM D 2784 does not seem to be a better method than ASTM D 5623. Commenters stated that ASTM D 2784 is not the most precise method and that it is not widely used. We believe there may be some difficulty in even obtaining the apparatus for ASTM D 2784. ASTM D 3227 is not appropriate since it is designed for measuring a single sulfur compound, and it is currently designated for testing liquid samples.

We believe that ASTM D 4468 appears to be a good method for testing butane for sulfur levels below 20 ppm. However, dilution would be necessary to test for sulfur levels above 20 ppm. This may be problematical, since it may be difficult to dilute a gaseous fuel. We expect that under today's rule, butane being tested will frequently have sulfur content in excess of 20 ppm. Several other methods exist that might work well for testing for sulfur content of gaseous fuels, but their current scope does not include determination of sulfur in gaseous fuels.

ASTM D 3246–96, which was suggested by API and NPRA as a suitable method, is an appropriate method for measuring gaseous compounds and provides test results for total elemental sulfur. Its range is 1.5 to 100 ppm, which is ideal for testing for the alternative 30 ppm butane sulfur standard applicable to butane blenders promulgated in today's rule.[144]

After considering the strengths and weaknesses of all the available options we believe ASTM D 3246 is the best currently-available method. Therefore, today's rule makes ASTM D 3246 the designated method for testing the sulfur content of butane or other gaseous blendstocks. As discussed above, we anticipate that a performance-based test method rule for motor vehicle fuel parameters may be promulgated before 2004, and that the efficacy of other methods would be demonstrable under that rule. However, if that is not the case, the Agency may reconsider the issue of appropriate alternate test methods in a future rulemaking.

3. Quality Assurance Testing

Several commenters urged that alternate test methods be allowed for quality assurance test purposes. Under today's rule, the use of alternate test methods for quality assurance testing for purposes of establishing a defense to liability, for butane quality assurance testing under section 80.340(b)(4), and for determination of whether gasoline is small refiner gasoline, is allowed, so long as the alternate test method is correlated to the regulatory test method, the method is ASTM approved, and the

[141] ASTM D 5623, entitled ''Standard Test Method for Sulfur Compounds in Light Petroleum Liquids by Gas Chromatography and Sulfur Selective Detection.''

[142] ASTM D 2784, entitled ''Standard Test Method for Sulfur in liquefied Petroleum Gases''; ASTM D 4468–85(1995), entitled ''Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry''; and ASTM D 3246–96, entitled ''Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry.''

[143] ASTM D 3227, entitled ''Mercaptan sulfur in Gasoline, Kerosine, Aviation Turbine, and Distillate Fuels''. The commenter suggested it should be allowed with the use of the x-ray finish.

[144] Discussed in section VI.D.3.

protocols under the method are followed. However, the regulatory method is required for the truck importer quality assurance testing under section 80.350(c).

4. Requirement To Test Every Batch of Gasoline Produced or Imported

We proposed in the NPRM that refiners and importers [145] would be required to sample each batch of gasoline produced or imported and perform a test on each sample to determine the sulfur content prior to the gasoline leaving the refinery gate or importer facility. We received comments on several aspects of this proposed requirement.

Several commenters urged that we continue to allow composite sampling and testing for sulfur. Some refiners commented that the requirement to test each batch would raise testing costs. However, one refiner commented that every-batch testing for sulfur would not be a substantial burden so long as every-batch testing for other CG parameters is not required.[146] This commenter stated that testing for sulfur content is much less complex than testing for certain other CG parameters.

We believe that with a refinery gate sulfur cap combined with refinery averaged standards, there is no realistic alternative to every-batch testing. The Agency has no way to know whether a composite sample that is tested and found to meet the applicable refinery cap included a sample from an individual batch of gasoline that was introduced into commerce that exceeded the cap by a factor of 2 or 3. Further, we believe that with averaged standards for refiners and importers, and with multiple cap standards in effect during the phase-in period, monitoring compliance without every-batch testing would be impossible even if we could somehow be assured that no individual batch significantly exceeded the applicable refinery level cap.

We realize that there will be an additional cost associated with testing every batch of CG—for sulfur content (this is already required for RFG). However, we believe less expensive test methods for sulfur content already exist, and may continue to be developed, that will likely be acceptable as alternative methods in the future, as discussed above. Therefore, today's rule retains the requirement for every-batch testing. Under today's final rule, the test results for each batch of gasoline will be used to determine compliance with the applicable refiner/importer cap standard and to calculate the refiner's or importer's annual average sulfur level. Any batch of gasoline that exceeds the applicable sulfur cap cannot be distributed or sold in the U.S. (unless it is exempted from the standards under today's rule, as described in section VI.G., below).

Refiners who use computerized in-line blending methods objected to the proposed requirement for a batch test before the gasoline is released from the refinery. These commenters stated that refiners using the sophisticated in-line blending practice cannot produce a complete batch test until a portion of the batch is already past the refinery gate. These commenters did not urge that we eliminate the requirement for every-batch testing, but urged that the sulfur rule adopt the RFG rule provisions for in-line blending found at 40 CFR 80.65(f)(4), for both RFG and CG.

We believe that the importance of assuring compliance with the refinery level cap is such that the rule must generally require that gasoline must be tested for sulfur content before it leaves the refinery. Based on experience under the RFG rule, we do not believe that the requirement to test each batch before it is released will substantially increase the cost of testing or cause delays in shipments.

However, today's rule recognizes the unique circumstances involved in computerized in-line blending. We believe that with appropriate safeguards, compliance with sulfur standards for gasoline produced by refineries using in-line blending can be assured. Therefore, today's rule incorporates the RFG rule provisions for in-line blending at 40 CFR 80.65(f)(4). Such provisions will be applicable to RFG and CG. However, refineries presently having an in-line blending waiver will be asked to submit additional information under the auditing procedures included in approvals of in-line blending petitions already in place. We will contact individual holders of in-line blending approvals to request information on how sulfur is monitored and how streams of gasoline are distributed in the in-line blending process. If we cannot conclude that the monitoring procedures will assure compliance with sulfur standards, we will revoke the in-line blending approval for that purpose. We believe it is important to ensure that the in-line analyzer technology and the refiner's methodology and procedures are sufficient for the gasoline sulfur levels the refinery will have after this rule is implemented, for both RFG and CG.

Several commenters stated that the proposed rule's requirement to test every batch of CG for sulfur is unnecessary during the period of early credit generation because there is no cap standard in effect during this period, even for those refiners generating credits. We agree that every-batch testing is not essential for CG until the refinery gate per-gallon cap standards go into effect. Thus, today's final rule allows composite sample testing for CG to continue during the period of early credits generation, until January 1, 2004, when a cap standard for sulfur is first imposed on gasoline.

5. Exceptions to the Every-Batch Testing Requirement

Under the RFG rule, refiners who blend butane or other blendstocks to previously certified gasoline (PCG) must determine the volume and parameter values of the blendstock, including sulfur content, by testing the gasoline before and after blending, and calculating the properties of the blendstock by subtracting the volume and parameter values of the PCG. For CG only, under certain conditions, we have allowed butane blenders to use the parameter specifications of butane as tested by the butane producer. We have allowed this alternative to every-batch testing because of the costs of testing each load of butane. We proposed a similar alternative to every-batch testing for butane blenders in the NPRM, which allows butane blenders to use the sulfur test result of their suppliers, if the butane contains no more than 30 ppm sulfur and if the butane blender undertakes a quality assurance program of periodic sampling and testing to ensure that the supplier's sampling and testing is accurate.

We also proposed to allow refiners that blend other blendstocks into PCG to meet an alternative testing requirement in lieu of testing every batch of gasoline. Provided that the refiner's test result for the sulfur content of each of the blendstocks is less than the national refinery level per-gallon cap standard, a refiner can sample and test each blendstock when received at the refinery, and treat each blendstock receipt as a separate batch for purposes of compliance calculations for the annual average sulfur standard.

Today's rule adopts these provisions. Several commenters urged us to delay the 30 ppm per-gallon cap standard until other refiners must meet a 30 ppm average standard. The proposed 30 ppm per gallon standard was intended to be environmentally neutral in relation to

[145] Except for certain truck importers, as noted above.

[146] As noted above, we are not requiring every batch testing for CG parameters other than sulfur.

the standard applicable to other refiners. Therefore, today's final rule makes clear that for the alternative compliance approach for butane blenders, the 30 ppm per-gallon cap is not applicable until January 1, 2005. The per-gallon cap starting January 1, 2004 is 120 ppm.[147] For GPA gasoline the per-gallon cap under this alternative compliance option is 150 ppm in 2004 through 2006.

6. Sampling Methods

Sampling methods apply to all parties who conduct sampling and testing under the rule. We proposed to require the use of sampling methods that were proposed in the July 11, 1997 **Federal Register** notice for the RFG/CG rule (62 FR 37338, at 37341–37342, 37375–37376). These sampling methods include ASTM D 4057–95 (manual sampling), ASTM D 4177–95 (automatic sampling from pipelines/in-line blending), and ASTM D 5842 (this sampling method is primarily concerned with sampling where gasoline volatility is going to be tested, but it would also be an appropriate sampling method to use when testing for sulfur). There were no adverse comments to the proposed sampling provisions. Today's rule adopts the methods as proposed.

7. Gasoline Sample Retention Requirements

In the NPRM, we proposed a refiner and importer (collectively referred to in this section as ''refiner'') sampling and testing program to establish the sulfur compliance of each batch of gasoline produced or imported. We were aware that there were possible drawbacks to a self-testing scheme. For example, a party might sample or test gasoline in a manner that is inconsistent with the required procedures, or employees might inaccurately record the test results by mistake or otherwise. Parties might also attempt to conceal a discovered violation or to save money by not correcting a violation.

To address our concerns about self-testing, we considered an alternative option of requiring independent sampling and testing for all gasoline, including conventional gasoline. We did not propose this requirement for independent sampling and testing for all gasoline because of the costs of such a requirement,[148] and we are not adopting such a program in today's final rule. Instead, we proposed in the NPRM a different strategy to complement the self-testing program that would help ensure refinery sulfur compliance. This strategy would have required refiners to retain for thirty days a representative sample from each batch of gasoline produced, and to provide such samples to the Agency upon request. We believed that, by means of this option, EPA could verify the refiner test results. We believe that this would create an incentive for refiners to sample, test, and record their sulfur results in an accurate and truthful manner. We also proposed that refiners be required to certify annually that the samples have been collected in the manner required under the sulfur rule. In addition, we proposed that specific procedures be followed by refiners to properly collect, retain, and ship the samples in a manner consistent with requirements already imposed or proposed under the RFG program. Under the proposal, a minimum representative sample of 330 ml of each gasoline batch would need to be retained (and submitted to EPA upon request).[149]

Although there were few comments on this proposal, one commenter, the National Petrochemical & Refiners Association (''NPRA''), did comment extensively on it, and strongly urged the Agency not to finalize it. One of the points raised by the NPRA was that the RFG regulations have their own sample retention and submission requirements, (40 CFR 80.65), so that a sulfur rule provision for RFG batches was not necessary. The Agency continues to believe that sample and retention requirements are useful to ensure compliance with the sulfur standards, but we agree with NPRA that the sample retention and submission requirements found in the RFG rule will serve equally as well for the sulfur rule. Therefore, the final sulfur rule requires all refiners, including those producing RFG, to comply with the sulfur rule's retention requirements. However, any refiner of RFG using an independent laboratory pursuant to 40 CFR 80.65(f), either under the 100% Option or the 10% Option, will be considered to be in compliance with the sulfur rule's retain requirements provided the refiner ensures that the independent laboratory conducting the retain program for the refiner, is in compliance with these requirements. In particular, the refiner must ensure that its independent laboratory sends the appropriate certificate of analysis along with any sample forwarded to EPA. Under the RFG program's 100% Option, the refiner must ensure that its independent laboratory sends the independent lab's certificate of analysis; and under the 10% Option, the refiner must ensure that its independent laboratory sends the refiner's certificate of analysis.

In addition to urging EPA not to finalize the sample retention and submission requirements for RFG gasoline, NPRA urged us not to finalize these requirements for CG as well. NPRA argued that these requirements would not prove useful in deterring non-compliance with the sulfur requirements for this product, primarily because false samples could be forwarded to EPA. The Agency disagrees with NPRA's argument. First, the goal of these requirements is not only to deter cheating but also to reveal inadequacies that exist in refiners' sulfur testing procedures. We do not expect that most non-compliance with the sulfur standards will occur through cheating, but rather through operational problems. Agency enforcement experience under the RFG rule reveals that some refiners' testing procedures are not always accurate in measuring parameters and thus detecting noncompliance. EPA verification testing will expose such testing inaccuracy, enabling the refiner to improve its testing procedures and thus improve its ability to detect, and correct, its own compliance problems. To ensure the effectiveness of these sulfur sample retention and submission requirements, the final rule requires all refiners to provide EPA with the sulfur test result the refiner has obtained for the sample, along with each sample the refiner provides to the Agency under this rule.

EPA will use these retained samples in compliance determinations. Gasoline samples that are forwarded to EPA under the sample retention requirements that are found to be in violation of a refinery cap, will be considered by EPA to be evidence of violations of the cap standard, regardless of the refiner's own test result. In addition, EPA testing of these samples may establish that the refiners' test results are generally incorrect, *i.e.*, are biased. EPA will evaluate whether such a bias constitutes evidence of a violation of the sulfur average standards applicable to the refiner, including whether the bias extends to other sulfur tests conducted by the refiner during the current or previous averaging periods. Further, evidence of testing bias could constitute evidence a refiner has not met the requirement to conduct sulfur testing in accordance with specified

[147] See Table IV.C.–1.

[148] See the discussion on this subject in the preamble to the reformulated gasoline program's final rule, 59 FR 7765 (Feb. 16, 1994).

[149] See 40 CFR 80.65(f)(3)(F)(ii), and the Proposed Rule for Modifications to Standards and Requirements for Reformulated and Conventional Gasoline, 62 FR 37337 *et seq*, proposed 40 CFR 80.101(i)(1)(i)(C)(iii).

procedures, and any reports submitted to EPA that reflect the bias could be evidence a refiner has not met the requirement to properly report the sulfur content of gasoline produced.

While it is true that a party can submit false samples to EPA in order to prevent the Agency from discovering what in actuality is a non-compliant batch of gasoline, we do not believe that there will be many examples of such flagrant cheating. Our enforcement experience indicates that the great majority of parties regulated under the fuels programs work to comply with the regulatory requirements. We believe that the potential penalties for the submission of false samples to the government, and the potential criminal liability which such conduct would subject parties to under to section 113 of the Clean Air Act, will act as significant deterrents to this cheating. Last, to further decrease perceived incentives for such cheating, the regulation specifically requires that the refinery official signing and submitting the refinery's annual sulfur report must make inquiries to verify the correctness of the sampling collection and retention procedures and include with the annual sulfur report a personal certification of the correctness of the procedures used to collect the retained samples. If such certification cannot be made, then the report cannot be timely filed.

NPRA further commented that CG being counted to create early credits under the sulfur rule's ABT program should not be subject to the proposed sample retention and submission requirements. NPRA argues that the lack of a sulfur cap during the early credit timeframe makes such retention and submission unnecessary. The Agency disagrees. During the early credit generation timeframe, refiners participating in the credit program must comply with sulfur averaging requirements, even though sulfur caps are not required to be met. Accurate determination of compliance with the averaging requirements necessitates accurate sulfur testing in the early credit period, just as it does during implementation of the full sulfur program, even though sulfur testing of CG composite samples will be permitted. Hence, the sample retention and submission requirements, whose purpose is to ensure accurate testing and compliance determination, continue to be necessary for the early credit period. The final rule retains the sample retention requirements for CG during the early credit time frame.

NPRA also suggested that in place of the proposed 30 day sample retention requirement, EPA instead should require refiners to maintain samples only from the last three batches of gasoline produced. NPRA argued that this alternative requirement would prove more economical for the refiners, yet would still provide EPA with the ability to test some samples itself. Although the Agency believes that the proposed 30 day retention period would provide a valuable amount of samples to be retained and thus available for testing by EPA, the Agency agrees that a more limited sample retention requirement could provide an acceptable means of confirming refiner testing accuracy and sulfur compliance, while being less burdensome to refiners. We do not believe, however, that retention of samples from only three batches of gasoline would be effective in accomplishing the goal of producing greater testing accuracy. Three samples would not be a great enough number to realistically demonstrate if a pattern of testing irregularities exists or to demonstrate that a significant volume of the refiner's production is covered by the testing verification process. Consequently, instead of the three batch sample retention requirement proposed by this commenter, the Agency has instead required in the final rule that at least the last 20 samples be retained, and that each sample be retained for a minimum of 21 days. The Agency believes this amended requirement addresses NPRA's concern that the amount of days of sample retention be reduced from thirty days, while also providing the Agency with an effective means of assuring a reasonable number of samples, representing a significant period of refining activity, will be available for accuracy testing. We believe the retention requirement is not burdensome given the limited number of samples that must be retained. Further, many refineries already retain samples.

A final comment by NPRA about the sample retention and submission requirements is addressed in the final rule. NPRA raised a concern about the required retention and submission of samples of pressurized blendstock, particularly butane, which would require the use of specialized high-pressure containers. The Agency agrees that there is legitimate concern about the handling, storing and shipping of such samples. We also believe that the final rule's quality assurance testing requirements and the testing requirements for blendstock suppliers provides adequate assurance of the compliance of these blendstocks. Hence, the final sulfur rule does not contain a requirement that samples of pressurized blendstock must be retained.

*E. Federal Enforcement Provisions for California Gasoline and for Use of California Test Methods To Determine Compliance*

Requirements to Segregate Gasoline and to Use Product Transfer Documents for Certain California gasoline; Definition of California Gasoline

In the NPRM, the Agency proposed to generally exempt from the requirements of the federal sulfur rule certain gasoline sold or intended for sale in California. For the purpose of program consistency, the gasoline to be exempt in the sulfur rule would meet the same definition of California gasoline as found in the RFG rule (40 CFR 80.81(a)(2)). The exempt gasoline would include all gasoline sold, intended for sale, or made available for sale in California that was also either: produced within California; imported into California from outside the U.S.; or imported into California from another state, provided that the out-of-state refinery did not also produce federal RFG.

Although the NPRM proposed to exempt California gasoline from compliance with the proposed sulfur standards (for reasons discussed elsewhere in this preamble), we did propose two requirements that would apply to some exempt California gasoline. The first would require exempt gasoline produced outside of California but intended for use in California, to be segregated from non-exempt gasoline at all points in the distribution system. The second would require out-of-state producers of exempt gasoline intended for sale in California to create PTDs identifying the product as California gasoline, and would require such PTDs to be provided to all transferees of this gasoline in the distribution system. Requiring such documentation is intended to facilitate enforcement and compliance by identifying gasoline that is not federally regulated. The same PTD requirements currently apply under the RFG program.[150]

One commenter expressed a reservation about the sulfur rule's proposed segregation requirement. The commenter was concerned that the segregation requirement for exempt California gasoline might interfere with the ability of California importers to import into California, non-exempt, federal RFG gasoline that happened to comply with California Air Resources Board (ARB) sulfur requirements, but had not been kept segregated by its out-

[150] See 40 CFR 80.81(g).

of-state refiner from the refiner's federal RFG product. Out of a concern about potential gasoline supply problems in California, the commenter asked for assurances from the Agency that such gasoline would not be prohibited from sale in California because of the sulfur rule's segregation requirement.

The Agency agrees that it would not be beneficial to restrict the flow of complying gasoline into California. However, since the federal and the ARB sulfur control programs provide for differing calculations of standard compliance, and since the standards themselves are not always consistent between the two programs, EPA does not believe that the compliance of gasoline produced for federal purposes will necessarily assure its compliance with ARB program requirements, and vice-versa. Therefore, we believe it is necessary to require the physical segregation of the gasolines produced for the different programs in order to best ensure compliance with our uniquely determined federal sulfur standards. To ensure segregation, it is necessary that refiners and importers designate gasoline batches destined for California as California gasoline and that PTDs identify the gasoline as being for use only in California.

Further, one of the purposes of creating the California exemption in the federal sulfur rule is to ensure the exclusion of California gasoline from the refiner's compliance calculations under the federal rule. This exclusion is necessary to prevent gasoline that is produced to comply with the strict California standards from unfairly effecting the refiner's compliance with the federal requirements, thereby facilitating the production of higher sulfur gasoline for use in a federal market supplied by the refiner. EPA believes that segregation of the two gasolines is necessary because it facilitates accurate identification of the product to be included solely in the federal compliance calculations.

EPA does not believe that requiring the segregation of California gasoline from gasoline produced for the federal market should create a significant restriction in the flow of gasoline to California. The Agency believes that if a California marketer needs to acquire ARB-complying gasoline from out-of-state, the marketer should generally be able to satisfy that need by ordering a batch of California gasoline to be created for it by out-of-state producers. Under this circumstance of the creation of a unique batch of California gasoline, segregation of the gasoline will typically be assured.

In analyzing the above comment on segregation of California gasoline, the Agency realized that the sulfur rule's proposed definition of exempted California gasoline, which paralleled the definition existing in the RFG rule, was not as complete as it should be to properly address the unique needs of the sulfur program. Specifically, the exclusion from the sulfur rule's exemption of out-of-state gasoline sold or intended for sale in California solely because it happens to be produced at a refinery that produces federal RFG gasoline, is not appropriate. Basing an exemption on whether or not an out-of-state refinery produces federal RFG is relevant to the RFG program, but it has no relevance to the sulfur control program. To ensure effective determination of compliance with federal sulfur standards, the final sulfur rule deletes any reference to RFG production in the rule's definition of exempt California gasoline. Hence, the example presented in the comment, in which out-of-state gasoline for sale in California could be considered non-exempt gasoline, would not arise under the expanded definition of California gasoline.

Use of California Test Methods and Off-Site Sampling Procedures for 49 State Gasoline

Under the NPRM and the final rule, refineries and importers located in California would be required to meet the federal sulfur standards and other requirements with regard to their ''federal'' gasoline to be used outside of California. However, we proposed that gasoline produced in California for sale outside of California could be tested for compliance under the federal sulfur rule using the methodologies approved by the ARB, provided that the producer complies with the procedures for such testing as already required under 40 CFR 80.81(h), which permits California test methods not identical to federal test methods to be used for conventional gasoline. Today's rule adopts this provision, as well as the corollary proposed provision that gasoline produced by California refiners for use out-of-state may be tested at off-site testing as already permitted pursuant to 40 CFR 80.81(h) for CG purposes. Both provisions in today's rule should alleviate duplicate testing burdens on California refiners subject to both the federal and California programs, since the test methods acceptable under these alternative provisions in today's rule are also currently used to comply with California requirements. No comments were received on these provisions.

*F. Recordkeeping and Reporting Requirements*

1. Product Transfer Documents

Small Refiner Gasoline Transfers

The NPRM proposed that the business practice PTDs that accompany each transfer of custody or title of gasoline that includes gasoline produced by any small refiner subject to sulfur rule individual refinery standards would be required to identify the gasoline as such, including the applicable downstream cap, as an aid to enforcing the national downstream cap. Today's rule adopts the proposed PTD requirement, with modifications regarding how the PTD requirement relates to testing, as described in section VI.C. The requirement for printing information on PTDs has been simplified in the final rule. All parties may use brief codes to identify the small refiner status of the gasoline and to identify the small refiner downstream standard it is subject to. This small refiner gasoline PTD provision is also applied to gasoline subject to individual refinery standards under the temporary refiner relief provision of today's rule.

GPA Gasoline Transfers

Under the geographic phase-in program finalized today, gasoline produced or imported for use in the GPA may be used only in the GPA states. Therefore, it is necessary for PTDs for gasoline that is comprised in whole, or in part, of GPA gasoline, to identify the gasoline as such and state that the gasoline may not be distributed or sold for use outside the GPA. Product codes may be used to provide this information, except in the case of transfers to truck carriers, retailers and wholesale purchaser-consumers.

2. Recordkeeping Requirements

Under today's rule, refiners and importers will be required to keep and make available to EPA certain records that demonstrate compliance with the sulfur program standards and requirements. This includes records pertaining to the generation, use and transfer of credits and allotments. The RFG/CG regulations currently require refiners and importers to retain records that include much of the information required in the sulfur rule. Where this is the case, there is no requirement for duplication of records or information.

Under the final rule, all parties in the gasoline distribution system, including refiners, importers, oxygenate blenders, retailers, and all types of distributors will be required to retain PTDs and records of quality assurance programs (including, where applicable, sulfur test

results) that parties conduct to establish a defense to downstream violations. All parties in the gasoline distribution system currently are required to keep PTDs for RFG. However, since there are no downstream CG standards under the anti-dumping regulations, only refiners and importers are required to retain PTDs for conventional gasoline under the current regulations. Because the sulfur rule, like the RFG rule, includes downstream standards, we believe that a requirement to retain PTDs for all parties in the gasoline distribution system is appropriate under the sulfur rule. The PTD information will help us identify the source of any gasoline found to be in violation of the sulfur standards, and will provide downstream parties with information regarding the applicable downstream standard.

Parties are required to keep records for a period of five years,[151] with additional requirements for records pertaining to credits and allotments. Records pertaining to credits or allotments that were banked and never transferred to another party are required to be retained for five years after the credits or allotments are used for compliance purposes. Records pertaining to credits or allotments that were transferred are required to be retained by the transferor for five years after the year the credits or allotments were transferred, and by the transferee for five years after use.

We received comment that the regulations should allow records to be maintained in non-hard copy formats, such as photographic or electronic means. We do not believe that the recordkeeping requirements, as proposed, disallow the retention of records in electronic or photographic form. However, parties that electronically generate and/or maintain records must make available to EPA the hardware and software necessary to review the records, or if requested by EPA, electronic records shall be converted to paper documents.

The sulfur rule, like the RFG/CG rule, requires regulated parties to keep the results of tests conducted on the gasoline. A number of parties previously have asked EPA to clarify whether, under the RFG/CG rule, this recordkeeping requirement requires parties to keep copies of all documents that contain test results. To clarify what the recordkeeping requirements require with regard to test data, we proposed for the RFG/CG rule to add language which specifies that the test result as originally printed by the testing apparatus is required to be kept, or, where no printed result is generated by the testing apparatus, the results as originally recorded by the person who performed the tests. Today's action incorporates this clarification in the sulfur rule. Under this provision, where the test data is initially recorded into a database system and there are no prior written recordings of the data, the information in the database system may serve as the original record of the test data. The final rule also specifies that any record that contains results for a test that are not identical to the results as originally printed by the testing apparatus or recorded by the person who performed the test must also be kept. Although this language was not included in the NPRM, we have concluded it is a logical outgrowth of the proposal regarding recordkeeping for test data, and that it will make the regulation clearer with regard to this requirement. As a result, it is appropriate to include this language in the final rule.

3. Reporting Requirements

Refiners and importers will be required to submit an annual report that demonstrates compliance with the applicable sulfur standards and data on individual batches of gasoline, including batch volume and sulfur content. The rule requires that refiners and importers report on the generation, use and transfer of credits and allotments. The RFG/CG programs contain similar reporting requirements. Based on our experience with these programs, we believe that requiring an annual sulfur report and batch information will provide an appropriate and effective means of monitoring compliance with the average standards under the sulfur program. The batch data also will serve to verify that each batch of gasoline met the applicable sulfur cap standard when it left the refinery or import facility. The batch data must also show which batches were designated as GPA gasoline, as appropriate.

For the 2004 and 2005 annual averaging periods, refiners will be required to submit a report for the refiner's gasoline production (RFG and conventional gasoline) for all refineries during the averaging period, which demonstrates compliance with the applicable corporate average and per-gallon cap standards. For the 2005 annual averaging period, refiners will also be required to submit a separate report for each refinery, which demonstrates compliance with the refinery average standard. For the 2004 and 2005 annual averaging periods, importers will be required to submit a report for all of the gasoline they import during the averaging period, which demonstrates compliance with the applicable corporate average and per-gallon cap standards. The importer's report for 2005 must also demonstrate compliance with the refinery average (30 ppm) standard. Any refiner who is also an importer must aggregate the refining and importing activities for the purpose of demonstrating compliance with the applicable corporate average standards. Importers of gasoline produced by foreign refiners with individual baselines have additional reporting requirements. For the 2006 averaging period and beyond, corporate average reports are no longer required for either refiners or importers. Refiners will be required to submit an annual report for each refinery (importers for the gasoline they import), which demonstrates compliance with the refinery average and per-gallon cap standards. Refiners or importers producing both GPA gasoline and gasoline for the remainder of the country, must separately report compliance with the different standards. Annual reports, on forms provided by the Agency, must be received by EPA by the last day of February for the prior calendar year.

The annual reports will also provide a vehicle for accounting for any sulfur allotments or credits created, sold or used to achieve compliance during the averaging period. (See Section IV.C. for a discussion of the sulfur allotment and ABT credit programs.) Each refiner or importer choosing to participate in the ABT program will be required to report to the Agency on an annual basis (refiners for each refinery, and importers for the gasoline they import) the applicable sulfur baseline and the annual average gasoline sulfur level produced at that refinery or by that importer (in ppm sulfur) during the averaging period. Credit calculations will be reported, along with an accounting of credits banked, used, traded, acquired or terminated. The credits will be in units of ppm-gallons. The identity of the refiners/refineries and importers involved in these transactions will be reported, along with the registration numbers assigned to them by the Agency under the RFG/CG program (40 CFR 80, subparts D, E, and F).

For years 2000 through 2003, parties who generate early ABT credits will be required to report information relating to the generation of these credits. These early credit reports will only cover credits banked and traded. Beginning in 2004 and beyond, refiners and importers

[151] Five years is the applicable statute of limitations for the RFG and other fuels programs. See 28 U.S.C. 2462.

who generate and/or use ABT credits will be required to submit information relating to the generation and use of the credits as part of their annual compliance reports, including any credit debit that is carried over to the subsequent year. For each purchase of ABT credits, as reported on the buyer's annual report, there must be a corresponding entry on the seller's annual report. The annual report must also indicate any credits that are used to achieve compliance with the refinery average standard.

As discussed above, during the 2004 and 2005 annual averaging periods, refiners for the combined production from all their refineries, and importers for the gasoline they import, will also be required to demonstrate compliance with the applicable corporate average standard. In addition, refiners and importers must demonstrate compliance with the requirements for the generation, use, transfer and termination of allotments. Refiners and importers who trade sulfur allotments to meet the corporate average standard will be required to submit information relating to these transactions. All sulfur allotment transactions must be concluded by the last day of February of the calendar year following the year the allotments were used to meet the corporate average. Information relating to such transactions, including the identity of the refiners and importers involved in the transactions and their EPA registration numbers, must be reported by both parties to the transaction as part of their annual compliance reports.

As discussed in Section IV.C., above, parties that only blend oxygenates into gasoline are not treated as refiners under the sulfur rule, and, as a result, are not subject to the reporting requirements under § 80.370.

Refiners and importers are also required to arrange for a certified public accountant or certified internal auditor to conduct an annual review of the company's records that form the basis of the annual sulfur compliance report (called an ''attest engagement''). The purpose of the attest engagement is to determine whether representations by the company are supported by the company's internal records. Attest engagements are already required under the RFG/CG regulations. The refiner's attest engagement under the RFG/CG rule partially encompasses sulfur rule compliance since the attest auditors are already required to verify sulfur results for both CG and RFG. However, the RFG/CG attest engagements do not require the attest auditor to review sulfur credit generation, credit purchases, credit trading or small refiner issues. Because of the complexity of the sulfur credit program and small refiner program, sulfur attest engagement provisions have been adopted by today's rule that require the attest auditor to review sulfur credit generation, credit trading, credit purchasing, credit selling, corporate pool averaging, and small refiner issues. Consistent with the RFG regulations, the attest reports for sulfur are to be included in the presently required attest engagement submitted by May 31 of each year.

*G. Exemptions for Research, Development, and Testing*

The final rule provides for an exemption from the sulfur requirements for gasoline used for research, development and testing purposes. We recognize that there may be legitimate research programs that require the use of gasoline with higher sulfur levels than those allowed under the sulfur rule. As a result, the final rule includes provisions for obtaining an exemption from the prohibitions for persons distributing, transporting, storing, selling or dispensing gasoline that exceeds the standards, where such gasoline is necessary to conduct a research, development or testing program. Parties are required to submit to EPA an application for exemption that describes the purpose and scope of the program and the reasons why use of the higher sulfur gasoline is necessary. In approving any application, EPA will impose reasonable conditions such as recordkeeping, reporting, volume limitations and possible requirements to repair vehicles.

We received comment that the regulations should clarify that suppliers of gasoline used for R&D purposes are exempt from the prohibitions and penalties under the sulfur rule. To clarify this point, we have added a provision which explicitly states that gasoline subject to an R&D exemption is exempt from the provisions of subpart H, so long as the gasoline is used in a way that complies with the terms of the memorandum of exemption. If the R&D exemption is shown to be based on false information or is not properly maintained, parties will be liable for violations of the provisions under subpart H regarding any gasoline covered under the exemption.

We also received comment that the regulations should ensure that vehicles which have been used for testing with high sulfur test fuels are not later returned to the general fleet, or if they are, the vehicles should be required to be restored to their original condition. EPA agrees that it would be improper to permit such vehicles to be used in general use if their emission controls have been rendered inoperative through fueling with high sulfur gasoline. This issue may be effectively addressed through the anti-tampering requirements of section 203(a)(3) of the Clean Air Act, 42 U.S.C. § 7522(a)(3), and is also addressed in today's rule, which provides the Administrator with the power to include appropriate conditions when granting R&D exemptions.

*H. Liability and Penalty Provisions for Noncompliance*

The liability and penalty provisions under the sulfur rule are similar to the liability and penalty provisions of the RFG and other fuels regulations.[152] Regulated parties will be liable for committing certain prohibited acts, such as selling or distributing gasoline that does not meet the sulfur standards, or causing others to commit prohibited acts. In addition, parties will be liable for a failure to meet certain affirmative requirements, such as the recordkeeping or PTD requirements, or causing others to fail to meet such requirements.

The sulfur rule, like other EPA fuels regulations, includes a presumptive liability scheme for violations of prohibited acts. Under this approach, the party in the gasoline distribution system that controls the facility where the violation occurred, and other parties in that gasoline's distribution system (such as the refiner, reseller, and distributor), are presumed liable for the violation.[153] The sulfur rule explicitly includes causing another person to commit a prohibited act and causing the presence of non-conforming gasoline to be in the distribution system as prohibitions. The final rule clarifies that causing the presence of non-conforming gasoline to be in the distribution system includes gasoline that does not conform to the applicable average standard, as well as gasoline that does not conform to the cap standard. Affirmative defenses are provided for each party that is deemed presumptively liable for a violation, and all presumptions of liability are refutable. The defenses under the sulfur rule are similar to those

[152] See section 80.5 (penalties for fuels violations); section 80.23 (liability for lead violations); section 80.28 (liability for volatility violations); section 80.30 (liability for diesel violations); section 80.79 (liability for violation of RFG prohibited acts); section 80.80 (penalties for RFG/CG violations).

[153] An additional type of liability, vicarious liability, is also imposed on branded refiners under these fuels programs.

available to parties for violations of the RFG regulations.

The final sulfur rule, like the proposal, applies the provisions of section 211(d)(1) of the Clean Air Act (Act) for the collection of penalties. The penalty provisions subject any person who violates any requirement or prohibition of the sulfur rule to a civil penalty of up to $27,500 for every day of each such violation and the amount of economic benefit or savings resulting from the violation. A violation of the applicable average sulfur standard constitutes a separate day of violation for each day in the averaging period. A violation of a sulfur cap standard constitutes a separate day of violation for each day the gasoline giving rise to the violation remained in the gasoline distribution system. The length of time the gasoline in question remained in the distribution system is deemed to be twenty-five days unless there is evidence that the gasoline remained in the gasoline distribution system for fewer than or more than twenty-five days. The penalty provisions are similar to the penalty provisions for violations of the RFG regulations.

After consideration of the comments received, the Agency is adopting regulations that specify the regulated parties who may be subject to liability for causing a violation of the sulfur rule. As proposed, the regulation would have applied to any person, not limited to the parties in the gasoline distribution system whose actions could logically have caused the nonconformity. This provision would have potentially broadened the range of liable parties under the sulfur rule beyond the range established under other fuel programs. EPA believes that the presumptive liability schemes of current fuels regulations have generally been effective and finds no compelling reason to apply the regulatory provision at issue to ''any person'' rather than to specific parties. Therefore, in the final sulfur rule, the liability sections for the causation violations will specify the regulated parties subject to the liability, and will not encompass unspecified parties. The final rule clarifies that oxygenate blenders are among the specified parties potentially subject to liability. Today's final rule also clarifies that parent corporations are liable for violations of subsidiaries. This is consistent with our interpretation of the RFG rule, as stated in the RFG and Anti-dumping Question and Answer document. Finally, the final rule clarifies that each partner to a joint venture will be jointly and severally liable for the violations at a joint venture facility or by a joint venture operation.

We received several comments on the proposal. Some commenters believe that the Act does not authorize EPA to establish prohibitions against causing another person to commit a prohibited act or causing the presence of non-conforming gasoline to be in the distribution system. These commenters believe that these prohibitions are a departure from the liability scheme under the existing fuels regulations and that they constitute double jeopardy by imposing liability for multiple violations for a single act. The commenters also believe that imposing liability for causing another person to commit a prohibited act extends the limits that Congress placed on liability under section 211 of the Act, since sections 211(d) and 211(k)(5) do not expressly mention imposing liability for causing another person to violate regulations. The commenter also noted that, had Congress intended for such actions to be prohibited, it could have expressly included such a prohibition in section 211. This commenter cites section 211(g) as an example of a statutory provision with such a prohibition. One commenter said that, rather than clarify the presumptive liability scheme, the rule provides no guidance regarding what it means to cause someone to violate a prohibition or cause non-conforming gasoline to be in the distribution system. A commenter also stated that these proposed prohibitions are unnecessary, since EPA has issued violations to multiple parties under current fuels regulations.

EPA disagrees with the comment that the sulfur rule's proposed liability scheme is a marked departure from the liability schemes typically found in the other fuels programs promulgated pursuant to section 211 of the Act and with the comment that the regulations constitute double jeopardy (the double jeopardy issue is addressed in the Response to Comment document). The majority of these programs, including the proposed sulfur rule, contain presumptive liability enforcement structures which impose liability on parties who, through their actions, could logically have caused the fuel nonconformity. The sulfur rule's presumptive liability scheme is thus consistent with the liability schemes of typical prior fuels programs. While EPA has issued notices of violations to multiple parties for violations under current fuels regulations, the Agency believes it is appropriate to clarify that the act of causing another party to violate the regulations is a prohibited act. Therefore, the regulatory language in the sulfur regulations explicitly addresses this issue.

EPA also disagrees with the comment that this provision is inconsistent with Section 211(d) of the Act because Section 211(d) does not mention imposing liability for causing another person to violate the regulations promulgated under Section 211(c). For the reasons described above, EPA is adopting a provision in today's regulations that prohibits causing another entity to violate the standards. This prohibition is a reasonable exercise of EPA's discretion under Section 211(c), and the penalty provision of Section 211(d) apply to violations of the prohibition. The fact that Section 211(d) does not specifically mention causing another person to violate the regulations is therefore irrelevant, such action is itself a violation of the regulations. Moreover, Section 211(d) does not mention any specific violations for which penalties may be assessed, but rather states generally that violations shall result in penalties. Thus, the absence of specific mention of causing another entity to violate the regulations is irrelevant, since all other specific prohibitions in regulations subject to Section 211(d) penalties are similarly not mentioned.

The Agency also disagrees with the comment that the Clean Air Act does not give EPA the authority to establish causation violations under the sulfur rule. We believe that the Act gives us ample authority to categorize the sulfur rule's causative acts, *i.e.,* the causing of another party to commit a violation, and the causing of nonconforming gasoline to be present in the distribution system, as prohibited acts. Section 211(c) of the Act authorizes the Agency to promulgate regulations for the purpose of prohibiting or controlling the manufacture, introduction into commerce, sale, or offering for sale of fuels or fuel additives where the fuel or additive causes or contributes to air pollution which may reasonably be anticipated to endanger public health or welfare, or where the fuel or additive will impair to a significant degree the performance of emission control devices that are or will be in general use. Today's gasoline sulfur rule is promulgated pursuant to this authority.

Section 211(c) gives EPA broad discretion to fashion regulations to control or prohibit the manufacture, introduction into commerce, sale, or offering for sale of fuels once the Agency has made the requisite findings regarding contribution to harmful air pollution or impairment of vehicle emissions control system performance. This includes the discretion to adopt

reasonable regulatory provisions that are necessary and appropriate to ensure that the controls or prohibitions are effective. To effectively regulate sulfur in gasoline under section 211, it is necessary for the Agency to regulate the actions of those parties who do the manufacturing, introducing into commerce, and selling of gasoline subject to the sulfur requirements.

When one or several of these regulated parties causes another regulated party to violate the rule (or causes nonconforming gasoline to be present in the system), such an act could logically result in the high sulfur gasoline contributing to harmful air pollution or to the impairment of vehicle emission control device performance, which are the adverse impacts that legislative authority under section 211(c) was created to control. Examples of such upstream causative acts include the scenario where a refiner produces high sulfur gasoline which it sells to a distributor. That distributor then resells the nonconforming product to a variety of retail outlets which, in their turn, also violate the rule by selling the high sulfur gasoline to owners of motor vehicles. Another example occurs where a distributor has created high sulfur gasoline by blending high sulfur blendstock into his gasoline. This distributor then makes several different sales of this noncomplying product to a variety of retail outlets, which, in their turn, also violate the rule by selling the product to numerous motor vehicle owners. A third upstream causation scenario could occur if several refiners happen to make nonconforming gasoline. Each then sells its nonconforming product to a different distributor, and a retail outlet which is a customer of both distributors, purchases some of the noncomplying gasoline from both distributors. The retailer then commits a violation by offering this product for sale to its customers.

In some cases, an upstream action has more severe environmental impacts through causing a downstream violation than would occur if the violation was corrected upstream. For example, a refiner may violate the sulfur regulations by shipping gasoline that exceeds the applicable standards when it leaves the refinery. If that violation is corrected before the gasoline reaches the retail outlets, the adverse environmental impacts could be mitigated or avoided. However, if the refiner's violation is not corrected and ultimately causes a number of violations of the standards at retail outlets, the environmental impact would be more severe, since high sulfur gasoline would be introduced into vehicles and impair catalyst performance. Therefore, it is reasonable to consider causing a downstream violation by another party to be a separate violation, since an upstream party's actions can have more severe environmental consequences if they cause downstream parties to violate applicable requirements. For these reasons, it is reasonable to conclude that section 211(c) authorizes the Agency to prohibit and control such causative acts in order to ensure that gasoline ultimately introduced into vehicles meets the low sulfur standards.

Our approach is also reasonable under section 211(c) even though section 211(c) does not expressly prohibit causing another party to violate standards adopted under this subsection. In fact, section 211(c) itself does not contain any express prohibitions, but rather provides EPA authority to regulate fuels and fuel additives, based on certain findings. In contrast, other provisions of section 211, such as section 211(g), do include express prohibitions against certain actions. Thus, under section 211(g), the specified actions are prohibited even in the absence of EPA adopting regulations to codify the prohibitions. In section 211(g), Congress indicated a clear intent to prohibit a specific action (misfueling), without requiring EPA to adopt regulations to implement that prohibition. However, section 211(c) authorizes EPA to establish regulations with certain controls and prohibitions, and, as described above, EPA has the discretion to adopt reasonable measures to ensure that the requirements of such regulations are met.

Moreover, the commenters' assertion that this provision is inconsistent with other subsections of section 211 of the Act is misplaced. First, while the sulfur standards do apply to all gasoline, including gasoline subject to the reformulated gasoline requirements, the sulfur standards are being adopted pursuant to EPA's authority under section 211(c)(1), not under section 211(k). Therefore, section 211(k)(5)'s prohibitions, which describe actions that are violations of section 211(k), are not relevant to the sulfur standards. In addition, the enumeration of specific prohibitions in section 211(k) does not mean that EPA may establish no other prohibited acts with respect to reformulated gasoline; rather, it simply identifies certain actions that ''shall be'' violations of section 211(k), but does not preclude establishment of other appropriate prohibited acts pursuant to EPA's authority under the Act.

The Agency also disagrees with the argument that the proposed causation violations under the sulfur rule would impose unjustifiable, multiple liability for the commission of a single prohibited act. The Agency is generally not in the best position to know the exact cause of a gasoline nonconformity since so many parties and actions are involved with the sale and transfer of the gasoline. Therefore, for effective enforcement, we must have the ability to assert the liability of all the parties in the system who were connected with the nonconforming gasoline because they each could have caused the violation. Similarly, we must also have the ability to assert upstream liability for the full number of downstream violations a party may be responsible for causing, even if the multiple downstream violations may all ultimately be found to stem from one gasoline sale or transfer on the part of the upstream party. The enforcement possibility exists that the separate downstream violations may each have stemmed from separate actions by that party.

Any party may rebut the presumption of liability for each asserted violation by establishing through affirmative defenses that it did not cause the violation. Moreover, any party against whom EPA institutes an enforcement action may raise equitable factors about its own conduct as part of settlement of the violation enforcement action. In settling fuels matters, the Agency typically takes into account such matters as the volume of nonconforming product that a party was connected with, and the severity and the amount of proscribed activity that the party was actually involved with in causing the violation. We do not believe that either the sulfur rule's liability scheme or its future implementation will be arbitrary or unjustified.

To further alleviate commenters' concern about potential liability for multiple violations under the sulfur rule, we want to clarify that the Agency does not ordinarily attempt to collect separate penalties from an entity for the array of possible standard violations (*e.g.,* both for the manufacturing and the selling of noncomplying product), that a party might be liable for in respect to the same gasoline. In addition, we do not intend to seek penalties from a single party for violating regulatory standard requirements while also seeking penalties for that party's causing of other entities to violate regulatory standard requirements, where both violations involve the same gasoline, unless very unusual circumstances exist which would warrant such action, such as egregious conduct on the part of the party.

In a similar fashion, we do not expect to collect penalties from one party for both types of causation violations for the same amount of gasoline under normal circumstances. A primary Agency purpose in defining the causation violations as two separate prohibited acts (*i.e.,* causing another to commit a violation, and causing the presence of nonconforming product in the distribution system), was not to collect a double penalty, but to address different scenarios of evidence collection. For example, if the Agency finds a sulfur rule standard violation in a sample from a retail outlet supplied by a certain distributor, but we do not have a nonconforming sample from the distributor, the evidence would most easily permit us to assert that the distributor was responsible for causing the retailer violation that we do have evidence for. It is reasonable for us to assert the causation violation against the distributor in spite of our lack of a sample from the distributor, because any distributor who transfers gasoline to a retailer, which gasoline is found to be noncompliant, could logically have caused the noncompliance of the gasoline when it was under the distributor's control, such as by blending high sulfur blendstock into the gasoline.

On the other hand, if we have a violation sample from a distributor, but no samples from its downstream customers, we may assert that the distributor caused the presence of nonconforming gasoline in the distribution system, rather than assert that the distributor caused another party to sell nonconforming product, since we don't have a nonconforming sample from another party's facility. It would be reasonable for us to assert that the distributor caused the presence of nonconforming gasoline in the distribution system since we do have a sample of nonconforming gasoline from the distributor, and provided also that there is evidence that the distributor had sold, transferred, etc. this product to downstream customers.

In summary, the Agency intends to enforce the liability scheme of the sulfur rule in the same reasonable manner that we have enforced the similar liability schemes in our prior fuels regulations. This does not include attempting to penalize a party for multiple variations of noncompliance in regard to the same gasoline unless unusual circumstances make such action appropriate.

*I. How Will Compliance With the Sulfur Standards Be Determined?*

We have often used a variety of evidence to establish non-compliance with the requirements imposed under our current fuels regulations. Test results of the content of gasoline have been used to establish violations, both in situations where the sample has been taken from the facility at which the violation occurred, and where the sample has been obtained from other parties' facilities when such test results have had probative value of the gasoline's characteristics at points upstream or downstream. The Agency has also commonly used documentary evidence to establish non-compliance or a party's liability for non-compliance. Typical documentary evidence has included PTDs identifying the gasoline as inappropriate for the facility it is being delivered to, or identifying parties having connection with the non-complying gasoline.

