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Friday
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Alcohol, Tobacco and Firearms Bureau

Banks, Banking
Federal Deposit Insurance Corporation

Coal
Land Management Bureau

Employee Benefit Plans
Pension Benefit Guaranty Corporation

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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.
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 85-008]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the regulations govering the interstate movement of cattle because of brucellosis by including the following Counties in Montana in the portion of Montana designated as Class Free: Lake, Lincoln, Mineral, Missoula, Ravalli, and Sanders. This rule is necessary because it has been determined that these Counties together with the previously designated Class Free area of Montana meet the standards for Class Free status. The rule relieves certain restrictions on the interstate movement of cattle from certain Counties in Montana.

EFFECTIVE DATE: March 15, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas J. Holt, Cattle Diseases Staff, VS, APHIS, USDA, Room 817, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8711.

SUPPLEMENTARY INFORMATION:

Background

A document published in the **Federal Register** on November 15, 1984 (49 FR 45110-45111), amended the brucellosis regulations in 9 CFR Part 78 on an interim basis by including the following Counties in Montana in the portion of Montana designated as Class Free: Lake, Lincoln, Mineral, Missoula, Ravalli, and Sanders. With the changes made by the interim rule the portion of Montana designated as Class Free consists of all Counties in Montana other than Flathead County. Flathead County remains designated as Class A. The interim rule, which became effective November 15, 1984, relieved certain restrictions on the interstate movement of cattle from an area in Montana.

Comments were solicited for 60 days after publication of the interim rule. No comments were received. The factual situation which was set forth in the document of November 15, 1984, still provides a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

This rule has been reviewed in accordance with Executive Order 12291 and has been determined to be not a major rule. The Department has determined that this rule will not have a significant annual effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Changing the status of a portion of the State of Montana reduces testing requirements on the interstate movement of certain cattle. Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by the changes in status. Also, cattle from Certified Brucellosis-Free Herds moving interstate are not affected by these changes in status. It has been determined that the changes in brucellosis status made by this rule will not affect marketing patterns and will not have a significant economic impact on those persons affected by this document.

Therefore, 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 9 CFR Part 78

Animal Diseases, Cattle, Hogs, Quarantine, Transportation, Brucellosis.

PART 78—[AMENDED]

Accordingly, this document affirms the change in the status of Lake, Lincoln, Mineral, Missoula, Ravalli, and Sanders counties in Montana from Class A to Class Free (published at 49 FR 45110-45111 on November 15, 1984).

Authority: Secs. 4, 5, and 6, 23 Stat. 32, as amended, secs. 1 and 2, 32 Stat. 791-792, as amended; sec. 3, 33, Stat. 1265, as amended; sec. 2, 65 Stat. 693, and secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111-113, 114a-1, 115, 120, 121, 125, 134b, 134f; 7 CFR 2.17, 2.51, 371.2(d).

Done at Washington, D.C., this 11th day of March, 1985.

J.K. Atwell,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-6213 Filed 3-14-85; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 332 and 337

Exemption From Provisions Prohibiting a Bank From Guaranteeing or Acting as Surety for the Obligations of Others

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: The FDIC is amending Part 332 of its regulations ("Powers Inconsistent With Purposes of Federal Deposit Insurance Law") which formerly prohibited an insured nonmember bank from guaranteeing the obligations of third parties. Specifically, this amendment is in the form of an exemption designed to allow banks to do two things: (1) to issue check guaranty cards, and (2) to sponsor customers in credit card agreements with other banks.

The exemption will allow banks to enter into these undertakings as long as they meet certain criteria pertaining to safety and soundness, in conformance

with Part 337 of the FDIC regulations ("Unsafe and Unsound Banking Practices"). The language of these two expemptions is broad enough to include arrangements that have similar characteristics, but have been termed differently.

EFFECTIVE DATE: April 15, 1985.

FOR FURTHER INFORMATION CONTACT: Fredric H. Karr, Attorney, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429, (202) 389–4171.

SUPPLEMENTARY INFORMATION: The purpose of these amendments is to allow insured nonmember banks to engage in certain practices which technically are in violation of the FDIC's existing regulations.

The first practice involves so-called check guaranty programs. These programs either can be created by the banks themselves, or else the banks can purchase the program through a marketing agreement with an independent company. However, regardless of which program the bank chooses, its characteristics are basically the same. The major feature of these check guaranty card programs is that the retailer to whom the card is presented has a legal right to rely on the bank's assurances that the customer has sufficient funds in his/her account to cover a check, and checks received in reliance upon such a guarantee will be paid by the depository bank without regard to the balance on deposit in the account.

The FDIC is of the opinion that these "guarantees" of customer credit either are prohibited outright by 12 CFR 332.1(d), which enjoins a bank from guaranteeing or becoming a surety upon the obligations of other or, at the very least, are similar in nature to standby letters of credit and are subject to the restrictions of 12 CFR 337.2.

The second practice is the sponsorship by the bank of one of its customers in the credit card program offered by another bank. In this type of arrangement, a bank issues a credit card to a customer of the sponsoring bank. In turn, the sponsoring bank assumes all the responsibility in case of a default by the cardholder. The sponsoring bank lends its credit rating to its customers, while the correspondent bank does the billing and receives the interest. Like the check guaranty cards, this practice also violates 12 CFR 3321(d).

The FDIC had considered this issue of check guaranty cards and credit cards sponsorship in the past. In June 1981, the FDIC published for public comment a proposal which would have allowed insured nonmember banks to sponsor credit card agreements with other banks and to issue check guaranty cards. 46 FR 31018–19 (1981). However, since no formal action was taken on this measure for over two and one-half years, the FDIC stated on March 30, 1984 that it was withdrawing this proposal at that time because of its stale date (49 FR 12707 (1974)). However, the FDIC added that it was then considering a new proposal which would have the same effect as the 1981 proposal and which reflected commentary received as a result of the earlier proposal. The instant proposal so reflects this latter statement by the FDIC.

The FDIC published for comment in the **Federal Register** of August 24, 1984 (49 FR 33690–92) proposed exemptions to these prohibitions in Parts 332 and 337 of its regulations for check guaranty cards and customer-sponsored credit card accounts. Concerning check guaranty cards, the FDIC stated that it was of the opinion that these "guarantees" actually represent small risk to the safety and soundness of the bank, since the low maximum limits typically imposed by the banks on the card make it fairly diffficult for a cardholder to write enough checks to amass large amounts of debt. Also, the verification procedures banks typically elect to impose should minimize the bank's exposure. As for the customer-sponsored credit card accounts, the proposed exemption attempted to minimize the exposure on the part of the sponsoring bank by requiring credit checks on each applicant by the sponsoring bank prior to the issuance of the guarantee to the card-issuing bank.

The FDIC received a total of 37 comments on these proposed exemptions. Concerning check guaranty cards, 31 were in favor, two were opposed, and four offered no opinion on this particular exemption, while as for the customer sponsored credit cards in correspondent banks, 29 were is favor, three were opposed, and five offered no opinion on this particular exemption.

Taken together, the reasons given in support of both of the proposed exemptions include increased service benefits to consumers; the adoption of such services will not bring any significant risks or monetary costs to banks, especially in light of the verification procedures written into the proposed regulation; insofar as the independent bank community is concerned, the proposed bank services are essential to its survival; there are no reasons not to place state insured nonmember banks in parity with national banks and member banks which can now offer both of these services; and the existing prohibitions are inconsistent with the purposes of the Federal Deposit Insurance Act. Those reasons forwarded against both of the proposed exemptions include, decisions on these services should be left to the discretion of the individual banks and the regulators' focus should intead be on closing the non-bank bank loopholes.

Based upon all of the comments as well as the reasons forwarded by the FDIC in support of these proposed exemptions, the FDIC will adopt these proposals as written. In addition, in the **Federal Register** notice of August 24, 1984, the FDIC also sought public comment on whether Part 332 is even necessary at all and hence should be revoked. Two reasons given by the FDIC in supporting total revocation were that adoption of these proposals would mean still other exceptions that would encompass the general prohibitions in Part 332 and the general atmosphere in the 1980's of the deregulation of banking.

Of the 37 comments submitted concerning the proposed amendments to Parts 332 and 337 of the regulations, eight specifically addressed the issue of the total revocation of Part 332, with three being in favor of revocation while five were opposed to revocation.

Those comments favoring revocation mentioned the general deregulation of banking and hence the need for revocation; the existing prohibitions are inconsistent with the purposes of the Federal Deposit Insurance Act; and the prohibition of certain activities by banks, rather than being prohibited by the FDIC's regulations, should instead be left to the states. Those comments arguing for retention of Part 332 stated that there should be orderly deregulation and not piecemeal deregulations, which is what revocation of Part 332 would represent; repeal of Part 332 could lead to more state laws as well as abuses by banks of their powers as lenders; total revocation would be inconsistent with the purposes of the Federal Deposit Insurance Act; and revocation is premature at the present time.

However, because the Board has proposed a broad, general revision to Part 332 (49 FR 48552–64 (1984)), the issue of the deletion of the existing prohibitions contained in Part 332 will not be addressed at this time.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board, in proposing the amendment, certified that the proposed amendments would not have a significant economic impact on a substantial number of small entities

because they do not impose mandatory requirements on banks, but merely authorize a practice presently prohibited, and facilitate competition with national and state member banks. The ability to sponsor customers for participation in credit card programs of other banks provides a method for small banks to provide a service to their customers that they otherwise might not be able to serve.

List of Subjects in 12 CFR Parts 332 and 337

Banks, banking, Credit, State nonmember banks.

PART 332—POWERS INCONSISTENT WITH PURPOSES OF FEDERAL DEPOSIT INSURANCE LAW

12 CFR Part 332 is amended as follows:

1. The authority citation for Part 332 reads as follows:

Authority: Secs. 6, 9, 64 Stat. 876, 881; 12 U.S.C. 1816, 1819.

2. A new § 332.3 is added to read as follows:

§ 332.3 Exemption.

Check guaranty card programs, customer-sponsored credit card programs, and similar arrangements in which a bank undertakes to guarantee the obligations of individuals who are its retail banking deposit customers are exempted from § 332.1 of this subchapter: *Provided, however,* That the bank should establish the creditworthiness of the individual before undertaking to guarantee his/her obligations and that any such arrangement to which a bank's principal shareholders, directors, or executive officers are a party be in compliance with applicable provisions of Federal Reserve Regulation O (12 CFR Part 215).

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

12 CFR Part 337 is amended as follows:

3. The authority citation for Part 337 reads as follows:

Authority: Sec. 9, 64 Stat. 881–882, 12 U.S.C. 1819; sec. 18(j)(2), 92 Stat. 3664, 12 U.S.C. 1828(j)(2); sec. 442, 96 Stat. 1469, Pub. L. 97–320.

4. A new § 337.5 is added to read as follows:

§ 337.5 Exemption.

Check guaranty card programs, customer-sponsored credit card programs, and similar arrangements in which a bank undertakes to guarantee the obligations of individuals who are its retail banking deposit customers are exempted from § 337.2: *Provided, however,* That the bank establishes the creditworthiness of the individual before undertaking to guarantee his/her obligations and that any such arrangement to which a bank's principal shareholders, directors, or executive officers are a party be in compliance with applicable provisions of Federal Reserve Regulation O (12 CFR Part 215).

By Order of the Board of Directors, March 11, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–6216 Filed 3–14–85; 8:45 am]

BILLING CODE 6714–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Definition of Small Business for Services and Telephone Communications

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This rule makes final three interim emergency rules issued by SBA earlier last year concerning the size standards for several industries.

EFFECTIVE DATE: See table below.

FOR FURTHER INFORMATION CONTACT: Andrew A. Canellas (202) 653–6373.

SUPPLEMENTARY INFORMATION:

Industries covered	SIC	Effective date	Citation
Business and secretarial schools.	8244	July 9, 1984	49 FR 27924.
Vocational schools.	9249	do	Do.
Job training and vocational rehabilitation services.	8331	do	Do.
Child care services.	8351	do	Do.
Telephone communication.	4811	do	Do.
Individual and family social services.	8321	Aug. 30, 1984	49 FR 34346.
Residual size standard for services not listed.	Div. I	Oct. 12, 1984	49 FR 39996.

Size Standards were established on an interim basis for the above industries at $3.5 million, except for telephone communications, which was set at 1,500 employees. The residual size standard for services was also established at $3.5 million.

These industries had not been given size standards in the general revision of size standards which occurred on February 9, 1984 (49 FR 5024), because there was no perceived need for them at the time. They were established on an interim basis to facilitate SBA operations which otherwise would have been disrupted due to lack of a size standard. The levels of $3.5 million and, for telephone, 1,500 employees were chosen in recognition of the structures of these industries, because $3.5 million is commonly used in services, and because 1,500 employees is the maximum or ceiling size standard used at SBA.

SBA received two comments on the July 9, 1984, rule. One was from a group identified as representing several nonprofit voluntary organizations. They feared that the establishment of size standards for job training and child care services was a signal that SBA would be increasing assistance to privately owned for-profit firms in these industries. Furthermore, they viewed the $3.5 million size standard as too inclusive of the larger firms in these industries, and that such firms, if granted SBA financial or procurement assistance, would come to dominate these industries, an anticompetitive result. The group advocated a lower size standard.

The second commenter was concerned that organizations applying for Handicapped Assistance Loans would have to meet the size standard for these industries. Such organizations, however, do not have to conform to size standards. This is stated elsewhere in SBA's lending regulations; it is unnecessary to repeat the exemption in the size regulations.

The August 30, 1984, rule elicited one comment. This comment was from the same nonprofit group which commented on the previous rule. They questioned the need for a size standard for social services. The commenters reiterated their view that $3.5 million was too high a size standard because it would include virtually all firms in the social services industry and, thus, make the larger firms eligible for existing SBA assistance. They also pointed out that (under already existing SBA regulations) nonprofit organizations are not eligible to compete on Federal contracts set aside for small business. This eliminates a substantial portion of the industry from bidding and could decrease competition and quality, they reason. The commenter urged that nonprofit organizations be allowed to bid, and that the size standard if adopted be lowered.

No comments were received concerning the October 12, 1984, rule on a residual size standard for services.

With respect to those comments, SBA's view is that, because nonprofit organizations receive certain other governmental benefits which no for-profit firm may receive, it is unfair to allow nonprofit organizations to compete against for-profit small business in set-aside procurements. The procurement policy regarding nonprofits is not new to the present rule. It has been a longstanding policy which predates both the present rule and the general revision of size standards which took place on February 9, 1984.

Also, the establishment of size standards for these industries is not new. Prior to February revision, these industries had been covered under a size standard of $2 million. This final rule restores them. The size standard of $3.5 million was selected because it is the lowest generally used size standard in services, and because it is a floor below which SBA believes all business, regardless of industry, should be considered small. Consequently, no changes are made in this final rule from the size standards set forth in the three interim emergency rules.

SBA certifies that this final rule is not a major rule within the meaning of Executive Order 12291. Each of these size standards was established to facilitate the processing of SBA financial assistance for specific individual loan guarantees. SBA does not anticipate frequent use of these size standards on an annual basis. Consequently, this rule is not likely to have an annual economic impact exceeding $100 million. Similary, this regulation is not likely to result in a major increase in costs or prices or have a significant adverse effect on the United States economy.

SBA also certifies that this final rule will not impose any reporting or recordkeeping requirements which are subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35. This rule may, however, 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.* Consequently, SBA offers the following final regulatory flexibility analysis:

1. This final rule is necessary because no permanent size standards presently exist for these stated industries and size standards are needed to ensure that otherwise eligible businesses are afforded financial and procurement assistance. SBA is establishing a permanent general size standard applicable to those industries which do not have specific size standards in services because of the administrative complexity of issuing rules piecemeal in the **Federal Register** and because of the lack of size standards in various service industries. A residual size standard will, therefore, reduce the need for separate **Federal Register** notices to deal with those activities which presently lack size standards and those activities in which a need arises for a size standard in the future. The legal basis of this final rule is section 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6).

2. A summary of the issues raised by public comments and SBA's assessment of such issues appears above in the Supplementary Information.

3. There are no significant alternatives to the final rule which are consistent with the stated objectives and which would minimize any significant economic impact of the rule on small entities.

List of Subjects in 13 CFR Part 121

Small business, Standard Industrial Classification Codes.

PART 121—[AMENDED]

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6), SBA hereby amends Part 121 of Title 13 of the Code of Federal Regulations by adding the following entries to the table in § 121.2(c)(2):

§ 121.2 [Amended]

(c) * * *

(2) * * *

* * * * * *

SIC	Description	Size standards in number of employees or millions of dollars—final rule
	MAJOR GROUP 48—COMMUNICATION	
4811	Telephone Communication (Wire or Radio).	1,500
	MAJOR GROUP 82—EDUCATIONAL SERVICES	
8244	Business and Secretarial Schools	$3.5
8249	Vocational Schools	3.5
	MAJOR GROUP 83—SOCIAL SERVICES	
8321	Individual and Family Social Services.	3.5
8331	Job Training	3.5
8351	Child Care Services	3.5
	DIVISION I—SERVICES	
	* * * * *	

For industries in this division which do not have specific size standards, the size standard is $3.5 million

Dated: January 24, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-6156 Filed 3-14-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 55 and 178

[T.D. ATF-200]

License and Permit Procedures; Firearms and Explosives

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

ACTION: Final rule; Treasury decision.

SUMMARY: This fnal rule amends the regulations to require persons filing applications for, or renewals of, Federal firearms licenses and/or explosives licenses or permits to mail their Federal license or permit applications (with the appropriate fee) to a post office box for processing. This procedure will decrease the time of response to the applicant and reduce the cost to the Government.

EFFECTIVE DATE: April 15, 1985.

FOR FURTHER INFORMATION CONTACT: Henry M. McMahon, Firearms and Explosives Operations Branch, (202) 566-7591.

SUPPLEMENTARY INFORMATION:

Background

The Bureau published a notice of proposed rulemaking on November 13, 1984 (49 FR 44922), requesting comments on changing regulations in 27 CFR Parts 55 and 178 to allow for the use of a post office box to which all applications for, or renewals of, Federal firearms licenses and/or explosives licenses or permits would be sent.

The Firearms regulations under the Gun Control Act of 1968 and the Explosives regulations under Title XI of the Organized Crime Control Act of 1970 currently require a person filing an application for, or a renewal of, a firearms license and/or explosives license or permit to file the application/renewal and the correct license/permit fee through the Director of the Internal Revenue Service Center for the district or region in which the applicant intends to operate. The IRS service center deposits the fees and forwards the application to ATF for processing.

Notice of Proposed Rulemaking

The Bureau published a notice of proposed rulemaking on November 13, 1984 (49 FR 44922), requesting comments on changing regulations in 27 CFR Parts 55 and 178 to allow for the use of a post office box to which all applications for firearms licenses, explosives licenses and permits, and renewals would be

sent. The comment period ended December 13, 1984 with no comments being received.

Regulation Change

This final rule utilizes a post office box deposit system to deposit fees to the U.S. Treasury General Account and direct the application to the ATF Office indicated on the form, on a daily basis.

A study conducted by the Bureau of Government Financial Operations has concluded that this system using the commercially proven, special purpose post office box would reduce cost, cut response time to the applicants, and deliver funds to the U.S. Treasury's account more rapidly than is currently the case.

This Treasury decision changes the regulation to require the use of the post office box indicated on the forms used to make original or renewal applications for Federal firearms or explosives licenses or permits (with the correct fee attached and made payable to the Bureau of Alcohol, Tobacco and Firearms).

The language in the affected sections of the regulations have been revised to delete reference to licensing under the Federal Firearms Act and to state that the required 45 day time period for agency action on an application or renewal begins with the receipt of a perfected application and certification of correct remittance at the ATF Licensing Section as indicated on the form. With respect to obtaining certified copies of licenses and giving notice of a change of location of business premises, the notice proposed to amend these provisions solely to clarify current ATF practices. After internal review and comment on the notice, it was concluded that the proposed changes were unnecessary and that internal instructions could provide any needed clarification. Therefore, changes to these two provisions, §§ 178.52 and 178.95 have been withdrawn.

Drafting Information

The principal author of this final rule is Henry M. McMahon, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 55

Administrative practice and procedure, Authority delegation, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, and Warehouses.

27 CFR Part 178

Administrative practice and procedure, Arms and munitions, Authority delegations, Customs delegations, Customs duties and inspections, Exports, Imports, Military personnel, Penalties, Reporting and recordkeeping requirements, Research, Seizures and forfeitures, and Transportation.

Executive Order 12291

It has been determined that this final rule is not classified as a "major rule" within the meaning of Executive Order 12291 of February 17, 1981 (46 FR 13193), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The notice of proposed rulemaking which resulted in this final rule contained a certification under the provision of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that if promulgated as a final rule, it would not have a significant impact on a substantial number of small entities. Therefore, the requirement contained in the Regulatory Flexibility Act (5 U.S.C. 603, 604) for a final regulatory flexibility analysis does not apply to this final rule.

Authority

Under the authorization contained in 18 U.S.C. 847 (84 Stat. 959), and in 18 U.S.C. 926 (82 Stat. 1226), Title 27 of the Code of Federal Regulations is amended. Section A. Part 55 is amended as follows:

PART 55—COMMERCE IN EXPLOSIVES

Paragraph 1. The table of sections is amended by revising the following heading to read as follows:

Sec.

* * * * *

55.47 Insufficient fee.

* * * * *

§ 55.11 [Amended]

Par. 2. In § 55.11, the definitions for "*District Director*", "*Internal Revenue District*", and "*Service Center Director*" are removed.

§ 55.41 [Amended]

Par. 3. Paragraph (b) of 55.41 is amended by removing the words "the Service Center Director for the internal revenue district in which his business premises are to be located," and inserting, in their place, the words "ATF in accordance with the instructions on the form (see § 55.45)." Paragraph (c) of § 55.41 is amended by removing the words "the Service Center Director for the internal revenue district in which is located his legal residence or principal place of business," and inserting, in their place, the words "ATF in accordance with the instructions on the form (see § 55.45)."

Par. 4. Section 55.45 is revised to read as follows:

§ 55.45 Original license or permit.

(a) Any person who intends to engage in business as an explosive materials importer, manufacturer, or dealer, or who has not timely submitted application for renewal of a previous license issued under this part, shall file with ATF an application for License, Explosives, ATF F 5400.13 with ATF in accordance with the instructions on the form. The application must be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 844(a). The application is to be accompanied by the appropriate fee in the form of a money order or check made payable to the Bureau of Alcohol, Tobacco and Firearms. ATF F 5400.13 may be obtained from any ATF office.

(b) Any person, except as provided in § 55.41(a), who intends to acquire explosive materials from a licensee in a state other than the State in which that person resides, or from a foreign country, or who intends to transport explosive materials in interstate or foreign commerce, or who has not timely submitted application for renewal of a previous permit issued under this part, shall file an application for Permit, Explosives, ATF F 5400.16 with ATF in accordance with the instructions on the form. The application must be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 844(a). The application is to be accompanied by the appropriate fee in the form of a money order or check made payable to the Bureau of Alcohol, Tobacco and Firearms. ATF F 5400.16 may be obtained from any ATF office.

§ 55.46 [Amended]

Par. 5. Section 55.46(a) is amended by removing the words "the Service Center

Director for the internal revenue district in which the business premises are located, or in the case of a permittee, in which is located his legal residence or principal place of business," and inserting, in their place, the words "ATF in accordance with the instructions on the form."

Par. 6. Section 55.47 is revised to read as follows:

§ 55.47 Insufficient fee.

If an application is filed with an insufficient fee, the application and fee submitted will be returned to the applicant.

§ 55.49 [Amended]

Par. 7. Paragraph (c) of § 55.49 is amended by removing the words "by the Service Center Director". Section B. Part 178 is amended as follows.

PART 178—COMMERCE IN FIREARMS AND AMMUNITION

Paragraph 1. The table of sections is amended by revising the following heading to read as follows:

Sec.

* * * * *

178.46 Insufficient fee.

* * * * *

§ 178.11 [Amended]

Par. 2. In § 178.11, the definition for "*District Director*" and "Internal revenue district" are removed.

§ 178.41 [Amended]

Par. 3. Section 178.41, paragraph (b) is amended by removing "the Service Center Director or District Director for the internal revenue district in which his premises are to be located" and inserting, in their place, the words "ATF in accordance with the instructions on the form (see § 178.44)". Paragraph (c) of § 178.41 is amended by replacing "the Service Center Director or District Director for the internal revenue district in which his collection premises are to be located," with "ATF in accordance with the instructions on the form (see § 178.44)".

Par. 4. In § 178.44, paragraph (c) is removed and paragraphs (a) and (b) are revised to read as follows:

§ 178.44 Original License.

(a) Any person who intends to engage in business as a firearms or ammunition importer, manufacturer, or dealer or who has not previously been licensed under the provisions of this part to so engage in business, or who has not timely submitted an application for renewal of the previous license issued under this part, shall file an application for license, Form 7 (Firearms), in duplicate with ATF in accordance with the instructions on the form. The application must be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 924. The application shall be accompanied by the appropriate fee in the form of money order or check made payable to the Bureau of Alcohol, Tobacco and Firearms. ATF Forms 7 (Firearms) may be obtained from any ATF office.

(b) Any person who desires to obtain the privileges granted to a licensed collector under the Act and this part, or who has not timely submitted an application for renewal of the previous license issued under this part, shall file an application, Form 7 (Firearms), in duplicate with ATF in accordance with the instructions on the form. The application must be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 924. The application shall be accompanied by the appropriate fee in the form of a money order or check made payable to the Bureau of Alcohol, Tobacco and Firearms. The Forms 7 (Firearms) may be obtained from any ATF office.

§ 178.45 [Amended]

Par. 5. Section 178.45 is amended by removing the words "District Director for the internal revenue district in which the business or activity is operated," and inserting, in their place, the words "ATF in accordance with the instructions on the form."

Par. 6. Section 178.46 is revised to read as follows:

§ 178.46 Insufficient fee.

If an application is filed with an insufficient fee, the application and any fee submitted will be returned to the applicant.

§ 178.47 [Amended]

Par. 7. In § 178.47, paragraph (a) is amended by removing "internal revenue district," and inserting, in their place, the words "location (state)" and paragraph (c) is amended by removing the words "by the Service Center Director or the District Director".

Signed: February 8, 1985.

Stephen E. Higgins,

Director.

Approved: February 15, 1985.

John M. Walker, Jr.,

Assistant Secretary, (Enforcement and Operations).

[FR Doc. 85-6004 Filed 3-14-85; 8:45 am]

BILLING CODE 4810-31-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Non-Multiemployer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Non-Multiemployer Plans contains the interest rates and factors for the period beginning April 1, 1985. The interest rates and factors are to be used to value benefits provided under terminating non-multiemployer pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974.

The valuation of plan benefits is necessary because, under section 4041 of the Act, the Pension Benefit Guaranty Corporation ("PBGC") and the plan administrator must determine whether a terminating pension plan has sufficient assets to pay all benefits under the plan that are guaranteed by the PBGC under the Title IV plan termination insurance program.

The interest rates and factors set forth in Appendix B to Part 2619 are adjusted periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after April 1, 1985, and will enable the PBGC and plan administrators to value the benefits provided under those plans. These rates and factors will remain in effect until Appendix B of the regulation is again amended.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 611, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, D.C. 20006, 202-254-6476, (202-254-8010 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On January 28, 1981, the PBGC published a final regulation on Valuation of Plan Benefits in Non-multiemployer Plans (46 FR 9492). That regulation, codified at 29 CFR Part 2619 (1984), sets forth the methods for valuing plan benefits of terminating non-multiemployer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* (1976), *as amended.* The regulation contains

formulas for valuing different types of benefits. Appendix B to the regulation sets forth the interest rates and factors that are to be used in the formulas. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

As published in the 1984 edition of 29 CFR, Appendix B of Part 2619 contains interest rates and factors for valuing benefits in plans that terminated during various periods from September 2, 1974 through July 1, 1984. With the exception of the months of September and January, the PBGC has published in the ensuing months new rates and factors for plans terminating during the months of August, 1984 through March, 1985 (49 FR 28551, 49 FR 32573, 49 FR 40161, 49 FR 45129, 49 FR 48691, and 50 FR 6342).

At this time, changes in the financial and annuity markets require an increase in the rates used for valuing benefits. Accordingly, this amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after April 1, 1985, which set reflects an increase of ¼ percent in the interest rate to 9¾ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as PBGC publishes another amendment concerning them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This determination is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions. The PBGC has found that the public interest is best served by issuing the rates and factors on a prospective basis so that plans may be able to calculate the value of plan benefits before submitting a notice of intent to terminate. Also, plans will be able to predict employer liability more accurately prior to plan termination.

Because of the need to provide immediate guidance for the valuation of benefits of plans that will terminate on or after April 1, 1985, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment to the final regulation effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, February 17, 1981, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

PART 2619—[AMENDED]

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

1. The authority citation for Part 2619 reads as follows:

Authority: Secs. 4002(b)(3), 4041(b), 4044, 4062(b)(1)(A), Pub. L. 93–406, 88 Stat. 1004, 1020, 1025, 1029, as amended by secs. 403(1), 403(d), 402(a)(7), Pub. L. 96–364, 94 Stat. 1302, 1301, 1299 (29 U.S.C. 1302, 1341, 1344, 1362).

2. Rate Set 54 of Appendix B is revised and Rate Set 55 of Appendix B is added to read as follows:

Appendix B—Interest Rates and Quantities Used To Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "G_v" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For Plans With a Valuation Date		Immediate annuity rate (percent)	Deferred annuities				
	On or after	And before		k_1	k_2	k_3	n_1	n_2
*	*	*	*	*	*	*	*	
54	3–1–85	4–1–85	9.50	1.0875	1.0750	1.0400	7	8
55	4–1–85		9.75	1.0900	1.0775	1.0400	7	8

Roderick J. O'Neil,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 85–6093 Filed 3–14–85; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 40211–4050]

Atlantic Mackerel, Squid, and Butterfish Fisheries

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

ACTION: Interim rule and request for public comment.

SUMMARY: NOAA issues this interim rule to provide the initial annual specifications for the 1985–1986 fishing year for the Atlantic mackerel fishery. Regulations governing this fishery require that the Secretary of Commerce publish his determination of the initial annual specifications for the current fishing year. This action is intended to promote development of the U.S. Atlantic mackerel fishery and to maintain existing mackerel joint ventures in the new fishing year.

DATES: This notice is effective March 12, 1985. Comments are invited until April 11, 1985.

ADDRESS: Copies of the regulatory flexibility analysis are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617–281–3600, ext. 273.

SUPPLEMENTARY INFORMATION: Implementing regulations of the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) (January 4, 1984, 49 FR 402), stipulate at § 655.22(b) that the Secretary of Commerce (Secretary) will publish a notice specifying the preliminary initial annual amounts of the respective optimum yields (OYs), as well as the amounts for domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), total allowable levels of foreign fishing (TALFFs), and Reserves (if any) for Atlantic mackerel, *Illex* and *Loligo* squids, and butterfish. Procedures for determining the initial annual amounts are found at § 655.21. The Secretary is required to publish this notice by February 1 of each year and to provide for a 30-day comment period on the preliminary specifications.

The Secretary issued a notice on February 19, 1985 (50 FR 6953), informing the public that the preliminary initial annual specifications were postponed until March 14, 1985. The postponement was to allow the Mid-Atlantic and New England Fishery Management Councils and NMFS adequate time to review new information on the domestic harvesting and processing capacity during the upcoming fishing year.

Although the squid and butterfish fisheries information is still being reviewed, the Atlantic mackerel fishery review has been completed. In order not to adversely impact the U.S. and foreign mackerel fisheries by causing fishing to halt when the 1984–1985 fishing year ends on March 31, 1985, the Secretary issues this interim rule to make the initial annual specifications for Atlantic mackerel effective immediately and requests public comment for 30 days. The Secretary will consider all public comments received and will issue notice in the **Federal Register** modifying or leaving unadjusted these 1985–1986 fishing year specifications.

The following table lists the initial annual specifications in metric tons (mt) of the maximum optimum yield (Max OY), allowable catch (AC), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), reserve, and total allowable level foreign fishing (TALFF) for Atlantic mackerel. The FMP allows that if U.S. landings during the year, including amounts authorized for joint ventures, increase above the final initial estimates, DAH and OY may be increased by similar amounts up to the point where OY = AC. TALFF would not change from its value at the beginning of a year as a result of such adjustments to DAH and OY.

INITIAL ANNUAL SPECIFICATIONS FOR FISHING YEAR—APRIL 1, 1985 TO MARCH 31, 1986

[In metric tons (mt)]

Specifications	Atlantic mackerel
Max OY*	225,300
AC	225,300
DAH	*123,200
DAP	13,000
JVP	100,000
Reserve	51,050
TALFF	51,050

* This is the maximum OY as determined by the formula in the FMP.
* Includes 10,200 mt projected recreational catch.

Classification

This action is authorized by 50 CFR Part 655, and complies with E.O. 12291. The Council prepared a regulatory flexibility analysis for the rule which authorized this action (see **ADDRESS** for a copy).

(16 U.S.C. 1801 *et seq.*)

Dated: March 12, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 85–6233 Filed 3–12–85; 4:52 pm]

BILLING CODE 3510-22-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 507]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 270,000 cartons during the period March 17–23, 1985. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

DATES: Effective for the period March 17–23, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on March 5, 1985, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the lemon demand pattern is improved on the larger sizes, steady on the mid sizes, and easy on the smaller sizes of fruit.

It is further found that it is impracticable and contrary to the public interest to give prelimianry notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regualtory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.807 is added as follows:

§ 910.807 Lemon Regulation 507.

The quantity of lemons grown in California and Arizona which may be handled during the period March 17, 1985, through March 23, 1985, is established at 270,000 cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: March 13, 1985.

D.S. Kuryloski,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–6498 Filed 4–14–85; 11:54 am]

BILLING CODE 3410-02-M

Proposed Rules

Federal Register
Vol. 50, No. 51
Friday, March 15, 1985

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

Tobacco Inspection—Growers' Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of referendum.

SUMMARY: This notice announces that a referendum will be conducted by mail during the period of March 25–29, 1985, of producers of flue-cured tobacco who sell their tobacco at auction in Valdosta and Hahira, Georgia, to determine producer approval of the designation of the Valdosta and Hahira Tobacco markets as one consolidated auction market.

DATES: The referendum will be held March 25–29, 1985.

FOR FURTHER INFORMATION CONTACT: Lioniel S. Edwards, Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C., 20250, Telephone Number—(202) 447–2567.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a mail referendum on the designation of a consolidated Valdosta-Hahira, Georgia, auction market. Valdosta, Georgia was designated on June 21, 1940 (5 FR 2335) and Hahira, Georgia, was designated on August 16, 1941 (6 FR 4111) as flue-cured tobacco auction markets under the Tobacco Inspection Act of 1935 (7 U.S.C. 511 *et seq.*). Under this Act the two markets have been receiving mandatory grading services from USDA.

On August 9, 1984, an application was made to the Secretary of Agriculture to consolidate the designated markets of Valdosta and Hahira. This application, filed by the warehousemen in those markets, was made pursuant to the regulations promulgated under the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*, 7 CFR Part 29). On October 3, 1984, an oral hearing was held in Valdosta, Georgia, pursuant to applicable provisions of the regulations under the Tobacco Inspection Act.

A Review Committee, established pursuant to § 29.3(h) of the regulations (7 CFR 29.3(h)), has reviewed and considered the application, the testimony presented at the hearing, the exhibits received in evidence, together with other available information which was officially noticed at the hearing relating to the application and briefs filed by the applicants. The Committee recommended to the Secretary that the application for consolidation be granted and the Secretary approved the application on February 25, 1985.

Before a new market can be officially designated, a referendum must be held to determine that a two-thirds majority of producers favor said designation. It is hereby determined that the referendum will be held by mail during the period of March 25–29, 1985. The purpose of the referendum is to determine whether farmers who sold their tobacco on the designated markets at Valdosta and Hahira, Georgia, are in favor of or opposed to the designation of the consolidated market for the 1985 and succeding crop years. Accordingly, if a two-thirds majority of those tobacco producers favor this consolidation, a new market will be designated as and be called Valdosta-Hahira.

To be eligible to vote in the referendum the tobacco producer must have sold flue-cured tobacco on either the Valdosta or Hahira auction market during 1984. Any farmer who believes he or she is eligible to vote in the referendum but has not received a mail ballot by March 25, 1985, should immediately contact Lioniel S. Edwards at (202) 447–2567.

The referendum will be held in accordance with the provisions of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1312(c)) and the regulations set forth in 7 CFR Parts 29 and 717.

Dated: March 11, 1985.

Karen Darling,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85–6212 Filed 3–14–85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 391

[Docket No. 50222–5022]

Addition of "Foreign Availability Procedures and Criteria" to the Export Administration Regulations

AGENCY: Office of Export Administration, International Trade Administration; Commerce.

ACTION: Proposed rule with request for comments.

SUMMARY: The Department of Commerce was required by the Export Administration Act to initiate and review claims of foreign availablility on all items controlled for national security reasons. The proposed regulations set out the procedure for initiating foreign availability claims and the criteria by which such claims shall be assessed and reviewed. The Department's program of foreign availability assessment is intended to lead to elimination of export controls that are ineffective in achieving the national security objectives of the export control system.

DATE: Comments must be received by May 14, 1985.

ADDRESS: Written comments (six copies) should be sent to: Betty Ferrell, Exporter Assistance Division, Office of Export Administration, U.S. Department of Commerce, P.O. BOX 273, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Robert Rarog, Foreign Availability Assessment Division, Telephone: (202) 377–4890.

SUPPLEMENTARY INFORMATION:

Background

A foreign availability assessment capability was mandated as a function of the Department of Commerce by the Export Administration Act of 1979. Accordingly, Commerce established a Foreign Availability Assessment Division to implement this function. This division will provide timely, technically sound, and objective assessments of foreign availability for the purpose of determining appropriate levels of export controls.

The proposed regulations define procedures and criteria to address foreign availability for commodities and technical data controlled for national security purposes. The Department intends to issue separate regulations to assess claims for items controlled for foreign policy purposes because the basic purposes of national security and off foreign policy based controls are different.

Foreign availability exists for items controlled for national security purposes when "comparable" foreign commodities or technical data are available in "sufficient" quantities to the proscribed countries to satisfy their needs so that U.S. exports of such items would not make a significant contribution to such countries' military potential. In determining comparablility of foreign commodities and technical data, the following factors will be considered: (a) End uses, (b) similarity of design or resolution of technical problems, and (c) similarity of performance and reliability characteristics. Availability of such items to the proscribed countries must not be effectively restricted by international agreements or foreign law. Additional information for this comparison shall related to parts and component availability, production data, capacity, costs, export history to proscribed country destinations, and any other information pertinent to the objectives and effectiveness of national security controls.

The primary objective of foreign availability assessment is to determine levels of export controls for commodities and technical data that are both effective and consistent with national security concerns. License approval and decontrol on foreign availability grounds are clearly part of this process but will be made only when such actions would not permit exports that could contribute in any significant way to the military potential of a country or combination of countries to which national security export controls are directed.

Foreign availability assessment requires information on foreign items that is both detailed and reliable. Since such data may be used to modify controls imposed for national security reasons, it should be broader in scope and more detailed than the material often collected by U.S. firms on their foreign competitors in the ordinary course of business.

The Department of Commerce views participation by industry in data collection as an element of a successful foreign availability program. While the Department will use every means available government-wide to gather the type of reliable information required on foreign commodities and technical data, one of the best potential sources of such information will be the U.S. business community and its representatives overseas.

The proposed regulations present minimum standards for industry submission of foreign availability claims. Supporting data in the form of test results, marketing or other relevant data will, however, greatly assist in timely and complete assessments. Information should be detailed, product specific and, whenever possible, subject to verification. Unsubstantiated assertions will not, of themselves, be accepted as proof of foreign availability. A submission need only be accompanied by the best available evidence, but the Department may refuse to process a submission if it appears that no reasonable attempt has been made to supply substantiating evidence or that the claim is otherwise totally lacking in substance.

The foreign availability program is intended to play a major role in the level of export controls that are maintained. Industry is therefore urged to submit comments on the substance of the proposed regulations.

Rulemaking Requirements and Invitation to Comment

In connection with various rulemaking requirements, the Office of Export Administration has determine that:

1. Since this regulation involves a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring a notice of proposed rulemaking, an opportunity for public participation, and a delay in effective date are inapplicable. Nevertheless, to help ascertain the economic impact of the regulation upon the general public, the regulation is being issued in proposed form and public comment is being solicited.

2. This proposed rule contains a new collection of information requirement under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* This new collection of information requirement has been submitted to the Office of Management and Budget (OMB) for review under Section 3504(h) of the Paperwork Reduction Act of 1980.

3. The Regulatory Flexibility Act does not apply to this proposed rule because it is not a rule within the meaning of Section 601(2) of the Act. Accordingly, no initial Regulatory Flexibility Analysis has been prepared.

4. Because this proposed rule is being issued with respect to a foreign affairs function, it is not subject to Executive Order No. 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."

The period for submission of comments will close May 14, 1985.

All comments received before the close of the comment period will be considered by the Department in the development of final regulations. While comments received after the end of the comment period will be considered if possible, their consideration cannot be assured. Public comments will become a matter of public record.

Comments that are accompanied by a request that the information be treated confidentially because of its business proprietary nature or for any other reason will be accepted on the conditions described below.

Public comments on these proposed regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received, they must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4104, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, D.C. 20230.

Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Particia L. Mann, International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377-3031.

The Office of Export Administration (OEA) is especially interested in receiving comments on the business and economic effects of the proposed regulations. Because providing such comments may involve the disclosure of proprietary business information, OEA will accept comments on a confidential basis.

Persons may request confidential treatment for their comments involving proprietary information on paperwork

burden, sales, or any other aspects of the business or economic impact of the proposed regulations. The request must include a full statement of the reasons why confidential treatment should be granted. The business or financial information for which confidential treatment is requested should be submitted to OEA on sheets of paper separate from any non-confidential information submitted. The top of each page should be marked with the term "CONFIDENTIAL BUSINESS INFORMATION." OEA will either accept the submission in confidence or, if the submission fails to meet the standards for confidential treatment, will return it. A non-confidential summary must accompany each submission of confidential information. The summary will be made available for public inspection.

Information accepted by OEA as privileged under subsections (b)(3) or (4) of the Freedom of Information Act (5 U.S.C., Section 552(b)(3) and (4)) will be kept confidential and will not be available for public inspection, except according to law.

List of Subjects in 15 CFR Part 391

Exports, Foreign availability, Science and technology, Technical advisory committees.

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are proposed to be amended by adding a Part 391, to read as follows:

PART 391—FOREIGN AVAILABILITY PROCEDURES AND CRITERIA

Sec.
391.1 Definitions.
391.2 Foreign availability claims.
391.3 Criteria for determination.
391.4 Procedures.
391.5 Appeals.

Authority: secs. 203, 206, Pub. L. 95–223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704), E.O. 12470 of March 30, 1984 (49 13099, April 3, 1984).

§ 391.1 Definitions.

(a) *Available in fact.* As used in this Part 391, "available in fact" means that a non-U.S. origin item may be obtained by the proscribed countries.

(b) *Proscribed countries.* As used in this Part 391 "proscribed countries" means Country Groups Q, W, and Y (as defined in Part 385).

These countries are: The USSR, Albania, Bulgaria, Czechoslovakia, the German Democratic Republic (including East Berlin), Hungary, Laos, the Mongolian People's Republic, Poland and Romania. Country Group Z (North Korea, Vietnam, Kampuchea, and Cuba) is not included since these countries are subject to a virtual embargo notwithstanding any foreign availability.

(c) *Foreign availability.* "Foreign availability" for a national security controlled item exists when the Secretary of Commerce determines that a non-U.S. origin item of comparable quality is available in fact to proscribed counties in quantities sufficient to satisfy their needs so that U.S. exports of such an item would not make a significant contribution to the military potential of such countries.

(d) *Foreign availability submission.* A "Foreign Availability Submission" (FAS) is a written claim submitted by an applicant requesting a foreign availability assessment in accordance with the requirements contained in section 391.2 (b)(1).

(e) *Item.* An "item" as used in Part 391 may be a commodity or technical data.

(f) *Non-U.S. origin.* A commodity or technical data is of "non-U.S. origin" when it is not subject to U.S. export or re-export controls.

§ 391.2 Foreign availability claims.

(a) *General requirements.* Foreign availability claims must be submitted in writing and must refer to specific items controlled for national security purposes (reasons for control are noted in each Commodity Control list entry of Supplement No. 1 § 399.1).

(b) *Applications.* A formal determination by the Department of Commerce of foreign availability may serve as grounds for license approval or decontrol.

(1) *Validated License Approval.* A claim of foreign availability may be made in connection with an application for a validated license or a request for re-export authorization for exports to any destination (except Country Group Z). A foreign availability claim consists of a Foreign Availability Submission (FAS) which shall become part of the appropriate license application. An assessment of foreign availability, however, will be made only on items in applications that have been denied on national security grounds. A FAS may be submitted at the time an export license application or request for re-export authorization is filed, or at any time up to thirty (30) days after the date appearing on a denial. A FAS should contain at least the following elements:

Name of sources outside the U.S. and their overseas business addresses.

Product names and model designations of both the U.S. commodities or technical data and their non-U.S. origin counterparts.

Available technical information, including known performance attributes and quality considerations needed for comparison of U.S. and non-U.S. origin commodities or technical data.

Information on production and demand, including quantities of known trade in such commodities to proscribed countries.

Unsupported claims may be returned to the applicant without action.

Information on sources of foreign availability provided in the FAS will be reviewed in conjunction with any other pertinent information available to the Department of Commerce. Such information may include data received from other sources, including the Department of Defense and other appropriate governmental agencies. A detailed description of foreign availability sources, including any supporting data available to the applicant, will greatly assist in a timely and complete assessment. Such supporting data may include such items as foreign manufacturers' catalogs, brochures, operation or maintenance manuals, articles from reputable trade publications, photographs, and other credible data. Foreign availability assessment criteria outlined in § 391.3 of this part should be considered when assembling data in support of a FAS.

(2) *Decontrol.* (i) Claims based on foreign availability may be submitted for the purpose of removing commodities or technical data from national security controls. The Foreign Availability Assessment Division, in consultation with the Department of Defense and other appropriate Government agencies, has responsibility for reviewing and consolidating claims for action to determine appropriate levels of control.

(ii) Claims should include the same information as that listed in paragraph (b)(1) above, including information for all known foreign producers. Foreign availability assessment criteria outlined in § 391.3 of this part should be considered when assembling data to support a claim of an FAS.

(iii) Any person, including a trade association, or the Department of Commerce's Technical Advisory Committees, may submit a foreign availability claim. The Department may also begin a foreign availability assessment on its own initiative to determine whether national security controls should be maintained on specific items.

(iv) Claims must be addressed to: Foreign Availability Assessment Division, Office of Export Administration, Room 2606 U.S. Department of Commerce, 14th & Pennsylvania Ave., NW Washington, D.C. 20230

§ 391.3 Criteria for determination.

(a) *Non-U.S. origin.* Only information pertaining to non-U.S. origin commodities or technical data (as defined in § 391.1) will be considered in support of foreign availability claims.

(b) *Availability in fact.* Only non-U.S. origin commodities or technical data that are available in fact to the proscribed countries will be considered in establishing foreign availability.

(c) *Standards of comparison for commodities.* All of the following tests must be met in determining the comparability and quantitative sufficiency of U.S. and non-U.S. origin commodities:

(1) *Comparable Quality.* U.S. and non-U.S. origin commodities must be substantially similar in: (i) Function; (ii) technolgical approach; (iii) performance thresholds; and (iv) maintainability and service life when such attributes are relevant to the purposes for which controls were placed on that commodity.

(2) *Sufficient quantity.* For all submissions, comparable non-U.S. origin commodities must be available in fact to the proscribed countries in quantities sufficient to satisfy their needs so that U.S. exports would not make a significant contribution to the military potential of such countries.

(d) *Standards of comparison for technical data.* Non-U.S. origin technical data submitted as evidence of foreign availability must meet the following standards of comparison as to comparable quality:

(1) Non-U.S. origin technical data is or can be used or adapted for use in ways and with results similar to those of its U.S. counterparts;

(2) End products of the use of non-U.S. origin technical data are substantially similar to end products resulting from the use of its U.S. counterparts.

(e) *Evidence.* The Department of Commerce may consider evidence from any source in determining the existence of foreign availability. A claim of foreign availability for an item supported by reliable evidence shall be accepted unless contradicted by other reliable evidence available to the Department. To the extent consistent with the national security and foreign policy interests of the United States and with the protection of confidential business information, the Department of Commerce will inform the claimant of evidence contradicting the representations and supporting evidence where such evidence is the basis for a negative determination of foreign availability. The Department of Commerce will normally rely upon its own and other governmental sources for evidence bearing on the needs of proscribed countries and whether the denial of a license or continuation of controls would be ineffective in achieving the national security purposes of the controls.

§ 391.4 Procedures.

(a) *Claims associated with license applications.* Assessments of foreign availability for items included in a validated license application (or request for reexport authorization) will be initiated only when all the following conditions are met: (1) A license denial based only on national security grounds has been forwarded to the applicant, and (2) an FAS is received no later than 30 days from the date on the license denial. If a FAS has been submitted prior to the license denial, the applicant will be notified that an assessment of foreign availability has been initiated at the time of license denial. If no FAS was submitted, the applicant will be informed that a foreign availability assessment will be initiated upon the Department's receipt of a timely and appropriate FAS. The Department of Commerce will seek to complete its evaluation of the claim within 90 days. Except as provided immediately below, if a positive determination is made, a validated license will be forwarded to the applicant; if a positive determination is not made, a negative foreign availability determination notice informing the applicant, to the extent consistent with the U.S. national security and foreign policy interests, of the reasons for denial will be forwarded. Despite a positive determination of foreign availability, the Secretary of Commerce, in consultation with the Secretary of Defense, may determine that approval of a validated license would be detrimental to national security. In such cases, no approval will occur, and the applicant will be so informed.

In cases where a positive determination of foreign availability has been made and a validated license issued, the Foreign Availability Assessment Division will decide whether to initiate a foreign availability assessment to determine whether national security controls should be maintained on such items.

(b) *Decontrol submissions.* The Foreign Availability Assessment Division will collect and evaluate all foreign availability information for decontrol purposes and initiate appropriate assessments. Such assessments will refer to generic equipment categories or characteristics or will propose changes to the Commodity Control List. Standards outlined in § 391.3 shall be used to make the assessments. When appropriate, preliminary findings will be forwarded to the Department of Defense, other relevant U.S. Government agencies, and/or the Department of Commerce's Technical Advisory Committees for review and comment. Except as provided below, in cases where the Department of Commerce determines the existence of foreign availability, action to decontrol the relevant commodities or technical data will be taken and notice of such action will be published in the **Federal Register.** Negative foreign availability determinations shall also be published in the **Federal Register.** Information used to arrive at final determinations may come from any source, Government or non-Government, deemed appropriate by the Department of Commerce. In cases where a decontrol submission consists of a TAC certification, the Department will seek to complete its evaluation within 90 days. Despite positive foreign availability determinations, the President may determine that decontrol would be detrimental to the national security. In such cases, no decontrol will occur. Where such a determination has been made, the Department will publish that determination in the **Federal Register** with a concise statement of its basis and the estimated economic impact of the decision. In addition, negotiations will be initiated to eliminate sources of foreign availability on such items. When the Department of Commerce determines that conditions under which a positive determination of foreign availability were made have changed so as to cast doubt on the continued existence of foreign availability, a review of the original decontrol action may be undertaken. If foreign availability is determined no longer to exist, controls may be re-imposed. Appropriate notice will be published in the **Federal Register.**

§ 391.5 Appeals.

Appeals of negative foreign availability determinations must be received by the Office of the Assistant Secretary for Trade Administration, International Trade Administration, 14th Street and Pennsylvania Ave. NW, Room 3898B, U.S. Department of Commerce, Washington, D.C. 20230 no later than 45 days after the date appearing on the negative foreign availability assessment notice. A determination to deny a license or continue controls notwithstanding foreign availability shall not be subject to appeal. Appeals will be conducted according to standards and procedures

outlined in Part 389 of the Export Administration Regulations.

(Secs. 203, 206, Pub. L. 95-223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704), Executive Order No. 12470 of March 30, 1984 (49 FR 13099, April 3, 1984))

Dated: February 25, 1985.

John K. Boidock,

Office of Export Administration, International Trade Administration.

[FR Doc. 85-6172 Filed 3-14-85; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-244]

High-Cost Gas Produced From Tight Formations; WV-2 Addition

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982), to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of West Virginia Office of Oil and Gas that an additional area of the "Big Lime" of the Greenbrier Group be designated as a tight formation under § 271.703(d).

DATES: Comments on the proposed rule are due on April 25, 1985. Public Hearing: No public hearing is scheduled in this docket as yet. Written request for a public hearing are due on March 26, 1985.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Edward G. Gingold, (202) 357-5491, or Walter W. Lawson, (202) 357-8556.

SUPPLEMENTARY INFORMATION:

Issued March 11, 1985.

I. Background

On February 14, 1985, the State of West Virginia Office of Oil and Gas (West Virginia) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (18 CFR 271.703(1983)), that an additional area of the "Big Lime" Formation of the Greenbrier Group located in the southwestern portion of the state of West Virginia be designated as a tight formation. The Commission previously adopted a recommendation that the "Big Lime" Formation in certain areas of Fayette, Mercer, McDowell, Raleigh and Wyoming Counties be designated a tight formation (Order No. 372 issued May 9, 1984, in Docket No. RM79-76-134 (West Virginia-2)). Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hearby issued to determine whether West Virginia's recommendation that the additional areas of the "Big Lime" Formation be designated a tight formation should be adopted. West Virginia's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

West Virginia recommends that the "Big Lime" Formation of the Greenbrier Group, of Mississippian age, located in southwestern West Virginia underlying Boone, Cabell, Kanawaha, Lincoln, Logan, Mingo, Putnam and Wayne Counties, be designated as a tight formation.

The "Big Lime" (Greenbrier Formation of the Mississippi System) lies below the Maxton Sandstone (Mauch Chunk Formation of the Mississippi System) and above the Injun Sandstone (Pocono Formation of the Mississippi System). The "Big Lime" ranges from 150 feet thick in the western portion of the recommended area thickening to about 400 feet in the eastern portion. The average depth to the top of the formation varies from about 1,375 feet to the north to approximately 2,160 feet in the southern portion of the recommended area.

III. Discussion of Recommendation

West Virginia claims in its submission that evidence gathered through information and testimony presented at a public hearing convened by West Virginia on the matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

West Virginia further asserts that existing state law and established casing procedures assure protection of all fresh water zones.

Accordingly, under the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, [Reg., Preambles 1977-1981] FERC Stats. and Regs. ¶ 30,180 (1980), the Director gives notice of the proposal submitted by West Virginia that the additional areas of the "Big Lime", as described and delineated in West Virginia's recommendation filed with the Commission, be designated as a tight formation under § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before April 25, 1985. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76-244 (West Virginia-2 Addition) and should give reasons including supporting data for any recommendation. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing of a desire to make an oral presentation and

therefore request a public hearing. The person shall specify the amount of time requested at the hearing, and should file the request with the Secretary of the Commission no later than March 26, 1985.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

Accordingly, the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, will be amended as set forth below, in the event the Commission adopts West Virginia's recommendation.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703 is amended as follows:

1. The authority citation for Part 271 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by revising paragraph (d)(162) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations* * * *

(162) *"Big Lime" Zone of the Greenbrier Group in West Virginia.* RM79–76 (West Virginia—2).

(i) *Delineation of formation.* The "Big Lime" Zone of the Greenbrier Group is defined as the stratigraphic interval overlying the "Keener" and "Big Injun" Zones of the Pocono Group and underlying the "Blue Monday" and "Little Lime" Zones, where present, or the Maxton Zone, all of the Mauch Chunk Group. The "Big Lime" Zone is found in portions of Fayette, McDowell, Raleigh, Wyoming, Mercer, Boone, Cabell, Kanawha, Lincoln, Logan, Mingo, Putnam and Wayne Counties.

(ii) *Depth.* The depth to the top of the "Big Lime" Zone ranges from approximately 1,375 feet in the northwest portion to 3,100 feet along the eastern edge and ranges in thickness from approximately 150 feet in the west to a maximum thickness of approximately 1,800 feet in the southeastern portion of the designated area.

[FR Doc. 85–6161 Filed 3–14–85; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 625 and 655

[FHWA Docket No. 85–1]

National Standards for Traffic Control Devices; Manual on Uniform Traffic Control Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD); request for comments.

SUMMARY: The FHWA is inviting comments on requests for changes to the MUTCD which contains the standards for traffic control devices and has been approved by the FHWA for use on all streets and highways open to public travel.

The MUTCD is incorporated by reference in the design standards for Federal-aid highways found in Part 625 of Title 23, Code of Federal Regulations. It also is recognized in 23 CFR Part 655 as the national standard for traffic control devices on all public roads.

The amendments affect various parts of the MUTCD and are intended to expedite traffic, improve safety, and provide a more uniform application of highway signs, signals, and markings.

DATE: Comments must be received on or before July 22, 1985.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 85–1, Federal Highway Administration, Room 4205, HCC–10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification or receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Philip O. Russell, Office of Traffic Operations, (202) 426–0411, or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 426–0762, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The FHWA prepares and issues the national standards for traffic control devices used on all streets and highways open to public travel. These standards are published in the MUTCD which has been incorporated by reference into title 23, Code of Federal Regulations (CFR) Parts 625 and 655. The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. It may be purchased for $30.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, Stock No. 050–001–81001–8. The FHWA both receives requests and initiates recommendations for changes (i.e., amendments) to the MUTCD. This request is being processed in accordance with the informal rulemaking procedure of the Administrative Procedures Act (5 U.S.C. 553) and the procedures issued pursuant to Executive Order 12291.

Part II—Signs of the MUTCD is organized into subparts based on three general types of signs (regulatory signs, warning signs, and guide signs), and the special application of these signs. Since the application of many guide signs varies significantly with the class of highway in which they are used, the specific standards and guidelines for the design and use of guide signs are organized principally into three subparts on the class of highway. These subparts are Part II–D, Guide Signs—Conventional Roads; Part II–E, Guide Signs—Expressways; and Part II–F, Guide Signs—Freeways.

Recreational and Cultural Interest Area Signs presently are classified in the MUTCD as a type of guide sign. Consequently, standards and guidelines for recreational and cultural interest area signs are covered in each of these three subparts (Part II–D, Part II–E, and Part II–F).

Two numbered sections of the MUTCD apply exclusively to these signs. These sections are 2D–44 and 2E–39. Section 2F–41 applies indirectly.

On August 8, 1973, the National Park Service (NPS) and the FHWA entered into a Memorandum of Understanding which resolved certain issues relating to recreational symbol signs used within the National Park System. Official MUTCD Ruling Sn–84 (Chng.) was made on August 30, 1974, to permit the use of the 88 NPS recreational symbols within public parks on recreation roads.

On December 9, 1975, the NPS wrote the FHWA advising of the many requests from State and local governments for information concerning the 88 recreational symbols and their use. The NPS also requested and received agreement from the FHWA that an interagency task force on signing and symbols be formed to develop a special use category (standards) for recreational areas.

The task force was formed in February 1976, with representatives from the U.S. Army Corps of Engineers,

the Bureau of Land Management, the U.S. Forest Service, the NPS, and the FHWA. The original intent of the task force effort was to develop a new and separate document apart from the MUTCD for recreational signing. However, due to the volume of the proposed new document, it was recommended by the Office of Traffic Operations (OTO) of the FHWA that the task force committee rewrite the proposed standards as a new part of the MUTCD.

The proposed new part was completed and the above interagency task force members voted unanimously to recommend that it be approved for signing roads, trails, structures, and other facilities located in recreational and cultural interest areas.

On June 3, 1977, OTO personnel submitted request Sn–219 (Chng.) to the National Committee on Uniform Traffic Control Devices (NC) Signs Technical Committee to consider adding the recreational sign standards to the MUTCD. At the June 22–24, 1977, NC meeting in Portland, Maine, the Signs Technical Committee recommended denial of request Sn–219 (Chng.) giving the following reasons:

1. No action should be taken until the American Association of State Highway and Transportation Officials (AASHTO) Traffic Engineering Subcommittee Task Force report on an overall sign program for directional service signing has been developed and given consideration.

2. The Signs Technical Committee does not want to approve the signs for all roads.

3. The Red Cross symbol in the proposal cannot be used until the American Red Cross gives its permission.

On May 19, 1978, OTO resubmitted request Sn–219 (Chng.), Recreational and Cultural Interest Area Signs, for reconsideration and recommendation by the Signs Technical Committee at the June 1978, meeting in Phoenix, Arizona. The OTO May 19, 1978, submittal stressed the amount of effort expended, the reason for the request, and the need for development of these national standards and the need to relieve the NPS of a burden which was an FHWA responsibility. At the June 1978 meeting, the Signs Technical Committee assigned this matter to a task force for review. The task force submitted its recommendation on this issue which was subsequently adopted by the NC in June 1980. The adopted recommendation is as follows:

Issue an interpretation which approves recreational and cultural interest area signing for those States which have identified the need for such signing. Such signing should be limited to those streets/highways adjacent to or within the recreational/cultural interest area and also to those services, recreational or cultural facilities, or activities that are within the area under the jurisidiction of the recreational/cultural agency. Moveover, this type of signing would not be used on freeways and would have the lowest priority of use on other roads needing signing at a specific location including General Information Signs which identify boundary lines and the names of lakes and rivers. (The various symbols shall be in accordance with the understanding reached under NPS 88).

Recreational and cultural Interest Area Signs provide directional information to facilities, structures, and places; inform the public of certain rules and regulations; and identify various services available to the public. The information provided to motorists is of lower priority than directional information for cities and numbered highway routes and the symbols are limited solely to those 88 symbols previously adopted by FHWA. The symbols may be used to sign conventional roads, trails, structures, and facilities, and for special purposes such as maps, brochures, displays, posters, and for interpretive and management use.

The FHWA proposes to amend the MUTCD by combining all the pertinent provisions on recreational and cultural interest area signing into one subpart, II–H Recreational and Cultural Interest Area Signs. The FHWA believes that the proposed amendment will eliminate considerable duplication in the MUTCD and the possibility for confusion resulting from the present scattering of the limited standards and cross-referencing of provisions for recreation signing among the three subparts. The unification and expanded provisions will provide users of the MUTCD with a complete subpart for this special type of signing and will simplify the use of the MUTCD.

The proposal has been prepared principally as a new addition to the MUTCD with the specific intent to retain the present standards and guidelines. Present Sections 2D–44, 2E–39, and 2F–41 will be combined into the new subpart.

This notice of proposed amendments is being published so that interested persons may participate in the processing of a proposed amendment to the MUTCD. The FHWA will consider all written comments received. Based upon comments received and on its own review, the FHWA will prepare a final amendment to the MUTCD which will be published in the **Federal Register** and incorporated by reference in the Code of Federal Regulations.

The FHWA is inviting comments on its proposal to amend the MUTCD as follows:

1. Delete in their entirety Sections 2D–44, 2E–39, and 2F–41.

2. Add a new Part II–H, Recreational and Cultural Interest Area Signs.

This notice of proposed amendments to the MUTCD is issued under the authority of 23 U.S.C. 109(d), 315, and 402(a), and the delegation of authority in 49 CFR 1.48(b).

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant proposal under the regulatory policies and procedures of the Department of Transportation. For the reasons stated herein under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities. Due to the preliminary nature of this inquiry, a regulatory evaluation has not been prepared at this time. The expected impact of the changes requested is so minimal that a full regulatory evaluation does not appear to be warranted. The need to further evaluate economic consequences will be reviewed on the basis of the comments submitted in response to this notice.

List of Subjects in 23 CFR Parts 625 and 655

Design standards, Grant programs-transportation, Highways and roads, Signs, Traffic regulations, Incorporation by reference.

(Catalog of Federal Domestic Assistance Program Number 20.205 Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal program and activities apply to this program)

Copies of the proposed text changes to the MUTCD will be distributed to everyone currently appearing on the FHWA mailing list for MUTCD matters. Those wishing to be added to the mailing list or receive copies of the proposed text should write to the Federal Highway Administration (FHWA), Office of Traffic Operations, 400 Seventh Street, SW., Washington, D.C. 20590 or contact Mr. Philip O. Russell (202) 426–0411.

Issued on: February 20, 1985.

R. A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 85–6107 Filed 3–14–85; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3400, 3420, and 3460

Coal Management—General; Competitive Leasing; and Environment; Amendment Implementing Some Recommendations of the Office of Technology Assessment to the Federal Coal Leasing Program

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would implement certain responses by the Secretary of the Interior to the Office of Technology Assessment's *Environmental Protection in the Federal Coal Leasing Program.* The Office of Technology Assessment identified 10 options in areas of environmental concern that could be the basis of reducing the public perception that environmental effects of mining were not given thorough consideration during coal leasing. The Secretary's July 9, 1984, response to the report contained a series of proposals for procedural changes. This proposed rulemaking would implement those changes which the Secretary determined should be implemented through changes in the existing regulations.

DATE: Comments should be submitted by April 15, 1985. Comments postmarked or received after the cited date may not be considered in the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20230. Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Carole Smith, (202) 343–4774

or

Robert C. Bruce, (202) 343–8735.

SUPPLEMENTARY INFORMATION: The Congress, in the Department of the Interior Fiscal Year 1984 Appropriations Act, directed the Office of Technology Assessment to assess whether the Federal coal management program ensures the development of coal leases in an environmentally compatible manner. The resulting report, *Environmental Protection in the Federal Coal Leasing Program*, was given to the Department of the Interior on May 24, 1984, and contained policy goals/options in 10 areas of environmental concern.

The Department of the Interior responded to the report by proposing a number of procedural changes in the policy goal/option areas identified by the Office of Technology Assessment. The policy goal/option areas in which regulatory changes would be required are: (1) To improve the effectiveness of public participation (option 3); (2) to improve the data base by calling for all resource information (not just coal) when initiating land use planning (part of response to option 6); and (3) to incorporate cumulative impact assessments in pre-sale planning decisions (option 7).

The changes made by this proposed rulemaking will be incorporated in a final rulemaking which will be published simultaneously with a final rulemaking covering the recommendations of the Commission on Fair Market Value Policy for Federal Coal Leasing that were contained in a proposed rulemaking that appeared in the **Federal Register** on November 5, 1984 (49 FR 44221). In order to provide the public an opportunity to give consideration to the effects of both documents, the comment period on the proposed rulemaking of November 5, 1984, has been reopened and will now close at the same time the comment period closes on this proposed rulemaking.

The changes that would be made by the proposed rulemaking have been included in the proposed action studied in the Federal Coal Management Draft Environmental Impact Statement Supplement and are set out in Appendix 6, p. 410, to that document. The Department of the Interior anticipates that comments on the Draft Environmental Impact Statement Supplement will include comments on the changes that would be made by the proposed rulemaking, particularly as they relate to the Federal Coal Management Program as a whole. All comments on the Draft Environmental Impact Statement Supplement which relate to this proposed rulemaking will be considered in the decisionmaking process on the issuance of a final rulemaking. In addition, no final rulemaking will be issued until the Federal Coal Management Final Environmental Impact Statement is completed.

As part of the Department of the Interior's effort to promulgate regulations with public input, a document incorporating the concepts contained in this proposed rulemaking was provided to representatives of the coal industry, State governments and conservation groups in late November 1984 for review and any comments they might wish to offer. Meetings were held on December 6 and 7, 1984, in Denver, Colorado to hear from industry and State governments. A separate meeting was conducted on January 8, 1985, to hear from representatives of environmental groups. All of the comments received at the meetings were given careful consideration, with adoption of a request that would strengthen State and public participation in the coal management program by making the Department of the Interior even more responsive to State and public concerns. All of the comments received at the meetings described above will be included in the docket of comments on the proposed rulemaking to give the public an opportunity to review them.

As part of his response to option 3 of the Office of Technology Assessment Report, the Secretary of the Interior proposed setting a minimum time period for public comments on Federal coal management decisions in both Department of the Interior regulations and Bureau of Land Management Manuals. This response would be implemented in this proposed rulemaking by the addition of a new § 3400.6 that would provide a minimum comment period of 30 days. An additional response to option 3 that would be provided by this proposed rulemaking is the inclusion in the regulations of language from the Federal-State Coal Advisory Board Charter. The two sentences that would be added to § 3000.4 state that the recommendations of the Regional Coal Team will be accepted by the Secretary of the Interior unless there are overriding National interest considerations or unless the Secretary accepts a State Governor's recommendations.

The response of the Secretary of the Interior to option 6 of the Office of Technology Assessment Report was to recommend combining the call for coal resource information, made at the beginning of the land use planning process, with a call for other resource information relevant to evaluating lands for potential coal leasing offering. The proposed rulemaking would expand the language in § 3420.1–2(a) to include a call for coal and other resource information.

The Secretary of the Interior, in response to option 7 of the Office of Technology Assessment Report, recommended the reinstatement of the threshold concept in the coal management regulations. This

recommendation would be carried out by this proposed rulemaking by the addition of a new paragraph (f) to § 3420.1–4 which would reinstate the threshold concept. This proposed change would remove some confusion that seems to have arisen from the removal of the threshold concept from the coal management program regulations in the July 1982 amendments while leaving it in the land-use planning regulations in 43 CFR Group 1600. The reinstatement of this concept in the coal management program regulations should remove the doubt expressed by some that the Department was not fulfilling its responsibilities under the Federal Land Policy and Management Act of 1976 and the National Environmental Policy Act of 1969.

The proposed rulemaking would add a new paragraph (b) to § 3420.1–8 of the existing regulations which would provide that activity planning would begin with the Regional Coal Team meeting that reviews land-use data/decisions and the market analysis. This change would implement the Secretary of the Interior's response to option 3 of the Office of Technology Assessment Report.

Another change made by the proposed rulemaking that would implement a portion of the Secretary of the Interior's response to option 3 of the Office of Technology Assessment Report would add new language to § 3461.3–1(a). The new language would reinstate the public comment period on the application of the unsuitability criteria in land-use planning.

The principal author of this proposed rulemaking is Carole Smith, Division of Solid Mineral Leasing, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

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

The changes that would be made by this proposed rulemaking should not affect small businesses engaged in the coal industry. Establishing a minimum comment period of 30 days for coal program actions, combining the call for coal resource information with a call for all resource information, reinstating thresholds in the coal management program regulations, and accepting the recommendations of the Regional Coal Team in most circumstances—these changes should not affect either the number of small business set-aside tracts or the number of such tracts offered as small business leasing opportunities in regional coal lease sales.

This proposed rulemaking contains no additional information collection requirements requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects

43 CFR Part 3400

Coal, Intergovernmental relations, Mines, Public lands—classification, Public lands—mineral resources.

43 CFR Part 3420

Administrative practice and procedure, Coal, Environmental protection, Intergovernmental relations, Mines, Public lands—mineral resources.

43 CFR Part 3460

Coal, Environmental protection, Mines, Public lands—classification, Public lands—mineral resources.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Surface Mining control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Multiple Mineral Development Act (30 U.S.C. 521–531), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Federal Coal Leasing Amendments Act of 1976, as amended (90 Stat. 1083–2075) and the Small Business Act of 1953, as amended (15 U.S.C. 631 et seq.), it is proposed to amend Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 3400—[AMENDED]

§ 3400.4 [Amended]

1. Section 3400.4 is amended by:

a. Redesignating paragraphs (d), (e) and (f) as paragraphs (e), (f) and (g) respectively; and

b. Adding a new paragraph (d) to read:

* * * * *

(d) The regional coal team recommendations shall be accepted except: (1) In the case of an overriding national interest; or (2) in the case the advice of the Governor(s) which is contrary to the recommendations of the regional coal team is accepted pursuant to § 3420.4–3(c) of this title. In cases where the regional coal team's advice is not accepted, a written explanation of the reasons for not accepting the advice shall be provided to the regional coal team and made available for public review.

* * * * *

2. A new § 3400.6 is added to read:

§ 3400.6 Minimum comment period.

Unless otherwise required in group 3400 of this title, a minimm period of 30 days shall be allowed for public review and comment where such review is required for Federal coal management program activities under group 3400 of this title.

PART 3420—[AMENDED]

§ 3420.1–2 [Amended]

3. Section 3420.1–2 is amended by:

a. Revising the heading to read:

§ 3420.1–2 Call for coal resource and other resource information.

b. Amending paragraph (a) by removing the phrase "Call for Coal Resource Information" where it appears and replacing it with the phrase "Call for Coal and Other Resource Information" and by removing the phrase "coal resource development potential" where it appears and replacing it with the phrase "coal resource development potential and on other resources which may be affected by coal development";

c. Amending paragraph (b) by removing the phrase "Call for Coal Resource Information" where it appears and replacing it with the phrase "Call for Coal and Other Resoruce Information"; and

d. Amending paragraph (c) by removing the phrase "Call for Coal Resource Information" in the two places it appears and replacing it with the phrase "Call for Coal and Other Resoruce Information".

§ 3420.1–4 [Amended]

4. Seciton 3420.1–4 is amended by adding a new paragraph (f) to read:

* * * * *

(f) In its review of cumulative impacts of coal development, the regional coal

team shall consider any threshold analysis performed during land-use planning as required by § 1610.4–4 of this title and shall expand this analysis, where appropriate, to the broader area.

§ 3420.1–8 [Amended]

5. Section 3420.1–8 is amended by:

a. Adding the figure "(a)" at the beginning of the existing text; and

b. Adding a new paragraph (b) to read:

* * * * *

(b) Activing planning shall begin with the regional coal team meeting that reviews mark analyses and land-use planning summaries. The market analyses and land-use planning summaries shall be available at least 45 days prior to such meeting.

PART 3460—[AMENDED]

§ 3461.3–1 [Amended]

6. Section 3461.3–1(a) is amended by:

a. Redesignating paragraph (a)(2) as paragraph (a)(3); and

b. Adding a new paragraph (a)(2) to read:

(a) * * *

(2) Public comments on the application of the unsuitability criteria shall be solicited by a notice published in the **Federal Register**. This call for comments may be part of the call for public comments on the draft land-use plan or land-use analysis. This notice shall announce the availability of maps and other information describing the results of the application and the application process used.

* * * * *

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

March 4, 1985.

[FR Doc. 85–6196 Filed 3–14–85; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Part 3420

Competitive Leasing; Amendments to Federal Coal Management Regulations; Reopening of Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of reopening of comment period.

SUMMARY: The proposed rulemaking that would amend the coal management regulations to implement certain recommendations of the Commission on Fair Market Value Policy for Federal Coal Leasing was published in the **Federal Register** on November 5, 1984 (49 FR 44221), with a comment period that closed on January 4, 1985. Since that publication, the Secretary of the Interior has determined to publish a proposed rulemaking that incorporates certain recommendations of the Office of Technology Assessment on Federal Coal Leasing. In order to give the public an opportunity to consider the effect of both of these proposed rulemakings on the Federal Coal Leasing Program, the comment period on the proposed rulemaking incorporating the recommendations of the Commission on Fair Market Value Policy is hereby being reopened to coincide with the comment period on the proposed rulemaking incorporating the recommendations of the Office of Technology Assessment. The changes contained in this proposed rulemaking are included in the preferred alternative studied in the Federal Coal Management Draft Environmental Impact Statement Supplement and are discussed in Appendix 6, p. 358. The Department of the Interior anticipates that comments on the Draft Environmental Impact Statement Supplement will include comments on this proposed rulemaking, particularly as they relate to the program as a whole. All comments on the Draft Environmental Impact Statement Supplement which relate to this proposed rulemaking will be considered in the decisionmaking process on the issuance of a final rulemaking. In addition, a final rulemaking will not be issued until the Federal Coal Management Final Environmental Impact Statement Supplement is completed.

DATE: Comments should be submitted by April 15, 1985. Comments postmarked or received after the cited date may not be considered in the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be submitted to: Director (140), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20230.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Tom Walker, (202) 343–4636, Dan Dick, (202) 343–3537.

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

March 4, 1985.

[FR Doc. 85–6197 Filed 3–14–85; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[General Docket NO. 83–989; FCC 85–97]

Enforcement of Prohibitions Against the Use of Common Carriers for the Transmission of Obscene Materials

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this Second Notice of Proposed Rulemaking, the FCC proposes to amend its rules to provide a defense to enforcement of prohibitions against dial-a-porn services, pursuant to the Communications Act, as amended. An earlier regulation adopted by the FCC was found to be unconstitutional by the court. The FCC is responding to the standards set forth in the court's decision.

DATES: Comments must be submitted on or before May 14, 1985 and reply comments on or before June 11, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: James M. Talens, Chief, Domestic Services Branch, Facilities Division, Common Carrier Bureau, (202) 634–1800.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 64

Telephone.

Second Notice of Proposed Rulemaking

In the Matter of Enforcement of Prohibitions Against the Use of Common Carriers for the Transmission of Obscene Materials (Gen. Docket No. 83–989).

Adopted: March 1, 1985.

Released: March 8, 1985.

By the Commission.

1. This Second Notice of Proposed Rulemaking solicits additional comments on regulations the Commission is under mandate to adopt pursuant to Section 223 of the Communications Act of 1934, as amended, 47 U.S.C. 223. Section 223, *inter alia*, imposes fines on those who use telephone facilities to transmit obscene or indecent messages to individuals under eighteen years of age. It also requires the Commission to promulgate regulations which, in effect, restrict access of minors to such services.[1] In a *Report and Order*

[1] More specifically, Section 223(b) imposes fines, not to exceed $50,000 per day, upon those who, for

Continued

adopted June 4, 1984, 49 FR 24996 (June 19, 1984), the Commission promulgated a regulation after reviewing comments and reply comments submitted in response to a Notice of Inquiry (NOI) [2] and a Further Notice of Inquiry and Notice of Proposed Rulemaking (NPRM).[3] On November 2, 1984, the United States Court of Appeals for the Second Circuit found the Commission had failed to justify the regulation.[4] In this Second Notice we seek further public comment on proposals to restrict minors' access to obscene or indecent telephone communications, in response to the Court's Decision.

Background

2. On September 9, 1983, the Commission adopted its NOI, which focused on the scope of the Commission's authority to take action against "dial-a-porn" services under Section 223 of the Act [5] and on the extent to which the Commission ought to exercise its discretion to use any such authority. Meanwhile, Congress amended Section 223 of the Act and answered some of the questions raised in the NOI, such as the authority of the Commission to impose fines for violations. The amendment did not answer certain other questions, however. Accordingly, the Commission issued its NPRM to permit public comment on the issues raised in the NOI with reference to amended Section 223, and to solicit comments and suggestions on the rules and regulations that the Commission must adopt, if practicable, under the mandate of the new amendment.[6] The Commission sought ideas and comments on rules and regulations that are technically and economically feasible which could limit dial-a-porn access to adults, including approaches such as operator intervention, blocking technology, hour limitations, and limitations on advertisements.

3. After analyzing the comments submitted in response to its NOI and NPRM, the Commission issued its *Report and Order*, which promulgated the following regulation:

> It is a defense to prosecution under Section 223(b) of the Communications Act of 1934, as amended, 47 U.S.C. 223(b) (1983), that the defendant has taken either of the following steps to restrict access to communications prohibited thereunder:
>
> (a) Operating only between the hours of 9:00 p.m. and 8:00 a.m. Eastern Time, or
>
> (b) Requiring payment by credit card before transmission of the message(s).

49 FR at 25003. Subsection (a), referred to as a "time-channeling" restriction because it puts restraints on the time of day during which access is permitted, was intended to regulate prerecorded dial-a-porn services; subsection (b) was intended to regulate live telephone services providing sexually explicit conversation, which generally require payment by charge or credit card and which the Commission found, by the very nature of payment, generally would limit access to adults. As discussed in greater detail below, the United States Court of Appeals for the Second Circuit set aside the Commission's regulation because, in the court's view, the record did not show that the time-channeling regulation was the least restrictive available. Court Decision at 122.[7] In response to the Court Decision, the Commission now proposes to adopt a revised regulation to accomplish the mandate of Congress to prevent access to dial-a-porn services by minors. First, however, we will carefully review the Court Decision.

The Court Decision

4. While the court did not reach the constitutionality of the underlying statute, it did not find that the Commission's time-channel regulation failed to meet the high standard of review appropriate for a content-based regulation.[8] According to the court, a content-based regulation must be reviewed under stricter scrutiny than the mere reasonableness test articulated by the United States Supreme Court in *Young* v. *American Mini Theaters, Inc.*, 427 U.S. 50 (1976) (plurality opinion). In the court's view, the proper standard of review, found in *Consolidated Edison Co.* v. *Public Service Commission*, 447 U.S. 530 (1980), requires that the regulation be narrowly drawn to further a compelling state interest. Court Decision at 121. Although the court indicated that the governmental interest in protecting minors from obscene or indecent material is quite compelling, it determined that we failed to demonstrate adequately that the regulatory scheme is narrowly drawn or that it is the least restrictive means of protecting minors. The court stated:

> The FCC expressly rejected certain alternatives, but the record provides minimal explanation for why screening or blocking or using access numbers would not be both more effective in limiting the dial-it audience to those over the age of eighteen and less restrictive of adults' freedom to hear what they want when they want to hear it.

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commercial purposes, use their telephone or allow others to use telephone facilities under their control to transmit obscene or indecent messages to individuals under eighteen years of age. The Commission is under mandate to develop a regulation restricting access by minors to "dial-a-porn" services. 47 U.S.C. 223(b)(2). A defendant may defend against prosecution under the statute by attempting to restrict access in accordance with the Commission's regulation. Section 223(b)(2) is set out at note 6, *infra*. *See also* note 5, *infra*.

[1] 48 FR 43348 (September 23, 1983).

[2] 49 FR 2124 (January 18, 1984).

[3] *See* Carlin Communications, Inc. v. FCC, 749 F.2d 113 (2d Cir. 1984), [hereinafter referred to as the "Court Decision"].

[4] In our NOI, we described the "dial-a-porn" service that resulted in passage of the legislation as follows:

> High Society Magazine, Inc. and Car-Bon Publishers obtained the Dial-It number in a lottery for Dial-It numbers conducted by New York Telephone in January 1983. The number was thereafter advertised in "High Society Live!" magazine and, in February 1983, operation of the service commenced. When the number is dialed, the caller hears a description or depiction of actual or simulated sexual behavior. The messages, *which are changed at least once daily, are available to any caller, twenty-four hours a day, every day.* As the local common carrier, New York Telephone does not operate the message service but provides the Dial-It service capability pursuant to an intrastate tariff filed with the Public Service Commission of New York. That tariff, which applies to all New York Telephone Dial-It services, explicitly provides that the subscriber has exclusive control over the content and quality of the message recorded and that the telephone company assumes no liability therefor.
>
> The Dial-It number operated by High Society has apparently been widely disseminated and called. Sources calculate that the service receives up to 500,000 calls a day, yielding approximately $10,000 for High Society and $35,000 for New York Telephone per day before costs. [Citations omitted and emphasis added].

As was further explained,

> Pursuant to the local tariff for Dial-It services, prior to May 1983 High Society received 2¢ for each local call while New York Telephone received 7¢ (of which 6.96¢ is estimated as New York Telephone's cost). As of May 1983, High Society continued to receive 2¢ per call, but New York Telephone's revenue per local call increased to 13¢ (and its average cost to 11.4¢). *See* New York Telephone P.S.C. Tariff No. 900 13 at 25. High Society also receives 2¢ for each long distance call. The long distance carriers and local carriers divide the remaining long distance revenues.
>
> *See* NOI, 48 FR at 43349, n. 7.
>
> We note that it is more accurate to refer to the "Dial-It" service as the Mass Announcement Network Service, but the parlance has become accepted and is used throughout this preceeding. It should also be noted that all Mass Announcement Services in the State of New York are on a 976 exchange and can be accessed locally or through an interexchange carrier. Report and Order, 49 FR 24998, n. 6.

[5] The Commission is required to adopt regulations pursuant to Section 223(b)(2). Section 223(b)(2) provides that:

> It is a defense to a prosecution under this subsection that the defendant restricted access to the prohibited communication to persons eighteen years of age or older in accordance with procedures which the Commission shall prescribe by regulation.

[7] The Court Decision was based on the content of subsection (a) of the Commission's regulation. *See* Court Decision at 120 and n. 11.

[8] The court did not observe, however, that the Commission's regulation was not arbitrary or capricious. Moreover, the court explained that the Commission's regulation was content-based because it did not apply to all "dial-it" services, only those transmitting obscene or indecent material. Court Decision at 116, 121.

Court Decision at 122.[9] On this basis the court set aside the Commission's regulation.

5. In accordance with the guidance set forth in the court's decision, the Commission will now embark on a second rulemaking proceeding through which it will attempt to develop a comprehensive record.[10]

Discussion

6. We have found in this proceeding that there are three practicable approaches by which access to dial-a-porn services by minors may be restricted: screening and blocking, access and identification codes, and limiting operational hours. As we observed in our *Report and Order*, each approach may entail a variety of workable schemes, and some schemes may impose simultaneous requirements on the subscribers, the telephone company, and/or the dial-a-porn service provider. One approach we have not discussed but upon which we seek comment responds directly to the need of parents to police the use of their telephones. Under this approach, telephone companies would be required to report on monthly bills to their subscribers any local or long distance calls made to 976-type numbers. Dial-a-porn service providers would be required to reimburse the administrative costs experienced by the telephone companies. One problem, of course, is the effect of such an approach on other dial-it service providers not offering obscene or indecent subject matter. We seek comment on the practicability and adequacy of implementing this kind of approach, including the extent to which it would serve as a viable defense under Section 223(b)(2).[11]

7. *Screening and blocking.* "Blocking" essentially refers to a technical methodology by which access to one or more preselected telephone numbers can be prevented. This generally may be achieved by the installation of specialized equipment at the local telephone company's central office, through either software modifications in the case of ESS (electronic switching system) equipped central offices or hardware changes where electromechanical switching is employed, or by deployment of call-blocking technology in the subscriber's terminal equipment. In our *Report and Order*, 49 FR 24998–99 (paras. 19–26), we discussed both methods. We noted that these methods are analogous to the postal service's accommodation of those who request non-delivery of "erotically arousing or sexually provocative" materials, where the burden of implementation lies with the offeror and subscriber, not the government or the carrier. *Id.* Based on the record, we concluded that blocking or screening would require time to develop and could entail costs that would outweigh the benefits to be obtained. We found, for example, that central office switching equipment currently in use is incapable of selectively screening or blocking on an entire seven or ten digit basis. Similarly, we rejected a blocking device installed in telephone equipment at the customers' premises because it required the development and installation on new equipment.

8. The court noted that the Commission did not refer to the technical option of simply blocking all "976" calls, *i.e.*, blocking an entire exchange, rather than blocking individual numbers. The court observed that blocking an entire exchange raises the problem of preventing legitimate calls to, for example, weather dial-it, but it nevertheless suggested that this option would at least offer the subscriber a choice and warranted consideration. Court Decision at 122, n. 14.

9. In order to augment the record on this issue, we ask interested parties to comment on the technical practicability of offering an exchange blocking service through the central office. A variant might involve telephone company provision of a screening subscription service by which equipment installed in the central office would automatically block all dial-it or, alternately, only dial-a-porn calls unless the subscriber paid a tariffed fee. Those commenting should include a detailed examination of the estimated costs associated with such schemes and assess those costs against other screening or blocking schemes, and other approaches generally. Interested parties are also asked to comment on possible solutions to the constitutional issue arising out of an exchange blocking scheme, *viz.*, blocking access to non-obscene or indecent dial-it services.

10. Since the telephone companies filed their comments in this proceeding, there have been significant changes in the telephone industry, including initial implementation of equal access to local exchange service by interexchange carriers.[12] One concomitant technical development we understand may be underway involves the inter- or intra-network transfer of ten digit (interexchange) calling number information, *i.e.*, the transfer of the telephone number of the calling party to a network location at or near the call destination. Such number reporting may already exist among or between originating line (subscriber), originating interoffice trunk, originating access line, terminating access line, terminating (incoming) interoffice trunk, or terminating line (destination) locations. It is possible as well that screening at the originating central office is tenable.

11. The screening of calls within the network from particular numbers to particular numbers may be more readily accomplished if the mechanism for number reporting is in place. The availability of calling party numbers could be used as a data base for screening. Thus, the extent to which number reporting exists or is planned may suggest a viable option to the approaches already before us in this proceeding to prevent minors from accessing dial-a-porn services. Accordingly, we ask that interested parties, particularly telephone companies, comment on the current and planned state of this number reporting, including timetable(s) for implementation, a detailed description of the system(s), and problems (including estimated costs) and recommended solutions associated with

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[9] The court further stated that:

[T]he [time-channel] regulation [adopted by the Commission] denies access to adults between certain hours, but not to youths who can easily pick up a private or public telephone and call dial-a-porn during the remaining hours. . . . [and] a young person needs to be unsupervised for only about ninety seconds in order to dial the number and hear the message.

Id. at 121.

[10] Earlier in this proceeding we proposed and evaluated schemes such as advertisements, disclaimers, and a goal-oriented approach. *See* Report and Order at 25,000 (paras. 30–33). Should any party commenting on issues in this Second Notice choose to comment further on any of those schemes, we ask that only *new* information directly related to the issues specifically delineated herein be offered. Further, without intimating our views on such a possibility, we are cognizant that, after due analysis consistent with the standards set forth by the court, we may find no solution more practicable than the regulation we adopted in our earlier Report and Order, or that no regulation at all is practicable. *See* 105 Cong. Rec. E 5966–67 (remarks by Congressman Kastenmeier) (December 14, 1983).

[11] We note that some telephone companies are already charging subscribes separately for calls to 976 transport service numbers, *e.g.*, C&P Telephone Company in Maryland and Washington, D.C. The Maryland Public Service Commission requires all recorded message services on the 976 exchange to preface each recording with a 10 second message informing callers that they will be charged for the call if they stay on the line. In addition, the service provider is required to retain all messages transmitted over its service for 90 days. This restriction became effective on January 22, 1985. We seek comment as to whether this approach by itself or in combination with another proposal would effectively fulfill our statutory mandate.

[12] *See* Modification of Final Judgment, United States v. American Tel. and Tel. Co., 552 F.Supp. 131, 230–31 (D.D.C. 1982), *aff'd, sub nom.* Maryland v. United States, 460 U.S. 1001 (1983).

adaptation of any such systems to screening access to specific dial-a-porn service numbers from specific numbers.

12. Similarly, comparable seven digit calling number reporting may exist or be planned in connection with the provision of intraLATA facilities, interoffice trunks, access lines, terminating lines, or interLATA trunks. Parties should comment on the state of these capabilities and include timetables and estimated costs for these plans as well. One additional variant involves reporting calling numbers information directly to the dial-a-porn operator, perhaps by separate order wire or interexchange carrier if necessary. By this scheme the dial-a-porn operator would be able to implement a blocking or screening procedure. Commenting parties should discuss the technical and legal problems associated with implementing any of these screening schemes, and include possible solutions to the problems raised.

13. With regard to a blocking device installed in telephone equipment at the calling customer's premises, we concluded in our *Report and Order* that "no existing commercial device has a screening capability that could be deployed within the subscriber's terminal equipment." *Report and Order*, 49 Fed. Reg. at 24,999. The court noted, however, that certain federal buildings have installed equipment that blocks all outgoing 976 calls. Court Decision at 122 and n. 15. [13] The court suggested that a regulation could be promulgated to provide the message provider with a defense to Section 223(b) were it to provide (or possibly pay for) a blocking device to telephone customers who request it. *Id.* at n. 16.

14. In responding to these concerns, we note at least one related factor that may have an impact on the feasibility of implementing a subscriber-located blocking option. There is currently in place an efficient means by which devices of this nature, should they be manufactured, may be quickly approved for direct network interconnection. Since initial implementation of Part 68 of the Commission's rules in 1976, which preemptively permits the installation of customer-provided terminal equipment without the interposition of telephone company-provided protective apparatus, some 24,000 models of telephone terminal equipment have been registered by over 2,000 registrants. [14] It is plain that there is considerable competition among terminal equipment suppliers, and it follows that there is an incentive among manufacturers, presumably eager for new opportunities, to develop a device that blocks outgoing calls from a subscriber's premises. We believe, therefore, that there exists a ready means of supplying such a device.