EPA proposed that compliance with the sulfur standards would be determined based on the sulfur level of the gasoline, as measured using the regulatory testing methodologies. We further proposed that any evidence from any source or location could be used to establish the gasoline sulfur level, provided that such evidence is relevant to whether the level would have been in compliance if the regulatory sampling and testing methodology had been correctly performed. In today's action, EPA is adopting the proposed regulatory provision.

Several commenters interpreted this proposed language as evidencing the Agency's intent to make all evidence, including evidence not derived from regulatory test methods, equal in probative value to that from the regulatory test methods. One commenter also stated that the proposed provision is inconsistent with other parts of the proposal because it undercuts the benefits of having clearly defined regulatory test methodologies. EPA disagrees that the regulatory language indicates such an intent, or has such an effect. The regulations provide that compliance with the standards is to be determined using specified test methodologies. While other information may be used, including test results using different test methods, such other information may only be used if it is relevant to determining whether the sulfur level would meet applicable standards had compliance been properly measured using the specified test methodologies. Thus, the regulation adopted today does not result in a situation where any and all evidence carries equal weight in an enforcement action. In fact, the regulation establishes the regulatory test method as the standard against which other evidence is measured. Moreover, since any evidence other than regulatory test results must be relevant to compliance using the test method, EPA disagrees with the commenter who stated that the validity of the sulfur standards can be challenged in any enforcement action because neither EPA nor regulated entities will be able to rely on measurements taken using the regulatory test methods. Rather than causing more confusion regarding compliance with the standard, this provision clarifies that the regulatory test method defines compliance, since other evidence can only be used if it relates to compliance using that test method.

The following is an example of how the Agency believes evidence of standard non-compliance not based on regulatory test results might be used for compliance purposes under today's rule provisions. Under a first scenario, the Agency might not have sulfur results derived from regulatory test methods for a certain amount of gasoline sold by a terminal, yet the terminal's own test results, based on testing using methods other than those specified in the regulations, show an exceedance of the sulfur standard. Under the requirements of today's rule, the evidence from the non-regulatory test method could only be used to establish noncompliance if the terminal's test results are relevant to the determination of the gasoline's sulfur level that would have resulted if the regulatory test method had been used. Thus, the Agency would have to present evidence to link the results of the alternative test method to sulfur levels as measured using the regulatory test method.

Another commenter has suggested that, if the Agency decides to finalize a ''credible evidence'' provision, it use the language in the current RFG regulations which establishes a presumption that the regulatory testing methods prevail, except in exceptional circumstances. Other commenters also opposed the proposed provision in part because it differs from that in EPA's current fuels regulations. As described above, EPA believes that the provision adopted today does not undercut the importance of the regulatory testing methodologies, since other evidence may be used only as relevant to compliance as measured using the regulatory methods. In addition, as is consistent with the RFG scheme, EPA believes it is appropriate to use such other evidence even in some circumstances where test results using the regulatory test methods do exist, and the provision adopted today clarifies this. EPA also notes that it intends to undertake rulemaking in the near future to revise the current fuels regulations to

include the same language for use of other evidence as adopted today in the final sulfur rule.

The provision adopted today also clarifies that any probative evidence obtained from any source or location may be used to establish non-compliance with requirements other than the sulfur standards, such as recordkeeping requirements and requirements to properly calculate sulfur credits and averages, as well as to establish which parties have facility control or some other basis for liability for sulfur rule non-compliance. Since proof of these elements is not predicated on establishing sulfur levels, whether or not regulatory test methods are used is not significant. Therefore commenters' concern about the use of other evidence undercutting the primacy of the regulatory test methods is not germane to this part of the regulation which is not directed toward standards. This provision is being included in the final sulfur rule to clarify that this rule, as is consistent with our interpretation of our other fuels rules, contemplates the full use of all relevant evidence to establish non-standard violations and rule liability.

EPA disagrees with the commenters who stated that EPA lacks authority under the Clean Air Act to permit the use of any evidence of non-compliance of the sulfur standards other than test results using the regulatory test methods. One commenter notes that the only explicit reference in the Act to the use of ''credible evidence'' is in section 113(e), which applies only to stationary sources, and that neither section 211 nor section 205 mention ''credible evidence.'' Finally, the commenter states that the proposed provision is inconsistent with the directive of section 211(k) that EPA determine appropriate measures of and methods for ascertaining the emissions of air pollutants.

EPA disagrees with the comments asserting that the Agency lacks authority to promulgate this provision. While section 113(e) does refer to ''credible evidence,'' that provision is not relevant to EPA's action today. Moreover, the absence of the explicit use of the term ''credible evidence'' in sections 205 and 211 does not compel a conclusion that EPA lacks authority to allow the consideration of relevant evidence in determining compliance with the sulfur standards. EPA believes that section 211(c) provides sufficient authority to adopt such a provision. Section 211(c) authorizes the Agency to promulgate regulations for the purpose of prohibiting or controlling the manufacture, introduction into commerce, sale, or offering for sale of fuels or fuel additives where the fuel or additive causes or contributes to air pollution which may reasonably be anticipated to endanger public health or welfare, or where the fuel or additive will impair to a significant degree the performance of emission control devices that are or will be in general use. As described in other sections of this preamble and in the RIA, today's regulation is promulgated pursuant to this authority. Section 211(c) gives EPA broad discretion to fashion regulations to control or prohibit the manufacture, introduction into commerce, sale, or offering for sale of fuels once the Agency has made the requisite findings regarding contribution to harmful air pollution or impairment of vehicle emissions control system performance. This includes the discretion to adopt reasonable regulatory provisions that are necessary and appropriate to ensure that the controls or prohibitions are effective and can be enforced.

To ensure the effectiveness and the ability to adequately enforce the sulfur standards, it is reasonable for EPA to consider evidence other than actual test results using the regulatory test method, where such evidence can be related to the test results. As described above, test results using the regulatory test method are often not available. In such circumstances, it is reasonable to consider other evidence of compliance, such as test results using other methods or commercial documents, if such evidence can be shown to be relevant to determining whether the gasoline would meet the standard if tested using the regulatory methods. This provision would not permit the use of other evidence that is not relevant to such a determination, and is therefore reasonably limited to allow for effective enforcement, without creating uncertainty about compliance.

Finally, EPA disagrees with the commenter's assertion that this provision is inconsistent with section 211(k). First, while the sulfur standards do apply to all gasoline, including gasoline subject to the reformulated gasoline requirements, the sulfur standards are being adopted pursuant to EPA's authority under section 211(c)(1), not under section 211(k). In any case, the directive of section 211(k)(4) that EPA determine through regulation appropriate measures of and methods for ascertaining the emissions of air pollutants explicitly applies only for purposes of section 211(k), and applies for determining the emissions levels of VOCs and toxic air pollutants from baseline vehicles when operating on baseline gasoline, as defined by section 211(k). Thus, the commenter's reference to section 211(k)(4) as inconsistent with the provision adopted today is misplaced, particularly in light of the limited applicability of the language in section 211(k)(4).[154]

As described in the NPRM, the Agency frequently uses a variety of evidence to establish compliance with fuel programs' regulatory requirements and liability for non-compliance. Such evidence has included test results obtained from a variety of sources, including bills of lading, delivery records, manifests, and other commercial documents. The compliance determination provisions included in today's final rule are created to provide the most effective Agency capability to enforce the rule's requirements.

## VII. Public Participation

A wide variety of interested parties participated in the rulemaking process that culminates with this final rule. The formal comment period and four public hearings associated with the NPRM provided additional opportunities for public input. EPA also met with a variety of stakeholders, including environmental and public health organizations, oil company representatives, auto company representatives, emission control equipment manufacturers, and states at various points in the process.

We have prepared a detailed Response to Comments document that describes the comments received on the NPRM and presents our response to each of these comments. The Response to Comments document is available in the docket for this rule and on the Office of Mobile Sources internet home page. Comments and our responses are also included throughout this preamble for several key issues.

## VIII. Administrative Requirements

### *A. Administrative Designation and Regulatory Analysis*

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency is required to determine whether this regulatory action would be ''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 any regulatory action that is likely to result in a rule that may:

[154] The commenter references section 211(k)(5) as support for its assertion, but quotes language from section 211(k)(4). EPA assumes that the commenter intended to cite section 211(k)(4) rather than section 211(k)(5).

• 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;
• Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
• Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,
• 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 final rule is a ''significant regulatory action'' because the vehicle standards, gasoline sulfur standards, and other regulatory provisions, if implemented, would have an annual effect on the economy in excess of $100 million. Accordingly, we have prepared a Final Regulatory Impact Analysis (RIA) which is available in the docket for this rulemaking and at the internet address listed under **ADDRESSES** above. This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12866. Any written comments from OMB on today's action and any responses from EPA to OMB comments are in the public docket for this rulemaking.

*B. Regulatory Flexibility*

The Regulatory Flexibility Act, 5 U.S.C. 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, to ensure that concerns regarding small entities are adequately considered during the development of new regulations that affect them. EPA has identified industries subject to this rule and has provided information to, and received comment from, small entities and representatives of small entities in these industries. We have prepared a Final Regulatory Flexibility Analysis (RFA) to evaluate the economic impacts of today's proposal on small entities.[155] The key elements of the RFA include:

• The number of affected small entities;
• The projected reporting, record keeping, and other compliance requirements of the proposed rule, including the classes of small entities that would be affected and the type of professional skills necessary for preparation of the report or record;
• Other federal rules that may duplicate, overlap, or conflict with the proposed rule; and
• Any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize significant economic impacts of the proposed rule on small entities.

The Agency convened a Small Business Advocacy Review Panel (the Panel) under section 609(b) of the Regulatory Flexibility Act as added by SBREFA. The purpose of the Panel was to collect the advice and recommendations of representatives of small entities that could be affected by today's proposed rule and to report on those comments and the Panel's findings as to issues related to the key elements of the Regulatory Flexibility Analysis under section 603 of the Regulatory Flexibility Act. The report of the Panel has been placed in the docket for this rulemaking.[156]

The contents of today's final rule and the Final Regulatory Flexibility Analysis reflect the recommendations in the Panel's report. We summarize our outreach to small entities and our responses to the recommendations of the Panel below.

1. Potentially Affected Small Businesses

The Regulatory Flexibility Analysis identifies small businesses from the industries in the following table as subject to the provisions of today's rule:

TABLE VIII.1.—INDUSTRIES CONTAINING SMALL BUSINESSES POTENTIALLY AFFECTED BY TODAY'S RULE

| Industry | NAICS[a] codes | SIC[b] codes | Defined by SBA as a small business if:[c] |
|---|---|---|---|
| Motor Vehicle Manufacturers | 336111 | 3711 | < 1000 employees. |
| | 336112 | | |
| | 336120 | | |
| Alternative Fuel Vehicle Converters | 336311 | 3592 | < 500 employees. |
| | 541690 | 8931 | |
| | 336312 | 3714 | < 750 employees. |
| | 422720 | 5172 | < 100 employees. |
| | 454312 | 5984 7549 | < $5 million annual sales. |
| | 811198 | 8742 | |
| | 541514 | | |
| Independent Commercial Importers of Vehicles and Vehicle Components. | 811112 | 7533 | < $5 million annual sales. |
| | | 7549 | |
| | 811198 | 8742 | |
| | 541514 | | |
| Petroleum Refiners | 324110 | 2911 | < 1500 employees. |
| Petroleum Marketers and Distributors | 422710 | 5171 5172 | < 100 employees. |
| | 422720 | | |

[a] North American Industry Classification System.
[b] Standard Industrial Classification system.
[c] According to SBA's regulations (13 CFR 121), businesses with no more than the listed number of employees or dollars in annual receipts are considered ''small entities'' for purposes of a regulatory flexibility analysis.

The Final RFA identifies about 15 small petroleum refiners, several hundred small petroleum marketers, and about 15 small certifiers of covered vehicles (belonging to the other categories in the above table) that would be subject to the rule.

[155] The Final RFA is contained in Chapter 8 of the Regulatory Impact Analysis.

[156] Report of the Small Business Advocacy Panel on Tier 2 Light-Duty Vehicle and Light-Duty Truck Emission Standards, Heavy-Duty Gasoline Engine Standards, and Gasoline Sulfur Standards, October 1998.

2. Small Business Advocacy Review Panel and the Evaluation of Regulatory Alternatives

The Small Business Advocacy Review Panel was convened by EPA on August 27, 1998. The Panel consisted of representatives of the Small Business Administration (SBA), the Office of Management and Budget (OMB), and EPA. During the development of the proposal, EPA and the Panel were in contact with representatives from the small businesses that would be subject to the provisions of the rule. In addition to verbal comments from industry noted by the Panel at meetings and teleconferences, we received written comments from each of the affected industry segments or their representatives. These comments, alternatives suggested by the Panel to mitigate adverse impacts on small businesses, and issues the Panel requested EPA take additional comment on are contained in the report of the Panel and are summarized below. Today's final rule incorporates the major recommendations of the Panel.

Fuel-Related Small Business Issues

Most of the small refiners stated that if they were required to achieve 30 ppm sulfur levels on average with an 80 ppm per-gallon cap without some regulatory relief, they would be forced out of business. Thus, the Panel devoted much attention to regulatory alternatives to address this concern. Most small refiners strongly supported delaying mandatory compliance for their facilities. On the other hand, most small refiners stated that a phase-in of gasoline sulfur standards would not be helpful because it would be more cost-effective for them to install the maximum technology required for the most stringent sulfur levels that would ultimately be imposed.

The Society of Independent Gasoline Marketers of America (SIGMA) commented that EPA should consider giving relief not only to refiners that meet the SBA definition of small refiner but also to refineries with relatively small production capacity that are owned by large refining companies. This was because a refinery with a small production capacity would operate essentially as an SBA-defined small refiner would. SIGMA also noted that small gasoline marketers would be affected by the closure of any refinery with small production capacity, whether it was owned by a large company or an SBA-defined small refining company.

The Panel recommended that small refiners be given a four to six year period of relief during which less stringent gasoline sulfur requirements would apply. The Panel also advised that EPA specifically request comment on an alternative duration of ten years for the relief period. Small refiners would be assigned interim sulfur standards during this relief period based on their current individual refinery sulfur levels. Following this relief period, small refiners would be required to meet the industry-wide standard, although temporary hardship relief would be available on a case-by-case basis. The Panel concluded that additional time provided to small refiners before compliance with the industry-wide standard was required would allow (1) new sulfur-reduction technologies to be proven-out by larger refiners, (2) the costs of advanced technology units to drop as the volume of their sales increases, (3) industry engineering and construction resources to be freed-up, and (4) the acquisition of the necessary capital by small refiners.

The Panel also concluded that adding gasoline sulfur to the fuel parameters already being sampled and tested by gasoline marketers would likely result in little, if any, additional burden. Therefore, the Panel did not recommend any special provision for gasoline marketers.

EPA's final action on this issue closely follows the Panel's recommendations. You can find a description of the small refiner provisions of today's final rule in Section IV.C.2. above. Comments and our responses on related issues are collected in the Response to Comments document.

*Vehicle-Related Small Business Issues*

Independent commercial importers of vehicles (ICIs) suggested that the new emissions standards be phased-in with the phase-in schedule based on the small vehicle manufacturer's annual production volume. Secondly, the ICIs requested that small testing laboratories be permitted to use older technology dynamometers than proposed for use by the Agency. Finally, the ICIs commented that the certification process should be waived for certain foreign vehicles. Small-volume vehicle manufacturers (SVMs) stated that a phase-in of Tier-2 emissions standards is essential. They further stated that SVMs should not be required to comply until the end of the phase-in period, which should not be before model year 2007. The SVMs also stated that a case-by-case hardship relief provision should be provided for their members. SVMs requested that a credit program be established with incentives for larger manufacturers to make credits available to SVMs in meeting their compliance goals.

Based on the above comments, the Panel advised that EPA consider several alternatives, individually or in combination, for the potential relief that they might provide to small certifiers of vehicles.

The Final Regulatory Flexibility Analysis evaluates the financial impacts of the proposed vehicle standards and fuel controls on small entities. EPA believes that the regulatory alternatives incorporated in today's final rule will provide substantial relief to small business from the potential adverse economic impacts of complying with today's proposed rule.

*C. Paperwork Reduction Act*

The information collection requirements (ICRs) associated with today's rule belong to two distinct categories: (1) those that pertain to amendments to the vehicle certification requirements, and (2) those that pertain to requirements for the control of gasoline sulfur content. These information collection requirements are contained in two separate ICR documents according to the category to which they belong.

The ICR in this final rule that pertains to the amendments to the vehicle certification requirements has been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* Copies of this ICR [157] can be obtained from Sandy Farmer, Office of Environmental Information, Collections Strategy Division, U.S. Environmental Protection Agency (Mail Code 2822), 401 M Street, SW, Washington, D.C. 20460, or by calling (202) 260–2740. Please refer to ICR #783.40 in any correspondence. Copies may also be downloaded from the internet at *http://www.epa.gov/icr.*

The ICR in this final rule that pertains to the requirements for the control of gasoline sulfur will be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The submission to OMB of the ICR document that contains this ICR and its availability to the public will be announced in a subsequent **Federal Register** notice.

[157] The information collection requirements associated with the amendments to the requirements for vehicle certification are contained in the Information Collection Request entitled ''Amendments to the Reporting and Recordkeeping Requirements for Motor Vehicle Certification Under the Tier 2 Rule'', OMB No. 2060–0114, EPA ICR # 783.40.

The Agency may not conduct or sponsor an information collection, and a person is not required to respond to a request for information unless the information collection request displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The OMB control numbers for the information collection requirements in this rule will be listed in an amendment to 40 CFR part 9 in a subsequent **Federal Register** notice after OMB approves the ICRs.

*The Paperwork Reduction Act* stipulates that ICR documents estimate the burden of activities required of regulated parties within a three year time period. Consequently, the ICR documents associated with today's final rule contain burden estimates for the activities that will be required under the first three years of the program.

*ICRs Pertaining to the Amendments to Vehicle Certification Requirements:* The information collection burden to vehicle certifiers associated with the amendments to the vehicle certification requirements in today's notice pertain to the fleet-average $NO_X$ standard and emission credits provisions. These requirements are very similar to those under the voluntary National Low Emission Vehicle (NLEV) program, which includes a fleet-average standard for nonmethane hydrocarbon organic gases (NMOG) and associated emission credits provisions. The hours spent annually by a given vehicle certifier on the information collection activities associated with the these recordkeeping and reporting requirements depends upon certifier-specific variables, including: the scope/variety of their product line as reflected in the number of test groups and strategy used to comply with the fleet-average $NO_X$ standard, the extent they utilize emissions credits provisions, and whether they opted into the NLEV program. Vehicle certifiers that use the provisions for early banking of emission credits will be subject to the associated information collection requirements as early as September 1, 2000.[158] All vehicle certifiers will be required to comply with the information collection requirements associated with the amendments to the vehicle certification program beginning September 1, 2003.[159] The ICR document for the amendments to the vehicle certification program in this final rule provides burden estimates for all of the associated information collection requirements. The total information collection burden associated with the amendments to the vehicle certification requirements is estimated at 8,406 hours and $567,217 annually for the certifiers of light-duty vehicles, medium-duty passenger vehicles, and light-duty trucks.

*ICRs Pertaining to the Requirements for Gasoline Sulfur Control:* The information collection burden to gasoline refiners, importers, marketers, distributors, retailers and wholesale purchaser-consumers (WPCs), and users of research and development (R&D) gasoline pertain to the gasoline sulfur control program in today's rule. The scope of the recordkeeping and reporting requirements for each regulated party, and therefore the cost to that party, reflects the party's opportunity to create, control, or alter the sulfur content of gasoline. As a result, refiners and importers have significant requirements, which are necessary both for their own tracking, and that of downstream parties, and for EPA enforcement. Parties downstream from the gasoline production or import point, such as retailers, have minimal burdens that are primarily associated with the transfer and retention of product transfer documents. Many of the reporting and recordkeeping requirements for refiners and importers regarding the sulfur content of gasoline currently exist under EPA's Reformulated Gasoline (RFG) and Anti-Dumping programs. The ICR for the RFG program covered start up costs associated with reporting gasoline sulfur content under the RFG program. Consequently, much of the cost of the information collection requirements under the gasoline sulfur control program has already been accounted for under the RFG program ICR. In addition, many of the information collection burdens associated with the sulfur program are the result of provisions designed to provide refiners with flexibility in demonstrating compliance with the sulfur standards in the early years of the program, such as the credit trading and small refiner programs.

The information collection requirements under the sulfur control program evolve over time as the program is phased-in. Beginning July 1, 2000, certain requirements apply to parties that voluntarily opt to generate credits for early sulfur reduction under the average banking and trading (ABT) provisions. Many of the requirements do not become applicable until the beginning of the sulfur control program on October 1, 2003, when all refiners are required to meet the sulfur standards. The information collection requirements under the sulfur control program become stable after January 1, 2008, when the optional small refiner provisions expire.[160]

The ICR document for the sulfur control program in this final rule will provide burden estimates for the activities required under the first three years of the program, from July 1, 2000, through June 30, 2003. The burden associated with activities required after June 30, 2003, will be estimated in later ICRs. The initial ICR for the gasoline sulfur control program, however, will provide a qualitative characterization of all of the required activities and associated burdens for the various regulated parties as they develop, and until they become stable after January 1, 2008.

In the ICR associated with the NPRM for this final rule, we estimated that the total burden of the information collection requirements that would be applicable during the first three years of the proposed gasoline sulfur control program would be 42,479 hours and $2,149,865 annually.[161] Annual burden estimates for the various regulated entities under the initial three year period of the gasoline sulfur control program were also provided in the NPRM ICR as follows:

- Refiners: 31,231 hours; $1,879,822.
- Importers: 40 hours; $2,067.
- Pipelines: 85 hours; $2,785.
- Terminals: 1,700 hours; $55,700.
- Truckers: 3,333 hours; $118,000.
- Retailers/WPCs: 6,087 hours; $91,298.
- R&D Gasoline Users: 3 hours; $193.

We received few comments on the ICR burden estimates in the proposed sulfur rule. Most regulated parties have been fulfilling reporting, recordkeeping and testing requirements under the reformulated and conventional gasoline regulations. The only negative comments we received related to the batch testing for sulfur content and sample retention for conventional gasoline. We believe the estimated cost of complying with these requirements is somewhat higher than the actual

[158] These ICRs will become effective on the date that model year 2001 vehicles are introduced into commerce. EPA assumes that September 1, 2000 is the earliest date that model year 2001 vehicles will be marketed.

[159] Assuming model year 2004 vehicles are introduced into commerce on this date.

[160] A refiner can petition EPA for an extension of the small refiner provisions beyond January 1, 2008, based on hardship.

[161] The information collection requirements associated with the proposed gasoline sulfur control program are contained in the Information Collection Request that accompanied the Tier 2 NPRM which is entitled ''Recordkeeping and Reporting Requirements Regarding the Sulfur Content of Motor Vehicle Gasoline Under the Tier 2 Proposed Rule'', ICR #1907.01. Copies of this ICR can be obtained as discussed earlier in this section.

burdens industry will realize. The ICR for this final rule will be adjusted accordingly.

We estimate that there will be some additional costs and hourly burdens over those estimated in the NPRM associated with certain changes made to the sulfur program from the NPRM to this final rule. In particular, this final rule includes a program which provides for relaxed standards in the early years of the program for refiners and importers who produce or import gasoline for use in certain states in the western U.S. This program requires some additional reporting and recordkeeping burdens for those refiners and importers who participate in the program, since they will be required to submit an application for the program, including a baseline for purposes of establishing their sulfur standard. This program requires gasoline intended for use in the geographic area to be identified on product transfer documents and segregated from other gasoline in the distribution system. This final rule also includes provisions for trading sulfur allotments to provide refiners and importers additional flexibility in meeting the corporate pool average standards. This program requires additional reporting and recordkeeping to track allotment trading activity. In addition, the final rule requires small refiners to submit information regarding their crude oil capacity in order to qualify for the small refiner standards under the rule. Small refiners are also required to submit reports of their progress toward compliance with the sulfur standards. The additional total annual cost and hourly burden over the first three years of the program, as a result of changes made to the program in the final rule, are estimated to add less than one percent to the overall burden estimates contained in the NPRM ICR for the sulfur control program.

*Total Burden of the ICRs:* In the NPRM, we estimated that the total burden of the recordkeeping and reporting requirements associated with the proposed vehicle certification and gasoline sulfur control requirements would be 50,840 hours and $2,714,037 annually over the first three years that these requirements would be in effect. In the ICR document for this final rule which covers the ICRs for the vehicle certification program, the burden estimates were increased by 45 hours and $3,045 over the burden estimates in the NPRM ICR. This increase reflects changes from the NPRM in the final rule associated the inclusion of the medium-duty passenger vehicles (MDPVs) under the program. As discussed above, we anticipate that changes to the ICR document for this final rule which covers the ICRs for the sulfur control program will have burden estimates less than one percent higher than the estimates contained in the NPRM. Adding these increased costs to the burden estimates presented in the NPRM, we arrive at an estimate of the total burden of the recordkeeping and reporting requirements associated with the vehicle certification and gasoline sulfur control requirements in this final rule of less than 51,350 hours and $2,742,000 annually over the first three years that these requirements will be in effect. These burden estimates will be more precisely stated in the forthcoming **Federal Register** notice which announces the submission to OMB of the ICR document for this final rule that covers the ICRs for the sulfur control program and the availability of this ICR document to the public.

*D. Intergovernmental Relations*

1. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more for any single year. Before promulgating a 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 that is not the least costly, most cost-effective, or least burdensome alternative if EPA provides an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule would significantly or uniquely affect small governments.

EPA has determined that this rule contains federal mandates that may result in expenditures of more than $100 million to the private sector in any single year. EPA believes that today's final rule represents the least costly, most cost-effective approach to achieve the air quality goals of the rule. The cost-benefit analysis required by the UMRA is discussed in Section IV.D. above and in the Draft RIA. See the ''Administrative Designation'' and Regulatory Analysis' section in today's preamble (VIII.A.) for further information regarding these analyses.

2. Executive Order 13084: 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 motor

vehicle emissions, motor vehicle fuel, and other related requirements for private businesses in today's rule would have national applicability, and thus would not uniquely affect the communities of Indian Tribal Governments. Further, no circumstances specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of today's document. Thus, EPA's conclusions regarding the impacts from the implementation of today's rule discussed in the other sections of this preamble are equally applicable to the communities of Indian Tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

3. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (*i.e.*, the rules 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). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

This final rule does not have federalism implications. It 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, as specified in Executive Order 13132. This rule adopts national emissions standards for certain categories of motor vehicles and national standards to control gasoline sulfur. The requirements of the rule will be enforced by the federal government at the national level. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State and local officials in developing this rule. In addition, EPA provided state and local officials an opportunity to comment on the proposed regulations. A summary of concerns raised by commenters, including state and local commenters, and EPA's response to those concerns, is found in the Response to Comments document for this rulemaking.

This final rule preempts State and local controls or prohibitions respecting gasoline sulfur content, pursuant to Section 211(c)(4) of the Clean Air Act. The basis and scope of preemption is described in Section IV.C.1.d of this notice. Although this rule was proposed before the November 2, 1999 effective date of Executive Order 13132, EPA provided State and local officials notice and an opportunity for appropriate participation when it published the proposed rule, as described above. Thus, EPA has complied with the requirements of section 4 of the Executive Order.

*E. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d) of Public Law 104–113, directs EPA to use voluntary consensus standards in its regulatory activities unless it would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) 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 rule references technical standards adopted by the Agency through previous rulemakings. No new technical standards are established in today's rule. The standards referenced in today's rule involve the measurement of gasoline fuel parameters and motor vehicle emissions. The measurement standards for gasoline fuel parameters referenced in today's proposal are all voluntary consensus standards. The motor vehicle emissions measurement standards referenced in today's rule are government-unique standards that were developed by the Agency through previous rulemakings. These standards have served the Agency's emissions control goals well since their implementation and have been well accepted by industry. EPA is not aware of any voluntary consensus standards for the measurement of motor vehicle emissions. Therefore, the Agency is using the existing EPA-developed standards found in 40 CFR Part 86 for the measurement of motor vehicle emissions

*F. Executive Order 13045: Children's Health Protection*

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, section 5–501 of the Order directs the Agency to 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 subject to the Executive Order because it is an economically significant regulatory action as defined by Executive Order 12866 and it concerns in part an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

This rulemaking will achieve significant reductions of various emissions from passenger cars and light trucks, primarily $NO_X$, but also NMOG

and PM. These pollutants raise concerns regarding environmental health or safety risks that EPA has reason to believe may have a disproportionate effect on children, such as impacts from ozone, PM and certain toxic air pollutants. See Section III of this preamble and the RIA for a further discussion of these issues.

The effects of ozone and PM on children's health were addressed in detail in EPA's rulemaking to establish the NAAQS for these pollutants, and we are not revisiting those issues here. We believe, however, that the emission reductions from the strategies established in this rulemaking will further reduce air toxics and the related adverse impacts on children's health. We will be addressing the issues raised by air toxics from motor vehicles and their fuels in a separate rulemaking that we will initiate in the near future under section 202(l) of the Act. That rulemaking will address the emissions of hazardous air pollutants from vehicles and fuels, and the appropriate level of control of HAPs from these sources.

In this final rule, we have evaluated several regulatory strategies for reductions in emissions from passenger cars and light trucks. (See sections IV, V, and VI of this preamble as well as the RIA.) For the reasons described there, we believe that these strategies are preferable under the Clean Air Act to other potentially effective and reasonably feasible alternatives that we considered for purposes of reducing emissions from these sources (as a way of helping areas achieve and maintain the NAAQS for ozone and PM). Moreover, we believe that we have selected for proposal the most stringent and effective control reasonably feasible at this time, in light of the technology and cost requirements of the Act.

*G. 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**. This rule is a ''major rule'' as defined by 5 U.S.C. 804(2).

## IX. Statutory Provisions and Legal Authority

Statutory authority for the vehicle controls set in today's final rule can be found in sections 202, 206, 207, 208, and 301 of the Clean Air Act (CAA), as amended, 42 U.S.C. sections 7521, 7525, 7541, 7542 and 7601.

Statutory authority for the fuel controls set in today's final rule comes from section 211(c) of the CAA (42 U.S.C., section 7545(c)), which allows EPA to regulate fuels that either contribute to air pollution which endangers public health or welfare or which impair emission control equipment. Both criteria are satisfied for the gasoline sulfur controls we are establishing today. Additional support for the procedural and enforcement-related aspects of the fuel's controls in today's final rule, including the record keeping requirements, comes from sections 114(a) and 301(a) of the CAA.

**List of Subjects**

*40 CFR Part 80*

Environmental protection, Air pollution control, Fuel additives, Gasoline, Imports, Incorporation by reference, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

*40 CFR Part 85*

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements, Research, Warranties.

*40 CFR Part 86*

Environmental protection, Administrative practice and procedure, Confidential business information, Incorporation by reference, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: December 21, 1999.

**Carol M. Browner,**

*Administrator.*

For the reasons set forth in the preamble, parts 80, 85 and 86 of title 40, of the Code of Federal Regulations are amended as follows:

## PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

**Authority:** Secs. 114, 211, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7545 and 7601(a)).

2. Section 80.2 is amended by removing and reserving paragraph (aa), adding paragraph (d), and revising paragraphs (h), (s) and (gg) to read as follows:

**§ 80.2 Definitions.**

* * * * *

(d) *Previously certified gasoline* means gasoline or RBOB that previously has been included in a batch for purposes of complying with the standards for reformulated gasoline, conventional gasoline or gasoline sulfur, as appropriate.

* * * * *

(h) *Refinery* means any facility, including but not limited to, a plant, tanker truck, or vessel where gasoline or diesel fuel is produced, including any facility at which blendstocks are combined to produce gasoline or diesel fuel, or at which blendstock is added to gasoline or diesel fuel.

* * * * *

(s) *Gasoline blending stock, blendstock, or component* means any liquid compound which is blended with other liquid compounds to produce gasoline.

* * * * *

(gg) *Batch of gasoline* means a quantity of gasoline that is homogeneous with regard to those properties that are specified for conventional or reformulated gasoline.

* * * * *

3. Section 80.46 is amended by revising paragraphs (a) and (h) to read as follows:

**§ 80.46 Measurement of reformulated gasoline fuel parameters.**

(a) *Sulfur.* Sulfur content of gasoline and butane must be determined by use of the following methods:

(1) The sulfur content of gasoline must be determined by use of American Society for Testing and Materials (ASTM) standard method D 2622–98, entitled ''Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry.''

(2) The sulfur content of butane must be determined by the use of ASTM standard method D 3246–96, entitled ''Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry.''

* * * * *

(h) *Incorporations by reference.* ASTM standard methods D 2622–98, D 3246–96, D 3606–92, D 1319–93, D 4815–93, and D 86–90 with the exception of the degrees Fahrenheit figures in Table 9 of D 86–90, are incorporated by reference. These

incorporations by reference were 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 the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. Copies may be inspected at the Air Docket Section (LE–131), room M–1500, U.S. Environmental Protection Agency, Docket No. A–97–03, 401 M Street, SW., Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

4. Subpart H is added to part 80 to read as follows:

## Subpart H—Gasoline Sulfur

**General Information**

Sec.
80.180 [Reserved]
80.185 [Reserved]
80.190 Who must register with EPA under the sulfur program?

**Gasoline Sulfur Standards**

80.195 What are the gasoline sulfur standards for refiners and importers?
80.200 What gasoline is subject to the sulfur standards and requirements?
80.205 How is the annual refinery or importer average and corporate pool average sulfur level determined?
80.210 What sulfur standards apply to gasoline downstream from refineries and importers?
80.211 [Reserved]
80.212 What requirements apply to oxygenate blenders?
80.213–80.214 [Reserved]

**Geographic Phase-In Program**

80.215 What is the scope of the geographic phase-in program?
80.216 What standards apply to gasoline produced or imported for use in the GPA?
80.217 How does a refiner or importer apply for the GPA standards?
80.218 [Reserved]
80.219 Designation and downstream requirements for GPA gasoline.
80.220 What are the downstream standards for GPA gasoline?

**Hardship Provisions**

80.225 What is the definition of a small refiner?
80.230 Who is not eligible for the hardship provisions for small refiners?
80.235 How does a refiner obtain approval as a small refiner?
80.240 What are the small refiner gasoline sulfur standards?
80.245 How does a small refiner apply for a sulfur baseline?
80.250 How is the small refiner sulfur baseline and volume determined?
80.255 Compliance plans and demonstration of commitment to produce low sulfur gasoline.
80.260 What are the procedures and requirements for obtaining a hardship extension?
80.265 How will the EPA approve or disapprove a hardship extension application?
80.270 Can a refiner seek temporary relief from the requirements of this subpart?

**Allotment Trading Program**

80.275 How are allotments generated and used?

**Averaging, Banking and Trading (ABT) Program—General Information**

80.280 [Reserved]
80.285 Who may generate credits under the ABT program?
80.290 How does a refiner apply for a sulfur baseline?

**ABT Program—Baseline Determination**

80.295 How is a refinery sulfur baseline determined?
80.300 [Reserved]

**ABT Program—Credit Generation**

80.305 How are credits generated during the time period 2000 through 2003?
80.310 How are credits generated beginning in 2004?

**ABT Program—Credit Use**

80.315 How are credits used and what are the limitations on credit use?
80.320 [Reserved]
80.325 [Reserved]

**Sampling, Testing and Retention Requirements for Refiners and Importers**

80.330 What are the sampling and testing requirements for refiners and importers?
80.335 What gasoline sample retention requirements apply to refiners and importers?
80.340 What standards and requirements apply to refiners producing gasoline by blending blendstocks into previously certified gasoline (PCG)?
80.345 [Reserved]
80.350 What alternative sulfur standards and requirements apply to importers who transport gasoline by truck?
80.355 [Reserved]

**Recordkeeping and Reporting Requirements**

80.360 [Reserved]
80.365 What records must be kept?
80.370 What are the sulfur reporting requirements?
80.371–80.373 [Reserved]

**Exemptions**

80.374 What if a refiner or importer is unable to produce gasoline conforming to the requirements of this subpart?
80.375 What requirements apply to California gasoline?
80.380 What are the requirements for obtaining an exemption for gasoline used for research, development or testing purposes?

**Violation Provisions**

80.385 What acts are prohibited under the gasoline sulfur program?
80.390 What evidence may be used to determine compliance with the prohibitions and requirements of this subpart and liability for violations of this subpart?
80.395 Who is liable for violations under the gasoline sulfur program?
80.400 What defenses apply to persons deemed liable for a violation of a prohibited act?
80.405 What penalties apply under this subpart?

**Provisions for Foreign Refiners With Individual Sulfur Baselines**

80.410 What are the additional requirements for gasoline produced at foreign refineries having individual small refiner sulfur baselines, foreign refineries granted temporary relief under § 80.270, or baselines for generating credits during 2000 through 2003?

**Attest Engagements**

80.415 What are the attest engagement requirements for gasoline sulfur compliance applicable to refiners and importers?

## Subpart H—Gasoline Sulfur

## General Information

### § 80.180 [Reserved]

### § 80.185 [Reserved]

### § 80.190 Who must register with EPA under the sulfur program?

(a) Refiners and importers who are registered by EPA under § 80.76 are deemed to be registered for purposes of this subpart.

(b) Refiners and importers subject to the standards in § 80.195 who are not registered by EPA under § 80.76 must provide to EPA the information required by § 80.76 by November 1, 2003, or not later than three months in advance of the first date that such person produces or imports gasoline, whichever is later.

(c) Refiners with any refinery subject to the small refiner standards under § 80.240, or refiners subject to the geographic phase-in area (GPA) standards under § 80.216, who are not registered by EPA under § 80.76 must provide to EPA the information required under § 80.76 by December 31, 2000.

(d) Any refiner who plans to generate credits or allotments under § 80.305 or § 80.275 in any year prior to 2004 who is not registered by EPA under § 80.76 must register under § 80.76 no later than September 30 of the year prior to the first year of credit generation. Any refiner who plans to generate credits in 2000 who is not registered by EPA under § 80.76 must register under § 80.76 no later than May 10, 2000.

**Gasoline Sulfur Standards**

**§ 80.195 What are the gasoline sulfur standards for refiners and importers?**

(a)(1) The gasoline produced by small refiners subject to the standards at § 80.240, and gasoline designated as GPA gasoline under § 80.219(a), are as follows:

| | Gasoline sulfur standards for the averaging period beginning: | | |
|---|---|---|---|
| | January 1, 2004 | January 1, 2005 | January 1, 2006 and subsequent |
| Refinery or Importer Average | [1] | 30.00 | 30.00 |
| Corporate Pool Average | 120.00 | 90.00 | [1] |
| Per-Gallon Cap | 300 | 300 | 80 |

[1] Not applicable.

(2) The sulfur standards and all compliance calculations for sulfur under this subpart are in parts per million (ppm) and volumes are in gallons.

(3) The averaging period is January 1 through December 31 of each year.

(4) The standards under this paragraph (a) for all imported gasoline shall be met by the importer.

(b)(1) The refinery or importer annual average gasoline sulfur standard is the maximum average sulfur level allowed for gasoline produced at a refinery or imported by an importer during each calendar year starting January 1, 2005.

(2) The annual average sulfur level is calculated in accordance with § 80.205.

(3) The refinery or importer annual average gasoline sulfur standard may be met using credits as provided under § 80.275 or § 80.315.

(4) In 2005 only, the refinery or importer annual average sulfur standard may be met using credits or allotments as provided under § 80.275 or credits as provided under § 80.315.

(c)(1) The corporate pool average gasoline sulfur standards applicable in 2004 and 2005 are the maximum average sulfur levels allowed for a refiner's or importer's gasoline production from all of the refiner's refineries or all gasoline imported by an importer in a calendar year. The corporate pool average standards for a party that is both a refiner and an importer are the maximum average sulfur levels allowed for all the party's combined gasoline production from all refineries and imported gasoline in a calendar year.

(2) The corporate pool average is calculated in accordance with the provisions of § 80.205.

(3) The corporate pool average standard may be met using sulfur allotments under § 80.275.

(4) The corporate pool average standards do not apply to approved small refiners subject to the small refiner gasoline sulfur standards under § 80.240.

(5)(i) Joint ventures, in which two or more parties collectively own and operate one or more refineries, will be treated as a separate refiner under this section.

(ii) One partner to a joint venture may include one or more joint venture refineries in its corporate pool for purposes of complying with the corporate pool average standards. The joint venture will be in compliance for such joint venture refinery(ies) if the partner's corporate pool average meets the corporate pool average standards. The joint venture entity must demonstrate compliance with the corporate pool average standards for any refinery(ies) owned by the joint venture that are not included in one partner's corporate pool.

(d)(1) The per-gallon cap standard is the maximum sulfur level allowed for each batch of gasoline produced or imported starting January 1, 2004.

(2) In 2004 only, a refiner or importer may produce or import gasoline with a per-gallon sulfur content greater than 300 ppm, to a maximum of 350 ppm, provided the following conditions are met:

(i) The refinery or importer becomes subject to an adjusted per-gallon cap standard in 2005, calculated using the following formula:

$$ACS = 300 - (S_{max} - 300)$$

Where:

ACS=Adjusted cap standard.

$S_{max}$=Maximum sulfur content of any gasoline produced at a refinery or imported by an importer during 2004.

(ii) The adjusted cap standard calculated under paragraph (d)(2)(i) of this section applies to all gasoline produced at a refinery or imported by an importer during 2005.

(iii) The refinery or importer remains subject to the 30.00 average standard under paragraph (a) of this section for 2005.

(iv) The provisions of this paragraph (d)(2) apply to gasoline designated as GPA gasoline under § 80.219(a).

(v) The provisions of this paragraph (d)(2) do not apply to small refiners as defined in § 80.225.

**§ 80.200 What gasoline is subject to the sulfur standards and requirements?**

For the purpose of this subpart, all reformulated and conventional gasoline and RBOB, collectively called ''gasoline'' unless otherwise specified, is subject to the standards and requirements under this subpart, with the following exceptions:

(a) Gasoline that is used to fuel aircraft, racing vehicles or racing boats that are used only in sanctioned racing events, provided that:

(1) Product transfer documents associated with such gasoline, and any pump stand from which such gasoline is dispensed, identify the gasoline either as gasoline that is restricted for use in aircraft, or as gasoline that is restricted for use in racing motor vehicles or racing boats that are used only in sanctioned racing events;

(2) The gasoline is completely segregated from all other gasoline throughout production, distribution and sale to the ultimate consumer; and

(3) The gasoline is not made available for use as motor vehicle gasoline, or dispensed for use in motor vehicles, except for motor vehicles used only in sanctioned racing events.

(b) California gasoline as defined in § 80.375.

(c) Gasoline that is exported for sale outside the U.S.

**§ 80.205 How is the annual refinery or importer average and corporate pool average sulfur level determined?**

(a) The annual refinery or importer average and corporate pool average gasoline sulfur level is calculated as follows:

$$S_a = \frac{\sum_{i=1}^{n}(V_i \times S_i)}{\sum_{i=1}^{n} V_i}$$

Where:

$S_a$=The refinery or importer annual average sulfur value, or corporate pool average sulfur value, as applicable.

$V_i$=The volume of gasoline produced or imported in batch i.

$S_i$=The sulfur content of batch i determined under § 80.330.

n=The number of batches of gasoline produced or imported during the averaging period.

i=Individual batch of gasoline produced or imported during the averaging period.

(b) All annual refinery or importer average or corporate pool average calculations shall be conducted to two decimal places.

(c) A refiner or importer may include oxygenate added downstream from the refinery or import facility when calculating the sulfur content, provided the following requirements are met:

(1) For oxygenate added to conventional gasoline, the refiner or importer must comply with the requirements of § 80.101(d)(4)(ii).

(2) For oxygenate added to RBOB, the refiner or importer must comply with the requirements of § 80.69(a).

(d) Refiners and importers must exclude from compliance calculations all of the following:

(1) Gasoline that was not produced at the refinery;

(2) In the case of an importer, gasoline that was imported as Certified Sulfur-FRGAS;

(3) Blending stocks transferred to others;

(4) Gasoline that has been included in the compliance calculations for another refinery or importer; and

(5) Gasoline exempted from standards under § 80.200.

(e)(1) A refiner or importer may exceed the refinery or importer annual average sulfur standard specified in § 80.195 for a given averaging period for any calendar year through 2010, creating a compliance deficit, provided that in the calendar year following the year the standard is not met, the refinery or importer shall:

(i) Achieve compliance with the refinery or importer annual average sulfur standard specified in § 80.195; and

(ii) Use additional sulfur credits sufficient to offset the compliance deficit of the previous year.

(2) No refiner or importer may have a compliance deficit in any year after 2010. Any deficit that exists in 2010 must be made up in 2011.

(f) For refiners subject to the corporate pool average who produce some GPA gasoline, the refinery average sulfur value for its GPA gasoline shall be the average sulfur value after applying credits.

**§ 80.210 What sulfur standards apply to gasoline downstream from refineries and importers?**

The sulfur standard for gasoline at any point in the gasoline distribution system downstream from refineries and import facilities, including gasoline at facilities of distributors, carriers, oxygenate blenders, retailers and wholesale purchaser-consumers (''downstream location''), shall be determined in accordance with the provisions of this section.

(a) *Definition. S–RGAS* means gasoline that is subject to the standards under § 80.240 or § 80.270, including Certified Sulfur-FRGAS as defined in § 80.410, except that no batch of gasoline may be classified as S–RGAS if the actual sulfur content is less than the applicable per-gallon refinery cap standard specified in § 80.195.

(b) *Standards for gasoline that does not qualify for S–RGAS downstream standards.* The following standards apply to any gasoline that does not qualify for S–RGAS downstream standards under in paragraph (d) of this section:

(1) Starting February 1, 2004 the sulfur content of gasoline at any downstream location other than at a retail outlet or wholesale purchaser-consumer facility, and starting March 1, 2004 the sulfur content of gasoline at any downstream location, shall not exceed 378 ppm.

(2) Except as provided in § 80.220(a), starting February 1, 2005 the sulfur content of gasoline at any downstream location other than at a retail outlet or wholesale purchaser-consumer facility, and starting March 1, 2005 the sulfur content of gasoline at any downstream location, shall not exceed 326 ppm.

(3) Except as provided in § 80.220(a), starting February 1, 2006 the sulfur content of gasoline at any downstream location other than at a retail outlet or wholesale purchaser-consumer facility, and starting March 1, 2006 the sulfur content of gasoline at any downstream location, shall not exceed 95 ppm.

(c) *Standards for gasoline that qualifies for S–RGAS downstream standards.* In the case of any gasoline that qualifies for S–RGAS downstream standards under paragraph (d) of this section, the sulfur standard shall be the downstream standard for the gasoline calculated under paragraph (f) of this section. In the case of mixtures of gasoline that qualify for different S–RGAS downstream standards, the sulfur standard shall be the highest downstream standard applicable to any of the S–RGAS in the mixture.

(d) *Gasoline that qualifies for S–RGAS downstream standards.* Gasoline qualifies for S–RGAS downstream standards if all of the following conditions are met:

(1) The gasoline must be comprised in whole or part of S–RGAS.

(2) Product transfer documents applicable to the gasoline when received at that location must represent that the gasoline contains S–RGAS.

(3) Except as provided in paragraph (d)(4) of this section, the gasoline must have been sampled and tested at that location subsequent to the most recent receipt of gasoline at that location, and the test result must show a sulfur content greater than:

(i) 350 ppm starting February 1, 2004;

(ii) 300 ppm starting February 1, 2005; and

(iii) 80 ppm (or in the GPA, 300 ppm) starting February 1, 2006.

(4) This sampling and testing condition does not apply for gasoline at any retail outlet, wholesale purchaser-consumer facility, or contained in any transport truck.

(e) *Product transfer document information for S–RGAS.* (1) On each occasion when any refiner or importer of S–RGAS transfers custody or title to such gasoline, the refiner or importer shall provide to the transferee documents that include the following information:

(i) Identification of the gasoline as being S–RGAS; and

(ii) The downstream standard applicable to the batch of gasoline under paragraph (f) of this section.

(2) Where gasoline in whole or part is classified as S–RGAS when received by the transferor, and where the gasoline transferred meets the conditions under paragraph (d) of this section, the transferor shall provide to the transferee, on each occasion when custody or title to gasoline is transferred, documents that include the following information:

(i) Identification of the gasoline as S–RGAS; and

(ii) The applicable downstream standard under paragraph (c) of this section. This does not apply when gasoline is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer facility.