15. Accordingly, there would appear to be no patently insurmountable obstacle to development of, for example, a simple electronic device with a locking cover that would allow a subscriber to block one of a series of telephone numbers—even an entire exchange—from being dialed from his or her premises. It seems a system could be designed to permit easy programming in the way speed or automatic dialers currently available at very moderate prices operate. Such a device would obviate the need for replacing or modifying any telephone within a home or office to prevent minors from dialing dial-a-porn numbers; and the "lock" would serve as a practical means of discouraging children from tampering with the programming. [15]

16. A version of this device could be adapted for use within telephone company-provided coin telephones, as an alternative to central office screening, though telephone companies might be burdened with retrofitting coin telephones readily accessible to minors, if not all coin telephones. Instrument-implemented coin telephones, on the other hand, which are currently registrable under Part 68, could be required to contain this capability, either at the federal level through a Part 68 rule amendment or by state action coincident with policies set forth in *Coin Telephone Registration*, 49 FR 27763 (July 6, 1984). [16] The problem underlying application of this kind of approach to public telephones is that the calling party cannot be conveniently identified for screening purposes; and total 976 exchange blocking would seem untenable because many adult callers could not freely access their desired numbers. One solution to this problem might be to require calling party identification or code transmission, as discussed in more detail at paras. 19 *et seq.* herein. Comments are sought generally with regard to implementing a scheme that prevents minors from accessing dial-a-porn services from public telephones without unreasonably restricting access by adults or restricts pubic access to non-obscene or indecent dial-it services from such telephones.

17. In any case, we believe the option of relying upon a blocking device at the subscriber's premises, strictly under the control of the telephone service subscriber (or the telephone company in the case of central office implemented coin telephones), remains a practical option by whch we may accomplish the mandate of Congress. We therefore ask that interested parties offer their views on this generic option, with particular attention to estimated costs, and analysis regarding who should bear the financial responsibility for providing the blocking device(s). We ask that telephone companies providing dial-it services supply with their comments information concerning what percentage

[13] We note that such blocking may be optional on certain centrex services, but is not generally used.

[14] *See* 47 CFR Part 68. Our program requires, as a requisite for issuance of a registration number, submission of technical support data showing compliance with our technical standards. Once registered, a device may be connected directly to the telephone network by a subscriber, without harm to the network, telephone company employees, or third parties. Devices typically registered include telephones, answering machines, private branch exchanges (PBXs), key systems and automatic and memory dialers. For a chronicle of the implementing orders, *see* Memorandum Opinion and Order (Fourth Report) in Docket Nos. 19528, 20774 and 21182, 70 F.C.C.2d 1800 (1979). *See also* First Report and Order in CC Docket No. 81-216, 49 FR 21719 (1984) (inside wiring rules); Second Report and Order in CC Docket No. 81-216, FCC 84-522 (released November 28, 1984) (rules for registering digital equipment). With regard to the regulatory environment, we note a recent order by the Commission that facilitates implementation of the blocking device approach to preventing access by minors to dial-a-porn services. In the First Report and Order in CC Docket No. 81-216, the Commission adopted a universally applicable definition of the demarcation point between the telephone network and subscribers' premises, and rules were promulgated to permit subscribers to install their own new simple inside wiring. (The rules became effective in August 1984.) Thus, in conjunction with state tariffs that generally permit subscribers to arrange for the installation of a jack at the junction between existing inside wiring and the network, there are no regulatory restrictions against installing a single blocking device within a subscriber's premises that functions on all telephones within that premises. System wiring, *i.e.*, premises wiring involving more than one or two pairs of cables and generally associated with PBXs and key systems, similarly may be installed by the premises owner. *See* Fourth Report in Docket Nos. 19528, 20774 and 21182.

[15] One risk of this approach is that a clever youngster could "unplug" the blocking device and install instead a regular telephone, thereby bypassing the blocking function. One answer to this might be to mount the telephone jacks of the blocking device internally so that the locking cover prevents access to the means of network interconnection.

[16] Generally, instrument-implemented coin telephones registered under Part 68 may be connected to the network with the same preemptive right as any other registered telephone. *See* 47 CFR Part 68. The Commission deferred to the states and local regulatory authorities, however, the matter of resale of local exchange or intrastate service through such coin telephones. It also allowed states to require special features such as free "911" access, etc., on registered coin telephones installed within their borders. *See also* petition for declaratory ruling by Universal Payphone Corp. regarding state practices in response to the Commission's coin telephone decision, Public Notice No. 1166, December 4, 1984.

of (and how many) dial-a-porn calls are made from pay telephones and whether implementing this kind of blocking approach without application to coin telephones generally is a reasonable possibility. We further ask for suggestions as to how the general public could be apprised of numbers that it might choose to block. Interested parties should also provide appropriate recommended revisions to Part 68.

18. A regulation relying on subscriber initiative and expense to provide blocking devices in effect would alleviate the dial-a-porn message provider from having to perform any act to prevent minors from accessing his or her service. The Court itself noted:

> Yet we do not see when the financial burden could not be placed on dial-it services. For example, an alternative regulation might provide a defense to dial-it services that provide screening devices to telephone customers who request the installation of such devices.

Court Decision at n. 16. We seek comment as to whether a regulation of this nature should be adopted (as the least restrictive means of achieving the intent of Congress in adopting Section 223(b)), whether such a regulation should provide that blocking devices ought to be made available by the dial-a-porn service provider at no expense to the calling party, and whether telephone companies should be required to notify subscribers that blocking devices are available.

19. *Access and identification codes.* This approach essentially limits access to dial-a-porn services by requiring each caller to provide an access number for identification to an operator or computer before receiving the message.[17] Based on the record before it, the Commission found that requiring operator intervention for every prerecorded message would be economically impracticable in view of the vast number of simultaneous calls, and that an automatic access code system "would place substantial economic and administrative burdens on recorded service providers." *Report and Order*, 49 FR 25000. The Commission therefore rejected this regulatory approach.

20. In its opinion the court stated that it found "no great administrative difficulty" in requiring each person who desires access to dial-a-porn services to fill out some type of application which would be sent to the message service provider who then would have to rely on some system of age verification. Court Decision at 123. The court added that age verification might not be necessary because an access code mailed to a minor child would likely be intercepted by the parents.[18] The court further stated that it was not determining the constitutional impact of this scheme on adults who do not have access or identification codes but who wish to patronize dial-a-porn services. It observed that the Commission rejected the financial risk argument when it embraced the time-channeling approach, discussed briefly below, but did not accept the same financial jeopardy argument with regard to an automated access code scheme. In short, the court concluded that "[t]he Commission did not make the crucial determination about which scheme would be less restrictive of freedom of expression." Court Decision at 123. In this regard, we believe that an automated coding scheme not discussed earlier in this proceeding might offer an alternative and therefore warrants public comment.

21. That approach, incorporating a method of encryption technology known as scrambling, basically consists of mixing the content of a signal before transmission and reconstituting it on receipt. As applied to limiting access to dial-a-porn services by minors, a master scrambler would be installed at the output of the dial-a-porn provider's recorders and descramblers would be located at each subscriber's premises. Only those whose scramblers contained the "correct" code could receive the dial-a-porn messages. The actual scrambling could be achieved in a variety of ways. For example, the dial-a-porn audio would be disassembled under an algorithm into frequency bands, reassembled in an artificial and seemingly unintelligible fashion for transmission to subscribers, and descrambled, *i.e.*, reassembled, at the subscriber's location to restore the "intelligence". The descrambler located at the subscriber's premises could consist of a self-contained, prewired box plugged into the telephone line much like the blocking device discussed earlier herein, or could be acoustically coupled. To prevent the spread of purloined or pirated descrambling devices, it might be possible to include a removable circuit board feature and periodically change the scrambling algorithm or code (and the circuit board) in a way analogous to changing the combination of a lock. This scheme would also permit other dial-it service providers to offer similar subscription services; they would only need to provide their unique circuit cards. The scheme requires no action by the common carrier.

22. Interested parties are invited to comment on the feasibility of access and identification code approaches, who should bear the costs incurred by such approaches, and the degree to which freedom of expression would be restricted by each of the access and identification code approaches discussed in this proceeding. Commenters should also include detailed analysis of the likely impact of each approach on the viability of the message service provider, and the impact of each approach on the telephone company and telephone subscribers generally.

23. *Limiting operational hours.* We concluded in our *Report and Order* at 25,001–02 that limiting operational hours of dial-a-porn services to between the hours of 9:00 p.m. and 8:00 a.m. Eastern Time would present a "most effective method of limiting the availability of recorded 'dial-a-porn' services to minors, * * * " As noted above, however, the court requires that limiting access to dial-a-porn services by time-channeling restrictions carries with it the necessity for careful evaluation against all reasonable alternatives.

24. In view of the court's decision, we ask that interested parties consider alternative means of implementing a time-channel approach to achieve the intent of Congress in adopting Section 223(b)(2). For example, the court observed that

> * * * the record before us offers little that demonstrates why a prohibition on dial-it services is needed during daytime school hours when children are for the greater part of the year likely to be in class under adult supervision, while the prohibition is not needed after 9:00 p.m. Eastern Time (6:00 p.m. on the West Coast), when a young person needs to be unsupervised for only about ninety seconds in order to dial the number and hear the message.

Court Decision at 121. It may be appropriate to consider alternative hours of prohibition, or structure a regulation founded on time-channel restrictions but which is coupled with an access limitation or code scheme. Interested parties are invited to comment on these time-channel approach alternatives. We also solicit views on the relative merits of time-channel proposals against other

[17] The court did not find fault with the Commission's conclusion that requiring payment by credit card before transmission of live dial-a-porn messages was a proper means of restricting access to minors under Section 223(b). The rationale is that minors are generally not issued and do not have access to credit cards. *See* para. 3, *supra*. Our discussion here focuses on situations where there is no such inherent age screening. *See* Report and Order, 49 FR 24998–25000 (para. 17); *id.* at 25,000 (paras. 25–29).

[18] *Cf.* Report and order, 49 FR 25000, n. 43.

methods already in the record and against those new approaches and schemes set forth in this Second Notice.

Conclusion

25. By this Second Notice of Proposed Rulemaking we seek to cure what the court found to be infirmities in the record supporting the regulation we issued pursuant to the mandate of Section 223(b). More specifically, we ask parties to supplement the record on the feasibility, the costs and who would bear them, the benefits, and the efficacy of various means of satisfying Congress' objective in amending Section 233—to achieve the compelling public interest of limiting the access of children to obscene or indecent material transmitted by telephone. Our primary purpose is to address the concerns raised by the court. We particularly call upon those who may wish to avail themselves of the defense the Commission's regulation will provide, and upon the telephone companies who may be affected by techniques prescribed to limit the access of children to salacious material (and who draw revenue from the services under scrutiny), to respond to the concerns raised by the court and to propose techniques that would be "more effective in limiting the dial-it audience to those over the age of eighteen and less restrictive of adults' freedom to hear what they want when they want to hear it." Court Decision at 122.

26. As required by Section 603 of the Regulatory Flexibility Act, the FCC has prepared another initial regulatory flexibility analysis (IRFA) of the expected impact of the proposed rule changes on small entities. The IRFA is set forth in Appendix A. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Second Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the Second Notice, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1980)).

27. Members of the public are advised that *ex parte* contracts are permitted from the time the Commission adopts the Second Notice of Proposed Rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communcation (other than formal written comment/pleading and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding must prepare a written summary of that presentation; and, on the day of oral presentation, must serve that written summary on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must alo state by docket number the proceeding to which it related. *See* generally, § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

28. This Second Notice of Proposed Rulemaking is issued pursuant to authority contained in Sections 4(i) and 223(b)(2) of the Communications Act of 1934, as amended. Interested parties may file comments on or before May 14, 1985 and reply comments on or before June 11, 1985. All relevant and timely comments filed in response to this Second Notice will be considered by the Commission. In accordance with the provision of § 1.419 of the Commission's Rules, an original and five copies of all comments, replies, briefs and other documents filed in this proceeding shall be furnished to the Commission. Further, members of the general public who wish to participate informally in the proceeding may submit one copy of their comments, specifying the docket number in the heading. All comments should be submitted to the Commission's Secretary. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided the fact of the Commission's reliance on such information is noted in the Report and Order that follows.

29. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A—Initial Regulatory Flexibility Act Analysis

1. *Reason for Action:* Section 223(b)(2) of the Communications Act of 1934, as amended, 47 U.S.C. 223(b)(2), requires the Commission to adopt rules and regulations limiting access to obscene or indecent telephone message services by persons 18 years or age or older. Further, the United States Court of Appeals for the Second Circuit set aside the initial regulation adopted by the Commission as insufficiently justified under constitutional standards. This action is in response to that finding.

2. *Objectives:* The Commission proposes to adopt rules that will curtail children's access to these services while retaining reasonable access for adults. The Commission has suggested certain approaches but requires public comment in addition to those submitted earlier in the proceeding before deciding whether to adopt them.

3. *Legal basis:* Action proposed herein is taken pursuant to Sections 223(b)(2) and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i) and 223(b)(2).

4. *Description of potential impact and number of small entities affected.* This action will have primary effect on sponsors of dial-a-porn types of services. It is unclear how many such sponsors there are when all kinds of message services (rather than dial-it services only) are involved. We believe our proposals are the least burdensome available to these operators. (Telephone companies are not considered small businesses for purposes of this analysis. *See Market Structure (Phase I),* 93 F.C.C. 2d 241, 338 (1983).) We therefore ask small entities to comment on the impact they foresee arising out of adoption of any of the rules we or others are proposing.

5. *Recording, record keeping and other compliance requirements:* None.

6. *Federal rules which overlap, duplicate or conflict with this rule:* None.

7. *Any significant alternatives minimizing impact on small entities and*

consistent with the stated objective.
None.

[FR Doc. 85-6190 Filed 3-14-85; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 36

Federal Acquisition Regulation (FAR); Definition of Architect-Engineer Services

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council are considering a revision of the Federal Acquisition Regulation (FAR) at FAR 36.102, Definitions, and FAR 53.236-2, Architect-engineer services (SF's 254 and 255).

DATE: Comments on the proposed revisions should be submitted in writing to the FAR Secretariat at the address shown below on or before May 14, 1985, to be considered in the formulation of the final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, Attn: FAR Secretariat (VT), 18th & F Streets, NW., Room 4041, Washington, DC 20405. Please cite FAR Case No. 85-20 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Roger M. Schwartz, Director, FAR Secretariat, (202) 523-4755.

SUPPLEMENTARY INFORMATION: This proposed revision to FAR 36.102, Definitions, (and a corresponding revision of the definition on Standard Form (SF) 254, Architect-Engineer and Related Services Questionnaire, and SF 255, Architect-Engineer and Related Services Questionnaire for Specific Projects) will implement the Office of Federal Procurement Policy (OFPP) Policy Letter 83-3, June 8, 1983 (48 FR 27861, June 1, 1983). This proposed revision will add a definition and guidance regarding the acquisition of architect-engineer services.

Dated: March 13, 1985.

Roger M. Schwartz,
Director, FAR Secretariat.

List of Subjects in 48 CFR Part 36

Government procurement.

Therefore, it is proposed that 48 CFR Part 36 be amended as follows:

1. The Authority for Part 36 is:

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; 42 U.S.C. 2453(c).

PART 36 CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

2. Section 36.102 is amended by alphabetically adding the definition of "Architect-Engineer Services" to read as follows:

36.102 Definitions.

"Architect-Engineer Services" means (a) Professional services of an architectural or engineering nature that are *required* either by virtue of law or the contracting officer's determination to be performed by a registered or licensed architect or engineer; or (b) incidental services that members of the architect-engineer professions or those in their employ may logically or justifiably perform in conjunction with professional architect-engineer services acquired through the Pub. L. 92-582 procedure.

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[FR Doc. 85-6267 Filed 3-14-85; 8:45 am]
BILLING CODE 6820-61-M

Notices

Federal Register
Vol. 50, No. 51
Friday, March 15, 1985

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.

COMMISSION ON CIVIL RIGHTS

Delaware Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Delaware Advisory Committee to the Commission will convene at 2:30 p.m. and will end at 4:30 p.m., on March 25, 1985, at the Carvel State Office Building, 820 North French Street, The Conference Room, 4th floor, Wilmington, Delaware. The purpose of the meeting is to review the programs and activities of the Commission and the Advisory Committee.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson William J. Conner or Edward Rutledge of the Mid-Atlantic Regional Office at (202) 254–6717.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 8, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–6249 Filed 3–14–85; 8:45 am]

BILLING CODE 6335–01–M

Iowa Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Iowa Advisory Committee to the Commission will convene at 11:00 a.m. and will end at 1:30 p.m., on April 24, 1985, at the Holiday Inn, 210 S. Dubuque Street, the Johnson Room, Iowa City, Iowa. The purpose of the meeting is to develop program plans for FY 1985 and to discuss follow-up plans to the community forum on "Age Discrimination."

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson George Williams or Melvin Jenkins of the Central States Regional Office at (816) 374–5253.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 12, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–6252 Filed 3–14–85; 8:45 am]

BILLING CODE 6335–01–M

Louisiana Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 1:00 p.m. and will end at 4:00 p.m., on March 28, 1985, at the Sheraton-New Orleans, 500 Canal Street, the Rampart Room, New Orleans, Louisiana. The purpose of the meeting is to plan State Advisory Committee programs and a briefing on Commission and regional programs.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Louis Pendleton or Richard Avena in the Southwestern Regional Office (512) 229–5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 8, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–6250 Filed 3–14–85; 8:45 am]

BILLING CODE 6335–01–M

Massachusetts Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 1:00 p.m., on April 18, 1985, at the U.S. Commission on Civil Rights, 55 Summer Street, 8th Floor, Boston, Massachusetts. The purpose of the meeting is to provide an orientation for new committee members, review recent committee activity, and plan the committee's program for the remainder of the year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Philip Perlmutter or Jacob Schlitt of the New England Regional Office at (617) 223–4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 12, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–6253 Filed 3–14–85; 8:45 am]

BILLING CODE 6335–01–M

Michigan Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will convene at 6:00 p.m. and will end at 9:00 p.m. on April 9, 1985, at the Westin Hotel, Renaissance Center, 400 E. Jefferson Street, the Windsor Room, Detroit, Michigan. The purpose of the meeting is to discuss a general review of the status of civil rights in Michigan.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson M. Howard Rienstra, or Isidro Lucas in the Midwestern Regional Office (312) 353–7371.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 12, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–6251 Filed 3–14–85; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Withdrawal of Application for Duty-Free Entry of Scientific Instruments

The University of Washington has withdrawn Docket Number 83-112, an application for duty-free entry of a Neutron Therapy System. Accordingly, further administrative proceedings will not be taken by the Department of Commerce with respect to this application.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-6174 Filed 3-14-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-502]

Initiation of Antidumping Duty Investigation; Low-Fuming Brazing Copper Rod and Wire from France

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether low-fuming brazing copper rod and wire from France is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before April 5, 1985, and we will make ours on or before July 29, 1985.

EFFECTIVE DATE: March 15, 1985.

FOR FURTHER INFORMATION CONTACT: David D. Johnston, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 377-2239.

SUPPLEMENTARY INFORMATION:

The Petition

On February 19, 1985, we received a petition in proper form filed by American Brass, Century Brass, and Cerro Metal Products on behalf of the United States low-fuming brazing rod and wire industry. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from France are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

The petitioners based the United States prices on average unit values of imports from France, as calculated from data reported by the Department of Commerce. From these unit values, petitioners deducted the cost of packing and handling.

The petitioners based foreign market value on sales prices of ⅛ inch diameter low-fuming brazing copper rod in the home market. Petitioners deducted from these prices a 30 percent mark-up to allow for the different levels of trade; a five percent rebate provided to large purchasers; estimated credit cost; and estimated insurance cost. Petitioners have also adjusted home market values downward to reflect dropping metal values where applicable.

By comparing the values calculated by the foregoing methods, the petitioners alleged dumping margins between 36 and 64 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on low-fuming brazing copper rod and wire and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether low-fuming brazing copper rod and wire from France is being, or is likely to be, sold in the United States at less than fair value. If our investigation proceeds normally we will make our preliminary determination by July 29, 1985.

Scope of Investigation

The products covered by this investigation are low-fuming brazing copper rod and wire, principally of copper and zinc alloy ("brass"), of varied dimension in terms of diameter, whether cut-to-length or coiled, whether bare of flux-coated, currently classified in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 612.6205, 612.7220 and 653.1500. The chemical composition of the products under investigation is defined by Copper Development Association (CDA) standards 680 and 681.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by April 5, 1985, whether there is a reasonable indication that imports of low-fuming brazing copper rod and wire from France are causing material injury, or threaten material injury, to a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

March 11, 1985.

C. Christopher Parlin,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-6224 Filed 3-14-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-404]

Preliminary Determination of Sales at Less Than Fair Value; Fabric Expanded Neoprene Laminate From Japan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that fabric expanded neoprene laminate from Japan is being, or is likely to be, sold in the United States at less than fair value. Therefore, we have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise, with the exception of entries of merchandise manufactured by three companies preliminarily excluded, which are entered, or withdrawn from

warehouse, for consumption, on or after the date of publication of this notice and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. We have excluded three manufacturers whose margins are *de minimis* from this preliminary determination. Those firms which are subject to suspension of liquidation are indicated in the "Suspension of Liquidation" section.

If this investigation proceeds normally, we will make a final determination by May 28, 1985.

EFFECTIVE DATE: March 15, 1985.

FOR FURTHER INFORMATION CONTACT: William Kane, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 377-1776.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that there is a reasonable basis to believe or suspect that fabric expanded neoprene laminate from Japan is being sold, or is likely to be sold, in the United States at less than "fair value," as provided in section 733 of the Tariff Act of 1930, as amended (the Act). We have found *de minimis* margins on sales at less than fair value for three of the firms investigated. Therefore, we have excluded those firms from this determination. For the remaining firm we have found that the foreign market value exceeded the United States price on 88 percent of the sales compared. These margins ranged from .39 percent to 38 percent. The weighted-average margin on all sales compared is 13.02 percent. Those firms which are subject to or excluded from this determination are indicated in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by May 28, 1985.

Case History

On October 1, 1984, we received a petition in proper form from Rubatex Corporation, Bedford, Virginia on behalf of the U.S. industry producing fabric expanded neoprene laminate. In accordance with the filing requirements of § 353.36 of the Commerce Department Regulations (19 CFR 353.36), the petition alleged that fabric expanded neoprene laminate from Japan is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure, a U.S. industry.

After reviewing the petition, we determined it contained sufficient grounds to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on October 22, 1984 (49 FR 42970). The ITC subsequently found, on November 14, 1984, that there is a reasonable indication that imports of this product from Japan are materially injuring, or are threatening to materially injure, a United States industry.

Scope of the Investigation

The merchandise covered by this petition is fabric expanded neoprene laminate imported from Japan and currently classified under item numbers 355.81, 355.82, 359.50, and 359.60 of the *Tariff Schedules of the United States*. We investigated sales of this product which were made by four Japanese producers and sold to the United States during the period of investigation, May 1, 1984 through October 31, 1984. The firms investigated were: Yamamoto Corporation (Yamamoto); Asahi Rubber Co., Ltd. (Asahi); Sedo Chemicals Co., Ltd. (Sedo); and Daiwa Rubber and Chemical Co., Ltd. (Daiwa). Sales by the above firms accounted for approximately 94 percent of all sales of the merchandise to the United States during the period of investigation.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value. With the exception of certain sales by Asahi, we based the foreign market value on sales of such or similar merchandise in the Japanese home market. For sales by Asahi of a unique, fire-retardant product there were no sales in the home market of such or similar merchandise. In accordance with section 773(a)(1)(B) of the Act, for these sales we based the foreign market value on sales of such or similar merchandise to a third country, Canada.

United States Price

As provided in section 772(b) of the Act, for all companies we used the purchase price of the subject merchandise to represent the United States price, because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated purchase price based on FAS or FOB Japanese port or CIF, packed prices to unrelated purchasers in the United States or to unrelated trading companies for sale to the United States.

We made deductions, where appropriate, for ocean freight, marine insurance, foreign inland freight and foreign brokerage and handling charges.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value for Yamamoto, Sedo, Daiwa and certain sales by Asahi based on home market ex-factory or delivered, packed and unpacked prices to unrelated purchasers in the home market. For sales of fire-retardant products by Asahi we based foreign market value on delivered Japanese port, packed prices to unrelated trading companies for sale to Canada, because there were no sales of such or similar merchandise in the home market. We made deductions, where appropriate, for foreign inland freight and cash discounts. We made adjustments for warranty expenses, advertising expenses and differences in credit expenses, where appropriate, in accordance with § 353.15 of the Commerce regulations. We made adjustments for cost differences in comparisons of similar merchandise in accordance with § 353.16 of the Commerce regulations. We also deducted the home market or third-country packing cost, where appropriate, and added the packing cost incurred on sales to the United States.

Yamamoto claimed a level of trade adjustment to home market prices, because sales to the United States were all to unrelated trading companies, while sales in the home market were to end users and unrelated trading companies. In the home market we compared only sales to unrelated trading companies. Therefore, no adjustment for level of trade was necessary.

Sedo claimed as a direct selling expense costs associated with salesmen's visits to customers. We have not allowed this claim pending verification that such expenses are directly related to the sales under investigation.

Daiwa claimed an adjustment to home market prices for a "quality discount". We have not allowed the adjustment at this time as we need further clarification of the nature of this discount. If warranted, we will consider this claim further in our final determination.

Asahi claimed an adjustment to home market prices for an amount reflecting advertising and other direct selling expenses. We have denied this adjustment pending clarification of the individual expenses included in this

amount. We may consider this claim further for our final determination. Asahi also submitted revised calculations of home market packing expenses. These were not submitted in time to be included in our preliminary determination. They will be reviewed at verification and considered for our final determination.

Verification

In accordance with section 776(a) of the Act, we will verify all data used in reaching a final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of fabric expanded neoprene laminate from Japan which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise exceeds the United States price. This suspension of liquidation will remain in effect until further notice. Companies excluded from this determination are identified by an asterisk (*) in the chart below. The weighted-average margins are as follows:

Manufacturer	Weighted-average margin (percent)
Yamamoto Corporation	13.02
*Asahi Rubber Co., Ltd	[1].12
*Sedo Chemicals Co., Ltd	[1].002
*Daiwa Rubber & Chemicals Co., Ltd	[1].34
*All others	13.02

[1] De minimis.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Public Comment

In accordance with § 353.47 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on April 22, 1984, at the U.S. Department of Commerce, Room B841, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least ten copies must be submitted to the Deputy Assistant Secretary by April 19, 1983. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within thirty days of publication of this notice, at the above address in at least 10 copies.

C. Christopher Parlin,

Acting Deputy Assistant Secretary for Import Administration.

March 11, 1985.

[FR Doc. 85-6226 Filed 3-14-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-403]

Final Determination of Sales at Less Than Fair Value; Stainless Steel Woven Wire Cloth From Japan

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that stainless steel woven wire cloth from Japan is being sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring or are threatening to materially injure, a United States industry.

EFFECTIVE DATE: March 15, 1985.

FOR FURTHER INFORMATION CONTACT: Michael Ready, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377-2613.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that stainless steel woven wire cloth from Japan (SSWWC) is being sold, or is likely to be sold, in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act).

The weighted-average margin of all sales compared is 3.35 percent *ad valorem*. We have found either no margins, or *de minimis* margins on sales made by three of the firms investigated. Therefore, those firms have been excluded from this determination. Margins were found on 30 percent of the sales compared. The margins ranged from .03 percent to 41.25 percent. For the period of investigation, based on the weighted-average for the companies above the *de minimis* level, dumping duties would have amounted to $117,108 on sales totalling $3,491,556.

Case History

On May 31, 1984, we received a petition filed in proper form from the American Wire Cloth Institute (AWCI), on behalf of the U.S. industry producing SSWWC. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act), and that these imports are materially injuring, or threatening material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated the investigation on June 19, 1984 (49 FR 25890), and notified the ITC of our action.

On July 10, 1984, the ITC found that there is a reasonable indication that imports of SSWWC from Japan are materially injuring, or threatening material injury to, a U.S. industry (U.S. ITC Pub. No. 1552, July 1984).

On October 24, 1984, pursuant to a request from the petitioner under section 733(c)(1)(A) of the Act, the Department extended the date for the preliminary determination until December 27, 1984 (49 FR 42771).

We published a preliminary determination of sales at less than fair value on January 3, 1985 (50 FR 309). Our notice of the preliminary determination provided interested parties with an opportunity to submit views orally or in

writing. On February 11, 1985, we held a public hearing.

The following manufacturers, accounting for more than 80 percent of the sales of the subject merchandise to the United States, were investigated: Nihon Net Kosan Co. Ltd. (Nihon), Nissaku Wire Netting Co. Ltd. (Nissaku), Asano Wire Netting Co. Ltd. (Asano), F. Hayashi Wire Cloth Manufacturing Co. (Hayashi), Matsubara Wire Netting Co. Ltd. (Matsubara), Sakakura Wire and Wire Netting Co. Ltd. (Sakakura), Yamato Wire Netting Co. Ltd. (Yamato), DIA Enterprises Ltd. (DIA), and ITO Wire Netting Co. (ITO). We investigated 100 percent of the sales made by the above companies during the period of investigation (December 1, 1983, through May 31, 1984).

Scope of Investigation

The merchandise covered by this investigation is stainless steel woven wire cloth, whether in rolls, in endless bands, or in lengths, not cut to shape; woven of simple warp and weft construction with (1) meshes not finer than 30 wires to the lineal inch in warp or filling, valued over 7.5 cents per square foot, (2) with meshes finer than 30 but not finer than 90 wires to the lineal inch in warp or filling, valued over 21.25 cents per square foot, or (3) with meshes finer than 90 wires to the lineal inch in warp or filling; as currently provided for in items 642.5200, 642.6400 and 642.7400 of the *TSUSA*. Stainless steel gauze, fabric, screen, netting or fencing are not covered by this investigation.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the FOB, C&F, CIF, or ex-godown packed price to unrelated customers in the United States, or to unrelated trading companies in Japan. We made deductions, where appropriate, for Japanese inland freight, inland insurance, ocean freight, marine insurance, FOB charges, customs brokerage, and inspection expenses.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales, sales to third country markets, or constructed value. We made comparisons of "such or similar" merchandise based on grade, mesh size, and wire diameter categories selected by Commerce Department industry experts.

Where we used home market prices as the basis for foreign market value, we calculated the home market prices for each type of SSWWC on the basis of delivered or ex-factory packed prices to unrelated purchasers. From these prices, we deducted, where appropriate, Japanese inland freight and inland insurance. Where we used sales to third country markets as the basis for foreign market value, we calculated the third country price on the basis of the ex-godown or CIF price with deductions, where appropirate, for inland freight in Japan, inspection expenses, ocean freight and marine insurance. In both cases, we made adjustments, where appropriate, for differences in credit expenses and other direct selling expenses in accordance with section 353.15 of our regulations (19 CFR 353.15). We also made adjustments, where appropriate, for differences in merchandise in accordance with section 353.16 of our regulations (19 CFR 353.16). We also deducted home market or third country packing costs and added the packing cost incurred on sales to the United States.

We disallowed a claimed adjustment for differences in manufacturing costs (based on differences in the order date between certain sales to the United States and certain sales to the home market). We also disallowed a claimed adjustment for higher administrative expenses incurred on home market sales because we consider these to be indirect expenses not bearing a direct relationship to the sales under consideration.

Where we used constructed value as the basis for foreign market value, we added the cost of materials, fabrication, general expenses, profit, and U.S. packing. The amount added for general expenses was the statutory minimum of 10 percent of the sum of material and fabrication costs, or the actual general expenses, whichever was higher. The amount added for profit was the statutory minimum of 8 percent of the sum of materials, fabrication costs, and general expenses, or the actual profit, whichever was higher.

Verification

In accordance with section 776(a) of the Act, we verified data used in making this determination by using verification procedures which included on-site inspection of manufacturers' facilities and examination of company records and selected original source documentation containing relevant information.

Petitioner's Comment

The petitioner's only comment was to request the Department to conduct a careful analysis of the respondents' component stainless steel wire costs to ensure the accuracy of the information upon which this final determination is based.

DOC Response: The Department conducted an extensive verification of the information provided by the Japanese wire cloth companies. Particular attention was paid to verifying the respondents' stainless steel wire costs. As a result of the verification the Department is satisfied that the stainless steel wire costs reported by the respondents are accurate.

Respondents' Comments

Comment 1: The respondents argue that the Department should base foreign market value for AISI Type 304 cloth on the home market price of AISI Type 316 cloth (rather than on the constructed value of 304 cloth) in cases where there were no home market sales of 304 cloth.

DOC Response: According to section 771(16)(C)(ii) of the Act, in order for us to consider Type 316 similar to Type 304, Type 316 must be like Type 304 in the purposes for which it is used. The primary difference in these two steel types is the inclusion of two percent molybdenum in Type 316. As a result of the addition of molybdenum, cloth woven from Type 316 affords greater corrosion resistance, but less abrasion resistance than Type 304. Therefore the wire cloth woven from these two steel types is used in different applications. We accordingly determine that Type 316 is not like Type 304 within the meaning of section 771(16)(C)(ii) of the Act.

Comment 2: Respondents argue that in calculating foreign market value the Department should make an adjustment to account for the "high administrative costs incurred in making a substantial number of sales in small quantities in the home market," as compared to the costs required to sell substantial quantities to a handful of U.S. customers.

DOC Response: The administrative costs for which the respondents claim an adjustment are fixed costs which do

not bear a direct relationship to the sales under consideration. As such, these costs do not satisfy the criteria for making an adjustment under either section 353.14 or 353.15 of the DOC Regulations.

Comment 3: Respondents argue that in calculating a weighted-average margin applicable to companies whose sales have not been investigated, the Department should take into account the companies with either zero or *de minimis* margins.

DOC Response: The Department's long-standing policy is to base the bonding rate for manufacturers and exporters not investigated on the weighted-average of the margins applicable to companies covered by an affirmative determination. Manufacturers or exporters who have affirmatively demonstrated, through verified information, that they do not sell at less than fair value or have *de minimis* margins, are excluded from the determination. The Department does not believe it is appropriate to include in the weighted-average bonding rate those margins applicable to companies not covered by the affirmative determination.

Comment 4: Respondents argue that in calculating constructed value for Matsubara, the Department should base the amount to be added for general expenses on the selling, general and administrative expenses (SG&A) incurred by Matsubara during the first six months of 1984, rather than on the SG&A for fiscal year 1983.

DOC Response: We agree.

Comment 5: Respondents argue that the SG&A expenses for Asano were overstated in the Department's preliminary determination by including certain expenses not related to the product under investigation and other expenses not properly included in the ex-factory cost of production of the product.

DOC Response: Based on additional information received from the respondent, the Department concludes that certain costs included in the SG&A in the preliminary determination were related to other products not under investigation or were selling expenses related to other markets. Therefore, we did not include these expenses in Asano's SG&A for this final determination.

Comment 6: Respondents argue that in calculating constructed value, the Department should reduce the respondents' material costs to reflect income earned from sales of wire scrap.

DOC Response: We agree that income from the sale of scrap is a reduction to the cost of material. The respondents reported this income in SG&A expenses. Transferring this income from SG&A expenses to material costs would not have an effect on the total cost of production of the product.

Comment 7: Respondents argue that their credit costs (used for calculating a credit expense adjustment) should be increased by the amount of bank handling charges incurred by the respondents in connection with their short-term borrowings.

DOC Response: This adjustment claim was not made until after the completion of the verification. As such, the claim is untimely and may not be considered.

Comment 8: The respondents argue that the Department should reduce the SG&A expenses of Sakakura Wire and Wire Netting Co., Ltd. by the amount of profit realized on currency exchange.

DOC Response: This adjustment claim is also untimely.

Continuation of Suspension of Liquidation

We are directing the United States Customs Service to continue to suspend liquidation of all entries of SSWWC from Japan, with the exception of the SSWWC produced by ITO, DIA, Matsubara or Yamato, which are entered, or withdrawn from warehouse, for consumption, on or after January 3, 1985, the date on which the Department published its preliminary determination in the **Federal Register**. We are also directing the Customs Service to suspend liquidation of all entries of SSWWC from Japan produced by ITO which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this final determination in the **Federal Register**. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated weighted-average margin amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. The bond or cash deposit amounts established in our preliminary determination of January 3, 1985, remain in effect with respect to entries or withdrawals made prior to the date of publication of this notice in the **Federal Register**. With respect to entries or withdrawals made on or after the publication of this notice, the bond or cash deposit amounts required are shown below. Companies excluded from this determination are identified by an asterisk(*).

Manufacturer/producer/exporter	Weighted-average margin percentage
Asano	5.58
Hayashi	2.07
ITO	1.19
Nihon	4.74
Nissaku	1.47
Sakakura	4.78
*Matsubara	[1] 0.13
*Yamato	[1] 0.32
*DIA	[1] 0.30
All other manufacturers/producers/exporters	3.35

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will make its determination whether these imports are materially injuring, or threatening to materially injure, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on stainless steel woven wire cloth from Japan entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

William T. Archey,

Acting Assistant Secretary for Trade Administration.

March 11, 1985.

[FR Doc. 85-6221 Filed 3-14-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-614-502]

Initiation of Antidumping Duty Investigation; Low-Fuming Brazing Copper Rod and Wire from New Zealand

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether low-fuming brazing copper rod and wire from New Zealand is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before April 5, 1985, and we will make ours on or before July 29, 1985.

EFFECTIVE DATE: March 15, 1985.

FOR FURTHER INFORMATION CONTACT: David D. Johnston, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–2239.

SUPPLEMENTARY INFORMATION:

The Petition

On February 19, 1985, we received a petition in proper form filed by American Brass, Century Brass, and Cerro Metal Products on behalf of the United States low-fuming brazing rod and wire industry. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from New Zealand are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

The petitioners based the United States prices on average unit values of imports from New Zealand, as calculated from data reported by the Department of Commerce. From these unit values, petitioners deducted the cost of packing and handling.

The petitioners based foreign market value on sales prices of ⅛ inch diameter low-fuming brazing copper rod in the home market. Petitioners deducted from these prices a 30 percent mark-up to allow for the different levels of trade; estimated cost of flux coating to allow for difference is merchandise; estimated credit cost; and estimated insurance cost. Petitoners factored in the effect of the depreciation of the New Zealand Dollar vis-a-vis the U.S. Dollar. Petitioners have also adjusted home market values downward to reflect dropping metal values where applicable.

By comparing the values calculated by the foregoing methods, the petitioners alleged dumping margins between 21 and 52 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on low-fuming brazing copper rod and wire and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether low-fuming brazing copper rod and wire from New Zealand is being, or is likely to be, sold in the United States at less than fair value. If our investigation proceeds normally we will make our preliminary determination by July 29, 1985.

Scope of Investigation

The products covered by this investigation are low-fuming brazing copper rod and wire, principally of copper and zinc alloy ("brass"), of varied dimension in terms of diameter, whether cut-to-length or coiled, whether bare or flux-coated, currently classified in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 612.6205, 612.7220 and 653.1500. The chemical composition of the products under investigation is defined by Copper Development Association (CDA) standards 680 and 681.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by April 5, 1985, whether there is a reasonable indication that imports of low-fuming brazing copper rod and wire from South Africa are causing material injury, or threaten material injury, to a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

C. Christopher Parlin,

Acting Deputy Assistant Secretary for Import Administration.

March 11, 1985.

[FR Doc. 85–6225 Filed 3–14–85; 8:45 am]

BILLING CODE 3510–05–M

[A–435–401]

Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China; Initiation of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether natural bristle paint brushes and brush heads from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value. We will notify the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products are causing material injury, or threaten material injury to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before Arpil 5, 1985, and the Department of Commerce will make its preliminary determination on or before July 29, 1985.

EFFECTIVE DATE: March 15, 1985.

FOR FURTHER INFORMATION CONTACT: Mary J. Jenkins, Office of Investigation, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 377–1756.

SUPPLEMENTARY INFORMATION:

The Petition

On February 19, 1985, we received a petition in proper form filed by the United States Paint Brush Manufacturers and Suppliers Ad Hoc Import Action Coalition, on behalf of the U.S. industry producing natural bristle paint brushes and brush heads. The coalition is comprised of 10 United

States manufacturers and two suppliers of paint brushes. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

Petitioner based United States prices on "purchase price" which was determined by using 1984 price quotations received by unrelated U.S. purchasers of Chinese produced natural bristle paint brushes.

Petitioner claims that the PRC is a state-controlled economy country within the meaning of the Act. It alleges that the state-controlled nature of the industry and the consequent ability to set prices without regard to production costs, does not permit a reliable calculation of foreign market value based either on sales or offers of sales of the products under investigation in the PRC or to countries other than the United States. Therefore, petitioner alleges that the Department of Commerce must choose a surrogate country. The petitioner chose Sri Lanka as the non-state-controlled-economy surrogate country whose prices should be used as the basis for determining the foreign market value of the merchandise under investigation.

Petitioner supports its allegations of sales at less than fair value by using as foreign market value ex-factory prices for natural bristle paint brushes in Sri Lanka obtained from a 1983 price list supplied to a manufacturer of the British Brush Manufacturing Association. Petitioner attempted to convert the 1983 price list to 1984 prices, taking into account inflation in Sri Lanka and changes in the exchange rate.

Based on comparison of prices calculated using the foregoing methodology, the petitioner alleges an average dumping margin ranging from 26.70 percent to 487 percent. Petitioner also compared the average unit price of paint brushes imported to the United States from Sri Lanka in 1983 with the average unit price of paint brushes imported from the PRC in 1983, using the customs entry value as derived from the Bureau of the Census statistics. Based on comparisons of prices calculated using this method, the petitioner alleges an estimated dumping margin of 205.99.

Initiation of Investigations

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on natural bristle paint brushes and brush heads and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether natural bristle paint brushes and brush heads from the PRC are being, or are likely to be, sold in the United States at less than fair value.

Petitioner has included natural bristle brush heads within the scope of investigation to avoid the possibility that antidumping duties assessd on paint brushes from the PRC might be avoided by switching to importation of paint brush heads to be fitted with handles in the United States. Petitioner provided correspondence received from exporters stating that natural bristle paint brush heads are available for exportation from the PRC. Both natural bristle paint brushes and brush heads are currently provided for in item number 750.65 of the *Tariff Schedules of the United States, Annotated (TSUSA)*. Therefore, we have no information with which we can determine whether brush heads are currently imported into the United States. We have determined that natural bristle paint brush heads are a part of the same class or kind of merchandise as paint brushes and have included them in the scope of the investigation.

In the course of our investigation, we will determine whether the economy of the PRC is state-controlled to an extent that sales of such or similar merchandise in the home market or third country markets do not permit determination of foreign market value. If it is determined to be a state-controlled economy, we will then choose a non-state-controlled-economy surrogate country for purposes of determining foreign market value. If our investigation proceeds normally, we will make our preliminary determination by July 29, 1985.

Scope of Investigation

The products covered by this investigation are natural bristle paint brushes and brush heads currently provided for in item 750.65 of the *TSUSA*.

Notification of the ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by the ITC

The ITC will determine by April 5, 1985, whether there is a reasonable indication that imports of natural bristle paint brushes and brush heads from the PRC are causing material injury, or threaten material injury, to a United States industry. If the ITC determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

C. Christopher Parlin,

Acting Deputy Assistant Secretary for Import Administration

March 11, 1985.

[FR Doc. 85-6222 Filed 3-14-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-791-502]

Initiation of Antidumping Duty Investigation; Low-Fuming Brazing Copper Rod and Wire From South Africa

AGENCY: International Trade Adminstration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether low-fuming brazing copper rod and wire from South Africa is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before April 5, 1985, and we will make ours on or before July 29, 1985.

EFFECTIVE DATE: March 15, 1985.

FOR FURTHER INFORMATION CONTACT: David D. Johnston, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 377–2239.

SUPPLEMENTARY INFORMATION:

The Petition

On February 19, 1985, we received a petition in proper form filed by American Brass, Century Brass, and Cerro Metal Products on behalf of the United States low-fuming brazing rod and wire industry. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from South Africa are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

The petitioners based the United States prices on average unit values of imports from South Africa, as calculated from data reported by the Department of Commerce. From these unit values, petitioners deducted the cost of packing and handling.

The petitioners based foreign market value on sales prices of ⅛ inch diameter low-fuming brazing copper rod in the home market. Petitioners deducted from these prices a 30 percent mark-up to allow for the different levels of trade; estimated packing cost; estimated credit cost; and estimated insurance cost. Petitioners factored in the effect of the depreciation of the Rand vis-a-vis the U.S. dollar. Petitioners have also adjusted home market values downward to reflect dropping metal values where applicable.

By comparing the values calculated by the foregoing methods, the petitioners alleged dumping margins between 62 and 110 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on low-fuming brazing copper rod and wire and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether low-fuming brazing copper rod and wire from South Africa is being, or is likely to be, sold in the United States at less than fair value. If our investigation proceeds normally we will make our preliminary determination by July 29, 1985.

Scope of Investigation

The products covered by this investigation are low-fuming brazing copper rod and wire, principally of copper and zinc alloy ("brass"), of varied dimension in terms of diameter, whether cut-to-length or coiled, whether bare or flux-coated, currently classified in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 612.6205, 612.7220 and 653.1500. The chemical composition of the products under investigation is defined by Copper Development Association (CDA) standards 680 and 681.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by April 5, 1985, whether there is a reasonable indication that imports of low-fuming brazing copper rod and wire from South Africa are causing material injury, or threaten material injury, to a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

C. Christopher Parlin,

Acting Deputy Assistant Secretary for Import Administration

March 11, 1985.

[FR Doc. 85–6223 Filed 3–14–85; 8:45 am]

BILLING CODE 3510–05–M

National Oceanic and Atmospheric Administration

Pacific Coast Groundfish Fishery

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

ACTION: Notice of experimental fishing permit application and request for comment.

SUMMARY: This notice acknowledges receipt of an experimental fishing permit (EFP) application and announces a public comment period. The applicant proposes to conduct an experimental fishery to harvest up to 1,000 metric tons (mt) each of shortbelly rockfish, squid, and Pacific whiting with two domestic vessels using pelagic trawls in the fishery conservation zone (FCZ) off the California coast. If granted, the EFP would allow fishing which otherwise would be prohibited by Federal regulations governing the mesh size of trawls.

DATE: Comments on this EFP application will be accepted until April 1, 1985.

ADDRESSES: Send comments to E. C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Rodney R. McInnis, (Chief, Fisheries Management Division), 213–548–2518.

SUPPLEMENTAL INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) provides the basis for regulating foreign and domestic groundfish fisheries in the FCZ off the coasts of Washington, Oregon, and California. Regulations implementing the FMP became effective on September 30, 1982 (47 FR 43964, October 5, 1982). The regulations specify that EFPs may be issued to authorize fishing by U.S. vessels which otherwise would be prohibited. Procedures for application and issuance of EFPs are given in the regulations at § 663.10 (b) and (c).

An EFP application to harvest shortbelly rockfish (*Sebastes jordani*), squid (*Loligo opalescens*), and Pacific whiting (*Merluccius productus*) with midwater trawl gear was received by the Southwest Regional Office, NMFS, on February 27, 1985. The applicant requests authority to use a codend mesh size of one and one-quarter inches to harvest Pacific whiting. Current groundfish regulatiosn prohibit use of a mesh size smaller than three inches in pelagic trawls or four and one-half inches in roller trawls in the area off central California where the applicant proposes to fish (§ 663.26 (a) and (b)). If granted, the EFP would suspend the mesh size restriction for the time, area, and vessels specified while harvesting shortbelly rockfish and Pacific whiting. The squid resource is not managed by the FMP.

The EFP request is summarized as follows:

1. *Purpose and goal.* The purpose of the experiment is to attempt to improve the domestic market for the target species. The experiment also would evaluate the gear and mesh size suitable for efficient harvesting, encourage development of new fishing and processing technology, and provide otherwise unavailable or incomplete biological and fishing data.

2. *Significance.* The shortbelly rockfish and Pacific whiting resources are currently underharvested. If the resources can provide wholesome yet inexpensive seafood, then other fishing boats are likely to participate in the fishery. development could reduce fishing pressure on traditionally-harvested groundfish species, encourage development of the U.S. fishing industry, increase development of foreign markets for U.S. seafood products, and enable biological and fishing data to be obtained. The impacts of the experiment could extend beyond the interests of the EFP applicant.

3. *Vessels.* Two domestic vessels would be involved in the fishery. The first vessel is 58.9 feet long and 40 net tons; the second vessel is 53.3 feet long and 22 net tons.

4. *Species and amount.* One thousand metric tons each of shortbelly rockfish and Pacific whiting is requested. In addition, other *Sebastes* species, black cod *(Anoplopoma fimbria)*, and flatfish caught incidentally during experimental fishing are requested to be retained.

5. *Time, place, and gear.* The applicant proposes to fish under the EFP in an area of the Pacific between Pt. Piedras Blancas and Pt. Reyes, California, at unspecified times during 1985 with conventional pelagic trawl gear with mesh size of one and one-quarter inches for shortbelly rockfish and two and one-half inches for Pacific whiting.

6. *Additional information.* The applicant has agreed to keep specific catch logs and to accommodate observers as requested.

In 1982, four EFPs were issued to U.S. fishing vessels to harvest shortbelly rockfish with pelagic trawls in the FCZ for delivery to a foreign processing vessel. Of the amount delivered, 89 percent was shortbelly rockfish, 11 percent was Pacific whiting, and less than one-half of one percent was other rockfish, sablefish, flatfish, and other fish. No salmon were taken. An EFP was issued to one U.S. fishing vessel in 1983 and to one in 1984 to harvest shortbelly rockfish for delivery to a shorebased, domestic processor; however, no fishing was done under these EFPs for technical reasons.

(6 U.S.C. 1801 *et seq*)

Dated: March 11, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-6179 Filed 3-14-85; 8:45 am]

BILLING CODE 3910-22-M

Salmon Fisheries Off Washington, Oregon, and California

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

ACTION: Notice of availability of reports; notice of public meetings; tentative hearing dates.

SUMMARY: The Pacific Fishery Management Council (Council) has begun its annual management process for the 1985 ocean salmon fishery as specified under the final salmon management framework amendment.

The Council's Salmon Plan Development Team (Team) and staff economist have completed two reports which are currently available to the public. The first report, "1984 Ocean Salmon Fisheries Review," provides a summary of the 1984 ocean salmon fisheries and assesses how well the Council's management objectives were met in 1984. The second report is entitled "1985 Ocean Salmon Fisheries Stock Status Projections, Management Goals, and Regulation Impact Analysis." Both reports will be reviewed by the Council at its March meeting and will help guide the development of management options for 1985.

The Council's first meeting in its 1985 preseason management process will be at the Portland Hilton Hotel, 921 S.W. Sixth Avenue, Portland, Oregon, on March 12–14. As provided in the second report, the Council will review the 1985 salmon stock status projections and the management impacts which the 1984 ocean salmon fishery regulations would have if used for the 1985 season. The Council will receive additional recommendations and comments on 1985 management matters from the Salmon Advisory Subpanel, the Team, the Scientific and Statistical Committee, the Council's member states, and the public. Utilizing this input, the Council will develop three possible 1985 management options for public review. Tentative options will be adopted on Tuesday, March 12, with the adoption of three final options on Thursday, March 14, after review by the Council's advisory entities and the public. An impact analysis of the Council's final proposed management options will be developed by the Team and available to the public shortly after the March meeting. The public hearings for these options are tentatively scheduled for March 26 in Seattle, WA, Coos Bay, OR, and Eureka, CA; on March 27 in Astoria, OR and San Francisco, CA; and on April 4 in Boise, ID.

The Council will meet again on April 9–11 at the Airport Holiday Inn in Portland to consider the input from the public hearings and hear additional comments from its advisors and the public. The Council will then develop its recommendations for the 1985 ocean salmon fishing season regulations for submission to the Secretary of Commerce. The Team will prepare a final impact analysis report for the Council's recommendations.

Your comments and recommendations, written or oral, are welcomed at any point during this process. Please address written comments to Joseph C. Greenley, 526 S.W. Mill St., Portland, OR 97201. Copies of the reports can be requested from the same address. For further information, telephone 503–221–6352.

(16 U.S.C. 1801 *et seq.*)

Dated: March 12, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 85-6234 Filed 3-12-85; 4:52 pm]

BILLING CODE 3510-22-M

Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: U.S. Fish and Wildlife Service (P45C), Alaska Maritime National Wildlife Refuge.

b. Address: 202 W. Pioneer Avenue, Homer, Alaska 99603.

2. Type of Permit: Scientific Research.

3. Name and Number of Animals: Stellar sea lion *(Eumetopias jubatus)*, unspecified.

4. Type of Take: Harassment incidental to other wildlife surveys.

5. Location of Activity: Islands of Alaska Maritime National Wildlife Refuge.

6. Period of Activity: four (4) years.

Concurrent with the publication of this notice in the **Federal Register**, the

Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

Dated: March 8, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-6232 Filed 3-14-85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Bilateral Textile Consultations With the Government of the Republic of Indonesia To Review Trade in Category 613pt.

March 12, 1985

On January 31, 1985 the Government of the United States requested consultations with the Government of the Republic of Indonesia with respect to polyester/cotton lightweight fabrics in Category 613pt. (only TSUSA numbers 338.5035, 338.5036, 338.5039, and 338.5041). This request was made on the basis of the agreement, as amended, between the Governments of the United States and Republic of Indonesia relating to trade in Cotton, Wool and Man-Made Fiber Textiles and Textile Products of October 13 and November 9, 1982, as amended.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the governments, CITA, pursuant to the agreement, as amended, may establish a prorated specific limit of 4,961,555 square yards for the entry and withdrawal from warehouse for consumption of textile products in Category 613pt., produced or manufactured in Indonesia and exported to the United States during the period which began on January 31, 1985 and extends through the end of the agreement year, June 30, 1985. The limit may be adjusted to include prorated swing and carryforward.

The Government of the United States has decided, pending agreement on a mutually satisfactory solution, to control imports in this category during the 90-day consultation period (January 31–May 1, 1985) at a level of 3,535,520 square yards. In the event the limit established for the ninety-day period is exceeded, such excess amount, if allowed to enter, may be charged to the level established during the period which began on January 31, 1985 and extends through June 30, 1985.

A summary market statement for this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Anyone wishing to comment or provide data or information regarding the treatment of Category 613pt. under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement with the Government of the Republic of Indonesia, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan

Chairman, Committee for the Implementation of Textile Agreements.

Indonesia—Market Statement

Category 613 Pt.—Polyester/Cotton Lightweight Fabrics [1]

January 1985.

U.S. imports of these lightweight polyester/cotton fabrics from Indonesia totaled 10.5 million square yards during the year ending November 1984, an increase of 508 percent over the 1,720,000 square yards imported a year earlier. These imports in the first 11 months of 1984 alone reached 10.4 million square yards or 502.7 percent higher than the total quantity imported from Indonesia a year earlier. This is a sharp and substantial increase in imports into a sector already adversely affected by imports. These imports from Indonesia are entered at duty-paid landed values which are below the U.S. producer price for comparable fabrics. These and other factors lead the United States Government to conclude that imports from Indonesia are creating a real risk of market disruption in the United States for such fabrics.

Approximately 91 percent of Indonesia's imports of these lightweight fabrics were entered under TSUSA No. 368.5035—polyester/cotton grey fabrics. Indonesia was the second largest supplier of this TSUSA, accounting for 21 percent of the total imports. Most of the remainder was imported under TSUSA No. 338.5039—yarn-dyed lightweight polyester/cotton fabric. The textile bilaterals with the other major suppliers provide for specific limits on 1984 trade.

The U.S. market for these fabrics produced for sale has been disrupted by imports for several years. The market share held by U.S. producers has sharply declined, dropping from 80.3 in 1982 to 67.7 percent during the

[1] U.S. imports of these fabrics enter under TSUSA Nos. 338.5035, 338.5036, 338.5039 and 338.5041. These TSUSA Numbers cover all imports of polyester/cotton yarn-dyed and plain weave fabrics weighing not over 5 ounces per square yard. Imports of these fabrics directly impact the market for domestically produced printcloths, batistes, broadcloths, yarn-dyed fabrics, and other lightweight polyester/cotton fabrics which are produced for sale before finishing.

first three quarters of 1984. The 1984 share will be smaller since the market for domestically produced fabrics plunged October and failed to recover during the remainder of 1984. The remaining market demand was met by imports which had been ordered prior to the depressed market. Import in October and November 1984 were at an annual rate of 94.5 million square yards, compared with 72.4 million square yards during the first nine months of 1984.

The U.S. production of these fabrics produced for sale declined from 170.8 million square yards in 1982 to 155.4 million in 1983. The annual rate of production for the first nine months of 1984 was 151.4 million square yards; however, the production during the last quarter was down sharply due to extended closing for the Thanksgiving and Christmas holidays. Most producers extended their holidays in an attempt to prevent building of excess inventories during a period of very slack demand. Man-hours worked during October were done 10.5 percent from a year earlier and November and December probably were down more.

Imports of these fabrics from all sources increased 35 percent from 49.9 million square yards in 1982 to 67.6 million in 1983. Imports for the first 11 months of 1984 were 80.3 million square yards, up 28.4 percent from the same period in 1983. Imports were equal to 24.4 percent of production in 1982; 36.3 percent in 1983; and 47.8 percent during the first three quarters of 1984.

March 12, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, between the Governments of the United States and the Republic Of Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 18, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textiles in Category 613pt.,[1] produced or manufactured in Indonesia and exported during the ninety-day period which began on January 31, 1985 and extends through May 1, 1985, in excess of 3,535,520 square yards.[2]

Textile products in Category 613pt. which have been exported to the United States prior to January 30, 1985 shall not be subject to this directive.

Textile products in Category 613pt. which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenhan,

Chairman, Committee for the Implementation of Textile Agreement.

[FR Doc. 6220 Filed 3-14-85; 8:45 am]

BILLING CODE 3510-DR-M

[1] In category 613, only TSUSA numbers 338.5035, 338.5036, 338.5039, and 338.5041

[2] The level has not been adjusted to reflect any imports exported after January 30, 1985.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1985 services to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: March 15, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On October 26, November 9, November 26, December 7 and December 21, 1984 and January 1, 1985, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (49 FR 43087, 49 FR 44789, 49 FR 46458, 49 FR 47890, 49 FR 49694 and 50 FR 522) of proposed additions to Procurement List 1985, October 19, 1984 (49 FR 41195).

Additions

After consideration of the relevant matter presented, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the services listed.

c. The actions will result in authorizing small entities to provide the services procured by the Government.

Accordingly, the following services are hereby added to Procurement List 1985:

SIC 0782

Grounds Maintenance, Federal Building, 2800 Cottage Way, Sacramento, California

SIC 7349

Janitorial/Custodial, Social Security Complex, Woodlawn Annex and Supply Buildings, 6401 Security Boulevard, Baltimore, Maryland

SIC 7369

Commissary Shelf Stocking and Custodial, George Air Force Base, California
Commissary Shelf Stocking and Custodial, Minot Air Force Base, North Dakota
Commissary Shelf Stocking and Custodial, Goodfellow Air Force Base, Texas
Commissary Shelf Stocking and Custodial, Reese Air Force Base, Texas

C.W. Fletcher,

Executive Director.

[FR Doc. 85-6207 Filed 3-14-85; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1985; Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from

Procurement List 1985 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

DATE: Comments must be received on or before: April 17, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and services to Procurement List 1985, October 19, 1984 (49 FR 41195):

Class 7210

Cover, Mattress
7210-00-140-4236

SIC 7349

Janitorial/Custodial, Federal Building and U.S. Courthouse, 121 West Spring Street, New Albany, Indiana

SIC 7369

Commissary Shelf Stocking, Custodial and Warehousing Service, Keesler Air Force Base, Mississippi

Deletions

It is proposed to delete the following commodities and services from Procurement List 1985, October 19, 1984 (49 FR 41195):

Class 8105

Bag, Plastic
8105-00-NSH-0001
8105-00-NSH-0002
8105-00-NSH-0003
8105-00-NSH-0004
(Requirements for the Naval Weapons Support Center, Crane, Indiana)

SIC 7349

Janitorial Service, Federal Office Building, Cass & Stephens Streets, Roseburg, Oregon

SIC 7374

Keypunch and Verification, General Services Administration, Region 2, Automated Data Management Services Division "overflow" requirements

SIC 7399

Repair of Air Cargo Pallet Top and Side Nets, McChord Air Force Base, Washington

C.W. Fletcher,

Executive Director.

[FR Doc. 85-6206 Filed 3-14-85; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

President's Chemical Warfare Review Commission (CWRC); Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting. The initial meetings of the below indicated committee were originally scheduled to commence on 19 February 1985, and are rescheduled as indicated below:

Monday, March 11, 1985 Through Thursday March 21, 1985

Time of Meeting

0830-1545 11 March (Open)
0830-1830 12 March (Closed)
0730-1645 13 March (Closed)
0830-1800 14 March (Open/Closed)
0800-1630 15 March (Open/Closed)
0830-1100 18 March (Closed)
0900-1700 19 March (Open)
0900-1700 20 March (Open)
0900-1630 21 March (Open)

ADDRESS:

11-15 March 1985, Washington, DC
18 March 1985, Washington, DC
19 March 1985, Ft. Polk, LA
20 March 1985, Naval tactical unit (TBD)
21 March 1985, Naval Air Station, Norfolk, VA

Agenda

The President's Chemical Warfare Review Commission (CWRC) will hold its initial meetings and take field trips to Ft. Polk, LA; a Naval tactical unit at sea; and Naval Air Station, Norfolk, VA. The CWRC will receive background briefings including an overview of the issues to be addressed by the Commission, chemical warfare (CW) policies, the threat, CW history and participate in field trips as follows:

Monday, March 11, 1985

—Morning Session—Charge to Commission, Opening Statement and Congressional perspective
—Afternoon Session—Executive working session

Tuesday, March 12, 1985 (Closed)

—Morning Session—What is Chemical Warfare?
—Afternoon Session—National policy dealing with Chemical Warfare

Wednesday, March 13, 1985 (Closed)

—Morning Session—The threat we face
—Afternoon Session—The threat we face (continued)

Thursday, March 14, 1985

—Morning Session—Policy Implication of Alternative U.S. Force postures and National Policies (Open meeting)
—Afternoon Session—Military Perspective (Closed Meeting)

Friday, March 15, 1985

—Morning Session—History of Chemical Warfare (Open meeting) and Future Implication of Technology on the issue (Closed meeting)
—Afternoon Session—Impact of U.S. Chemical Warfare policy on relationship with other countries (Closed meeting)

Monday, March 18, 1985

—Morning Session—Preparation for European trip (Closed meeting)
—Afternoon Session—Field Trip to Service locations

Tuesday, March 19, 1985

Field trip to Ft. Polk, LA

Wednesday, March 20, 1985

Field trip to Naval tactical unit, at sea

Thursday, March 21, 1985

Field trip to Naval Air Station Norfolk, VA

The meetings on March 11, 14 (the morning session, 15 (the morning session), 19, 20, and 21, 1985 are open to the public. Any person may attend and/or file requests to appear before the Commission at the time said and in the manner permitted by the Commission.

The meetings on March 12 (the afternoon session), 13, 14 (the afternoon session), and 18 (the afternoon session), are closed to the public in accordance with section 552c(c) of title 5 United States Code, specifically subparagraph (1) thereof, and title 5, United States Code, Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting.

FOR FURTHER INFORMATION CONTACT: The CWRC staff manager, Lieutenant

Colonel Frank Sisti, telephone (202) 653–0145.

Patricia H. Means,

OSD Federal Liaison Officer, Department of Defense.

March 12, 1985.

[FR Doc. 85–6218 Filed 3–14–85; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Reinstatement

Advance Payment Transaction and Status (0701–0054)

The Air Force's present advance payment authorizations total $38 million and go to 13 different universities. The advance is used to finance DOD nonprofit cost-type research and development contracts and is made without interest. This report is used to ensure advance payments do not result in over-financing; i.e., to be sure time and amount of money are kept to a minimum. Thirteen universities are affected and must respond semi-annually.

Individuals

Responses 26

Burden hours 416

ADDRESSESS: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Steve Donnell, AFAFC/TCB, Denver, Colorado 80279, commercial telephone (303) 370–7805.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 12, 1985.

[FR Doc. 85–6219 Filed 3–14–85; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Military Traffic Management Command; Directorate of Personal Property; Intrastate Rate Solicitation for Alaska, Household Goods Carriers

AGENCY: Military Traffic Management Command, DOD.

ACTION: The milling of Rate Solicitation 84–1, with attachments, to all Department of Defense Intrastate Household Goods Carriers in Alaska.

SUMMARY: The purpose of this notice is to inform of the mailing of a copy of Rate Solicitation 84–1 and filing instructions to carriers to ensure that all participating carriers are fully informed on the Intrastate Rate Program and have an opportunity to provide comments. These instructions contain the procedures which carriers will use in preparation and submission of Individual Rate Tenders for movement of intrastate traffic effective in Alaska June 1, 1985. The instructions are prepared to simplify the processing of tenders and to facilitate the use of tenders by the military services, finance centers, and the audit agency.

Rate Solicitation 84–1 with attachments includes all baseline rates and charges. Carriers will tender rates and charges by expressing a percentage of the line-haul and a percentage of packing/unpacking rates or a percentage of the single factor rate shown in Rate Solicitation 84–1. Information contained in the attachments will be incorporated into the solicitation for the 1 Oct 85 cycle.

Carriers will use MT–HQ Form 43 for filing individual rate tenders. Instructions for completing forms are included in the solicitation.

Incentive tonnages will be awarded to the low rate setter. Rate adjustment tenders will be allowed to provide carriers who file during the I/D filing cycle, the option of adjusting to another carrier's offer. *ONLY THOSE CARRIERS WHO FILE DURING THE I/D FILING PERIOD CAN FILE DURING THE RATE ADJUSTMENT PERIOD.* However, the low cost carrier will be offered 50 percent of the tonnage awarded by an installation transportation office. Other carriers, adjusting to the low will share equally in the remaining tonnage. In the event two or more carriers establish the low rate, tonnage will be divided so each of the rate setters will receive as must tonnage as all the carriers adjusting to the low rate.

In order for a carrier to adjust a rate on Individual Rate Tender(s) during the Rate Adjustment Filing Period, a tender(s) covering the origin/destination combination must have been filed during the Increase/Decrease Filing Period. *CARRIERS CANNOT ESTABLISH RATES OR NEW TRAFFIC CHANNELS DURING THE RATE ADJUSTMENT FILING CYCLE, WHICH WERE NOT PREVIOUSLY SET.*

Intrastate tenders will be filed with Headquarter, Military Traffic Management Command in accordance with paragraph 1001 of the filing instructions. Tariffs/tenders for intrastate traffic will no longer be filed directly with the installation transportation officer.

Comments: Written comments concerning this solicitation will be considered if received not later than April 15, 1985.

Address comments to: Commander, Military Traffic Management Command, ATTN: Rate Acquisition Division (MT–PPC), Room 408, 5611 Columbia Pike, Falls Church, Virginia 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey McKenzie or Mr. Ron Shackleford, HQ, Military Traffic Management Command, Attn: MT–PPC (Room 408), 5611 Columbia Pike, Falls Church, Virginia 22041–5050, (202) 756–1190

SUPPLEMENTARY INFORMATION: The procurement period for this program is normally 6 months (April 1 thru September 30 and October 1 thru March 31), however to allow for sufficient filing time, the first cycle will be 4 months (June 1 thru Sept 30, 1985). The period for filing Increase/Decrease (I/D) rate tenders is April 8 thru April 15, 1985. Carriers must file during the I/D period in order to participate in the Rate Adjustments filing period May 2–9, 1985. Tenders will take effect on June 1, 1985, and will expire at 11:59 p.m., on Sept 30, 1985. Subsequent rate filings will be in accordance with dates established in Para 3003c.

Rate Tenders will show expiration dates of September 30 or March 31 depending on the filing cycle in accordance with paragraph 3022 of the filing instructions. Filing cycles are

established in accordance with paragraph 3003 of the filing instructions.

This request for comments and the resulting determinations are being made under the authority of 10 U.S.C. 2301–2314 and DOD Directive 4500.9 and 4500.34R.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 12, 1985.

[FR Doc. 85–6168 Filed 3–14–85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before April 15, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the 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) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: March 12, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Educational Research and Improvement

Type of Review Requested: New
Title: Preapplication and Application for Educational Research and Development Grants [General Education Provisions Act, section 405(e)]
Agency Form Number: G50–2P
Frequency: Semi-annually
Affected Public: Individuals or households; State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
Reporting Burden Responses: 750; Burden Hours: 6,000
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: Grants will be awarded to support research, dissemination of educational research, training of individuals in educational research and technical assistance.

Type of Review Requested: New
Title: National Assessment of Educational Progress 1985—Field Test of the Special Probe of the Educational Progress of Language Minority Students
Agency Form Number: ED 2371
Frequency: Non-Recurring
Affected Public: Individuals or households; State or local governments
Reporting Burden: Responses: 33,320;. Burden Hours: 335
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: Congress mandated the NAEP survey. This field test survey concerns collection of data for the NAEP 1985–86 Special Probe of the Educational Prograss of language minority students. Information will be collected from children (Age 9/Grade 3; Age 13/Grade 7 and Age 17/Grade 11) from homes where a language other than English is spoken; their teachers; and their principals.

Office of Special Education and Rehabilitive Services

Type of Review Requested: Reinstatement
Title: Report of Vending Facility Program
Agency Form Number: RSA ED 15
Frequency: Annually
Affected Public: State or Local Governments
Reporting Burden: Responses: 54; Burden Hours: 448
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The form indicates the financial health and programmatic impact of the program earnings and losses; indicates efficient types of methods for return on investment and ability to produce earnings to support an operator. This will ensure the program's financial accountability and solvency and meeting the expressed goals of the clients.

Type of Review Requested: Extension
Title: Local Educational Agency Application (Recordkeeping Requirement)
Agency Form Number: N/A
Frequency: Annually
Affected Public: State or local governments
Reporting Burden: Responses: 0; Burden Hours: 0
Recordkeeping Burden: Recordkeepers: 15,500; Burden Hours: 775

Abstract: In order to receive a sub-grant under Pub. L. 94–142, Education of the Handicapped Act Basic Grant program, each local educational agency must submit an application for a sub-grant to the State educational agency.

Type of Review Requested: Extension
Title: State Agency Project Application (Recordkeeping Requirement)
Agency Form Number: N/A
Frequency: Annually
Affected Public: State or local governments
Reporting Burden: Responses: 0; Burden Hours: 0
Recordkeeping Burden: Recordkeepers: 158; Burden Hours: 500

Abstract: In order to receive a sub-grant under Pub. L. 89–313, State Operated Programs for Handicapped Children, each public agency must submit an appication for a sub-grant to the State educational agency.

Office of Planning, Budget and Evaluation

Type of Review Requested: Extension
Title: State Uses of Federal Funds Under State-Administered Federal Education Programs

Agency Form Number: ED 511
Frequency: Annually
Affected Public: State or local governments
Reporting Burden: Responses: 51; Burden Hours: 2,550
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This report provides information collected from State educational agencies concerning the amount of funds distributed in the past year to each school district or other grantee. The collection of this information is mandated by section 406A of the General Education Provisions Act and is presented to Congress on March 31st of each year.

Type of Review Requested: New
Title: Secondary Instructional Services Offered to Language Minority and Limited English Proficient Students
Agency Form Number: P75–2P
Frequency: One time
Affected Public: State or local governments; Non-profit institutions
Reporting Burden: Responses: 2,616; Burden Hours: 1,308
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This national study will describe the instructional and support services offered to secondary language minority students with limited-English proficiency in public and private schools.

Office of Vocational and Adult Education

Type of Review Requested: REINSTATEMENT
Title: State Council on Vocational Education—Narrative Report
Agency Form Number: C30–1P
Frequency: Biennially
Affected Public: State or local governments
Reporting Burden: Responses: 53; Burden Hours: 4,664
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The Carl D. Perkins Vocational Edcuation Act, Section 1 of Pub. L. 98–524, requires States desiring to participate in vocational education programs authorized by the Act, to establish State councils. The councils must evaluate the vocational education program delivery systems assisted under the Act and the Job Partnership Training Act at least once every two years and report their findings to the Governor, the State board, the State job training coordinating council, the Secretary of Education, and the Secretary of Labor.

Office of Postsecondary Education

Type of Review Requested: New
Title: A Demonstration of Behavior Scoring Models to Prevent Defaults and to Collect Defaulted Loans in the Guaranteed Student Loan Program
Agency Form Number: E40–5P
Frequency: One time
Affected Public: Businesses or other for-profit organizations
Reporting Burden: Responses: 1,000; Burden Hours: 500
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The data will be used to evaluate the effectiveness of lender and guarantee agency practices in preventing defaults and in collecting defaulted loans in the Guaranteed Student Loan Program. Data on practices and loan portfolio characteristics are being requested from a sample of lenders having agreements with nine selected guarantee agencies.

Type of Review Requested: Revision
Title: State Student Incentive Grant Performance Report and Financial Statue Report
Agency Form Number: ED 1288–1, 1288–2
Frequency: Annually
Affected Public: State or local governments
Reporting Burden: Responses: 57; Burden Hours: 285
Recordkeeping Burden: Recordkeepers: 57; Burden Hours: 85.5

Abstract: The State Student Incentive Grant Program uses matching Federal/State funds to provide a nationwide system of grants to help qualified college students. The performance report and financial status report is used by the Department of Education to obtain information about the use of allotments. The analyzed data is used for program evaluation, budget and policy decisions, and to assist States in program improvement.

Type of Review Requested: New
Title: National Direct/Defense Student Loan Program
Agency Form Number: ED 553–A
Frequency: At discretion of institution
Affected Public: Individuals; Institutions of postsecondary education
Reporting Burden: Responses: 300,000; Burden Hours: 15,000
Recordkeeping Burden: Recordkeepers: 3,000; Burden Hours: 150

Abstract: This form will be used by Loan Officers at institutions of postsecondary education who participate in the National Direct/Defense Student Loan Program to give information to the Department on their students who are late making payments. The Department will generate a collection letter to the student to assist the institution in getting the student to pay on time.

Office of Elementary and Secondary Education

Type of Review Requested: Revision
Title: Recordkeeping Requirements in 34 CFR 200.55(d)(1)(iv) and 204.32(b)(4)–Chapter 1 of the Education Consolidation and Improvement Act of 1981
Agency Form Number: NA
Frequency: Annually
Affected Public: State or local governments
Reporting Burden: Responses: 0; Burden Hours: 0
Recordkeeping Burden: Recordkeepers: 600; Burden Hours: 24,000

Abstract: Chapter 1 permits agencies to exclude, for the purpose of determining compliance with the supplement, not supplant and comparability requirements, state and local funds spent in carrying out certain special programs. If an agency claims an exclusion, the agency must comply with the recordkeeping requirements in 34 CFR 200.55(d)(1)(iv) and 204.32(b)(4).

[FR Doc. 85–6204 Filed 3–14–85; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

National Petroleum Council, Refinery Survey Task Group; Meeting

Notice is hereby given that the Refinery Survey Task Group will meet in March 1985. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Refinery Survey Task Group will address previous Council refining studies and evaluate future refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Refinery Survey Task Group will hold its fourth meeting on Wednesday, March 20, 1985, starting at 9:00 a.m. in the Conference Room of the National Petroleum Council, 1625 K Street, NW., Suite 600, Washington, D.C.

The tentative agenda for the Refinery Survey Task Group meeting follows:

1. Opening remarks by Chairman and Government Cochairman.

2. Discuss the status of Refinery Survey responses.

3. Discuss proposals for aggregations of survey data.

4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Refinery Survey Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Refinery Survey Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Carolyn Klym, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353/2709, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on March 4, 1985.

William A. Vaughan,

Assistant Secretary, Fossil Energy.

[FR. Doc. 85-6254 Filed 3-14-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 85-06-NG]

Natural Gas Imports; The U.S. Natural Gas Clearinghouse, Ltd.; Application To Import Natural Gas From Canada

AGENCY: Ecomonic Regulatory Administration, DOE.

ACTION: Notice of Application for Authorization to Import Natural Gas from Canada.

SUMMARY: Economic Regulatory Administration (ERA) gives notice of receipt on February 27, 1985, of the application of the U.S. Natural Gas Clearinghouse, Ltd. (Clearinghouse) for blanket authorization to import up to 1 Bcf per day of natural gas from Canada for four years for short-term or spot sales. The details of individual transactions including identification of suppliers, purchasers, volumes, prices, and terms will be negotiated before the gas is delivered. Then Clearinghouse proposes to make quarterly reports to the ERA.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m. on April 15, 1985.

FOR FURTHER INFORMATION CONTACT:

Robert Groner, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9482

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6667

SUPPLEMENTARY INFORMATION: The Clearinghouse is a Houston, Texas-based, limited partnership with the Gas Clearinghouse Operating Company as general partner and six initial limited partners that are subsidary corporations of the following natural gas pipelines: Colorado Interstate Gas Company, The Columbia Gas System, Inc., El Paso Natural Gas Company, Houston Natural Gas Corporation, Transco Energy Company, and United Energy Resources, Inc. The Clearinghouse currently facilitates domestic natural gas spot market transactions for a fee and without taking title. It assesses a customer's specific purchase and sales requirements and matches up buyers and sellers in specific transactions, arranging for transportation and delivery of the gas and assisting with contract documentation.

The Clearinghouse seeks authorization to import up to a total of 1 Bcf per day of Canadian gas for a term of four years (up to 1.46 Tcf) for short-term or spot sales. The Clearinghouse requests authorization to import for it own account, by taking title to gas, as well as for the accounts of its Canadian producer/marketer clients and U.S. purchaser clients. The applicant states that it seeks the authorization on a self-implementing or blanket basis in order to eliminate regulatory delays which it asserts place the Canadian supplies at a competitive disadvantage in the rapidly changing and dynamic U.S. spot market.

According to the application, no new facilities will be required to implement the proposed import. The imported volumes are to be transported by Canadian pipelines including TransCanada Pipelines Ltd., Union Gas Ltd., Foothills Pipe Lines Ltd., Alberta Natural Gas Co. Ltd., and Westcoast Transmission Co. Ltd.

The applicant intends to purchase from a number of Canadian producers whose identities, as well as those of the buyers, will not be known until the spot transactions are consummated. The Clearinghouse indicates that the price, volume, and terms of individual transactions will be negotiated before the gas is delivered.

The Clearinghouse maintains that, although it is requesting authorization to import up to 1 Bcf per day, volumes involved in individual transactions could range anywhere from 250 Mcf per day to 250,000 Mcf per day. According to the Clearinghouse, this gas would be price competitive with fuel oil and domestic natural gas for potential purchasers because of the deliverability surplus of Canadian gas and its reduced price. Because the price is so competitive, the applicant states that users and suppliers have been contacting the Clearinghouse about its availability for short-term and spot sales. The applicant anticipates that in many of its spot market transactions the price will be adjusted on a monthly basis as required by market conditions and available competing fuels, including domestic natural gas. Therefore, the Clearinghouse considers that the requested blanket authorization is in full conformance with the February 1984 policy guidelines and delegation orders issued by the Secretary of Energy.

Public comment on this application is encouraged by this notice. Intervention requirements will be liberally applied and the views expressed by interested parties will be given careful and thorough consideration in evaluating the Clearinghouse's application. The decision on this application will be made consistent with the Secretary of Energy's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest. 49 FR 6684, February 22, 1984. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Other Information

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the

proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received by persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-033-B, RG-43, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585. They must be filed no later than 4:30 p.m., April 15, 1985.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of the Clearinghouse's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-033-B, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on March 11, 1985.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-6248 Filed 3-14-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER85-332-000, et al.]

Connecticut Light and Power Company, et al.; Electric Rate and Corporate Regulation Filings

March 8, 1985.

Take notice that the following filings have been made with the Commission:

1. Connecticut Light and Power Company

[Docket No. ER85-332-000]

Take notice that on March 1, 1985, Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule pertaining to a Sales Agreement with respect to Montville Unit No. 6 between CL&P and the Massachusetts Municipal Wholesale Electric Company (MMWEC) dated as of September 5, 1984.

CL&P states that the Sales Agreement provides for a sale to MMWEC of various percentages of capacity and associated energy from CL&P's Montville Unit No. 6 (Unit) together with related transmission service commencing November 1, 1984 and terminating October 31, 1986.

CL&P requests an effective date of November 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Comment date: March 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power & Light Company

[Docket No. ER85-329-000]

Take notice that on February 27, 1985, Florida Power & Light Company (FP&L) tendered for filing a notice of cancellation of Rate Schedule FERC No. 67 between FP&L and Jacksonville Electric Authority.

FP&L requests an effective date of November 1, 1984, and therefore requests waiver of the Commission's notice requirements.

FP&L states that copies of this filing has been served upon Jacksonville Electric Authority.

Comment date: March 25, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company

[Docket No. ER85-328-000]

Take notice that on February 27, 1985, Florida Power & Light Company (FP&L) tendered for filing a document entitled Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Seminole Electric Cooperative, Inc.

FP&L states that under the Agreement to provide specified transmission service between FP&L and Seminole Electric Cooperative, Inc., FP&L will transmit power and energy for Seminole Electric Cooperative, Inc. as is required by Seminole in the implementation of its interchange agreements with: the Fort Pierce Utilities Authority; the City of Homestead, Florida; Jacksonville Electric Authority; the Lake Worth Utilities Authority; the Utilities Commission, City of New Smyrna Beach, Florida; the City of Starke, Florida; and the City of Vero Beach, Florida.

FP&L requests an effective date of January 1, 1985, and therefore requests waiver of the Commission's notice requirements.

According to FP&L copies of the filing were served on Seminole Electric Cooperative, Inc.

Comment date: March 25, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Ohio Edison Company

[Docket No. ER85-330-000]

Take notice that on February 28, 1985, Ohio Edison Company (Ohio Edison) tendered for filing Amendment Number One (1) to clarify the availability of Additional Alternate Capacity and associated energy under its Energy Supply Agreement, designated FERC Rate Schedule 150, governing service to American Municipal Power, Ohio, Inc. (AMP-Ohio).

Ohio Edison requests an effective date of February 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Comment date: March 25, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Mexico

[Docket No. ER85-326-000]

Take notice that on February 26, 1985, Public Service Company of New Mexico (PNM) tendered for filing a notice of termination of Rate Schedule FPC No. 46. PNM requests an effective date of February 28, 1985.

Comment date: March 25, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Company of New Mexico

[Docket No. ER85-331-000]

Take notice that on February 28, 1985, Public Service Company of New Mexico (PNM) tendered for filing a notice of cancellation of FERC Rate Schedule No. 52 between PNM, the City of Burbank and the City of Pasadena.

PNM requests an effective date of April 30, 1984, and therefore requests waiver of the Commission's notice requirements.

Comment date: March 25, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

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

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-6160 Filed 3-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ID-2006-001, et al.]

Arthur A. Hatch, et al.; Interlocking Directorate Applications

March 8, 1985.

Take notice that the following filings have been made with the Commission:

1. Arthur A. Hatch

[Docket No. ID-2006-001]

Take notice that on March 4, 1985, Arthur A. Hatch (applicant) filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Vice President, Blackstone Valley Electric Company, Public Utility
Vice President, Eastern Edison Company, Public Utility
Vice President & Director, Montaup Electric Company, Public Utility

Comment date: March 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Richard M. Burns

[Docket No. ID-1745-000]

Take notice that on March 4, 1985, Richard M. Burns (applicant) filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Treasurer, Blackstone Valley Electric Company, Public Utility
Treasurer, Eastern Edison Company, Public Utility
Treasurer & Director, Montaup Electric Company, Pubic Utility

Comment date: March 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Thomas O. Lind

[Docket No. ID-2159-000]

Take notice that on March 4, 1985, Thomas O. Lind (applicant) filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Vice President, Louisiana Power & Light Company, Public Utility
Vice President, New Orleans Public Service, Inc., Public Utility

Comment date: March 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, 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 this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-6159 Filed 3-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP84-429-001, CP84-654-001, CP85-294-000]

Texas Eastern Transmission Corp. et al; Intent To Prepare an Environmental Assessment for the DCO Pipeline Project and Request for Comments on Environmental Issues

March 12, 1985.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC) will prepare an environmental assessment on the facilities proposed in the above-referenced dockets. Texas Eastern Transmission Corporation (Texas Eastern) and Algonquin Gas Transmission Company (Algonquin) are seeking certificates of public convenience and necessity under section 7(c) of the Natural Gas Act to construct and operate a total of 130.26 miles of pipeline loop and 17,660 horsepower of compression. (See table 1.) Known as the DCQ Pipeline Project, most of the facilities proposed by Algonquin were to be constructed as part of the Canadian Import Project—Niagara Route Proposal (CIP), and subsequently, would have been evaluated in the CIP environmental impact statement. (See *Canadian Import Project—Niagara Route Proposal, Notice of Intent to Prepare a Draft Environmental Impact Statement and Request for Comments on Its Scope.* October 12, 1984 (49 FR 40653).) Instead, most of Algonquin's facilities are now proposed to be constructed and used for the transportation of domestic gas in the DCQ Pipeline Project. All of Texas Eastern's DCQ Pipeline Project facilities are newly proposed in this docket.

The DCQ Pipeline Project is an independent proposal that is proposed to be constructed in the summers of 1985 and 1986. Texas Eastern proposes to sell up to 180,000 dekatherms per day (Dt/d) of gas to customers in the northeast and to transport up to 80,000 Dt/d of gas for Columbia Gas Transmission Corporation from Ohio and western Pennsylvania to eastern Pennsylvania. Algonquin would purchase up to 69,084 Dt/d from Texas Eastern and transport and sell this gas to its customers in New England.

On February 15, 1985, Transcontinental Gas Pipe Line Corporation (Transco) filed, in Docket

No. CP85-294-000, a competitive application that proposes to sell and/or transport about 80,436 Dt/d of gas for six of Texas Eastern's customers in Docket No. CP84-429-001. If authorized, this partial alternative would reduce the volume of gas transported by Texas Eastern from 260,000 Dt/d to 179,564 Dt/d. Transco would construct a total of 13.01 miles of pipeline loop: 5.44 miles of 42-inch diameter pipeline loop in Elbert and Hart Counties, Georgia; 4.13 miles of 36-inch diameter pipeline loop in Morris and Essex Counties, New Jersey; and 3.44 miles of 24-inch diameter pipeline loop in Mercer County, New Jersey. Transco's New Jersey facilities were also previously proposed in CIP. The staff does not know at this time how Texas Eastern's facility requirements would be reduced by Transco's proposal. This alternative will also be analyzed in the environmental assessment.

This environmental assessment will be offered as evidentiary matter if hearings are held for these dockets. Anyone wishing to present evidence on environmental matters must file with the Commission a petition to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

A copy of this notice has been distributed to Federal, state, and local environmental agencies, parties to the proceeding, and the public. In addition, a map showing the general location of the facilities identified in table 1 has been provided to those on the distribution list. Any comments should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Written comments should be submitted by April 12, 1985, and referenced to Docket No. CP84-429-001. Additional information about the proposals, including more detailed maps of the individual facility locations, is available from Mr. Kenneth Frye, Project Manager, Environmental Evaluation Branch, Office of Pipeline and Producer Regulation, telephone (202) 357-9039.

Kenneth F. Plumb,

Secretary.

TABLE 1.—PROPOSED DCQ PIPELINE PROJECT FACILITIES

Company and proposed facilities	Pipe diameter (inches)	Length (miles)	Construction year	Location		Right-of-way width (feet)	
				State	Counties	Construction	Permanent
Texas Eastern Transmission Corp.:							
Pipeline loop 1	30	10.90	1985	PA	Indiana	75	25
Pipeline loop 2	36	11.00	1985	PA	Indiana, Cambria	75	25
Pipeline loop 3	30	10.38	1985	PA	Blair, Huntingdon	75	25
Pipeline loop 4	36	11.00	1985	PA	Huntingdon	75	25
Pipeline loop 5	30	9.00	1985	PA	Perry	25	25
Pipeline loop 6	30	9.00	1985	PA	Dauphin	75	25
Pipeline loop 7	30	9.00	1985	PA	Lebanon, Berks	75	25
Pipeline loop 8	30	11.00	1985	PA	Berks	75	25
Pipeline loop 9	36	2.48	1985	PA	do	75	25
Pipeline loop 10	36	16.00	1985	PA	Fayette, Westmoreland	75	25
6,000 hp additional at Wind Ridge compressor station			1985	PA	Green		(1)
4,000 hp additional at Lambertville compressor station			1985	NJ	Hunterdon		(1)
Meter and regulator station 2405 [2]			1985	PA	Montgomery		0.25 acre site.
Algonquin Gas Transmission Co.[3]							
Morristown loop	30	[4] 15.3	1986	NJ	Somerset, Morris	[4] 45	25
Norwich loop	10	3.1	1986	CT	New London	[4] 45	20
Tiverton loop	12	5.2	1986	RI	Newport	[4] 45	20
Plymouth loop	20	4.4	1986	MA	Plymouth	[4] 65	45
Taunton loop	12	2.5	1986	MA	Bristol	[4] 45	20
Southeast compressor station (7,660 hp)			1986	NY	Putnam		122 acre site.
Bridgewater regulator			1986	NJ	Morris		[5]

[1] Existing aboveground facility site.
[2] Texas Eastern would also expand meter and regulator stations 087, 011, 953, and 036 by installing an additional meter run and associated equipment. No additional land would be required at these stations.
[3] Algonquin would also construct 3.5 miles of 30-inch diameter pipeline that was authorized by the Commission on February 22, 1984, in Docket Nos. CP81-107-006 *et al.*
[4] Existing right-of-way would be used for access.
[5] Algonquin would also modify the proces piping configuration and restage the compressor units at it's existing Stony Point Compressor Station in New York; restage the existing compressor units at its compressor stations in Hanover, New Jersey and Cromwell, Connecticut; and make minor modifications at unspecified meter stations on its system. Algonquin's authorized Phase 1A expansion of the Cromwell Compressor Station would also be advanced by one year.
[6] Algonquin would remove a regulator and relocate it within the existing Hanover Compressor Station site in New Jersey.

[FR Doc. 85-6121 Filed 3-14-85; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51562; TSH-FRL 2796-4]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-five PMNs and provides a summary of each.

DATES: Close of Review Period: P 85-544 and 85-545, May 20, 1985. P 85-613, 85-614, 85-615, 85-616, 85-617, 85-618 and 85-619, May 29, 1985. P 85-621, 85-622, 85-623, 85-624, 85-625, 85-626, June 1, 1985. P 85-627, 85-628, 85-629, 85-630, 85-631, 85-632, 85-633, 85-634, 85-635 and 85-636, June 2, 1985. P 85-637, 85-638, 85-639, and 85-640, June 3, 1985. P 85-641, 85-642, 85-643, 85-644, 85-645 and 85-646, June 4, 1985.

Written comments by: P 85-544 and 85-545, April 20, 1985. P 85-613, 85-614, 85-615, 85-616, 85-617, 85-618, and 85-619, April 29, 1985. P 85-621, 85-622, 85-623, 85-624, 85-625 and 85-626, May 2, 1985. P 85-627, 85-628, 85-629, 85-630, 85-631, 85-632, 85-633, 85-634, 85-635 and 85-636, May 3, 1985. P 85-637, 85-638, 85-639 and 85-640, May 4, 1985. P 85-641, 85-642, 85-643, 85-644, 85-645 and 85-646, May 5, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-51562]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information

Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, DC 20460, (202-383-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460 (202-382-3725).

SUPPLEMENTARY INFORMATION: A nonsubstantive change in the prefixes is being initiated for information published under sections 5(d)(2) and 5(h)(6) of the Toxic Substances Control Act (TSCA). The notices will contain essentially the same information but the prefixes to the specific number assignment will appear in an abbreviated form. Prefixes under the modified format will use the letters "P" (PMN), "T" (TMEA) and "Y" (Polymer Exemption). The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

P 85-544

Importer. Rohm Tech, Inc.
Chemical. (S) 2-Butenedioic acid (Z)-, mono[2[(1-oxo-2-propenyl)oxy]ethyl]-ester.
Use/Import. (S) Industrial and commercial general acrylic monomer applications. Import range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Irritation; Skin—non-irritant, Eye-Non-irritant.
Exposure. No exposure.
Environmental Release/Disposal. No release.

P 85-545

Importer. Rohm Tech, Inc.
Chemical. (S) 2-Propenoic acid-3-(dimethylamino)-2, 2-dimethyl-propylester.
Use/Import. (S) Industrial and commercial general acrylic monomer applications. Import range: Confidential.
Toxicity Data. Acute oral: 423 mg/kg; Irritation: Skin—Irritant, Eye-Irritant.
Exposure. No exposure.
Environmental Release/Disposal. No release.