(3) No person shall classify gasoline as being S–RGAS except as provided in paragraphs (e)(1) and (e)(2) of this section.

(4) Product codes may be used to convey the information required by paragraphs (e)(1) and (e)(2) of this section if such codes are clearly understood by each transferee.

(f) *Downstream standards applicable to S–RGAS when produced or imported.* (1) The downstream standard applicable to any gasoline classified as S–RGAS when produced or imported shall be calculated using the following equation:

$$D=S+105\times((S+2)/10^4)^{0.4}$$

Where:

D=Downstream sulfur standard.
S=The sulfur content of the refiner's batch determined under § 80.330.

(2) Where more than one S–RGAS batch is combined, prior to shipment, at the refinery or import facility where the S–RGAS is produced or imported, the downstream standard applicable to the mixture shall be the highest downstream standard, calculated under paragraph (f)(1) of this section, for any S–RGAS contained in the mixture.

**§ 80.211 [Reserved]**

**§ 80.212 What requirements apply to oxygenate blenders?**

Effective January 1, 2004, oxygenate blenders who blend oxygenate into gasoline downstream of the refinery that produced the gasoline or the import facility where the gasoline was imported, are not subject to the requirements of this subpart applicable to refiners for this gasoline, but are subject to the requirements and prohibitions applicable to downstream parties and the prohibition specified in § 80.385(e).

**§§ 80.213–80.214 [Reserved]**

## Geographic Phase-In Program

**§ 80.215 What is the scope of the geographic phase-in program?**

(a) *Geographic phase-in area.* (1) The following states comprise the geographic phase-in area (GPA) subject to the provisions of the geographic phase-in program: North Dakota, Montana, Idaho, Wyoming, Utah, Colorado, New Mexico, and Alaska.

(2) Additional counties or tribal lands in states adjacent to the states identified in paragraph (a) of this section will be included in the GPA if any of the following criteria is met:

(i) Approximately 50% or more of the total volume of gasoline in the county or tribal land in 1999, as measured at the terminal(s) and bulk station(s) in the county or tribal land, was received from a refinery or refineries located in the area specified in paragraph (a)(1) of this section; or

(ii) Approximately 50% or more of the total volume of gasoline dispensed in the county or tribal land in 1999 was received from a refinery or refineries located in the area specified in paragraph (a)(1) of this section; or

(iii) Approximately 50% or more of the total commercial and private dispensing outlets in the county or tribal land in 1999 were supplied by gasoline produced by a refinery or refineries located in the area specified in paragraph (a)(1) of this section.

(3) The criteria of paragraphs (a)(2)(i), (ii) and (iii) of this section are without regard to the method of gasoline delivery (e.g, pipeline, truck, rail or barge). The criteria of paragraphs (a)(2)(ii) and (a)(2)(iii) of this section are without regard to whether the gasoline was transported directly from the refinery to the dispensing outlet or distributed through a terminal or bulk station.

(b) *Duration of the program.* The geographic phase-in program applies to the 2004, 2005, and 2006 annual averaging periods.

(c) *Persons eligible.* Any refiner or importer who produces or imports gasoline for use in the geographic area under paragraph (a) of this section is eligible to apply for the geographic phase-in program. The provisions of the geographic phase-in program shall apply to imported gasoline through the importer.

**§ 80.216 What standards apply to gasoline produced or imported for use in the GPA?**

(a)(1) The refinery or importer annual average sulfur standard for gasoline produced or imported for use in the geographic area under § 80.215 shall be the lesser of:

(i) 150 ppm; or

(ii) The refinery's or importer's 1997/1998 average sulfur level, calculated in accordance with § 80.295, plus 30 ppm.

(2) In the case of any refinery whose actual annual sulfur average decreases to a level lower than the refinery's annual average sulfur standard established under paragraph (a)(1) of this section during the period 2000 through 2003, the standard applicable to that refinery from 2004 through 2006 shall be the lowest average sulfur content for any year in which the refinery generated allotments or credits under § 80.275(a) or § 80.305 plus 30 ppm, not to exceed 150 ppm.

(b) The per-gallon cap standard for gasoline produced or imported for use in the GPA under paragraph (a) of this section shall be 300 ppm, except as specified in § 80.195(d).

(c) The refinery or importer annual average sulfur level is calculated in accordance with the provisions of § 80.205.

(d) The refinery or importer annual average standard under paragraph (a) of this section may be met using sulfur allotments or credits as provided under §§ 80.275 and 80.315.

(e) Gasoline produced by approved small refiners subject to the standards under § 80.240 is not subject to the standards under paragraphs (a) and (b) of this section.

(f)(1) A refiner or importer whose gasoline production or volume of imported gasoline in 2004 or 2005 is comprised of ≥50% of gasoline designated as GPA gasoline under § 80.219 shall not be required to meet the corporate pool average standards under § 80.195 for its gasoline production or imported gasoline during the applicable averaging period.

(2) A refiner or importer whose gasoline production or volume of imported gasoline in 2004 or 2005 is comprised of less than 50% of gasoline designated as GPA gasoline under § 80.219 must meet the corporate pool average standards under § 80.195 for all the refiner's gasoline production or the importer's volume of imported gasoline during the applicable averaging period.

(g) The provisions for compliance deficits under § 80.205(e) do not apply to gasoline subject to the standards under paragraphs (a) and (b) of this section.

**§ 80.217 How does a refiner or importer apply for the GPA standards?**

(a) To apply for the GPA standards under § 80.216, a refiner or importer must submit an application in accordance with the provisions of § 80.290.

(b) Applications under paragraph (a) of this section must be submitted by December 31, 2000.

(c)(1) If approved, EPA will notify the refiner or importer of each refinery's or the importer's annual average sulfur standard for gasoline produced for use in the GPA for the 2004 through 2006 annual averaging periods.

(2) If disapproved, the refiner or importer must comply with the standards in § 80.195 for gasoline produced for use in the GPA.

(d) If EPA finds that a refiner or importer provided false or inaccurate

information on its application under this section, upon notice from EPA, the refiner's or importer's application will be void *ab initio.*

**§ 80.218 [Reserved]**

**§ 80.219 Designation and downstream requirements for GPA gasoline.**

The requirements and prohibitions specified in this section apply during the period January 1, 2004 through December 31, 2006.

(a) *Designation.* Any refiner or importer shall designate any gasoline produced or imported that is subject to the standards under § 80.216 as ''GPA'' gasoline.

(b) *Product transfer documents.* (1) On each occasion that any person transfers custody or title to gasoline designated as GPA gasoline, other than when gasoline is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer facility, the transferor shall provide to the transferee documents that include the following information:

(i) Identification of the gasoline as being GPA gasoline;

(ii) A statement that the gasoline may not be distributed or sold for use outside the geographic phase-in area.

(2) Except for transfers to truck carriers, retailers and wholesale purchaser-consumers, product codes may be used to convey the information required by paragraph (b)(1) of this section if such codes are clearly understood by each transferee.

(3) The requirements under paragraph (b)(1) of this section are in addition to the requirement under § 80.210(e), where appropriate, to identify gasoline as being S–RGAS.

(c) *GPA gasoline use prohibitions.* (1) All parties in the distribution system, including refiners, importers, distributors, carriers, oxygenate blenders, retailers and wholesale purchaser-consumers, are prohibited from:

(i) Selling, offering for sale, dispensing, distributing, storing or transporting GPA gasoline for use outside the geographic phase-in area; and

(ii) Commingling GPA gasoline with gasoline not designated as GPA gasoline unless the mixture is classified as GPA gasoline.

(2) Gasoline not designated as GPA gasoline may be distributed or sold for use in the geographic phase-in area.

**§ 80.220 What are the downstream standards for GPA gasoline?**

(a) *GPA gasoline.* (1) During the period February 1, 2004 through January 31, 2005, the sulfur content of GPA gasoline at any downstream location other than at a retail outlet or wholesale purchaser-consumer facility, and during the period March 1, 2004 through February 28, 2005, the sulfur content of GPA gasoline at any downstream location shall not exceed 378 ppm.

(2) During the period February 1, 2005 through January 31, 2007, the sulfur content of GPA gasoline at any downstream location other than at a retail outlet or wholesale purchaser-consumer facility, and during the period March 1, 2005 through February 28, 2007, the sulfur content of GPA gasoline at any downstream location shall not exceed 326 ppm.

(b) *GPA gasoline mixed with S–RGAS.* Notwithstanding the requirements in paragraph (a) of this section, the sulfur standard applicable to a mixture of GPA gasoline and S–RGAS gasoline at a downstream location shall be the greater of the standard under paragraph (a) of this section or the standard determined under § 80.210.

**Hardship Provisions**

**§ 80.225 What is the definition of a small refiner?**

(a) A *small refiner* is defined as any person, as defined by 42 U.S.C. 7602(e), who: (1)(i) Produces gasoline at a refinery by processing crude oil through refinery processing units;

(ii) Employed an average of no more than 1,500 people, based on the average number of employees for all pay periods from January 1, 1998, to January 1, 1999; and

(iii) Had an average crude capacity less than or equal to 155,000 barrels per calendar day (bpcd) for 1998.

(2) For the purpose of determining the number of employees and crude capacity under paragraph (a)(1) of this section, the refiner shall include the employees and crude capacity of any subsidiary companies, any parent company and subsidiaries of the parent company, and any joint venture partners.

(b) The definition under paragraph (a) of this section applies to domestic and foreign refiners. For any refiner owned by a governmental entity, the number of employees as specified in paragraph (a) of this section shall include all employees of the governmental entity.

(c) If, without merger with, or acquisition of, another business unit, a company with approved small refiner status under § 80.235 exceeds 1,500 employees, or a corporate crude capacity of 155,000 bpcd after January 1, 1999, it will be considered a small refiner for the duration of the small refiner program.

(d) Notwithstanding the definition in paragraph (a) of this section, refiners who acquire a refinery after January 1, 1999, or reactivate a refinery that was shutdown or was non-operational between January 1, 1998, and January 1, 1999, may apply for small refiner status in accordance with the provisions of § 80.235.

**§ 80.230 Who is not eligible for the hardship provisions for small refiners?**

(a) The following are not eligible for the hardship provisions for small refiners:

(1) Refiners of refineries built after January 1, 1999;

(2) Refiners who exceed the employee or crude oil capacity criteria under § 80.225(a) on January 1, 1999, but who meet these criteria after that date, regardless of whether the reduction in employees or crude capacity is due to operational changes at the refinery or a company sale or reorganization;

(3) Importers; and

(4) Refiners who produce gasoline other than by processing crude oil through refinery processing units.

(b)(1) Refiners who qualify as small under § 80.225, and subsequently employ more than 1,500 people as a result of merger with or acquisition of or by another entity, are disqualified as small refiners. If this occurs the refiner shall notify EPA in writing no later than 20 days following this disqualifying event.

(2) Any refiner who qualifies as small under § 80.225 may elect to meet the standards under § 80.195 by notifying EPA in writing no later than November 15 prior to the year the change will occur.

(3) Any refiner whose status changes under paragraph (b)(1) or (2) of this section shall meet the standards under § 80.195 beginning with the first averaging period subsequent to the status change.

**§ 80.235 How does a refiner obtain approval as a small refiner?**

(a) Applications for small refiner status must be submitted to EPA by December 31, 2000, except for applications submitted pursuant to § 80.225(d), which must be submitted by June 1, 2002.

(b) Applications for small refiner status must be sent to: U.S. EPA, Attn: Sulfur Program (6406J), 401 M Street, SW, Washington, DC 20460. For commercial delivery: U.S. EPA, Attn: Sulfur Program (6406J), 501 3rd Street, NW, Washington, DC 20001.

(c) The small refiner status application must contain the following information for the company seeking

small refiner status, plus any subsidiary companies, any parent company and subsidiaries of the parent company, and any joint venture partners:

(1)(i) A listing of the name and address of each location where any employee worked during the 12 months preceding January 1, 1999; the average number of employees at each location based upon the number of employees for each pay period for the 12 months preceding January 1, 1999; and the type of business activities carried out at each location; or

(ii) In the case of a refiner who acquires a refinery after January 1, 1999, or reactivates a refinery that was shutdown between January 1, 1998, and January 1, 1999, a listing of the name and address of each location where any employee of the refiner worked since the refiner acquired or reactivated the refinery; the average number of employees at any such acquired or reactivated refinery during each calendar year since the refiner acquired or reactivated the refinery; and the type of business activities carried out at each location.

(2) The total corporate crude capacity of each refinery as reported to the Energy Information Administration (EIA) of the U.S. Department of Energy (DOE). The information submitted to EIA is presumed to be correct. In cases where a company disagrees with this information, the company may petition EPA with appropriate data to correct the record within 60 days after the company submits its application for small refiner status.

(3) A letter signed by the president, chief operating or chief executive officer of the company, or his/her designee, stating that the information contained in the application is true to the best of his/her knowledge.

(4) Name, address, phone number, facsimile number and E-mail address (if available) of a corporate contact person.

(d) For joint ventures, the total number of employees includes the combined employee count of all corporate entities in the venture.

(e) For government-owned refiners, the total employee count includes all government employees.

(f) Approval of small refiner status for refiners who apply under § 80.225(d) will be based on all information submitted under paragraph (c) of this section. Where appropriate, the employee and crude oil capacity criteria for such refiners will be based on the most recent 12 months of operation.

(g) EPA will notify a refiner of approval or disapproval of small refiner status by letter.

(1) If approved, EPA will notify the refiner of each refinery's applicable baseline standard and volume, and per-gallon cap under § 80.240.

(2) If disapproved, the refiner must comply with the standards in § 80.195.

(h) If EPA finds that a refiner provided false or inaccurate information on its application for small refiner status, upon notice from EPA the refiner's small refiner status will be void ab initio.

(i) Upon notification to EPA, an approved small refiner may withdraw its status as a small refiner. Effective on January 1 of the year following such notification, the small refiner will become subject to the standards at § 80.195.

### § 80.240 What are the small refiner gasoline sulfur standards?

(a) The gasoline sulfur standards for an approved small refiner are as follows:

| Refinery baseline sulfur level | Temporary sulfur standards for small refiners applicable from January 1, 2004 through December 31, 2007 | |
|---|---|---|
| | Annual average | Per gallon cap |
| 0 to 30 | 30.00 | 300 |
| 31 to 200 | Baseline level | 300 |
| 201 to 400 | 200.00 | 300 |
| 401 to 600 | 50% of baseline | Factor of 1.5 times the average standard. |
| 601 and above | 300.00 | 450 |

(b) The refinery annual average sulfur standards must be met on an annual calendar year basis for each refinery owned by a small refiner. The refinery annual average sulfur level is calculated in accordance with the provisions of § 80.205.

(c)(1) The refinery annual average standards specified in paragraph (a) of this section apply to the volume of gasoline produced by a small refiner's refinery up to the lesser of:

(i) 105% of the baseline gasoline volume as determined under § 80.250(a)(1); or

(ii) The volume of gasoline produced at that refinery during the averaging period by processing crude oil.

(2) If a refiner exceeds the volume limitation in paragraph (c)(1) of this section during any averaging period, the annual average sulfur standard applicable to the refiner for that averaging period is calculated as follows:

$$S_{sr} = \frac{(V_b \times S_b) + (AF \times (V_a - V_b))}{V_a}$$

Where:

$S_{sr}$=Small refiner annual average sulfur standard.

$V_b$=Applicable volume under paragraph (c)(1) of this section.

$V_a$=Averaging period gasoline volume.

$S_b$=Small refiner sulfur baseline as determined under § 80.250.

AF=Adjustment factor (120 in 2004; 90 in 2005; and 30 in 2006 and thereafter).

(3) The small refiner average standards under paragraph (a) of this section may be met using sulfur allotments or credits as provided under § 80.275 or § 80.315.

(4) The provisions for compliance deficits under § 80.205(e) do not apply to small refiners subject to the standards under this section.

(d) In the case of any refiner with small refiner status who generates sulfur allotments or credits pursuant to § 80.275(a) or § 80.305, the baseline applicable to that refiner's refinery for purposes of establishing the standard for the refinery under paragraph (a) of this section beginning in 2004 shall be the lowest annual average sulfur content for any year during the period in which the refiner generated allotments or credits.

### § 80.245 How does a small refiner apply for a sulfur baseline?

(a) Any refiner seeking small refiner status must apply for a refinery sulfur baseline by the deadline under § 80.235 for each of the refiner's refineries by providing the following information:

(1) A sulfur baseline and baseline volume for every refinery calculated in accordance with § 80.250.

(2) The following information for each batch of gasoline produced in 1997–1998:

(i) Batch number assigned to the batch under § 80.65(d) or § 80.101(i);

(ii) Volume; and

(iii) Sulfur content.

(3) For any refiner who acquires a refinery after January 1, 1999, or reactivates a refinery that was shut down or non-operational between January 1, 1998, and January 1, 1999, the average sulfur level and average volume of gasoline produced during each year the refinery was in operation after the refinery was acquired or reactivated. Where appropriate, the baseline sulfur level and volume for such refineries will be determined based on the annual average for the most recent year of operation.

(b) The sulfur baseline application must be submitted to the address specified in § 80.235(b).

**§ 80.250 How is the small refiner sulfur baseline and volume determined?**

(a)(1) The small refiner baseline volume is determined for each refinery as follows:

$$V_b = \frac{\sum_{i=1}^{n}(V_i)}{2}$$

Where:

$V_B$=Baseline volume.

$V_I$=Volume of gasoline batch i.

n=Total number of batches of gasoline produced from January 1, 1997, through December 31, 1998.

i=Individual batch of gasoline produced from January 1, 1997, through December 31, 1998.

(2) The small refiner sulfur baseline is determined for each refinery as follows:

$$S_b = \frac{\sum_{i=1}^{n}(V_i \times S_i)}{\sum_{i=1}^{n} V_i}$$

Where:

$S_b$=Small refiner sulfur baseline.

$V_i$=Volume of gasoline batch i.

$S_i$=Sulfur content of batch i.

n=Total number of batches of gasoline produced from January 1, 1997, through December 31, 1998.

i=Individual batch of gasoline produced from January 1, 1997, through December 31, 1998.

(b) Foreign refiners who do not have an approved refinery baseline under § 80.94 must follow the procedures specified in § 80.410(b).

(c) If at any time a small refinery baseline is determined to be incorrect, the corrected baseline applies ab initio and the annual average standards and cap standards are deemed to be those applicable under the corrected information.

**§ 80.255 Compliance plans and demonstration of commitment to produce low sulfur gasoline.**

The requirements of this section apply to any refiner approved for small refiner standards who wishes to be eligible for a hardship extension under § 80.260.

(a) *Compliance commitment.* By no later than June 1, 2004, any refiner who is approved for small refinery standards must submit a preliminary report to EPA which outlines the refiner's timeline for compliance and a project plan which discusses permits, capital commitments and engineering plans for making the necessary modifications to produce gasoline that meets the 30 ppm refinery average and 80 ppm per-gallon cap sulfur standards under § 80.195 on or before January 1, 2008. Documents showing activities and progress in these areas should be provided, if available.

(b) *Demonstration of Progress.* (1)(i) By no later than June 1, 2005, the small refiner must submit a report to EPA that states in detail the progress toward compliance with the 30 ppm refinery average and 80 ppm cap sulfur standards to date based on their timeline and project plan. The report must include:

(A) Copies of approved permits for construction of the equipment, or the permit application if approval is still pending;

(B) Copies of contracts for design and construction; and

(C) Any available evidence of having secured the necessary financing to complete the required construction;

(ii) If the refiner anticipates any difficulties in meeting its compliance commitments under this section, the refiner must submit a detailed report of all efforts made to date and the factors that may cause delay, including costs, specification of engineering or other design work needed and reasons for delay, specification of equipment needed and any reasons for delay, potential equipment suppliers and history of negotiations, and any other relevant information. If unavailability of equipment is a factor, the report must include a discussion of other options considered and the reasons these other options are not feasible.

(2) By no later than June 1, 2006, the small refiner must submit to EPA evidence that on-site construction has begun and that, absent unforeseen difficulties, the small refiner will be producing complying gasoline by January 1, 2008. If construction has not begun, the refiner must demonstrate that it has made all reasonable efforts to begin construction, that substantial progress is being made to begin construction as soon as possible, and that construction can be completed in time to begin production of gasoline that complies with the standards of § 80.195 by January 1, 2008.

(c) *Additional information.* The Administrator may request any additional information necessary to determine a refiner's commitment and/or progress toward meeting the standards in § 80.195 by 2008.

(d) *Failure to comply with requirements.* Any small refiner who fails to submit the progress reports required under this section will not be eligible for a hardship extension under § 80.260.

**§ 80.260 What are the procedures and requirements for obtaining a hardship extension?**

(a) An approved small refiner who has filed the reports specified in § 80.255 may apply to EPA for a hardship extension of the small refiner standards for calendar years 2008 and 2009. The application must be submitted in writing no later than January 1, 2007, to U.S. EPA, Attn: Sulfur Program (6406J), 401 M Street, SW, Washington, DC 20460. For commercial (non-postal) delivery: U.S. EPA, Attn: Sulfur Program, 501 3rd Street NW, Washington, DC 20001.

(b) The application must specify the factors that demonstrate a significant economic hardship and must provide a detailed discussion regarding the inability of the refinery to produce gasoline meeting the requirements of § 80.195. Such an application must include, at a minimum, the following information:

(1) Documentation of efforts made to obtain necessary financing, including:

(i) Copies of loan applications for the necessary financing of the construction of appropriate sulfur reduction technology and other equipment procurements or improvements; and

(ii) If financing has been disapproved or is otherwise unsuccessful, documents supporting the basis for that disapproval and evidence of efforts to pursue other means of financing;

(2) A detailed analysis of the reasons the refinery is unable to produce gasoline meeting the standards of

§ 80.195 in 2008, including costs, specification of equipment still needed, potential equipment suppliers, and efforts already completed to obtain the necessary equipment;

(3) If unavailability of equipment is part of the reason for the inability to comply, a discussion of other options considered, and the reasons these other options are not feasible;

(4) If relevant, a demonstration that a needed or lower cost technology is immediately unavailable, but will be available in the near future, and full information regarding when and from what sources it will be available;

(5) Schematic drawings of the refinery configuration as of January 1, 1999, and as of the date of the hardship extension application, and any planned future additions or changes;

(6) If relevant, a demonstration that a temporary unavailability exists of engineering or construction resources necessary for design or installation of the needed equipment;

(7) If sources of crude oil lower in sulfur than what the refiner is currently using are available, full information regarding the availability of these different crude sources, the sulfur content of those crude sources, the cost of the different crude sources over the past five years, and an estimate of gasoline sulfur levels achievable by the refinery if the lower sulfur crude sources were used;

(8) A discussion of any sulfur reductions that can be achieved from current levels;

(9) The date the refiner anticipates compliance with the standards in § 80.195 can be achieved at its refinery;

(10) An analysis of the economic impact of compliance on the refiner's business (including financial statements from the last 5 years, or for any time period up to 10 years, at EPA's request); and

(11) Any other information regarding other strategies considered, including strategies or components of strategies that do not involve installation of equipment, and why meeting the standards in § 80.195 beginning in 2008 is infeasible.

(c) The hardship extension application must contain a letter signed by the president or the chief operating or chief executive officer of the company, or his/her designee, stating that the information contained in the application is true to the best of his/her knowledge.

**§ 80.265 How will the EPA approve or disapprove a hardship extension application?**

(a) EPA will evaluate each application for hardship extension on a case-by-case basis. The factors considered for a hardship extension may include: The refiner's financial position and efforts to obtain capital funding; the refiner's efforts to procure necessary equipment, obtain design and engineering services and construction contractors; the availability of desulfurization equipment; and any other relevant factor. An extension will be granted for a refinery for the 2008 averaging period if the small refiner who owns the refinery adequately demonstrates that severe economic hardship would result if compliance with the standards in § 80.195 is required in 2008, or that compliance with the standard in 2008 is not feasible for reasons beyond the refiner's control, and that the refiner has made the best efforts possible to achieve compliance with the national standards by January 1, 2008. Upon reapplication by the refiner, if EPA determines that further relief is appropriate, EPA may grant a further extension through the 2009 averaging period. In no case will a further extension for the 2009 averaging period be granted unless the refiner demonstrates conclusively that it has financing in place and that it will be able to complete construction and meet the national gasoline sulfur standards no later than December 31, 2009.

(b) EPA may request more information, if necessary, for evaluation of the application. If requested information is not submitted within the time specified in EPA's request, or any extensions granted, the application may be denied.

(c) EPA will notify the refiner of approval or disapproval of hardship extension by letter.

(1) If approved, EPA will also notify the refiner of the date that full compliance with the standards specified at § 80.195 must be achieved or what interim sulfur levels or schedules apply, if any.

(2) If disapproved, beginning January 1, 2008, the refinery is subject to the requirements in § 80.195. Refiners who receive an extension for the 2008 averaging period shall meet the standards in § 80.195 beginning on January 1, 2009, unless EPA grants an extension of the hardship relief for an additional year. If such an additional extension is granted, the refiner shall meet the standards in § 80.195 on January 1, 2010.

(d) Refiners who receive a hardship extension may be required to meet more stringent standards than those which apply to them during 2007, and/or could be required to offset excess sulfur levels. EPA may impose reasonable conditions on an extension, such as requiring segregation of the small refiner's gasoline or requiring the gasoline to be sold for use in older vehicles only.

**§ 80.270 Can a refiner seek temporary relief from the requirements of this subpart?**

(a) EPA may permit a refiner to produce and distribute gasoline which does not meet the requirements of this subpart if the refiner demonstrates that:

(1) Unusual circumstances exist that impose extreme hardship and significantly affect ability to comply by the applicable date; and

(2) It has made best efforts to comply with the requirements of this subpart (including making efforts to obtain credits and/or allotments).

(b) Applications must be submitted to EPA by September 1, 2000. Relief may be granted from some or all of the requirements of this subpart, at EPA's discretion; however, EPA reserves the right to deny applications for appropriate reasons, including unacceptable environmental impact. Approval to distribute gasoline which does not meet the requirements of this subpart may be granted for such time period as EPA determines is appropriate, but shall not extend beyond January 1, 2008.

(c)(1) Applications must include a plan demonstrating how the refiner will comply with the requirements of this subpart as expeditiously as possible. The plan shall include a showing that contracts are or will be in place for engineering and construction of desulfurization equipment, a plan for applying for and obtaining any permits necessary for construction, a description of plans to obtain necessary capital, and a detailed estimate of when the requirements of this subpart will be met.

(2) Applications must include a detailed description of the refinery configuration and operations, including, at a minimum, the following information:

(i) The portion of gasoline production that is produced using an FCC unit;

(ii) The refinery's hydrotreating capacity;

(iii) The refinery's total reformer unit throughput capacity;

(iv) The refinery's total crude capacity;

(v) Total crude capacity of any other refineries owned by the same entity;

(vi) Total volume of gasoline production at the refinery;

(vii) Total volume of other refinery products; and

(viii) Geographic location(s) in which gasoline will be sold.

(3) Applications must include, at a minimum, the following information:

(i) Detailed description of efforts to obtain capital for refinery investments;

(ii) Bond rating of entity that owns the refinery; and

(iii) Estimated capital investment needed to comply with the requirements of this subpart by the applicable date.

(4) Applicants must also provide any other relevant information requested by EPA.

(d) EPA may impose any reasonable conditions on waivers granted under this section.

**Allotment Trading Program**

**§ 80.275 How are allotments generated and used?**

(a) *Generation of allotments and credits in 2003.* (1) During 2003 only, any domestic or foreign refiner may have the option to generate credits in accordance with the provisions of § 80.305 or generate allotments and credits under paragraph (a)(2) of this section.

(2) If the average sulfur content of the gasoline produced at a refinery is less than the refinery's baseline as determined under § 80.295 and is 60 ppm or less, allotments and credits may be generated using the following procedures. This paragraph (a) does not apply to importers.

(i) If the average sulfur content of the gasoline produced at a refinery is less than or equal to 30, and the refinery's sulfur baseline is greater than 120, the following procedures apply:

$SA_{TypeB} = (30 - Sa_a) \times V$

$SA_{TypeA} = (V \times 90) \times 0.8$

$CR = (S_{Base} - 120) \times V$

(ii) If the average sulfur content of the gasoline produced at a refinery is less than or equal to 30, and the refinery's sulfur baseline is greater than 30 but less than or equal to 120, the following procedures apply:

$SA_{TypeB} = (30 - S_a) \times V$

$SA_{TypeA} = ((S_{Base} - 30) \times V) \times 0.8$

(iii) If the average sulfur content of the gasoline produced at a refinery is less than or equal to 30, and the refinery's sulfur baseline is less than or equal to 30, the following procedures apply:

$SA_{TypeB} = ( S_{Base} - S_a) \times V$

(iv) If the average sulfur content of the gasoline produced at a refinery is greater than 30, and the refinery's sulfur baseline is greater than 120, the following procedures apply:

$SA_{TypeA} = ((120 - S_a) \times V) \times 0.8$

$CR = (S_{Base} - 120) \times V$

(v) If the average sulfur content of the gasoline produced at a refinery is greater than 30, and the refinery's sulfur baseline is less than or equal to 120, the following procedures apply:

$SA_{TypeA} = ((S_{Base} - Sa) \times V) \times 0.8$

(vi) For purposes of the equations under paragraphs (a)(2)(i) through (v) of this section, the following definitions apply:

$SA_{TypeB}$ = Type B sulfur allotments generated.

$SA_{TypeA}$ = Type A sulfur allotments generated.

CR = Credits generated.

$S_{Base}$ = Refinery's sulfur baseline value under § 80.295.

$S_a$ = Average sulfur content of the gasoline produced at the refinery during 2003 (or for a foreign refinery, all gasoline produced during 2003 that was imported into the U.S.).

V = Volume of gasoline produced at the refinery during 2003 (or for a foreign refinery, all gasoline produced during 2003 that was imported into the U.S.).

(b) *Generation of allotments in 2004 and 2005.* During 2004 and 2005 only, refiners and importers that have corporate pool average sulfur levels below the corporate pool average standards under § 80.195 may generate sulfur allotments separately for each year using the following procedures.

(1) If the average sulfur content of the gasoline produced or imported is less than 30 the following procedures apply:

$SA_{TypeB} = (30 - S_a) \times V_a$

$SA_{TypeA} = (S_{PS} - 30) \times V_a$

(2) If the average sulfur content of the gasoline produced or imported is equal to or greater than 30 the following procedures apply:

$SA_{TypeA} = (S_{PS} - S_a) \times V_a$

(3) For purposes of the equations under paragraphs (b)(1) and (2) of this section, the following definitions apply:

$SA_{TypeB}$ = Type B sulfur allotments generated.

$SA_{TypeA}$ = Type A sulfur allotments generated.

$S_a$ = Corporate pool average sulfur level for the year.

$S_{PS}$ = Corporate pool average standard (120 in 2004; 90 in 2005).

$V_a$ = Total volume of gasoline produced and/or imported during the year.

(c) *Use of sulfur allotments to meet standards.* (1) Refiners and importers may use Type A and Type B sulfur allotments to meet the corporate pool average standards under § 80.195, except that if allotments generated in 2003 or 2004 are used to meet the corporate pool standard in 2005 the allotments generated in 2003 or 2004 shall be reduced in value by 50%.

(2) Small refiners subject to the standards under § 80.240, and refiners and importers of gasoline designated as GPA gasoline under § 80.219(a), may use sulfur allotments to meet their annual average refinery or importer standards.

(d) *Transfers of sulfur allotments.* Sulfur allotments generated under this section may be transferred, provided that:

(1) No allotment may be transferred more than twice: The first transfer by the refiner or importer who generated the allotment may only be made to a refiner or importer who intends to use the allotment; if the transferee cannot use the allotment, it may make the second, and final, transfer only to a refiner or importer who intends to use the allotment. In no case may an allotment be transferred more than twice before being used or terminated.

(2) The allotment transferor must apply any allotments necessary to meet the transferor's corporate pool average standard before transferring allotments to any other refiner or importer or before converting allotments into credits.

(3) The transferor must supply to the transferee records indicating the year of generation and type of the allotments, the identity of the refiner or importer who generated the allotments, and the identity of the transferring party, if it is not the same part that generated the allotments.

(4) The transferor must inform the transferee whether any transferred allotments are Type A allotments or Type B allotments, as defined in paragraphs (a) and (b) of this section.

(5) In the case of allotments that have been calculated or created improperly, or are otherwise determined to be invalid, the following provisions apply:

(i) Invalid allotments cannot be used to achieve compliance with the transferee's corporate pool average standard or be converted to credits, regardless of the transferee's good faith belief that the allotments were valid.

(ii) The refiner or importer who used the allotments, and any transferor of the allotments, must adjust their allotment records and reports and sulfur calculations as necessary to reflect the proper allotments.

(iii) Any allotments remaining after correcting for the improperly created allotments must first be applied to correct the invalid transfers before the transferor may transfer any other allotments or before converting allotments into credits.

(e) *Conversion of allotments into credits.* A refiner or importer may convert allotments into credits using the following procedures:

(1) Type A allotments may be converted into credits with the same requirements and limitations on use that

apply under § 80.315 to credits generated in 2000 through 2003.

(2) Type B allotments may be converted into credits with the same requirements and limitations on use that apply under § 80.315 to credits generated in 2004 and later, based on the year of creation of the allotment.

(f) *Small refiners.* Small refiners subject to the standards under § 80.240 may not generate sulfur allotments under paragraph (b) of this section.

(g) *GPA gasoline.* GPA gasoline that is included in the refiner's or importer's corporate pool average under § 80.216(f)(2) must be included in the calculations under paragraph (b) of this section. No refiner or importer may generate allotments in 2004 or 2005 who is not required to meet the corporate pool average standards.

**Averaging, Banking and Trading (ABT) Program—General Information**

**§ 80.280 [Reserved]**

**§ 80.285 Who may generate credits under the ABT program?**

(a) *Credit generation in 2000 through 2003.* (1) Credits may be generated in 2000 through 2003 under § 80.305 by refiners who produce gasoline from crude oil, and are:

(i) Refiners who establish a sulfur baseline under § 80.295;

(ii) Foreign refiners with approved baselines under § 80.94, or baselines established in accordance with § 80.410; or

(iii) Small refiners for any refinery subject to the standards under § 80.240, using their small refiner baseline established under § 80.250.

(2) Importers and oxygenate blenders may not generate credits under § 80.305.

(b) *Credit generation beginning in 2004.* (1) Credits may be generated beginning in 2004 under § 80.310 by:

(i) Refiners and importers subject to the standards under § 80.195;

(ii) Refiners and importers of gasoline designated as GPA gasoline under § 80.219, using the lesser of: 150 ppm; or the refiner's or importer's baseline calculated under § 80.295; or the refinery's lowest annual average sulfur content for any year from 2000 through 2003 during which the refiner generated credits (for any party generating credits under both paragraph (b)(1)(i) of this section and this paragraph (b)(1)(ii), such credits must be calculated separately); or

(iii) Small refiners for any refinery subject to the standards under § 80.240, using refinery's standard established under § 80.240.

(2) Generation of credits for all imported gasoline shall be through the importer.

(3) Oxygenate blenders may not generate credits under § 80.310.

**§ 80.290 How does a refiner apply for a sulfur baseline?**

(a) The refiner must submit an application to EPA which includes the information required under paragraph (c) of this section no later than September 30 of the year in which the refiner plans to begin generating credits, or the refiner or an importer plans to sell gasoline in the geographic phase-in area in accordance with § 80.217.

(b) The sulfur baseline request must be sent to: U.S. EPA, Attn: Sulfur Program (6406J), 401 M Street SW., Washington, DC 20460. For commercial (non-postal) delivery: U.S. EPA, Attn: Sulfur Program, 501 3rd Street NW., Washington, DC 20001.

(c) The sulfur baseline application must include the following information:

(1) A listing of the names and addresses of all refineries owned by the corporation for which the refiner is applying for a sulfur baseline.

(2) The annual average gasoline sulfur baseline for gasoline produced in 1997–1998, for each refinery for which the refiner is applying for a sulfur baseline, calculated in accordance with § 80.295.

(3) A letter signed by the president, chief operating or chief executive officer, of the company, or his/her delegate, stating that the information contained in the sulfur baseline determination is true to the best of his/her knowledge.

(4) Name, address, phone number, facsimile number and E-mail address of a corporate contact person.

(5) The following information for each batch of gasoline produced in 1997–1998:

(i) Batch number assigned to the batch under § 80.65(d) or § 80.101(i);

(ii) Volume; and

(iii) Sulfur content.

(d) Foreign refiners who do not have an approved refinery baseline under § 80.94 must follow the procedures specified in § 80.410(b).

(e) Within 60 days of receipt of an application under this section, EPA will notify the refiner of approval of the refinery's baseline or of any deficiencies in the application.

(f) If at any time the baseline submitted in accordance with the requirements of this section is determined to be incorrect, EPA will notify the refiner of the corrected baseline.

(g) Any refiner that seeks temporary relief under § 80.270 shall apply for a refinery sulfur baseline in accordance with the provisions of this section and § 80.295, and if applicable, § 80.410(b), no later than September 1, 2000.

**ABT Program—Baseline Determination**

**§ 80.295 How is a refinery sulfur baseline determined?**

(a) A refinery's gasoline sulfur baseline for the purpose of generating credits during years 2000 through 2003 is calculated using the following equation:

$$S_{Base} = \frac{\sum_{i=1}^{n} (Vi \times Si)}{\sum_{i=1}^{n} Vi}$$

Where:

$S_{Base}$=Sulfur baseline value.

$V_i$=Volume of gasoline batch i.

$S_i$=Sulfur content of gasoline batch i.

n=Total number of batches of gasoline produced during January 1, 1997 through December 31, 1998.

i=Individual batch of gasoline produced during January 1, 1997 through December 31, 1998.

(b) Any refiner who, under § 80.65 or § 80.101(d)(4), included oxygenate blended downstream in compliance calculations for 1997–1998 must include this oxygenate in the baseline calculations for sulfur content under paragraph (a) of this section.

**§ 80.300 [Reserved]**

**ABT Program—Credit Generation**

**§ 80.305 How are credits generated during the time period 2000 through 2003?**

(a) Credits must be calculated as follows:

$CR_a = V_a \times (S_{Base} - S_a)$

Where:

$CR_a$=Credits generated for the averaging period.

$V_a$=Total volume of gasoline produced during the averaging period at the refinery.

$S_{Base}$=Sulfur baseline value for the refinery established under § 80.250 or § 80.295.

$S_a$=Actual annual average sulfur level for gasoline produced during the averaging period by the refinery exclusive of any credits.

(b) The refiner may include any oxygenates included in its RFG or conventional gasoline volume under §§ 80.65 and 80.101(d)(4), respectively, for the purpose of generating credits.

(c) Credits under this program are in units of ''ppm-gallons''.

(d) Refiners may generate credits for gasoline produced during an averaging period only if the annual average sulfur level for the gasoline produced during the averaging period is less than 0.90 of the refiners baseline under § 80.250 or § 80.295.

(e) Credits generated in accordance with paragraph (a) of this section must be identified by the year of creation.

### § 80.310 How are credits generated beginning in 2004?

(a) A refiner for any refinery, or an importer, may generate credits in 2004 and thereafter if the annual average sulfur level for gasoline produced or imported for the averaging period is less than the applicable refinery or importer annual average sulfur standard for that refinery or importer in that year.

(b) Credits are calculated as follows:

$$CR_a = V_a \times (S_{Std} - S_a)$$

Where:

$CR_a$=Credits generated for the averaging period.

$V_a$=Total annual volume gasoline produced at a refinery or imported during the averaging period.

$S_{std}$=30 ppm; or the sulfur standard for a small refinery established under § 80.240; or, for gasoline designated as GPA gasoline under § 80.219, the lesser of 150 ppm, the refinery's or importer's baseline calculated under § 80.295, or the refinery's lowest annual average sulfur content for any year from 2000 through 2003 during which the refinery generated credits or allotments.

$S_a$=Actual annual average sulfur level of gasoline produced at a refinery or imported during the averaging period exclusive of any credits.

(c) Credits generated in accordance with this section must be identified by the year of creation.

## ABT Program—Credit Use

### § 80.315 How are credits used and what are the limitations on credit use?

(a) *Credit use.* Credits may be used to meet the applicable refinery or importer annual average sulfur standards under § 80.195, § 80.216, or § 80.240, provided that:

(1) Sulfur credits used were generated pursuant to the requirements of this subpart; and

(2) The requirements of paragraphs (b) and (c) of this section are met.

(b) *Credit transfers.* (1) Credits obtained from other persons may be used to meet the annual average standards specified in § 80.195, § 80.216, or § 80.240 if all the following conditions are met:

(i) The credits are generated and reported according to the requirements of this subpart.

(ii) The credits are used in compliance with the limitations regarding the appropriate periods for credit use in this subpart.

(iii) Any credit transfer takes place no later than the last day of February following the calendar year averaging period when the credits are used.

(iv) No credit may be transferred more than twice: The first transfer by the refiner or importer who generated the credit may only be made to a refiner or importer who intends to use the credit; if the transferee cannot use the credit, it may make the second, and final, transfer only to a refiner or importer who intends to use the credit. In no case may a credit be transferred more than twice before being used or terminated.

(v) The credit transferor must apply any credits necessary to meet the transferor's applicable average standard before transferring credits to any other refiner or importer.

(vi) No credits may be transferred that would result in the transferor having a negative credit balance.

(vii) Each transferor must supply to the transferee records indicating the years the credits were generated, the identity of the refiner or importer who generated the credits, and the identity of the transferring party, if it is not the same party that generated the credits.

(2) In the case of credits that have been calculated or created improperly, or are otherwise determined to be invalid, the following provisions apply:

(i) Where a refiner's baseline has been determined to be incorrect under § 80.250(c) or § 80.290(f), any credits generated, banked, used or traded must be adjusted to reflect the corrected baseline.

(ii) Invalid credits cannot be used to achieve compliance with the transferee's averaging standard, regardless of the transferee's good faith belief that the credits were valid.

(iii) The refiner or importer who used the credits, and any transferor of the credits, must adjust their credit records and reports and sulfur calculations as necessary to reflect the proper credits.

(iv) Any properly created credits existing in the transferor's credit balance after correcting the credit balance, and after the transferor applies credits as needed to meet the average standard at the end of the compliance year, must first be applied to correct the invalid transfers before the transferor trades or banks the credits.

(c) *Limitations on credit use.* (1) Credits generated prior to 2004 may only be used for demonstrating compliance with the refinery or importer annual average standards under § 80.195 during the 2005 and 2006 averaging periods. Such credits may be used to demonstrate compliance with the standards under § 80.216 during the 2004 through 2006 averaging periods, and with the standards under § 80.240 during the 2004 through 2007 averaging periods, and the 2008 and 2009 averaging periods, if allowed under the terms of a hardship extension under § 80.265.

(2) Credits generated in 2004 or later may only be used for demonstrating compliance with standards during an averaging period within five years of the year of generation.

(3) A refiner or importer possessing credits must use all credits prior to falling into compliance deficit under § 80.205(e).

(4) Credits may not be used to meet corporate pool average standards under § 80.195.

### § 80.320 [Reserved]

### § 80.325 [Reserved]

## Sampling, Testing and Retention Requirements for Refiners and Importers

### § 80.330 What are the sampling and testing requirements for refiners and importers?

(a) *Sample and test each batch of gasoline.* (1) Refiners and importers shall collect a representative sample from each batch of gasoline produced or imported and test each sample to determine its sulfur content for compliance with requirements under this subpart prior to the gasoline leaving the refinery or import facility, using the sampling and testing methods provided in this section.

(2) Except as provided in paragraph (a)(3) of this section, the requirements of this section apply beginning January 1, 2004, or January 1 of the first year of allotment or credit generation under § 80.275 or § 80.305, whichever is earlier.

(3) Prior to January 1, 2004, for purposes of meeting the sampling and testing requirements of this section for conventional gasoline, any refiner may, prior to analysis, combine samples of gasoline from more than one batch of gasoline or blendstock and treat such composite sample as one batch of gasoline or blendstock pursuant to the requirements of § 80.101(i)(2).

(4) Any refiner who produces reformulated gasoline or conventional gasoline using computer-controlled in-line blending equipment may meet the testing requirement of paragraph (a)(1) of this section under the terms of an exemption granted under § 80.65(f)(4).

(b) *Sampling methods.* For purposes of paragraph (a) of this section, refiners and importers shall sample each batch of gasoline by using one of the following methods:

(1) Manual sampling of tanks and pipelines shall be performed according to the applicable procedures specified in one of the two following methods:

(i) American Society for Testing and Materials (ASTM) method D 4057–95, entitled ''Standard Practice for Manual Sampling of Petroleum and Petroleum Products.''

(ii) Samples collected under the applicable procedures in ASTM method D 5842–95, entitled ''Standard Practice for Sampling and Handling of Fuels for Volatility Measurement,'' may be used for measuring sulfur content if there is no contamination present that could affect the sulfur test result.

(2) Automatic sampling of petroleum products in pipelines shall be performed according to the applicable procedures specified in ASTM method D 4177–95, entitled ''Standard Practice for Automatic Sampling of Petroleum and Petroleum Products.''

(c) *Test method for measuring the sulfur content of gasoline.* (1) For purposes of paragraph (a) of this section, refiners and importers shall use the method provided in § 80.46(a)(1) to measure the sulfur content of gasoline they produce or import.

(2) Except as provided in § 80.350 and in paragraph (c)(1) of this section, any ASTM sulfur test method for liquefied fuels may be used for quality assurance testing under § 80.400, or to determine whether gasoline qualifies for a S–RGAS downstream standard, if the protocols of the ASTM method are followed and the alternative method is correlated to the method provided in § 80.46(a)(1).

(d) *Test method for sulfur in butane.* (1) Refiners and importers shall use the method provided in § 80.46(a)(2) to measure the sulfur content of butane when the butane constitutes a batch of gasoline.

(2) Except as provided in paragraph (d)(1) of this section, any ASTM sulfur test method for gaseous fuels may be used for quality assurance testing under §§ 80.340(b)(4) and 80.400, if the protocols of the ASTM method are followed and the alternative method is correlated to the method provided in § 80.46(a)(2).

(e) *Incorporations by reference.* ASTM standard practices D 4057–95, D 4177–95 and D 5842–95 are incorporated by reference. These incorporations by reference were 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 the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. Copies may be inspected at the Air Docket Section (LE–131), room M–1500, U.S. Environmental Protection Agency, Docket No. A–97–03, 401 M Street, SW., Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

### § 80.335 What gasoline sample retention requirements apply to refiners and importers?

(a) *Sample retention requirements.* Beginning January 1, 2004, or January 1 of the first year allotments or credits are generated under §§ 80.275 and 80.305, whichever is earlier, any refiner or importer shall:

(1) Collect a representative portion of each sample analyzed under § 80.330(a), of at least 330 ml in volume;

(2) Retain sample portions for the most recent 20 samples collected, or for each sample collected during the most recent 21 day period, whichever is greater;

(3) Comply with the gasoline sample handling and storage procedures under § 80.330(b) for each sample portion retained; and

(4) Comply with any request by EPA to:

(i) Provide a retained sample portion to the Administrator's authorized representative; and

(ii) Ship a retained sample portion to EPA, within 2 working days of the date of the request, by an overnight shipping service or comparable means, to the address and following procedures specified by EPA, and accompanied with the sulfur test result for the sample determined under § 80.330(a).

(b) *Sample retention requirement for samples subject to independent analysis requirements.* (1) Any refiner or importer who meets the independent analysis requirements under § 80.65(f) for any batch of reformulated gasoline or RBOB will have met the requirements of paragraph (a) of this section, provided the independent laboratory meets the requirements of paragraph (a) of this section for the gasoline batch.

(2) For samples retained by an independent laboratory under paragraph (b) of this section, the test results required to be submitted under paragraph (a) of this section shall be the test results determined under § 80.65(e).

(c) *Sampling compliance certification.* Any refiner or importer shall include with each annual report filed under § 80.370, the following statement, which must accurately reflect the facts and must be signed and dated by the same person who signs the annual report:

I certify that I have made inquiries that are sufficient to give me knowledge of the procedures to collect and store gasoline samples, and I further certify that the procedures meet the requirements of the ASTM procedures required under 40 CFR 80.330.