P 85-613

Manufacturer. Confidential.
Chemical. (G) Dialkylamine substituted aryl-N-arylnitrone.
Use/Import. (G) Destructive use—used in semiconductor manufacturing. Prod. rang: Confidential.
Toxicity Data. Irritation: Skin—Non-irritant, Eye—Irritant; Ames Test: Non-mutagenic.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85-614

Manufacturer. Confidential.
Chemical. (G) Dialkylamine substituted aryl-N-arylnitrone.
Use/Import. (G) Destructive use—used in semiconductor manufacturing. Prod. range: Confidential.
Toxicity Data. Irritation: Skin-Non-irritant, Eye—Irritant: Ames Test: Non-mutagenic.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85-615

Manufacturer. Confidential.
Chemical. (G) Nitrobenzoic acid ester.
Use/Production. (G) Destructive use—material will be reacted on-site to produce a contrast enhancing dye used for simiconductor processing. Prod. range: Confidential.
Toxicity Data. No data submitted on the PMN substance.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85-616

Manufacturer. Confidential.
Chemical. (G) Bromonated propanoic acid derivative.
Use/Production. (G) Chemical intermediate. Prod. range: 7.500 kg/yr.
Toxicity Data. Acute oral: >3,200 mg/kg; Irritation: Skin—Slight, Eye—Very slight; Skin sensitization: Low potential.
Exposure. Manufacture and use: dermal, a total of 8 workers, up to 1.0 hr/da, up to 4 da/yr.
Environmental Release/Disposal. No release. Less than 0.005 kg/batch disposed of by biological treatment system with less than 45 kg/batch incinerated.

P 85-617

Importer. Confidential.
Chemical. (G) Substituted-phenylazo-substituted-naphthalenedisulfonic acid, soduim salt.
Use/Import. (S) Industrial colorant for textiles. Import range: Confidential.
Toxicity Data. Acute oral: Female->5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; IC_{50} 48 hr (Leucisucus idus): >1o,000 mg/1.
Exposure. Use: dermal, inhalation and ocular, 1 weighing/shift, less than 5 min/weighing.
Environmental Release/Disposal. Release to air, water and land. Disposal by publicly owned treatment works (POTW) or customer's own treatment facility.

P 85-618

Importer. Confidential.
Chemical. (G) Substituted-phenylazo-substituted-naphthalenesulfonic acid, sodium salt.
Use/Import. (S) Industrial colorant for textiles. Import range: Confidential.
Toxicity Data. Acute oral (Male & female): >3.1 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; IC_{50} 96 hr (Brachydanio rerio): >100 mg/1.
Exposure. Use: dermal, inhalation and ocular, 1 weighing/shift, less than 5 min/weighing.
Environmental Release/Disposal. Release to air, water and land. Disposal by POTW or customer's own treatment facility.

P 85-619

Manufacturer. Nuclear Technology Corporation.
Chemical. (G) Tetra substituted aminocarboxylic acid.
Use/Production. (S) Industrial and commercial boiler scale remover, nuclear reactor primary decontamination solvent, ferrous iron reservoir in styrene-butablene rubber catalysis, evaporator descaleant, paper mill felt belt cleaner and general descaling compound. Prod. range: Confidential.
Toxicity Data. Acute oral: 0.93 g/kg; Irritation: Skin—Non-irritant, Eye—Irritant; LC_{50} 96 hr (Daphnia magna): 1.4 mg/1.
Exposure. Manufacture: dermal, a total of 7 workers, up to 4 hrs/da, up to 50 da/yr.
Environmental Release/Disposal. 0.25 to 0.75 gal/batch released to water. Disposal in a lagoon.

P 85-621

Importer. Confidential.
Chemical. (G) A cyclopentene substituted alcohol.
Use/Import. (G) Ingredient for use in consumer products, highly dispersive use. Import range: 100-1,000 kg/yr.
Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: Males->2.0 g/kg, females-<2 g/kg; Irritation: Skin—Not a primary irritant, Eye—Not a primary irritant; Photosensitization: Not a photosensitizer; Skin sensitization: Not a sensitizer; Ames test: Negative.
Exposure. Import: dermal, a total of 6 workers, up to 2 hrs/da, up to 20 da/yr.
Environmental Release/Disposal. No release.

P 85–622

Manufacturer. Confidential.

Chemical. (G) Poly[alkyl sulfonic acid, ammonium salt].

Use/Production. (S) Viscosity control agent for aqueous acid, alkaline cleaners and "functional" fluids (i.e., lubricating, cutting, and drilling fluids). Prod. range: Confidential.

Toxicity Data. Acute oral: >15 g/kg; Irritation: Skin—Non-irritant, Eye—Mild; D.O.T. skin corrosion: No Irritation.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–623

Importer. Biddle Sawyer Corporation.

Chemical. (G) Substituted benzene sulfonic acid, -[chloro-[(substituted phenyl)amino]-Triazinyl amino]-[[amino carbonyl-ethyl-hydroxy-methyl-oxo-pyridinyl]hydroxy-methyl-oxo-pyridine]azo]-, alkali metal salt.

Use/Import. (S) Reactive dyes for textiles. Import range: 40,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No exposure.

Environmental Release/Disposal. No release.

P 85–624

Importer. Biddle Sawyer Corporation.

Chemical. (G) Amino-hydroxy-naphthalene disulfonic acid, -[[(dichloro-triazinyl)amino]substituted phenyl azo]-[(substituted phenyl) azo]-alkali metal salt.

Use/Import. (S) Reactive dyes for textiles. Import range: 40,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No exposure.

Environmental Release/Disposal. No release.

P 85–625

Importer. Biddle Sawyer Corporation.

Chemical. (G) Cooper phthalocyanine, [[(chloro-substituted-triazinyl)amino]substituted]sulfonyl sulfo derivatives alkali metal salt.

Use/Import. (S) Reactive dyes for textiles. Import range: 40,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No exposure.

Environmental Release/Disposal. No release.

P 85–626

Manufacturer. Eastman Kodak Company.

Chemical. (S) 3-Acetyl-7-(diethylamino)-2H-1-benzopyran-2-one.

Use/Production. (G) Chemical intermediate. Prod. range: 200–600 kg/yr.

Toxicity Data. Irritation: Skin—Slight.

Exposure. Manufacture and use: dermal and inhalation, a total of 12 workers, up to 0.8 hrs/da, up to 6 da/yr.

Environmental Release/Disposal. No release. Disposal by Less than 12 to less than 20 kg/batch incinerated.

P 85–627

Manufacturer. Confidential.

Chemical. (G) Alkenyloxysilane.

Use/Production. (G) Monomer for use in acrylic copolymers. Prod. range: Confidential.

Toxicity Data. Ames Test: Non-mutagenic.

Exposure. Manufature: dermal, a total of 4 workers, up to 8 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. Confidential.

P 85–628

Manufacturer. Confidential.

Chemical. (G) Synthetic oil.

Use/Production. (S) Industrial, commercial and consumer coating for wood and wood products. Prod. range: 20,000–100,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 9 workers, up to 8 hrs/da, up to 200 da/yr.

Environmental Release/Disposal. .5 kg/batch released to water with .5 to 10 kg/batch to land. Disposal by POTW and landfill.

P 85–629

Manufacturer. Stepan Company.

Chemical. (S) Potassium, 1-n-Octyl sulfonate.

Use/Production. (S) Industrial surfactants for detergents. Prod. range: Confidential.

Toxicity Data. Acute oral: 5.0 g/kg; Irritation: Skin—Very slight to severe, Eye—Severe; Comparative skin irritation screen: Severe.

Exposure. Manufacture: dermal, a total of 28 workers, up to 5.0 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. 0.2 kg/batch released to air with 15 kg/batch to water. Disposal by POTW and navigable waterway.

P 85–630

Manufacturer. Stepan Company.

Chemical. (S) Ammonium, 1-n-Tetradecyl sulfonate.

Use/Production. (S) Industrial surfactants for detergents. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 28 workers, up to 5.0 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. 0.2 kg/batch released to air with 15 kg/batch to water. Disposal by POTW and navigable waterway.

P 85–631

Manufacturer. Stepan Company.

Chemical. (S) Sodium, 1-n-Tetradecyl sulfonate.

Use/Production. (S) Industrial surfactants for detergents. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 28 workers, up to 5.0 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. 0.2 kg/batch released to air with 15 kg/batch to water. Disposal by POTW and navigable waterway.

P 85–632

Manufacturer. Stepan Company.

Chemical. (S) Ammonium, 1-n-Hexadecyl sulfonate.

Use/Production. (S) Industrial surfactants for detergents. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 28 workers, up to 5.0 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. 0.2 kg/batch released to air with 15 kg/batch to water. Disposal by POTW and navigable waterway.

P 85–633

Importer. Pacific Anchor Chemical Corporation.

Chemical. (G) Aminoalkanoic acid.

Use/Import. (S) Industrial power coatings, curing agent for epoxy adhesives and encapsulating systems. Import range: Confidential.

Toxicity Data. Acute oral: 16 g/kg; Irritation: Skin—Nonirritant, Eye—Non-irritant; Accumulation test: Non-accumulative.

Exposure. Use: dermal and inhalation, a total of 25–50 workers, up to 2 hrs/da, up to 50 da/yr.

Environmental Release/Disposal. Less than 1 kg/yr released to air and water. Disposal by Federal and state regulations.

P 85–634

Manufacturer. Synthetic Products Company.

Chemical. (G) Butyltin alkyl thioglycolate.

Use/Production. (S) Industrial producing compound to be used as a stabilizer for PVC. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85-635

Manufacturer. Callaway Chemical Company.

Chemical. (S) Polymer of methyl methacrylate, butyl acrylate, dimethylaminoethyl methacrylate methacrylic acid.

Use/Production. (S) Dye fixative component in textile dyeing systems. Prod. range: 75,00-150,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 6 workers, up to 3 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. 8 kg/batch released to water. Disposal by POTW.

P 85-636

Manufacturer. Shell Oil Company.

Chemical. (G) Substituted epoxy resin.

Use/Production. (G) Industrial baking coating for application to metal furniture or shelving. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Nil release to air.

P 85-637

Manufacturer. Confidential.

Chemical. (G) Phosphonomethylated amine.

Use/Production. (G) Additive. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal, a total of 22 workers, up to 9.5 hrs/da, up to 4 da/yr.

Environmental Release/Disposal. Release to air and water. Disposal by POTW.

P 85-638

Manufacturer. The Dow Chemical Company.

Chemical. (G) Substituted polyglycol.

Use/Production. (S) Industrial polyol for use in polyurethane resins. Prod. range: Confidential.

Toxicity Data. Acute oral: >2,000 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin—No irritation, Eye—No irritation.

Exposure. Manufacture: dermal, a total of 48 workers.

Environmental Release/Disposal. Release to air. Disposal by incineration.

P 85-639

Manufacturer. The Dow Chemical Company.

Chemical. (G) Substituted polyglycol.

Use/Production. (S) Industrial polyol for use in polyurethane resins. Prod. range: Confidential.

Toxicity Data. Acute oral: >2,000 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin—No irritation, Eye—No irritation.

Exposure. Manufacture: dermal, a total of 48 workers.

Environmental Release/Disposal. Release to air. Disposal by incineration.

P 85-640

Manufacturer. The Dow Chemical Company.

Chemical. (G) Substituted propenamide.

Use/Production. (S) Site-limited chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: Female->2,000 mg/kg; Irritation: Eye—Slight.

Exposure. Manufacture and use: dermal.

Environmental Release/Disposal. None expected. Disposal by navigable waterway after treatment.

P 85-641

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Substituted amino carboxamide.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. Acute dermal: 9.1 g/kg; Irritation: Skin—Severe, Eye—Servere.

Exposure. Manufacture: dermal, a total of 2 workers.

Environmental Release/Disposal. No release anticipated. Disposal by incineration.

P 85-642

Importer. Confidential.

Chemical. (S) 2-Nonynoic acid, 2-methylpropyl ester.

Use/Import. (G) Highly dispersive use. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85-643

Importer. Confidential.

Chemical. (G) Substituted pyridine.

Use/Import. (G) Highly dispersive end use. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85-644

Manufacturer. Confidential.

Chemical. (G) Substituted alkanoic triester.

Use/Production. (G) Component of industrial coating. Prod. range: 60,000-296,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 31 workers, up to 8 hrs/da, up to 153 da/yr.

Environmental Release/Disposal. 4 to 95 kg/batch released to land. Disposal by incineration and landfill.

P 85-645

Manufacturer. Catalyst Resources Incorporated.

Chemical. (G) A titanium complex compound.

Use/Production. (S) Site-Limited intermediate in manufacture of polypropylene catalyst. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and processing: dermal, a total of 3 workers.

Environmental Release/Disposal. No release. Disposal by Gulf Coast Wastewater Treatment Works, incineration and landfill.

P 85-646

Manufacturer. Catalyst Resources Incorporated.

Chemical. (G) A titanium complex compound.

Use/Production. (S) Industrial polypropylene manfacturing catalyst. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and processing: dermal and inhalation, a total of 3 workers.

Environmental Release/Disposal. No release.

Dated: March 11, 1985.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 85-6088 Filed 3-14-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59707; TSH-FRL 2796-J]

Rosin Modified Alkyd Polymer; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of

May 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984, (49 FR 46066)(40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reveiwed by EPA within 21 days of receipt. This notice announces receipt of one such PMN and provides a summary of each.

DATES: Close of Review Period: Y 85-28, March 25, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460 (202-382-3725).

SUPPLEMENTARY INFORMATION: A nonsubstantive change in the prefixes is being initiated for information published under sections 5(d)(2) and 5(h)(6) of TSCA. The notices will contain essentially the same information but the prefixes to the specific number assignment will appear in an abbreviated form. Prefixes under the modified format will use the letters "Y" (Polymer Exemption), "P" (PMN) and "T" (TMEA). The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 85-28

Manufacturer. Confidential.

Chemical. (G) Rosin modified alkyd polymer.

Use/Production. (g) Polymeric binder for pigmented air-dry finishes. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Dated: March 11, 1985.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 85-6087 Filed 3-14-85; 8:45 am]

BILLING CODE 6560-50-M

[SWH-FRL 2797-4]

Public Briefings on RCRA Amendments

AGENCY: Environmental Protection Agency.

ACTION: Notice of public briefings.

SUMMARY: The Environmental Protection Agency will hold four public briefings in April to present a comprehensive overview and discussion of the "Hazardous and Solid Waste Amendments of 1984" to the Resource Conservation and Recovery Act. EPA staff will also discuss rules to be published in the near future which will codify in regulations those requirements which, by statute, took effect immediately upon or shortly after enactment of the 1984 Act.

A panel of EPA experts will make presentations on the following topics and time will be provided for questions from the audience:

1. Overview of EPA's approach to RCRA implementation.
2. Issues in proposed codification rule.
3. Schedule of EPA's guidance and regulations.
4. Enforcement provisions.
5. Minimum technology standards.
6. Labelling hazardous wastes as fuels.
7. Controlling leaking underground storage tanks.
8. Banning wastes from land disposal.
9. Implementing small quantity generator provisions.
10. Permits and State implementation.
11. Exposure assessments.
12. Corrective actions.

DATES AND LOCATIONS:

April 12, 1985—Washington, D.C.

Department of Health and Human Services, North Auditorium, 330 Independence Avenue, S.W., Washington, D.C. 20201

Note.—Attendees without Government ID, please use "C" Street entrance.

April 17, 1985—Chicago, Illinois

Sheraton International at O'Hare,[1] 6810 North Mannheim Road, Chicago/Rosemont, Illinois 60018, Telephone: (312) 297-1234

April 23, 1985—Dallas, Texas

Sheraton-Dallas Hotel,[1] Southland Center, 400 North Olive Street, Dallas, Texas 75201, Telephone: (214) 922-8000

April 30, 1985—San Francisco, California

Sir Francis Drake Hotel, On Union Square, 450 Powell Street, San Francisco, California 94101, Telephone: (415) 392-7755

[1] A block of rooms has been reserved at these hotels under U.S. EPA, the evening preceding the meetings.

TIME: The meetings will begin at 9:00 A.M. (local time). Registration of attendees will begin at 8:30 A.M.

FOR FURTHER INFORMATION CONTACT:

Gerri Wyer, Office of Solid Waste (WH-562), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460, Phone: 202-382-4676

Joan Warren, Office of Solid Waste (WH-562), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460, Phone: 202-475-8613

To facilitate registration at the briefings, if you plan on attending one of the meetings, please notify in writing one of the individuals listed above.

Dated: March 8, 1985.

Jack W. McGraw,

Acting Assistant Administrotor, Office of Solid Waste and Emergency Response.

[FR Doc. 85-6181 Filed 3-14-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2796-8]

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements filed March 4, 1985 through March 8, 1985. Pursuant to 40 CFR 1506.9.

EIS No. 850086, FSuppl, IBR, CO, Narrows Unit Multipurpose Water Development Project, Pick-Sloan Missouri Basin Program, Weld and Morgan Counties, Due: April 15, 1985, Contact: Richard Eggen (303) 236-0684.

EIS No. 850087, Final FHW, AR, North Belt Freeway Construction, I-440/I-40 Interchange to US 67/167, Pulaski County, Due: April 15, 1985, Contact: Martin Convisser (202) 426-4357.

EIS No. 850088, Draft, BLM, BIA, NM, Jackpile-Paguate Uranium Mine Reclamation Plan, Approval, Cibola County, Due: April 29, 1985. Contact: Mike Pool (505) 766-3114.

EIS No. 850089, FSuppl, AFS, APH, PRO, SEV, Gypsy Moth Suppression and Eradication Program, CT, DE, MD, ME, MA, MI, NH, NJ, NY, PA, RI, VT, VA, WV, CA, IL, IN, MN, NC, OH, SC, OR, TN, WA, WI. Due: April 15, 1985, Contact: Thomas Schenarts (215) 461-3125.

EIS No. 850090, Draft, AFS, FL, Florida National Forests, Land and Resource Management Plan, Due: June 13, 1985, Contact: Ray Mason (904) 681-7265.

EIS No. 850091, Draft, AFS, OK, Ouachita National Forest, Land and Resource Management Plan, Due: June

15, 1985. Contact: E. J. Wenner, Jr. (501) 321-5202.

EIS No. 850092, Draft, AFS, MI, Huron-Manistee National Forests, Land and Resource Management Plan, Due: June 24, 1985, Contact: Wayne Mann (616) 775-2421.

EIS No. 850093, Final, FHW, KY, US 27/Nicholasville Bypass Construction, Jessamine County, Due: April 15, 1985, Contact: Robert Johnson (502) 227-7321.

EIS No. 850094, DSuppl, DEA, PRO, United States Federal Lands, Intermingled Forests and Rangelands, Cannabis Eradication Program, Due: April 30, 1985, Contact: Thomas Byrne (202) 633-1271.

Amended Notice: EIS No. 850068, Final, BLM, CO, Piceance Basin Resource Management Plan, Rio Blanco and Garfield Counties, Due: April 8, 1985, Published FR 3-1-85—Incorrect due date.

Dated: March 12, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-6255 Filed 3-14-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2797-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 25, 1985 through March 1, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 Fr 41108).

Draft EISs

ERP No. D-AFS-B65002-00 Rating EC2, White Mtn. Nat'l Forest Land and Resource Mgmt. Plan, NH and ME. SUMMARY: EPA has concerns related to the Forest Service's overall assessment of potential water quality and other environmental impacts. Specifically, the DEIS does not clearly show the relative environmental risks associated with the more intensive road building, timber cutting, and intensive motorized recreation features of several alternatives. EPA supports the mix of management areas and activities in Alter. 3 as the environmentally preferable alternative.

ERP No. D-AFS-F65009-WI, Rating EC2, Nicolet Nat'l Forest Land and Resource Mgmt. Plan, WI. SUMMARY: The EPA expressed concerns regarding implementation of the recommended alternative. The concerns relate to impacts on wilderness management, road construction impacts on wetlands, and nonrenewability of resources. We do, however, believe that appropriate mitigration measures and plan modifications can be implemented to produce a plan which is more sensitive to an environmentally sound resolution of conflicts between different resource uses.

ERPP NO. D-AFS-K61083-CA, Rating LO, Dodge Ridge Ski Resort, Expansion, Stanislaus Nat'l Forest, CA. SUMMARY: EPA expressed no objections to the project as proposed.

ERP No. D-BLM-J02009-UT, Rating 3, Circle Cliffs Special Tar Sand Area, Oil and Gas Leases, Conversion to Hydrocarbon Leases, UT. SUMMARY: EPA does not believe that the DEIS is adequate for the purposes of the NEPA and/or Sect. 309 review. Insufficient geological, hydrological, geophysical and geochemical information and attendent impacts from in-site development is presented for EPA to adequately assess potentially significant environmental impacts. Furthermore, a method of transporting hydrocarbons from the site is not evaluated in the EIS.

ERP No. D-FHW-B40062-NH, Rating E02, Nashua-Hudson Circumferential Hwy. Construction, F.E. Everett Turnpike from Nashau to Merrimack, NH. Summary: EPA believes that the DEIS does not adequately assess the magnitude of petential highway impact on drinking water resources, wetlands and streams in the study area, and that it lacks a thorough evaluation of alternatives that would avoid or reduce impacts. EPA's main concerns with the DEIS are the lack of consideration of alternative alignments for the Southern Segment, the crossing of the Pennichuck Reservoir watershed in the Northern Segment, and the absence of a specific mitigation plan for unavoidable wetland impacts.

ERP No. D-FHW-L40143-WA, Rating EC2, Monroe and Lincoln Couplet Construction, Main Avenue to Wall and Monroe Streets, WA. SUMMARY: EPA suggested that the FEIS more thoroughly evaluate potential air quality impacts especially considering completion for "Green Time" with major cross-arterials. Also, greater consideration of mitigation for noise impacts on residences was requested. Finally, EPA requested more opportunity for, and better documentation of public involvement with the project.

ERP No. D-OSM-J01066-MT, Rating LO, Rosebud Mine, Area D Expansion, Approval and Permits, MT. SUMMARY: EPA does not believe there will be a violation of EPA environmental standards based on the information provided in the DEIS.

Final EISs

ERP No. F-COE-L36097-WA, Mt. St. Helens, Sediment Control and Flood Reduction Plan, WA. Summary: EPA supports the Corps' decision to remain flexible by requesting funding for three possible alternatives. We remain concerned about the Corps' lack of commitment to mitigation for wetlands lost at dredged material disposal sites near the mouth of the Cowlitz River. We also have concerns about stilling basin water quality and the lack of possible solutions. We continue to believe that the usefulness of the EIS could be improved by incorporating EPA's comments on the DEIS.

ERP No. F-FHW-H40080-NB, NB-370 Improvement, Between Papillion to Bellevue, NB. SUMMARY: EPA expressed no objections to the project and concerns with predicted noise impacts identified in the DEIS were satisfactorily resolved by information presented in the FEIS.

Regulations

ERP No. R-NOA-A86213-00, Coastal Zone Mgmt. Act, Federal Consistency Regs., 15 CFR Parts 923 and 930, (Docket No. 40565-4179) (50 FR 3798). SUMMARY: EPA did not have any objections to the proposed regulations. EPA reiterated the comment made on the advance notice of Proposed Rulemaking that a better reading of the Supreme Court decision would provide that Federal activities outside the Coastal Zone would likely not be subject to the consistency requirements of sec. 307(c)(1) of the CZMA.

Dated: March 12, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-6256 Filed 3-14-85; 8:45 am]

BILLING CODE 6560-50-M

COMMISSION ON EXECUTIVE LEGISLATIVE AND JUDICIAL SALARIES

Public Hearing

March 8, 1985.

The Honorable Nicholas F. Brady, Chairman of the Commission on

Executive Legislative and Judicial Salaries announced today that hearings have been scheduled to examine the effects of the current mechanism for determining salaries for top government officials. The hearings have been scheduled for Wednesday, April 3, 1985, beginning at 9:00 a.m. in room 4830 of the U.S. Department of Commerce, 14th & Constitution Avenue, N.W., Washington, D.C.

Under current law, the Quadrennial Commission on Executive, Legislative and Judicial Salaries meets every four years to make salary recommendations to the President for the positions of Vice President, the Executive Branch from Cabinet officers through Executive Level V, for Members of Congress, for Supreme Court Justices and for other Members of the Federal Judiciary. Since 1969, each Commission has recommended substantial salary increases for all the positions under its purview, but these recommendations have seldom been enacted. As a result of these events, the purchasing power of top level government salaries has declined dramatically.

Recognizing that public service appropriately carries with it a "badge" of financial sacrifice, the Commission requests that testimony focus on the following issues:

1. Whether the disparity between private sector and public sector salaries at top levels is unacceptable;

2. Whether this disparity in income has had serious effects on the recruiting and retention of experienced individuals;

3. Whether less experienced and less qualified individuals are being attracted to government from the private sector;

4. Whether the current mechanism for determining top level government salaries permits Congress to address the issue in an orderly and effective manner and, if not, how should the mechanism be improved; and

5. Whether the quality of government is undermined by this system of compensation.

The Commission plans to receive testimony from representatives of the Federal Executive, Legislative and Judicial branches, individuals from the private sector, interested industry, labor, academic and public policy groups and other invited and public witnesses.

Details for Submission of Request To Be Heard

Individuals and organizations interested in presenting oral testimony before the Commission must submit their request to be heard by telephone to Meredith P. Catlett, (202) 377-3914, no later than the close of business March 18, 1985, to be followed by a formal written request to Ede Holiday, Executive Director of the Commission. Every effort will be made to honor requests to be heard. The Commission, however, reserves the right to require written statements in lieu of oral testimony where time constraints so dictate. Notification to those scheduled to appear will be made by telephone as soon as possible after the filing deadline.

It is urged that persons and organizations having a common position make every effort to designate one spokesperson to represent them in order for the Commission to hear as many points of view as possible. In addition, witnesses may be grouped as panelists. Time for oral presentation will be strictly limited to 5 minutes with the understanding that a more detailed statement may be included in the printed record of the hearing. This process will afford more time for the questioning of witnesses.

In order to assure the most productive use of the limited amount of time available, witnesses scheduled to appear are required to submit to the Commission on or before March 25, 1985, 25 copies of their prepared statement and any other supporting documentation which they plan to submit. Additionally, witnesses are required to bring to the hearing another 25 copies of their prepared statement.

Formal written requests to be heard must contain the following information:

1. The name, full address, and capacity in which the witness will appear, as well as a telephone number where the witness or a designated representative may be reached;

2. A list of any clients or persons, or any organization for whom the witness appears; and

3. A topical outline or summary of comments and recommendations.

The above information should also be incorporated in the prepared statements to be presented in person as well as those filed for the printed record of the hearing.

Written Statements in Lieu of Personnal Appearance

Persons submitting a written statement in lieu of a personal appearance should submit at least twenty-five (25) copies of their statement by the close of business, Monday, March 25, 1985, to Ede Holiday, Executive Director, Commission on Executive, Legislative and Judicial Salaries, 734 Jackson Place, Northwest, Washington, D.C. 20503. If those filing written statements for the record of the printed hearing wish to have their statements distributed to the press and the interested public, they may provide 25 copies for this purpose to the Commission before the hearing begins.

For further information, contact Patsy Semple, Commission on Executive, Legislative and Judicial Salaries, 734 Jackson Place, N.W., Washington, D.C. 20503. Telephone: (202) 377-3914.

Nicholas F. Brady,

Chairman.

[FR Doc. 85-6175 Filed 3-14-85; 8:45 am]

BILLING CODE 3510-BX-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

March 11, 1985.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of these submissions are available from the Commission by calling Doris R. Peacock, (202) 632-7513. Persons wishing to comment on any information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington D.C. 20503, (202) 395-7231.

OMB No.: 3060-0012
Title: Application for Extension of Construction Permit or to Replace Expired Construction Permit
Form No.: FCC 701
Action: Revision
Estimated Annual Burden: 1,633 Responses; 3,266 Hours

OMB No.: 3060-0061
Title: Annual Report of Cable Television Systems—Schedule 1—Community Unit Data, Schedule 2—Physical System Data
Form No.: FCC 325
Action: Extension
Estimated Annual Burden: 32,000 Responses; 128,000 Hours

OMB No.: 3060-0062
Title: Application for Authority to Construct or Make Changes in an Instructional Television Fixed and/or Response Station(s) and Low Power Relay Station(s)
Form No.: FCC 330-P
Action: Revision
Estimated Annual Burden: 400 Responses; 2,000 Hours

OMB No.: 3060-0064

Title: Application for Station Authorization in the Private Operational Fixed Microwave Radio Service
Form No.: FCC 402
Action: Revision
Estimated Annual Burden: 8,610 Responses; 51,660 Hours
OMB No.: 3060-0066
Title: Application for Renewal of Instructional Television Fixed Station and/or Response Station(s) and Low Power Relay Station(s) License
Form No.: FCC 330-R
Action: Revision
Estimated Annual Burden: 35 Responses; 88 Hours
OMB No.: 3060-0079
Title: Application to Renew or Modify and Amateur Club, RACES or Military Recreation Station License
Form No.: FCC 610-B/610-BL
Action: Revision
Estimated Annual Burden: 1,000 Responses; 83 Hours
OMB No.: 3060-0107
Title: Application for Renewal of Radio Station License and/or Notification of Change to License Information
Form No.: FCC 405-A
Action: Revision
Estimated Annual Burden: 10,700 Responses; 1,787 Hours

William J. Tricarico,
Secretary, Federal Communications Commission.

[FR Doc. 85-6192 Filed 3-14-85; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-002813-004.
Title: The Port of San Francisco (Port) California Stevedore and Ballast Company (CS&B).
Parties:
The Port of San Francisco
California Stevedore & Ballast Co.
Synopsis: This agreement amends the basic agreement between the Port and CS&B which provides for the management and operation of a wharfinger and marine terminal at Pier 80, San Francisco. The amendment deletes the original paragraph 1 of the basic agreement and provides substitute language therefore, covering payment of compensation by the Port to CS&B for performing services of managing, operating and soliciting cargo for the facility.

Agreement No.: 213-010657-001.
Title: NYK and Showa Space Charter and Sailing Agreement.
Parties:
Nippon Yusen Kaisha
Showa Line, Ltd.
Synopsis: The proposed amendment would permit the parties to employ vessels which have standard operating capacities of less than 1,000 TEU's in the agreement trade. The parties have requested a shortened review period.

Agreement No.: 224-010732.
Title: Gulfport Terminal Agreement.
Parties:
The Mississippi State Port Authority at Gulfport (Authority)
Bob Bland, Inc. (Bland)
Synopsis: The Authority will lease to Bland certain premises at the Northeast section of the Gulfport Terminal for the conduct of operations related to foreign and domestic trade through the port of Gulfport. The term of the agreement is for five years with an option to renew the agreement for two periods of five years each.

Agreement No.: 224-010733.
Title: Mississippi State Port Authority Marine Terminal Agreement.
Parties:
Mississippi State Port Authority at Gulfport (Authority)
Hirschbach Motor Lines, Ltd. (Hifschbach)
Synopsis: The Authority will lease to Hirschbach certain premises located at the Northeast section of the Authority's marine terminal at Gulfport, for the conduct of operations related to foreign and domestic trades. The term of the agreement shall be for one year with an extension option for two one year periods.

Agreement No.: 224-010734.
Title: Milwaukee Terminal Agreement.
Parties:
The Port of Milwaukee (Port)
Domtar Industries, Inc. (Domtar)
Synopsis: Agreement No. 224-010734 provides for the lease by the Port of Domtar of six parcels of land and a building at various locations in the South Harbor Tract within the Port. Domtar will use the premises for the receiving, handling, storage, packaging and delivery of salt and other bulk products. The term of the agreement shall be for twenty years. The parties requested a shortened review period for the agreement.

Agreement No.: 224-010735.
Title: Oakland Terminal Agreement.
Parties:
The Port of Oakland (Port)
Hanjin Container Lines, Ltd. (Hanjin)
Synopsis: The agreement between the Port and Hanjin is a terminal use agreement providing for the nonexclusive use by Hanjin of the Port's Outer Harbor Terminal, Berth No. 6. Hanjin will use the facility for the berthing, loading and discharging of its vessels and related operations in its transpacific container liner service. Hanjin agrees that the assigned premises shall be its published, regularly scheduled Northern California port of call. As consideration for its regular use of the premises Hanjin will pay to the Port 90 percent of dockage and wharfage revenue. If Hanjin's usage of the premises generates in excess of 31,000 revenue tons in a contract year, wharfage payments for such excess of that amount will be refunded to Hanjin. The term of the agreement is for five years.

By Order of the Federal Maritime Commission.

Dated: March 12, 1985.

Bruce A. Dombrowski,
Assistant Secretary.

[FR Doc. 85-6265 Filed 3-14-85; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

The Chase Manhattan Corp. and Chase Manhattan National Corp., et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 4, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation* and *Chase Manhattan National Corporation*, both located in New York, New York; to engage *de novo* through various subsidiaries in the making, acquiring or servicing of loans or other extensions of credit, secured and unsecured, for consumer and other purposes; and leasing of personal or real property or acting as agent, in leasing such property. These activities would be conducted worldwide.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Metropolitan Financial Corporation*, Baton Rouge, Louisiana; to engage *de novo* through its subsidiary, Metropolitan Investment Advisory, Inc., Baton Rouge, Louisiana; in acting as an investment or financial adviser in the State of Louisiana.

2. *Merchants Bancshares, Inc.*, Kenner, Louisiana; to engage *de novo* through its subsidiary, Merchants Mortgage Corporation, Kenner, Louisiana, in making and servicing loans; and offering for sale credit life, credit disability and involuntary unemployment insurance directly related to extensions of credit made by its subsidiary. These activities would be conducted in the State of Louisiana.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *CNB Financial Corporation, Inc.*, Taylor, Texas; to engage *de novo* in making, acquiring, and/or servicing loans for itself or others of the type made by a mortgage company or consumer finance company. These activities would be conducted in Williamson and adjacent counties in Texas.

D. **Federal Reserve Bank of San Franciso** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Lloyds Bank, Plc.*, London, England, parent of Lloyds Bank International Limited, New York, New York; to engage *de novo* through an unnamed subsidiary located in New Orleans, Louisiana, in the activity of solicitation of loans and other extensions of credit and the marketing of Applicant's commercial banking credit services to existing and potential customers. These activities would be conducted in the States of Louisiana, Alabama and Mississippi.

Board of Governors of the Federal Reserve System, March 11, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-6162 Filed 3-14-85; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting or Request for Early Termination of the Waiting Period Under the Premerger Notification Rules; Correction

IN FR Doc. 85-4719, appearing in the **Federal Register** issue for Wednesday, Feb. 27, 1985, 50 FR 7963, an incorrect listing appeared. Substitute the following for the entry that appeared under #38:

* * * * *

(38) 85-0049—Equity Group Holdings', a partnership proposed acquisition of assets of Evans Products Company.		Feb. 8, 1985.

For further information contact: Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

Emily H. Rock,

Secretary.

[FR Doc. 85-6163 Filed 3-14-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on March 8, 1985.

Public Health Service

National Institutes of Health

Subject: Piedmont Health Survey of the Elderly—New
Respondents: Individuals
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: Enumeration Validation Study Interview Guide—SA 5001—New
Respondents: Individuals
Subject: Certificate of Election for Reduced Spouse's Benefits—SSA-25—Reinstatement
Respondents: Individuals
Subject: 45 CFR 303.10(b)(1) of the Final Rule on Procedures for Case Assessment—New
Respondents: States
Subject: SSA Contractor Report Forms SSA-870, SSA-871, SSA-4513, SSA-4514, SSA-4515, SSA-4516—Existing Collection
Respondents: State Disability Determination Staffs
Subject: Representative Payee Evaluation Report—SSA-624 Extension—(0960-0069)
Respondents: Individuals
Subject: Modified Benefit Formula Questionnaire—SSA-150—New
Respondents: Individuals
OMB Desk Officer: Robert J. Fishman

Health Care Financing Administration

Subject: Information Collection Requirements in HSQ-108-F, Peer Review Organization Assumption of Responsibilities 42 CFR 405.472, 431.630, 456.654, 466.70, 466.72, 466.74,

466.78, 466.80, and 466.94—(HCFA–R–71) New
Respondents: States
Subject: Information Collection Requirements in HSQ–109–F, Peer Review Organization Sanctions 42 CFR 474.36(b), 474.38 (a, b, and c), 474.39 (a and b) and 474.40 (a and b)—(HCFA–R–65) New
Respondents: States
Subject: Information Collection Requirements in HSQ–111–F, Peer Review Organization Reconsideration and Appeals 42 CFR 473.18 (a and b), 473.34 (a and b), 473.36 (a and b) and 473.42 (a)—(HCFA–R–72) New
Respondents: States
Subject: Methodology for Estimating Waiver Cost for HCFA Demonstration Projects—New
Respondents: Applicants for Demonstration Grants
OMB Desk Officer: Fay S. Iudicello

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, ATTN: (name of OMB Desk Officer).

Dated: March 11, 1985

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85–6238 Filed 3–14–85; 8:45 am]

BILLING CODE 4150–04–M

National Institutes of Health

Blood Diseases and Resources Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, May 2–3, 1985, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205. The Committee will meet in Building 31, Conference Room 7, C Wing.

The entire meeting will be open to the public from 9:00 AM to 5:00 PM on May 2, and from 8:30 AM to adjournment on May 3, to discuss the status of the Blood Diseases and Resources program needs and opportunities. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Fann Harding, Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building, Room 5A–08, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496–1817, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: March 6, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–6164 Filed 3–14–85; 8:45 am]

BILLING CODE 4140–01–M

Cancer Control Science Subcommittee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Control Science Subcommittee of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, March 28, 1985, Landow Building, Conference Room E, 7910 Woodmont Avenue, Bethesda, Maryland 20205. The entire meeting will be open to the public from 11:00 a.m. to adjournment, and the current and future programs of the Cancer Control Science Program will be discussed. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of meetings and rosters of subcommittee members upon request.

Mr. J. Henry Montes, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, Blair Building, Room 1A07, Bethesda, Maryland 20205 (301/427–8630) will furnish substantive program information.

Dated: March 6, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–6170 Filed 3–14–85; 8:45 am]

BILLING CODE 4140–01–M

Centers and Community Oncology Subcommittee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Centers and Community Oncology Subcommittee of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, March 28, 1985, O'Hare Hilton Hotel, Room 2015, Chicago, Illinois 60666. The entire meeting will be open to the public from 10:00 a.m. to adjournment, and the current and future programs of the Centers and Community Oncology Program will be discussed. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Mr. J. Henry Montes, Executive Secretary of the Board of Scientific Counselors Division of Cancer Prevention and Control, National Cancer Institute, Blair Building, Room 1A07, National Institutes of Health, Bethesda, Maryland 20205 (301/496–7978) will furnish substantive program information.

Dated: March 6, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–6166 Filed 3–14–85; 8:45 am]

BILLING CODE 4140–01–M

Developmental Therapeutics Contracts Review Committee; Meeting Cancellation

Notice of the meeting of the Developmental Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, March 18–20, 1985, published in the **Federal Register** (50 FR 8598 and 8599), is hereby cancelled due to last minute conflict of committee member's schedules. For further information, please contact Dr. Kendall G. Powers, Executive Secretary, National Cancer Institute, Westwood Building, Room 805, National Institutes of Health, Bethesda, Maryland 20205 (301/496–7575).

Dated: March 6, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–6165 Filed 3–14–85; 8:45 am]

BILLING CODE 4140–01–M,

National High Blood Pressure Education Program Coordinating Committee; Meeting

Notice is hereby given of the meeting of the National High Blood Pressure Education Program Coordinating Committee sponsored by the National Heart, Lung, and Blood Institute, on April 27, 1985, from 1:00 p.m. to 5:00 p.m., Crystal Room, Palmer House, 17 East Monroe Street, Chicago, Illinois.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National High Blood Pressure Education Program. Attendance by the public will be limited to space available. The meeting is being held prior to the National Conference on High Blood Pressure Control, April 28–30, at the Palmer House.

For the detailed program information, agenda, list of participants and meeting summary contact: Dr. Edward J. Roccella, Coordinator, Health Education Branch, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A18, Bethesda, MD 20205, 301–496–1051.

Dated March 6, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR. Doc. 85–6169 Filed 3–14–85; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

National Park Service

Intention To Extend Concession Permit

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to extend a concession permit with Teton Boating Company, authorizing it to continue to provide boat transportation and rental services for the public at Grant Teton National Park, Wyoming, for a period of two (2) years from January 1, 1985, through December 31, 1986.

This permit extension has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1984, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Rocky Mountain Region, Denver, Colorado, for information as to the requirements of the proposed permit.

Dated: February 22, 1985.

Jack W. Neckels,

Regional Director, Rocky Mountain Region.

[FR Doc. 85–6235 Filed 3–14–85; 8:45 am]

BILLING CODE 4310–70–M

Upper Delaware National Scenic and Recreational River

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: March 22, 1985, 7:00 p.m.

ADDRESS: Town of Tusten, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky Superintendent, Upper Delaware National Scenic and Recreational River, Drawer C. Narrowsburg, N.Y. 12764–0159.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95–625, 16 U.S.C. 1274 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governonrs of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will include items regarding continuance of discussion of requirements for a river management plan. The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Council c/o Upper Delaware National Scenic and Recreational River, Drawer C. Narrowsburg, N. Y. 12764–0159. Minutes of meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Upper Delaware National and Recreational River, River Road, 1¾ miles north of Narrowsburg, N.Y., Damascus Township, Pennsylvania.

Dated: March 5, 1985.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 85–6236 Filed 3–14–85; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Availability of Final Comprehensive Environmental Impact Statement on Permit Decisions Under the Tennessee Federal Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of final comprehensive environmental impact statement (OSM–EIS–18).

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is making available a final environmental impact statement (EIS) on permitting under the Tennessee Federal program. This EIS has been prepared to analyze the comprehensive impacts to the human environment that would result from decisions by OSM on permit applications for surface coal mining operations under the Tennessee Federal program.

ADDRESSES: Copies of the final EIS may be obtained from the following OSM offices:

Office of Surface Mining, 1100 L Street, NW., Room 5121, U.S. Department of the Interior, Washington, D.C. 20240.

Knoxville Field Office, Office of Surface Mining, U.S. Department of the Interior, 530 Gay Street, Suite 500, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Dr. Mark Boster, Office of Surface Mining, 1100 L Street, NW., Room 5121, U.S. Department of the Interior, Washington, D.C. 20240 (telephone: 202–343–5143).

SUPPLEMENTARY INFORMATION: On October 1, 1984, OSM implemented a Federal program for the regulation of

surface coal mining operations in the State of Tennessee. This EIS analyzes the comprehensive impacts that would result from decisions by OSM on permit applications for coal mining operations under the Federal regulatory program for Tennessee. For the purpose of the cumulative impacts analysis, it has been estimated that OSM would be able to make the necessary findings and approve nearly 100 percent of all pending and new applications for mining permits. This would result in an annual disturbance of approximately 3,150 acres in Tennessee. In addition, a lower range of permit approvals that would result in 70 percent of the annual disturbance and an upper range of 130 percent of the annual disturbance have been analyzed.

A notice of availability of the draft EIS was published in the **Federal Register** on November 21, 1984 (49 FR 45934). The final EIS contains the revised text of the draft EIS, the written comments on the draft EIS, the oral testimony from the public hearing on the draft EIS, and OSM responses to the testimony and comments.

Dated: March 11, 1985.

Brent Wahlquist,

Assistant Director, Technical Services and Research.

[FR Doc. 85-6200 Filed 3-14-85; 8:45 am]

BILLING CODE 4310-05-M

Bureau of Reclamation

Nevada Realty Action; Non-Competitive Sale of Public Land; Amendment

The notice published in the **Federal Register** on January 7, 1985, on page 897 in the second column is amended by adding the following sentence to the 6th paragraph: The land sale will be made by the authorized officer of the Bureau of Land Management.

Dated: March 12, 1985.

Jed D. Christensen,

Acting Assistant Secretary, Water and Science.

[FR. Doc. 85-6187 Filed 3-14-85; 8:45 am]

BILLING CODE 4310-09-M,

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the sixty-ninth meeting of the Board for International Food and Agricultural Development (BIFAD) on April 10, 1985.

The purpose of the meeting is to receive and discuss reports on: the Presidential Task Force on agricultural production and marketing in Zaire by Board Member Benjamin F. Payton; the Sorghum/Millet Collaborative Research Support Program (CRSP) by Glenn Vollmar, CRSP Director, University of Nebraska; and A.I.D.'s strategy for dealing with biological diversity issues in development assistance by A.I.D. Senior Assistant Administrator for Science and Technology Nyle Brady and others.

The meeting will begin at 9:00 a.m. and adjourn at 12:00 noon, and will be held in Room 1107, New State Department Building, 22nd and C Streets, NW., Washington, D.C. The meeting is open to the public. Any interested person may attend, may file written statements with the Board before or after the meeting, or may present oral statements in accordance with procedures established by the Board, and to the extent the time available for the meeting permits. An escort from the "C" Street Information Desk (Diplomatic Entrance) will conduct you to the meeting.

Dr. Erven J. Long, Director, Research and University Relations, Bureau for Science and Technology, Agency for International Development, is designated as A.I.D. Advisory Committee Representative at this meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, International Development Cooperation Agency, Washington, D.C. 20523, or telephone him at (703) 235-8929.

Dated: March 12, 1985.

Erven J. Long,

A.I.D. Advisory Committee Representative, Board for International Food and Agricultural Development.

[FR Doc. 85-6257 Filed 3-14-85; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-165 (Final)]

Certain Valves, Nozzles, and Connectors of Brass From Italy for Use in Fire Protection Systems

Correction

In FR Doc. 85-4806 appearing on page 7971 in the issue of Wednesday, February 27, 1985, make the following corrections: In the second column, in the twentieth line, "637.35" should read "657.35"; also, in the second column, in the twenty-fourth line, "as" should read "at".

BILLING CODE 1505-01-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 399]

Rail Carriers; Cost Recovery Percentage

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to notice of proposed costing standards and decision.

SUMMARY: The Edison Electric Institute, the Fertilizer Institute and the National Industrial Transportation League (Edison) have requested a 60-day extension of time to file comments concerning the Cost Recovery Percentage (CRP) decision served January 25, 1985. (50 FR 3846, January 28 1985) Edison contends that granting the extension will permit the Commission to calculate a CRP to be effective October 1, 1985 in a timely fashion, while considering the comments of various parties. It also contends that numerous demands have been placed on its consultants because of other Commission proceedings and the need for analysis of the most recent decision necessitate the extension.

The calculation of the annual CRP is a task which must be scheduled over a sufficiently long period of time to insure the service of a preliminary decision, a comment period for the preliminary CRP, analysis of preliminary CRP comments and service of a final CRP calculated in light of those comments. The granting of a 60-day extension of time would seriously delay the timely service of a final 1985 CRP. A more modest extension of time should not delay the 1985 CRP production schedule and would still permit additional time for various parties to comment. No further extensions will be granted.

DATES: Comments are due April 15, 1985.

FOR FURTHER INFORMATION CONTACT: William T. Bono (202) 275-7354, or Robert C. Hasek (202) 232-8067 or (202) 275-7354.