### § 80.340 What standards and requirements apply to refiners producing gasoline by blending blendstocks into previously certified gasoline (PCG)?

(a) Any refiner who produces gasoline by blending blendstock into PCG must meet the requirements of § 80.330 to sample and test every batch of gasoline as follows:

(1)(i) Sample and test to determine the volume and sulfur content of the PCG prior to blendstock blending.

(ii) Sample and test to determine the volume and sulfur content of the gasoline subsequent to blendstock blending.

(iii) Calculate the volume and sulfur content of the blendstock, by subtracting the volume and sulfur content of the PCG from the volume and sulfur content of the gasoline subsequent to blendstock blending. The blendstock is a batch for purposes of compliance calculations and reporting. For purposes of this paragraph (a), compliance with the applicable cap standard under § 80.195(a) shall be determined based on the sulfur content of the gasoline subsequent to blendstock blending.

(2) In the alternative, a refiner may sample and test each batch of blendstock when received at the refinery to determine the volume and sulfur content, and treat each blendstock receipt as a separate batch for purposes of compliance calculations for the annual average sulfur standard and for reporting. This alternative applies only if every batch of blendstock used at a refinery during an averaging period has a sulfur content that is equal to, or less than, the applicable per-gallon cap standard under §§ 80.195 or 80.216.

(b) Refiners who blend only butane into PCG may meet the sampling and testing requirements by using sulfur test results of the butane supplier, provided that the following requirements are also met:

(1) The sulfur content of the butane received from the butane supplier must not exceed the following sulfur standards on a per-gallon basis as follows:

(i) 120 ppm in 2004, and 30 ppm for 2005 and any subsequent year;

(ii) Except that the per-gallon sulfur content of butane blended to PCG that is designated as GPA gasoline shall not exceed 150 ppm from January 1, 2004, through December 31, 2006.

(2) The refiner obtains test results from the butane supplier that demonstrate that the sulfur content of

each load of butane supplied does not exceed the applicable per-gallon sulfur standard under paragraph (b)(1) of this section through test results of samples of the butane contained in the storage tank from which the butane blender is supplied.

(i) Testing for the sulfur content of the butane by the supplier must be subsequent to each receipt of butane into the supplier's storage tank, or the testing must be immediately before transfer of butane to the butane blender.

(ii) The testing must be performed by the method specified in § 80.46(a)(2).

(iii) The butane blender must obtain a copy of the butane supplier's test results, at the time of each transfer of butane to the butane blender, that reflect the sulfur content of each load of butane supplied to the butane blender.

(3) The sulfur content and volume of each batch of gasoline produced is that of the butane the refiner blends into gasoline for purposes of calculating compliance with the standards in §§ 80.195 and 80.216.

(4) The refiner must conduct a quality assurance program of sampling and testing for each butane supplier that demonstrates the butane sulfur content does not exceed the applicable per-gallon sulfur standard in paragraph (b)(1) of this section. The frequency of butane sampling and testing, for each butane supplier, must be one sample for every 500,000 gallons of butane received, or one sample every 3 months, whichever results in more frequent sampling.

(5) If any of the requirements of this section are not met, in whole or in part, for any butane blended into gasoline, that butane is deemed in violation of the gasoline sulfur standards in § 80.195 or § 80.216, as applicable.

**§ 80.345 [Reserved]**

**§ 80.350 What alternative sulfur standards and requirements apply to importers who transport gasoline by truck?**

Importers who import gasoline into the United States by truck may comply with the following requirements instead of the requirements to sample and test every batch of gasoline under § 80.330, and the annual sulfur average and per-gallon cap standards otherwise applicable to importers under §§ 80.195 and 80.216:

(a) *Alternative standards.* The imported gasoline must comply with the standards in paragraph (a)(1) or (a)(2) of this section as follows:

(1) The applicable average standards, corporate average standards and per-gallon standards under § 80.195(a)(1), except that imported gasoline designated for use in the geographic phase-in area from January 1, 2004, through December 31, 2006 must comply with an average standard of 150 ppm and a per-gallon standard of 300 ppm; or

(2) In 2004, a per-gallon standard of 120 ppm, and in 2005 and subsequent years a per-gallon standard of 30 ppm, except that imported gasoline designated for use in the geographic phase-in area from January 1, 2004, through December 31, 2006 must comply with a per-gallon standard of 150 ppm.

(b) *Terminal testing.* The importer may use test results for sulfur content testing conducted by the terminal operator, for gasoline contained in the storage tank from which trucks used to transport gasoline into the United States are loaded, for purposes of demonstrating compliance with the standards in paragraph (a) of this section, provided the following conditions are met:

(1) The sampling and testing shall be performed after each receipt of gasoline into the storage tank, or immediately before each transfer of gasoline to the importer's truck.

(2) The sampling and testing shall be performed using the methods specified in § 80.330(b) and 80.46(a)(1), respectively.

(3) At the time of each transfer of gasoline to the importer's truck for import to the U.S., the importer must obtain a copy of the terminal test result that indicates the sulfur content of the truck load.

(c) *Quality assurance program.* The importer must conduct a quality assurance program, as specified in this paragraph, for each truck loading terminal.

(1) Quality assurance samples must be obtained from the truck-loading terminal and tested by the importer, or by an independent laboratory, and the terminal operator must not know in advance when samples are to be collected.

(2) The sampling and testing must be performed using the methods specified in §§ 80.330(b) and 80.46(a)(1), respectively.

(3) The quality assurance test results for sulfur must differ from the terminal test result by no more than the ASTM reproducibility of the terminal's test results, as determined by the following equation:

$$R = 105 \times ((S+2)/10^4)^{0.4}$$

Where:

R = ASTM reproducibility.

S = Sulfur content based on the terminal's test result.

(4) The frequency of the quality assurance sampling and testing must be at least one sample for each fifty of an importer's trucks that are loaded at a terminal, or one sample per month, whichever is more frequent.

(d) *Party required to conduct quality assurance testing.* The quality assurance program under paragraph (c) of this section shall be conducted by the importer. In the alternative, this testing may be conducted by an independent laboratory that meets the criteria under § 80.65(f)(2)(iii), provided the importer receives, no later than 21 days after the sample was taken, copies of all results of tests conducted.

(e) *Assignment of batch numbers.* The importer must treat each truck load of imported gasoline as a separate batch for purposes of assigning batch numbers and maintaining records under § 80.365, and reporting under § 80.370.

(f) *EPA inspections of terminals.* EPA inspectors or auditors, and auditors conducting attest engagements under § 80.415, must be given full and immediate access to the truck-loading terminal and any laboratory at which samples of gasoline collected at the terminal are analyzed, and must be allowed to conduct inspections, review records, collect gasoline samples, and perform audits. These inspections or audits may be either announced or unannounced.

(g) *Certified Sulfur-FRGAS.* This section does not apply to Certified Sulfur-FRGAS.

(h) *Reporting requirements.* Any importer who elects to comply with the alternative standards in paragraph (a) of this section shall comply with the following requirements:

(1) All importer recordkeeping and reporting requirements under §§ 80.365 and 80.370, except as provided in paragraph (h)(2) of this section.

(2) An importer who elects to comply with the alternative standards in paragraph (a)(2) of this section must certify in the annual report whether it is in compliance with the applicable per-gallon batch standard set forth in paragraph (a)(2) of this section, in lieu of providing the information required by § 80.370(a) regarding annual average sulfur content and compliance with the average standard under § 80.195.

(i) *Effect of noncompliance.* If any of the requirements of this section are not met, all gasoline imported by the truck importer during the time any requirements are not met is deemed in violation of the gasoline sulfur average and per-gallon cap standards in § 80.195 or § 80.216, as applicable. Additionally, if any requirement is not met, EPA may notify the importer of the violation and,

if the requirement is not fulfilled within 10 days of notification, the truck importer may not in the future use the sampling and testing provisions in this section in lieu of the provisions in § 80.330.

**§ 80.355 [Reserved]**

**Recordkeeping and Reporting Requirements**

**§ 80.360 [Reserved]**

**§ 80.365 What records must be kept?**

(a) *Records that must be kept.* Beginning January 1, 2004, any person who produces, imports, sells, offers for sale, dispenses, distributes, supplies, offers for supply, stores, or transports gasoline, shall keep records that contain the following information:

(1) The product transfer document information required under §§ 80.77, 80.106, 80.210 and 80.219; and

(2) For any sampling and testing for sulfur content required under this subpart:

(i) The location, date, time and storage tank or truck identification for each sample collected;

(ii) The name and title of the person who collected the sample and the person who performed the test;

(iii) The results of the test as originally printed by the testing apparatus, or where no printed result is produced, the results as originally recorded by the person who performed the test; and

(iv) Any record that contains a test result for the sample that is not identical to the result recorded under paragraph (a)(2)(iii) of this section.

(b) *Additional records that refiners and importers must keep.* Beginning January 1, 2004, or January 1 of the first year allotments or credits are generated under § 80.275 or § 80.305, whichever is earlier, any refiner for each of its refineries, and any importer for the gasoline it imports, shall keep records that include the following information:

(1) For each batch of gasoline produced or imported:

(i) The batch volume;

(ii) The batch number assigned under § 80.65(d)(3) and the appropriate designation under paragraph (b)(1)(i) of this section; except that if composite samples of conventional gasoline representing multiple batches produced subsequent to December 31, 2003, are tested under § 80.101(i)(2) for anti-dumping compliance purposes, for purposes of this subpart a separate batch number must be assigned to each batch using the batch numbering procedures under § 80.65(d)(3);

(iii) The date of production or importation; and

(iv) If appropriate, the designation of the batch as GPA gasoline under § 80.219, California gasoline under § 80.375, exempt gasoline for research and development under § 80.380, or for export outside the United States.

(2) Information regarding credits and allotments, separately kept for credits and for allotments; separately kept according to the year of creation for the credits and for the allotments; and for credit generation or use starting in 2004, separately kept for GPA gasoline and other gasoline. Information shall be kept separately for different types of allotments and credits generated under §§ 80.275(e)(1), 80.275(e)(2), 80.305 and 80.310:

(i) The number in the refiner's or importer's possession at the beginning of the averaging period;

(ii) The number generated;

(iii) The number used;

(iv) If any were obtained from or transferred to other parties, for each other party its name, its EPA refiner or importer registration number, and the number obtained from, or transferred to, the other party;

(v) The number that expired at the end of the averaging period;

(vi) The number of allotments, by type, that were converted into credits under § 80.275(e);

(vii) The number in the refiner's or importer's possession that will carry over into the subsequent averaging period; and

(viii) Contracts or other commercial documents that establish each transfer of credits and allotments from the transferor to the transferee.

(3) The calculations used to determine the applicable refiner baseline under § 80.250 or § 80.295.

(4) The calculations used to determine compliance with the applicable sulfur average standards of § 80.195, § 80.216, § 80.240, or § 80.270.

(5) The calculations used to determine the number of credits or allotments generated under § 80.305, § 80.310 or § 80.275.

(6) The calculations used to determine any applicable adjusted cap standard under § 80.195(d).

(7) A copy of all reports submitted to EPA under § 80.370.

(c) *Additional records importers must keep.* Any importer shall keep records that identify and verify the source of each batch of certified Sulfur-FRGAS and non-certified Sulfur-FRGAS imported and demonstrate compliance with the requirements for importers under § 80.410(o).

(d) *Length of time records must be kept.* The records required in this section shall be kept for five years from the date they were created; except that:

(1) *Transfers of credits and allotments.* Records relating to credit and allotment transfers, except as provided in paragraph (d)(2) of this section, shall be kept by the transferor for 5 years from the date the credits or allotments are transferred, and shall be kept by the transferee for 5 years from the date the credits or allotments were transferred, used or terminated, whichever is later.

(2) *Early credits.* (i) Where the party generating the credits does not transfer the credits, records must be kept for 5 years from the date of creation, use or termination whichever is later.

(ii) Where early credits are transferred, records relating to such credits shall be kept by both parties for 5 years from the date the credits were transferred, used or terminated, whichever is later.

(e) *Make records available to EPA.* On request by EPA the records required in paragraphs (a), (b) and (c) of this section shall be provided to the Administrator's authorized representative. For records that are electronically generated or maintained the equipment and software necessary to read the records shall be made available, or if requested by EPA, electronic records shall be converted to paper documents which shall be provided to the Administrator's authorized representative.

**§ 80.370 What are the sulfur reporting requirements?**

Beginning with the 2004 averaging period, or the first year credits or allotments are generated under § 80.275 or § 80.305, whichever is earlier, and continuing for each averaging period thereafter, any refiner or importer shall submit to EPA annual reports that contain the information required in this section, and such other information as EPA may require.

(a) *Refiner and importer annual reports.* Any refiner, for each of its refineries, and any importer for the gasoline it imports, shall submit a report for each calendar year averaging period that includes the following information, and in the case of a refiner or importer producing or importing both GPA gasoline and other gasoline, the information shall be separately reported:

(1) The EPA importer, or refiner and refinery facility registration numbers;

(2) The applicable baseline, average standard, and adjusted cap standard as follows:

(i) For the years 2000 through 2003, the applicable baseline under § 80.250 or § 80.295.

(ii) For the 2004 averaging period and subsequent averaging periods:

(A) All applicable average standards under § 80.195, § 80.216, § 80.240 or § 80.270;

(B) All applicable adjusted cap standards under § 80.195(d), with the 2005 report identifying both the 2004 and 2005 applicable adjusted cap standards;

(3) The total volume of gasoline produced or imported;

(4) The annual average sulfur content of the gasoline produced or imported;

(5) The annual average sulfur level after inclusion of any credits and allotments;

(6) Information, separately provided, for credits and allotments, and separately by year of creation, as follows:

(i) The number of credits and allotments at the beginning of the averaging period;

(ii) The number of credits and allotments generated;

(iii) The number of credits and allotments used;

(iv) If any credits or allotments were obtained from or transferred to other parties, for each other party its name and EPA refiner or importer registration number, and the number of credits or allotments obtained from or transferred to the other party;

(v) The number of credits and allotments that expired at the end of the averaging period;

(vi) The number of credits and allotments that will carry over into the subsequent averaging period; and

(vii) The number of each type of allotments converted to credits;

(7) For each batch of gasoline produced or imported during the averaging period:

(i) The batch number assigned under § 80.65(d)(3) and the appropriate designation under § 80.365; except that if composite samples of conventional gasoline representing multiple batches produced subsequent to December 31, 2003, are tested under § 80.101(i)(2) for anti-dumping compliance purposes, for purposes of this subpart a separate batch number must be assigned to each batch using the batch numbering procedures under § 80.65(d)(3);

(ii) The date the batch was produced;

(iii) The volume of the batch; and

(iv) The sulfur content of the batch as determined under § 80.330; and

(8) When submitting reports under this paragraph (a), any importer shall exclude certified Sulfur-FRGAS.

(b) *Additional reporting requirements for importers.* Any importer shall report the following information for Sulfur-FRGAS imported during the averaging period:

(1) The EPA refiner and refinery registration numbers of each foreign refiner and refinery where the certified Sulfur-FRGAS was produced; and

(2) The total gallons of certified Sulfur-FRGAS and non-certified Sulfur-FRGAS imported from each foreign refiner and refinery.

(c) *Corporate pool average reports.* (1) Annual reports filed under this section for the 2004 and 2005 averaging periods must include the party's corporate pool average as determined under § 80.205.

(2) If the party submitting the annual report under paragraph (c)(1) of this section is a refiner with more than one refinery or is a refiner who also imports gasoline, then for the purposes of this paragraph, the party shall report the information required for individual refineries and for importers under paragraph (a) of this section, also in the aggregate for all the gasoline produced and imported during the calendar year.

(3) Refiners and importers exempted from corporate pool standards under § 80.216 or § 80.240 are exempt from reporting the information required under paragraphs (c)(1) and (c)(2) of this section.

(d) *Report submission.* Any annual report required under this section shall be:

(1) Signed and certified as meeting all of the applicable requirements of this subpart by the owner or a responsible corporate officer of the refiner or importer; and

(2) Submitted to EPA no later than the last day of February for the prior calendar year averaging period.

(f) *Attest reports.* Attest reports for refiner and importer attest engagements required under § 80.415 shall be submitted to the Administrator by May 31 of each year for the prior calendar year averaging period.

**§§ 80.371—80.373 [Reserved]**

## Exemptions

### § 80.374 What if a refiner or importer is unable to produce gasoline conforming to the requirements of this subpart?

In appropriate extreme and unusual circumstances (*e.g.,* natural disaster or Act of God) which are clearly outside the control of the refiner or importer and which could not have been avoided by the exercise of prudence, diligence, and due care, EPA may permit a refiner or importer, for a brief period, to distribute gasoline which does not meet the requirements of this subpart provided the refiner or importer meets all the criteria, requirements and conditions contained in § 80.73 (a) through (e).

### § 80.375 What requirements apply to California gasoline?

(a) *Definition.* For purposes of this subpart *California gasoline* means any gasoline designated by the refiner as for use in California.

(b) *California gasoline exemption.* California gasoline that complies with all the requirements of this section is exempt from all other provisions of this subpart.

(c) *Requirements for California gasoline.* The requirements are:

(1) Each batch of California gasoline must be designated as such by its refiner or importer;

(2) Designated California gasoline must be kept segregated from gasoline that is not California gasoline, at all points in the distribution system;

(3) Designated California gasoline must ultimately be used in the State of California and not used elsewhere;

(4) In the case of California gasoline produced outside the State of California, the transferors and transferees must meet the product transfer document requirements under § 80.81(g); and

(5) Gasoline that is ultimately used in any part of the United States outside of the State of California must comply with the standards and requirements of this subpart, regardless of any designation as California gasoline.

(d) *Use of California test methods and off site sampling procedures.* In the case of any gasoline that is not California gasoline and that is either produced at a refinery located in the State of California or is imported from outside the United States into the State of California, the refiner or importer may, with regard to such gasoline:

(1) Use the sampling and testing methods approved in Title 13 of the California Code of Regulations instead of the sampling and testing methods required under § 80.330; and

(2) Determine the sulfur content of gasoline at off site tankage as permitted in § 80.81(h)(2).

### § 80.380 What are the requirements for obtaining an exemption for gasoline used for research, development or testing purposes?

Any person may request an exemption from the provisions of this subpart for gasoline used for research, development or testing (''R&D'') purposes by submitting to EPA an application that includes all the information listed in paragraph (b) of this section.

(a) *Criteria for an R&D exemption.* For an R&D exemption to be granted, the proposed test program must:

(1) Have a purpose that constitutes an appropriate basis for exemption;

(2) Necessitate the granting of an exemption;

(3) Be reasonable in scope; and

(4) Have a degree of control consistent with the purpose of the program and EPA's monitoring requirements.

(b) *Information required to be submitted.* To demonstrate each of the four elements in paragraphs (a)(1) through (4) of this section, the application required under this section must include the following information:

(1) A statement of the purpose of the program demonstrating that the program has an appropriate R&D purpose.

(2) An explanation of why the stated purpose of the program cannot be achieved in a practicable manner without performing one or more of the prohibited acts under § 80.385.

(3) To demonstrate the reasonableness of the scope of the program:

(i) An estimate of the program's beginning and ending dates;

(ii) An estimate of the maximum number of vehicles and engines involved in the program, and the number of miles and engine hours that will be accumulated on each;

(iii) The sulfur content of the gasoline expected to be used in the program; and

(iv) The quantity of gasoline that exceeds the applicable sulfur standard that is expected to be used in the program.

(4) With regard to control, a demonstration that the program affords EPA a monitoring capability, including at a minimum:

(i) A description of the technical and operational aspects of the program;

(ii) The site(s) of the program (including street address, city, county, State, and ZIP code);

(iii) The manner in which information on vehicles and engines used in the program will be recorded and made available to EPA;

(iv) The manner in which results of the program will be recorded and made available to EPA;

(v) The manner in which information on the gasoline used in the program (including quantity, sulfur content, name, address, telephone number and contact person of the supplier, and the date received from the supplier), will be recorded and made available to EPA;

(vi) The manner in which distribution pumps will be labeled to insure proper use of the gasoline where appropriate;

(vii) The name, address, telephone number and title of the person(s) in the organization requesting an exemption from whom further information on the application may be obtained; and

(viii) The name, address, telephone number and title of the person(s) in the organization requesting an exemption who is responsible for recording and making available the information specified in paragraphs (b)(4)(iii), (iv) and (v) of this section, and the location in which such information will be maintained.

(c) *Additional requirements.* (1) The product transfer documents associated with R&D gasoline must identify the gasoline as such, and must state that the gasoline is to be used only for research, development, or testing purposes.

(2) The R&D gasoline must be designated by the refiner or importer as exempt R&D gasoline.

(3) The R&D gasoline must be kept segregated from non-exempt gasoline at all points in the distribution system of the gasoline.

(4) The R&D gasoline must not be sold, distributed, offered for sale or distribution, dispensed, supplied, offered for supply, transported to or from, or stored by a gasoline retail outlet, or by a wholesale purchaser-consumer facility, unless the wholesale purchaser-consumer facility is associated with the R&D program that uses the gasoline.

(d) *Memorandum of exemption.* The Administrator will grant an R&D exemption upon a demonstration that the requirements of this section have been met. The R&D exemption will be granted in the form of a memorandum of exemption signed by the applicant and the Administrator (or delegate), which may include such terms and conditions as the Administrator determines necessary to monitor the exemption and to carry out the purposes of this section, including restoration of motor vehicle emissions control systems. Any violation of such a term or condition of the exemption or any requirement under this section will cause the exemption to be void ab initio.

(e) *Effects of exemption.* Gasoline that is subject to an R&D exemption under this section is exempt from other provisions of this subpart provided that the gasoline is used in a manner that complies with the memorandum of exemption granted under paragraph (d) of this section.

## Violation Provisions

### § 80.385 What acts are prohibited under the gasoline sulfur program?

No person shall:

(a) *Averaging violation.* Produce or import gasoline that does not comply with the applicable sulfur average standard under § 80.195, § 80.216 or § 80.240.

(b) *Cap standard violation.* Produce, import, sell, offer for sale, dispense, supply, offer for supply, store or transport gasoline that does not comply with the applicable sulfur cap standard under § 80.195, § 80.216, § 80.210, § 80.220 or § 80.240.

(c) *Causing an averaging, cap standard, or geographic phase-in area (GPA) use violation.* Cause another person to commit an act in violation of paragraph (a), (b), or (f) of this section.

(d) *Causing violating gasoline to be in the distribution system.* Cause gasoline to be in the distribution system which does not comply with an applicable sulfur cap standard under § 80.195, § 80.210, § 80.216, § 80.220 or § 80.240; a sulfur average standard under § 80.195, § 80.216 or § 80.240; or a GPA use prohibition under § 80.219(c).

(e) *Denatured ethanol violation.* Blend into gasoline denatured ethanol with a sulfur content higher than 30 ppm.

(f) *GPA use violation.* Produce, import, sell, offer for sale, dispense, supply, offer for supply, store or transport gasoline that does not comply with a GPA use prohibition under § 80.219(c).

### § 80.390 What evidence may be used to determine compliance with the prohibitions and requirements of this subpart and liability for violations of this subpart?

(a) Compliance with the sulfur standards of this subpart shall be determined based on the sulfur level of the gasoline, measured using the methodologies specified in §§ 80.330(b) and 80.46(a). Any evidence or information, including the exclusive use of such evidence or information, may be used to establish the sulfur level of gasoline if the evidence or information is relevant to whether the sulfur level of gasoline would have been in compliance with the standards if the appropriate sampling and testing methodology had been correctly performed. Such evidence may be obtained from any source or location and may include, but is not limited to, test results using methods other than those specified in §§ 80.330(b) and 80.46(a), business records, and commercial documents.

(b) Determinations of compliance with the requirements of this subpart other than the sulfur standards, and determinations of liability for any violation of this subpart, may be based on information obtained from any source or location. Such information may include, but is not limited to, business records and commercial documents.

### § 80.395 Who is liable for violations under the gasoline sulfur program?

(a) *Persons liable for violations of prohibited acts.* (1) *Averaging violation.*

Any refiner or importer who violates § 80.385(a) is liable for the violation.

(2) *Causing an averaging violation.* Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who causes another party to violate § 80.385(a), is liable for a violation of § 80.385(c).

(3) *Cap standard violation.* Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who owned, leased, operated, controlled or supervised a facility where a violation of § 80.385 (b) occurred, is deemed in violation of § 80.385(b).

(4) *Causing a cap standard violation.* Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who produced, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation or storage of gasoline that violates § 80.385(b), is deemed in violation of § 80.385(c).

(5) *GPA use violation.* Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who produced, imported, sold, offered for sale, dispensed, supplied, offer for supply, stored, transported, or caused the transportation or storage of gasoline that violates § 80.385(f), is deemed in violation of § 80.385(f).

(6) *Causing a GPA use violation.* Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who causes another party to violate § 80.385(f), is deemed liable for a violation of § 80.385(c).

(7) *Branded refiner/importer liability.* Any refiner or importer whose corporate, trade, or brand name, or whose marketing subsidiary's corporate, trade, or brand name appeared at a facility where a violation of § 80.385(b) or (f) occurred, is deemed in violation of § 80.385(b) or (f), as applicable.

(8) *Causing violating gasoline to be in the distribution system.* Any refiner, importer, distributor, reseller, carrier, or oxygenate blender, who owned, leased, operated, controlled or supervised a facility from which gasoline was released into the distribution system which does not comply with an applicable sulfur cap standard, a sulfur averaging standard, or a GPA use prohibition, is deemed in violation of § 80.385(d).

(9) *Carrier causation.* In order for a carrier to be liable under paragraph (a)(2), (4), (6), or (8) of this section, EPA must demonstrate, by reasonably specific showing by direct or circumstantial evidence, that the carrier caused the violation.

(10) *Denatured ethanol violation.* Any oxygenate blender who violates § 80.385(e) is liable for the violation.

(11) *Parent corporation liability.* Any parent corporation is liable for any violations of this subpart that are committed by any of its wholly-owned subsidiaries.

(12) *Joint venture liability.* Each partner to a joint venture is jointly and severally liable for any violation of this subpart that occurs at the joint venture facility or is committed by the joint venture operation.

(b) *Persons liable for failure to meet other provisions of this subpart.* (1) Any refiner, importer, distributor, reseller, carrier, wholesale purchaser-consumer, retailer, or oxygenate blender who fails to meet a provision of this subpart not addressed in paragraph (a) of this section is liable for a violation of that provision.

(2) Any refiner, importer, distributor, reseller, carrier, wholesale purchaser-consumer, retailer, or oxygenate blender who caused another person to fail to meet a requirement of this subpart not addressed in paragraph (a) of this section, is liable for causing a violation of that provision.

### § 80.400 What defenses apply to persons deemed liable for a violation of a prohibited act?

(a) Any person deemed liable for a violation of a prohibition under § 80.395 (a)(3) through (8), will not be deemed in violation if the person demonstrates that:

(1) The violation was not caused by the person or the person's employee or agent; and

(2) The person conducted a quality assurance sampling and testing program, as described in paragraph (d) of this section. A carrier may rely on the quality assurance program carried out by another party, including the party who owns the gasoline in question, provided that the quality assurance program is carried out properly. Retailers and wholesale purchaser-consumers are not required to conduct quality assurance programs.

(b) In the case of a violation found at a facility operating under the corporate, trade or brand name of a refiner or importer, or a refiner's or importer's marketing subsidiary, the refiner or importer must show, in addition to the defense elements required under paragraphs (a)(1) and (2) of this section, that the violation was caused by:

(1) An act in violation of law (other than the Clean Air Act or this part 80), or an act of sabotage or vandalism;

(2) The action of any refiner, importer, retailer, distributor, reseller, oxygenate blender, carrier, retailer or wholesale purchaser-consumer in violation of a contractual agreement between the branded refiner or importer and the person designed to prevent such action, and despite periodic sampling and testing by the branded refiner or importer to ensure compliance with such contractual obligation; or

(3) The action of any carrier or other distributor not subject to a contract with the refiner or importer, but engaged for transportation of gasoline, despite specifications or inspections of procedures and equipment which are reasonably calculated to prevent such action.

(c) Under paragraph (a) of this section for any person to show that a violation was not caused by that person, or under paragraph (b) of this section to show that a violation was caused by any of the specified actions, the person must demonstrate by reasonably specific showing, by direct or circumstantial evidence, that the violation was caused or must have been caused by another person and that the person asserting the defense did not contribute to that other person's causation.

(d) *Quality assurance and testing program.* To demonstrate an acceptable quality assurance and testing program under paragraph (a)(2) of this section, a person must present evidence of the following:

(1) A periodic sampling and testing program to ensure the gasoline the person sold, dispensed, supplied, stored, or transported, meets the applicable sulfur standard; and

(2) On each occasion when gasoline is found not in compliance with the applicable sulfur standard:

(i) The person immediately ceases selling, offering for sale, dispensing, supplying, offering for supply, storing or transporting the non-complying product; and

(ii) The person promptly remedies the violation and the factors that caused the violation (for example, by removing the non-complying product from the distribution system until the applicable standard is achieved and taking steps to prevent future violations of a similar nature from occurring).

(3) For any carrier who transports gasoline in a tank truck, the quality assurance program required under this paragraph (d) need not include periodic sampling and testing of gasoline in the tank truck, but in lieu of such tank truck sampling and testing, the carrier shall demonstrate evidence of an oversight program for monitoring compliance with the requirements of this subpart

relating to the transport or storage of gasoline by tank truck, such as appropriate guidance to drivers regarding compliance with the applicable sulfur standard and product transfer document requirements, and the periodic review of records received in the ordinary course of business concerning gasoline quality and delivery.

**§ 80.405 What penalties apply under this subpart?**

(a) Any person liable for a violation under § 80.395 is subject to civil penalties as specified in section 205 of the Clean Air Act for every day of each such violation and the amount of economic benefit or savings resulting from each violation.

(b) Any person liable under § 80.395(a)(1) or (2) for a violation of the applicable sulfur averaging standard or causing another party to violate that standard during any averaging period, is subject to a separate day of violation for each and every day in the averaging period. Any person liable under § 80.395(b) for a failure to fulfill any requirement for credit or allotment generation, transfer, use, banking, or deficit correction, is subject to a separate day of violation for each and every day in the averaging period in which invalid credits or allotments are generated or used.

(c)(1) Any person liable under § 80.395(a)(3), (4), (5), or (6) for a violation of an applicable sulfur per gallon cap standard under § 80.195, § 80.210, § 80.216, § 80.220 or § 80.240, a GPA use prohibition under § 80.219(c), or of causing another party to violate a cap standard or a GPA use prohibition, is subject to a separate day of violation for each and every day the non-complying gasoline remains any place in the gasoline distribution system.

(2) Any person liable under § 80.395(a)(8) for causing gasoline to be in the distribution system which does not comply with an applicable sulfur cap standard, a sulfur averaging standard, or a GPA use prohibition, is subject to a separate day of violation for each and every day that the non-complying gasoline remains any place in the gasoline distribution system.

(3) For purposes of paragraph (c) of this section, the length of time the gasoline in question remained in the gasoline distribution system is deemed to be twenty-five days, unless a person subject to liability or EPA demonstrates by reasonably specific showings, by direct or circumstantial evidence, that the non-complying gasoline remained in the gasoline distribution system for fewer than or more than twenty-five days.

(d) Any person liable under § 80.395(b) for failure to meet, or causing a failure to meet, a provision of this subpart is liable for a separate day of violation for each and every day such provision remains unfulfilled.

**Provisions for Foreign Refiners With Individual Sulfur Baselines**

**§ 80.410 What are the additional requirements for gasoline produced at foreign refineries having individual small refiner sulfur baselines, foreign refineries granted temporary relief under § 80.270, or baselines for generating credits during 2000 through 2003?**

(a) *Definitions.* (1) A foreign refinery is a refinery that is located outside the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (collectively referred to in this section as ''the United States'').

(2) A foreign refiner is a person who meets the definition of refiner under § 80.2(i) for a foreign refinery.

(3) A small foreign refiner is a refiner that meets the definition of a small refiner under § 80.225.

(4) ''Sulfur-FRGAS'' means gasoline produced at a foreign refinery that has been assigned an individual refinery sulfur baseline under §§ 80.250 or 80.295, or has been granted temporary relief under § 80.270, and that is imported into the United States.

(5) ''Non-Sulfur-FRGAS'' means gasoline that is produced at a foreign refinery that has not been assigned an individual refinery sulfur baseline, gasoline produced at a foreign refinery with an individual refinery sulfur baseline that is not imported into the United States, and gasoline produced at a foreign refinery with an individual sulfur baseline during a year when the foreign refiner has opted to not participate in the Sulfur-FRGAS program under paragraph (c)(3) of this section.

(6) ''Certified Sulfur-FRGAS'' means Sulfur-FRGAS the foreign refiner intends to include in the foreign refinery's sulfur compliance calculations under § 80.205 pursuant to § 80.240 or § 80.270 or credit calculations under §§ 80.305 or 80.310 and allotment calculations under § 80.275(a), and does include in these compliance calculations when reported to EPA.

(7) ''Non-Certified Sulfur-FRGAS'' means Sulfur-FRGAS that is not Certified Sulfur-FRGAS.

(b) *Baseline establishment.* Any foreign refiner who does not have an approved refinery baseline under § 80.94 may submit a petition to the Administrator for an individual refinery sulfur baseline pursuant to §§ 80.245 and 80.250, a baseline for generating credits or allotments under §§ 80.290 and 80.295, or a baseline for temporary refinery relief under §§ 80.270 and 80.295.

(1) The refiner shall follow the procedures specified in §§ 80.91 through 80.93 to establish the volume and sulfur content of gasoline that was produced at the foreign refinery and imported into the United States during 1997 and 1998 for purposes of establishing baselines under § 80.250 or § 80.295.

(2) In making determinations for foreign refinery baselines EPA will consider all information supplied by a foreign refiner, and in addition may rely on any and all appropriate assumptions necessary to make such determinations.

(3) Where a foreign refiner submits a petition that is incomplete or inadequate to establish an accurate baseline, and the refiner fails to cure this defect after a request for more information, EPA will not assign an individual refinery sulfur baseline.

(c) *General requirements for foreign refiners with individual refinery sulfur baselines.* A foreign refiner of a refinery that has been assigned an individual sulfur baseline under § 80.250 or § 80.295 must designate all gasoline produced at the foreign refinery that is exported to the United States as either Certified Sulfur-FRGAS or as Non-Certified Sulfur-FRGAS, except as provided in paragraph (c)(3) of this section.

(1) In the case of Certified Sulfur-FRGAS, the foreign refiner must meet all provisions that apply to refiners under this subpart H.

(2) In the case of Non-Certified Sulfur-FRGAS, the foreign refiner shall meet all the following provisions, except the foreign refiner shall substitute the name Non-Certified Sulfur-FRGAS for the names ''reformulated gasoline'' or ''RBOB'' wherever they appear in the following provisions:

(i) The designation requirements in this section;

(ii) The recordkeeping requirements under § 80.365;

(iii) The reporting requirements in § 80.370 and this section;

(iv) The product transfer document requirements in this section;

(v) The prohibitions in this section and § 80.385; and

(vi) The independent audit requirements under § 80.415, paragraph (h) of this section, §§ 80.125 through

80.127, § 80.128(a),(b),(c),(g) through (i), and § 80.130.

(3)(i) Any foreign refiner that generates sulfur credits under § 80.305 during the period 2000 through 2003, or allotments under § 80.275(a) during 2003, and any small refiner generating credits under § 80.310, shall designate all Sulfur-FRGAS as Certified Sulfur-FRGAS for any year that such credits are generated.

(ii) Any foreign refiner that has been assigned an individual sulfur baseline for a foreign refinery under § 80.250 or § 80.295 may elect to classify no gasoline imported into the United States as Sulfur-FRGAS, provided the foreign refiner notifies EPA of the election no later than November 1 of the prior calendar year.

(iii) An election under paragraph (c)(3)(ii) of this section shall:

(A) Apply to an entire calendar year averaging period, and apply to all gasoline produced during the calendar year at the foreign refinery that is used in the United States; and

(B) Remain in effect for each succeeding calendar year averaging period, unless and until the foreign refiner notifies EPA of a termination of the election. The change in election shall take effect at the beginning of the next calendar year.

(d) *Designation, product transfer documents, and foreign refiner certification.* (1) Any foreign refiner of a foreign refinery that has been assigned an individual sulfur baseline must designate each batch of Sulfur-FRGAS as such at the time the gasoline is produced, unless the refiner has elected to classify no gasoline exported to the United States as Sulfur-FRGAS under paragraph (c)(3)(i) of this section.

(2) On each occasion when any person transfers custody or title to any Sulfur-FRGAS prior to its being imported into the United States, it must include the following information as part of the product transfer document information in this section:

(i) Identification of the gasoline as Certified Sulfur-FRGAS or as Non-Certified Sulfur-FRGAS; and

(ii) The name and EPA refinery registration number of the refinery where the Sulfur-FRGAS was produced.

(3) On each occasion when Sulfur-FRGAS is loaded onto a vessel or other transportation mode for transport to the United States, the foreign refiner shall prepare a certification for each batch of the Sulfur-FRGAS that meets the following requirements:

(i) The certification shall include the report of the independent third party under paragraph (f) of this section, and the following additional information:

(A) The name and EPA registration number of the refinery that produced the Sulfur-FRGAS;

(B) The identification of the gasoline as Certified Sulfur-FRGAS or Non-Certified Sulfur-FRGAS;

(C) The volume of Sulfur-FRGAS being transported, in gallons;

(D) In the case of Certified Sulfur-FRGAS:

(*1*) The sulfur content as determined under paragraph (f) of this section; and

(*2*) A declaration that the Sulfur-FRGAS is being included in the compliance calculations under § 80.205 or credit calculations under § 80.305 or allotments under § 80.275(a) for the refinery that produced the Sulfur-FRGAS.

(ii) The certification shall be made part of the product transfer documents for the Sulfur-FRGAS.

(e) *Transfers of Sulfur-FRGAS to non-United States markets.* The foreign refiner is responsible to ensure that all gasoline classified as Sulfur-FRGAS is imported into the United States. A foreign refiner may remove the Sulfur-FRGAS classification, and the gasoline need not be imported into the United States, but only if:

(1)(i) The foreign refiner excludes:

(A) The volume of gasoline from the refinery's compliance calculations under § 80.205; and

(B) In the case of Certified Sulfur-FRGAS, the volume and sulfur content of the gasoline from the compliance calculations under § 80.205 or credit calculations under § 80.305.

(ii) The exclusions under paragraph (e)(1)(i) of this section shall be on the basis of the sulfur content and volumes determined under paragraph (f) of this section; and

(2) The foreign refiner obtains sufficient evidence in the form of documentation that the gasoline was not imported into the United States.

(f) *Load port independent sampling, testing and refinery identification.* (1) On each occasion Sulfur-FRGAS is loaded onto a vessel for transport to the United States a foreign refiner shall have an independent third party:

(i) Inspect the vessel prior to loading and determine the volume of any tank bottoms;

(ii) Determine the volume of Sulfur-FRGAS loaded onto the vessel (exclusive of any tank bottoms present before vessel loading);

(iii) Obtain the EPA-assigned registration number of the foreign refinery;

(iv) Determine the name and country of registration of the vessel used to transport the Sulfur-FRGAS to the United States; and

(v) Determine the date and time the vessel departs the port serving the foreign refinery.

(2) On each occasion Certified Sulfur-FRGAS is loaded onto a vessel for transport to the United States a foreign refiner shall have an independent third party:

(i) Collect a representative sample of the Certified Sulfur-FRGAS from each vessel compartment subsequent to loading on the vessel and prior to departure of the vessel from the port serving the foreign refinery;

(ii) Prepare a volume-weighted vessel composite sample from the compartment samples, and determine the value for sulfur using the methodology specified in § 80.330 by:

(A) The third party analyzing the sample; or

(B) The third party observing the foreign refiner analyze the sample;

(iii) Review original documents that reflect movement and storage of the certified Sulfur-FRGAS from the refinery to the load port, and from this review determine:

(A) The refinery at which the Sulfur-FRGAS was produced; and

(B) That the Sulfur-FRGAS remained segregated from:

(*1*) Non-Sulfur-FRGAS and Non-Certified Sulfur-FRGAS; and

(*2*) Other Certified Sulfur-FRGAS produced at a different refinery.

(3) The independent third party shall submit a report:

(i) To the foreign refiner containing the information required under paragraphs (f)(1) and (2) of this section, to accompany the product transfer documents for the vessel; and

(ii) To the Administrator containing the information required under paragraphs (f)(1) and (2) of this section, within thirty days following the date of the independent third party's inspection. This report shall include a description of the method used to determine the identity of the refinery at which the gasoline was produced, assurance that the gasoline remained segregated as specified in paragraph (n)(1) of this section, and a description of the gasoline's movement and storage between production at the source refinery and vessel loading.

(4) The independent third party must:

(i) Be approved in advance by EPA, based on a demonstration of ability to perform the procedures required in this paragraph (f);

(ii) Be independent under the criteria specified in § 80.65(e)(2)(iii); and

(iii) Sign a commitment that contains the provisions specified in paragraph (i) of this section with regard to activities, facilities and documents relevant to

compliance with the requirements of this paragraph (f).

(g) *Comparison of load port and port of entry testing.* (1)(i) Except as described in paragraph (g)(1)(ii) of this section, any foreign refiner and any United States importer of Certified Sulfur-FRGAS shall compare the results from the load port testing under paragraph (f) of this section, with the port of entry testing as reported under paragraph (o) of this section, for the volume of gasoline and the sulfur value.

(ii) Where a vessel transporting Certified Sulfur-FRGAS off loads this gasoline at more than one United States port of entry, and the conditions of paragraph (g)(2)(i) of this section are met at the first United States port of entry, the requirements of paragraph (g)(2) of this section do not apply at subsequent ports of entry if the United States importer obtains a certification from the vessel owner, that meets the requirements of paragraph (s) of this section, that the vessel has not loaded any gasoline or blendstock between the first United States port of entry and the subsequent port of entry.

(2)(i) The requirements of this paragraph (g)(2) apply if:

(A) The temperature-corrected volumes determined at the port of entry and at the load port differ by more than one percent; or

(B) The sulfur value determined at the port of entry is higher than the sulfur value determined at the load port, and the amount of this difference is greater than the reproducibility amount specified for the port of entry test result by the American Society of Testing and Materials (ASTM).

(ii) The United States importer and the foreign refiner shall treat the gasoline as Non-Certified Sulfur-FRGAS, and the foreign refiner shall exclude the gasoline volume and properties from its gasoline sulfur compliance calculations under § 80.205.

(h) *Attest requirements.* The following additional procedures shall be carried out by any foreign refiner of Sulfur-FRGAS as part of the applicable attest engagement for each foreign refinery under § 80.415:

(1) The inventory reconciliation analysis under § 80.128(b) and the tender analysis under § 80.128(c) shall include Non-Sulfur-FRGAS in addition to the gasoline types listed in § 80.128(b) and (c).

(2) Obtain separate listings of all tenders of Certified Sulfur-FRGAS, and of Non-Certified Sulfur-FRGAS. Agree the total volume of tenders from the listings to the gasoline inventory reconciliation analysis in § 80.128(b), and to the volumes determined by the third party under paragraph (f)(1) of this section.

(3) For each tender under paragraph (h)(2) of this section where the gasoline is loaded onto a marine vessel, report as a finding the name and country of registration of each vessel, and the volumes of Sulfur-FRGAS loaded onto each vessel.

(4) Select a sample from the list of vessels identified in paragraph (h)(3) of this section used to transport Certified Sulfur-FRGAS, in accordance with the guidelines in § 80.127, and for each vessel selected perform the following:

(i) Obtain the report of the independent third party, under paragraph (f) of this section, and of the United States importer under paragraph (o) of this section.

(A) Agree the information in these reports with regard to vessel identification, gasoline volumes and test results.

(B) Identify, and report as a finding, each occasion the load port and port of entry parameter and volume results differ by more than the amounts allowed in paragraph (g) of this section, and determine whether the foreign refiner adjusted its refinery calculations as required in paragraph (g) of this section.

(ii) Obtain the documents used by the independent third party to determine transportation and storage of the Certified Sulfur-FRGAS from the refinery to the load port, under paragraph (f) of this section. Obtain tank activity records for any storage tank where the Certified Sulfur-FRGAS is stored, and pipeline activity records for any pipeline used to transport the Certified Sulfur-FRGAS, prior to being loaded onto the vessel. Use these records to determine whether the Certified Sulfur-FRGAS was produced at the refinery that is the subject of the attest engagement, and whether the Certified Sulfur-FRGAS was mixed with any Non-Certified Sulfur-FRGAS, Non-Sulfur-FRGAS, or any Certified Sulfur-FRGAS produced at a different refinery.

(5)(i) Select a sample from the list of vessels identified in paragraph (h)(3) of this section used to transport certified and Non-Certified Sulfur-FRGAS, in accordance with the guidelines in § 80.127, and for each vessel selected perform the following:

(ii) Obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure of the vessel, and the port of entry and date of arrival of the vessel. Agree the vessel's departure and arrival locations and dates from the independent third party and United States importer reports to the information contained in the commercial document.

(6) Obtain separate listings of all tenders of Non-Sulfur-FRGAS, and perform the following:

(i) Agree the total volume of tenders from the listings to the gasoline inventory reconciliation analysis in § 80.128(b).

(ii) Obtain a separate listing of the tenders under paragraph (h)(6) of this section where the gasoline is loaded onto a marine vessel. Select a sample from this listing in accordance with the guidelines in § 80.127, and obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure and the ports and dates where the gasoline was off loaded for the selected vessels. Determine and report as a finding the country where the gasoline was off loaded for each vessel selected.

(7) In order to complete the requirements of this paragraph (h) an auditor shall:

(i) Be independent of the foreign refiner;

(ii) Be licensed as a Certified Public Accountant in the United States and a citizen of the United States, or be approved in advance by EPA based on a demonstration of ability to perform the procedures required in §§ 80.125 through 80.130 and this paragraph (h); and

(iii) Sign a commitment that contains the provisions specified in paragraph (i) of this section with regard to activities and documents relevant to compliance with the requirements of §§ 80.125 through 80.130, § 80.415 and this paragraph (h).

(i) *Foreign refiner commitments.* Any foreign refiner shall commit to and comply with the provisions contained in this paragraph (i) as a condition to being assigned an individual refinery sulfur baseline.

(1) Any United States Environmental Protection Agency inspector or auditor will be given full, complete and immediate access to conduct inspections and audits of the foreign refinery.

(i) Inspections and audits may be either announced in advance by EPA, or unannounced.

(ii) Access will be provided to any location where:

(A) Gasoline is produced;

(B) Documents related to refinery operations are kept;

(C) Gasoline or blendstock samples are tested or stored; and

(D) Sulfur-FRGAS is stored or transported between the foreign refinery

and the United States, including storage tanks, vessels and pipelines.

(iii) Inspections and audits may be by EPA employees or contractors to EPA.

(iv) Any documents requested that are related to matters covered by inspections and audits will be provided to an EPA inspector or auditor on request.

(v) Inspections and audits by EPA may include review and copying of any documents related to:

(A) Refinery baseline establishment, including the volume and sulfur content, and transfers of title or custody, of any gasoline or blendstocks, whether Sulfur-FRGAS or Non-Sulfur-FRGAS, produced at the foreign refinery during the period January 1, 1997 through the date of the refinery baseline petition or through the date of the inspection or audit if a baseline petition has not been approved, and any work papers related to refinery baseline establishment;

(B) The volume and sulfur content of Sulfur-FRGAS;

(C) The proper classification of gasoline as being Sulfur-FRGAS or as not being Sulfur-FRGAS, or as Certified Sulfur-FRGAS or as Non-Certified Sulfur-FRGAS;

(D) Transfers of title or custody to Sulfur-FRGAS;

(E) Sampling and testing of Sulfur-FRGAS;

(F) Work performed and reports prepared by independent third parties and by independent auditors under the requirements of this section and § 80.415 including work papers; and

(G) Reports prepared for submission to EPA, and any work papers related to such reports.

(vi) Inspections and audits by EPA may include taking samples of gasoline or blendstock, and interviewing employees.

(vii) Any employee of the foreign refiner will be made available for interview by the EPA inspector or auditor, on request, within a reasonable time period.