Dated: March 8, 1985.

By the Commission, Reese H. Taylor, Jr., Chairman.

James H. Bayne,

Secretary.

[FR Doc. 85-6193 Filed 3-14-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-52; Sub-No. 32]

Rail Carriers; the Atchison, Topeka and Santa Fe Railway Company; Abandonment; in Garvin County, OK; Findings

The Commission has issued a certificate authorizing The Atchison, Topeka and Santa Fe Railway Company to abandon its 21.25-mile rail line between Lindsay junction, OK (milepost 2+3640 feet) and Lindsay, OK (milepost 23+4943 feet) in Garvin County, OK. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 85-6194 Filed 3-14-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Order Pursuant To Toxic Substances Control Act; Hyman Friedman et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Order in *United States* v. *Hyman Friedman, Kimro, Inc., AAA Fuel Oil Company and Zenith Fuel Oil Company*, Civil Action No. 3-84-453 was lodged with the United States District Court for the District of Minnesota. The complaint filed by the United States alleged that defendants Hyman Friedman, AAA Fuel Oil Company, Kimro, Inc., and Zenith Oil Company, violated the Toxic Substances Control Act by improperly marking, storing, distributing in commerce and disposing of oils containing polychlorinated biphenyls ("PCBs") and by maintaining inadequate records concerning storage, distribution and disposal of oils containing PCBs. The complaint sought injunctive relief to require defendants to comply with all requirements of the Toxic Substances Control Act governing the transportation, storage and handling of PCBs.

The proposed Consent Order prohibits defendants from accepting, purchasing, storing, or selling of oils containing any detectable concentration of PCBs. The proposed Consent Order also provides that defendants may not accept any load of waste oil (except for oils from gasoline stations) until an analysis of the total PCB content of such load is performed. In addition, the proposed Consent Order requires defendants to comply with the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*, and the requirements of 40 CFR Part 761, and to submit detailed records of all results of PCB analyses, all waste oil purchases by defendants and all waste, drain or fuel oil deliveries made by defendants. The Consent Order provides for payment of stipulated penalties in the event of any violation of the terms of the Consent Order.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Order. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Hyman Friedman, Kimro, Inc., AAA Fuel Company and Zenith Fuel Oil Co.*, D.J. Ref. 90-5-1-1-2148.

The proposed Consent Order may be examined at the office of the United States Attorney, 234 U.S. Courthouse, 110 South Fourth Street, Minneapolis, Minnesota 55401 and at the Region V Office of the Environmental Protection Agency, Office of Regional Counsel, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Consent Order may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed Consent Order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.40 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-6497 Filed 3-14-85; 11:31 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 84-41]

Brokerage, Inc.; Denial of Application

On August 24, 1984, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed an Order to Show Cause to Brokerage, Inc., Suite A, Route 1, Box 149A, Scott, Arkansas 72142 (Respondent). The Order to Show Cause sought to deny an application executed on June 29, 1983, by James Earl Gilbert, the president of Brokerge, Inc., for registration as a distributor under 21 U.S.C. 823(b). The Order to Show Cause recited three grounds to be considered by the Administrator under 21 U.S.C. 823(b) and 823(e) for denial of the application. First, Brokerage, Inc. is not licensed with the Arkansas State of Pharmacy, as required by relevant Arkansas law. Second, Brokerage, Inc. does not maintain effective control against diversion of controlled substances into other than legitimate medical, scientific and industrial channels. Third, among other factors relevant to and consistent with the public health and safety, was the conviction of James Earl Gilbert, the president and general manager of Respondent, on December 9, 1976, in the United States District Court for the Eastern District of Arkansas of seven counts of failure of a licensed firearms dealer to properly maintain records required by United States Department of Treasury, in violation of 18 U.S.C. 922(m); and one count of unlawful possession of an unregistered firearm, in violation of 26 U.S.C. 5861(d) and 5871.

By handwritten letter dated September 23, 1984, Respondent, through James Earl Gilbert, requested a hearing on the issues raised by the Order to Show Cause. The Matter was placed on the docket of Administrative Law Judge Francis L. Young. On October 1, 1984, Judge Young ordered the parties to file and exchange written prehearing statements on or before November 9, 1984. Respondent failed to submit any prehearing statement or other response to the order of the Administrative Law Judge. The Government then moved for summary disposition of the Matter, based on Respondent's lack of

authorization under state law to handle controlled substances. Judge Young gave Respondent until November 16, 1984, to respond to the motion for summary disposition filed by the Government. Respondent failed to respond in any way, and on January 15, 1985, Judge Young entered an order terminating proceedings in this matter. Judge Young found that, under 21 CFR 1301.54(d) and (e), Respondent had waived its opportunity for a hearing. The Acting Administrator concurs in the finding of the Administrative Law Judge and finds that Respondent has waived its opportunity for a hearing.

Respondent has applied, pursuant to 21 U.S.C. 823(b) and 823(e), to be registered as a distributor of controlled substances. As a prerequisite to registering a distributor, the Acting Administrator must be satisfied that the proposed business will be operated in compliance with applicable state and local laws. The Arkansas State Board of Pharmacy, the state agency charged with the licensure of controlled substance manufacturers, distributors, wholesalers, packers and pharmacies under Arkansas law, has notified the Drug Enforcement Administration that Respondent is not a licensed wholesaler or distributor under the laws of that state. Accordingly, Respondent cannot be registered under the Federal Controlled Substances Act. EDA has consistently held that it cannot register applicants who are not authorized to handle controlled substances in the state in which they seek to be registered. See *Harold E. Harbo, M.D.*, 48 FR 36221 (1983); *Floyd A. Santner*, Docket No. 79-23, 47 FR 51831 (1982); *Henry Weitz, M.D.*, 46 FR 34858 (1981); *James Waymon Mitchell, M.D.*, Docket No. 79-16, 44 FR 71466 (1979). In light of this precedent, the Acting Administrator has no recourse but to deny the application executed by Respondent for registration as a distributor with the Drug Enforcement Administration. Respondent has not come forward with any evidence suggesting that it is authorized to distribute or otherwise handle controlled substances under Arkansas law.

The Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby denies the application executed by Respondent, Brokerage, Inc., on June 29, 1983, and any other pending applications, effective April 15, 1985.

Dated: March 11, 1985.

John C. Lawn,

Acting Administrator.

[FR Doc. 85-6195 Filed 3-14-85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Secretary of Labor's Committee on Veterans' Employment; Meeting

The Secretary's Committee on Veterans' Employment was established under Section 308, Title III, Pub. L. 97-306 "Veterans Compensation, Education and Employment Amendments of 1982," to bring to the attention of the Secretary, problems and issues relating to veterans' employment.

Notice is hereby given that the Secretary of Labor's Committee on Veterans' Employment will meet on Tuesday, April 9, 1985, at 10: a.m., in the Secretary's Conference Room, S-2508, FPB.

Items to be discussed are:

OFCCP
EVJTA Update
JTPA IV-C Update
Joint Pre-Separation Project Update
VA Committee for Employer Support of Veterans Employment Update
Validity Generalization Report
New Personnel Federal Regulations Affecting Veterans.

The public is invited.

Signed at Washington, D.C. this 12th day of March, 1985.

Donald E. Shasteen,

Deputy Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 85-6262 Filed 3-14-85; 8:45 am]

BILLING CODE 4510-79-M

Employment and Training Administration

[TA-W-15,112, TA-W-15,481]

National Steel Service Center, Inc., New Castle, PA, and The Selmer Co., Elkhart, IN; Dismissals of Applications for Reconsideration

Pursuant to 29 CFR 90.18 applications for administrative reconsideration were filed with the Director of the Office of Trade Adjustment Asaistance for workers at the National Steel Service Center, Inc., New Castle, Pennsylvania plant and The Selmer Company, Elkhart, Indiana plant. The reviews indicated that the applications contained no new substantial information which would bear importantly on the Department's determinations. Therefore, dismissals of the applications were issued.

TA-W-15,112: National Steel Service Center, Inc. New Castle, Pennsylvania (March 5, 1985)

TA-W-15,481: The Selmer Company, Elkhart, Indiana (February 27, 1985).

Signed at Washington, D.C. this 6th day of March 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-6259 Filed 3-14-85; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Appy for Worker Adjustment Assistance; La Femme Manufacturing Corp. et al.

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period February 25, 1985-March 1, 1985.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the worker in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-15,593; La Femme Manufacturing Corp., Brooklyn, NY

TA-W-15,604; Allied Materials Corp., Allied Roofing Co., Stroud, OK

TA-W-15,605; Cincy Sportswear, Inc., Cincinnati, OH

Affirmative Determinations

TA-W-15,611; Miller Shoe Co., Inc., Cincinnati, OH

A certification was issued covering all workers separated on or after November 19, 1983 and before January 7, 1985.

TA-W-15,610; Levi Strauss & Co., Rock Island, TN

A certification was issued covering all workers separated on or after November 14, 1983 and before January 31, 1985.

TA-W-15,608; Levi Strauss & Co., Arkadelphia, AR

A certification was issued covering all workers separated on or after November 14, 1983 and before January 31, 1985.

TA-W-15,679; Johnson Camping, Inc., Walton, NY

A certification was issued covering all workers separated on or after December 3, 1983 and before February 15, 1985.

TA-W-15,625; Airco Welding Products, Fillermetals Plant, Sparrows Point, MD

A certification was issued covering all workers separated on or after October 1, 1983.

I hereby certify that the aforementioned determinations were issued during the period February 28, 1985–March 1, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 5, 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 6258– Filed 3–14–85; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

[V-84-4]

Temporary Variances From Final Trigger Level for Medical Removal Protection Under the Standard for Occupational Exposure to Lead

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Grant of Temporary Variances.

SUMMARY: This notice announces the grant of temporary variances to 28 plants for the final trigger level for medical removal protection, under the standard for Occupational Exposure to Lead [29 CFR 1910.1025(k)(1)(i)(D)]. The variances temporarily relieve the affected employers of the requirement to comply with the 50 μg. of lead per 100g of blood removal trigger under the lead standard. As a condition of the granted relief, the employers must continue to comply with the 60/40 removal and return triggers and all other provisions of the lead standard and must satisfy the conditions and requirements of the variance order. This relief applies only to the affected supervisory, maintenance and skilled production employees referred to in the 28 applications for temporary variances.

DATES: The effective date of the grant of temporary variances is March 7, 1985. The expiration date of the temporary variances is September 1, 1985.

FOR FURTHER INFORMATION CONTACT:

James J. Concannon, Director, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third and Constitution Avenue, NW., Rm. N–3656, Washington, D.C. 20210, Telephone: (202) 523–7193

or the following Regional and Area Offices:

U.S. Department of Labor—OSHA, 1515 Broadway (1 Astor Plaza), Room 3445, New York, New York 10036

U.S. Department of Labor—OSHA, 90 Church Street, Room 1405, New York, New York 10007

U.S. Department of Labor—OSHA, Gateway Building, Suite 2100, 3535 Market Street, Philadelphia, Pennsylvania 19104

U.S. Department of Labor—OSHA, Room 242, U.S. Customs House, Second & Chestnut Street, Philadelphia, Pennsylvania 19106

U.S. Department of Labor—OSHA, Penn Place, Room 2005, 20 North Pennsylvania Avenue, Wilkes-Barre, Pennsylvania 18701

U.S. Department of Labor—OSHA, Federal Building, Room 2236, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15522

U.S. Department of Labor—OSHA, Progress Plaza, 49 North Progress Avenue, Harrisburg, Pennsylvania 17109

U.S. Department of Labor—OSHA, 850 N. 5th Street, Allentown, Pennsylvania 18102

U.S. Department of Labor—OSHA, 1375 Peachtree Street, NE., Suite 587, Atlanta, Georgia 30367

U.S. Department of Labor—OSHA, Building 10—Suite 33, La Vista Perimeter Office Park, Tucker, Georgia 30084

U.S. Department of Labor—OSHA, Todd Mall, 2047 Canyon Road, Birmingham, Alabama 35216

U.S. Department of Labor—OSHA, 951 Government Street—Suite 502, Mobile, Alabama 36604

U.S. Department of Labor—OSHA, Federal Building, Room 302, 299 East Broward Boulevard, Fort Lauderdale, Florida 33301

U.S. Department of Labor—OSHA, 700 Twiggs Street, Room 624, Tampa, Florida 33602

U.S. Department of Labor—OSHA, 32nd Floor, Room 3244, 230 South Dearborn Street, Chicago, Illinois 60604

U.S. Department of Labor—OSHA, 1400 Torrence Avenue, 2nd Floor, Calumet City, Illinois 60409

U.S. Department of Labor—OSHA, 6000 West Touhy Avenue, Niles, Illinois 60648

U.S. Department of Labor—OSHA, 344 Smoke Tree Business Park, North Aurora, Illinois 60542

U.S. Department of Labor—OSHA, Federal Office Building, Room 4028, 550 Main Street, Cincinnati, Ohio 45202

U.S. Department of Labor—OSHA, Federal Office Building, Room 899, 1240 East 9th Street, Cleveland, Ohio 44199

U.S. Department of Labor—OSHA, U.S.PO & Courthouse, Room 422, 46th East Ohio Street, Indianapolis, Indiana 46204

U.S. Department of Labor—OSHA, Henry S. Reuss Building, 310 West Wisconsin Avenue, Suite 1180, Milwaukee, Wisconsin 53203

U.S. Department of Labor—OSHA, 555 Griffin Square Building, Room 602, Dallas, Texas 75202

U.S. Department of Labor—OSHA, 1425 West Pioneer Drive, Irving, Texas 75061

U.S. Department of Labor—OSHA, 611 East 6th Street, Room 303, Austin, Texas 78701

U.S. Department of Labor—OSHA, Savers Building, Suite 828, 320 West Capitol Avenue, Little Rock, Arkansas 72201

U.S. Department of Labor—OSHA, Hoover Annex, Suite 200, 2156 Wooddale Boulevard, Baton Rouge, Louisiana 70806

U.S. Department of Labor—OSHA, 911 Walnut Street, Room 406, Kansas City, Missouri 64106

U.S. Department of Labor—OSHA, 1150 Grand Avenue, 6th Floor, Room 606, Kansas City, Missouri 64106

SUPPLEMENTARY INFORMATION:

I. Background

Under the medical removal protection (MRP) provision of the lead standard, [29 CFR 1910.1025(k)], employers are required to remove an employee from work having and exposure to lead at or above the action level of 30 micrograms of lead per cubic meter of air (30 $\mu g/m^3$), if the employee's blood lead level is at or above the specified medical removal trigger. The employee must be kept on temporary medical removal until the employee's blood lead level has declined to or below the return trigger. Employees are guaranteed full wages

and benefits throughout the duration of the removal period generally to a maximum of 18 months.

The purpose of the MRP provision is to provide temporary medical removal protection to workers who are at risk of sustaining material impairment to health from continued exposure to lead. The standard specifies four removal and three return trigger levels. These levels were phased in over a five-year period. Phase one required removal of employees having blood levels at or above 80 micrograms of lead per 100 grams of whole blood (80 μg/100g) and allowed return when blood lead levels decline to 60 micrograms of lead per 100 grams of whole blood (60 μg/100g). Phase one expired March 1, 1979. Phase two required removal at 70 μg/100g and permitted return at 50 μg/100g. Phase two expired March 1, 1980. Phase three required removal at 60 μg/100g and authorized return at 40 μg/100g. Phase three expired March 1, 1981. The fourth and final phase requires removal at 50 μg/100g and allows return at 40 μg/100g.

The first three medical removal triggers—the 80, 70, and 60 μg/100g triggers—would require removal of an employee after periodic and follow-up blood sample tests indicate that the employee's blood lead is at or above the specified trigger. The fourth removal trigger, however, requires the removal of an employee whenever the average of the last three blood tests or the average of all blood tests taken over the previous six months, whichever is longer, is at or above 50 μg/100g. An employee need not be removed under the terms of the 50 μg/100g trigger whenever the employee's most recent blood test results indicate at blood lead level of 40 μg/100g or below.

Under the terms of the standard, the 60 and 50 μg/100g removal triggers are concurrently in effect. Thus, an employee must be removed when the employees's blood lead test results average 50 μg/100g or higher or when the employee's blood lead level is confimed by a follow-up sample (within two weeks of the receipt of the results of the first test) to be 60 μg/100g or higher.

On March 1, 1983, the 50 μg/100g MRP removal trigger level became effective. Based on the data that had been submitted in support of earlier requests for temporary variance from the 60/40 μg/100g MRP trigger levels (46 FR 37891, July 23, 1981; and 48 FR 4062, January 28, 1983), the lead rulemaking record (OSHA Docket No. H-004), the judicial history of the lead standard and surveys of lead industries, OSHA recognized that the 50 μg/10g MRP removal trigger was likely to pose feasibility problems for many plants.

Relief from the 50 μg/100g removal trigger was originally sought by 125 employers. Of the 125 employers, 28 failed to submit sufficient data to establish a need, 13 were referred to the appropriate States with approved occupational safety and health plans, and 12 are not being granted relief at this time. Four of the remaining five employers submitted applications in error, and one has been withdrawn.

Of that number, only 67 were considered appropriate for relief at that time. The employers submitted applications for a temporary variance and an interim order with supporting data to indicate that 10 percent or more of their total skilled lead-exposed employees would require removal under the 50 μg/100g trigger. Based on those data, and the additional data generated during discussions with the employers and during variance investigations conducted at 12 of the affected plants, OSHA decided to grant an interim order to 65 of the 67 employers (two employers no longer needed this relief). The interim order became effective for 48 employers on September 2, 1983; for one employer on September 20, 1983; for nine employers on October 17, 1983; and for seven employers on August 24, 1984. Notice of the applications for temporary variances and of the grant of interim orders was published in the **Federal Register** on August 24, 1984 (49 FR 33757). Since the grant of the interim order to 65 plants, 34 have ceased to need the relief, two have closed, and one plant requires further evaluation.

Included in the termination of the relief were the following six employers who were listed in the August 24, 1984 **Federal Register** publication:

Exide Corporation, 2001 Lee High Street, Allentown, Pennsylvania 18103
Exide Corporation, 2510 North Boulevard, Raleigh, North Carolina 27604
Exide Corporation, U.S. Highway 15, Sumter, South Carolina 29150
GNB Batteries Inc., 11331 Satellite Boulevard, Orlando, Florida 32809
GNB Batteries Inc., 2800 Carrol Avenue, Lynchburg, Virginia 60901
New Castle Battery Manufacturing Company, 3601 Wilmington Road, New Castle, Pennsylvania 16105

The employers also had requested relief from the 40 μg/100g return trigger (29 CFR 1910.1025(k)(l)(iii)(A)(3)). The employers claim that the 40 return trigger is infeasible because the length of time required for blood lead levels to decline below 40 is longer than anticipated by OSHA. Their concerns focus particularly on long-tenured employees. Based on the evidence to date, however, OSHA concluded that the data are insufficient to support the claim of infeasibility and denied the requests for interim orders providing relief from the 40 μg/100g return trigger (49 FR 33757; August 24, 1984).

The interim order granted temporary relief to each employer from the requirement to comply with the 50 μg/100g removal trigger level. As a condition of the relief, the employers were required to continue to comply with the 60/40 μg/100g removal and return triggers and all other provisions of the lead standard and to satisfy the conditions and requirements of the interim order.

The names and addresses of the 28 plants that have continued to operate under the interim order, which are now being granted temporary variances are:

Secondary Smelters

Franklin Smelting & Refining Corporation, Castor Avenue East of Richmond Street, Philadelphia, Pennsylvania 19134
GNB Batteries Inc., South 5th Street, Frisco, Texas 75034
General Battery Corporation, Spring Valley Road, Reading, Pennsylvania 19603
Gulf Coast Lead Company, 1910 N. 66th Street, Tampa, Florida 33619
ILCO, Inc., Dunnanant Road, Leeds, Alabama 35094
Inland Metals Refining Company, 651 East 119th Street, Chicago, Illinois 60628
Master Metals, Inc., 2850 West 3rd Street, Cleveland, Ohio 44113
Non-Ferrous Processing Corporation, 551 Stewart Avenue, Brooklyn, New York 11222
Sanders Lead Company, Inc., Henderson Road, Troy, Alabama 36081
Seitzinger, Inc., 900 Ashby Street, N.W., Atlanta, Georgia 30318
Tonolli Corporation, R. D. #1, Route 54, Nesquehoning, Pennsylvania 18204

Battery Manufacturers

Abex Corporation, Bronze and Alloy Division, Route 19 (Baldwin Street Extension), Meadville, Pennsylvania 16335
Battery Manufacturing Company, Inc., 804 South Dixie, West Palm Beach, Florida 33401
Exide Corporation, 303 Water Street, Logansport, Indiana 46947
Exide Corporation, 1222 18th Street, Racine, Wisconsin 53403
GNB Batteries Inc., West Station Street, Kankakee, Illinois 60901
General Battery Corporation, Montrose Avenue & Angeline Street, Reading, Pennsylvania 19103

General Battery Corporation, Spring Valley Road, Reading, Pennsylvania 19603
K W Battery Company, 3555 Howard Street, Skokie, Illinois 60076
Miami Battery Manufacturing Company, 11100 N.W. South River Drive, Miami, Florida 33178
General Battery Corporation, 250 Grand Street, Hamburg, Pennsylvania 19526
Prestolite Battery Division, 4700 Fifth Street Highway, Temple, Pennsylvania 19603
Red Diamond Battery Company, Route 6, Box 828, Garland County Industrial Park, Hot Springs, Arkansas 71901
Standard Industries, Nelson Road At Reliable Drive, San Antonio, Texas 78227

Other Industries

American Cyanamid Company, 4500 West Fifteenth Street, Chicago, Illinois 60623
Associated Lead, Inc., 2545 Aramingo Avenue, Philadelphia, Pennsylvania 19125
Eagle-Picher Industries, Inc., Post Office Box 550, Joplin, Missouri 64802
Hamilton Brass & Aluminum Casting Company, Eighth and Chestnut Streets, Hamilton, Ohio 45011

Where temporary variance requests involve an employer at multiple locations, including one or more in a State with an approved occupational safety and health plan, the temporary variance is granted under the Federal/State Reciprocity Agreement established at 29 CFR 1905.14(b)(3). Thus, the State of Indiana, having jurisdiction over places of employment covered in the application, concurs with the granting of the variance.

The **Federal Register** notice of August 24, 1984 invited interested persons, including affected employers and employees, to submit written comments, data, views, and arguments regarding the grant or denial of the variance requested. In addition, affected employees were notified by employers of their right to request a hearing on the applications for temporary variance. No written comments or requests for a hearing were received concerning the 28 plants.

II. Issues Raised in the Temporary Variance Applications

The 28 secondary lead smelters, lead battery manufacturers, and facilities in other segments of the lead industry listed in the background section above submitted appropriate applications pursuant to section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655), 29 CFR 1905.10 and the Secretary of Labor's Order No. 9–83 (48 FR 35736) for a temporary variance and an interim order, pending a decision on the variance, from 29 CFR 1910.1025(k)(1)(i)(D), the 50 μg/100g medical removal protection (MRP) trigger and 29 CFR 1910.1025(k)(1)(iii)(A)(3), the 40 μg/100g medical return trigger of the lead standard.

As discussed more fully above, the 50 removal trigger requires an employer to remove an employee from work where lead exposure is at or above the 30 $\mu g/m^3$ action level whenever the average of the employee's last three blood sample tests (or of all tests conducted over the previous six months, whichever is longer) is at or above 50 μg/100g of whole blood. The 40 return trigger prohibits the employee from being returned to his or her former jobs unless two consecutive blood sampling tests indicate that the employee's blood lead is at or below 40 μg/100g of whole blood.

The requests for temporary variance are based upon the employers' alleged inability to comply with the standard because of the anticipated removal and consequent unavailability of a significant number of skilled and supervisory employees if the 50 removal and 40 return triggers for MRP were put into effect. Essentially, the applicants made the following three-spronged feasibility argument:

(1) The 50 removal trigger would require, for the first time, the removal of many supervisory, maintenance and highly skilled employees whose blood lead levels are betweeen 50–59 μg/100g. For example, blood lead data from September 1, 1982 to March 1, 1983 indicate that the employers receiving relief appear to have severe problems in coming into compliance with the 50 trigger. The numbers alone suggest the severity of the problem. The anticipated removals range from a high of approximately 100 percent of all lead-exposed supervisory, maintenance and skilled employees to a low of approximately 10 percent. Current blood lead data indicate that the anticipated removals range from a high of approximately 64 percent to a low of 10 percent. Seitzinger, with the highest blood lead levels, would have to remove approximately 64 percent of its skilled workforce. Other plants with high levels include: Hamilton Brass (57 percent); ILCO (53 percent); Inland Metals and Master Metals (50 percent); Red Diamond (47 percent); and Miami Battery (40 percent). Among the plants having the lowest blood lead levels, approximately 10 percent, are: Prestolite, American Cyanamid and Abex.

(2) The removal of the supervisory, maintenance and highly skilled employees would be prolonged beyond OSHA's original expectation in order for their blood lead levels to drop to the 40 μg/100g return level. As previously stated in the background section, the employers concerns focus particular on long-tenured employees.

(3) Since these employees are highly paid, occupy crucial positions and are extremely difficult to replace, placing them on MRP not only would be costly, but also would drastically reduce productivity and result in a less safe and healthful workplace. Employers contend that replacements for the substantial number of supervisory, maintenance and highly skilled production employees subject to the 50 trigger are not available in the labor market or at the plant. A few examples suffice to establish this point. American Cyanamid, for instance, contends that the supervisory and production capabilities of the plant would be severely impaired because one-third of the supervisory force and one-half of the litharge operators, process operators and blender-packers would be on removal. It would be difficult to find experienced employee replacements, particularly for the supervisors subject to removal. The company states it would have to hire and train new workers to replace the employees predicted to be on medical removal. A minimum training period for inexperienced replacements ranges from six months for blender-packers to 12 months for litharge and process operators, to three years for foremen.

Abex Corporation contends that many years of experience are necessary before replacements for the two electric furnace operators who would have to be removed could learn the chemistry of the approximately 75 different alloys used at the plant and operate the complex furnace controls. The operators must have knowledge ranging from the type of metals to add at various heats to the hazardous metals that require special handling. The two current electric furnace operators have a combined experience of over 35 years. Replacement oerators reportedly have merely one to two years experience and, therefore, appear not to have the requisite expertise to adequately staff the job. A supervisor would be required to supervise and train them for up to one year, distracting from other supervisory duties. Other operations that require the production of the furnace for subsequent production stages would also be disrupted.

Most employers claim that is not possible to estimate quantitatively with any precision the costs that would be incurred for training, pay, and benefits to the removed and transfered employees if more than 10 percent of their workers are placed on MRP. But they suggest that cost undoubtedly will be very substantial.

Prestolite, for instance, based its cost estimate on training cost, lost production, lost profit and increased spoilage and waste incurred over the one-year period required to train inexperienced workers. The company estimates an annual total cost of $405,000 to remove 54 employees at the 50 μg/100g trigger.

GNB Batteries, Frisco, Texas secondary smelter cost estimate is based on the predicted closing of the plant caused by temporary removal of 22 of the 58 skilled employees (or 38 percent) if the 50 μg/100g trigger were applied. GNB estimates that the cost and time involved in training a replacement for each employee placed on MRP is $28,700 annually. GNB contends that the cost of the removal program, combined with the reduced productivity caused by the impact of the 50 trigger and coupled with the economically depressed state of the secondary lead industry, could not be sustained.

In addition the potential adverse safety and health consequences of implementing the 50 μg/100g trigger at once also appear to be serious. The removal of experienced and highly skilled employees will require hiring or transfering inexperienced personnel to work at complex jobs, which would promote the spread of lead contamination to other employees. Many examples are cited. For instance, at the Associated Lead plant approximately 29 percent of the total skilled workforce would be on continuous removal (3 of 12 supervisors, 4 of 21 maintenance men, and 21 of 63 skilled production employees). Eighty-six percent of these employees have 10 or more years of experience. The supervisors are responsible for the enforcement of all safety and health regulations and controls, as well as training in the operation of equipment, in individual job functions, and in safe work practices required to reduce the hazards of injury or excessive exposure to airborne lead. If experienced supervisors are replaced with inexperienced employees, the quality of such protective practices as respirator training and surveillance, work and hygiene practices (such as the cleaning of work areas and of equipment) and the proper use and maintenance of local exhaust ventilation to keep airborne dust and fumes away from the employee's breathing zone will be impaired.

Similarly, the quality of maintenance is likely to suffer. Maintenance personnel are required to repair and perform preventive maintenance on all equipment located at the plant. If pollution control equipment is not properly maintained, it becomes inoperable and thus affords no protection to employees against excessive exposure to airborne lead dust and fumes. For example, should a dust collector need repair, and such repair not be forthcoming because of the unavailability of adquately trained maintenance personnel, excessive lead dust and fume could permeate the work area, thus adversely affecting the safety and health of employees. Likewise, if an inexperienced maintenance man fails to repair a water jacket rupture around a blast furnance immedately, water could leak into the lead pot and cause a violent explosion with a high probability of employee injury or death.

III. Conclusions

OSHA's analysis of the evidence resulted in the following conclusions:

1. Approximately 10 percent or more of the total lead-exposed skilled workforce at each of the plants to which variances are granted would be on continuous temporary medical removal at the 50 μ/100g removal trigger.

2. The removal of 10 percent or more of the lead-exposed skilled workforce of each plant would seriously and adversely affect the ability of each plant to continue to operate.

3. A firm conclusion cannot be drawn from the estimates in the variance records concerning the length of time necessary for the blood lead of a removed employee to drop to the 40 μ/100g level of the return trigger, because the evidence to substantiate the employers' estimates are inadequate.

4. The time needed to train fully competent employees to replace the experienced supervisory, maintenance, and skilled employees who would be subject to removal under the 50 removal trigger varies from periods of six months to three years or more for supervisory employees, one to four years for maintenance employees and three to 16 months or more for skilled production employees. The number of experienced replacements both inside and outside of the plants is extremely limited.

5. Adverse safety and health consequences would result from removing experienced and highly skilled employees and replacing them with inexperienced personnel. These consequences might include subjecting the replacements, as well as other employees, to: (a) excessive lead exposure from process and ventilation equipment breakdown caused by inadequate preventive maintenance, improper work and hygiene practices and improper use of protective devices such as respirators; (b) possible injury or death from explosions caused by failure to repair water jackets around blast furnaces or by improper handling of explosives used to blast aerations from the furnace shaft; (c) possible burns from materials that splash or drop during transfer of molten lead; and (d) other injuries and illnesses resulting from employees' inability to protect their own safety and health due to reduced or ineffective safety and health training applicable to their job functions.

6. OSHA cannot draw firm conclusions of the dollar losses that would be incurred if 10 percent or more of the employees in each plant are placed on MRP since cost data were incomplete and were submitted by only three employers, but the costs appear to be substantial.

7. Based on air lead data, the number of available positions located in areas below the 30 μ/m^3 action level are grossly inadequate to accommodate the numbers of employees placed on MRP because of elevated blood leads. Such positions are almost nonexistent in primary smelters, and vary from one to five positions in most of the secondary smelters, battery manufacturing and other plants.

IV. Decision

The variance record demonstrates that immediate compliance with the 50 μ/100g MRP removal trigger level presents severe feasibility problems for the 28 employers in four major areas: (1) The applicants would have to remove between 10 percent to 100 percent of their total skilled workforce from lead exposure; (2) experienced employees who would be removed could not easily be replaced because the employers are unable either to recruit other employees with comparable skill levels or to quickly train replacements; (3) removal of highly skilled and experienced employees would diminish the health and safety of the remaining employees at the affected plants, with a resulting higher probability of work-related injuries, illnesses, and deaths; and (4) sufficient transfer opportunities do not exist and extensive removals from the workplace would result in greatly increased MRP costs. Based on the above, OSHA concludes that the 28

employers have demonstrated that immediate compliance with 50 μ/100g MRP removal trigger level is infeasible. Each, thus, merits a temporary variance, effective until September 1, 1985.

V. Summary and Explanation of the Final Variance Order Requirements

The primary purpose of the requirements contained in the interim order and in this order of variance is to provide significantly increased protection to supervisory, maintenance and skilled employees with elevated blood lead levels between 50–59 μ/100g who, because of the relief afforded to employers by this or the interim order, need not be removed from lead-exposure. In the absence of this relief the employer would have to remove such employees in compliance with 50 μ/100g removal trigger. Because the orders temporarily deny the affected employees that particular form of protection, OSHA, in fulfillment of its statutory obligations under section 6(b)(6)(A) of the Act, mandates further safeguards including enhanced medical surveillance to protect against any adverse health affects from the hazards of lead exposure for employees with blood lead levels between 50 and 59 μ/100g of whole blood.

The following is a discussion of the individual requirements of the variance order, including OSHA's rationale for each specific provision.

Paragraph 1 requires that the employers perform blood lead and zinc protoporphyrin (ZPP) testing bi-monthly on all employees with blood leads over 40 μg/100g who are exposed to lead above the 30 $\mu g/m^3$ action level. This requirement imposes no additional burden upon employers. Section 1910.1025(j)(2) of the lead standard presently requires such monitoring.

Paragraph 2 requires that the employer provide for a consultation with a physician every two months and a comprehensive medical examination every six months (or sooner, at the discretion of the consulting or examining physician) for employees with blood lead averages between 50–59 μg/100g who are not removed because of the interim order or this order. By contrast the lead standard requires medical examinations and consultations annually for any employee whose blood lead level during the preceeding 12 months is at or above 40 μg/100g (§ 1910.1025(j)(3)).

Paragraph 3 requires a written medical opinion by the physician as to whether the employee who need not be removed because of the relief afforded to employers by the interim or variance orders has a detected medical condition that places the employee at increased risk of material impairment to health from exposure to lead. Section 1910.1025(k)(l)(ii) of the lead standard already requires removal of an employee from lead exposure at or above 30 $\mu g/m^3$ on each occasion when a final medical determination indicates that the employee has a detected medical condition that places the employee at increased risk of material impairment to health from exposure to lead. To more fully implement the preventive aspects of the medical consultations and examinations required by this order, OSHA is requiring a physician's written medical opinion after each visit. This paragraph also requires the employer to submit to OSHA after each consultation and medical examination a written statement from the physician concerning each affected employee who need not be moved from his or her job, stating that it is medically appropriate for the employee to continue to work at his or her present job. This requirement will enable OSHA to monitor compliance with this provision.

Paragraph 4 requires the employer to remove an employee with blood leads at 60 μg/100g or above to areas where lead exposure is below 30 $\mu g/m^3$, and allows the employer to return the employee when the blood lead level has diminished to 40 μg/100g or below. This is already required by the lead standard (Paragraphs (k)(l)(i)(C) and (k)(l)(iii)(A)(3)).

Paragraph 5 requires that the employer provide OSHA with the name, job classification, and position of each employee who is subject to MRP as a result of either a blood lead level at or above 60 μg/100g or the recommendation of the examining physician. Requiring these data will enable OSHA to confirm employer compliance with the applicable removal provisions of the lead standard.

Paragraph 6 requires full-shift respirator usage for employees with blood lead levels at or above 50 μg/100g who are working in areas with air lead levels at or above the 30 $\mu g/m^3$, and who because of this or the interim order are not removed. OSHA has concluded that requiring full shift respirator usage at the 30 $\mu g/m^3$ action level in lieu of the more limited respirator usage at or above the 50 $\mu g/m^3$ permissible exposure limit required by § 1910.1025(e)(2) of the lead standard, will provide needed increased protection.

Paragraph 7 requires that the employer make an immediate inspection and evaluation of the conditions and work practices of employees with blood lead levels between 50–59 μg/100g who need not be removed under this or the interim order, and take all reasonable and appropriate corrective steps necessary to reduce employee lead absorption. This paragraph also requires the employer to make periodic inspections and evaluations of the work conditions and practices until the affected employees blood lead levels are below 50 μg/100g.

Paragraph 8 requires that the employer provide OSHA with blood lead, ZPP, and air lead data as accumulated bi-monthly for all skilled lead-exposed employees. OSHA has concluded that the data will assist in determining the employer's compliance with the lead standard and terms of the variance order.

Paragraph 9 requires that the employer agree to allow OSHA (or, where relevant, State) health and safety inspections related to its temporary variance. OSHA, in granting this relief, must be assured that it can readily monitor compliance with the requirements of the order.

V. Order

It appears from the applications for temporary variance, the supporting data, and the variance investigations that, within the meaning of section 6(b)(6)(A) of the Act, the employers listed below were unable to comply with the requirements of 29 CFR 1910.1025(k)(l)(i)(D) by the date required by the standard because of the unavailability of professional or technical personnel. It further appears that the variance is necessary to prevent undue hardship to the employers and their employees. Therefore, pursuant to the authority in section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970, in the Secretary of Labor Order No. 9–83 (48 FR 35736), and in 29 CFR Part 1905, it is ordered that the 28 plants listed below are authorized to comply with the requirements of the order set forth below with respect to their lead-exposed supervisory, maintenance and skilled production employees, in lieu of complying with the requirements of 29 CFR 1910.1025(k)(l)(i)(D). All other provisions of the lead standard are unaffected by this order and, therefore, must be complied with in conjunction with the terms of this order.

Temporary variances are being issued to the following 28 plants, whose addresses appear above:

Abex Corporation
American Cyanamid Company
Associated Lead, Inc.
Battery Manufacturing Company, Inc.
Eagle-Picher Corporation

Exide Corporation (2 plants)
Logansport, Indiana Plant
Racine, WI Plant
Franklin Smelting & Refining Corporation
GNB Batteries Inc. (2 plants)
Frisco, TX Secondary Smelter
Kankakee, IL Battery Plant
General Battery Corporation (4 plants)
Hamburg, PA Plant
Reading, PA Battery Manufacturing Plant
Reading, PA Industrial Battery Plant
Reading, PA Secondary Smelter
Gulf Coast Lead Company
Hamilton Brass & Aluminum Casting Company
ILCO, Inc.
Inland Metals, Inc.
K W Battery Corporation
Master Metals
Miami Battery Manufacturing Company
Non-Ferrous Processing Corporation
Prestolite Battery Division
Red Diamond Battery Company
Sanders Lead Company
Seitzinger, Inc.
Standard Industries
Tonolli Corporation

The conditions and requirements of the order are:

(1) As presently required by 29 CFR 1910.1025(j)(2) of the lead standard, employers shall perform blood lead and zinc protoporphyrin (ZPP) tests every two months on each employee whose last blood test indicated a blood lead level at or above 40 μg/100g and who is exposed to lead at or above the 30 μg/m³ action level.

(2) For employees whose last three blood tests or all blood tests for the previous six months (whichever is longer) average 50 μg/100g or above who work in jobs having airborne lead exposure at or above 30 μg/m³ and who are not removed because of the interim order or this order, the employer shall provide:

(a) A personal consultation with a licensed physician every two months; and

(b) A comprehensive medical examination by a licensed physician every six months, or sooner, as determined by a physician.

(3) After each such personal consultation and comprehensive medical examination, the physician shall make a written medical determination as to whether the employee has a detected medical condition that places the employee at increased risk of material impairment to health from exposure to lead.

(a) If the employee is determined to have such a condition, the employee shall be removed from work having an exposure to lead at or above 30 μg/m³;

(b) If the employee is determined not to have such a condition, the employer shall submit to the Office of Variance Determination a written statement from the physician stating that it is medically appropriate for the employee to continue to work at the employee's present job.

(4) Employers shall remove each employee with blood lead levels at or above 60 μg/100g and return the employee when the employee's blood lead level is at or below 40 μg/100g, in accordance with the provisions of § 1910.1025(k)(l)(i)(C) and 1910.1025(k)(l)(iii)(A)(3) of the lead standard.

(5) The name and job classification of each employee on MRP and the area where the employee is assigned shall be submitted to the Office of Variance Determination each time an affected employee is placed on medical removal protection as a result of either a blood lead level at or above 60 μg/100g or the recommendation of a physician.

(6) For employees with blood lead levels at or above 50 μg/100g who are working in areas with air-lead levels at or above 30 μg/m³, respirator usage shall be mandatory during the entire workshift.

(7) For all employees with blood lead levels between 50–59 μg/100g, who need not be removed under the terms of the interim or this order, the employer shall make immediate inspections and evaluations of:

(a) The lead-related work practices affecting the employees;

(b) The employee's respirator usage;

(c) The use and availability of hygiene facilities, and the employee's relevant personal hygiene habits; and,

(d) The existing engineering controls, to determine whether they are maintained properly.

Based on that inspection and evaluation, the employer shall take all reasonable and appropriate corrective steps to reduce the employee's absorption of lead. The employer shall submit to the Office of Variance Determination a written report (within 45 days after the effective date of this order) documenting when and where the evaluation took place, any corrective actions that were necessary, any corrective actions that were taken and the name and job classification of the affected employee. Periodic inspections and evaluations shall be conducted until the employee's blood lead level is below 50 μg/100g.

(8) For the duration of the variance order, every two months the employer shall submit to the Office of Variance Determination blood lead, ZPP and air lead data, as accumulated for all skilled lead-exposed employees.

(9) The employer shall agree to allow OSHA or, where relevant, State safety and health officials to inspect its facilities in connection with this variance application and this order.

As soon as possible after the effective date of this order, the employers listed above shall give notice to their affected employees of the conditions and requirements of this order by the same means required to inform them of the application for a variance.

EFFECTIVE DATES: This order becomes effective March 7, 1985.

Expiration date: The order shall remain in effect until September 1, 1985, unless modified or revoked in accordance with Section 6(d) of the OSH Act.

Signed at Washington, D.C., this 7th day of March 1985.

Robert A. Rowland,

Assistant Secretary of Labor.

[FR Doc. 85–6261 Filed 3–14–85; 8:45 am]

BILLING CODE 4510-26-M

Office of Pension and Welfare Benefit Programs

[Application No. D–5439, et al.]

Proposed Exemptions; Arnett Brokerage Profit-Sharing Plan, et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employment Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington,

DC 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, DC 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in application filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Arnett Brokerage Profit-Sharing Plan (the Plan) Located in Lubbock, Texas

[Application No. D–5439]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the Exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the lease of certain improved real property by the Plan to Arnett Brokerage Company (the Plan Sponsor) provided the terms of the lease are at least as favorable to the Plan as those obtainable by the Plan in an arm's-length tansaction with an unrelated party.

Effective Date: August 22, 1984

Summary of Facts and Representations

1. The Plan is a profit sharing plan with an estimated 45 participants. The Plan had total assets of $1,238,000 as of October 16, 1984. The trustees of the Plan are A.C. Arnett, Jean R. Arnett, and Robert McBrayor (the Trustees). The Trustees are officers and employees of the Plan Sponsor. The Plan Sponsor is engaged in the food brokerage business.

2. The Plan owns certain real property and improvements located at 5607 Avenue Q, Lubbock, Texas (the Property). The Property consists of a 6,440 square foot building located on a 34,000 square foot parcel. The Property was acquired by the Plan on December 4, 1968 from an unrelated party at the cost of $34,000. Subsequently, the Plan built the improvements at the cost of $174,162. Thus, the Plan has a total of $208,162 invested in the Property. The Property was then leased to the Plan Sponsor pursuant to an oral lease (the Old Lease)[1] The Property represents 27 percent of the total assets of the Plan. The applicant represents that the projected earnings of the Plan for 1984 and 1985 should result in the Property representing 25 percent or less than the total assets of the Plan as of December 31, 1985.

3. It is now proposed that the Property be leased to the Plan Sponsor (the New Lease). The New Lease will be for a period of 120 months with no renewal provisions. The rental rate will be 1.2 per cent per month of the fair market value of the Property as determined by an independent appraisal with adjustments every two years. The monthly rental rate will not be less than the rate charged during the first 24 months of the New Lease throughout its term. The Plan Sponsor will pay all insurance premiums, taxes and utilities during the term of the New Lease.

4. An independent appraisal of the Property was performed by Mr. Bass Elliot, a realtor located in Lubbock, Texas (the Appraiser). The Appraiser established the fair market value of the Property at $335,000 as of May 10, 1984. The Appraiser also reviewed the New Lease and has determined that it is very favorable to the Plan and that the Plan will receive fair rental value for the Property.

5. Mr. Louis Warren Howell II, C.P.A., is the independent trustee (the Independent Trustee) for the New Lease. The Independent Fiduciary was appointed on August 22, 1984. The Independent Trustee represents that he is unrelated to the Plan Sponsor and he is familiar with the fiduciary duties imposed by the Act. The Independent Trustee has been involved in numerous real estate transactions, appraisals and leasings. The Independent Trustee represents that he has reviewed all the terms of the New Lease and has determined that all of its terms are fair market value terms. He has determined that the plan will receive a fair market value rental rate under the New Lease.

6. The Independent Trustee will monitor and enforce all of the terms of the New Lease and make the rental adjustments under its terms, assuring that the Plan continues to receive fair market rental value. The fair market rental value of the Property will be determined as of each applicable date by an independent appraiser selected by the Independent Trustee and the Plan Sponsor. If the Independent Trustee and the Plan Sponsor cannot agree upon the selection of a single appraiser, then each will select an appraiser, and the two appraisers will select a third appraiser. The three appraisers will determine the fair market value of the Property and the Independent Trustee will make the rental adjustment.

7. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(1) The Independent Trustee has determined that the New Lease is in the interests of and protective of the Plan and its participants and beneficiaries;

(2) All of the terms of the New Lease are fair market value terms; and

(3) And the Appraiser has established the fair rental value of the Property and determined that the New Lease is at least as favorable to the Plan as an arm's-length transaction with an unrelated party.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

[1] The applicant represents that the Old Lease was not a prohibited transaction because it was exempted under section 414 of the Act. The Department expresses no opinion as to the applicability of section 414 of the Act in this instance. The applicant further represents that it will pay any excise tax which may be due as a result of the Old Lease for the period July 1, 1984 through August 21, 1984 within 60 days of the granting of this proposed exemption.

Aviall, Inc. Profit Sharing Plan (the Plan) Located in Dallas, Texas

[Application No. D-5849]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale by the Plan of a third party mortgage note (the Note) secured by a deed of trust on real property to Aviall, Inc. (the Employer), the sponsor of the Plan, provided that the sale price of the Note is not less than its fair market value on the date of the sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 123 participants as of December 31, 1983. As of November 30, 1984, the Plan had total assets of $905,294. The Plan was established in 1960 by Aviation Power Supply, Inc. (Aviation), a predecessor company of the Employer. Effective January 1, 1982, the Employer, following a change of name and the acquisition of certain operational subsidiaries, implemented new retirement plans for its employees and suspended contributions to the Plan. At the same time the admission of new participants to the Plan was discontinued. The fiduciaries with respect to the Plan consist of the administrative committee, the trust committee, the trustee, any any investment managers and custodians which are appointed from time to time. The Bank of America serves as the Plan trustee and the Financial Management Group (FMG) a division of Bear, Stearns & Co., has been delegated certain fiduciary responsibility with respect to the Plan, including investment authority with regard to the proposed transaction.

2. The Employer, a Delaware corporation, is an independent service organization for the aviation support industry. As of November 30, 1984, the Employer had total assets of $271,291,000.

3. In 1963, Aviation acquired certain land in Burbank, California, and improved the land by constructing a warehouse. Shortly thereafter the property was contributed to the Plan. On May 12, 1972, the property was sold by the Plan to an unrelated third party. The sale price was $190,000 of which $25,000 was paid in cash and the balance of $165,000 was represented by the Note. The Note yields 8½ percent per annum in interest and is secured by a deed of trust on the property. The Note is payable in monthly installments of $1,500 and matures on April 5, 1990. All payments under the Note have been timely paid by the third party obligor.

4. The applicant seeks an exemption to allow the Plan to sell the Note to the Employer for cash at its outstanding principal balance plus accrued interest to the date of sale. As of November 30, 1984, the Note's outstanding principal balance was $77,900. FMG has determined that the proposed sale of the Note to the Employer will be appropriate and in the best interest of the participants of the Plan. FMG based its conclusion upon an independent appraisal of the Note made on June 30, 1984, by Merrill Lynch Capital Markets, Institutional Sales Division, (Merrill Lynch). Merrill Lynch determined that the Note has a fair market value of no more than 83.6 percent of its outstanding principal balance. Thus, the Plan will receive an amount greater than the value determined by Merrill Lynch.

5. The Plan will not incur any expenses in connection with the sale. The sale will enable the Plan to reinvest the cash proceeds in more liquid and diverse investments.

6. In summary, the applicant represents that the proposed sale will satisfy the criteria of section 408 (a) of the Act because (1) the sale will be a one-time transaction for cash; (2) the Plan will sell the Note at the highest price which can be realized from a sale of the Note on the open market to any other protential buyer; and (3) FMG represents that the sale is prudent and in the best interest of the Plan and its participants.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523-7901. (This is not a toll-free number.)

Teamsters Local 639-Employers Health Trust Fund (The Plan) Located in Washington, D.C.

[Application No. L-5948]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act shall not apply to the proposed purchase of prescription drugs, at discount prices, by Plan participants and beneficiaries from Giant Food, Inc. and Safeway Stores, Inc. (collectively, the Providers), parties in interest with respect to the Plan, provided the terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party.

Summary of Facts and Presentations

1. The Plan is a multi-employer, jointly trusteed, employee welfare benefit plan providing health benefits—including, among others, coverage for prescription drug costs—to approximately 5,500 participants as of October 19, 1984. The market value of the Plan's total assets as of November 30, 1984, (unaudited) was $3,104,080.31. Investment decisions for the Plan are made, in accordance with policies established by the Plan trustees, by Mr. Norman Eig, of Lazard-Freres Assets Management, New York City. It is represented that Mr. Eig has no relationship to the Providers or any of their principals. Both Providers employ Plan participants and contribute to the Plan but are not fiduciaries with respect to the Plan, according to the applicant. Giant Food, Inc. is a supermarket (grocery) chain in the Washington, D.C. metropolitan area. Safeway Stores, Inc. is a national supermarket (grocery) chain.

2. The historical practice of the Plan has been to utilize the services of a Prescription Drug Card Company (defined below) to administer the filling of prescriptions at any pharmacy that the Plan participant or beneficiary chose to utilize. The phrase "Prescription Drug Card Company" refers to an administrator of the Plan's prescription drug program. The Plan participant carries a card issued by the Prescription Durg Card Company that is presented to the pharmacy together with a prescription for medication. The Prescription Drug Card Company has an arrangement with many pharmacies located throughout the area in which participants and beneficiaries live. The pharmacy fills the prescription and submits its bill for payment to the Prescription Drug Card Company, which processes the invoice for payment after it determines that the participant is eligible for benefits and the extend of coverage available. The Prescription Drug Card Company thereafter bills the Plan for the average wholesale price charged by the pharmacy to the participant for the drug, plus a dispensing fee of $2.25 and an administrative fee of 44¢ for each prescription. Under this arrangement, the Plan paid out approximately

$800,000 for prescription drug benefits during calendar year 1983.

3. Under the proposed arrangement, the Providers would become preferred providers of prescription drugs and related services for the Plan participants and beneficiaries. The proposed arrangement would be renewable on a six month basis, providing maximum flexibility to the Plan, according to the applicant, as the Plan could cancel the arrangement should problems arise or should the program not be adequate to meet the Plan's needs. Under the proposed arrangement, Plan participants and beneficiaries would receive greater benefits—either 100% coverage or less-deductible payment by the participants, depending upon their class of benefit—by having their drug prescriptions filled at pharmacies of either of the Providers, located throughout the Washington, D.C. metropolitan area. While participants could continue to have drug prescriptions filled at other pharmaceutical outlets, they would do so without receiving the additional coverage available by going to either of the Providers. The proposal arrangement merely authorizes the Plan to encourage participants to obtain prescriptions from the Providers, who have agreed to provide a substantial discount in price to be received by the Plan.

4. The Plan believes that the Providers are major, solid, and reliable providers of services with whom it can deal regarding such additional matters as the monitoring of drug abuse, the use of generic equivalent drugs, and the utilization of computers to warn participants to avoid harmful combination of drugs.[2] The Providers will furnish these services at no additional charge. The Providers have ample retail outlets within the Washington, D.C. metropolitan area that would provide convenient access to the substantial majority of the Plan participants and beneficiaries. Consequently, the applicant believes the Providers are likely to provide better service to the participants and beneficiaries. It is represented that detailed records applicable to the proposed transaction will be maintained by the Plan and will be available during normal business hours for review by the Department, the Internal Revenue Service, and/or any Plan participant.

5. The proposed arrangement would generate a substantial savings of Plan assets, according to the applicant. Based upon a survey of 121 actual claims paid in March 1984, the Plan would have realized a savings of 23% had the same prescriptions been filled under the proposed arrangement. Based on the 1983 annual figures, this would have represented a savings to the Plan of more than $180,000. The applicant states that the Plan has not been able to identify any other source of prescription drugs at such a substantial savings to the Plan and that the Plan trustees face a serious need to control spiraling costs of medical benefits in all ways possible. In their judgment, the current arrangement is too costly, given the prospect of saving approximately 23% by entering into the proposed arrangement with the Providers. For these reasons, the Plan trustees believe that the proposed arrangement, given the known alternatives, would be in the best interests of the Plan and its participants and beneficiaries and would maximize resources for other benefits.

6. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because (a) the proposed arrangement will provide greater prescription drug benefits for Plan participants and beneficiaries by providing either full coverage of the cost of purchasing prescription drugs or by reducing the portion of such cost payable by the participants and beneficiaries; (b) the proposed arrangement would not prevent participants and beneficiaries from obtaining prescriptions from other providers so long as such participants and beneficiaries pay the additional cost charged by such other providers; (c) the proposed arrangement would generate a substantial savings of Plan assets, thus enabling the Plan to provide additional benefits to participants and beneficiaries; (d) the convenience offered by large suppliers of prescription drugs, such as the Providers, would better serve Plan participants and beneficiaries likely to require prescription services; (e) the Plan will maintain detailed records relating to the proposed arrangement, and such records will be available during normal business hours for review by any Plan participant, the Department, and the Internal Revenue Service; (f) under the proposed arrangement, the Providers will furnish additional services to the Plan at no extra charge; and (g) every six months, the Plan will be able to cancel the proposed arrangement should it be found unsatisfactory.

For Further Information Contact: Mrs. Miriam Freund, of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

[2] The proposed exemption provides no relief with respect to the services proposed to be provided by the Providers beyond that exempted under section 408(b)(2) of the Act.

The Goodwin Ammonia Company Profit Sharing Plan (the Plan) Located in Garden Grove, California

[Application No. D-5961]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale on December 28, 1983, by the Plan to Goodwin Ammonia Company (the Employer) of a promissory note (the Note) made by Janus Financial Group, Inc. (the Borrower), an unrelated third party, for the full face value of the Note, provided such value was no less than the fair market value of the Note on that date.

Effective Date: If the proposed exemption is granted, the exemption will be effective December 28, 1983.

Summary of Facts and Representations

1. The Plan covered 30 participants as of April 20, 1984 and had assets totalling $1,666,399.47 as of December 31, 1983. Mr. Donald Goodwin (the Trustee) is the trustee of the Plan and is also the president of the Employer.

2. On October 7, 1983, the Plan invested $50,000 with the Borrower, an unrelated third party, and received a $50,000 promissory note in return.[3] The principal sum of $50,000 with accrued interest of $3,000, computed at the rate of 6 percent per quarter, was due and payable on Junuary 7, 184. As security for the payment of the Note, the Borrower had pledged its accounts receivable and all proceeds therefrom. The express purpose of the Note was to enable the Borrower to purchase, at a discount, insurance-paid claims (i.e., the accounts receivable) from doctors, medical groups, or private hospitals, according to a description of this medical factoring program prepared by Mr. Ken Cooper (Mr. Cooper), a financial couselor at Corporate Trust Consultants. Mr. Cooper is not related in any manner to the Employer or the

[3] The Department is expressing no opinion herein as to whether or not this investment was consistent with the requirements of section 404 of the Act.

Trustee. Other parties also lent funds to the Borrower under this medical factoring program.

3. On December 7, 1983, the Trustee received a letter from the Borrower stating, in pertinent part:

> As you may have read in the newspaper, this week a local federal judge issued a temporary restraining order freezing the bank accounts of The Carter Company, which is the medical factoring company with which Janus Financial placed its funds. We understand this to be a "stand still" order designed to preserve the status quo while the Securities and Exchange Commission investigates complaints of fraud and related charges against The Carter Company.

The letter also advised that the Borrower had scheduled a Lenders Meeting on December 13, 1983 to provide more information. The applicant states that the Trustee had no knowledge of The Carter Company's involvement before he received this letter, that the Trustee was unsuccessful in attempting to obtain further information from the Borrower, but that other sources advised him that all funds solicited from lenders went only to The Carter Company and not to doctors or hospitals. On December 13, 1983, the Trustee wrote to the Borrower requesting repayment of the entire amount due on the Note on January 1984—$50,000 principal + $3,000 interest—instead of renewing the Note pursuant to a renewal option signed by the Trustee in October 1983. On December 13, 1983, the Trustee also wrote to March & McLennan, Inc., the Borrower's insurance agent, regarding apparent misrepresentations made concerning the Note and the medical factoring program and the possible disbursement of insurance proceeds to cover the amount payable under the Note. Although both of these letters requested a written response, none was received, according to the applicant.

4. The applicant states that on December 21, 1983, the Trustee telephoned Mr. Cooper, of Corporate Trust Consultants (see 2, above), who had received a copy of the Trustee's December 13, 1983 letter to the Borrower. According to the applicant, Mr. Cooper stated that there was no way the Plan woud receive any money on January 7, 1984, as the Borrower did not have any money to repay the Note; on other words, the fair market value of the Note at this date was zero. The Trustee states that he never was able to contact the Borrower directly and he felt that the Plan would be in for a long wait and much litigation before any of the money was repaid. The Trustee states that at this point he decided to sell the Note on behalf of the Plan to the Employer for face value as he thought the Employer was in a better situation to deal with the problem than the Plan. He explains that he felt the Plan should not be burdened either by the Note, now a highly risky investment, or by any legal costs likely to be incurred in collecting on the Note.

5. It is represented that the Employer paid the entire sales price of the Note ($50,000 face value) to the Plan in cash on December 28, 1983, and that the plan did not pay any expenses in connection with the sale of the Note to the Employer.

6. According to the applicant, no amounts were paid by the Borrower on January 7, 1984, when the Note was due and payable, or on any other date, and the matter is now in litigation. A class action suite, in which the Employer is included, has been filed and certified against the Borrower. The Trustee first learned of this suit in a letter dated February 2, 1984 from the Borrower, followed by a Credit Manager's Bulletin dated February 21, 1984. These communications were followed by a Bulletin dated April 23, 1984, giving details of the class action suit and a further Bulletin dated May 10, 1984. On June 22, 1984, the Trustee received a Bulletin stating that the class action suit had been certified. The class consists of approximately 850 accounts, including the Employer, none of the remaining accounts are related to the Trustee, the Employer, or the Plan. The complaint does not comment on the likelihood of collection, and the attorneys representing the action will not make a prediction of the potential collection at this time.

7. In summary, the applicant represents that the subject transaction satisfied the exemption criteria set forth in section 408(a) of the Act because (a) the sale was a one-time cash transaction, (b) the sale price was no less than the Note's fair market value on the date of the sale, (c) the plan did not pay any expenses in connection with the sale, and (d) the sale protected the Plan and its participants and beneficiaries from probable economic loss due to both the uncertainty that the Note will ever be repaid in full and the litigation costs that have been and will be incurred in attempting to collect the amount due under the Note.

For Further Information Contact: Mrs. Miriam Freund, of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 406(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 12th day of March, 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-6248 Filed 3-14-85; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 85-53; Exemption Application No. D-5384 et al.]

Grant of Individual Exemptions; Carolina Surgical Clinic, et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713), October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Carolina Surgical Clinic of Charlotte, P.A. Pension Plan (the Plan) Located in Charlotte, N.C.

[Prohibited Transaction Exemption 85-53; Exemption Application No. D-5384]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective July 1, 1984, to: (1) The lease of the unimproved fee interest in a parcel of real property (the Property) by the Plan to P-H-J Co. (P-H-J), a party in interest with respect to the Plan; (2) the proposed purchase by the Plan from P-H-J of an improvement on the Property; (3) the lease (the New Lease) of the entire fee interest of the Property by the Plan to Carolina Surgical Clinic of Charlotte, P.A., the sponsor of the Plan; and (4) transactions to be effected in accordance with the provisions of the New Lease, such as the exercise of the "put" option by the Plan, provided that the transactions have been and will be effected upon terms and conditions not less favorable to the Plan than those obtainable from third parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 2, 1985 at 50 FR 191.

Effective Date: This exemption will be effective from July 1, 1984 with respect to the ground lease, and from the date of this grant with respect to the purchase of the improvement and the execution of the New Lease.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Armin Frank Profit Sharing Plan Located in Wilmington, Ohio

[Prohibited Transaction Exemption 85-54; Exemption Application No. D-5445]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Plan on June 15, 1984 of certain real property (the Property) to Armin Frank (Frank), a disqualified person with respect to the Plan, for cash in the amount of $33,500, provided that this amount was the fair market value of the Property on June 15, 1984.[1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 2, 1985 at 50 FR 192.

Effective Date: The effective date is June 15, 1984.

For Further Information Contact: Mr. Richard Small of the Department, telephone (202) 523-7222. (This is not a toll-free number.)

W.L. Gordon Employees Profit Sharing Plan (the Plan) Located in Dallas, Texas

[Prohibited Transaction Exemption 85-55; Exemption Application No. D-5580]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan to W.L. Gordon Company, Inc., the Plan sponsor, of two contiguous parcels of improved real property, provided that the terms and conditions of the sale are not less favorable to the Plan than those terms obtainable in a transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 2, 1985 at 50 FR 193.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Henry Carlson Company Profit Sharing Plan and Trust (the Plan) Located in Sioux Falls, South Dakota

[Prohibited Transaction Exemption 85-56; Exemption Application No. D-5697]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of 15,000 shares of common stock of Ramkota Inc. by the Plan to Henry Carlson Company, the employer of Plan

[1] Since Frank owns 100% of the beneficial interest of the sponsor of the Plan and with his wife are the only Plan participants there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510 3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

participants, provided the sale price is not less than the fair market value of such shares on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 2, 1985 at 50 FR 193.

For Further Information Contact: Mrs. Miriam Freund, of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Real Estate Collective Investment Fund Established under the InterFirst Corporation Investment Trust for Employee Benefit Plans (the Dallas Fund); Employee Benefit Real Estate Equities Fund (the Fort Worth Equities Fund) and the Employee Benefit Real Estate Mortgage Fund (the Fort Worth Mortgage Fund) Established under the First National Bank of Fort Worth Collective Investment Trust Located in Dallas and Fort Worth, Texas

[Prohibited Transaction Exemption 85-57; Exemption application No. D-5761]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to the proposed merger of the Fort Worth Equities Fund into the Dallas Fund, and the proposed transfer of the Fort Worth Mortgage Fund into a new fund managed by InterFirst Bank Dallas, N.A., provided that the aggregate fair market value of the interests of each plan participating in any of these funds (collectively, the Funds), upon completion of the transactions, equals the aggregate fair market value of such plan's interests in the Funds immediately preceding the mergers.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 15, 1985 at 50 FR 2109.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) these exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed as Washington, D.C., this 12th day of March, 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-6247 Filed 3-14-85; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-341; Fermi-2]

Detroit Edison Co.; Receipt of Request for Action

Notice is hereby given that by petition dated January 28, 1985, the Safe Energy Coalition, Detroit, Michigan, has requested pursuant to 10 CFR 2.206 that the Director of Nuclear Reactor Regulation investigate and initiate proceedings, as appropriate, to ensure adequate resolution of certain alleged deficiencies in the Fermi-2 plant prior to issuance of a license authorizing fuel load and low power operation of the plant. The alleged deficiencies concern the adequacy of computer systems, as-built electrical systems and instrumentation, the radwaste processing system, fire protection systems, and the containment design.

As provided in 10 CFR 2.206, a decision will be issued with respect to the petition within a reasonable time. Copies of the petition are available for public inspection in the Commission's Public Document Room at 1717 H Street, N.W., Washington D.C. 20555, and in the local public document room for the Fermi-2 plant at the Monroe County Library System, Reference Department, 3700 South Custer Road, Monroe, Michigan 48161.

Dated in Bethesda, Maryland, this 11th day of March 1985.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85-6227 Filed 3-14-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-70-OLR; ASLBP No. 85-507-01-LR]

General Electric Co.; Establishment of Atomic Safety and Licensing Board To Preside in Proceeding

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972) and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding concerning the operating license renewal application identified in the February 13, 1985 Memorandum and Order issued by the Licensing Board established to rule on petitions for leave to intervene which admitted Jack Turk (Intervenor) as a party and ruled that certain of Intervenor's contentions be admitted for litigation. (LBP-85-4, 21 NRC —— (February 13, 1985)).

GENERAL ELECTRIC COMPANY
(General Electric Test Reactor, Vallecitos Nuclear Center); Operating License No. TR-1

This Board is being established pursuant to a notice published by the Commission on September 15, 1977, in the **Federal Register** entitled, "Consideration of Applications for Renewal of Operating License and Special Nuclear Material License." 42 FR 46427 (1977).

The Board is comprised of the following Administrative Judges:

John H. Frye, III, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Gustave A. Linenberger, Jr., Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Harry Foreman, Box 395 Mayo Memorial Building, 420 Delaware Street, SE., University of Minnesota, Minneapolis, MN 55455.

Issued at Bethesda, Maryland, this 11th day of March 1985.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 85-6228 Filed 3-14-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-70-OLR; ASLBP No. 85-507-01-LR]

General Electric Co. (GETR Vallecitos); Hearing on Facility Operating License

March 12, 1985.

Pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations, notice is hereby given that a hearing will be held at a time and place to be announced in the vicinity of Alameda County, California, to consider the application filed by the General Electric Company (GE) for a renewal of its operating license number TR-1 for the General Electric Test Reactor (GETR) located at the Vallecitos Nuclear Center in Alameda County. If granted, the renewal would extend the expiration date of this license to October 1, 1995.

The hearing will be conducted by an atomic safety and licensing board designated by the Chief Administrative Judge, Atomic Safety and Licensing Board Panel, consisting of the following administrative judges: Dr. Harry Foreman, Gustave A. Linenberger, and John H. Frye, III, Chairman.

A notice that the Commission was considering GE's license renewal application was published in the **Federal Register** of September 15, 1977. (*See* 42 FR 46427.) That notice invited petitions to intervene requesting a hearing. Mr. Jack Turk filed such a petition, but action on this petition was deferred pending resolution of a related proceeding concerning the NRC Staff's Order to Show Cause issued to GE. Following the Commission's final action with respect to that proceeding, this proceeding was reactivated. Mr. Jack Turk filed contentions and the parties engaged in extensive negotiations with respect to those contentions, but were unable to resolve all of their differences. On February 13, 1985, the Atomic Safety and Licensing Board designated to rule on Mr. Turk's petition admitted five of the seven contentions on which the parties could not agree and admitted Mr. Turk as a party. This Notice of Hearing formally commences the proceeding on Mr. Turk's contentions.

The application and other documents pertinent to the matters under consideration, the transcripts of the prehearing conferences and of the hearing, have or will be placed in the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., where they will be available for inspection by members of the public. Copies of those documents will also be made available at the Local Public Document Room for GETR located at Region V, 1450 Maria Lane, Suite 210, Walnut Creek, California, 94596, for inspection by members of the public.

Any person who wishes to make an oral or written statement in this proceeding, but who has not filed either a petition for leave to intervene or a request for a hearing, may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.715 of the Commission's "Rules of Practice." Oral limited appearance statements will be permitted at the time of the hearing in the discretion of the Board, within such limits and on such conditions as may be fixed by the Board. Written limited appearance statements may be filed with the Board at any time. A person permitted to make a limited appearance does not become a party, but may state his position and raise questions which he would like to have answered to the extent that the questions are within the scope of the hearing.

Bethesda, Maryland, March 12, 1985.

For the Atomic Safety and Licensing Board (Designated to Rule on Petitions to Intervene).

John H. Frye, III,

Chairman, Administrative Judge.

[FR Doc. 85-6229 Filed 3-14-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. STN 50-498 OL, STN 50-499 OL; ASLBP No. 79-421-07 OL]

Houston Lighting and Power Co., et al.; South Texas Project Units 1 and 2 Prehearing Conference

March 12, 1985.

Notice is hereby given that a prehearing conference in this operating license proceeding will be held on Tuesday, April 30, 1985, commencing at 9:30 a.m., in the U.S. Nuclear Regulatory Commission hearing room, 5th floor, 4350 East West Highway, Bethesda, MD. At the conference, the Licensing Board will consider the further specification of all issues to be heard in Phase II of this proceeding (including the issues discussed in LBP-85-6, the Board's Memorandum and Order dated February 26, 1985), witnesses proposed to be presented by each party (if known), the scheduling and location of hearings, and other procedural matters bearing upon such hearings.

The filings by the applicants and CCANP which are required by LBP-85-6 to be submitted no later than 10 days prior to the prehearing conference should be filed by Friday, April 19, 1985.

The public is invited to attend the prehearing conference, but oral limited appearance statements will not be entertained.

Dated at Bethesda, Maryland this 12th day of March, 1985.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 85-6230 Filed 3-14-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN 50-482]

Kansas Gas & Electric Co., et al., Wolf Creek Generating Station, Unit No. 1; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF-32 to Kansas Gas & Electric Company, Kansas City Power & Light Company and Kansas Electric Power Cooperative, Inc. (the licensees) which authorizes operation of the Wolf Creek Generating Station, Unit No. 1 at reactor core power levels not in excess of 3411 megawatts thermal in accordance with the provisions of the License, the Technical Specifications and the Environmental Protection Plan with a condition currently limiting operation to five percent of full power (170 megawatts thermal). Authorization to operate beyond five percent of full power will require specific Commission approval.

Wolf Creek Generating Station, Unit No. 1 is a pressurized water reactor located approximately 28 miles east-southeast of Emporia, in Coffey County, Kansas. The application was submitted and accepted for review under the Commission's standardization policy statement of March 5, 1973. Kansas Gas & Electric Company was one of five utilities who joined together under the acronym SNUPPS (Standardized Nuclear Unit Power Plant System) to submit applications for Construction Permits for a standard plant design for review under the Commission's standardization policy, using the duplicate plant option described in Appendix N to the Commission's regulations in Part 50 of Title 10 of the Code of Federal Regulations (10 CFR

Part 50), "Licensing of Production and Utilization Facilities." This option allows for a simultaneous review of the safety-related parameters of a limited number of duplicate plants which are to be constructed within a limited time span at a multiplicity of sites. The license is effective as of the date of issuance.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on December 8, 1980 (45 FR 83360).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License No. NPF-32, with Technical Specifications (NUREG-1104) and the Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards, dated May 11, 1982; (3) the Commission's Safety Evaluation Report, dated April 1982 (NUREG-0881), and Supplements 1 through 5; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; (6) the Final Environmental Statement, dated June 1982; and (7) Assessment of the Effect of License Duration on Matters Discussed in the Final Environmental Statement for the Wolf Creek Plant Unit 1.

These items are available for inspection at the Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C. 20555 and at the Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801. A copy of Facility Operating License NPF-32 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and Supplements 1 through 5 (NUREG-0881) and the Final Environmental Statement (NUREG-0878) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to the U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, D.C. 20555. GPO deposit account holders may call (301) 492-9530.

Dated at Bethesda, Maryland this 11th day of March 1985.

For the Nuclear Regulatory Commission.

B.J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 85-6231 Filed 3-14-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-14821 (EA 84-78); ASLBP No. 85-508-01-OT]

Reich Geo-Physical, Inc.; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972) and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, a presiding officer is designated in the following proceeding:

Reich Geo-Physical, Inc., License No. 25-18304-01

The presiding officer is being designated pursuant to an order of the Commission dated March 8, 1985 concerning Reich Geo-Physical, Inc.'s request for a hearing in this enforcement action.

The presiding officer in this proceeding is The Honorable Ivan W. Smith, Administrative Law Judge.

All correspondence, documents and other materials shall be filed with Judge Smith in accordance with 10 CFR § 2.701. His address is: Administrative Law Judge Ivan W. Smith, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issued at Bethesda, Maryland, this 12th day of March 1985.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 85-6237 Filed 3-14-85; 8:45 am]

BILLING CODE 7590-01-M

PEACE CORPS

Peace Corps Advisory Council; Meeting

AGENCY: Peace Corps.

ACTION: Peace Corps Advisory Council; Meeting.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), notice is hereby given that an open meeting of the Peace Corps Advisory Council will be held on April 1, 1985 from 9:00 a.m. to 5:00 p.m. in Room 414 of Peace Corps headquarters, 806 Connecticut Avenue, N.W., Washington, D.C. and on April 2, 1985 from 9:00 a.m. to 5:00 p.m.

The purpose of the meetings is to review operations of the Peace Corps in order to establish areas of interest and develop agenda for the Council.

Further information on the meeting may be obtained by contacting Phyllis Draper at 254-7970.

Signed this 15th day of March 1985 in Washington, D.C.

John F. Burgess,

Acting Director.

[FR Doc. 85-6189 Filed 3-13-85; 8:45 am]

BILLING CODE 6051-01-M

POSTAL RATE COMMISSION

Visit to ZIP Mail Services, Inc.

March 11, 1985.

Notice is hereby given that Vice Chairman Folsom and a staff member will visit ZIP Mail Services, Inc., in St. Louis, Missouri, on Monday, March 11, 1985. On Tuesday, March 12, 1985, they will visit the St. Louis Post Office and the printing plant of World Color Press in Effingham, Illinois.

A report of the visits will be on file in the Commission's Docket Room.

Charles L. Clapp,

Secretary.

[FR Doc. 85-6152 Filed 3-14-85; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14408; File No. 812-4771]

The Golden Corral Pooling Group; Application for an Amended Order in Connection With an Employee Incentive Plan

March 11, 1985.

Notice is hereby given that The Golden Corral Pooling Group ("Applicant"), a North Carolina joint venture, filed an application on December 21, 1984, and an amendment thereto on February 14, 1985, requesting an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") amending an existing order, Investment Company Act

Release No. 11952 (September 22, 1981) ("Existing Order"), which exempts Applicant from all provisions of the Act. Applicant seeks an amended order in light of the gradual increase in Applicant's membership that has occurred since the issuance of the Existing Order and the anticipated continuation of this gradual increase in size. All interested persons are referred to the application on file with the Commission for a statement of the representations therein, which are summarized below, to the Act for the text of its provisions; and to the notice of the filing of the application for the Existing Order (Investment Company Act Release No. 11909; August 17, 1981) for a more complete summary of Applicant's operations.

Applicant states that it was organized in 1976 to implement an employee incentive plan for Golden Corral Corporation ("Golden Corral"). Golden Corral is a North Carolina corporation formed in 1971 that operates a chain of approximately 333 restaurants under the Golden Corral name. Each of Golden Corral's restaurants is organized as a separate Restaurant Joint Venture ("RJV") in which Golden Corral retains a 50% ownership interest, while, generally, selling a 20% interest to the manager of the RJV and a 5% interest to the area supervisor. These ownership interests in RJVs are called Restaurant Interests, each one representing a 5% interest in a particular RJV and selling for a fixed price of $5,000. The remaining 25% ownership in each RJV is sold to Applicant, which in turn, sells its own Pooling Group Units ("PG Units") to its members. These PG Units are generally offered to its members on a rotation basis at a fixed price of $5,000 per PG Unit whenever a Restaurant Interest becomes available for sale to Applicant, and that the proceeds from sale of a PG Unit are immediately invested in an available Restaurant Interest. The PG Unit therefore represents a proportional interest in Applicant and entitles its owner to a proportional share of the earnings distributed to Applicant from the Restaurant Interests which it owns. By investing in PG Units, Applicant's members thus share indirectly in the ownership of a number of RJVs. Applicant represents that the earnings derived from RJVs are distributed monthly to holders of Restaurant Interests (including Applicant), and that Applicant, in turn, makes monthly distributions to its members.

Applicant states that the Existing Order is premised on the facts set forth in its original application, as amended. As stated in the original application, Applicant's membership comprised 110 persons as of December 31, 1980. Although at that time Applicant anticipated that its membership would decrease through normal employment attrition, Applicant's membership has in fact increased and, as of September 30, 1984, consisted of approximately 125 persons. (Of the current 125 members, approximately 72 are eligible to acquire additional PG Units, while the remaining approximately 53 members are restricted to the number of PG Units which they currently own.) Applicant states that this increase in membership is principally attributable to the considerable growth of Golden Corral during this period and the accompanying increase in the number of its employees eligible to become members of Applicant. The number of restaurants owned and operated by Golden Corral has more than tripled since 1980 (106 restaurants at December 31, 1980, as compared to approximately 333 restaurants on December 12, 1984). The number of Golden Corral officers, district managers, and key senior level employees eligible to become members of Applicant has therefore also increased. Applicant anticipates that its membership could continue to increase at the rate of up to ten persons per year for the foreseeable future since Golden Corral expects to continue building or acquiring additional restaurants at an increased rate. However, Applicant asserts that its membership will continue to be limited to persons who are directors, officers, district managers, key senior level employees and, under certain circumstances, heirs or devisees of one of such persons. Applicant also states that its total membership will not exceed 250 persons unless it first seeks an amendment to the order sought by this application.

Applicant states that both the Restaurant Interests and the PG Units are the subjects of an effective registration statement under the Securities Act of 1933, and all members will be given a copy of the current final prospectus. Furthermore, all of its members, by reason of their employment positions and the information available to them, are able to evaluate the relative merits and risks of purchasing PG Units.

Applicant agrees that any order granted by the Commission amending the Existing Order may be subject to the following conditions: (1) That Applicant will continue to offer its PG Units only to directors, officers and other key senior level employees of Golden Corral Corporation and not to the general public. (2) That Applicant will continue to invest the proceeds of the sale of PG Units only in Golden Corral Corporation Restaurant Interests and will invest that portion of its earnings which is retained as a loss reserve only in government securities, certificates of deposit and similar short-term, low-risk securities. (3) That information concerning the financial operations of Applicant will be furnished to offerees and holders of PG Units in the following manner: (a) A copy of the final prospectus included in Applicant's registration statement under the Securities Act of 1933 will be given to each current holder of PG Units and to all future members, should there be any, of Applicant; and (b) A copy of Applicant's annual report, including audited financial statements, will be provided to each holder of PG Units. (4) That the final prospectus relating to Applicant's registration statement under the Securities Act of 1933 contain substantially the following paragraph:

> Because the Pooling Group (i.e., Applicant) engages in investment activities involving primary investments in Golden Corral Corporation's Restaurant Interests, the Pooling Group is considered to be an "investment company" as defined in the Investment Company Act of 1940 (the "1940 Act"). The Pooling Group has not registered under the 1940 Act, but believes that it has at all times been a private company of a type which the 1940 Act was not intended to regulate. The Pooling Group has received an order from the Securities and Exchange Commission which exempts the Pooling Group from compliance by the Pooling Group with certain conditions set forth in the application.

The foregoing paragraph will be modified as necessary to reflect any changes in the terms of the amended order as compared to the Existing Order.

Applicant submits that its application requesting the amendment of the Existing Order should be granted because it is not the type of company to which the provisions of the Act were intended to apply. Applicant further submits that the continued exemption of Applicant from all provisions of the Act is consistent with the standards for exemptions set forth in Section 6(c) of the Act, pursuant to which the Existing Order was granted.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 5, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above.

Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-6241 Filed 3-14-85; 8:45 am]

BILLING CODE 8010-01-M

[File No. 4-256; Rel. No. 21832]

Institutional Networks Corporation and National Association of Securities Dealers, Inc.; Order Denying Second Request for Reconsideration

March 8, 1985.

I. Background

On April 17, 1984, the Commission issued an order ("April Order") announcing Commission findings with respect to a fee dispute between the National Association of Securities Dealers, Inc. ("NASD") and the Institutional Networks Corporation ("Instinet").[1] The proceeding, which was instituted on August 16, 1983,[2] consists of Commission review, pursuant to Section 11A(b)(5) of the Securities Exchange Act of 1934 ("Act"), of proposed fees of the NASD for full information on quotations disseminated through NASDAQ.

On June 11, 1984, the NASD filed a motion requesting Commission reconsideration [3] of the finding made in the April Order that costs related to NASDAQ's query function, which requires the maintenance of a database to store quotations for subscriber recall, are not properly allocable to Instinet or its subscribers ("Query Cost Finding"). In urging reconsideration of this finding the NASD asserted that market makers necessarily query full quotation information offered through NASDAQ in deciding whether to maintain or change their quotations. Accordingly, the NASD argued that the query function was an essential part of the update function and, therefore, Instinet's subscribers should bear a proportionate share of the costs related to the query function.[4] On November 8, 1984, after reviewing the NASD's June Motion and Instinet's response thereto,[5] the Commission issued an order ("November Order")[6] denying the NASD's June Motion. In denying that Motion, the Commission held that the NASD had not advanced any new data or arguments to warrant Commission reconsideration of issues resolved in the April Order.

II. NASD's Second Motion for Reconsideration

On November 19, 1984, the NASD filed a second motion requesting Commission reconsideration of the Query Cost Finding based on "new evidence" ("NASD's November Motion").[7] The evidence was derived from an NASD statistical study which indicated that 76.8 percent of all queries directed to the NASDAQ System made by market makers were in stocks in which they made markets ("Query Statistic") and a functional analysis of the structure and costs of the NASDAQ System done for the NASD by Coopers & Lybrand, a certified public accounting firm ("C&L Study").[8]

III. Discussion

The NASD's November Motion is not timely. First, the NASD's Motion does not comply with Rule 21(e) of the Commission's Rules of Practice and Investigations,[9] which require a motion for reconsideration of a Commission order to be filed within 10 days after entry of that order. Furthermore, apart from the specific requirements of Rule 21(e), the Commission does not believe it is appropriate to consider this motion more than seven months after the April Order.[10]

The NASD argues that its November Motion is based upon "newly discovered evidence," and thus warrants reconsideration of the April Order. The Commission does not agree. The parties in this proceeding have had ample opportunity, including an evidentiary hearing, to place evidence in the record. Under Rule 21(d) of the Commission's Rules of Practice,[11] to warrant reconsideration of the April Order based on new evidence, the NASD must show that there were reasonable grounds for its failure to produce this evidence prior to the April

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[1] See Securities Exchange Act Release No. 20874 (April 17, 1984), 49 FR 17640. The Order also modified interim relief and instituted additional proceedings. For further information concerning this proceeding, see this Order and the Order Instituting Proceedings, *infra* note 2.

[2] See Securities Exchange Act Release No. 20088 (August 16, 1983), 48 FR 38124 ("Order Instituting Proceedings").

[3] See Motion to George A. Fitzsimmons, Secretary, SEC, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated June 11, 1984 ("NASD's June Motion"). On June 8, 1984, the NASD also filed a comment letter raising certain issues relating to the April Order. See letter to George A. Fitzsimmons, Secretary, SEC, from Frnak J. Wilson, Executive Vice President and General Counsel, NASD. The Commission responded separately to the matters discussed in the NASD's comment letter. See letter to James Cangiano, Secretary, NASD, from Shirley E. Hollis, Acting Secretary, SEC, dated November 9, 1984.

[4] Supporting affidavits from 12 market makers accompanied the NASD's June Motion.

[5] See Response of Instinet to NASD's Request to Reconsider File Nos. 4-256 SR-NASD-83-13 submitted to SEC, from Daniel T. Brooks, Counsel to Instinet, dated August 3, 1984 ("Instinet Response"). On September 13, 1984, the NASD responded to procedural points raised in the Instinet Response. See letter to Richard G. Ketchum, Director, Division of Market Regulation, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated September 13, 1984.

[6] See Securities Exchange Act Release No. 21471 (November 8, 1984), 49 FR 45282.

[7] See Request for Reconsideration based upon New Evidence submitted by Frank J. Wilson, Executive Vice President and General Counsel, and Robert E. Aber, Associate General Counsel, NASD, dated November 19, 1984. The NASD also has filed in the United States Court of Appeals for the District of Columbia Circuit a petition seeking review of the Commission's orders issued in this proceeding. See *NASD* v. *SEC*, No. 85-1012 (D.C. Cir. filed Jan. 7, 1985).

[8] See Statement of William M. Saubert, Partner-in-Charge of Investment Services Consulting, Coopers & Lybrand, attached as *Exhibit 2* to the NASD's November Motion. On December 26, 1984, Instinet responded to the NASD Motion and argued that the Motion should be denied on procedural and substantive grounds. See Response of Instinet to NASD's Second Request to Reconsider File Nos. 4-256 SR-NASD-83-13 submitted to SEC, from Daniel T. Brooks, Counsel to Instinet, dated December 26, 1984. On January 22, 1985, the NASD responded to Instinet's submission. See Response to Instinet Filing submitted to SEC, from Frank J. Wilson, Executive Vice President and General Counsel, and Robert E. Aber, Associate General Counsel, NASD, dated January 22, 1985 ("NASD's January Response").

[9] 17 CFR 201.21(e). While certain subsections of Rule 21 relate to oral hearings and are not directly relevant to this proceeding, Rule 1 (17 CFR 201.1) states that the Commission's rules of practice "are generally applicable to proceedings before the Commission under the statutes which it administers. * * *"

[10] The NASD has styled its November Motion as relating to the Commission's November Order. The November Order simply denied the NASD's first motion for reconsideration of the April Order; thus, the November Motion is in effect a motion for reconsideration of the April Order. To treat it otherwise would be to allow repeated attacks on the finality of the Commission decisions in contravention of the purposes of administrative economy evidenced by Rule 21(e). *Cf. E.D. Rivers, Jr.*, 3A L. Rep. 48g13-17 (F.C.C. 1950) (under FCC rules, second motion for reconsideration held to be out of time); 6A J. Moore, J. Lucas & G. Grotheer, Jr., Moore's Federal Practice ¶ 59.13 n.12 and accompanying text (2d ed. 1984) (stating that repeated motions for reconsideration under Rule 59 of Federal Rules of Civil Procedure should be treated as out of time).

[11] 17 CFR 201.21(d). The NASD's November Motion does not expressly move for leave to adduce additional evidence pursuant to Rule 21(d). Nonetheless, because the Motion states that it is based on "newly discovered evidence," the Commission believes it appropriate to review the Motion under the standards of Rule 21(d).

Order [12] and must also show that the new evidence is material.[13]

The NASD Motion does not meet this standard and thus fails to demonstrate that the evidence it now submits warrants Commission reconsideration of issues resolved in the April Order. The NASD has not explained why the Query Statistic or opinions contained in the C&L Study could not have been discovered or formulated before the Commission issued the April Order; indeed it appears that, with reasonable diligence, this evidence could have been produced for the evidentiary hearing.

Moreover, the NASD has failed to show that the evidence is material to any of the findings contained in the April Order. In this regard, the Query Statistic is cumulative of evidence already contained on the record.[14] Also, the Query Statistic does not affect the Commission's determination that NASDAQ market makers receive unique benefits from the availability of the NASDAQ System which are critical to the liquidity of the over-the-counter market and their own profitability. Therefore, the Commission believes that NQDS subscribers should not "subsidize NASDAQ market makers by paying for NASDAQ database costs necessary to provide a quotation recall service through NASDAQ, a service that Instinet must duplicate at its own expense and recover from its subscribers." [15] Hence, even had this evidence been proffered earlier, it would not have affected the Commission findings.[16]

Nor is the C&L Study material to the Commission's April decision. The NASD uses the C&L Study as evidence of the integrated nature of the NASDAQ System in order to challenge the Commission's determination to base the NQDS subscriber fee on a pass-through service approach. In this respect, the Study is cumulative of evidence already on the record. The Commission notes that this contention was previously advanced by the NASD largely in reliance on similar statements made by another outside consultant, in a hearing held on December 14, 1983 [17] and in the NASD's January 16, 1984 Statement in support of its fees.[18] The C&L Study also is not material to the Commission's decision with respect to using a pass-through service approach because the Commission had specifically considered the NASD's position in the April Order, and determined that

because Instinet seeks to distribute certain NASDAQ quotation information in competition with the NASD, which is an exclusive processor of that information, the proposed fees must be cost-based and calculated by allocating the percentage of system use of each quotation service offered by the NASD ("functional analysis"), to ensure the neutrality and reasonableness of the NASD's charges to Instinet and its subscribers.[19]

IV. Order

On the basis of the above, pursuant to its authority under the Act, and particularly Sections 2, 3, 1, 11A, 15, 15A, 19, and 22 thereof, the Commission hereby orders that: the NASD's November 19, 1984 motion for Commission reconsideration be, and hereby is, denied.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85-6239 Filed 3-14-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21834; SR-Amex-85-3]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Order Granting Accelerated Approval of Proposed Rule Change; American Stock Exchange, Inc.

March 11, 1985.

On February 27, 1985, the American Stock Exchange, Inc. ("Amex") submitted a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] to implement a six-month pilot program [3] for selected series of options on the Major Market Index ("XMI") under which the highest bid and lowest offer on the XMI limit order book maintained by the XMI specialist will be continuously displayed to the trading crowd. This proposed display would be in addition to the absolute best bid and offer in the marketplace, which is currently displayed on the Amex floor and disseminated through the quotation vender's systems. The Amex states that the pilot program is warranted due to the high volume in XMI options, which are the most actively traded option class on the Amex. Amex states that there are over 100 traders in the XMI crowd, and that XMI volume continues to grow. According to Amex, the proposed rule change is intended to facilitate communications in this extremely active trading crowd and ensure ease of operation, thus improving crowd efficiency. Amex also argues that the pilot, by providing the registered options traders in the XMI crowd with greater information regarding market trends and forces, may encourage registered options traders ("ROTs") to be more competitive with specialists. Amex also points out that in 1978 the Commission approved a similar six-month pilot program for 10 classes of individual stock options,[4] and that the Chicago

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[12] *Gross* v. *SEC*, 418 F.2d 103, 108 (2d Cir. 1969); *cf. Vanasco* v. *SEC*, 395 F.2d 349, 352 (2d Cir. 1968) (request for leave to adduce additional evidence under Section 25(a)(5) of the Act).

[13] *In re Christiana Securities Company*, Investment Company Act Release No. 8692 (Feb. 27, 1975); *cf. Merritt, Vickers, Inc.* v. *SEC*, 353 F.2d 293, 297 (2d Cir. 1965) (request for leave to adduce additional evidence in Commission review of an NASD disciplinary action).

[14] *See* Transcript of Testimony of Robert N. Riess, In the Matter of Institutional Networks Corp., National Association of Securities Dealers, Inc., Commission File No. 4-256, pp. 48-52, 73-77, December 14, 1983 ("Riess Transcript"); Statement of the NASD in support of Proposed NQDS Service Fee and in response to Petition by Instinet and Request for Comments by the Securities and Exchange Commission, pp. 10, 64-65, dated January 16, 1984 ("NASD January Statement"); and *Economic Basis for NASDAQ Fees*, p. 5, attached as Appendix I to the NASD January Statement. That evidence was immaterial to the Commission's reasoning underlying its Query Cost finding. The Commission has stated that [t]here is no requirement that market makers recall NASDAQ quotation information through their NASDAQ terminals in connection with each quotation update. To the extent a market maker desires to recall quotation information before updating his quotation, he could choose to recall particular quotation information through Instinet terminals or inside quotation information through a variety of sources, without any reliance on the NASDAQ system's storage and recall functions. Moreover, the Commission does not believe that such a subsidization of market makers through NASD fees is consistent with the Act. While all NASDAQ and NQDS subscribers receive NASDAQ market maker quotation information, the fact remains that NASDAQ subscribers are provided a recall service, which Instinet must provide its subscribers at a separate cost.

April Order, *supra* note 1, 49 FR at 17649 n.91.

[15] November Order, *supra* note 6, 49 FR at 45284. *See also* April Order, *supra* note 1, 49 FR at 17649 n.91.

[16] While the NASD Query Statistics fails to constitute "new evidence" for purposes of Commission reconsideration, the Commission also believes that this evidence substantially lacks merit because it is limited to queries entered by market makers, and does not factor in queries made by other system users, and because it does not distinguish between market maker queries made for the purpose of updating quotations and those made for the other purposes.

[17] Riess Transcript, *supra* note 14.

[18] NASD January Statement, *supra* note 14.

[19] April Order, *supra* note 1, 49 FR at 17643.

[1] 15 U.S.C. 78s(b)(1) (1984).

[2] 17 CFR 240.19b-4 (1984).

[3] Amex has not yet determined exactly when it will commence the pilot, but states that the program will begin as soon as is operationally feasible and in no event later than three weeks from the date of this approval. Telephone Conversation of March 11, 1985, between Heidi Litt, Attorney, Amex, and Alden Adkins, Attorney, Division of Market Regulation.

[4] Securities Exchange Act Release No. 14966, July 26, 1978, 43 FR 33849.