(viii) English language translations of any documents will be provided to an EPA inspector or auditor, on request, within 10 working days.

(ix) English language interpreters will be provided to accompany EPA inspectors and auditors, on request.

(2) An agent for service of process located in the District of Columbia will be named, and service on this agent constitutes service on the foreign refiner or any employee of the foreign refiner for any action by EPA or otherwise by the United States related to the requirements of this subpart H.

(3) The forum for any civil or criminal enforcement action related to the provisions of this section for violations of the Clean Air Act or regulations promulgated thereunder shall be governed by the Clean Air Act, including the EPA administrative forum where allowed under the Clean Air Act.

(4) United States substantive and procedural laws shall apply to any civil or criminal enforcement action against the foreign refiner or any employee of the foreign refiner related to the provisions of this section.

(5) Submitting a petition for an individual refinery sulfur baseline, producing and exporting gasoline under an individual refinery sulfur baseline, and all other actions to comply with the requirements of this subpart H relating to the establishment and use of an individual refinery sulfur baseline constitute actions or activities that satisfy the provisions of 28 U.S.C. section 1605(a)(2), but solely with respect to actions instituted against the foreign refiner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under this subpart H, including conduct that violates Title 18 U.S.C. section 1001 and Clean Air Act section 113(c)(2).

(6) The foreign refiner, or its agents or employees, will not seek to detain or to impose civil or criminal remedies against EPA inspectors or auditors, whether EPA employees or EPA contractors, for actions performed within the scope of EPA employment related to the provisions of this section.

(7) The commitment required by this paragraph (i) shall be signed by the owner or president of the foreign refiner business.

(8) In any case where Sulfur-FRGAS produced at a foreign refinery is stored or transported by another company between the refinery and the vessel that transports the Sulfur-FRGAS to the United States, the foreign refiner shall obtain from each such other company a commitment that meets the requirements specified in paragraphs (i)(1) through (7) of this section, and these commitments shall be included in the foreign refiner's baseline petition.

(j) *Sovereign immunity.* By submitting a petition for an individual foreign refinery baseline under this section, or by producing and exporting gasoline to the United States under an individual refinery sulfur baseline under this section, the foreign refiner, its agents and employees, without exception, become subject to the full operation of the administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, with respect to actions instituted against the foreign refiner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under this subpart H, including conduct that violates Title 18 U.S.C. section 1001 and Clean Air Act section 113(c)(2).

(k) *Bond posting.* Any foreign refiner shall meet the requirements of this paragraph (k) as a condition to being assigned an individual refinery sulfur baseline.

(l) The foreign refiner shall post a bond of the amount calculated using the following equation:

Bond=G×$ 0.01

where:

Bond=amount of the bond in U. S. dollars.

G=the largest volume of gasoline produced at the foreign refinery and exported to the United States, in gallons, during a single calendar year among the most recent of the following calendar years, up to a maximum of five calendar years: the calendar year immediately preceding the date the baseline petition is submitted, the calendar year the baseline petition is submitted, and each succeeding calendar year.

(2) Bonds shall be posted by:

(i) Paying the amount of the bond to the Treasurer of the United States;

(ii) Obtaining a bond in the proper amount from a third party surety agent that is payable to satisfy United States administrative or judicial judgments against the foreign refiner, provided EPA agrees in advance as to the third party and the nature of the surety agreement; or

(iii) An alternative commitment that results in assets of an appropriate liquidity and value being readily available to the United States, provided EPA agrees in advance as to the alternative commitment.

(3) If the bond amount for a foreign refinery increases, the foreign refiner shall increase the bond to cover the shortfall within 90 days of the date the bond amount changes. If the bond amount decreases, the foreign refiner may reduce the amount of the bond beginning 90 days after the date the bond amount changes.

(4) Bonds posted under this paragraph (k) shall:

(i) Be used to satisfy any judicial judgment that results from an administrative or judicial enforcement action for conduct in violation of this subpart H, including where such conduct violates Title 18 U.S.C. section

1001 and Clean Air Act section 113(c)(2);

(ii) Be provided by a corporate surety that is listed in the United States Department of Treasury Circular 570 ''Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies'' (Available from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, Md. 20782. Also available on the internet at http://www.fms.treas.gov/c570/c570.html); and

(iii) Include a commitment that the bond will remain in effect for at least five (5) years following the end of latest averaging period that the foreign refiner produces gasoline pursuant to the requirements of this Subpart H.

(5) On any occasion a foreign refiner bond is used to satisfy any judgment, the foreign refiner shall increase the bond to cover the amount used within 90 days of the date the bond is used.

(l) [Reserved]

(m) *English language reports.* Any report or other document submitted to EPA by an foreign refiner shall be in English language, or shall include an English language translation.

(n) *Prohibitions.* (1) No person may combine Certified Sulfur-FRGAS with any Non-Certified Sulfur-FRGAS or Non-Sulfur-FRGAS, and no person may combine Certified Sulfur-FRGAS with any Certified Sulfur-FRGAS produced at a different refinery, until the importer has met all the requirements of paragraph (o) of this section, except as provided in paragraph (e) of this section.

(2) No foreign refiner or other person may cause another person to commit an action prohibited in paragraph (n)(1) of this section, or that otherwise violates the requirements of this section.

(o) *United States importer requirements.* Any United States importer shall meet the following requirements:

(1) Each batch of imported gasoline shall be classified by the importer as being Sulfur-FRGAS or as Non-Sulfur-FRGAS, and each batch classified as Sulfur-FRGAS shall be further classified as Certified Sulfur-FRGAS or as Non-certified Sulfur-FRGAS.

(2) Gasoline shall be classified as Certified Sulfur-FRGAS or as Non-Certified Sulfur-FRGAS according to the designation by the foreign refiner if this designation is supported by product transfer documents prepared by the foreign refiner as required in paragraph (d) of this section, unless the gasoline is classified as Non-Certified Sulfur-FRGAS under paragraph (g) of this section.

(3) For each gasoline batch classified as Sulfur-FRGAS, any United States importer shall perform the following procedures:

(i) In the case of both Certified and Non-Certified Sulfur-FRGAS, have an independent third party:

(A) Determine the volume of gasoline in the vessel;

(B) Use the foreign refiner's Sulfur-FRGAS certification to determine the name and EPA-assigned registration number of the foreign refinery that produced the Sulfur-FRGAS;

(C) Determine the name and country of registration of the vessel used to transport the Sulfur-FRGAS to the United States; and

(D) Determine the date and time the vessel arrives at the United States port of entry.

(ii) In the case of Certified Sulfur-FRGAS, have an independent third party:

(A) Collect a representative sample from each vessel compartment subsequent to the vessel's arrival at the United States port of entry and prior to off loading any gasoline from the vessel;

(B) Prepare a volume-weighted vessel composite sample from the compartment samples; and

(C) Determine the sulfur value using the methodologies specified in § 80.330, by:

(*1*) The third party analyzing the sample; or

(*2*) The third party observing the importer analyze the sample.

(4) Any importer shall submit reports within thirty days following the date any vessel transporting Sulfur-FRGAS arrives at the United States port of entry:

(i) To the Administrator containing the information determined under paragraph (o)(3) of this section; and

(ii) To the foreign refiner containing the information determined under paragraph (o)(3)(ii) of this section.

(5)(i) Any United States importer shall meet the requirements specified in § 80.195 for any imported gasoline that is not classified as Certified Sulfur-FRGAS under paragraph (o)(2) of this section.

(p) *Truck imports of Certified Sulfur-FRGAS produced at a small refinery.* (1) Any refiner whose Certified Sulfur-FRGAS is transported into the United States by truck may petition EPA to use alternative procedures to meet the following requirements:

(i) Certification under paragraph (d)(5) of this section;

(ii) Load port and port of entry sampling and testing under paragraphs (f) and (g) of this section;

(iii) Attest under paragraph (h) of this section; and

(iv) Importer testing under paragraph (o)(3) of this section.

(2) These alternative procedures must ensure Certified Sulfur-FRGAS remains segregated from Non-Certified Sulfur-FRGAS and from Non-Sulfur-FRGAS until it is imported into the United States. The petition will be evaluated based on whether it adequately addresses the following:

(i) Provisions for monitoring pipeline shipments, if applicable, from the refinery, that ensure segregation of Certified Sulfur-FRGAS from that refinery from all other gasoline;

(ii) Contracts with any terminals and/or pipelines that receive and/or transport Certified Sulfur-FRGAS, that prohibit the commingling of Certified Sulfur-FRGAS with any of the following:

(A) Other Certified Sulfur-FRGAS from other refineries;

(B) All Non-Certified Sulfur-FRGAS; or

(C) All Non-Sulfur-FRGAS;

(iii) Procedures for obtaining and reviewing truck loading records and United States import documents for Certified Sulfur-FRGAS to ensure that such gasoline is only loaded into trucks making deliveries to the United States; and

(iv) Attest procedures to be conducted annually by an independent third party that review loading records and import documents based on volume reconciliation, or other criteria, to confirm that all Certified Sulfur-FRGAS remains segregated throughout the distribution system and is only loaded into trucks for import into the United States.

(3) The petition required by this section must be submitted to EPA along with the application for small refiner status and individual refinery sulfur baseline and standards under § 80.240 and this section.

(q) *Withdrawal or suspension of a foreign refinery's baseline.* EPA may withdraw or suspend a baseline that has been assigned to a foreign refinery where:

(1) A foreign refiner fails to meet any requirement of this section;

(2) A foreign government fails to allow EPA inspections as provided in paragraph (i)(1) of this section;

(3) A foreign refiner asserts a claim of, or a right to claim, sovereign immunity in an action to enforce the requirements in this subpart H; or

(4) A foreign refiner fails to pay a civil or criminal penalty that is not satisfied using the foreign refiner bond specified in paragraph (k) of this section.

(r) *Early use of a foreign refinery baseline.* (1) A foreign refiner may begin using an individual refinery baseline before EPA has approved the baseline, provided that:

(i) A baseline petition has been submitted as required in paragraph (b) of this section;

(ii) EPA has made a provisional finding that the baseline petition is complete;

(iii) The foreign refiner has made the commitments required in paragraph (i) of this section;

(iv) The persons who will meet the independent third party and independent attest requirements for the foreign refinery have made the commitments required in paragraphs (f)(3)(iii) and (h)(7)(iii) of this section; and

(v) The foreign refiner has met the bond requirements of paragraph (k) of this section.

(2) In any case where a foreign refiner uses an individual refinery baseline before final approval under paragraph (r)(1) of this section, and the foreign refinery baseline values that ultimately are approved by EPA are more stringent than the early baseline values used by the foreign refiner, the foreign refiner shall recalculate its compliance, ab initio, using the baseline values approved by EPA, and the foreign refiner shall be liable for any resulting violation of the conventional gasoline requirements.

(s) *Additional requirements for petitions, reports and certificates.* Any petition for a refinery baseline under § 80.250 or § 80.295, any alternative procedures under paragraph (r) of this section, any report or other submission required by paragraphs (c), (f)(2), or (i) of this section, and any certification under paragraph (d)(3) of this section shall be:

(1) Submitted in accordance with procedures specified by the Administrator, including use of any forms that may be specified by the Administrator; and

(2) Be signed by the president or owner of the foreign refiner company, or by that person's immediate designee, and shall contain the following declaration:

I hereby certify: (1) that I have actual authority to sign on behalf of and to bind [insert name of foreign refiner] with regard to all statements contained herein; (2) that I am aware that the information contained herein is being certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR. Part 80, subpart H, and that the information is material for determining compliance under these regulations; and (3) that I have read and understand the information being certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof.

I affirm that I have read and understand the provisions of 40 CFR Part 80, subpart H, including 40 CFR 80.410 [insert name of foreign refiner]. Pursuant to Clean Air Act section 113(c) and Title 18, United States Code, section 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to $10,000, and/or imprisonment for up to five years.

**Attest Engagements**

**§ 80.415 What are the attest engagement requirements for gasoline sulfur compliance applicable to refiners and importers?**

In addition to the requirements for attest engagements that apply to refiners and importers under §§ 80.125 through 80.130, and § 80.410, the attest engagements for importers and refiners must include the following procedures and requirements each year.

(a) *Baseline.* (1) Obtain the EPA sulfur baseline approval letter for the refinery to determine the refinery's applicable sulfur baseline and baseline volume under §§ 80.250 or 80.295.

(2) If the year being reviewed is 2004 through 2006 (2007 for refineries with small refiner status) and the refinery or importer produced or imported any GPA gasoline under § 80.216 or the refiner has approved status for a small refinery:

(i) Obtain the refinery's annual sulfur reports for 2000 through 2003; and

(ii) Determine whether the annual average sulfur level for any year credits were generated for 2000 through 2003 was less than the baseline level under paragraph (a)(1) of this section.

(3) If the annual average sulfur content for any year credits were created for 2000 through 2003 was less than the baseline level under paragraph (a)(1) of this section, report as a finding the lowest annual sulfur level as the new baseline value. For GPA gasoline add 30 ppm to obtain the GPA standard, not to exceed 150 ppm.

(4) If the refinery being reviewed is a small refinery and the annual volume under paragraph (b)(2) of this section is greater than the baseline volume, calculate the applicable standard in accordance with § 80.240(c).

(5) Obtain a written representation from the company representative stating the sulfur value that the company used as its baseline and agree that number to paragraphs (a)(1) through (a)(4) of this section and to the reports to EPA.

(b) *EPA reports.* (1) Obtain and read a copy of the refinery's or importer's annual sulfur reports filed with EPA for the year.

(2) Agree the yearly volume of gasoline reported to EPA in the sulfur reports with the inventory reconciliation analysis under § 80.128.

(3) For the years 2004 through 2006, calculate the annual volume and average sulfur level for gasoline classified as GPA gasoline under §§ 80.216 and 80.219, and calculate the annual volume and average sulfur level for gasoline not classified as GPA gasoline, and agree these values with the values reported to EPA.

(4) Except as provided in paragraph (b)(3) of this section, calculate the annual average sulfur level for all gasoline and agree that value with the value reported to EPA.

(5) Obtain and read a copy of the refinery's or importer's sulfur credit report.

(c) *Credit generation before 2004.* In the case of a refinery that only generates credits during 2000 through 2003:

(1) Obtain a written representation from the company representative stating the refinery produces gasoline from crude oil.

(2) Compute and report as a finding the sulfur baseline from paragraph (a) of this section multiplied by 0.9.

(3) Obtain the annual average sulfur level from paragraph (b)(4) of this section.

(4) If the sulfur value under paragraph (c)(3) of this section is less than the sulfur value under paragraph (c)(2) of this section, compute and report as a finding the difference between the annual average sulfur level and the refinery's sulfur baseline from paragraph (a) of this section.

(5) Compute and report as a finding the total number of sulfur credits generated by multiplying the value in paragraph (c)(4) of this section by the volume of gasoline in paragraph (b)(2) of this section, and agree this value with the value reported to EPA.

(d) *Credit generation in 2004 and thereafter.* The following procedures shall be completed for a refinery or importer that generates credits in 2004 and thereafter:

(1) Obtain the annual average sulfur level for gasoline not classified as GPA from paragraph (b)(3) of this section.

(2) If the sulfur value under paragraph (d)(1) of this section is less than 30 ppm, compute and report as a finding the difference between the sulfur level under paragraph (d)(1) of this section and 30 ppm.

(3) Compute and report as a finding the total number of sulfur credits generated by multiplying the value calculated in paragraph (d)(2) of this

section by the volume of gasoline not classified as GPA in paragraph (b)(3) of this section, and agree this number with the number reported to EPA.

(4) Obtain the annual average sulfur level for gasoline classified as GPA from paragraph (b)(3) of this section.

(5) If the sulfur value under paragraph (d)(4) of this section is less than the applicable level under § 80.310, compute and report as a finding the difference between the sulfur level under paragraph (d)(4) of this section and the appropriate level in § 80.310 .

(6) Compute and report as a finding the total number of sulfur credits generated by multiplying the value calculated in paragraph (d)(5) of this section by the volume of gasoline classified as GPA in paragraph (b)(3) of this section, and agree this number with the number reported to EPA.

(7) If the refiner has an approved status as a small refinery, obtain the annual average sulfur level for gasoline from paragraph (b)(4) of this section.

(8) If the sulfur value under paragraph (d)(7) of this section is less than the applicable standard under § 80.240, compute and report as a finding the difference between the sulfur level under paragraph (d)(7) of this section and the appropriate standard under § 80.240.

(9) Compute and report as a finding the total number of sulfur credits generated by multiplying the value calculated in paragraph (d)(8) of this section by the volume of gasoline in paragraph (b)(4) of this section, and agree this number with the number reported to EPA.

(e) *Credit purchases and sales.* The following attest procedures shall be completed for a refinery or importer that is a transferor or transferee of credits during an averaging period:

(1) Obtain contracts or other documents for all credits transferred to another refinery or importer during the year being reviewed; compute and report as a finding the number and year of creation of credits represented in these documents as being transferred away; and agree with the report to EPA.

(2) Obtain contracts or other documents for all credits received during the year being reviewed; compute and report as a finding the number and year of creation of credits represented in these documents as being received; and agree with the report to EPA.

(f) *Credits required for non-GPA gasoline.* The following attest procedures shall be completed for refineries and importers in 2005 and thereafter (2004 and thereafter for refineries having standards under § 80.240):

(1) Obtain the annual average sulfur level for gasoline not classified as GPA from paragraph (b)(3) of this section.

(2) If the value in paragraph (f)(1) of this section is greater than 30 ppm (or greater than the small refinery standard), compute and report as a finding the difference between 30 ppm (or the standard under § 80.240) and the value in paragraph (f)(1) of this section.

(3) Compute and report as a finding the total sulfur credits required by multiplying the value in paragraph (f)(2) of this section times the volume of gasoline not classified as GPA in paragraph (b)(3) of this section, and agree with the report to EPA.

(4) Obtain the refiner's or importer's representation as to the portion of the deficit under paragraph (f)(3) of this section that was resolved with credits, the portion that was resolved with allotments in 2005 only or that was carried forward as a deficit under § 80.205, and agree with the report to EPA (refineries subject to standards under § 80.240 cannot carry deficits forward).

(g) *Credits required for GPA gasoline.* The following attest procedures shall be completed in 2004 through 2006 for a refinery or importer that produces gasoline subject to the geographic phase-in area standards under § 80.216:

(1) Obtain the annual average sulfur level for the refinery's or importer's GPA gasoline from paragraph (b)(3) of this section.

(2) If the value in paragraph (g)(1) of this section is greater than the refinery's or importer's baseline plus 30 ppm under § 80.216, as determined in paragraph (a) of this section or 150 ppm, whichever is less, compute and report as a finding the difference between the annual average sulfur level and the baseline level plus 30 ppm, or 150 ppm, whichever is less.

(3) Compute and report as a finding the total sulfur credits and/or allotments required by multiplying the value in paragraph (g)(2) of this section times the volume of GPA gasoline from paragraph (b)(3) of this section.

(4) Obtain the refiner's or importer's representation as to the portion of the deficit under paragraph (g)(3) of this section that was resolved with credits, or the portion that was resolved with allotments in 2004 or 2005 only (compliance deficits for GPA gasoline cannot be carried forward.

(h) *Credit expiration.* The following attest procedures shall be completed for a refinery or importer that possesses credits during an averaging period:

(1) Obtain a list of all credits in the refiner's or importer's possession at any time during the year being reviewed, identified by the year of creation of the credits.

(2) If the year being reviewed is 2006 and thereafter, except in the case of gasoline produced for use in the GPA and gasoline produced by small refiners, determine whether any credits identified in paragraph (h)(1) of this section or Type A sulfur allotments created under paragraph (i) of this section and converted to credits were created before 2004, and if so, report as a finding this number of expired credits.

(3) If the year being reviewed is 2008 and thereafter, determine whether any credits identified in paragraph (h)(1) of this section or Type B sulfur allotments created under paragraph (i) of this section and converted to credits were created more than 5 years before the year being reviewed, and if so, report as a finding this number of expired credits (for example, unused credits created during the 2004 averaging period expire at the end of the 2009 averaging period).

(i) *Optional credit and allotment generation in 2003.* The following requirements apply to any refinery that generates credits and allotments in 2003 under § 80.275(a):

(1) Obtain a written representation from the company representative stating the refinery produces gasoline from crude oil.

(2) Obtain the refinery baseline value from paragraph (b)(1) of this section, the annual volume from paragraph (b)(2) of this section and the annual average sulfur level from paragraph (b)(4) of this section.

(3) Based on the annual sulfur level and refinery baseline, determine which equation under § 80.275(a)(2) applies.

(4) Using the applicable equations under § 80.275(a)(2), recalculate the sulfur allotments, by type, and credits and report as a finding.

(j) *Credit reconciliation.* The following attest procedures shall be completed each year credits were in the refiner's or importer's possession at any time during the year:

(1) Obtain the credits remaining or the credit deficit from the previous year from the refiner's or importer's report to EPA for the previous year.

(2) Compute and report as a finding the net credits remaining at the conclusion of the year being reviewed by totaling:

(i) Credits remaining from the previous year; plus

(ii) Credits generated under paragraphs (c), (d) and (i) of this section; plus

(iii) Allotments generated under paragraph (i) of this section which are converted to credits; plus

(iv) Credits purchased under paragraph (e) of this section; minus

(v) Credits sold under paragraph (e) of this section; minus

(vi) Credits used under paragraphs (f) and (g) of this section; minus

(vii) Credits expiring under paragraph (h) of this section; minus

(viii) Credit deficit from the previous year.

(3) Agree the credits remaining or the credit deficit at the conclusion of the year being reviewed with the report to EPA.

(4) If the refinery or importer had a credit deficit for both the previous year and the year being reviewed, report this fact as a finding.

(k) *Sulfur allotments in 2004 and 2005.* The following requirements apply to any refinery or importer that is subject to corporate pool average standards under § 80.195:

(1) *Corporate pool average.* (i) Obtain the annual average sulfur level for the refiner or importer from the sulfur report filed with EPA for all gasoline subject to corporate pool standards (all gasoline produced and imported, except that if 50% or greater of the gasoline volume was GPA gasoline the refiner or importer is not subject to the corporate pool average).

(ii) Compute and report as a finding the company's gasoline volume subject to corporate pool standards and average sulfur level for gasoline subject to corporate pool standards, and agree with the values reported to EPA.

(2) *Allotment generation.* (i) For 2004, if the corporate pool average is less than 120 ppm, compute and report as a finding the number and type of sulfur allotments generated in accordance with the applicable provisions under § 80.275(b).

(ii) For 2005, if the corporate pool average is less than 90 ppm, compute and report as a finding the number and type of sulfur allotments generated in accordance with the applicable provisions under § 80.275(b).

(iii) If the refiner or importer produced and imported 50% or more of its gasoline for GPA use in 2004 or 2005, no allotments can be generated in that year.

(3) *Allotment purchases and sales.* (i) Obtain contracts or other documents for all allotments transferred to another company during the year being reviewed; compute and report as a finding the number of allotments represented in these documents as being transferred away; and agree with the report to EPA.

(ii) Obtain contracts or other documents for all allotments received during the year being reviewed; compute and report as a finding the number of allotments represented in these documents as being received; and agree with the report to EPA.

(4) *Allotments required.* (i) For 2004, if the corporate pool average is greater than 120 ppm, compute and report as a finding the number of allotments required by multiplying the amount the corporate pool average is above 120 ppm times the corporate pool volume, and agree with the report to EPA.

(ii) For 2005, if the corporate pool average is greater than 90 ppm, compute and report as a finding the number of allotments required by multiplying the amount the corporate pool average is above 90 ppm times the corporate pool volume, and agree with the report to EPA.

(iii) Obtain the number of allotments used to meet standards for GPA gasoline determined in paragraph (g) of this section.

(5) *Allotment reconciliation.* (i) Compute and report as a finding the net allotments remaining at the conclusion of the year being reviewed by totaling allotments:

(A) Generated under paragraphs (i)(4) and (k)(2) of this section; plus

(B) Purchased under paragraph (k)(3) of this section; minus

(C) Sold under paragraph (k)(3) of this section; minus

(D) Used under paragraph (k)(4) of this section for demonstrating compliance with the corporate pool average.

(ii) Report as a finding any allotments generated in 2003 or 2004 that are used to meet the corporate pool standards in 2005 that were not reduced to 50% of their original value.

(iii) If the company's net allotments remaining are less than zero, report this fact as a finding.

## PART 85—CONTROL OF AIR POLLUTION FROM MOBILE SOURCES

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

**Authority:** 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7601(a).

6. Section 85.1515 is amended by:

a. redesignating the existing paragraph (c) as paragraph (c)(1),

b. adding new paragraphs (c)(2), (c)(3), (c)(5), (c)(6) and (c)(7), and adding and reserving paragraph (c)(4), and

c. revising paragraph (d).

The revisions and additions read as follows:

**§ 85.1515 Emission standards and test procedures applicable to imported nonconforming motor vehicles and motor vehicle engines.**

* * * * *

(c)(1) * * *

(2)(i) The provisions of paragraph (c)(1) of this section notwithstanding, nonconforming light-duty vehicles and light light-duty trucks (LDV/LLDTs) modified in model years 2004, 2005 or 2006 must meet the FTP exhaust emission standards of bin 9 in Tables S04–1 and S04–2 in 40 CFR 86.1811–04 and the evaporative emission standards for light-duty vehicles and light light-duty trucks specified in 40 CFR 86.1811–04(e)(5).

(ii) Nonconforming LDT3s and LDT4s (HLDTs) and medium-duty passenger vehicles (MDPVs) modified in model years 2004 through 2006 must meet the FTP exhaust emission standards of bin 10 in Tables S04–1 and S04–2 in 40 CFR 86.1811–04 and the applicable evaporative standards specified in 40 CFR 86.1811–04(e)(5). For 2004 model year HLDTs and MDPVs where modifications commence on the first vehicle of a test group before December 21, 2003, this requirement does not apply to the 2004 model year. ICIs opting to bring all of their 2004 model year HLDTs and MDPVs into compliance with the exhaust emission standards of bin 10 in Tables S04–1 and S04–2 in 40 CFR 86.1811–04, may use the optional higher NMOG values for their 2004–2006 model year LDT2s and 2004–2008 LDT4s.

(iii) Nonconforming LDT3s and LDT4s (HLDTs) and medium-duty passenger vehicles (MDPVs) modified in model years 2007 and 2008 must meet the FTP exhaust emission standards of bin 8 in Tables S04–1 and S04–2 in 40 CFR 86.1811–04 and the applicable evaporative standards specified in 40 CFR 86.1811–04(e)(5).

(iv) Nonconforming LDV/LLDTs modified in model years 2007 and later and nonconfoming HLDTs and MDPVs modified in model years 2009 and later must meet the FTP exhaust emission standards of bin 5 in Tables S04–1 and S04–2 of 40 CFR 86.1811–04, and the evaporative standards specified in 40 CFR 86.1811(e)(1) through (e)(4).

(v) ICIs are exempt from the Tier 2 and the interim non-Tier 2 phase-in intermediate percentage requirements for exhaust, evaporative and refueling emissions described in 40 CFR 86.1811–04.

(3)(i) As an option to the requirements of paragraph (c)(2) of this section, independent commercial importers may elect to meet lower bins in Tables S04–1 and S04–2 of 40 CFR 86.1811–04 than

specified in paragraph (c)(2) of this section and bank or sell credits as permitted in 40 CFR 86.1860–04 and 40 CFR 86.1861–04. An ICI may not meet higher bins in Tables S04–1 and S04–2 of 40 CFR 86.1811–04 than specified in paragraph (c)(2) of this section unless it demonstrates to the Administrator at the time of certification that it has obtained appropriate and sufficient $NO_X$ credits from another manufacturer, or has generated them in a previous model year or in the current model year and not transferred them to another manufacturer or used them to address other vehicles as permitted in 40 CFR 86.1860–04 and 40 CFR 86.1861–04.

(ii) Where an ICI desires to obtain a certificate of conformity using a bin higher than specified in paragraph (c)(2) of this section, but does not have sufficient credits to cover vehicles produced under such certificate, the Administrator may issue such certificate if the ICI has also obtained a certificate of conformity for vehicles certified using a bin lower than that required under paragraph (c)(2) of this section. The ICI may then produce vehicles to the higher bin only to the extent that it has generated sufficient credits from vehicles certified to the lower bin during the same model year.

(4) [Reserved]

(5) Except for the situation where an ICI desires to bank, sell or use $NO_X$ credits as described in paragraph (c)(3) of this section, the requirements of 40 CFR 86.1811–04 related to fleet average $NO_X$ standards and requirements to comply with such standards do not apply to vehicles modified under this subpart.

(6) ICIs using bins higher than those specified in paragraph (c)(2) of this section must monitor their production so that they do not produce more vehicles certified to the standards of such bins than their available credits can cover. ICIs must not have a credit deficit at the end of a model year and are not permitted to use the deficit carryforward provisions provided in 40 CFR 86.1860–04(e).

(7) The Administrator may condition the certificates of conformity issued to ICIs as necessary to ensure that vehicles subject to paragraph (c) of this section comply with the appropriate average $NO_X$ standard for each model year.

(d) Except as provided in paragraph (c) of this section, ICI's must not participate in emission-related programs for emissions averaging, banking and trading, or nonconformance penalties.

* * * * *

## PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

7. The authority citation for part 86 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

8. In § 86.1 the table in paragraph (b)(4) is amended by revising the entry for ''California Regulatory Requirements Applicable to the 'LEV II' Program'' in alphabetical order and by revising the entry for ''California Regulatory Requirements Applicable to the National Low Emission Vehicle Program, October 1996'', to read as follows:

**§ 86.1 Reference materials.**

* * * * *

(b) * * *

(4) * * *

| Document No. and name | 40 CFR part 86 reference |
|---|---|
| California Regulatory Requirements Applicable to the ''LEV II'' Program, including:. | |
| 1. California Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Zero-Emission Vehicles and 2001 and Subsequent Model Hybrid Electric Vehicles, in the Passenger Car, Light-duty Truck and Medium-duty Vehicle Classes. August 5, 1999. | 86.1806–01; 86.1811–04; 86.1844–01. |
| 2. California Non-Methane Organic Gas Test Procedures. August 5, 1999. | 86.1803–01; 86.1810–01; 86.1811–04. |
| California Regulatory Requirements Applicable to the National Low Emission Vehicle Program, October 1996. | 86.113–004; 86.612–97; 86.1012–97; 86.1702–99; 86.1708–99; 86.1709–99; 86.1717–99; 86.1735–99; 86.1771–99; 86.1775–99; 86.1776–99; 86.1777–99; Appendix XVI; Appendix XVII. |

* * * * *

### Subpart A—General Provisions for Emission Regulations for 1977 and Later Model Year New Light-Duty Vehicles, Light-Duty Trucks and Heavy-Duty Engines, and for 1985 and Later Model Year New Gasoline-Fueled, Natural Gas-Fueled, Liquefied Petroleum Gas-Fueled and Methanol-Fueled Heavy-Duty Vehicles

9. Section 86.004–11 is amended by adding paragraph (e) to read as follows:

**§ 86.004–11 Emission standards for 2004 and later model year diesel heavy-duty engines and vehicles.**

* * * * *

(e) The standards described in this section do not apply to diesel-fueled medium-duty passenger vehicles (MDPVs) that are subject to regulation under subpart S of this part, except as specified in subpart S of this part. The standards described in this section also do not apply to diesel engines used in such MDPVs, except as specified in the regulations in subpart S of this part. The term ''medium-duty passenger vehicle'' is defined in § 86.1803.

10. Section 86.099–10 is amended by adding paragraph (e) to read as follows:

**§ 86.099–10 Emission standards for 1999 and later model year Otto-cycle heavy-duty engines and vehicles.**

* * * * *

(e) The standards described in this section do not apply to Otto-cycle medium-duty passenger vehicles (MDPVs) that are subject to regulation under subpart S of this part, except as specified in subpart S of this part. The standards described in this section also do not apply to Otto-cycle engines used in such MDPVs, except as specified in subpart S of this part. The term ''medium-duty passenger vehicle'' is defined in § 86.1803.

10a. The heading of Subpart B is revised to read as follows:

### Subpart B—Emission Regulations for 1977 and Later Model Year New Light-duty Vehicles, New Light-duty Trucks and New Medium-Duty Passenger Vehicles; Test Procedures

11. Section 86.113–04 is added to read as follows:

**§ 86.113–04 Fuel specifications.**

This section includes text that specifies requirements that differ from § 86.113–94. Where a paragraph in § 86.113–94 is identical and applicable to this section, this will be indicated by specifying the corresponding paragraph

and the statement ''[Reserved]. For guidance see § 86.113–94.''.

(a) *Gasoline fuel.* (1) Gasoline having the following specifications will be used by the Administrator in exhaust and evaporative emission testing of petroleum-fueled Otto-cycle vehicles, except that the Administrator will not use gasoline having a sulfur specification higher than 0.0045 weight percent. Gasoline having the following specification or substantially equivalent specifications approved by the Administrator, must be used by the manufacturer in exhaust and evaporative testing except that octane specifications do not apply:

| Item | ASTM test method No. | Value |
|---|---|---|
| Octane, Research, Min. | D 2699 | 93 |
| Sensitivity, Min. | | 7.5 |
| Lead (organic), max. g/U.S. gal. (g/liter) | D 3237 | 0.050 (0.013) |
| Distillation Range: | D 86 | |
| IBP[1]:deg. F (deg. C) | | 75–95 (23.9–35) |
| 10 pct. point: deg.F (deg.C) | | 120–135 (48.9–57.2) |
| 50 pct. point: deg.F. (deg.C) | | 200–230 (93.3–110) |
| 90 pct. point: deg.F (deg.C) | | 300–325 (148.9–162.8) |
| EP, max: deg.F (deg.C) | | 415 (212.8) |
| Sulfur, weight pct. | D 1266 | 0.0015–0.008 |
| Phosphorous, max. g/U.S. gal (g/liter) | D 3231 | 0.005 (0.0013) |
| RVP [2,3] | D 3231 | 8.7–9.2 (60.0–63.4) |
| Hydrocarbon composition: | D 1319 | |
| Olefins, max. pct. | | 10 |
| Aromatics, max, pct. | | 35 |
| Saturates | | Remainder |

[1] For testing at altitudes above 1,219 m (4000 feet), the specified range is 75–105 deg. F (23.9–40.6 deg. C).
[2] For testing which is unrelated to evaporative emission control, the specified range is 8.0-9.2 psi (55.2–63.4 kPa).
[3] For testing at altitudes above 1,219 m (4000 feet), the specified range is 7.6–8.0 psi (52-55 kPa).

(2) For light-duty vehicles, light-duty trucks and medium-duty passenger vehicles certified for 50 state sale, and for Tier 2 and interim non-Tier 2 vehicles whose certification is carried over from the NLEV program or carried across from the California LEV I program, ''California Phase 2'' gasoline having the specifications listed in the table in this section may be used in exhaust emission testing as an option to the specifications in paragraph (a)(1) of this section. If a manufacturer elects to utilize this option, the manufacturer must conduct exhaust emission testing with gasoline having the specifications listed in the table in this paragraph (a)(2) and in the case of interim non-Tier 2 LDV/Ts and interim non-Tier 2 MDPVs whose certification is carried over from the NLEV program or carried across from California LEV I program certification the Administrator must also conduct exhaust emission testing with gasoline having the specifications listed in the table in this paragraph (a)(2) . However, the Administrator may use or require the use of test fuel meeting the specifications in paragraph (a)(1) of this section for certification confirmatory testing, selective enforcement auditing and in-use testing for all other vehicles. All fuel property test methods for this fuel are contained in Chapter 4 of the California Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996). These requirements are incorporated by reference (see § 86.1). The table follows:

| Fuel property | Limit |
|---|---|
| Octane, (R+M)/2 (min) | 91 |
| Sensitivity (min) | 7.5 |
| Lead, g/gal (max) (No lead added) | 0–0.01 |
| Distillation range, °F. | |
| 10 pct. point, | 130–150 |
| 50 pct. point, | 200–210 |
| 90 pct. point, | 290–300 |
| EP, maximum | 390 |
| Residue, vol% (max) | 2.0 |
| Sulfur, ppm by wt. | 15–40, except that administrator may use and approve for use, lower ranges where such ranges are consistent with current California requirements. |
| Phosphorous, g/gal (max) | 0.005 |
| RVP, psi | 6.7–7.0 |
| Olefins, vol% | 4.0–6.0 |
| Total aromatic hydrocarbons (vol%) | 22–25 |
| Benzene, vol% | 0.8–1.0 |
| Multi-substituted alkyl Aromatic hydrocarbons, vol% | 12–14 |
| MTBE, vol % | 10.8–11.2 |
| Additives: | See chapter 4 of the California Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996). These procedures are incorporated by reference (see § 86.1). |

| Fuel property | Limit |
|---|---|
| Copper corrosion | No. 1. |
| Gum, washed, mg/100 ml (max) | 3.0 |
| Oxidation stability, minutes (min) | 1000 |
| Specific gravity | No limit; report to purchaser required. |
| Heat of combustion | No limit; report to purchaser required. |
| Carbon, wt% | No limit; report to purchaser required. |
| Hydrogen, wt% | No limit; report to purchaser required. |

(3)(i) Unless otherwise approved by the Administrator, unleaded gasoline representative of commercial gasoline that will be generally available through retail outlets must be used in service accumulation. For model years 2004 and later, and unless otherwise approved by the Administrator, this gasoline must have a minimum sulfur content of 15 ppm. Unless otherwise approved by the Administrator, where the vehicle is to be used for evaporative emission durability demonstration, such fuel must contain ethanol as required by § 86.1824–01(a)(2)(iii). Leaded gasoline must not be used in service accumulation.

(ii) Unless otherwise approved by the Administrator, the octane rating of the gasoline used must be no higher than 1.0 Retail octane number above the lowest octane rating that meets the fuel grade the manufacturer will recommend to the ultimate purchaser for the relevant production vehicles. If the manufacturer recommends a Retail octane number rather than a fuel grade, then the octane rating of the service accumulation gasoline can be no higher than 1.0 Retail octane number above the recommended Retail octane number. The service accumulation gasoline must also have a minimum sensitivity of 7.5 octane numbers, where sensitivity is defined as the Research octane number minus the Motor octane number.

(iii) The Reid Vapor Pressure of the gasoline used must be characteristic of the motor fuel used during the season in which the service accumulation takes place.

(4) The specification range of the gasoline to be used under this paragraph (a) must be reported in accordance with §§ 86.094–21(b)(3) and 86.1844–01.

(b) through (g) [Reserved]. For guidance see § 86.113–94.

12. Section 86.129–00 is amended by adding a new paragraph (f)(1)(ii)(C) to read as follows:

**§ 86.129–00 Road load power, test weight, and inertia weight class determination.**

* * * * *

(f)* * *

(1)* * *

(ii)* * *

(C) Regardless of other requirements in this section relating to the testing of HLDTs, for Tier 2 HLDTs, the test weight basis for FTP and SFTP testing (both US06 and SC03), if applicable, is the vehicle curb weight plus 300 pounds. For MDPVs certified to standards in bin 11 in Tables S04–1 and 2 in § 86.1811–04, the test weight basis must be adjusted loaded vehicle weight (ALVW) as defined in this part.

* * * * *

12.a. The heading of Subpart C is revised to read as follows:

## Subpart C—Emission Regulations for 1994 and Later Model Year Gasoline-Fueled New Light-Duty Vehicles, New Light-Duty Trucks and New Medium-Duty Passenger Vehicles; Cold Temperature Test Procedures

13. Section 86.213–04 is added to read as follows:

**§ 86.213–04 Fuel specifications.**

Gasoline having the following specifications will be used by the Administrator except that the Administrator will not use gasoline having a sulfur specification higher than 0.0045 weight percent. Gasoline having the specifications set forth in the table in this section, or substantially equivalent specifications approved by the Administrator, may be used by the manufacturer except that the octane specification does not apply. In lieu of using gasoline having these specifications, the manufacturer may, for certification testing, use gasoline having the specifications specified in § 86.113–04 provided the cold CO emissions are not decreased. Documentation showing that cold CO emissions are not decreased must be maintained by the manufacturer and must be made available to the Administrator upon request. The table listing the cold CO fuel specifications described in the text in this section follows:

TABLE—COLD CO FUEL SPECIFICATIONS

| Item | ASTM test | Cold CO low octane value or range | Cold CO high octane [1] value or range |
|---|---|---|---|
| (RON+MON)/2, min | D 2699 | 87.8±.3 | 92.3±0.5 |
| Sensitivity, min | D 2699 | 7.5 | 7.5 |
| Distillation range:. | | | |
| IBP, deg.F | D 86 | 76–96 | 76–96 |
| 10% point, deg.F. | D 86 | 98–118 | 105–125 |
| 50% point, deg.F. | D 86 | 179–214 | 195–225 |
| 90% point, deg.F. | D 86 | 316–346 | 316–346 |
| EP, max, deg.F | D 86 | 413 | 413 |
| Sulfur, wt. % | D 3120 | 0.0015–0.008 | 0.0015–0.008 |
| Phosphorous, g/U.S gal, max | D 3231 | 0.005 | 0.005 |
| Lead, g/gal, max | | 0.01 | 0.01 |
| RVP, psi | D 4953 | 11.5±.3 | 11.5±.3 |
| Hydrocarbon composition | D 1319 | | |
| Olefins, vol. pct | | 12.5±5.0 | 10.0±5.0 |
| Aromatics, vol. pct | | 26.4±4.0 | 32.0±4.0 |
| Saturates | | Remainder | Remainder. |

[1] Gasoline having these specifications may be used for vehicles which are designed for the use of high-octane premium fuel.

## Subpart R—General Provisions for the Voluntary National Low Emission Vehicle Program for Light-Duty Vehicles and Light-Duty Trucks

14. Section 86.1701–99 is amended by adding paragraph (f) to read as follows:

### § 86.1701–99 General applicability.

* * * * *

(f) The provisions of this subpart are not applicable to 2004 or later model year vehicles, except where specific references to provisions of this subpart are made in conjunction with provisions applicable to such vehicles.

14.a. The title of subpart S is revised 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 Medium Duty Passenger Vehicles

15. Section 86.1801–01 is amended by:

a. revising the first sentence of paragraph (a),

b. adding one sentence to the end of paragraph (c)(1),

c. revising the first sentence of paragraph (e), and

d. adding paragraphs (f), (g) and (h).

These revisions and additions read as follows:

### § 86.1801–01 Applicability.

(a) Except as otherwise indicated, the provisions of this subpart apply to new 2001 and later model year Otto-cycle and diesel cycle light-duty vehicles, light-duty trucks and medium-duty passenger vehicles, including multi-fueled, alternative fueled, hybrid electric, and zero emission vehicles. * * *

* * * * *

(c) * * * (1) * * * A 2004 or later model year heavy-duty vehicle optionally certified as a light-duty truck under this provision must comply with all provisions applicable to MDPVs including exhaust and evaporative emission standards, test procedures, on-board diagnostics, refueling standards, phase-in requirements and fleet average standards under 40 CFR Part 85 and this part.

* * * * *

(e) *National Low Emission Vehicle Program for light-duty vehicles and light light-duty trucks.* A manufacturer may elect to certify 2001–2003 model year light-duty vehicles and light light-duty trucks (LDV/LLDTs) to the provisions of the National Low Emission Vehicle Program contained in Subpart R of this part. * * *

(f) *''Early'' Tier 2 LDVs, LDTs and MDPVs.* Any LDV/LLDT which is certified to Tier 2 FTP exhaust standards prior to the 2004 model year, or any HLDT or MDPV which is certified to the Tier 2 FTP exhaust standards prior to the 2008 model year, to utilize alternate phase-in schedules and/or for purposes of generating and banking Tier 2 $NO_X$ credits, must comply with all the exhaust emission requirements applicable to Tier 2 LDV/LLDTs or HLDT/ MDPVs, as applicable, under this subpart.

(g) *Interim non-Tier 2 LDVs, LDTs and MDPVs.* Model year 2004–2008 LDVs, LDTs and MDPVs, that do not comply with the Tier 2 FTP exhaust emission requirements (interim non-Tier 2 LDV/LLDTs and interim non-Tier 2 HLDT/MDPVs) as permitted under the phase-in requirements of § 86.1811–04(k) must comply with all applicable interim non-Tier 2 exhaust emission requirements contained in this subpart, including FTP exhaust emission requirements for all interim non-Tier 2 LDV/LLDTs and HLDT/MDPVs found at § 86.1811–04(l). Additional emission bins and separate fleet average $NO_X$ emission standards and other provisions are provided for interim non-Tier 2 LDV/LLDTs, and interim non-Tier 2 HLDT/MDPVs.

(h) *Applicablity of provisions of this subpart to LDVs, LDTs and MDPVs.* Numerous sections in this subpart provide requirements or procedures applicable to a ''vehicle'' or ''vehicles''. Unless otherwise specified or otherwise determined by the Administrator, the term ''vehicle'' or ''vehicles'' in those provisions apply equally to LDVs, LDTs and MDPVs.

16. Section 86.1803–01 is amended by adding the following definitions in alphabetical order to read as follows:

### § 86.1803–01 Definitions.

* * * * *

*Bin* or *emission bin* means a set of emission standards applicable to exhaust pollutants measured on the Federal Test Procedure (FTP). A bin is equivalent to a horizontal row of FTP standards in Tables S04–1 and S04–2 shown in this subpart. Manufacturers are generally free to choose the bin of standards that will apply to a certain test group of vehicles, provided that on a sales weighted average of those bins, all of their vehicles meet a specified fleet average standard for a particular pollutant.

* * * * *

*CalLEV II* or *California LEV II* refers to California's second phase of its low emission vehicle (LEV) program. This program was adopted at the hearing of the California Air Resources Board held on November 5, 1998 and became effective on November 27, 1999.

* * * * *

*Fleet average $NO_X$ standard* means, for light-duty vehicles, light-duty trucks and medium-duty passenger vehicles, a $NO_X$ standard imposed over an individual manufacturer's total U.S. sales (or a fraction of total U.S. sales during phase-in years), as 'U.S. sales'' is defined in this subpart, of a given model year. Manufacturers determine their compliance with such a standard by averaging, on a sales weighted basis, the individual $NO_X$ standards they choose for the fleet of light-duty vehicles, light-duty trucks and medium-duty passenger vehicles they sell of that model year.

* * * * *

*Interim non-Tier 2 vehicle, interim non-Tier 2 LDV/LLDT, interim non-Tier 2 HLDT/MDPV,* or *interim vehicle* refer to 2004 or later model year light-duty vehicles, light-duty trucks or MDPVs, or a specific combination thereof, not certified to Tier 2 FTP exhaust emission standards during the Tier 2 phase-in period. Model year 2004 HLDTs belonging to test groups whose model year commences before December 21, 2003, are not interim non-Tier 2 HLDTs unless their manufacturer chooses to comply with the interim requirements applicable to HLDTs for all of its 2004 model year HLDTs as permitted in this subpart. Similarly 2004 model year heavy-duty vehicles whose model year commences before December 21, 2003, are not interim non-Tier 2 MDPVs unless their manufacturer chooses to comply with the interim requirements applicable to MDPVs for all of its 2004 model year MDPVs as permitted in this subpart. The terms *interim non-Tier 2 vehicle, interim non-Tier 2 LDV, interim non-Tier 2 LDT, interim non-Tier 2 HLDT, interim non-Tier 2 MDPV,* etc. have the same meaning without the words ''non-Tier 2''.

* * * * *

*LDV/T* means light-duty vehicles and light-duty trucks collectively, without regard to category.

* * * * *

*Medium-duty passenger vehicle (MDPV)* means any heavy-duty vehicle

(as defined in this subpart) with a gross vehicle weight rating (GVWR) of less than 10,000 pounds that is designed primarily for the transportation of persons. The MDPV definition does not include any vehicle which:

(1) Is an ''incomplete truck'' as defined in this subpart; or

(2) Has a seating capacity of more than 12 persons; or

(3) Is designed for more than 9 persons in seating rearward of the driver's seat; or

(4) Is equipped with an open cargo area (for example, a pick-up truck box or bed) of 72.0 inches in interior length or more. A covered box not readily accessible from the passenger compartment will be considered an open cargo area for purposes of this definition.

* * * * *

*Non-methane organic gases (NMOG)* means the sum of oxygenated and non-oxygenated hydrocarbons contained in a gas sample as measured in accordance with the California Non-Methane Organic Gas Test Procedures. These requirements are incorporated by reference (see § 86.1)

* * * * *

*Periodically regenerating trap oxidizer system* means a trap oxidizer that utilizes, during normal driving conditions, an automated regeneration mode for cleaning the trap, the operation of which can be easily detected.

* * * * *

*Point of first sale* means the location where the completed vehicle is first purchased. This term is synonymous with final product purchase location. The point of first sale may be a retail customer, dealer, distributor, fleet operator, broker, secondary manufacturer, or any other entity which purchases a vehicle from a manufacturer. In cases where the end user purchases the completed vehicle directly from the manufacturer, the end user is the point of first sale.

* * * * *

*Round, rounded* or *rounding* means, unless otherwise specified, that numbers will be rounded according to ASTM–E29–93a, which is incorporated by reference in this part pursuant to § 86.1.

* * * * *

*Tier 2 HLDT/MDPV* means any heavy light-duty truck or medium-duty passenger vehicle, including HEVs and ZEVs, of the 2008 or later model year certified to comply with the Tier 2 FTP exhaust standards contained in § 86.1811–04 including the 0.07 g/mi fleet average $NO_X$ standard. The term Tier 2 HLDT/MDPV also includes any heavy light-duty truck or medium-duty passenger vehicle, of any model year, which is certified to Tier 2 FTP exhaust standards for purposes of generating or banking early $NO_X$ credits for averaging under Tier 2 requirements, or utilizing alternate phase-in schedules, as allowed in this subpart.

*Tier 2 LDV/LLDT* means any light-duty vehicle or light light-duty truck, including HEVs and ZEVs, of the 2004 or later model year certified to comply with the Tier 2 FTP exhaust standards contained in § 86.1811–04 including the 0.07 g/mi fleet average $NO_X$ standard. The term Tier 2 LDV/LLDT also includes any light-duty vehicle or light light-duty truck, of any model year, which is certified to Tier 2 FTP exhaust standards for purposes of generating or banking early $NO_X$ credits for averaging under Tier 2 requirements, or utilizing alternate phase-in schedules as allowed in this subpart.

*Tier 2 standards* means those FTP exhaust emission standards *including the 0.07 g/mi full useful life fleet average $NO_X$ standard,* applicable to new light-duty vehicles and light light-duty trucks that begin a phase-in in the 2004 model year, and those exhaust emission standards *including the 0.07 g/mi full useful life fleet average $NO_X$ standard,* applicable to heavy light-duty trucks and medium-duty passenger vehicles that begin a phase-in in the 2008 model year. These standards are found in § 86.1811–04 of this subpart.

*Tier 2 vehicle* means any vehicle certified to comply with the Tier 2 FTP exhaust standards contained in § 86.1811–04 including the 0.07 g/mi fleet average $NO_X$ standard.

* * * * *

*U.S. sales* means, unless otherwise specified, sales in any state of the United States except for California or a state that has adopted California motor vehicle standards for that model year pursuant to section 177 of the Clean Air Act. This definition applies only to those regulatory requirements addressing Tier 2 and interim non-Tier 2 vehicles.

* * * * *

17. Section 86.1804–01 is amended by adding the following acronyms and abbreviations, in alphabetical order, to read as follows:

**§ 86.1804–01 Acronyms and abbreviations.**

* * * * *

HCHO—Formaldehyde.

HEV—Hybrid electric vehicle.

* * * * *

HLDT—Heavy light-duty truck. Includes only those trucks over 6000 pounds GVWR (LDT3s and LDT4s).

HLDT/MDPV—Heavy light-duty trucks and medium-duty passenger vehicles.

* * * * *

LDV/LLDT—Light-duty vehicles and light light-duty trucks. Includes only those trucks rated at 6000 pounds GVWR or less (LDT1s and LDT2s).

LDV/T—Light-duty vehicles and light-duty trucks. This term is used collectively to include, or to show that a provision applies to, all light-duty vehicles and all categories of light-duty trucks, i.e.

LDT1, LDT2, LDT3 and LDT4.

LEV—Low Emission Vehicle.

* * * * *

MDPV—Medium-duty passenger vehicle.

* * * * *

NLEV—Refers to the National Low Emission Vehicle Program. Regulations governing this program are found at subpart R of this part.

* * * * *

NMOG—Non-methane organic gases.

* * * * *

RAF—Reactivity adjustment factor.

* * * * *

SULEV—Super Ultra Low Emission Vehicle.

* * * * *

TLEV—Transitional Low Emission Vehicle.

* * * * *

ULEV—Ultra Low Emission Vehicle.

* * * * *

ZEV—Zero Emission Vehicle.

18. Section 86.1805–04 is added to read as follows:

**§ 86.1805–04 Useful life.**

(a) Except as required under paragraph (b) of this section or permitted under paragraphs (d), (e) and (f) of this section, the full useful life for all LDVs, LDT1s and LDT2s is a period of use of 10 years or 120,000 miles, whichever occurs first. For all HLDTs and MDPVs, full useful life is a period of 11 years or 120,000 miles, whichever occurs first. This full useful life applies to all exhaust, evaporative and refueling emission requirements except for standards which are specified to only be applicable at the time of certification.

(b) Manufacturers may elect to optionally certify a test group to the Tier 2 exhaust emission standards for 150,000 miles to gain additional $NO_X$ credits, as permitted in § 86.1860–04(g), or to opt out of intermediate life standards as permitted in § 86.1811–04(c). In such cases, useful life is a period of use of 15 years or 150,000 miles, whichever occurs first, for all exhaust, evaporative and refueling emission requirements except for cold CO standards and standards which are applicable only at the time of certification.

(c) Where intermediate useful life exhaust emission standards are

applicable, such standards are applicable for five years or 50,000 miles, whichever occurs first.

(d) Where cold CO standards are applicable, the useful life requirement for compliance with the cold CO standard only, is 5 years or 50,000 miles, whichever occurs first.

(e) Where LDVs, LDT1s and LDT2s of the 2003 or earlier model years are certified to Tier 2 exhaust emission standards for purposes of generating early Tier 2 $NO_X$ credits, manufacturers may certify those vehicles to full useful lives of 100,000 miles in lieu of the otherwise required 120,000 mile full useful lives, as provided under § 86.1861–04(c)(4).

(f) For interim non-Tier 2 LDV/LLDTs, the useful life requirement for exhaust, evaporative and refueling emissions is 10 years or 100,000 miles, whichever occurs first.

19. Section 86.1806–01 is amended by:

a. revising paragraph (a);

b. adding paragraph (b)(8);

c. redesignating the text of paragraph (d) after the paragraph heading as (d)(1); and

d. adding paragraph (d)(2).

The revisions and additions read as follows:

**§ 86.1806–01 On-board diagnostics.**

(a)(1) Except as provided by paragraph (a)(2) of this section, all light-duty vehicles, light-duty trucks and MDPVs must be equipped with an onboard diagnostic (OBD) system capable of monitoring, for each vehicle's useful life, all emission-related powertrain systems or components. All systems and components required to be monitored by these regulations must be evaluated periodically, but no less frequently than once per Urban Dynamometer Driving Schedule as defined in Appendix I, paragraph (a), of this part, or similar trip as approved by the Administrator.

(2) Diesel fueled chassis-certified MDPVs and engine-certified diesel engines used in MDPVs, are subject to the requirements of this section only if the exhaust emission certification of the applicable test group is being carried across from a California configuration to which California OBD–II requirements are applicable.

(b) * * *

(8) *For Tier 2 and interim non-Tier 2 hybrid electric vehicles (HEVs) only.* Unless added to HEVs in compliance with other requirements of this section, or unless otherwise approved by the Administrator:

(i) The manufacturer must equip each HEV with a maintenance indicator consisting of a light that must activate automatically by illuminating the first time the minimum performance level is observed for each battery system component. Possible battery system components requiring monitoring are: battery water level, temperature control, pressure control, and other parameters critical for determining battery condition.

(ii) The manufacturer must equip ''off-vehicle charge capable HEVs'' with a useful life indicator for the battery system consisting of a light that must illuminate the first time the battery system is unable to achieve an all-electric operating range (starting from a full state-of-charge) which is at least 75 percent of the range determined for the vehicle in the Urban Driving Schedule portion of the All-Electric Range Test (see the California Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Zero-Emission Vehicles, and 2001 and Subsequent Model Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes. These requirements are incorporated by reference (see § 86.1).

(iii) The manufacturer must equip each HEV with a separate odometer or other device subject to the approval of the Administrator that can accurately measure the mileage accumulation on the engines used in these vehicles.

* * * * *

(d) *MIL illumination.* (1) * * *

(2)(i) For interim non-Tier 2 and Tier 2 LDV/LLDTs and HLDT/MDPVs, vehicles produced through the 2007 model year, upon a manufacturer's written request, EPA will consider allowing the use of an on-board diagnostic system during the certification process, that functions properly on low-sulfur gasoline, but indicates sulfur-induced passes when exposed to high sulfur gasoline.

(ii) For interim non-Tier 2 and Tier 2 LDV/LLDTs and HLDT/MDPVs, if vehicles produced through the 2007 model year exhibit illuminations of the emission control diagnostic system malfunction indicator light due to high sulfur gasoline, EPA will consider, upon a manufacturer's written request, allowing modifications to such vehicles on a case-by-case basis so as to eliminate the sulfur induced illumination.

* * * * *

20. Section 86.1807–01 is amended by revising paragraph (a)(3)(vi) to read as follows:

**§ 86.1807–01 Vehicle labeling.**

(a) * * *

(3) * * *

(vi) The exhaust emission standards to which the test group is certified, and for test groups having different in-use standards, the corresponding exhaust emission standards that the test group must meet in use. In lieu of this requirement, manufacturers may use the standardized test group name designated by EPA;

* * * * *

21. Section 86.1809–01 is amended by adding paragraph (e) to read as follows:

**§ 86.1809–01 Prohibition of defeat devices.**

* * * * *

(e) For each test group of Tier 2 LDV/LLDTs and HLDT/MDPVs and interim non-Tier 2 LDV/LLDTs and HLDT/MDPVs the manufacturer must submit, with the Part II certification application, an engineering evaluation demonstrating to the satisfaction of the Administrator that a discontinuity in emissions of non-methane organic gases, carbon monoxide, oxides of nitrogen and formaldehyde measured on the Federal Test Procedure (subpart B of this part) does not occur in the temperature range of 20 to 86 degrees F. For diesel vehicles, the engineering evaluation must also include particulate emissions.

22. Section 86.1810–01 is amended by:

a. adding two new sentences to the end of the introductory text;

b. adding one new sentence to the end of paragraph (f);

c. adding a new sentence to the end of paragraph (i)(6); and

d. adding new paragraphs (i)(13), (i)(14), (o) and (p).

The additions read as follows:

**§ 86.1810–01 General standards; increase in emissions; unsafe conditions; waivers.**

* * * For Tier 2 and interim non-Tier 2 vehicles, this section also applies to hybrid electric vehicles and zero emission vehicles. Unless otherwise specified, requirements and provisions of this subpart applicable to methanol fueled vehicles are also applicable to Tier 2 and interim non-Tier 2 ethanol fueled vehicles.

* * * * *

(f) * * * Interim non-Tier 2 LDV/Ts may be certified to applicable Tier 1 exhaust emission standards at high altitude as set forth in §§ 86.1811–01, 86.1812–01, 86.1813–01, 86.1814–02 and 86.1815–02. Requirements to meet emission standards at high altitude are optional for interim non-Tier 2 MDPVs.

* * * * *

(i) * * *

(6) * * * For Tier 2 and interim non-Tier 2 vehicles, this provision does not

apply to enrichment that occurs upon cold start, warm-up conditions and rapid-throttle motion conditions (''tip-in'' or ''tip-out'' conditions).

* * * * *

(13) *A/C-on specific calibrations.* (i) For Tier 2 and interim non-Tier 2 vehicles, A/C-on specific calibrations (e.g. air to fuel ratio, spark timing, and exhaust gas recirculation), may be used which differ from A/C-off calibrations for given engine operating conditions (e.g., engine speed, manifold pressure, coolant temperature, air charge temperature, and any other parameters).

(ii) Such calibrations must not unnecessarily reduce the NMHC+$NO_X$ emission control effectiveness during A/C-on operation when the vehicle is operated under conditions which may reasonably be expected to be encountered during normal operation and use.

(iii) If reductions in control system NMHC+$NO_X$ effectiveness do occur as a result of such calibrations, the manufacturer must, in the Application for Certification, specify the circumstances under which such reductions do occur, and the reason for the use of such calibrations resulting in such reductions in control system effectiveness.

(iv) A/C-on specific ''open-loop'' or ''commanded enrichment'' air-fuel enrichment strategies (as defined below), which differ from A/C-off ''open-loop'' or ''commanded enrichment'' air-fuel enrichment strategies, may not be used, with the following exceptions: Cold-start and warm-up conditions, or, subject to Administrator approval, conditions requiring the protection of the vehicle, occupants, engine, or emission control hardware. Other than these exceptions, such strategies which are invoked based on manifold pressure, engine speed, throttle position, or other engine parameters must use the same engine parameter criteria for the invoking of this air-fuel enrichment strategy and the same degree of enrichment regardless of whether the A/C is on or off. ''Open-loop'' or ''commanded'' air-fuel enrichment strategy is defined as enrichment of the air to fuel ratio beyond stoichiometry for the purposes of increasing engine power output and the protection of engine or emissions control hardware. However, ''closed-loop biasing,'' defined as small changes in the air-fuel ratio for the purposes of optimizing vehicle emissions or driveability, must not be considered an ''open-loop'' or ''commanded'' air-fuel enrichment strategy. In addition, ''transient'' air-fuel enrichment strategy (or ''tip-in'' and ''tip-out'' enrichment), defined as the temporary use of an air-fuel ratio rich of stoichiometry at the beginning or duration of rapid throttle motion, must not be considered an ''open-loop'' or ''commanded'' air-fuel enrichment strategy.

(14) ''*Lean-on-cruise'' calibration strategies.* (i) For Tier 2 and interim non-Tier 2 vehicles, the manufacturer must state in the Application for Certification whether any ''lean-on-cruise'' strategies are incorporated into the vehicle design. A ''lean-on-cruise'' air-fuel calibration strategy is defined as the use of an air-fuel ratio significantly greater than stoichiometry, during non-deceleration conditions at speeds above 40 mph. ''Lean-on-cruise'' air-fuel calibration strategies must not be employed during vehicle operation in normal driving conditions, including A/C usage, unless at least one of the following conditions is met:

(A) Such strategies are substantially employed during the FTP or SFTP;

(B) Such strategies are demonstrated not to significantly reduce vehicle NMHC+$NO_X$ emission control effectiveness over the operating conditions in which they are employed; or

(C) Such strategies are demonstrated to be necessary to protect the vehicle occupants, engine, or emission control hardware.

(ii) If the manufacturer proposes to use a ''lean-on-cruise'' calibration strategy, the manufacturer must specify the circumstances under which such a calibration would be used, and the reason or reasons for the proposed use of such a calibration.

* * * * *

(o) Unless otherwise approved by the Administrator, manufacturers must measure NMOG emissions in accordance with the California Non-Methane Organic Gas Test Procedures. These procedures are incorporated by reference (see § 86.1).

(p) For gasoline and diesel-fueled Tier 2 and interim non-Tier 2 vehicles, manufacturers may measure non-methane hydrocarbons (NMHC) in lieu of NMOG. Manufacturers must multiply NMHC measurements from gasoline vehicles by an adjustment factor of 1.04 before comparing with the NMOG standard to determine compliance with that standard. Manufacturers may use other factors to adjust NMHC results to more properly represent NMOG results. Such factors must be based upon comparative testing of NMOG and NMHC emissions and be approved in advance by the Administrator.

23. Section 86.1811–01 is amended by adding a sentence to the end of the introductory text to read as follows:

**§ 86.1811–01 Emission standards for light-duty vehicles.**

* * * This section does not apply to 2004 and later model year vehicles, except as specifically referenced by § 86.1811–04.

* * * * *

24. Section 86.1811–04 is added to read as follows:

**§ 86.1811–04 Emission standards for light-duty vehicles, light-duty trucks and medium-duty passenger vehicles.**

(a) *Applicability.* (1) This section contains regulations implementing emission standards for all LDVs, LDTs and MDPVs. This section applies to 2004 and later model year LDVs, LDTs and MDPVs fueled by gasoline, diesel, methanol, ethanol, natural gas and liquefied petroleum gas fuels, except as noted. Additionally, this section contains provisions applicable to hybrid electric vehicles (HEVs) and zero emission vehicles (ZEVs). Multi-fueled vehicles must comply with all requirements established for each consumed fuel.

(2) This section also applies to LDVs, LDTs and MDPVs of model years prior to 2004, when manufacturers certify such vehicles to Tier 2 exhaust emission requirements to utilize alternate phase-in schedules, as allowed under paragraph (k)(6) of this section, and/or to earn early $NO_X$ credits for use in complying with the Tier 2 fleet average $NO_X$ standard which takes effect in the 2004 model year for LDV/LLDTs and 2008 for HLDT/MDPVs.

(3) Except where otherwise specified, this section applies instead of §§ 86.1811–01, 86.1812–01, 86.1813–01, 86.1814–01, 86.1814–02, 86.1815–01, and 86.1815–02.

(4) Except where otherwise specified, the provisions of this section apply equally to LDVs and all categories of LDTs, and to all MDPVs. Numerous provisions are applicable equally to HLDTs and MDPVs, as reflected by the term HLDT/MDPV. Numerous provisions apply equally to LDVs and LLDTs as reflected by the term LDV/LLDT.

(5) The exhaust emission standards and evaporative emission standards of this section apply equally to certification and in-use LDVs, LDTs and MDPVs, unless otherwise specified.

(b) *Test weight.* (1) Except as required in paragraphs (b)(2) and (b)(4) of this section, or permitted under paragraph (b)(3) of this section, emission testing of all LDVs, LDTs and MDPVs to

determine compliance with any exhaust or evaporative emission standard set forth in this Part must be on a loaded vehicle weight (LVW) basis, as that term is defined in this subpart.

(2) Interim non-Tier 2 HLDTs tested to Tier 1 SFTP standards, must be tested on an adjusted loaded vehicle weight (ALVW) basis, as that term is defined in this subpart, during the SC03 element of the SFTP.

(3) Except as required in paragraphs (b)(2) and (b)(4) of this section, interim non-Tier 2 HLDT/MDPVs may be tested on an ALVW basis or an LVW basis to demonstrate compliance with any exhaust or evaporative emission standard set forth in this Part.

(4) MDPVs certified to bin 11 standards from Tables S04–1 and –2 must be tested on an ALVW basis to demonstrate compliance with any exhaust emission standard set forth in this part.

(c) *Tier 2 FTP exhaust emission standards.* Exhaust emissions from Tier 2 vehicles must not exceed the standards in Table S04–1 of this section at full useful life when tested over the Federal Test Procedure (FTP) described in subpart B of this part. Exhaust emissions from Tier 2 vehicles must not exceed the standards in Table S04–2 of this section at intermediate useful life, if applicable, when tested over the FTP.

(1) For a given test group a manufacturer desires to certify to operate only on one fuel, the manufacturer must select a set of standards from the same bin (line or row) in Table S04–1 of this section for non-methane organic gases (NMOG), carbon monoxide (CO), oxides of nitrogen ($NO_X$), formaldehyde (HCHO) and particulate matter (PM). The manufacturer must certify the test group to meet those standards, subject to all the applicable provisions of this subpart. The manufacturer must also certify the test group to meet the intermediate useful life standards (if any) in Table S04–2 of this section having the same EPA bin reference number as the chosen full useful life standards.

(2) For a given test group of flexible-fueled, bi-fuel or dual fuel vehicles when operated on the alcohol or gaseous fuel they are designed to use, manufacturers must select a bin of standards from Table S04–1 of this section and the corresponding bin in Table S04–2, if any. When these flexible-fueled, bi-fuel or dual fuel vehicles are certified to operate on gasoline or diesel fuel, the manufacturer may choose to comply with the next numerically higher applicable NMOG standard, if any, above the bin which contains the standards selected for certification on the gaseous or alcohol fuel.

(3)(i) For a given test group of flexible-fueled, bi-fuel or dual fuel vehicles certified to bin 10 in Table S04–1, when operated on the alcohol or gaseous fuel they are designed to use, manufacturers may choose to comply with a NMOG standard of 0.230 for LDV/LLDTs or 0.280 g/mi for HLDT/MDPVs at full useful life and corresponding intermediate life standards of 0.160 g/mi and 0.195 g/mi, respectively.

(ii) For a given test group of flexible-fueled, bi-fuel or dual fuel vehicles certified to bin 8 in Table S04–1, when operated on the alcohol or gaseous fuel they are designed to use, manufacturers may choose to comply with a NMOG standard of 0.156 g/mi for LDV/LLDTs and 0.180 for HLDT/MDPVs at full useful life and corresponding intermediate life standards of 0.125 g/mi and 0.140 g/mi, respectively.

(4)(i) For bins where intermediate life standards are applicable, a manufacturer may elect not to comply with such standards. Except as permitted in paragraph (c)(4)(iv) of this section, the manufacturer must certify such vehicles to a useful life of 15 years or 150,000 miles, whichever occurs first, for LDV/LLDTs and HLDT/MDPVs.

(ii) A manufacturer electing not to comply with intermediate life standards, as permitted in paragraph (c)(4)(i) of this section, may not generate additional $NO_X$ credits as described under § 86.1860–04 (g), except as permitted in paragraph (c)(4)(iii) of this section.

(iii) For bins where intermediate life standards are not applicable, or are specified to be optional by paragraph (c)(4)(iv) of this section, a manufacturer may generate additional $NO_X$ credits subject to the provisions in § 86.1860–04 (g).

(iv) For diesel vehicles certified to bin 10, intermediate life standards are optional regardless of whether the manufacturer certifies the test group to a full useful life of 120,000 miles or 150,000 miles.

(5) In a given model year, an individual vehicle may not be included in both the Tier 2 program and an interim program.

(6) Tables S04–1 and S04–2 follow:

TABLE S04–1.—TIER 2 AND INTERIM NON-TIER 2 FULL USEFUL LIFE EXHAUST MASS EMISSION STANDARDS

[Grams per mile]

| Bin No. | $NO_X$ | NMOG | CO | HCHO | PM | Notes |
|---|---|---|---|---|---|---|
| 11 | 0.9 | 0.280 | 7.3 | 0.032 | 0.12 | a, c |
| 10 | 0.6 | 0.156/0.230 | 4.2/6.4 | 0.018/0.027 | 0.08 | a, b, d |
| 9 | 0.3 | 0.090/0.180 | 4.2 | 0.018 | 0.06 | a, b, e |
| 8 | 0.20 | 0.125/0.156 | 4.2 | 0.018 | 0.02 | b, f |
| 7 | 0.15 | 0.090 | 4.2 | 0.018 | 0.02 | |
| 6 | 0.10 | 0.090 | 4.2 | 0.018 | 0.01 | |
| 5 | 0.07 | 0.090 | 4.2 | 0.018 | 0.01 | |
| 4 | 0.04 | 0.070 | 2.1 | 0.011 | 0.01 | |
| 3 | 0.03 | 0.055 | 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 | |

Notes:

[a] This bin and its corresponding intermediate life bin are deleted at end of 2006 model year (end of 2008 model year for HLDTs and MDPVs).

[b] Higher NMOG, CO and HCHO values apply for HLDTs and MDPVs only.

[c] This bin is only for MDPVs.

[d] Optional NMOG standard of 0.280 g/mi applies for qualifying LDT4s and qualifying MDPVs only.

[e] Optional NMOG standard of 0.130 g/mi applies for qualifying LDT2s only.

[f] Higher NMOG standard deleted at end of 2008 model year.

TABLE S04–2.—TIER 2 AND INTERIM NON-TIER 2 INTERMEDIATE USEFUL LIFE (50,000 MILE) EXHAUST MASS EMISSION STANDARDS

[grams per mile]

| Bin No. | $NO_X$ | NMOG | CO | HCHO | PM | Notes |
|---|---|---|---|---|---|---|
| 11 | 0.6 | 0.195 | 5.0 | 0.022 | | a c f h |
| 10 | 0.4 | 0.125/0.160 | 3.4/4.4 | 0.015/0.018 | ..... | a b d f g h |
| 9 | 0.2 | 0.075/0.140 | 3.4 | 0.015 | ..... | a b c f h |
| 8 | 0.14 | 0.100/0.125 | 3.4 | 0.015 | ..... | b f h i |
| 7 | 0.11 | 0.075 | 3.4 | 0.015 | ..... | f h |
| 6 | 0.08 | 0.075 | 3.4 | 0.015 | ..... | f h |
| 5 | 0.05 | 0.075 | 3.4 | 0.015 | ..... | f h |

Notes:
[a] This bin deleted at end of 2006 model year (end of 2008 model year for HLDTs and MDPVs ).
[b] Higher NMOG, CO and HCHO values apply for HLDTs and MDPVs only.
[c] This bin is only for MDPVs.
[d] Optional NMOG standard of 0.195 g/mi applies for qualifying LDT4s and qualifying MDPVs only.
[e] Optional NMOG standard of 0.100 g/mi applies for qualifying LDT2s only.
[f] The full useful life PM standards from Table S04–1 also apply at intermediate useful life.
[g] Intermediate life standards of this bin are optional for diesels.
[h] Intermediate life standards are optional for vehicles certified to a useful life of 150,000 miles.
[i] Higher NMOG standard deleted at end of 2008 model year.

(d) *Fleet average $NO_X$ Standards.* (1)(i) For a given individual model year's sales of Tier 2 vehicles, including model years during the phase-in years of the Tier 2 standards, manufacturers must comply with a fleet average oxides of nitrogen ($NO_X$) standard of 0.07 grams per mile. The manufacturer must calculate its fleet average $NO_X$ emission level(s) as described in § 86.1860–04. Up through and including model year 2008, manufacturers must calculate separate fleet average $NO_X$ emission levels for LDV/LLDTs and for HLDT/MDPVs as described in § 86.1860–04.

(ii) During a phase-in year, the manufacturer must comply with the 0.07 g/mi fleet average standard for the required phase-in percentage for that year as specified in paragraph (k)(1) of this section, or for the alternate phase-in percentage as permitted under paragraph (k)(6) of this section.

(2) *For Early Tier 2 LDV/LLDTs.* For model years prior to 2004, where the manufacturer desires to bank early Tier 2 $NO_X$ credits as permitted under § 86.1861(c), the manufacturer must comply with a fleet average standard of 0.07 grams per mile for its Tier 2 LDV/LLDTs. Manufacturers must determine compliance with the $NO_X$ fleet average standard according to regulations in § 86.1860–04 of this subpart.

(3) *For Early Tier 2 HLDT/MDPVs.* For model years prior to 2008, where the manufacturer desires to bank early Tier 2 $NO_X$ credits as permitted under § 86.1861(c), the manufacturer must comply with a fleet average standard of 0.07 grams per mile for its Tier 2 HLDT/MDPVs. Manufacturers must determine compliance with the $NO_X$ fleet average standard according to regulations in § 86.1860–04.

(e) *Evaporative emission standards.* Consistent with the phase-in requirements in paragraph (k) of this section, evaporative emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, ethanol-fueled and methanol-fueled vehicles must not exceed the standards in this paragraph. The standards apply equally to certification and in-use vehicles, except that the spitback standard applies only to newly assembled vehicles.

(1) *Diurnal-plus-hot soak evaporative hydrocarbon standards.* Hydrocarbons for LDV/LLDTs, HLDTs and MDPVs must not exceed the diurnal plus hot soak standards shown in Table S04–3 for the full three diurnal test sequence and for the supplemental two diurnal test sequence. Table S04–3 follows:

TABLE S04–3.—LIGHT-DUTY DIURNAL PLUS HOT SOAK EVAPORATIVE EMISSION STANDARDS

[grams per test]

| Vehicle category | 3 day diurnal+hot soak | Supplemental 2 day diurnal+hot soak |
|---|---|---|
| LDV/LLDTs ..... | 0.95 | 1.2 |
| HLDTs ..... | 1.2 | 1.5 |
| MDPVs ..... | 1.4 | 1.75 |

(2) *Running loss standard.* Hydrocarbons for LDVs, LDTs and MDPVs measured on the running loss test must not exceed 0.05 grams per mile.

(3) *Refueling emission standards.* Refueling emissions must not exceed the following standards:

(i) For gasoline-fueled, diesel-fueled and methanol-fueled LDVs, LDTs and MDPVs: 0.20 grams hydrocarbon per gallon (0.053 grams per liter) of fuel dispensed.

(ii) For liquefied petroleum gas-fueled LDV, LDTs and MDPVs: 0.15 grams hydrocarbon per gallon (0.04 grams per liter) of fuel dispensed.

(iii) Refueling standards for HLDTs are subject to the phase-in requirements found in § 86.1810–01(k). MDPVs must also comply with the phase-in requirement in § 86.1810–01(k) and must be grouped with HLDTs to determine phase-in compliance.

(4) *Spitback standards.* For gasoline and methanol fueled LDV/Ts and MDPVs, hydrocarbons measured on the fuel dispensing spitback test must not exceed 1.0 grams hydrocarbon (carbon if methanol-fueled) per test.

(5) *Evaporative emission requirements for interim vehicles.* (i) LDV/Ts not certified to meet the evaporative emission standards in this paragraph (e) as permitted under the phase-in schedule of paragraph (k) of this section, must meet applicable evaporative emission standards in §§ 86.1811–01, 86.1812–01, 86.1813–01, 86.1814–02 or 86.1815–02 except that all LDV/Ts must meet the refueling emission standards in paragraph (e)(3) of this section.

(ii) MDPVs not certified to meet the evaporative emission standards in this paragraph (e) as permitted under the phase-in schedule of paragraph (k) of this section, must meet applicable evaporative emission standards for heavy-duty vehicles in § 86.099–10.

(6) In cases where applicable California emission standards are as stringent or more stringent than applicable standards specified under this paragraph (e), the Administrator may accept data indicating compliance with California standards to

demonstrate compliance for certification purposes with the standards required under this paragraph (e). The Administrator may require manufacturers to provide comparative test data to show that a vehicle meeting California standards under California test conditions and procedures will also meet the standards under this paragraph (e) when tested under test conditions and procedures in this Part 86.

(f) *Supplemental exhaust emission standards for LDV/Ts.* (1) Supplemental exhaust emission standards are applicable to gasoline and diesel-fueled LDV/Ts but are not applicable to MDPVs, alternative fueled LDV/Ts, or flexible fueled LDV/Ts when operated on a fuel other than gasoline or diesel. Except as otherwise specified in this paragraph (f), manufacturers must comply with 4000 mile and full useful life SFTP standards as determined in this paragraph (f). The 4000 mile SFTP standards must be taken from Table S04–4 and the full life SFTP standards must be calculated using the formula in paragraph (f)(2) of this section. Table S04–4 follows:

TABLE S04–4.—4000 MILE SFTP STANDARDS FOR TIER 2 AND INTERIM NON-TIER 2 LDVS AND LDTS

| | US06 | | SC03 | |
|---|---|---|---|---|
| | NMHC+$NO_X$ (g/mi) | CO (g/mi) | NMHC+$NO_X$ (g/mi) | CO (g/mi) |
| LDV/LDT1 | 0.14 | 8.0 | 0.20 | 2.7 |
| LDT2 | 0.25 | 10.5 | 0.27 | 3.5 |
| LDT3 | 0.4 | 10.5 | 0.31 | 3.5 |
| LDT4 | 0.6 | 11.8 | 0.44 | 4.0 |

(2)(i) Manufacturers must calculate their applicable full useful life SFTP standards for NMHC+$NO_X$, PM and for CO, if using the weighted CO standard. If not using the weighted CO standard, manufacturers may use the full useful life standalone Tier 1 standards for US06 and SC03. To calculate the applicable full useful life weighted NMHC+$NO_X$, PM and CO standards, manufacturers must use the following formula and values from Table S04–1 in paragraph (c) of this section and values from Tables S04–5 and S04–6 which follow:

SFTP Standard = SFTP $Standard_1$ − [0.35 x (FTP $Standard_1$—Current FTP Standard)]

Where:

SFTP Standard = Applicable full life weighted SFTP standard for NMHC+$NO_X$, PM or CO. This standard must be rounded to two decimal places.

SFTP $Standard_1$ = Applicable full life Tier 1 SFTP standard for NMHC+$NO_X$ or CO from Table S04–5. For PM only, use FTP $Standard_1$ for SFTP $Standard_1$.

FTP $Standard_1$ = Applicable full life Tier 1 FTP standard from Table S04–6 in this paragraph (f). For the Tier 1 NMHC+$NO_X$ standard, add the applicable NMHC and NOx standards.

Current FTP Standard = Applicable full life FTP standard from Table S04–1 in paragraph (c) of this section. For the current NMHC+$NO_X$ standard, add the NMOG and $NO_X$ standards from the applicable bin.

TABLE S04–5.—TIER 1 FULL USEFUL LIFE SFTP STANDARDS

| Vehicle category | NMHC + $NO_X$ (weighted g/mi)[a, c] | CO (g/mi)[b, c] | | |
|---|---|---|---|---|
| | | US06 | SC03 | Weighted |
| LDV/LDT1 | 0.91 (0.65) | 11.1 (9.0) | 3.7 (3.0) | 4.2 (3.4) |
| LDT2 | 1.37 (1.02) | 14.6 (11.6) | 4.9 (3.9) | 5.5 (4.4) |
| LDT3 | 1.44 | 16.9 | 5.6 | 6.4 |
| LDT4 | 2.09 | 19.3 | 6.4 | 7.3 |

[a] Weighting for NMHC+$NO_X$ and optional weighting for CO is 0.35x(FTP) +0.28x(US06)+0.37x(SC03).
[b] CO standards are stand alone for US06 and SC03 with option for a weighted standard.
[c] Intermediate life standards are shown in parentheses for diesel LDV/LLDTs opting to calculate intermediate life SFTP standards in lieu of 4,000 mile SFTP standards as permitted under paragraph (f)(6) of this section.

TABLE S04–6.—TIER 1 FULL USEFUL LIFE FTP STANDARDS (G/MI)

| Vehicle category | NMHC[a] | $NO_X$[a] | CO[a] | PM |
|---|---|---|---|---|
| LDV/LDT1 | 0.31 (0.25) | 0.6 (0.4) | 4.2 (3.4) | 0.10 |
| LDT2 | 0.40 (0.32) | 0.97(0.7) | 5.5 (4.4) | 0.10 |
| LDT3 | 0.46 | 0.98 | 6.4 | 0.10 |
| LDT4 | 0.56 | 1.53 | 7.3 | 0.12 |

[a] Intermediate life standards are shown in parentheses for diesel LDV/LLDTs opting to calculate intermediate life SFTP standards in lieu of 4,000 mile SFTP standards as permitted under paragraph (f)(6)of this section.

(ii)(A) Manufacturers must determine compliance with NMHC+$NO_X$, CO and PM weighted SFTP standards calculated in paragraph (f)(2)(i) of this section by weighting their emission results as follows:

0.35×(FTP)+0.28×(US06)+0.37×(SC03).

(B) The results of the calculation in paragraph (f)(2)(ii)(A) of this section must be rounded to one more decimal place than the applicable standard calculated in paragraph (f)(2)(i) of this section and then compared with that standard.

(3) For interim non-Tier 2 gasoline, diesel and flexible-fueled LDT3s and LDT4s, manufacturers may, alternatively, meet the gasoline-fueled vehicle SFTP standards found in §§ 86.1814–02 and 86.1815–02, respectively.

(4) Interim non-Tier 2 gasoline, diesel and flexible-fueled LDV/LLDTs certified to bin 10 FTP exhaust emission standards from Table S04–1 in paragraph (c) of this section may meet the gasoline Tier 1 SFTP requirements found at § 86.1811–01(b).

(5) SFTP standards for PM are not applicable to interim non-Tier 2 LDV/Ts. For Tier 2 LDV/Ts, the 4000 mile PM standard is equal to the full life PM standard calculated under paragraph (f)(2) of this section. The requirements of this paragraph (f)(5) also apply to Tier 2 flexible fuel vehicles when operated on gasoline or diesel fuel. (See regulations in § 86.1829-01(b)(1)(iii)(B) regarding data submittal for PM results for gasoline vehicles.)

(6)(i) In lieu of complying with 4000 mile SFTP standards described in this paragraph, diesel LDV/LLDTs through model year 2006, may comply instead with intermediate life SFTP standards derived from Tier 1 intermediate life SFTP standards for gasoline vehicles.

(ii) To calculate intermediate life SFTP standards, substitute intermediate life Tier 1 FTP and SFTP values from Tables S04–5 and S04–6 in this paragraph (f), as appropriate, for the full life values in the equation in paragraph (f)(2)(i) of this section. Substitute the applicable intermediate life standards for the full life current FTP standard. If there is no applicable intermediate life standard use the full life current FTP standard.

(iii) A manufacturer of diesel LDV/LLDTs must declare which option it will use (4,000 mile or intermediate life standards) in Part I of its certification application.

(g) *Cold temperature exhaust emission standards.* These standards are applicable only to gasoline fueled LDV/Ts and MDPVs. For cold temperature exhaust emission standards, a useful life of 50,000 miles applies.

(1) For LDVs and LDT1s, the standard is 10.0 grams per mile CO.

(2) For LDT2s, LDT3s and LDT4s, and MDPVs the standard is 12.5 grams per mile CO.

(3) These standards do not apply to interim non-Tier 2 MDPVs.

(h) *Certification short test exhaust emission standards.* Certification short test emissions from all gasoline-fueled otto cycle LDV/Ts and MDPVs must not exceed the following standards:

(1) Hydrocarbons: 100 ppm as hexane, for certification and SEA testing; 220 ppm as hexane, for in-use testing.

(2) Carbon monoxide: 0.5% for certification and SEA testing; 1.2% for in-use testing.

(3) These standards do not apply to interim non-Tier 2 MDPVs.

(i) Idle CO standards and references to such standards in this subpart, do not apply to any 2004 or later model year LDV, LDT, or MDPV or to any LDV, LDT or MDPV certified to Tier 2 standards before model year 2004 for purposes of generating early $NO_X$ credits or meeting the requirements of an alternative phase-in schedule that begins prior to the 2004 model year.

(j) *Highway $NO_X$ exhaust emission standard.* The maximum projected $NO_X$ emissions measured on the federal Highway Fuel Economy Test in 40 CFR part 600, subpart B, must not be greater than 1.33 times the applicable FTP $NO_X$ standard to which the manufacturer certifies the test group. Both the projected emissions and the product of the $NO_X$ standard and 1.33 must be rounded to the nearest 0.01 g/mi before being compared. This standard is not applicable to MDPVs.

(k) *Phase-in of the Tier 2 FTP exhaust and evaporative requirements; small volume manufacturer flexibilities.* (1) Manufacturers must comply with the phase-in requirements in Tables S04–7 and S04–8 of this paragraph (k) for the Tier 2 FTP exhaust emission requirements specified in paragraph (c) of this section. Separate phase-in schedules are provided for LDV/LLDTs and for HLDT/MDPVs. These requirements specify the minimum percentage of the manufacturer's LDV/LLDT and HLDT/MDPV U.S. sales, by model year, that must meet the Tier 2 requirements, including the applicable fleet average standard, for their full useful lives. As the terms LDV/LLDT and HLDT/MDVP imply, LDVs and LDTs must be grouped together to determine compliance with these phase-in requirements and HLDTs and MDPVs must also be grouped together to determine compliance with these phase-in requirements. Tables S04–7 and S04–8 follow:

TABLE S04–7.—PHASE-IN PERCENTAGES FOR LDV/LLDT TIER 2 REQUIREMENTS

| Model year | Percentage of LDV/LLDTs that must meet tier 2 requirements |
|---|---|
| 2004 | 25 |
| 2005 | 50 |
| 2006 | 75 |
| 2007 and subsequent | 100 |

TABLE S04–8.—PHASE-IN PERCENTAGES FOR HLDT/MDPV TIER 2 REQUIREMENTS

| ModeL year | Percentage of HLDT/MDPVs that must meet tier 2 requirements |
|---|---|
| 2008 | 50 |
| 2009 and subsequent | 100 |

(2) Manufacturers must also comply with the phase-in requirements in Tables S04–7 and S04–8 of this paragraph (k) for the evaporative emission requirements contained in paragraph (e) of this section.

(3) Manufacturers may opt to use different LDV/LLDTs and HLDT/MDPVs to meet the phase-in requirements for evaporative emissions and FTP exhaust emissions, provided that the manufacturer meets the minimum applicable phase-in requirements in Table S04–7 and Table S04–8 of this paragraph (k) for both FTP exhaust and evaporative emissions. A LDV, LDT or MDPV counted toward compliance with any phase-in requirement for FTP exhaust or evaporative standards, must comply with all applicable Tier 2 exhaust requirements or all applicable evaporative requirements, respectively, described in this section.

(4) LDVs, LDTs and MDPVs not certified to meet the Tier 2 FTP exhaust requirements during model years 2004–2008, as allowed under this subpart, are subject to the provisions of paragraph (l) of this section.

(5) *Provisions for small volume manufacturers* (i) Small volume manufacturers, as defined in this part, are exempt from the Tier 2 LDV/LLDT exhaust and evaporative emissions phase-in requirements for model years 2004, 2005 and 2006 in Table S04–7 of this paragraph (k), but must comply with the 100% requirement for the 2007 and later model years for exhaust and evaporative emissions. If not complying with Tier 2 requirements during 2004, 2005 and 2006, small volume

manufacturers must comply with the requirements for interim non-Tier 2 LDV/LLDTs.

(ii) Small volume manufacturers, as defined in this part, are exempt from the HLDT/MDPV exhaust and evaporative phase-in requirement for model year 2008 in Table S04–8 of this section but must comply with the 100% requirement for the 2009 model year. Small volume manufacturers are also exempt from the HLDT/MDPV interim fleet average $NO_X$ standard (0.20 g/mi) and its phase-in for the 2004, 2005 and 2006 model years.

(iii) Small volume manufacturers must comply with the FTP exhaust emission standards from Tables S04–1 and 2 of paragraph (c) of this section for all HLDT/MDPVs of model years 2004 and later, except that 2004 model year HLDTs may comply with Tier 1 exhaust emission standards subject to the provisions of paragraph (l)(2)(vii) of this section, and 2004 model year MDPVs may comply with heavy-duty vehicle standards subject to the provisions of paragraph (l)(2)(viii) of this section. Small volume manufacturers must also comply with the 0.20 g/mi fleet average $NO_X$ standard for 2007 and 2008 model year HLDT/MDPVs; the Tier 2 0.07 g/mi fleet average $NO_X$ standard for the 2009 and later model year HLDT/MDPVs; and the evaporative emission standards in Table S04–3 of this section for the 2009 and later model years.

(6)(i) A manufacturer may elect an alternate phase-in schedule that results in 100% phase-in for LDV/LLDTs by 2007. Alternate phase-in schedules must produce a sum of at least 250% when the percentages of LDV/LLDTs certified to Tier 2 requirements for each model year from 2001 through 2007 are summed. As an example, a 10/25/50/65/100 percent phase-in that began in 2003 would have a sum of 250 percent and would be acceptable. However, a 10/25/40/70/100 percent phase-in that began the same year would have a sum of 245 percent and would not be acceptable.

(ii) A manufacturer electing this option for LDV/LLDTs may calculate its compliance with the evaporative standards in paragraph (e)(1) of this section separately from its compliance with Tier 2 exhaust standards, provided that the phase-in schedules for each separately produce a sum of at least 250 percent when calculated as described in paragraph (k)(6)(i) of this section. A vehicle counted towards compliance with any phase-in requirement for the Tier 2 exhaust standards or the evaporative standards in paragraph (e)(1) of this section, must comply with all applicable Tier 2 exhaust standards or all evaporative standards, as applicable, described in this section.

(iii) In addition to the requirements of paragraphs (k)(6)(i) and (ii) of this section, except as permitted in paragraph (k)(6)(vii) of this section, a manufacturer of LDV/LLDTs electing to use an alternate phase-in schedule for compliance with the Tier 2 exhaust standards or the evaporative standards in paragraph (e)(1) of this section must ensure that the sum of the percentages of vehicles from model years 2001 through 2004, meeting such exhaust or evaporative standards, as applicable, is at least 25%.

(iv) A manufacturer may elect an alternate phase-in schedule that results in 100% phase-in for HLDT/MDPVs by 2009. The requirements of paragraphs (k)(6)(i) through (k)(6)(ii) of this section apply, except that for HLDT/MDPVs, the calculation described in paragraphs (k)(6)(i) and (k)(6)(ii) of this section may cover model years 2001 through 2009 and must produce a sum of at least 150%.

(v) A manufacturer electing to use any alternate phase-in schedule permitted under this section must provide in its Application for Certification for the first year in which it intends to use such a schedule, and in each succeeding year during the phase-in, the intended phase-in percentages for that model year and the remaining phase-in years along with the intended final sum of those percentages as described in this paragraph (k)(6). This information may be included with the information required under § 86.1844–01(d)(13). In its year end annual reports, as required under § 86.1844–01(e)(4) the manufacturer must include sufficient information so that the Administrator can verify compliance with the alternative phase-in schedule established under paragraph (k)(6) of this section.

(vi) Under an alternate phase-in schedule, the projected phase-in percentage is not binding for a given model year, provided the sums of the actual phase-in percentages that occur meet the appropriate total sums as required in paragraph (k)(6) of this section, and provided that 100% actual compliance is reached for the appropriate model year, either 2007 or 2009, as described in paragraph (k)(6) of this section.

(vii) A manufacturer unable to meet the 25% requirement in paragraph (k)(6)(iii) of this section, must:

(A) Ensure that the sum of the percentages of vehicles for model years 2001 through 2004, meeting such exhaust or evaporative standards, as applicable, is at least 20%.

(B) Subtract that sum of percentages for model years 2001 through 2004 from 25%, and multiply the unrounded result by 2.

(C) Round the product from paragraph (k)(6)(vii)(B) of this section to the nearest 0.1% and add that to 50%. That sum becomes the required phase-in percentage for the 2005 model year.

(D) Comply with the phase-in percentage for the 2005 model year determined in paragraph (k)(6)(vii)(C) of this section.

(E) Comply with a minimum phase-in percentage for the 2006 model year determined by the following equation:

$$\text{minimum phase-in percentage for 2006} = [75\% - (2005_{api} - 2005_{rpi})]$$

Where:

$2005_{rpi}$ = the required phase-in for the 2005 model year as determined in paragraph (k)(6)(vii)(C) of this section; and

$2005_{api}$ = the manufacturer's actual phase-in quantity for the 2005 model year.

(7)(i) Sales percentages for the purpose of determining compliance with the phase-in of the Tier 2 requirements and the phase-in of the evaporative standards in paragraph (e)(1) of this section, must be based upon projected U.S. sales of LDV/LLDTs and HLDT/MDPVs of the applicable model year by the manufacturer to the point of first sale. Such sales percentages must be rounded to the nearest one tenth of a percent, and must not include vehicles and trucks projected to be sold to points of first sale in California or a state that has adopted California requirements for that model year as permitted under section 177 of the Act.

(ii) Alternatively, the manufacturer may petition the Administrator to allow actual volume produced for U.S. sales to be used in lieu of projected U.S. sales for purposes of determining compliance with the phase-in percentage requirements under this section. The manufacturer must submit its petition within 30 days of the end of the model year to the Vehicle Programs and Compliance Division. For EPA to approve the use of actual volume produced for U.S. sales, the manufacturer must establish to the satisfaction of the Administrator, that actual production volume is functionally equivalent to actual sales volume of LDV/LLDTs and HLDT/MDPVs sold in states other than California and states that have adopted California standards.

(iii) Manufacturers must submit information showing compliance with all phase-in requirements of this section

with its Part I application as required by § 86.1844(d)(13).

(l) *FTP exhaust standards for interim non-Tier 2 vehicles.*—(1) *FTP exhaust emission standards for interim non-Tier 2 LDV/LLDTs.* (i) LDV/LLDTs that are not used to meet the Tier 2 phase-in requirements including the Tier 2 fleet average $NO_X$ requirement during the Tier 2 phase-in period (model years 2004–2006) must comply with the full useful life FTP exhaust emission standards listed in Table S04–1 of paragraph (c) of this section and the corresponding intermediate useful life standards, if any, in Table S04–2 of paragraph (c) of this section. Manufacturers may choose the bin of full useful life standards to which they certify a test group of vehicles, subject to the requirements in paragraph (l)(3)(i) of this section. In a given model year, an individual vehicle may not be used to comply with both the Tier 2 fleet average $NO_X$ standard and the applicable interim fleet average $NO_X$ standard although vehicles from the same test group may be separated and the vehicles counted toward compliance with either program.

(ii) The provisions of paragraphs (c)(1), (2) and (3) of this section apply to flexible-fueled, dual fuel and multi-fuel interim non-Tier 2 LDV/LLDTs.

(iii) Only manufacturers that comply with the applicable FTP standards in Tables S04–1 and 2 of paragraph (c) of this section for all of their 2004 model year HLDTs and declare their intention to comply with the 2004 model year 25% phase-in requirement to the 0.20 g/mi interim fleet average $NO_X$ standard for HLDTs (or HLDT/MDPVs) described in this paragraph (l) may use the optional higher NMOG values for interim LDT2s certified to bin 9 standards that are shown in Tables S04–1 and 2. Manufacturers must declare their intention to comply with the full 2004 model year 25% phase-in requirement in Part I of their HLDT or their HLDT/MDPV, as applicable, certification applications.

(iv) The provisions of paragraph (c)(4) of this section apply to interim non-Tier 2 vehicles.

(2) *FTP exhaust emission standards for interim non-Tier 2 HLDTs and interim non-Tier 2 MDPVs.* (i) Except as permitted under paragraphs (l)(2) (vii) and (viii) of this section, HLDTs and MDPVs of model years 2004–2008 that are not used to meet the Tier 2 FTP phase-in requirements including the Tier 2 fleet average $NO_X$ requirement must comply with the full useful life FTP exhaust emission standards listed in Table S04–1 of paragraph (c) of this section and, the corresponding intermediate useful life standards, if any, in Table S04–2 of paragraph (c) of this section. Manufacturers may choose the bin of full useful life standards to which they certify a test group of vehicles, subject to the requirements in paragraph (l)(3)(ii) of this section.

(ii) Except as permitted under paragraphs (l)(2) (vii) and (viii) of this section, HLDTs and MDPVs of model years 2004–2008 that are not used to meet the Tier 2 FTP phase-in requirements including the Tier 2 fleet average $NO_X$ requirement must comply with the fleet average $NO_X$ standard described in paragraph (l)(3)(ii) of this section subject to the phase-in schedule in paragraph (l)(2)(iv) of this section, i.e. 25 percent of the HLDT and MDPVs must meet the fleet average standard of 0.20 g/mi in 2004, 50 percent in 2005, and so on.

(iii) Manufacturers may choose the bin of full useful life standards and corresponding intermediate life standards to which they certify test groups of HLDTs and MDPVs, subject to the requirements in paragraph (l)(3)(ii) of this section. Manufacturers may include HLDT/MDPVs in the interim program that are not used to meet the Tier 2 fleet average $NO_X$ standard or the phase-in percentage requirements in the Tier 2 program or to generate Tier 2 $NO_X$ credits. In a given model year, an individual vehicle may not be used to comply with both the Tier 2 fleet average $NO_X$ standard and the applicable interim fleet average $NO_X$ standard although vehicles from the same test group may be separated and the vehicles counted toward compliance with either program.

(iv) *Phase-in schedule for interim non-Tier 2 HLDT/MDPVs.* Table S04–9 of this paragraph (l) specifies the minimum percentage of the manufacturer's interim non-Tier 2 HLDT/MDPV U.S. sales, by model year, that must comply with the fleet average $NO_X$ standard described in paragraph (l)(3)(ii) of this section. Table S04–9 follows:

Table S04–9.—Phase-in Percentages for Compliance With Interim Non-Tier 2 Fleet Average $NO_X$ Standard for HLDT/MDPVs

| Model year | Percentage of non-tier 2 HLDT/MDPVs that must meet interim non-tier 2 fleet average $NO_X$ standard |
|---|---|
| 2004 | 25 |
| 2005 | 50 |
| 2006 | 75 |

Table S04–9.—Phase-in Percentages for Compliance With Interim Non-Tier 2 Fleet Average $NO_X$ Standard for HLDT/MDPVs—Continued

| Model year | Percentage of non-tier 2 HLDT/MDPVs that must meet interim non-tier 2 fleet average $NO_X$ standard |
|---|---|
| 2007 and 2008 | 100 |

(v)(A) A manufacturer may elect an alternate phase-in schedule, beginning as early as the 2001 model year, that results in 100% compliance by 2007 with the fleet average $NO_X$ standard for interim non-Tier 2 HLDT/MDPVs described in paragraph (l)(3)(ii) of this section. The requirements of paragraph (k)(6) of this section apply to the selection of an alternate phase-in schedule.

(B) If a manufacturer elects not to bring all of its HLDT/MDPVs into compliance with the interim requirements in 2004 as permitted under paragraphs (l)(2)(vii) and

(viii) of this section, it may still use an alternate phase-in schedule to attain 100% compliance with the interim fleet average $NO_X$ standard for HLDT/MDPVs, but the sum of phase-in percentages it must meet will be 225% rather than 250%. If the manufacturer commences its 2004 model year on or after December 21, 2003, for any HLDT/MDPVs, the manufacturer must increase the 225% by the fraction of its 2004 model year HLDT/MDPVs whose model year commenced on or after that date and which were brought into compliance with the 0.20 g/mi corporate average $NO_X$ standard as required under paragraph (l)(2)(ix) of this section. The manufacturer must ensure that the sum of the percentages of vehicles up through model year 2005 complying with the interim fleet average $NO_X$ standard is at least 50%.

(vi) The provisions of paragraphs (c)(1), (2) and (3) of this section apply to flexible-fueled, dual fuel and multi-fuel interim non-Tier 2 HLDT/MDPVs.

(vii) For 2004 model year HLDT test groups whose model year commences before December 21, 2003, the manufacturer may exempt such HLDTs from compliance with any requirements applicable to interim non-Tier 2 HLDTs, and such HLDTs must be produced in accordance with standards and requirements in §§ 86.1814–02 and §§ 86.1815–02. Such HLDTs must also meet the refueling emission standards

contained in paragraph (e)(3) of this section.

(viii) For 2004 model year heavy-duty vehicles whose model year commences before December 21, 2003, the manufacturer may exempt such vehicles from compliance with any requirements applicable to interim non-Tier 2 MDPVs. Exempted vehicles will not be considered MDPVs and must be produced in accordance with standards and requirements in § 86.099–10. Exempted vehicles are also exempted from refueling emission standards.

(ix) For 2004 model year HLDT and MDPV test groups whose model year commences on or after December 21, 2003, the manufacturer must comply with all interim non-Tier 2 requirements in this section.

(A) All such vehicles, but not more than 25% of the manufacturer's total sales of 2004 model year HLDT/MDPVs must meet the interim non-Tier 2 fleet average $NO_X$ standard as described in paragraph (l)(3)(ii) of this section.

(B) All such vehicles but not more than 40% of the manufacturer's 2004 model year HLDT/MDPVs must comply with the refueling requirements in paragraph (e)(3) of this section.

(x) Only those manufacturers that comply with the interim non-Tier 2 FTP standards for all of their 2004 model year HLDTs and declare their intention to comply with the 2004 model year 25% phase-in requirement to the fleet average interim $NO_X$ standard for HLDTs or HLDT/MDPVs of 0.20 g/mi described in paragraph (l) of this section may use the optional higher NMOG values for interim LDT4s certified to bin 10 standards that are shown in Tables S04–1 and 2 of paragraph (c) of this section. Manufacturers must declare their intention to comply with the 2004 model year 25% phase-in requirement in Part I of their HLDT certification applications.

(xi) Only those manufacturers that comply with the interim non-Tier 2 FTP standards for all of their 2004 model year MDPVs, and declare their intention to comply with the 2004 model year 25% phase-in requirement to the fleet average interim $NO_X$ standard for MDPVs or HLDT/MDPVs of 0.20 g/mi described in paragraph (l) of this section may:

(A) Use the exhaust emission standards of bin 11 in Tables S04–1 and S04–2 of paragraph (c) in this section for MDPVs through model year 2008;

(B) For diesel-fueled vehicles, certify the engines in such vehicles, through model year 2007, to provisions in this part 86 applicable to diesel-fueled heavy-duty engines of the appropriate model year. Such diesel fueled vehicles must not be included in any count or determination of compliance with the phase-in requirements applicable to interim non-Tier 2 MDPVs; and

(C) Use the optional higher NMOG values for interim LDT4s certified to bin 10 standards that are shown in Tables S04–1 and 2.

(xii) Manufacturers electing to comply with the provisions of paragraph (l)(2)(xi) of this section must declare their intention to comply with the 2004 model year 25% phase-in requirement to the fleet average interim $NO_X$ standard for MDPVs or HLDT/MDPVs of 0.20 g/mi in Part I of their MDPV certification applications.

(xiii) Where diesel-fueled heavy-duty engines are used as permitted under paragraph (l)(2)(xi)(B) of this section, such engines must be treated as a separate averaging set—MDPV HDDEs—under the averaging, banking and trading provisions applicable to heavy-duty diesel engines. Only $NO_X$ credits generated by engine-certified diesel engines that are used in other MDPVs can be applied to these engines. Manufacturers wishing to average, bank or trade credits for MDPV HDDEs must comply with the requirements in this paragraph and with all requirements applicable to heavy-duty engine averaging, banking and trading in this part.

(3) *Fleet average $NO_X$ standards for interim non-Tier 2 LDV/Ts and MDPVs.* (i) Manufacturers must comply with a fleet average full useful life $NO_X$ standard for their interim non-Tier 2 LDV/LLDTs, on an annual basis, of 0.30 grams per mile.

(ii) Manufacturers must comply with a fleet average full useful life $NO_X$ standard for their interim non-Tier 2 HLDT/MDPVs, excluding those HLDTs and MDPVs not yet covered by the phase-in requirement described in paragraph (l)(2)(ii) of this section, on an annual basis, of 0.20 grams per mile.

(iii) Manufacturers must determine their compliance with these interim fleet average $NO_X$ standards for each model year by separately computing the sales weighted average $NO_X$ level of all interim non-Tier 2 LDV/LLDTs and all interim non-Tier 2 HLDT/MDPVs (excluding those not yet phased in as described in paragraph (l)(2)(ii) of this section), using the methodology in § 86.1860.

(iv) Manufacturers may generate, bank, average, trade and use interim non-Tier 2 $NO_X$ credits based on their $NO_X$ fleet average as determined under paragraph (l)(3)(iii) of this section. Unless waived or modified by the Administrator, the provisions of § 86.1861 of this part apply to the generation, banking, averaging, trading and use of credits generated by interim non-Tier 2 vehicles. $NO_X$ credits generated by interim non-Tier 2 vehicles are not subject to any discount except as required by § 86.1861–04(e).

(m) *NMOG standards for diesel, flexible fueled and dual-fueled LDV/Ts and MDPVs.* (1) For diesel fueled LDV/Ts and MDPVs, the term ''NMOG'' in both the Tier 2 and interim non-Tier 2 standards means non-methane hydrocarbons.

(2) Flexible-fueled and dual-fuel Tier 2 and interim non-Tier 2 vehicles must be certified to NMOG exhaust emission standards both for operation on gasoline and on any alternate fuel they are designed to use. Manufacturers may measure NMHC in lieu of NMOG when flexible-fueled and dual-fuel vehicles are operated on gasoline, subject to the requirements of § 86.1810(p).

(n) *Hybrid electric vehicle (HEV) and Zero Emission Vehicle (ZEV) requirements.* For FTP and SFTP exhaust emissions, and unless otherwise approved by the Administrator, manufacturers must measure emissions from all HEVs and ZEVs according to the requirements and test procedures found in the document entitled California Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Zero-Emission Vehicles and 2001 and Subsequent Model Hybrid Electric Vehicles, in the Passenger Car, Light-duty Truck and Medium-duty Vehicle Classes. This document is incorporated by reference (see § 86.1) . Requirements and procedures in this document that are relevant only to complying with the California ZEV mandate, computing partial and full ZEV allowance credits, or generating and using ZEV credits, are not relevant to the federal program and may be disregarded. Discussion in that document relevant to fleet average NMOG standards and NMOG credits may also be disregarded.

(o) *NMOG measurement.* (1) Manufacturers must measure NMOG emissions in accordance with Part G of the California Non-Methane Organic Gas Test Procedures. These requirements are incorporated by reference (see § 86.1).

(2) Manufacturers must not apply reactivity adjustment factors (RAFs) to NMOG measurements. See § 86.1841.

(p) *In-use standards.* (1) Table S04–10 of this paragraph (p) contains in-use emission standards applicable only to vehicles certified to the bins shown in the table. These standards apply to in-use testing performed by the manufacturer pursuant to regulations at §§ 86.1845–01, 86.1845–04 and 86.1846–01 and to in-use testing

performed by EPA. These standards do not apply to certification or Selective Enforcement Auditing.

(2) These standards apply only to LDV/LLDTs produced up through the 2008 model year, and HLDT/MDPVs produced up through the 2010 model year. These standards are subject to other limitations described in paragraph (p)(3) of this section.

(3) For the first model year and also for the next model year after that, in which a test group of vehicles is certified to a bin of standards to which it has not previously been certified, the standards in Table S04–10 of this paragraph (p) apply for purposes of in-use testing only. The standards apply equally to all LDV/Ts and MDPVs subject to the model year limitation in paragraph (p)(2) of this section. Table S04–10 follows:

TABLE S04–10—IN-USE COMPLIANCE STANDARDS (G/MI)

[Certification standards shown for reference purposes]

| Bin number | Durability period (miles) | $NO_X$ In-use | $NO_X$ certification | NMOG In-use | NMOG certification |
|---|---|---|---|---|---|
| 5 | 50,000 | 0.07 | 0.05 | n/a | 0.075 |
| 5 | 120,000 | 0.10 | 0.07 | n/a | 0.090 |
| 4 | 120,000 | 0.06 | 0.04 | n/a | 0.070 |
| 3 | 120,000 | 0.05 | 0.03 | 0.09 | 0.055 |
| 2 | 120,000 | 0.03 | 0.02 | 0.02 | 0.010 |

(4) For diesel vehicles certified to bin 10, separate in-use standards apply for $NO_X$ and PM emissions. These standards are determined by multiplying the applicable $NO_X$ and PM certification standards by factors of 1.2 and 1.35, respectively, and then rounding the result to one more decimal place than contained in the certification standard. The resultant standards do not apply for certification or selective enforcement auditing.

(q) *Hardship provision for small volume manufacturers.* (1) A small volume manufacturer may apply for relief from any applicable final phase-in model year contained in this section. Relief will only be available to defer required compliance with a completely new set of standards, a fleet average $NO_X$ standard, and/or evaporative emission standard for 100% of affected vehicles for one model year. Thus, a small volume manufacturer that obtains relief may:

(i) Defer 100% compliance with the fleet average $NO_X$ standard for interim LDV/LLDTs (0.30 g/mi) until 2005;

(ii) Defer 100% compliance with the evaporative emission standards and/or fleet average $NO_X$ standard for Tier 2 LDV/LLDTs (0.07 g/mi) until 2008;

(iii) Defer 100% compliance with the requirements that interim HLDTs and MDPVs comply with applicable emission standards shown in Tables S04–1 and S04–2, until 2005;

(iv) Defer 100% compliance with the fleet average $NO_X$ standard for interim HLDT/MDPVs (0.20 g/mi) until 2008; and

(v) Defer 100% compliance with the the evaporative emission standards and/or fleet average $NO_X$ standard for Tier 2 HLDT/MDPVs (0.07 g/mi) until 2010.

(2) Applications for relief must be in writing and must:

(i) Be submitted before the earliest date of noncompliance;

(ii) Include evidence that the manufacturer will incur severe economic hardship if relief is not granted;

(iii) Include evidence that the noncompliance will occur despite the best efforts of the manufacturer to comply; and

(iv) Include evidence that the manufacturer has made every reasonable effort to purchase credits to address the noncompliance, where applicable.

(r) *NMOG standard adjustment for direct ozone reducing devices.* (1) A manufacturer may obtain NMOG credit for use in certifying to the exhaust NMOG standards listed in paragraph (c) of this section and for use in complying with the in-use standards of paragraph (p) of this section, where applicable. This credit effectively allows the manufacturer to increase the exhaust NMOG emission standards listed in these paragraphs by the amount of the applicable credit. For example, if the applicable NMOG credit was 0.01 g/mi, and the vehicle was being certified in Bin 5, as described in Table S04–1 of paragraph (c) of this section, exhaust NMOG emissions must be no greater than 0.10 g/mi, as opposed to the normal NMOG certification standard of 0.09 g/mi in Bin 5.

(2) The NMOG credit must be determined through a two-step process.

(i) The first step must determine the ozone reduction potential of the direct ozone reducing device, the ozone reduction potential of exhaust NMOG reductions beyond Bin 5 of the Tier 2 standards, and the ratio of the two methods of reducing ambient ozone levels. The requirements for this step are described in paragraph (r)(3) of this section.

(ii) The second step must demonstrate and certify the relevant performance characteristics of the specific ozone reducing device. The requirements for this step are described in paragraph (r)(4) of this section.

(3) The ozone reduction potential of the direct ozone reducing device and the ozone reduction potential of exhaust NMOG reductions beyond Bin 5 of the Tier 2 standards must be estimated using procedures which are approved by the Administrator in advance. At a minimum:

(i) The modeling must utilize an urban airshed model using up-to-date chemical and meteorological simulation techniques;

(ii) Four local areas must be modeled: New York City, Chicago, Atlanta and Houston;

(iii) The ozone episodes to be modeled must meet the selection criteria established by EPA for State ozone SIPs;

(iv) Photochemical and dispersion modeling must follow that used by EPA to project the ozone impacts of this rule, or its equivalent;

(v) Emission projections must be made for calendar year 2007 and be consistent with those used by EPA in support of this final rule, or reflect updates approved by EPA;

(vi) Baseline emissions (emissions prior to use of the direct ozone reducing device or the VOC emission reductions) must include the benefits of the Tier 2 emission and sulfur standards; as well as all other emission controls assumed in EPA's ozone modeling of the benefits of the Tier 2 and sulfur standards, as described in the Final Regulatory Impact Analysis to the Tier 2 and Sulfur Rule;

(vii) The ozone benefit of the direct ozone reducing device must assume a radiator area of 0.29 square meters, an air flow velocity through the radiator of 40% of vehicle speed, and an ozone reduction efficiency of 80%, or other

values as approved by the Administrator;

(viii) The ozone level of the air entering the direct ozone reducing device must be assumed to be 40% less than that existing in the grid cell where the vehicle is located;

(ix) The ozone benefit of VOC emission reductions must be modeled by assuming that all Tier 2 LDVs, LDTs and MDPVs meet an exhaust NMOG standard of 0.055 g/mi or lower instead of a 0.09 g/mi NMOG standard;

(x) The ozone reducing device must be assumed to be present on all of the Tier 2 LDVs, LDTs and MDPVs modeled as meeting the more stringent NMOG standard described in paragraph (r)(3)(ix) of this section;

(xi) The relationship between changes in exhaust NMOG emission standards and in-use VOC emissions must be determined sufficiently far in the future to ensure that the change in ozone being modeled is sufficiently large to allow comparison with the impact of the ozone reducing device;

(xii) LDV, LDT and MDPV emissions must be modeled using the updated Tier 2 emission model developed by EPA as part of the Tier 2 rulemaking (available from EPA upon request) or MOBILE6, once this model is available;

(xiii) The ozone benefit of the direct ozone reducing device must be the reduction in the peak one-hour ozone level anywhere in the modeled region on the day when ozone is at its highest;

(xiv) The NMOG credit in each local area must be the reduction in peak one hour ozone associated with use of the direct ozone reducing device divided by the reduction in peak one hour ozone associated with the more stringent exhaust NMOG emission standard multiplied by the reduction the exhaust NMOG standard (in g/mi) modeled in paragraph (r)(3)(ix) of this section; and

(xv) The NMOG credit applicable to the generic direct ozone reducing device modeled in paragraph (r)(3)(vii) of this section must be determined by arithmetically averaging the NMOG credit determined in paragraph (r)(3)(xiv) of this section for each of the four local areas.

(4) The manufacturer must submit data, using procedures which have been approved by the Administrator in advance, that demonstrate the following aspects of the device being certified:

(i) The air flowrate through the device as a function of vehicle speed;

(ii) The ozone reduction efficiency of the device over the useful life of the vehicle for a range of vehicle speeds and ozone levels;

(iii) The method through which the onboard diagnostic system will detect improper performance.

(5) The NMOG credit for the specific application of this technology tested under the provisions of paragraph (r)(4) of this section is the four-area NMOG credit determined in paragraph (r)(3)(xv) of this section scaled based on the performance of the specific application tested under the provisions of paragraph (r)(4) of this section relative to those assumed in paragraph (r)(3)(vii) of this section. This scaling must assume a linear relationship between the NMOG credit and three aspects of the direct ozone reducing device: radiator area, average air flow through the radiator relative to vehicle speed, and ozone reduction efficiency and the NMOG credit. The NMOG credit must be rounded to the nearest 0.001 g/mi. For example, if the NMOG credit determined in paragraph (r)(3)(xv) of this section was 0.01 g/mi and the specific direct ozone reducing device being certified had an area of 0.20 square meters, an air flow velocity of 30% of vehicle speed and an ozone reducing efficiency of 70%, and the generic ozone reducing device simulated in the ozone model under paragraph (r)(3)(vii) of this section had an area of 0.29 square meters, an air flow velocity of 40% of vehicle speed and an ozone reducing efficiency of 80%, the NMOG credit applicable to the specific device being certified would be:

0.01 g/mi * (0.20/0.29) * (30%/40%) * 70%/80%) = 0.005

25. Section 86.1812–01 is amended by adding a sentence to the end of the introductory text to read as follows:

**§ 86.1812–01 Emission standards for light-duty trucks 1.**

* * * This section does not apply to 2004 and later model year vehicles, except as specifically referenced by § 86.1811–04.

* * * * *

26. Section 86.1813–01 is amended by adding a sentence to the end of the introductory text to read as follows:

**§ 86.1813–01 Emission standards for light-duty trucks 2.**

* * * This section does not apply to 2004 and later model year vehicles, except as specifically referenced by § 86.1811–04.

* * * * *

27. Section 86.1814–02 is amended by adding a sentence to the end of the introductory text to read as follows:

**§ 86.1814–02 Emission standards for light-duty trucks 3.**

* * * This section does not apply to 2004 and later model year vehicles, except as specifically referenced by § 86.1811–04.

* * * * *

**§ 86.1814–04 [Removed]**

28. Section 86.1814–04 is removed.

29. Section 86.1815–02 is amended by adding a sentence to the end of the introductory text to read as follows:

**§ 86.1815–02 Emission standards for light-duty trucks 4.**

* * * This section does not apply to 2004 and later model year vehicles, except as specifically referenced by § 86.1811–04.

* * * * *

**§ 86.1815–04 [Removed]**

30. Section 86.1815–04 is removed.

31. Section 86.1824–01 is amended by revising the first sentence of the introductory text and adding paragraphs (a)(2)(iii), (a)(2)(iv) and (a)(2)(v) 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 LDV/Ts and MDPVs.

* * *

(a) * * *

(2) * * *

(iii) For gasoline fueled vehicles certified to meet the evaporative emission standards set forth in § 86.1811–04(e)(1), any service accumulation method for evaporative emissions must employ gasoline fuel for the entire service accumulation period which contains ethanol in, at least, the highest concentration permissible in gasoline under federal law and that is commercially available in any state in the United States. Unless otherwise approved by the Administrator, the manufacturer must determine the appropriate ethanol concentration by selecting the highest legal concentration commercially available during the calendar year before the one in which the manufacturer begins its service accumulation. The manufacturer must also provide information acceptable to the Administrator to indicate that the service accumulation method is of sufficient design, duration and severity to stabilize the permeability of all non-metallic fuel and evaporative system components to the service accumulation fuel constituents.

(iv) For flexible-fueled, dual-fueled, multi-fueled, ethanol-fueled and methanol-fueled vehicles certified to

meet the evaporative emission standards set forth in § 86.1811–04(e)(1), any service accumulation method must employ fuel for the entire service accumulation period which the vehicle is designed to use and which the Administrator determines will have the greatest impact upon the permeability of evaporative and fuel system components. The manufacturer must also provide information acceptable to the Administrator to indicate that the service accumulation method is of sufficient design, duration and severity to stabilize the permeability of all non-metallic fuel and evaporative system components to service accumulation fuel constituents.

(v) A manufacturer may use other methods, based upon good engineering judgment, to meet the requirements of paragraphs (a)(2) (iii) and (iv) of this section, as applicable. These methods must be approved in advance by the Administrator and meet the objectives of paragraphs (a)(2) (iii) and (iv) of this section, as applicable: to provide assurance that the permeability of all non-metallic fuel and evaporative system components will not lead to evaporative emission standard exceedance under sustained exposure to commercially available alcohol-containing fuels for the useful life of the vehicle.

* * * * *

32. Section 86.1827–01 is amended by adding paragraph (e) to read as follows:

**§ 86.1827–01 Test group determination.**

* * * * *

(e) Unless otherwise approved by the Administrator, a manufacturer of hybrid electric vehicles must create separate test groups based on both the type of battery technology employed by the HEV and upon features most related to their exhaust emission characteristics.

33. Section 86.1829–01 is amended by adding paragraphs (b)(1)(iii)(E) and (d) to read as follows:

**§ 86.1829–01 Durability and emission testing requirements; waivers.**

* * * * *

(b) * * * (1) * * *

(iii) * * *

(E) In lieu of testing a gasoline or diesel fueled Tier 2 or interim non-Tier 2 vehicle for formaldehyde emissions when such vehicles are certified based upon NMHC emissions, a manufacturer may provide a statement in its application for certification that such vehicles comply with the applicable standards. Such a statement must be based on previous emission tests, development tests, or other appropriate information.

* * * * *

(d)(1) Beginning in the 2004 model year, the exhaust emissions must be measured from all LDV/T exhaust emission data vehicles tested in accordance with the federal Highway Fuel Economy Test (HWFET; 40 CFR part 600, subpart B). The oxides of nitrogen emissions measured during such tests must be multiplied by the oxides of nitrogen deterioration factor computed in accordance with § 86.1823–01 and subsequent model year provisions, and then rounded and compared with the applicable emission standard in § 86.1811–04. All data obtained from the testing required under this paragraph (d) must be reported in accordance with the procedures for reporting other exhaust emission data required under this subpart.

(2) In the event that one or more emission data vehicles fail the applicable HWFET standard in § 86.1811–04, the manufacturer may submit to the Administrator engineering data or other evidence showing that the system is capable of complying with the standard. If the Administrator finds, on the basis of an engineering evaluation, that the system can comply with the HWFET standard, he or she may accept the information supplied by the manufacturer in lieu of the test data.

(3) The provisions of paragraphs (d)(1) and (d)(2) of this section do not apply to MDPVs.

34. Section 86.1837–01 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

**§ 86.1837–01 Rounding of emission measurements.**

* * * * *

(b) Fleet average $NO_X$ value calculations, where applicable, must be rounded before comparing with the applicable fleet average standard and calculating credits generated or needed as follows: manufacturers must round to the same number of significant figures that are contained in the quantity of vehicles in the denominator of the equation used to compute the fleet average $NO_X$ emissions, but to no less than one more decimal place than that of the applicable fleet average standard.

35. Section 86.1838–01 is amended by revising paragraphs (b)(1)(i) and (c)(2)(iii) to read as follows:

**§ 86.1838–01 Small volume manufacturer certification procedures.**

* * * * *

(b) * * *

(1) * * *

(i) The optional small-volume manufacturers certification procedures apply to LDV/Ts and MDPVs produced by manufacturers with U.S. sales, including all vehicles and engines imported under provisions of 40 CFR 85.1505 and 85.1509 (for the model year in which certification is sought) of fewer than 15,000 units (LDV/Ts, MDPVs, heavy-duty vehicles and heavy-duty engines combined).

* * * * *

(c) * * *

(2) * * *

(iii) The provisions of § 86.1845–01(c)(2) and § 86.1845–04(c)(2) that require one vehicle of each test group during high mileage in-use verification testing to have a minimum odometer mileage of 75 percent of the full useful life mileage for Tier 1 and NLEV LDV/Ts, or 90,000 (or 105,000) miles for Tier 2 and interim non-Tier 2 vehicles, do not apply.

* * * * *

36. Section 86.1840–01 is amended by adding paragraphs (c) and (d) to read as follows:

**§ 86.1840–01 Special test procedures.**

* * * * *

(c) Manufacturers of vehicles equipped with periodically regenerating trap oxidizer systems must propose a procedure for testing and certifying such vehicles including SFTP testing for the review and approval of the Administrator. The manufacturer must submit its proposal before it begins any service accumulation or emission testing. The manufacturer must provide with its submittal, sufficient documentation and data for the Administrator to fully evaluate the operation of the trap oxidizer system and the proposed certification and testing procedure.

(d) The provisions of paragraphs (a) and (b) of this section also apply to MDPVs.

37. Section 86.1841–01 is amended by revising paragraph (a)(1)(iii) and adding paragraph (e) to read as follows:

**§ 86.1841–01 Compliance with emission standards for the purpose of certification.**

(a) * * *

(1) * * *

(iii) For the SFTP composite standard of NMHC+$NO_X$, the measured results of NMHC and $NO_X$ must each be adjusted by their corresponding deterioration factors before the composite NMHC+$NO_X$ certification level is calculated. Where the applicable FTP exhaust hydrocarbon emission standard is an NMOG standard, the applicable NMOG deterioration factor must be used in place of the NMHC deterioration

factor, unless otherwise approved by the Administrator.

* * * * *

(e) Unless otherwise approved by the Administrator, manufacturers must not use Reactivity Adjustment Factors (RAFs) in their calculation of the certification levels of any pollutant, regardless of the fuel used in the test vehicle.

38. Section 86.1844–01 is amended by adding new paragraphs (d)(15), (d)(16), (e)(6) and (i) to read as follows:

**§ 86.1844–01 Information requirements: Application for certification and submittal of information upon request.**

* * * * *

(d) * * *

(15) For HEVs, unless otherwise approved by the Administrator, the information required by the ''California Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Zero-Emission Vehicles, and 2001 and Subsequent Model Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck and Medium-duty Vehicle Classes'' must be supplied. These procedures are incorporated by reference (see § 86.1).

(16) (i) For Tier 2 and interim non-Tier 2 vehicles beginning with the 2004 model year, a statement indicating that the manufacturer has conducted an engineering analysis of the complete exhaust system to ensure that the exhaust system has been designed:

(A) To facilitate leak-free assembly, installation and operation for the full useful life of the vehicle; and

(B) To facilitate that such repairs as might be necessary on a properly maintained and used vehicle can be performed in such a manner as to maintain leak-free operation, using tools commonly available in a motor vehicle dealership or independent repair shop for the full useful life of the vehicle.

(ii) The analysis must cover the exhaust system and all related and attached components including the air injection system, if present, from the engine block manifold gasket surface to a point sufficiently past the last catalyst and oxygen sensor in the system to assure that leaks beyond that point will not permit air to reach the oxygen sensor or catalyst under normal operating conditions.

(iii) A ''leak-free'' system is one in which leakage is controlled so that it will not lead to a failure of the certification exhaust emission standards in-use.

(iv) The provisions of paragraphs (d)(16)(i) and (ii) do not apply to vehicles whose certification is carried over from the NLEV program or carried across from the Cal LEV I program.

(e) * * *

(6) The NMOG/NMHC and HCHO to NMHC ratios established according to § 86.1845–04.

* * * * *

(i) For exhaust emission testing for Tier 2 and interim non-Tier 2 vehicles, if approved by the Administrator in advance, manufacturers may submit exhaust emission test data generated under California test procedures to comply with any certification and in-use testing requirements under this subpart. The Administrator may require supporting information to establish that differences between California and Federal exhaust testing procedures and fuels will not produce significant differences in emission results. The Administrator may require that in-use testing be performed using Federal test fuels as specified in § 86.113–04(a)(1).

39. Section 86.1845–04 is amended by:

a. revising paragraph (a),

b. revising paragraph (c)(2), and

c. adding paragraph (f).

The revisions and additions read as follows:

**§ 86.1845–04 Manufacturer in-use verification testing requirements**

(a) *General requirements.* (1) A manufacturer of LDVs, LDTs and/or MDPVs must test, or cause to have tested, a specified number of LDVs, LDTs and MDPVs. Such testing must be conducted in accordance with the provisions of this section. For purposes of this section, the term vehicle includes light-duty vehicles, light-duty trucks and medium-duty vehicles.

(2) Unless otherwise approved by the Administrator, no emission measurements made under the requirements of this section may be adjusted by Reactivity Adjustment Factors (RAFs).

(3) Upon a manufacturer's written request, prior to in-use testing, that presents information to EPA regarding pre-conditioning procedures designed solely to remove the effects of high sulfur in gasoline from vehicles produced through the 2007 model year, EPA will consider allowing such procedures on a case-by-case basis. EPA's decision will apply to manufacturer in-use testing conducted under this section and to any in-use testing conducted by EPA.

* * * * *

(c) * * *

(2) Vehicle mileage:

(i) All test vehicles must have a minimum odometer mileage of 50,000 miles. At least one vehicle of each test group must have a minimum odometer mileage of 75 percent of the full useful life mileage. See § 86.1838–01(c)(2) for small volume manufacturer mileage requirements; or

(ii) For engine families certified for a useful life of 150,000 miles, at least one vehicle must have a minimum odometer mileage of 105,000 miles. See § 86.1838–01(c)(2) for small volume manufacturer mileage requirements.

* * * * *

(f)(1) A manufacturer may conduct in-use testing on a test group by measuring NMHC exhaust emissions rather than NMOG exhaust emissions. The measured NMHC exhaust emissions must be multiplied by the adjustment factor used for certification of the test group, or another adjustment factor acceptable to the Administrator, to determine the equivalent NMOG exhaust emission values for the test vehicle. The equivalent NMOG exhaust emission value must be used in place of the measured NMOG exhaust emission value in determining the exhaust NMOG results. The equivalent NMOG exhaust emission values must be compared to the NMOG exhaust emission standard from the emission bin to which the test group was certified.

(2) For flexible-fueled LDVs, LDTs and MDPVs certified to NMOG standards, the manufacturer may request from the Administrator the use of a methanol (M85) or ethanol (E85) NMOG exhaust emission to gasoline NMHC exhaust emission ratio which must be established during certification for each emission data vehicle for the applicable test group. The results must be submitted to the Administrator in the Part II application for certification. After approval by the Administrator, the measured gasoline NMHC exhaust emissions must be multiplied by the M85 or E85 NMOG to gasoline NMHC ratio submitted in the application for certification for the test group to determine the equivalent NMOG exhaust emission values for the test vehicle. The equivalent NMOG exhaust emission value must be used in place of the measured NMOG exhaust emission value in determining the exhaust NMOG results. The equivalent NMOG exhaust emission values must be compared to the NMOG exhaust emission standard from the vehicle emission standard bin to which the test group was certified.

(3) If the manufacturer measures NMOG it must also measure and report HCHO emissions. As an alternative to measuring the HCHO content, if the manufacturer measures NMHC as permitted in paragraph (f)(1) of this section, the Administrator may approve,

upon submission of supporting data by a manufacturer, the use of HCHO to NMHC ratios. To request the use of HCHO to NMHC ratios, the manufacturer must establish during certification testing the ratio of measured HCHO exhaust emissions to measured NMHC exhaust emissions for each emission data vehicle for the applicable test group. The results must be submitted to the Administrator with the Part II application for certification. Following approval of the application for certification, the manufacturer may conduct in-use testing on the test group by measuring NMHC exhaust emissions rather than HCHO exhaust emissions. The measured NMHC exhaust emissions must be multiplied by the HCHO to NMHC ratio submitted in the application for certification for the test group to determine the equivalent HCHO exhaust emission values for the test vehicle. The equivalent HCHO exhaust emission values must be compared to the HCHO exhaust emission standard applicable to the test group.

40. Section 86.1846–01 is amended by revising paragraph (a) to read as follows:

**§ 86.1846–01 Manufacturer in-use confirmatory testing requirements.**

(a) *General requirements.* (1) A manufacturer of LDVs, LDTs and/or MDPVs must test, or cause testing to be conducted, under this section when the emission levels shown by a test group sample from testing under § 86.1845–01 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 2001.

(2) Except for vehicles certified under the NLEV provisions of subpart R of this part or unless otherwise approved by the Administrator, no emission measurements made under the requirements of this section may be adjusted by Reactivity Adjustment Factors (RAFs).

(3) For purposes of this section, the term vehicle includes light-duty vehicles, light-duty trucks and medium-duty vehicles.

(4) Upon a manufacturer's written request, prior to in-use testing, that presents information to EPA regarding pre-conditioning procedures designed solely to remove the effects of high sulfur in gasoline from vehicles produced through the 2007 model year, EPA will consider allowing such procedures on a case-by-case basis. EPA's decision will apply to manufacturer in-use testing conducted under this section and to any in-use testing conducted by EPA.

* * * * *

41. Section 86.1848–01 is amended by adding paragraph (c)(7) to read as follows:

**§ 86.1848–01 Certification.**

* * * * *

(c) * * *

(7) For Tier 2 and interim non-Tier 2 vehicles, all certificates of conformity issued are conditional upon compliance with all provisions of §§ 86.1811–04, 86.1860–04, 86.1861–04 and 86.1862–04 both during and after model year production.

(i) Failure to meet the fleet average $NO_X$ requirements of 0.07g/mi, 0.30 g/mi or 0.20 g/mi, as applicable, will be considered to be a failure to satisfy the terms and conditions upon which the certificate(s) was (were) issued and the vehicles sold in violation of the fleet average $NO_X$ standard will not be covered by the certificate(s).

(ii) Failure to comply fully with the prohibition against selling credits that it has not generated or that are not available, as specified in § 86.1861–04, will be considered to be a failure to satisfy the terms and conditions upon which the certificate(s) was (were) issued and the vehicles sold in violation of this prohibition will not be covered by the certificate(s).

(iii) Failure to comply fully with the phase-in requirements of § 86.1811–04, will be considered to be a failure to satisfy the terms and conditions upon which the certificate(s) was (were) issued and the vehicles sold which do not comply with Tier 2 or interim non-Tier 2 requirements, up to the number needed to comply, will not be covered by the certificate(s).

(iv) For paragraphs (c)(7)(i) through (iii) of this section:

(A) The manufacturer must bear the burden of establishing to the satisfaction of the Administrator that the terms and conditions upon which the certificate(s) was (were) issued were satisfied.

(B) For recall and warranty purposes, vehicles not covered by a certificate of conformity will continue to be held to the standards stated or referenced in the certificate that otherwise would have applied to the vehicles.

* * * * *

42. Sections 86.1854 through 86.1859 are added and reserved.

43. Section 86.1860–04 is added to read as follows:

**§ 86.1860–04 How to comply with the Tier 2 and interim non-Tier 2 fleet average $NO_X$ standards.**

(a) The fleet average standards referred to in this section are the corporate fleet average standards for FTP exhaust $NO_X$ emissions set forth in: § 86.1811–04(d) for Tier 2 LDV/Ts and MDPVs (0.07 g/mi); § 86.1811–04(l)(3) for interim non-Tier 2 LDV/LLDTs (0.30 g/mi); and, § 86.1811–04(l)(3) for interim non-Tier 2 HLDT/MDPVs (0.20 g/mi). Unless otherwise indicated in this section, the provisions of this section apply to all three corporate fleet average standards, except that the interim non-Tier 2 fleet average $NO_X$ standards do not apply to a manufacturer whose U.S. LDV/T and MDPV sales are 100% Tier 2 LDV/Ts and MDPVs.

(b)(1) Each manufacturer must comply with the applicable fleet average $NO_X$ standard, or standards, on a sales weighted average basis, at the end of each model year, using the procedure described in this section.

(2) During a phase-in year, the manufacturer must comply with the applicable fleet average $NO_X$ standard for the required phase-in percentage for that year as specified in § 86.1811–04(k)(1), or for the alternate phase-in percentage as permitted under § 86.1811–04(k)(6).

(c)(1)(i) Each manufacturer must separately compute the sales weighted averages of the individual $NO_X$ emission standards to which it certified all its Tier 2 vehicles, interim non-Tier 2 LDV/LLDTs, and interim non-Tier 2 HLDT/MDPVs of a given model year as described in § 86.1804(l)(2).

(ii) For model years up to and including 2008, manufacturers must compute separate $NO_X$ fleet averages for Tier 2 LDV/LLDTs and Tier 2 HLDT/MDPVs.

(2)(i) For model years up to and including 2008, if a manufacturer certifies its entire U.S. sales of Tier 2 or interim non-Tier 2 LDV/LLDTs or interim non-Tier 2 HLDT/MDPVs, to full useful life bins having $NO_X$ standards at or below the applicable fleet average $NO_X$ standard, that manufacturer may elect not to compute a fleet average $NO_X$ level for that category of vehicles. A manufacturer making such an election must not generate $NO_X$ credits for that category of vehicles for that model year.

(ii) For model years after 2008, if a manufacturer certifies its entire U.S. sales of Tier 2 vehicles to full useful life bins having $NO_X$ standards at or below 0.07 gpm, that manufacturer may elect not to compute a fleet average $NO_X$ level for its Tier 2 vehicles. A manufacturer

making such an election must not generate $NO_X$ credits for that model year.

(d) The sales weighted $NO_X$ fleet averages determined pursuant to paragraph (c) of this section must be compared with the applicable fleet average standard; 0.07 g/mi for $NO_X$ for Tier 2 LDV/Ts and MDPVs, 0.30 g/mi for $NO_X$ for interim non-Tier 2 LDV/LLDTs, and 0.20 g/mi for NOx for interim non-Tier 2 HLDT/MDPVs. Each manufacturer must comply on an annual basis with the fleet average standards by:

(1) Showing that its sales weighted average $NO_X$ emissions of its LDV/LLDTs, HLDT/MDPVs or LDV/Ts, as applicable, are at or below the applicable fleet average standard; or

(2) If the sales weighted average is not at or below the applicable fleet average standard, by obtaining and applying sufficient Tier 2 $NO_X$ credits, interim non-Tier 2 LDV/LLDT $NO_X$ credits or interim non-Tier 2 HLDT/MDPV $NO_X$ credits, as appropriate, and as permitted under § 86.1861–04.

(i) Manufacturers may not use NMOG credits generated under the NLEV program in subpart R of this part to meet any Tier 2 or interim non-Tier 2 $NO_X$ fleet average standard.

(ii) Tier 2 $NO_X$ credits may not be used to meet any fleet average interim non-Tier 2 $NO_X$ standard except as permitted by § 86.1860–04(e)(1).

(iii) Interim non-Tier 2 $NO_X$ credits may not be used to meet the Tier 2 fleet average $NO_X$ standard.

(iv) Interim non-Tier 2 $NO_X$ credits from HLDT/MDPVs may not be used to meet the fleet average $NO_X$ standard for interim non-Tier 2 LDV/LLDTs, and interim non-Tier 2 credits from LDV/LLDTs may not be used to meet the fleet average $NO_X$ standard for interim non-Tier 2 HLDT/MDPVs.

(e) (1) Manufacturers that cannot meet the requirements of paragraph (d) of this section, may carry forward a credit deficit for three model years, but must not carry such deficit into the fourth year. When applying credits to reduce or eliminate a deficit under the fleet average standard for interim LDV/LLDTs or interim HLDT/MDPVs, that has been carried forward into a year subsequent to its generation, a manufacturer may apply credits from Tier 2 LDV/LLDTs or Tier 2 HLDT/MDPVs, respectively, as well as from the appropriate group of interim vehicles. A manufacturer must not use interim credits to reduce or eliminate any $NO_X$ credit deficit under the Tier 2 fleet average standard.

(2) A manufacturer carrying a credit deficit into the third year must generate or obtain credits to offset that deficit and apply them to the deficit at a rate of 1.2:1, (i.e. deficits carried into the third model year must be repaid with credits equal to 120 percent of the deficit).

(3) A manufacturer must not bank credits for future model years or trade credits to another manufacturer during a model year into which it has carried a deficit.

(f) *Computing fleet average $NO_X$ emissions.* (1) Manufacturers must separately compute these fleet $NO_X$ averages using the equation contained in paragraph (f)(2) of this section:

(i) Their Tier 2 LDV/LLDT and Tier 2 HLDT/MDPV fleet average $NO_X$ emissions for each model year through 2008;

(ii) Their combined Tier 2 LDV/T and MDPV fleet average $NO_X$ emissions for each model year after 2008;

(iii) Their interim non-Tier 2 LDV/LLDT fleet average $NO_X$ emissions for each model year through 2006; and

(iv) Their interim non-Tier 2 HLDT/MDPV fleet average $NO_X$ emissions for each model year through 2008.

(2) The equation for computing fleet average $NO_X$ emissions is as follows:

$$\frac{\sum(N \times NO_X \text{ emission standard})}{\text{Total number of vehicles of the appropriate category (e.g., all LDV/Ts and MDPVs, or interim non-Tier 2 HLDT/MDPVs, etc.) sold including HEVs and ZEVs}}$$

Where:

N = The number of vehicles sold in the applicable category that were certified for each corresponding $NO_X$ emission bin. N must be based on vehicles counted to the point of first sale.

Emission standard = The individual full useful life $NO_X$ emission standard for each bin for which the manufacturer had sales.

(3) The results of the calculation in paragraph (f)(2) of this section must be rounded as required by § 86.1837–01.

(4) When approved in advance by the Administrator, the numerator in the equation in paragraph (f)(2) of this section may be adjusted downward by the product of the number of HEVs from each $NO_X$ emission bin times a HEV $NO_X$ contribution factor determined through mathematical estimation of the reduction in $NO_X$ emissions over the test procedure used to certify the HEVs. The reduction in $NO_X$ emissions must be determined using good engineering judgement and reflect the relation in actual full useful life $NO_X$ emissions to the full useful life $NO_X$ standards for the certification bin applicable to the vehicles. The Administrator may require that calculation of the HEV $NO_X$ contribution factor include vehicle parameters such as vehicle weight, portion of time during the test procedure that the HEV operates with zero exhaust emissions, zero emission range, $NO_X$ emissions from fuel-fired heaters and $NO_X$ emissions from electricity production and storage.

(g) *Additional credits for vehicles certified to 150,000 mile useful lives.* (1) A manufacturer may certify any test group to an optional useful life of 15 years or 150,000 miles, whichever occurs first.

(2)(i) For any test group certified to the optional 15 year/150,000 mile useful life, the manufacturer may generate additional $NO_X$ credits, except as prohibited in paragraph (g)(3) of this section.

(ii) The manufacturer must calculate these extra $NO_X$ credits, where permitted, by substituting an adjusted $NO_X$ standard for the applicable $NO_X$ standard from the full useful life certification bin when it calculates the applicable fleet average $NO_X$ emissions by the procedure in paragraph (f) of this section. The adjusted standard must be equal to the applicable full useful life $NO_X$ standard multiplied by 0.85 and rounded to the same number of decimal places as the applicable full useful life $NO_X$ standard.

(3) A manufacturer electing not to comply with applicable intermediate life standards as permitted under § 86.1811–04(c)(4) may not generate additional credits from vehicles certified to a useful life of 15 years/150,000 miles; except that, for bins where such intermediate life standards do not exist or are specifically deemed to be optional in § 86.1811–04(c)(4), the manufacturer may generate additional

$NO_X$ credits from vehicles certified to a useful life of 15 years/150,000 miles.

(h) *Additional credits for vehicles certified to low bins.* A manufacturer may obtain additional $NO_X$ credits by certifying vehicles to bins 1 and/or 2 in model years from 2001 through 2005 subject to the following requirements:

(1) When computing the fleet average Tier 2 $NO_X$ emissions using the formula in paragraph (f)(2) of this section, the manufacturer may multiply the number (N) of vehicles certified to bins 1 and 2 by the applicable multiplier shown in Table S04–11. These multipliers may not be used after model year 2005. The table follows:

TABLE S04–11—MULTIPLIERS FOR ADDITIONAL TIER 2 $NO_X$ Credits for Bin 1 and 2 LDV/Ts.

| Bin | Model year | Multiplier |
|---|---|---|
| 2 ..... | 2001, 2002, 2003, 2004, 2005. | 1.5 |
| 1 ..... | 2001, 2002, 2003, 2004, 2005. | 2.0 |

(2) [Reserved]

44. Section 86.1861–04 is added to read as follows:

**§ 86.1861–04 How do the Tier 2 and interim non-Tier 2 $NO_X$ averaging, banking and trading programs work?**

(a) *General provisions for Tier 2 credits and debits.* (1) A manufacturer whose Tier 2 fleet average $NO_X$ emissions exceeds the 0.07 g/mile standard must complete the calculation at paragraph (b) of this section to determine the size of its $NO_X$ credit deficit. A manufacturer whose Tier 2 fleet average $NO_X$ emissions is less than or equal to the 0.07 g/mile standard must complete the calculation in paragraph (b) of this section if it desires to generate $NO_X$ credits. In either case, the number of credits or debits determined in the calculation at paragraph (b) of this section must be rounded to the nearest whole number.

(2) Credits generated according to the calculation in paragraph (b)(1) of this section may be banked for future use or traded to another manufacturer.

(3) $NO_X$ credits are not subject to any discount or expiration date except as required under the deficit carryforward provisions of § 86.1860–04(e)(2).

(4) If a manufacturer calculates that it has negative credits (debits or a credit deficit) for a given model year, it must obtain sufficient credits, as required under § 86.1860–04(e)(2), from vehicles produced by itself or another manufacturer in a model year no later than the third model year following the model year for which it calculated the credit deficit. (Example: if a manufacturer calculates that it has a $NO_X$ credit deficit for the 2008 model year, it must obtain sufficient $NO_X$ credits to offset that deficit from its own production or that of other manufacturers' 2011 or earlier model year vehicles.)

(5) A small volume manufacturer that has opted not to meet all phase-in requirements as permitted under § 86.1811–04(k)(5), must:

(i) Demonstrate compliance or obtain appropriate credits to comply with the 0.30 g/mi. fleet average $NO_X$ standard for interim LDV/LLDTs for 100% of its LDV/LLDTs in 2004, in order to carry forward a credit deficit for later model year interim LDV/LLDTs; and

(ii) Demonstrate compliance or obtain appropriate credits to comply with the 0.07 g/mi. fleet average $NO_X$ standard for 100% of its LDV/LLDTs in 2007, in order to carry forward a credit deficit for later model year Tier 2 LDV/LLDTs; and

(iii) Demonstrate compliance or obtain appropriate credits to comply with the 0.20 g/mi. fleet average interim $NO_X$ standard for 100% of its HLDT/MDPVs in 2007, in order to carry forward a credit deficit for later model year interim HLDT/MDPVs.

(6)(i) Manufacturers may not use $NO_X$ credits to comply with the NLEV requirements of subpart R of this part.

(ii) Manufacturers may not use NMOG credits generated by vehicles certified to the NLEV requirements of subpart R of this part to comply with any $NO_X$ requirements of this subpart.

(iii) Manufacturers may not use $NO_X$ credits generated by interim non-Tier 2 vehicles to comply with the fleet average $NO_X$ standard for Tier 2 vehicles.

(iv) Manufacturers may not use $NO_X$ credits generated by Tier 2 vehicles to comply with any fleet average $NO_X$ standard for interim non-Tier 2 vehicles, except as permitted under § 86.1860–04(e).

(v) Manufacturers may not use $NO_X$ credits generated by interim non-Tier 2 LDV/LLDTs to comply with the fleet average $NO_X$ standard for interim non-Tier 2 HLDT/MDPVs.

(vi) Manufacturers may not use $NO_X$ credits generated by interim non-Tier 2 HLDT/MDPVs to comply with the fleet average $NO_X$ standard for interim non-Tier 2 LDV/LLDTs.

(vii) Manufacturers may not use $NO_X$ credits generated by Tier 2 LDV/LLDTs to comply with the Tier 2 $NO_X$ average standard for HLDT/MDPVs before the 2009 model year.

(viii) Manufacturers may not use $NO_X$ credits generated by Tier 2 HLDT/MDPVs to comply with the Tier 2 $NO_X$ average standard for LDV/LLDTs before the 2009 model year.

(7) Manufacturers may bank Tier 2 $NO_X$ credits for later use to meet the Tier 2 fleet average $NO_X$ standard or trade them to another manufacturer. Credits are earned on the last day of the model year. Before trading or carrying over credits to the next model year, a manufacturer must apply available credits to offset any credit deficit, where the deadline to offset that credit deficit has not yet passed.

(8) There are no property rights associated with $NO_X$ credits generated under this subpart. Credits are a limited authorization to emit the designated amount of emissions. Nothing in this Part or any other provision of law should be construed to limit EPA's authority to terminate or limit this authorization through a rulemaking.

(b) *Calculating Tier 2 credits and debits.* (1) Manufacturers that achieve fleet average $NO_X$ values from the calculation in § 86.1860–04(f), lower than the applicable fleet average $NO_X$ standard, may generate credits for a given model year, in units of vehicle-g/mi $NO_X$, determined in this equation:

[(Fleet Average $NO_X$ Standard) − (Manufacturer's Fleet Average $NO_X$ Value)] + (Total number of Tier 2 Vehicles Sold, Including ZEVs and HEVs)

Where: The number of Tier 2 vehicles sold is based on the point of first sale and does not include vehicles sold in California or a state that adopts, and has in effect for that model year, California emission requirements.

(2) Where the result of the calculation in paragraph (b)(1) of this section is a negative number, the manufacturer must generate negative $NO_X$ credits (debits).

(c) *Early banking.* (1)(i) Manufacturers may certify LDV/LLDTs to the Tier 2 FTP exhaust standards in § 86.1811–04 for model years 2001–2003 in order to bank credits for use in the 2004 and later model years. Such vehicles must also meet SFTP exhaust emission standards specified in § 86.1811–04.

(ii) Manufacturers may certify HLDT/MDPVs to the Tier 2 FTP exhaust standards in § 86.1811–04 for model years 2001–2007 in order to bank credits for use in the 2008 and later model years. Such vehicles must also meet applicable SFTP exhaust emission standards specified in § 86.1811–04.

(iii) This process is referred to as ''early banking'' and the resultant credits are referred to as ''early credits''. In order to bank early credits, a manufacturer must comply with all exhaust emission standards and requirements applicable to Tier 2 LDV/LLDTs and/or HLDT/MDPVs, as applicable, except as allowed under paragraph (c)(4) of this section.

(2) To generate early credits, a manufacturer must separately compute

the sales weighted $NO_X$ average of the LDV/LLDTs and HLDT/MDPVs it certifies to the Tier 2 exhaust requirements and separately compute credits using the calculations in this section and in § 86.1860–04.

(3) Early HLDT/MDPV credits may not be applied to LDV/LLDTs before the 2009 model year. Early LDV/LLDT credits may not be applied to HLDT/MDPVs before the 2009 model year.

(4) Manufacturers may generate early Tier 2 credits from LDVs, LDT1s and LDT2s that are certified to a full useful life of 100,000 miles, provided that the credits are prorated by a multiplicative factor of 0.833 (the quotient of 100,000/120,000). Where a manufacturer has both 100,000 and 120,000 mile full useful life vehicles for which it desires to bank early credits, it must compute the credits from each group of vehicles separately and then add them together.

(5) Manufacturers may bank early credits for later use to meet the Tier 2 fleet average $NO_X$ standard or trade them to another manufacturer subject to the restriction in paragraph (c)(3) of this section.

(6) Early credits must not be used to comply with the fleet average $NO_X$ standards for interim non-Tier 2 vehicles.

(7) Nothing in this section prevents the use of the NMOG values of 2003 and earlier model year LDV/LLDTs from being used in calculations of the NMOG fleet average and subsequent NMOG credit generation, under subpart R of this part.

(d) *Reporting and recordkeeping for Tier 2 $NO_X$ credits including early credits.* Each manufacturer must comply with the reporting and recordkeeping requirements of § 86.1862–04.

(e) *Fleet average $NO_X$ debits.* (1) Manufacturers must offset any debits for a given model year by the fleet average $NO_X$ reporting deadline for the third model year following the model year in which the debits were generated as required in § 86.1860.04(e)(2). Manufacturers may offset debits by generating credits or acquiring credits generated by another manufacturer.

(2)(i) Failure to meet the requirements of paragraphs (a) through (d) of this section and of this paragraph (e), within the required timeframe for offsetting debits will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the individual noncomplying vehicles not covered by the certificate must be determined according to this section.

(ii) If debits are not offset within the specified time period, the number of vehicles not meeting the fleet average $NO_X$ standards and not covered by the certificate must be calculated by dividing the total amount of debits for the model year by the fleet average $NO_X$ standard applicable for the model year in which the debits were first incurred.

(iii) EPA will determine the vehicles for which the condition on the certificate was not satisfied by designating vehicles in those test groups with the highest certification $NO_X$ emission values first and continuing until a number of vehicles equal to the calculated number of noncomplying vehicles as determined above is reached. If this calculation determines that only a portion of vehicles in a test group contribute to the debit situation, then EPA will designate actual vehicles in that test group as not covered by the certificate, starting with the last vehicle produced and counting backwards.

(3) If a manufacturer ceases production of LDV/Ts and MDPVs or is purchased by, merges with or otherwise combines with another manufacturer, the manufacturer continues to be responsible for offsetting any debits outstanding within the required time period. Any failure to offset the debits will be considered to be a violation of paragraph (e)(1) of this section and may subject the manufacturer to an enforcement action for sale of vehicles not covered by a certificate, pursuant to paragraph (e)(2) of this section.

(4) For purposes of calculating the statute of limitations, a violation of the requirements of paragraph (e)(1) of this section, a failure to satisfy the conditions upon which a certificate(s) was issued and hence a sale of vehicles not covered by the certificate, all occur upon the expiration of the deadline for offsetting debits specified in paragraph (e)(1) of this section.

(f) *$NO_X$ credit transfers.* (1) EPA may reject $NO_X$ credit transfers if the involved manufacturers fail to submit the credit transfer notification in the annual report.

(2) A manufacturer may not sell credits that are not available for sale pursuant to the provisions in paragraphs (a)(2) and (a)(7) of this section.

(3) In the event of a negative credit balance resulting from a transaction, both the buyer and seller are liable, except in cases involving fraud. EPA may void *ab initio* the certificates of conformity of all engine families participating in such a trade.

(4)(i) If a manufacturer transfers a credit that it has not generated pursuant to paragraph (b) of this section or acquired from another party, the manufacturer will be considered to have generated a debit in the model year that the manufacturer transferred the credit. The manufacturer must offset such debits by the deadline for the annual report for that same model year.

(ii) Failure to offset the debits within the required time period will be considered a failure to satisfy the conditions upon which the certificate(s) was issued and will be addressed pursuant to paragraph (e) of this section.

(g) *Interim non-Tier 2 $NO_X$ credits and debits; Interim non-Tier 2 averaging, banking and trading.* Interim non-Tier 2 $NO_X$ credits must be generated, calculated, tracked, averaged, banked, traded, accounted for and reported upon separately from Tier 2 credits. The provisions of this section applicable to Tier 2 $NO_X$ credits and debits and Tier 2 averaging banking and trading are applicable to interim non-Tier 2 LDV/LLDTs and interim non-Tier 2 HLDT/MDPVs with the following exceptions:

(1) Provisions for early banking under paragraph (c) of this section do not apply.

(2) The fleet average $NO_X$ standard used for calculating credits is 0.30 grams per mile for interim non-Tier 2 LDV/LLDTs and 0.20 g/mi for interim non-Tier 2 HLDT/MDPVs. (The interim non-Tier 2 $NO_X$ standard of 0.30 (or 0.20) g/mi replaces 0.07 in the text and calculation in this section.)

(3) Interim non-Tier 2 $NO_X$ credit deficits may be carried forward for three years subject to the requirements of § 86.1860–04(e).

45. Section 86.1862–04 is added to read as follows:

**§ 86.1862–04 Maintenance of records and submittal of information relevant to compliance with fleet average $NO_X$ standards.**

(a) *Maintenance of records.* (1) The manufacturer producing any light-duty vehicles and/or light-duty trucks subject to the provisions in this subpart must establish, maintain, and retain the following information in adequately organized and indexed records for each model year:

(i) Model year;

(ii) Applicable fleet average $NO_X$ standard: 0.07g/mi for Tier 2 LDV/Ts; 0.30 g/mi for interim non-Tier 2 LDV/LLDTs; or 0.20 g/mi for interim non-Tier 2 HLDT/MDPVs;

(iii) Fleet average $NO_X$ value achieved; and

(iv) All values used in calculating the fleet average $NO_X$ value achieved.

(2) The manufacturer producing any LDV/Ts or MDPVs subject to the provisions in this subpart must establish, maintain, and retain the following information in adequately organized and indexed records for each LDV/T or MDPV subject to this subpart:

(i) Model year;

(ii) Applicable fleet average $NO_X$ standard;

(iii) EPA test group;

(iv) Assembly plant;

(v) Vehicle identification number;

(vi) $NO_X$ standard to which the LDV/T or MDPV is certified; and

(vii) Information on the point of first sale, including the purchaser, city, and state.

(3) The manufacturer must retain all records required to be maintained under this section for a period of eight years from the due date for the annual report. Records may be retained as hard copy or reduced to microfilm, ADP diskettes, and so forth, depending on the manufacturer's record retention procedure; provided, that in every case all information contained in the hard copy is retained.

(4) Nothing in this section limits the Administrator's discretion to require the manufacturer to retain additional records or submit information not specifically required by this section.

(5) Pursuant to a request made by the Administrator, the manufacturer must submit to the Administrator the information that the manufacturer is required to retain.

(6) EPA may void *ab initio* a certificate of conformity for a vehicle certified to emission standards as set forth or otherwise referenced in this subpart for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

(b) *Reporting.* (1) Each covered manufacturer must submit an annual report. Except as provided in paragraph (b)(2) of this section, the annual report must contain, for each applicable fleet average $NO_X$ standard, the fleet average $NO_X$ value achieved, all values required to calculate the $NO_X$ value, the number of credits generated or debits incurred, and all the values required to calculate the credits or debits. The annual report must contain the resulting balance of credits or debits.

(2) When a manufacturer calculates compliance with the fleet average $NO_X$ standard using the provisions in § 86.1860–04(c)(2), then the annual report must state that the manufacturer has elected to use such provision and must contain the fleet average $NO_X$ standard as the fleet average $NO_X$ value for that model year.

(3) For each applicable fleet average $NO_X$ standard, the annual report must also include documentation on all credit transactions the manufacturer has engaged in since those included in the last report. Information for each transaction must include:

(i) Name of credit provider;

(ii) Name of credit recipient;

(iii) Date the transfer occurred;

(iv) Quantity of credits transferred; and

(v) Model year in which the credits were earned.

(4) Unless a manufacturer reports the data required by this section in the annual production report required under § 86.1844–01(e) and subsequent model year provisions, a manufacturer must submit an annual report for each model year after production ends for all affected vehicles and trucks produced by the manufacturer subject to the provisions of this subpart and no later than May 1 of the calendar year following the given model year. Annual reports must be submitted to: Director, Vehicle Programs and Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105.

(5) Failure by a manufacturer to submit the annual report in the specified time period for all vehicles and trucks subject to the provisions in this section is a violation of section 203(a)(1) of the Clean Air Act for each subject vehicle and truck produced by that manufacturer.

(6) If EPA or the manufacturer determines that a reporting error occurred on an annual report previously submitted to EPA, the manufacturer's credit or debit calculations will be recalculated. EPA may void erroneous credits, unless transferred, and must adjust erroneous debits. In the case of transferred erroneous credits, EPA must adjust the selling manufacturer's credit or debit balance to reflect the sale of such credits and any resulting generation of debits.

(c) *Notice of opportunity for hearing.* Any voiding of the certificate under paragraph (a)(6) of this section will be made only after EPA has offered the manufacturer concerned an opportunity for a hearing conducted in accordance with § 86.614 for light-duty vehicles or § 86.1014 for light-duty trucks and, if a manufacturer requests such a hearing, will be made only after an initial decision by the Presiding Officer.

[FR Doc. 00–19 Filed 2–9–00; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday,
February 10, 2000

Part III

# Department of Education

**Office of Elementary and Secondary Education—Advanceed Placement Incentive Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000; Notice**

## DEPARTMENT OF EDUCATION

**[CFDA No.: 84.330]**

### Office of Elementary and Secondary Education—Advanced Placement Incentive Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

*Purpose of Program:* The Advanced Placement Incentive Program provides grants to States, including consortia of States, to enable them to pay advanced placement test fees on behalf of eligible low-income individuals, and to undertake activities designed to increase the participation of low-income students in advanced placement courses and tests. For FY 2000, we encourage applicants to design projects that meet the invitational priority in the PRIORITIES section of this application notice.

*Eligible Applicants:* State educational agencies (SEAs) in any State, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

*Deadline for Transmittal of Applications:* March 27, 2000.

*Deadline for Intergovernmental Review:* April 26, 2000.

*Applications Available*: February 10, 2000.

*Estimated Available Funds*: $15,000,000.

*Estimated Range of Awards*: $50,000 to $1,200,000 per year.

*Estimated Average Size of Awards*: $375,000 per year.

*Estimated Number of Awards*: 40.

**Note:** These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

*Project Period*: Up to 36 months.

#### Allowable Activities

States receiving grants under this program may use the grant funds to pay part or all of the cost of advanced placement test fees for low-income individuals who (1) are enrolled in an advanced placement class; and (2) plan to take an advanced placement test. In addition, SEAs in States in which no eligible low-income individual is required to pay more than a nominal fee to take advanced placement tests in core subjects may use grant funds for activities directly related to increasing (a) the enrollment of low-income individuals in advanced placement courses; (b) the participation of low-income individuals in advanced placement tests; and (c) the availability of advanced placement courses in schools serving high-poverty areas (hereinafter referred to as ''section 810(d)(1) activities''). Examples of section 810(d)(1) activities may include, but are not limited to, projects that provide student access to advanced placement courses online, and professional development institutes designed to prepare teachers to teach advanced placement courses. An SEA may apply for funds under this program both to assist it in meeting the requirement that no eligible low-income student in the State be required to pay more than a nominal fee to take advanced placement tests in core subjects and for section 810(d)(1) activities.

#### Priorities

(a) *Absolute Priority*. The Department is establishing an absolute priority for proposals to use grant funds to pay advanced placement test fees on behalf of eligible low-income individuals. We have chosen this priority from the allowable activities specified in the program statute (*see* 34 CFR 75.105(b)(2)(v) and section 810(a) of Title VIII, Part B of the Higher Education Amendments of 1998 (20 U.S.C. 1070a–11, note)).

To implement this priority, the Department intends to fund, at some level, all applications (1) meeting the minimum REQUIREMENTS FOR APPROVAL OF APPLICATIONS described in the application package; and (2) proposing to use grant funds for the purpose of paying part or all of the cost of advanced placement test fees on behalf of eligible low-income individuals in the State. For applications that propose to use grant funds to pay advanced placement test fees and to support section 810(d)(1) activities, the section of the application proposing to use grant funds for section 810(d)(1) activities will be evaluated based on the SELECTION CRITERIA described in the application package (*see* 34 CFR 75.105(c)(3)).

(b) *Invitational Priority*. The Department is particularly interested in applications from consortia, or groups, of States to undertake section 810(d)(1) activities. The consortium may be comprised of SEAs from any combination of States. Under 34 CFR 75.105(c)(1), the Department does not give an application that meets this invitational priority a competitive or absolute preference over applications that do not meet the invitational priority.

#### Allocation of Funds

The Department intends to allocate approximately $4 million of the funds available under this program to States for the purpose of paying advanced placement test fees on behalf of eligible low-income individuals. The Department intends to allocate approximately $11 million to States to support section 810(d)(1) activities. In determining grant award amounts, the Department will consider, among other things, the number of children in the State eligible to be counted under section 1124(c) of the Elementary and Secondary Education Act of 1965, in relation to the number of such children in all States.

#### Selection Criteria

The Secretary uses the selection criteria published in 34 CFR 75.209 and 75.210 to evaluate the section of the application that proposes to use grant funds to support section 810(d)(1) activities. The application package includes the SELECTION CRITERIA and the points assigned to each criterion.

#### Applicable Regulations and Statute

The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, 85, 86, and 99. Title VIII, Part B of the Higher Education Amendments of 1998 (1998 Amendments), 20 U.S.C. 1070a–11, note.

The following definitions and other provisions are taken from the Advanced Placement Incentive Program authorizing statute, in Title VIII, Part B of the 1998 Amendments. They are repeated in this application notice for the convenience of the applicant.

#### Definitions

As used in this section:

(a) The term *advanced placement test* includes only an advanced placement test approved by the Secretary of Education for the purposes of this program.

**Note:** To date, the Secretary has approved advanced placement tests administered by The College Board and International Baccalaureate Organisation. As part of the grant application process, applicants may request approval of tests from other educational entities that provide comparable programs of rigorous academic courses and testing through which students may earn college credit.

(b) The term *low-income individual* has the meaning given the term in section 402A(g)(2) of the Higher Education Act of 1965 (HEA) (20 U.S.C. 1070a-11(g)(2)).

**Note:** Under section 402A(g)(2) of the HEA, the term *low-income individual* means an

individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census (20 U.S.C. 1070a–11(g)(2)).

**Information Dissemination**

The SEA shall disseminate information regarding the availability of test fee payments under this program to eligible individuals through secondary school teachers and guidance counselors (20 U.S.C. 1070a–11, note (b)).

**Supplement, Not Supplant, Rule**

Funds provided under this program must be used to supplement and not supplant other non-Federal funds that are available to assist low-income individuals in paying advanced placement test fees (20 U.S.C. 1070a–11, note (d)(2)).

For Applications or Information Contact: Frank B. Robinson, U.S. Department of Education, School Improvement Programs, 400 Maryland Avenue, SW., Room 3C153, Washington, DC 20202–6140. Telephone (202) 260–2669. Internet address: frank—robinson@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (*e.g.,* Braille, large print, audiotape, or computer diskette) upon request to the contact person listed in the preceding paragraph. Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

**Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF, you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

**Program Authority:** 20 U.S.C. 1070a–11, note.

Dated: February 7, 2000.

**Michael Cohen,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 00–3090 Filed 2–9–00; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Thursday,
February 10, 2000

## Part IV

# The President

**Executive Order 13145—To Prohibit Discrimination in Federal Employment Based on Genetic Information**

Federal Register
Vol. 65, No. 28
Thursday, February 10, 2000

# Presidential Documents

**Title 3—**

## The President

**Executive Order 13145 of February 8, 2000**

## To Prohibit Discrimination in Federal Employment Based on Genetic Information

By the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, it is ordered as follows:

**Section 1.** *Nondiscrimination in Federal Employment on the Basis of Protected Genetic Information.*

1–101. It is the policy of the Government of the United States to provide equal employment opportunity in Federal employment for all qualified persons and to prohibit discrimination against employees based on protected genetic information, or information about a request for or the receipt of genetic services. This policy of equal opportunity applies to every aspect of Federal employment.

1–102. The head of each Executive department and agency shall extend the policy set forth in section 1–101 to all its employees covered by section 717 of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-16).

1–103. Executive departments and agencies shall carry out the provisions of this order to the extent permitted by law and consistent with their statutory and regulatory authorities, and their enforcement mechanisms. The Equal Employment Opportunity Commission shall be responsible for coordinating the policy of the Government of the United States to prohibit discrimination against employees in Federal employment based on protected genetic information, or information about a request for or the receipt of genetic services.

**Sec. 2.** *Requirements Applicable to Employing Departments and Agencies.*

1–201. Definitions.

(a) The term ''employee'' shall include an employee, applicant for employment, or former employee covered by section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-16).

(b) Genetic monitoring means the periodic examination of employees to evaluate acquired modifications to their genetic material, such as chromosomal damage or evidence of increased occurrence of mutations, that may have developed in the course of employment due to exposure to toxic substances in the workplace, in order to identify, evaluate, respond to the effects of, or control adverse environmental exposures in the workplace.

(c) Genetic services means health services, including genetic tests, provided to obtain, assess, or interpret genetic information for diagnostic or therapeutic purposes, or for genetic education or counseling.

(d) Genetic test means the analysis of human DNA, RNA, chromosomes, proteins, or certain metabolites in order to detect disease-related genotypes or mutations. Tests for metabolites fall within the definition of ''genetic tests'' when an excess or deficiency of the metabolites indicates the presence of a mutation or mutations. The conducting of metabolic tests by a department or agency that are not intended to reveal the presence of a mutation shall not be considered a violation of this order, regardless of the results of the tests. Test results revealing a mutation shall, however, be subject to the provisions of this order.

(e) Protected genetic information.

(1) In general, protected genetic information means:

(A) information about an individual's genetic tests;

(B) information about the genetic tests of an individual's family members; or

(C) information about the occurrence of a disease, or medical condition or disorder in family members of the individual.

(2) Information about an individual's current health status (including information about sex, age, physical exams, and chemical, blood, or urine analyses) is not protected genetic information unless it is described in subparagraph (1).

1–202. In discharging their responsibilities under this order, departments and agencies shall implement the following nondiscrimination requirements.

(a) The employing department or agency shall not discharge, fail or refuse to hire, or otherwise discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment of that employee, because of protected genetic information with respect to the employee, or because of information about a request for or the receipt of genetic services by such employee.

(b) The employing department or agency shall not limit, segregate, or classify employees in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect that employee's status, because of protected genetic information with respect to the employee or because of information about a request for or the receipt of genetic services by such employee.

(c) The employing department or agency shall not request, require, collect, or purchase protected genetic information with respect to an employee, or information about a request for or the receipt of genetic services by such employee.

(d) The employing department or agency shall not disclose protected genetic information with respect to an employee, or information about a request for or the receipt of genetic services by an employee except:

(1) to the employee who is the subject of the information, at his or her request;

(2) to an occupational or other health researcher, if the research conducted complies with the regulations and protections provided for under part 46 of title 45, of the Code of Federal Regulations;

(3) if required by a Federal statute, congressional subpoena, or an order issued by a court of competent jurisdiction, except that if the subpoena or court order was secured without the knowledge of the individual to whom the information refers, the employer shall provide the individual with adequate notice to challenge the subpoena or court order, unless the subpoena or court order also imposes confidentiality requirements; or

(4) to executive branch officials investigating compliance with this order, if the information is relevant to the investigation.

(e) The employing department or agency shall not maintain protected genetic information or information about a request for or the receipt of genetic services in general personnel files; such information shall be treated as confidential medical records and kept separate from personnel files.

**Sec. 3.** *Exceptions.*

1–301. The following exceptions shall apply to the nondiscrimination requirements set forth in section 1–202.

(a) The employing department or agency may request or require information defined in section 1–201(e)(1)(C) with respect to an applicant who has been given a conditional offer of employment or to an employee if:

(1) the request or requirement is consistent with the Rehabilitation Act and other applicable law;

(2) the information obtained is to be used exclusively to assess whether further medical evaluation is needed to diagnose a current disease, or medical condition or disorder, or under the terms of section 1–301(b) of this order;

(3) such current disease, or medical condition or disorder could prevent the applicant or employee from performing the essential functions of the position held or desired; and

(4) the information defined in section 1–201(e)(1)(C) of this order will not be disclosed to persons other than medical personnel involved in or responsible for assessing whether further medical evaluation is needed to diagnose a current disease, or medical condition or disorder, or under the terms of section 1–301(b) of this order.

(b) The employing department or agency may request, collect, or purchase protected genetic information with respect to an employee, or any information about a request for or receipt of genetic services by such employee if:

(1) the employee uses genetic or health care services provided by the employer (other than use pursuant to section 1–301(a) of this order);

(2) the employee who uses the genetic or health care services has provided prior knowing, voluntary, and written authorization to the employer to collect protected genetic information;

(3) the person who performs the genetic or health care services does not disclose protected genetic information to anyone except to the employee who uses the services for treatment of the individual; pursuant to section 1–202(d) of this order; for program evaluation or assessment; for compiling and analyzing information in anticipation of or for use in a civil or criminal legal proceeding; or, for payment or accounting purposes, to verify that the service was performed (but in such cases the genetic information itself cannot be disclosed);

(4) such information is not used in violation of sections 1–202(a) or 1–202(b) of this order.

(c) The employing department or agency may collect protected genetic information with respect to an employee if the requirements of part 46 of title 45 of the Code of Federal Regulations are met.

(d) Genetic monitoring of biological effects of toxic substances in the workplace shall be permitted if all of the following conditions are met:

(1) the employee has provided prior, knowing, voluntary, and written authorization;

(2) the employee is notified when the results of the monitoring are available and, at that time, the employer makes any protected genetic information that may have been acquired during the monitoring available to the employee and informs the employee how to obtain such information;

(3) the monitoring conforms to any genetic monitoring regulations that may be promulgated by the Secretary of Labor; and

(4) the employer, excluding any licensed health care professionals that are involved in the genetic monitoring program, receives results of the monitoring only in aggregate terms that do not disclose the identity of specific employees.

(e) This order does not limit the statutory authority of a Federal department or agency to:

(1) promulgate or enforce workplace safety and health laws and regulations;

(2) conduct or sponsor occupational or other health research that is conducted in compliance with regulations at part 46 of title 45, of the Code of Federal Regulations; or

(3) collect protected genetic information as a part of a lawful program, the primary purpose of which is to carry out identification purposes.

**Sec. 4.** *Miscellaneous.*

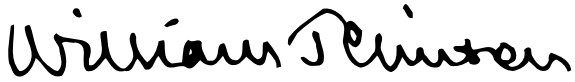
1–401. The head of each department and agency shall take appropriate action to disseminate this policy and, to this end, shall designate a high level official responsible for carrying out its responsibilities under this order.

1–402. Nothing in this order shall be construed to:

(a) limit the rights or protections of an individual under the Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), the Privacy Act of 1974 (5 U.S.C. 552a), or other applicable law; or

(b) require specific benefits for an employee or dependent under the Federal Employees Health Benefits Program or similar program.

1–403. This order clarifies and makes uniform Administration policy and does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its officers or employees, or any other person.



THE WHITE HOUSE,
*February 8, 2000.*

[FR Doc. 00–3331
Filed 2–9–00; 8:45 am]
Billing code 3195–01–P

# Reader Aids

**Federal Register**

Vol. 65, No. 28

Thursday, February 10, 2000

## CUSTOMER SERVICE AND INFORMATION

**Federal Register/Code of Federal Regulations**

| | |
|---|---|
| General Information, indexes and other finding aids | **202–523–5227** |
| **Laws** | **523–5227** |

**Presidential Documents**

| | |
|---|---|
| Executive orders and proclamations | **523–5227** |
| **The United States Government Manual** | **523–5227** |

**Other Services**

| | |
|---|---|
| Electronic and on-line services (voice) | **523–4534** |
| Privacy Act Compilation | **523–3187** |
| Public Laws Update Service (numbers, dates, etc.) | **523–6641** |
| TTY for the deaf-and-hard-of-hearing | **523–5229** |

## ELECTRONIC RESEARCH

**World Wide Web**

Full text of the daily Federal Register, CFR and other publications:

**http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

**http://www.nara.gov/fedreg**

**E-mail**

**PENS** (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

**listserv@www.gsa.gov**

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

**Reference questions.** Send questions and comments about the Federal Register system to:

**info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

## FEDERAL REGISTER PAGES AND DATE, FEBRUARY

4753–4864 ..... 1
4865–5218 ..... 2
5219–5406 ..... 3
5407–5732 ..... 4
5733–5992 ..... 7
5993–6304 ..... 8
6305–6522 ..... 9
6523–6880 ..... 10

## CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
7270 ..... 5217
7271 ..... 5219
**Executive Orders:**
13145 ..... 6523
**Administrative Orders:**
Directive of January 31, 2000 ..... 5729
Directive of January 31, 2000 ..... 5731
Presidential Determinations:
No. 2000–10 of January 31, 2000 ..... 5407
No. 2000–11 of February 1, 2000 ..... 6523

**5 CFR**

581 ..... 4753
582 ..... 4753
1201 ..... 5409
1208 ..... 5410
**Proposed Rules:**
630 ..... 6339

**7 CFR**

1 ..... 5414
301 ..... 4865, 5221, 6525
505 ..... 6526
905 ..... 5733
916 ..... 6305
917 ..... 6305
944 ..... 5733
955 ..... 5736
981 ..... 4867
985 ..... 6308, 6528
3418 ..... 5993
**Proposed Rules:**
54 ..... 4780
245 ..... 5791
457 ..... 6033
718 ..... 5444
989 ..... 6341

**9 CFR**

1 ..... 6312
77 ..... 5998
**Proposed Rules:**
94 ..... 6040

**10 CFR**

708 ..... 6314
**Proposed Rules:**
50 ..... 6044

**12 CFR**

201 ..... 6531
272 ..... 6319
936 ..... 5738
960 ..... 5418
**Proposed Rules:**
Ch. I ..... 4895
611 ..... 5286
951 ..... 5447
997 ..... 5447

**14 CFR**

39 ..... 4754, 4755, 4757, 4760, 4761, 4870, 5222, 5228, 5229, 5235, 5238, 5241, 5243, 5419, 5421, 5422, 5425, 5427, 5428, 5739, 5741, 5743, 5745, 5746, 5749, 5752, 5754, 5757, 5759, 5761, 6444, 6533, 6534
71 ..... 4871, 4872, 4873, 4874, 5762, 5763, 5764, 5765, 5767, 5768, 5769, 5770, 5999, 6000, 6320, 6535
91 ..... 5396, 5936
93 ..... 5396
97 ..... 4875, 4877, 4879, 6321, 6324
121 ..... 5396
135 ..... 5396
200 ..... 6446
211 ..... 6446
213 ..... 6446
216 ..... 6446
291 ..... 6446
300 ..... 6446
302 ..... 6446
303 ..... 6446
305 ..... 6446
377 ..... 6446
385 ..... 6446
399 ..... 6446
**Proposed Rules:**
21 ..... 5224
25 ..... 5024
39 ..... 4781, 4782, 4784, 4786, 4788, 4790, 4792, 4793, 4897, 4900, 4902, 4904, 4906, 5453, 5455, 5456, 5459, 6046, 6563, 6565, 6566
71 ..... 4910, 4911, 5804
91 ..... 5024
108 ..... 4912
109 ..... 4912
111 ..... 4912
121 ..... 4912
125 ..... 5024
129 ..... 4912
191 ..... 4912

**17 CFR**

1 ..... 6569
232 ..... 6444

**18 CFR**

**Proposed Rules:**
270 ..... 6048
375 ..... 6048
381 ..... 6048

382.....5289

**19 CFR**

132.....5430
163.....5430
**Proposed Rules:**
12.....6062
113.....6062

**21 CFR**

876.....4881
1308.....5024
**Proposed Rules:**
1310.....4913

**23 CFR**

**Proposed Rules:**
645.....6344

**24 CFR**

206.....5406

**26 CFR**

1 .....5432, 5772, 5775, 5777, 6001
35.....6001
602 .....5775, 5777, 6001
**Proposed Rules:**
1 .....5805, 5807, 6065, 6090
602.....5807

**27 CFR**

**Proposed Rules:**
9.....5828

**29 CFR**

**Proposed Rules:**
1910.....4795

**30 CFR**

250.....6536
938.....4882
946.....5782

**33 CFR**

117 .....5785, 6325, 6326
**Proposed Rules:**
100.....5833
110.....5833
165.....5833

**34 CFR**

676.....4886
**Proposed Rules:**
694.....5844

**36 CFR**

**Proposed Rules:**
217.....5462
219.....5462
242.....5196
1234.....5295

**37 CFR**

**Proposed Rules:**
201.....6573

**38 CFR**

21.....5785
**Proposed Rules:**
21.....4914

**39 CFR**

111.....4864, 5789
3001.....6536
**Proposed Rules:**
111.....4918

**40 CFR**

52 .....4887, 5245, 5252, 5259, 5262, 5264, 5433, 6327
62.....6008
80.....6698
85.....6698
86.....6698
300.....5435
761.....5442
**Proposed Rules:**
52 .....5296, 5297, 5298, 5462, 5463, 6091
62.....6102
130.....4919
300.....5465, 5844

**42 CFR**

412.....5933
413.....5933
483.....5933
485.....5933
**Proposed Rules:**
36.....4797

**43 CFR**

11.....6012
**Proposed Rules:**
2560.....6259

**44 CFR**

65 .....6014, 6018, 6023, 6025
67 28, 6031
**Proposed Rules:**
67.....6103, 6105

**45 CFR**

1303.....4764
**Proposed Rules:**
96.....5471

**46 CFR**

2.....6494
30.....6494
31.....6494
52.....6494
61.....6494
71.....6494
90.....6494
91.....6494
98.....6494
107.....6494
110.....6494
114.....6494
115.....6494
125.....6494
126.....6494
132.....6494
133.....6494
134.....6494
167.....6494
169.....6494
175.....6494
176.....6494
188.....6494
189.....6494
195.....6494
199.....6494
**Proposed Rules:**
15.....6350
110.....6111
111.....6111

**47 CFR**

Ch. I.....5267
1.....4891
73.....6544
97.....6548
**Proposed Rules:**
1.....6113
73 .....4798, 4799, 4923
76.....4927
95.....4935

**48 CFR**

Ch. 2.....6554
201.....6551
203.....4864
209.....4864
211.....6553
212.....6553
219.....6554
225 .....4864, 6551, 6553
249.....4864
252.....6553
2432.....6444
9903.....5990
**Proposed Rules:**
30.....4940
215.....6574
252.....6574

**49 CFR**

195.....4770
571.....6327
**Proposed Rules:**
567.....5847
568.....5847

**50 CFR**

17 .....4770, 52680, 6332
18.....52750
679 .....4891, 4892, 4893, 5278, 5283, 5284, 5285, 5442, 6561
**Proposed Rules:**
17 .....4940, 5298, 5474, 5848, 5946, 6114
100.....5196
622.....5299
648 .....4941, 5486, 6575
660.....6351, 6577

## REMINDERS

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.

## RULES GOING INTO EFFECT FEBRUARY 10, 2000

**AGRICULTURE DEPARTMENT**
**Agricultural Marketing Service**
Federal Seed Act:
Noxious-weed seeds; prohibition of shipment of agricultural and vegetable seeds containing them; published 1-11-00

**AGRICULTURE DEPARTMENT**
**Animal and Plant Health Inspection Service**
Exportation and importation of animals and animal products:
Pork and pork products
Imports from Sonora and Yucatan, Mexico; published 1-11-00

**COMMERCE DEPARTMENT**
**National Oceanic and Atmospheric Administration**
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pollock; published 2-3-00
Northeastern United States fisheries—
Spiny dogfish; published 1-11-00

**DEFENSE DEPARTMENT**
Acquisition regulations:
Class deviation authority delegation; published 2-10-00
Government-unique specifications and standards; offeror alternatives (OMB Circular A-119); published 2-10-00
Mentor-protege program improvements; published 2-10-00
People's Republic of China; published 2-10-00

**ENVIRONMENTAL PROTECTION AGENCY**
Toxic substances:
Preliminary assessment information and health and safety data reporting—
Nonylphenol ethoxylates added, etc.; published 1-11-00

**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**
Public and Indian housing:
Public Housing Assessment System; amendments; published 1-11-00

**POSTAL RATE COMMISSION**
Practice and procedure:
Proceedings; efficiency and effectiveness improvement; electronic filing, etc.; published 2-10-00

**TRANSPORTATION DEPARTMENT**
**Coast Guard**
Drawbridge operations:
Oregon; published 1-11-00

**TRANSPORTATION DEPARTMENT**
**Federal Aviation Administration**
Airworthiness directives:
Agusta S.p.A.; published 1-26-00
CFE Co.; published 1-6-00

## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**
**Food and Nutrition Service**
Food stamp program:
Personal Responsibility and Work Opportunity Reconcilation Act; implementation—
Personal responsibility provisions; comments due by 2-15-00; published 12-17-99

**AGRICULTURE DEPARTMENT**
**Farm Service Agency**
Program regulations:
Section 502 Guaranteed Rural Housing Program; administration; comments due by 2-14-00; published 12-15-99

**AGRICULTURE DEPARTMENT**
**Rural Business-Cooperative Service**
Program regulations:
Section 502 Guaranteed Rural Housing Program; administration; comments due by 2-14-00; published 12-15-99
Rural Economic Development Loan and Grant Program; comments due by 2-14-00; published 12-15-99

**AGRICULTURE DEPARTMENT**
**Rural Housing Service**
Program regulations:
Section 502 Guaranteed Rural Housing Program; administration; comments due by 2-14-00; published 12-15-99

**AGRICULTURE DEPARTMENT**
**Rural Utilities Service**
Program regulations:
Section 502 Guaranteed Rural Housing Program; administration; comments due by 2-14-00; published 12-15-99
Rural Economic Development Loan and Grant Program; comments due by 2-14-00; published 12-15-99
Telecommunication loans:
Guaranteed and insured loans; post-loan policies and procedures; comments due by 2-14-00; published 12-15-99

**COMMERCE DEPARTMENT**
**National Oceanic and Atmospheric Administration**
Endangered and threatened species:
Gulf of Maine anadromous Atlantic salmon; comments due by 2-15-00; published 11-17-99
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pollock; comments due by 2-14-00; published 12-29-99
Pollock; comments due by 2-17-00; published 2-2-00
Atlantic highly migratory species—
Pelagic longline management; comments due by 2-14-00; published 12-15-99
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish; comments due by 2-15-00; published 12-17-99

**DEFENSE DEPARTMENT**
Acquisition regulations:
Profit policy; comments due by 2-17-00; published 2-10-00

**ENERGY DEPARTMENT**
Nuclear waste repositories:
Yucca Mountain Site, NV; suitability guidelines
Hearings; comments due by 2-14-00; published 12-15-99

**ENERGY DEPARTMENT**
**Energy Efficiency and Renewable Energy Office**
Consumer products; energy conservation program:
Dishwashers; test procedures; comments due by 2-14-00; published 1-13-00

**ENVIRONMENTAL PROTECTION AGENCY**
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 2-18-00; published 1-19-00
Connecticut; comments due by 2-14-00; published 12-16-99
Delaware; comments due by 2-14-00; published 12-16-99
District of Columbia, Maryland, and Virginia; comments due by 2-14-00; published 12-16-99
Florida; comments due by 2-18-00; published 1-19-00
Georgia; comments due by 2-14-00; published 12-16-99
Illinois; comments due by 2-14-00; published 12-16-99
Indiana; comments due by 2-14-00; published 12-16-99
Maryland; comments due by 2-14-00; published 12-16-99
Massachusetts; comments due by 2-14-00; published 12-16-99
New Jersey; comments due by 2-14-00; published 12-16-99
New York; comments due by 2-14-00; published 12-16-99
Pennsylvania; comments due by 2-14-00; published 12-16-99
Tennessee; comments due by 2-18-00; published 1-19-00
Texas; comments due by 2-14-00; published 12-16-99
Wisconsin; comments due by 2-14-00; published 12-16-99
Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
Indiana; comments due by 2-18-00; published 1-19-00
Hazardous waste program authorizations:
North Dakota; comments due by 2-18-00; published 1-19-00

Hazardous waste:
Cement kiln dust; management standards; comments due by 2-17-00; published 10-28-99
Identification and listing—
Mixture and derived-from rules; treatment, storage or disposal; comments due by 2-17-00; published 11-19-99
Mixed waste; storage, treatment, transportation, and disposal; comments due by 2-17-00; published 11-19-99
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Metsulfuron methyl; comments due by 2-14-00; published 12-16-99
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 2-18-00; published 1-19-00
National priorities list update; comments due by 2-18-00; published 1-19-00
National priorities list update; comments due by 2-18-00; published 1-19-00
National priorities list update; comments due by 2-18-00; published 1-19-00

**GENERAL SERVICES ADMINISTRATION**

Federal Acquisition Regulation (FAR):
Multiple-award contracts competition; comments due by 2-14-00; published 12-15-99

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Food for human consumption:
Food labeling—
Trans fatty acids in nutrition labeling, nutrient content claims, and health claims; comments due by 2-15-00; published 11-17-99

**HEALTH AND HUMAN SERVICES DEPARTMENT**

Health plans, health care clearinghouses, and health care providers:
Administrative data standards and related requirements—
Individually identifiable health information; privacy standards; comments due by 2-17-00; published 12-15-99

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

Endangered and threatened species:
Cowhead Lake tui chub; comments due by 2-16-00; published 2-2-00
Critical habitat designations—
Spikedace and loach minnow; comments due by 2-14-00; published 1-12-00
Gulf of Maine anadromous Atlantic salmon; comments due by 2-15-00; published 11-17-99

**INTERIOR DEPARTMENT**

**Surface Mining Reclamation and Enforcement Office**

Permanent program and abandoned mine land reclamation plan submissions:
Utah; comments due by 2-14-00; published 1-14-00

**LABOR DEPARTMENT**

**Pension and Welfare Benefits Administration**

Group health plans; access, portability, and renewability requirements:
National Medical Support Notice; child support orders; health care coverage provisions; comments due by 2-14-00; published 11-15-99

**LIBRARY OF CONGRESS**

**Copyright Office, Library of Congress**

Digital Millennium Copyright Act:
Circumvention of copyright protection systems for access control technologies; exemption to prohibition; comments due by 2-17-00; published 2-10-00

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

Acquisition regulations:
Elements; elimination as category in evaluation; comments due by 2-14-00; published 12-16-99
Federal Acquisition Regulation (FAR):
Multiple-award contracts competition; comments due by 2-14-00; published 12-15-99

**NORTHEAST DAIRY COMPACT COMMISSION**

Over-order price regulations:
Technical amendments; hearing; comments due by 2-16-00; published 1-12-00

**NUCLEAR REGULATORY COMMISSION**

Production and utilization facilities; domestic licensing:
Antitrust review authority; clarification; comments due by 2-15-00; published 1-21-00
Rulemaking petitions:
Quigley, Barry; comments due by 2-14-00; published 12-1-99

**SECURITIES AND EXCHANGE COMMISSION**

Regulatory Flexibility Act:
Rules to be reviewed; list; comments due by 2-15-00; published 1-21-00

**TRANSPORTATION DEPARTMENT**

**Coast Guard**

Merchant marine officers and seamen:
Licensing and manning for officers of towing vehicles; comments due by 2-17-00; published 11-19-99
Ports and waterways safety:
Puget Sound, WA; vessel traffic service; radio frequencies; comments due by 2-14-00; published 12-14-99

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:
Agusta S.p.A.; comments due by 2-18-00; published 12-20-99
Bell; comments due by 2-14-00; published 12-16-99
Boeing; comments due by 2-14-00; published 12-29-99
Bombardier; comments due by 2-14-00; published 1-14-00
Cessna; comments due by 2-14-00; published 12-29-99
Fokker; comments due by 2-14-00; published 1-14-00
Learjet; comments due by 2-14-00; published 12-29-99
McDonnell Douglas; comments due by 2-18-00; published 12-20-99
New Piper Aircraft, Inc.; comments due by 2-17-00; published 12-14-99
Transport airplanes equipped with Mode ''C'' transponder(s) with single Gillham code altitude input; comments due by 2-14-00; published 12-16-99
Class E airspace; comments due by 2-16-00; published 1-12-00

**TRANSPORTATION DEPARTMENT**

**Federal Railroad Administration**

Railroad safety enforcement procedures:
Light rail transit operations on general railroad system; safety jurisdiction; joint agency policy statement with Federal Transit Administration; comments due by 2-14-00; published 1-12-00

**TRANSPORTATION DEPARTMENT**

**National Highway Traffic Safety Administration**

Motor vehicle safety standards:
Interior trunk releases; comments due by 2-15-00; published 12-17-99

**TREASURY DEPARTMENT**

**Comptroller of the Currency**

Corporate activities:
National banks; financial subsidiaries and operating subsidiaries; comments due by 2-14-00; published 1-20-00

**TREASURY DEPARTMENT**

**Internal Revenue Service**

Estate and gift taxes:
Generation-skipping transfer tax issues; comments due by 2-16-00; published 11-18-99

## LIST OF PUBLIC LAWS

**Note:** The List of Public Laws for the first session of the 106th Congress has been completed and will resume when bills are enacted into law during the second session of the 106th Congress, which convenes on January 24, 2000.

A Cumulative List of Public Laws for the first session of the 106th Congress will be published in the **Federal Register** on December 30, 1999.

**Last List December 21, 1999**