Board Options Exchange, Incorporated ("CBOE") already requires the CBOE Order Book Official to display continuously to the trading crowd the highest bid and lowest offer on the limit order book, as well as indication of market size.[5] Amex states that the statutory basis of the proposed rule change is Section 6(b)(5) of the Act.

The Commission is publishing this release to solicit comment on the proposed rule change. Persons interested in commenting on the proposal should submit six copies of their comments within 21 days from the date of publication of this notice in the Federal Register. Comments should be sent to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the proposed rule change, and all documents relating to the proposed rule change, except those that may be withheld from the public pursuant to 15 U.S.C. 552, are available for inspection and copying at the Commission's Public Reference Room. Copies of the filing also are available at the Amex.

The Commission finds that the proposed rule change may help facilitate communications in an extremely active options crowd, and also may, to a limited extent, encourage ROTs in the XMI crowd, as market makers, to be more competitive with the XMI specialist.[6] For these reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b)(5).

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that the proposal (1) is substantially similar to the Amex pilot program the Commission approved in 1978; and (2) imposes requirements substantially similar to those imposed by CBOE Rule 7.7, which rule, as amended since 1975, has been approved by the Commission after being published for comment.[7] In addition, Amex desires to commence the pilot as soon as possible, and in no event later than three weeks from the date of this approval, due to the constantly increasing size of the XMI crowd.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-6243 Filed 3-14-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21829; File No. SR-CSE-85-1]

Self-Regulatory Organizations; Proposed Rule Change by the Cincinnati Stock Exchange, Relating to Public Agency Transaction Charge

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on February 4, 1985, the Cincinnati Stock Exchange (the "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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. The Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Effective September 5, 1984, the Board of Trustees of the Cincinnati Stock Exchange revised Section (e) of The National Securities Trading System Fee Schedule, which now reads as follows (new language italicized and deleted language bracketed):

NATIONAL SECURITIES TRADING SYSTEM FEES

(a) * * *
(b) * * *
(c) * * *
(d) * * *

(e) $0.01 per share will be charged both Proprietary Members and non-members *when acting as agent* on public agency transactions[.]; *provided, however, that there will be no charge imposed on either Proprietary Members or non-members when acting as agent on public agency market orders or public agency limit orders at the market.*

(f) * * *
(g) * * *
(h) * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.* The Board of Trustees determined that the Proposed Change will facilitate, consistent with Section 11(A)(a)(1) of The Act, the economic execution of public agency orders.

B. *Self-Regulatory Organization's Statement on Burden on Competition.* The Exchange believes that the Proposed Change will impose no burden on competition.

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 comments on the Proposed Change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such 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 Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section,

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[5] Under Amex's proposed pilot, the number of contracts represented by the highest bid and offer will not be indicated.

[6] While ROTs might be encouraged to compete with specialists to an even greater extent if the pilot required an indication of the number of contracts represented by the bid and offer, the display of bids and offers even without an indication of size may give ROTs some additional information about market trends and forces and may, thus, give ROTs some additional incentive to compete more actively with the XMI specialist.

[7] Securities Exchange Act Release Nos. 15490 and 16484, January 11, 1979 and January 11, 1980, 44 FR 4060 and 45 FR 3068.

450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 5, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.[1]

March 8, 1985.

[FR Doc. 85-6242 Filed 3-14-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21835; SR-MSTC-85-2]

Self-Regulatory Organizations; Midwest Securities Trust Co.; Order Approving Proposed Rule Change

Midwest Securities Trust Company ("MSTC") on January 30, 1985, submitted a proposed rule change under Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Commission published notice of the proposal on February 6, 1985, to solicit public comment.[1] No comment has been received. This Order approves the proposal.

Current MSTC Rules prohibit participants from rejecting delivery of registered securities because the delivery is made by book-entry movement rather than by physical delivery of certificates. MSTC's proposal would broaden this proscription to include book-entry deliveries of bearer municipal bonds. Thus, under the proposal, no security delivery could be rejected because it is made by book-entry movement.

To conform MSTC's operating procedures to this rule change, the proposal also would require all MSTC participants that trade and settle bearer municipal bond transactions in MSTC facilities to do so within the MSTC Bearer System ("B System"). The B System is a book-entry accounting system designed specially for bearer securities, and its mandatory use would enable any delivery of bearer municipal bonds to a MSTC participant to be made by book-entry movement.

MSTC states in its filing that this rule change is necessary to enable participants to comply with recent change in Municipal Securities Rulemaking Board ("MSRB") Rules G-12 and G-15 that require book-entry settlement of certain municipal securities trades.[2] MSTC believes that by facilitating compliance with MSRB settlement rules, the proposal will further establishment of the National Clearance and Settlement System. MSTC believes, therefore, that the proposal is consistent with Section 17A of the Act.

The Commission believes that the proposal should be approved. The Commission agrees with MSTC that the proposal should enhance establishment of the National Clearance and Settlement System. While MSRB Rules G-12 and G-15 mandate use of full depository services for bearer municipal bonds, progress toward that goal can only be achieved if depository systems and rules are adapted to MSRB requirements. MSTC's B System has been successfully operated for over two years, providing full depository services for a constantly growing number of eligible securities. MSTC has established a regional custodial bank system for the convenience of participants in various geographical areas. Mandatory use of MSTC's B System therefore should enhance compliance with MSRB rules and should bring more of the municipal securities industry into the National Clearance and Settlement System.

For the reasons discussed above, the Commission finds the proposed rule change consistent with the Act and, in particular, Section 17A of the Act.

It is therefore ordered, under Section 19(b)(2) of the Act, that the proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

March 11, 1985.

[FR Doc. 85-6244 Filed 3-14-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21830; File No. SR-NYSE-85-7]

Self-Regulatory Organizations; Proposed Rule Change By New York Stock Exchange, Inc.

Relating to Proposed Increases in Floor Facilities Charges Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 28, 1985, the New York Stock Exchange, Inc. 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is instituting increases affecting certain Floor Facilities fees.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.*—(1) *Purpose*—The revenues generated by the Floor Facilities fees increase will be used to defray the expenses of this area. The current Floor Facilities fees do not fully recover the costs of providing the facilities. The estimated loss in 1984 was approximately $4 million dollars. Increases in projected expenses are anticipated because of continuing demands in the area. Even with the proposed rate increase a loss of approximately $1 million dollars is expected. The purpose of the proposed rate increases is to begin the process of recapturing the cost of this activity.

(2) *Statutory Basis*—The basis under the 1934 Act for this proposed rule change is the requirement under section 6(b)(4) that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

(B) *Self-Regulatory Organization's Statement on Burden on Competition.* The Exchange believes that this proposed rule change will not impose any burden on competition.

(C) *Self-Regulatory Organization's Statement on comments on the Proposed Rule Change received from Members, Participants or Others.* The Exchange

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[1] 50 FR 5149.

[2] *See* Securities Exchange Act Release No. 20365 (November 14, 1983), 48 FR 52531 (November 18, 1983), approving changes to MSRB Rules G-12 and G-15.

has not solicited, and does not intend to solicit, comments regarding this proposed rule change. The exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such 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 Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 5, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

March 8, 1985.

EXHIBIT A

	Current	Proposed
Floor Fees:		
Floor privilege fee:		
Minimum charge	$2,585	$3,460
Booth fees:		
Bond booths	3,200	4,290
Stock booths	900–6,625	1,200–8,880
Private line charge	960	1,290
Order pad privilege	900–6,625	1,200–8,880
Order pad privilege direct clearance	2,090	2,800
Post fees:		
Main room and garage	5,400	7,235
Blue room	5,400	7,235
Cabinet space—Post 30	800	1,070
Telephone Clerk Tickets:		
Regular	380	510
Special	715	960
Radio Paging Service:		
Base charge (unit and first channel)	300	330
Each additional channel	100	110
Financial Vendor Services:		
Base service include (key board, CRT, Quick Line)	895	1,200
Member Telephone Service (toll call amount billed by N.Y. Telephone Company plus surcharge on):		
Toll calls $.69 and below	.10	.13
Toll calls greater than $.69	.15	.20

[FR Doc. 85–6245 Filed 3–14–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–21828; SR–OCC–85–2]

Self-Regulatory Organizations; the Options Clearing Corp.; Filing of Proposed Rule Change

March 8, 1985.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 15, 1985, The Options Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II, and IV below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Introduction

At present, foreign securities firms participate in the domestic options markets indirectly, through OCC's Clearing Members. Some Clearing Members maintain offices overseas for the purpose of facilitating foreign securities firm's business. Typically, a foreign securities firm uses an OCC Clearing Member to execute its trades on the floors of OCC's participant exchanges, clear and maintain its positions, and perform certain back office functions. The OCC Clearing Member undertakes the responsibility for all overseas communications and for meeting margin and clearing fund deposits at OCC. For these services, foreign securities firms pay commissions, deposit customer margin on their positions, and pay other costs and expenses.

In an effort to reduce the expense of utilizing domestic Clearing Members for such a broad range of services, various foreign securities firms have sought membership in OCC. Since these firms typically would not seek membership in or a physical presence on the floor of any of OCC's participant exchanges, domestic broker-dealers would continue to execute their orders, but the trades would be assigned to the foreign Clearing Members through the use of OCC's Clearing Member Trade Assignment ("CMTA") procedure. As OCC Clearing Members, however, foreign securities firms would communicate directly with OCC, comply with OCC's margin and clearing fund requirements, clear and settle their trades directly with OCC, and be subject to OCC's financial reporting and other requirements.

The proposed rule change is designed to permit foreign securities firms to become OCC clearing members, on substantially the same terms as domestic firms. Foreign Clearing Members would be subject, as are domestic Clearing Members, to OCC's By-Laws and Rules concerning clearance of exchange transactions, clearing fund contributions, premium settlements,[1] margin requirements, and suspension and disciplinary proceedings.

The Proposed By-Law and Rule Changes

A. By-Law Definitions of "Foreign Securities Firm" and "Appropriate Regulatory Agency". OCC proposes to add a definition of "Foreign Securities Firm" to its By-Laws. The definition would have the effect of limiting applicants for Clearing Membership to those foreign firms that are subject to foreign governmental or foreign exchange regulation. In so limiting potential members, OCC will be able to assure itself that foreign Clearing Members will be subject to some regulatory authority responsible for supervising the foreign member with respect to such matters as capital and books and records requirements.[2]

[1] All foreign members will be required, as are domestic members, to effect premium and margin settlements through approved clearing banks in the U.S.

[2] OCC will independently require foreign members to meet U.S. capital, reporting and other requirements. Nonetheless, the definition will narrow potential applicants to those firms which have already demonstrated ability to meet established regulatory requirements.

The proposed rule change would exclude from the definition of "Foreign Securities Firm" any firm registered or required to be registered as a broker-dealer under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). It is OCC's understanding that as a general rule, foreign firms that do business only with foreign customers are not required to register as broker-dealers under the Exchange Act, even though they may trade in domestic securities through domestic broker-dealers. OCC does not anticipate that such a firm would be required to register as a broker-dealer merely because it became a Clearing Member of OCC.

OCC proposes to expand its definition of "Appropriate Regulatory Agency" to include the foreign governmental agency or self-regulatory authority responsible for a foreign Clearing Member. This definition is designed to dovetail with OCC Rule 1102, which requires OCC to notify a Clearing Member's "appropriate regulatory agency" should it determine to suspend the Clearing Member because of financial or operating difficulties.

B. Article V of the By-Laws: Clearing Member Qualifications and Conditions to Admission. As noted above, it is OCC's intention that its rules not discriminate between foreign and domestic Clearing Members. The proposed changes to Article V of the By-Laws reflect this intention. As amended, Article V, Section 1 would require foreign firms to meet the same financial responsibility and experience and competence standards as domestic firms. OCC's Interpretations and Policies concerning operational capability would be modified only insofar as they would permit a foreign firm to maintain its books and records in a manner or format different from domestic applicants. A foreign firm's records would still be required to provide, regardless of format, the substantive information necessary to assure OCC of the firm's net capital, aggregate indebtedness, and debt-equity total, as defined by Commission Rule 15c3–1. Consequently, any foreign firm that does not maintain its records in such a manner as to permit it to calculate those amounts in accordance with Commission rules will not be qualified to become or remian a Clearning Member.

Amended Article V, Section 3(i) would require foreign Clearing Members to comply with Section 7 of the Securities Exchange Act of 1934 and Regulation T promulgated thereunder by the Board of Governors of the Federal Reserve System. Subparagraph (j) would require a foreign member to comply with NASD maintenance margin rules. Compliance with these requirements will reduce the likelihood of foreign Clearing Member insolvencies resulting from the erosion of customer positions.

Section 3(j) would also require a foreign member to comply with NASD rules regarding cut-off times for the submission of exercise notices. This requirement will place foreign and domestic Clearing Members on an equal footing and help to avoid giving an unfair competitive advantage to foreign Clearing Members or their customers.

Finally, Section 3(k) would require a foreign firm to consent to the jurisdiction of U.S. courts and the application of Illinois law in the event of a dispute with OCC arising from membership. Such a provision is necessary to protect OCC and insure equal treatment of foreign and domestic members.

C. *Rule 201—Offices.* OCC proposes that Rule 201, which now requires members to maintain an office in the vicinity of one of OCC's offices, be waived for foreign Clearing Members that can establish other acceptable arrangements for transacting business with OCC. No foreign firm would be admitted unless it could demonstrate to OCC's satisfaction that its communications with OCC would be reliable, and operated by capable personnel and that the firm would provide sufficient back-up systems. OCC believes that existing overseas communication systems are highly reliable and could be used by foreign Clearing Members.

D. *Rules 306 and 310: Financial Reporting.* Rule 306 requires Clearing Members to file FOCUS reports with OCC. The purpose is to permit OCC to determine if Clearing Members are maintaining sufficient capital. If a Clearing Member's capital falls below certain guidelines, OCC can suspend it, or impose restrictions on its transactions or positions pursuant to Rule 305. Amended Rule 306 would require foreign Clearing Members to file FOCUS reports in the same manner as domestic Clearing Members. The rule would be changed only insofar as necessary to eliminate reference to *filing dates* which are inapplicable to a foreign firm.

Rule 310 is new. It would specifically require that all financial reports filed by foreign Clearing Members conform in all respects to domestic accounting practices and standards. Further, it would permit OCC to impose certain sanctions and restrictions in the event that a foreign firm failed to comply. These would include suspension or the imposition of increased margin or clearing fund requirements.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit foreign securities firms to become Clearing Members of OCC. OCC believes that the admission of foreign Clearing Members will encourage increased foreign participation in U.S. capital markets. It also believes that this expansion can be accomplished without exposing OCC, its members, or the public to materially increased risk. Because foreign membership will be extended only under conditions assuring equal treatment of domestic and foreign Clearing Members, adequate financial reporting and reliable communications, the proposed rule changes are consistent with the requirements of Section 17A of the Securities Exchange Act of 1934, as amended.

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 if 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 such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 5, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-6240 Filed 3-14-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Designation of Disaster Loan Area #6287]

Arizona; Designation of Federal Action Economic Injury Loan Area

Maricopa and Pinal Counties in the State of Arizona constitute an economic injury area as a result of the following Federal action pursuant to section 7(b)(3), as amended, of the Small Business Act:

1983 Payment-In-Kind Land Diversion Program

The date of said Federal action is 1983 crop season. Eligible small businesses without credit elsewhere may file applications for economic injury until the close of business on December 9, 1985, at the address listed below: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, Sacramento, CA 95825, or other locally announced locations. The interest rate for eligible small business applicants is 8%.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 8, 1985.

Robert A. Turnbull,

Acting Administrator.

[FR Doc. 85-6155 Filed 3-14-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 01/01-0335]

Capital Impact Corp; Issuance of a Small Business Investment Company License

On December 18, 1984, a notice was published in the **Federal Register** (49 FR 49196) stating that an application has been filed by Capital Impact Corporation, 234 Church Street, New Haven, Connecticut 06510 with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1984)) for a license as a small business investment company.

Interested parties were given until close of business January 17, 1985, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/01-0335 on March 1, 1985, to Capital Impact Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 8, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-6153 Filed 3-14-85; 8:45 am]

BILLING CODE 8025-01-M

[Designation of Disaster Loan Area #6255, Amendment #2]

Texas; Designation of Federal Action Economic Injury Loan Area

The above numbered Declaration (50 FR 2643, January 17, 1985) and amendment #1 (50 FR 4825, February 1, 1985) are amended to include the County of Presidio. All other information remains the same, i.e., the termination date for filing applications is the close of business on October 10, 1985.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 8, 1985.

Robert A. Turnbull,

Acting Administrator.

[FR Doc. 85-6154 Filed 3-14-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0287]

Mid/State Capital Corp.; Issuance of a License To Operate as a Small Business Investment Company

On December 11, 1984, a notice was published in the **Federal Register** (49 FR 48247), stating that Mid-State Capital Corporation located at 510 North Valley Mills Drive, Waco, Texas 76710, had filed an application with the Small Business Administration pursuant to 13 CFR 107.102(1984), for a license to operate as a small business investment company under the provisions of section 301(c) of the Small Business Investment Act of 1958, as amended.

The period for comment expired on January 10, 1985, and no significant comments were received.

Notice is hereby given that considering the application and other information, SBA has issued License No. 06/06-0287 to Mid-State Capital Corporation.

Dated: March 8, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR. Doc. 85-6209 Filed 3-14-85; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council; Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of San Diego, California, will hold a public meeting at 9:00 a.m. on March 21, 1985, in the Federal Building, 880 Front Street, San Diego, California, 92188, Room 4-S-13, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call George P. Chandler, District Director, U.S. Small Business Administration, 880 Front Street, Room 4-S-29, San Diego, California 92188 (619) 293-5430.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 11, 1985.

[FR. Doc. 85-6210 Filed 3-14-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of Department of Transportation's Procedural Regulations; Week Ended March 8, 1985

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set foth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order or in appropriate cases a final order without further processings. (See, 14 CFR 302.170 et. seq.).

Date filed	Docket No.	Description
Mar. 4, 1985	42916	Trans World Airlines, Inc., Ulrich V. Hoffman, Sr. V/P-External Affairs & General Counsel, 605 Third Avenue, New York, New York 10158. Application of Trans World Airlines, Inc. pursuant to section 401 of the Act for an amendment of its certificate of public convenience and necessity authorizing it to serve between the United States and France. Answer to the Conforming Application may be filed March 28, 1985.
Do.	42921	American Airlines, Inc., Wesley G. Kaldahl, Sr. V/P-Airline Planning, P.O. Box 619616, DFW Airport, Texas 75261. Application of American Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations for amendment of its certificate of public convenience and necessity for Route 137 to authorize service between Chicago and Manchester, England. Conforming Applications, Motions to Modify Scope and Answers may be filed by April 1, 1985.
Do.	42922	King Flying Service, Edward King, President, P.O. Box 26, Naknek, Alaska 99633. Application of King Flying Service pursuant to section 401 of the Act and Subpart Q of the Regulations for a certificate of public convenience and necessity for interstate air transportation of persons, property and mail within the State of Alaska between and among the terminal point Egegik, Alaska, the six intermediate points (South Naknek, Iguigig, King Salmon, Levelock, Naknek, and Pilot Point), and the terminal point Ugashik, Alaska. Conforming Applications, Motions to Modify Scope and Answers may be filed by April 1, 1985.
Mar. 5, 1985	42925	Aloha Airlines, Inc., c/o James T. Lloyd, Esq., Hydeman, Mason, Burzio & Lloyd, 1220—19th Street, N.W., Suite 700, Washington, D.C. 20036. Application of Aloha Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations for a certificate of public convenience and necessity to provide scheduled foreign air transportation of persons, property and mail between Honolulu, Hawaii and points in Japan. Conforming Applications, Motions to Modify Scope and Answers may be filed by April 2, 1985.
Mar. 6, 1985	42936	Jet Charter Service, Inc., d/b/a JET24 INTERNATIONAL AIRWAYS, Gabriel D'La Rotta, President, P.O. Box 522150, Miami, Florida 33152. Application Jet Charter Service, Inc., d/b/a JET24 INTERNATIONAL AIRWAYS pursuant to section 401 of the Act and Subpart Q of the Regulations for a certificate of public convenience and necessity to engage interstate and overseas scheduled air transportation of persons, property and mail between Miami and San Juan with three frequencies per week in each direction. Conforming Applications, Motions to Modify Scope and Answers may be filed by April 3, 1985.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85-6217 Filed 3-14-85; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

National Motor Carrier Advisory Committee; Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces that the National Motor Carrier Advisory Committee will hold a meeting on April 16, 1985, beginning at 9:00 a.m., in Sacramento, California, at Enchantment Hall, Capitol Plaza Building, 1025 9th Street, Sacramento.

The agenda includes the following topics: status report on Deficit Reduction Act studies and study on longer combination vehicles, briefing on FHWA Mexican border activities in 1984, report on the status of implementation of the Motor Carrier Safety Act of 1984, briefing on the FHWA Task Force Report on Motor Carrier Safety Reorganization, progress report on the FHWA bridge formula study, the experiences of the California Highway Patrol with heavy truck safety and accidents, and a presentation by the California Trucking Association on a motor carrier view of improving heavy truck safety.

In addition to the business meeting on April 16, the Committee will visit a roadside inspection facility, and on April 17 will tour a freight terminal and distribution center and observe a demonstration of a Commerical Vehicle Safety Alliance (CVSA) truck inspection at the California Highway Patrol Academy.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Stapleton, Executive Director, National Motor Carrier Advisory Committee, Federal Highway Administration, HCC-20, Room 4224, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426-0834. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

Issued on: March 12, 1985.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration

[FR Doc. 85-6304 Filed 3-14-85; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Notice of Grants and Denials of Applications for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in February 1985. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

Renewal and Party to Exemptions

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemtpion thereof
4575-X	DOT-E 4575	Racon, Inc., Wichita, KS	49 CFR 173.314(c), 173.315(a)	To authorize use of non-DOT specification cargo tanks and tank car tanks, for transportation of certain liquefied compressed gases. (Modes 1, 2, 3.)
6369-X	DOT-E 6369	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.346(a)(10), 173.347(a)(2), 173.352(a)(4), 173.374(a).	To authorize use of AAR proposed DOT Specification 120A300W and 120A400W tank car tanks, for transportation of certain Class B poisonous liquids. (Mode 2.)
6443-X	DOT-E 6443	Montana Sulphur & Chemical Company, Billings, MT.	49 CFR 173.315(a)(1)	To authorize use of DOT Specification MC-331 insulated cargo tanks not presently authorized, for transportation of a flammable gas. (Mode 1.)
6543-X	DOT-E 6543	Texas Instruments, Inc., Dallas, TX.	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.245, 173.247, 173.271, 175.3.	To authorize shipment of certain corrosive and flammable liquids in non-DOT specification 16 gauge, Type 304 stainless steel cylinders and/or 14 gauge Type 316 stainless steel cylinders. (Modes 1, 2, 3, 4.)
6826-X	DOT-E 6826	Airgo, The BOC Group, Inc., Murray Hill, NJ.	49 CFR 173.34(e)(15)(i), 173.34(e)(15)(iv), 175.3.	To authorize use of DOT Specification 3A or 3AA cylinders and cylinders marked ICC-3, 3A or 3AA, for shipment of certain compressed gases. (Modes 1, 2, 3, 4, 5.)
6922-X	DOT-E 6922	Halocarbon Products Corporation, Hackensack, NJ.	49 CFR 173.314(C), 179.30-15	To authorize use of a DOT Specification 106A500-X multi-unit tank car tank, for shipment of certain compressed gases. (Modes 1, 2, 3.)
7052-P	DOT-E 7052	Ballard Technologies Corporation, North Vancouver, B.C.,	49 CFR 172.101, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, 4.)
7052-X	DOT-E 7052	Moli Energy Limited, Burnaby, B.D., Canada.	49 CFR 172.101, 175.3	To authorize lithium molybdenum disulfide and lithium hexafluoroarsenate as additional chomcial makeup. (Modes 1, 2, 3, 4.)
7466-X	DOT-E 7466	Firmenich Incorporated, Princeton, NJ	49 CFR 173.119(a)(7), 175.3	To authorize shipment of certain flammable liquid mixtures, in a spun 99-percent pure aluminum can, overpacked in a corrugated fiberboard box. (Modes 1, 2, 3, 4.)
7774-X	DOT-E 7774	Pipe Recovery Systems, Incorporated, Houston, TX.	49 CFR 173.248, 175.3	To authorize shipment of bromine trifluoride in non-DOT specification cylinders. (Modes 1, 2, 4.)
7808-X	DOT-E 7808	Whitmire Research Laboratories, Inc., Saint Louis, MO.	49 CFR 173.304, 173.33a, 175.3	To authorize shipment of insecticides and liquefied gas mixtures, in inside nonrefillable aluminum containers comparable to DOT Specification 2Q cylinders equipped with integral pressure relief system. (Modes 1, 2, 3, 4.)
8115-X	DOT-E 8115	Acurex Corporation, Mountain View, CA	49 CFR 173.302(a)(1), 173.304(a), 173.304(d), 175.3.	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic hoop wrapped cylinder, for transportation of certain nonflammable compressed gases. (Modes 1, 2, 3, 4, 5.)
8509-X	DOT-E 8509	Reagent Chemical & Research, Inc., St. Gabriel, LA.	49 CFR 173.263(a)(9), 179.201-1	To authorize use of a safety relief valve in lieu of a safety vent in DOT Specification 111A100W5 tank car tanks, for transportation of hydrochloric acid. (Mode 2.)
8520-X	DOT-E 8520	Atlas Powder Company, Dallas, TX	49 CFR 173.114a(b)(6)	To authorize use of a "pipe test" on a material being evaluated as a blasting agent, instead of fire test prescribed in 173.114a(b)(6). (Modes 1, 2, 3, 4.)
8561-X	DOT-E 8561	HTL Industries, Inc., Duarte, CA	49 CFR 173.304(a)(1), 175.3, 178.44	To authorize manufacture, marking and sale of non-DOT specification girth welded stainless steel cylinders, for transportation of a compressed gas. (Modes 1, 2, 4.)
8612-X	DOT-E 8612	FIBA Leasing Company, Inc., Westborough, MA.	49 CFR 172.101, 173.314(c)	To authorize use of a non-authorized manifolded DOT Specification 107A4300 tank car tanks, for shipment of a flammable compressed gas. (Modes 1, 2.)
8680-X	DOT-E 8680	Walter Kidde, Wake Forest, NC	49 CFR 173.119, 173.302(a), 173.304(a), 173.304(d)(3), 175.3, 178.61-8.	To authorize manufacture, marking and sale of non-DOT specification cylinder manufactured in compliance with DOT Specification 4BW except circumferential weld will be full butt joints instead of joggle butt or lap joints, for transportation of compressed gases. (Modes 1, 2, 3, 4, 5.)
8737-X	DOT-E 8737	Webb Equipment Co., Santa Maria, CA	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC-307 or MC-312, with exception for transportation of flammable liquids, corrosive or poison B materials. (Mode 1.)
8937-P	DOT-E 8937	Spectrulite, Inc., Midland, MI	49 CFR 173.178	To become a party to Exemption 8937. (Modes 1, 2.)
8964-X	DOT-E 8964	Larson Tool and Stamping Company, Attleboro, MA.	49 CFR 173.302, 173.304, 175.3, 178.50-19.	To authorize manufacture, marking and sale of DOT Specification 4B cylindors that are stamped with prescribed marking in the foot ring of the cylinder containing non-corrosive fire suppressant agents only. (Modes 1, 2, 3, 4, 5.)
8965-X	DOT-E 8965	Pressed Steel Tank Company, Inc., Milwaukee, WI.	49 CFR 173.302(a), 175.3	To authorize rail freight, cargo vessel, passenger carrying aircraft and cargo-only aircraft as additional modes of transportation. (Modes 1, 2, 3, 4, 5.)
9003-X	DOT-E 9003	General Electric Co., San Jose, CA	49 CFR 173.206, 178.245	To authorize use of non-DOT specification portable tanks, for shipment of a flammable solid. (Mode 1.)
9059-P	DOT-E 9059	Boeing Aerospace Co., Seattle, WA	49 CFR 172.101, 172.202, 172.302(d), 173.34(d)(4).	To become a party to Exemption 9059. (Modes 1, 2.)
9256-X	DOT-E 9256	U.S. Department of Defense, Washington, DC.	49 CFR 173.86, Part 107, Subpart B	To ship new explosives under a tentative hazard classification to test facilities without marking them as laboratory samples and without being accompanied by a qualified explosives handler. (Modes 1, 2.)

New Exemption

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9306-N	DOT-E 9306	R.M.B. Products, Inc., Simi Valley, CA	49 CFR 173.268, 178.35, 178.35a, Part 173, Subpart F.	To authorize manufacture, marketing and sale of non-DOT specification inside packaging of teflon PFA plastic, similar to DOT-2SL, contained in a DOT Specification 6D steel overpack, for shipment of up to 70% nitric acid and those corrosive liquids authorized in a DOT-6D/2S or 2SL composite packaging. (Modes 1, 2.)
9315-N	DOT-E 9315	Chromasco, Toronto, Ontario	49 CFR 173.178	To authorize shipment of magnesium granules, coated particle size not less than 149 microns, in non-DOT specification collapsible, watertight, polyethylene lined, woven polypropylene bags in truckload lots only. (Mode 1.)

NEW EXEMPTION—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9326-N	DOT-E 9326	Carbonaire, Inc., Palmerton, PA	49 CFR 173.315	To authorize transport of carbon dioxide refrigerated liquid, in non-DOT specification cargo tank that has been retested in accordance with MC-331 cargo tank requirements. (Modes 1.)
9339-N	DOT-E 9339	ASP International Inc., Cleveland, TN	49 CFR 173.304, 175.3, 175.85, Parts 172.	To authorize transport of a nonflammable compressed gas in an inside nonrefillable, non-DOT specification aluminum cylinder. (Modes 1, 5.)
9340-N	DOT-E 9340	Pioneer Plastics & Services Co., Ltd., Brampton, Ont., Canada.	49 CFR 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, linear medium-density polyethylene portable tank enclosed in a steel frame, for shipment of corrosive liquids. (Modes 1, 2, 3.)
9356-N	DOT-E 8956	Clif Mock Company, Conroe, TX	49 CFR 173.119, 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3, 176.3.	To authorize manufacture, marking and sale of non-DOT specifications stainless steel cylinders, for transportation of flammable and nonflammable gases used for sampling purposes. (Modes 1, 3, 4.)
9367-N	DOT-E 9367	Marino, Technology/Champion International Corp., West Nyack, NY.	49 CFR 173.182, 173.217, 173.245b	To authorize manufacture, marking and sale of large non-DOT specification collapsible polyethylene-lined woven polypropylene bulk bags having a capacity of approximately 2000 pounds each, and top and bottom outlets, for shipment of corrosive solids and nitrates. (Modes 1, 2.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 8910-X	DOT-E 8910	Canbar Products Limited, Waterloo, Ontario, Canada.	49 CFR 178.19, 178.253, Part 173 Subpart F.	To authorize use of non-DOT specification rotationally molded, linear low density polyethylene portable tank enclosed in a steel cage, for shipment of corrosive liquids. (Modes 1, 2.)
EE 9390-N	DOT-E 9390	MarkAir, Inc., Anchorage, AK	49 CFR 172.101, 175.3	To authorize carriage of larger quantity of liquid petroleum gas than authorized by 49 CFR 172.101 in a DOT Specification 51 portable tank on cargo-only aircraft. (Mode 4.)
EE 9394-N	DOT-E 9394	Southern California Gas Company, Los Angeles, CA.	49 CFR 173.34(c)(1), 178.35-20	To authorize use of a limited number of existing cylinders with markings stamped in the sidewall, for transportation of compressed gases. (Mode 1.)

WITHDRAWALS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7768-X	Plasti-Drum Corporation, Lockport, IL	49 CFR 173.154, 173.217, 173.245b, 173.365, 178.19.	To authorize use of removable head polyethylene containers as an overpack for waste flammable liquids for disposal. (Modes 1, 2, 3.)

Denials

9320-N Request by Rohm and Haas Company, Philadelphia, PA to authorize shipment of dichlorosilane and trichlorosilane, classed a flammable liquid, and silicon tetrachloride, classed a corrosive material, in DOT Specification 5A steel drums denied February 14, 1985.

9321-N Request by The University of Iowa, Iowa City, IA to authorize shipment of various waste hazardous materials in non-DOT specification containers, overpacked in plywood boxes which are securely mounted to a transport vehicle denied February 13, 1985, as being unnecessary.

Issued in Washington, D.C., on March 7, 1985.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-6263 Filed 3-14-85; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: March 12, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB [listed by submitting bureau(s)], for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, N.W., Washington, D.C. 20220.

OMB Number: 1512-0163.

Form Number: ATF F 3068 (5210.5).

Type of Review: Reinstatement.

Title: Manufacturer of Tobacco Products Monthly Report.

Clearance Officer: Howard Hood, [202] 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 2228, Federal Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Joseph F. Maty,

Departmental Reports Management Office.

[FR Doc. 85-6205 Filed 3-14-85; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

English as a Foreign Language Institute; Rwanda and Togo

The Bureau of Educational and Cultural Affairs of the United States Information Agency plans to sponsor an *English as a Foreign Language (EFL) Summer Program* for *twenty-five* English teachers, inspectors, curriculum specialists, and supervisors from Rwanda and Togo. The six and one half week program will be conducted in July and August 1985, beginning either the week of July 8th or 15th. We are

requesting detailed proposals from several universities which have an acknowledged reputation in the field of EFL and special expertise in administering cross-cultural programs.

The summer program will be a component of the Agency's Teacher-Text-Technology (TTT) Initiative which is designed to support the efforts of African countries to upgrade secondary education and related teacher training in the fields of English, math, and science. During visits to the United States in 1984, Ministry of Education officials and educators from Rwanda and Togo were exposed to Federal, state, and local education programs at the secondary and college levels. During the summer of 1984, specialists from Rwanda and Togo participated in a five week EFL program. Based upon the visits and the 1984 EFL program, the Bureau of Educational and Cultural Affairs will sponsor a program with the following major components.

The summer program will have three distinct components. One component will be a university EFL Institute which will provide an intensive five week period of plenaries, presentations, workshops, and practicums designed to meet the special needs of twenty-five English teachers, supervisors, curriculum specialists, and inspectors. During the Institute, the host university will incorporate cultural features as well as academic sessions and practicums.

A second component will be a one week study tour and practicum at regional or metropolitan EFL laboratories or centers which focus on curriculum development and training. Programs should be scheduled at two sites. The Togolese participants should be scheduled at the Northwest Regional Educational Laboratory in Portland, Oregon. The Rwandans should be scheduled into a different laboratory or center during the same week. The programs at both sites should supplement the activities of the university Institute.

The third component will be a three to four day educational and cultural visit to New York City. During this period final debriefings will be held with USIA officers. If the EFL program is located in New York, the university must arrange a three or four day visit to another east coast City.

The grantee will be expected to handle *all* international and domestic travel and logistics, on-site university arrangements, coordination of activities at the EFL labotatories or centers, and the educational and cultural tour. The five week EFL Institute will orient the Rwandan and Togolese participants to university resources and those in the surrounding community. While the overall university Institute should address general EFL issues for all twenty-five participants, it must also design particular workshops and academic lectures to address *country specific needs.* The USIA is especially concerned that a relative balance be maintained among lectures, workshops, and practicums. Extensive lectures should not be the usual format.

Information from Rwanda indicates that participants will likely be ten English teachers and curriculum specialists. The EFL teachers and specialists teach classes and design curriculum for classes of 35 or more pupils. Their students are usually 15 to 20 years old; English teaching begins in the first year of secondary education and continues up to six years; most participants have B.A. degrees; and participants have been educated in Rwanda although they have been exposed to non-Rwandan instructors at the secondary and university levels.

Information from Togo indicates that the fifteen participants will likely be English "junior secondary and senior secondary" teachers, inspectors, and teacher trainers or supervisors. The participants have either an M.A. or a B.A. (plus a diploma in TEFL); some have received training from non-Togolese sources in Togo such as the local USIA branch or the British Council Technical Assistance Program. Some have had training in Great Britain, Canada, and English speaking African countries. Regular classes may have forty or more pupils; and over 100 teachers may be involved in one EFL training workship. Upon their return to Togo, some inspectors and teacher trainers will design an intensive program for teacher training to cover the entire country. The inspectors and supervisors spend approximately one-half the time with school inspection and training; upon their return, about one-quarter time will be devoted to administration and the remaining portion with teacher training. Inspections for individual teachers occur once every two to five years with the schools receiving the results two to four weeks later.

For both groups of participants, appropriate plenary and joint academic seminars and workships should be undertaken on topics such as communication, psycholinguistic understanding, microteaching, and traditional and comtemporary audiovisual equipment and material for EFL. Language enhancement and practical classroom training are particular needs of the Rwandans. Administration and supervision, evaluation, and teacher training are special needs for the Togolese. Our experience indicates that participants will be among the best teachers in their respective countries. It is important for the grantee to assume a fair level of sophistication. The substantive content and pedagogical methods should be blended with ample time for interaction with American students, faculty, administrators, and the local community to develop and enhance linguistic skills and experience English as a living language. In this context, the host university should discuss plans for continually incorporating cultural components in the EFL Institute—educational tours, home visits, sports, civic events, and sightseeing.

Throughout the entire EFL program African participants should have diverse opportunities to develop their linguistic skills; have extensive opportunities to interact with various American minority and ethnic groups in their local milieux; discuss civic affairs with state and local officials; and tour state and national historical and cultural sites.

If your university decides to submit a proposal, it should provide a detailed plan in response to the above needs. Insofar as possible, outstanding professionals from other universities, including those representing minority groups, should be involved. The professionals may be in either linquistics applied to EFL or aspects of American culture. The proposal must clearly demonstrate quality management capabilities for the orientation, university EFL Institute, the EFL laboratories and centers, and the educational and cultural tour. The EFL specialists may wish to work with their university Office of International Programs on some administrative components. At least one escort should be at each laboratory or center site; and three escorts (which may include the director of the overall EFL program) should assist the group in New York. The overall quality and effectiveness of the program hinges upon good administrative and managerial capabilities to enhance positive interactions between African educators and Americans.

The program should include a two to three day orientation to the USA and the university community. Some specific areas to address in the overall EFL program are:

(1) Developing and evaluating standard and flexible curriculum materials and texts;

(2) Providing creative instruction to enhance a set curriculum designed to prepare students for standard examinations;

(3) Designing pedagogical training to develop skills in classroom teaching and management—including current TEFL methodology;

(4) Designing, administering, and evaluating diagnostic tests;

(5) Arranging teacher training and supervisory sessions to handle individual student and small group needs in classes with forty or more students;

(6) Presenting language enhancement sessions to improve the participants' language skills: pronunciation, syntax, and reading;

(7) Visiting on-going EFL or ESL classes in local education or community centers which present African participants the opportunity to practice EFL skills;

(8) Developing curriculum material at the university Institute and the regional or metropolitan EFL laboratories and centers; and

(9) Designing and conducting workshops to train EFL teachers.

Two special areas of consideration for Rwandan teachers and curriculum development specialists are:

(1) Participating in language enhancement activities in a variety of formal and informal settings; and

(2) Practicing classroom teaching.

Three areas of special consideration for Togolese inspectors and supervisors are:

(1) Conducting observation and evaluation sessions for classroom teachers;

(2) Organizing and conducting training sessions for supervisors, particularly through workshops and other practicums; and

(3) Observing foreign language classes in American public or private schools.

A panel of senior USIA officers experienced in EFL, the exchange of international educators, and African affairs will evaluate the proposals based on the above general considerations and the following specific criteria:

(1) Clear evidence of the ability to deliver a substantive academic and pedagogical EFL program;

(2) Demonstrated high quality EFL programs—experience with Francophone Africa is desirable;

(3) Evidence of strong on-site administrative and managerial capabilities for international visitors with specific discussion of how managerial and logistical arrangements will be undertaken;

(4) A quality evaluation at the conclusion of the university EFL Institute and after the overall program;

(5) The experience of professionals and staff assigned to the institute;

(6) The ability to tap local and state resources for the university Institute, including the orientation and cultural component;

(7) Access to EFL professionals and programs from various universities;

(8) The ability to arrange a one week program at regional or metropolitan laboratories and centers in another geographical area;

(9) The design and plans for implementing the educational and cultural tour in New York; and

(10) Cost effectiveness.

The proposal should provide a *specific* and *detailed line item budget* for *both administrative* and *program costs*. The budget should elaborate and include each of the following:

(1) Tuition, salaries, benefits, or services (including support staff and escorts—escorts at same per diem rates as participants) for the entire EFL program plus overhead costs;

(2) Housing and board at the university, EFL laboratories and centers, and in New York (for example, faculty residences, graduate dormitories, home stays, and hotels);

(3) Transportation costs for *all* travel during the course of the overall EFL program (this includes international travel from Kigali, Rwanda and Lome, Togo and domestic travel);

(4) Miscellaneous costs such as daily maintenance allowance ($20 per participant), honoraria, film rental, certificates, cultural activities, support material, and supplemental book allowance ($200 per participant);

(5) University contributions or cost sharing and/or private sector contributions; and

(6) Indirect costs which should be held to a *minimum*.

For your guidance, our experiences with similar institutes would indicate that the cost for this Institute should probably not exceed $250,000. Based upon the final number of participants, some budget modifications may be necessary following the award.

Applicants should submit 10 copies each of a 500 word summary, a proposal not to exceed 15 typed double-spaced pages, and the detailed budget. The budget must be signed by the appropriate university budget and/or contract office.

Final proposals must be received by close of business on April 25, 1985 for funding in May 1985. Proposals should be submitted to: Dr. Ronald L. Trowbridge, Associate Director, Bureau of Educational and Cultural Affairs, United States Information Agency, 301 4th St., S.W., Washington, D.C. 20547.

We will provide the grantee with biographical and related information on participants prior to the beginning of the program so adjustments can be made to suit participants' needs. The program will likely begin July 8 or 15, 1985. If you have questions, please contact Dr. Beverly Lindsay, TTT Coordinator, Bureau of Educational and Cultural Affairs, USIA, 301 4th St., S.W., Washington, D.C. 20547; or you may call her at 202–485–7326–7326 or 485–8607.

Dated: March 12, 1985.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 85–6266 Filed 3–14–85; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 51
Friday, March 15, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Consumer Product Safety Commission	1, 2
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1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Wednesday, March 20, 1985.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, D.C.

STATUS: Partly Open—Partly Closed to the Public.

MATTERS TO BE CONSIDERED: ATV Proposal.

The staff will brief the Commission on action options on All Terrain Vehicles.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301—492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, (301) 492–6800.

Dated: March 13, 1985.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 85–6325 Filed 3–13–85; 1:28 p.m.]

BILLING CODE 6355–01–M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: See times below, Tuesday, March 19, 1985.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

8:30 a.m.

1. Commission Staff Briefing

The staff will brief the Commission on various matters.

Closed to the Public.

9:30 a.m.

2. Compliance Status Report

The staff will brief the Commission on various Compliance matters.

3. Enforcement Matter OS # 5043

The Commission will consider Enforcement Matter OS # 5043.

FOR A RECORD MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: (301) 492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, (301) 492–6800.

Dated: March 13, 1985.

[FR Doc. 85–6326 Filed 3–13–85; 1:28 p.m.]

BILLING CODE 6355–01–M

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, March 26, 1985, 9:30 AM (Eastern Time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street NW., Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations: A Briefing on the Sunshine Act Regulations
3. Proposed Compliance Manual § 701, Introduction to the Equal Pay Act
4. Proposed Compliance Manual § 801, Introduction to the Age Discrimination in Employment Act
5. Proposed Contracts for Expert Services in Connection With Court Cases
6. Annual Report on Coordination of Federal Equal Employment Opportunity Programs for Fiscal Year 1984
7. Discussion on Whether the Commission Should Issue Equal Pay Act Regulations

Closed

Litigation Authorization; General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Mattews, Executive Officer, Executive Secretariat at, (202) 634–6748.

This Notice Issued March 13, 1985.

Cynthia C. Matthbews,

Executive Officer

Dated: March 13, 1985.

[FR Doc. 85–6428 Filed 3–13–85; 3:50 pm]

BILLING CODE 6750–06–M

4

FEDERAL RESERVE SYSTEM

Federal Reserve System, Board of Governors.

TIME AND DATE: 10:00 a.m, Wednesday, March 20, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposals regarding extensions and revisions of Report of Transactions Accounts, Other Deposits and Vault Cash (FR 2900) and related reports (FR 2950/2951, 2910a, 2910q, 2000 and 2001).
2. Publication for comment on proposed amendments to Regulation J (Collection of Checks and Other Items and Transfers of Funds).
3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: March 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–6283 Filed 3–13–85; 10:48 am]

BILLING CODE 6210–01–M

5

FEDERAL RESERVE SYSTEM

Federal Reserve System Board of Governors

TIME AND DATE: Approximately 11:00 a.m., Wednesday, March 20, 1985, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of computers within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-6284 Filed 3-13-85; 10:48 am]

BILLING CODE 6210-01-M

6

NATIONAL SCIENCE BOARD

DATE AND TIME: March 22, 1985.

9:00 a.m.—Closed Session
9:30 a.m.—Open Session

PLACE: National Science Foundation Washington, D.C.

STATUS: Most of this meeting will be open to the public. Part of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE OPEN SESSION:

6. Minutes—February 1985 Meeting
7. Chairman's Report
8. Director's Report
9. International Science and Engineering
10. Other Business

MATTERS TO BE CONSIDERED AT THE CLOSED SESSION:

1. Minutes—February 1985 Meeting
2. NSB and NSF Staff Nominees
3. Vannevar Bush Award
4. Alan T. Waterman Award
5. Grants, Contracts, and Programs

Margaret L. Windus,

Executive Officer.

[FR Doc. 85-6357 Filed 3-13-85; 3:03 pm]

BILLING CODE 7555-01-M

7

TENNESSEE VALLEY AUTHORITY

Tennessee Valley Authority (Meeting No. 1346).

TIME AND DATE: 10:15 a.m. (e.s.t.), Tuesday, March 19, 1985.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Status: Open.

Agenda

Approval of minutes of meeting held on February 26, 1985.

Discussion Items

1. Review of the Land and Water 201 Program—regional soil and water conservation effort involving all agricultural agencies

Action Items

A—Budget and Financing

A1. Adoption of Supplemental Resolution Authorizing 1985 Series B Power Bonds.

A2. Resolution Authorizing the Chairman and Other Executive Officers to take Further Action Relating to Issuance and Sale of 1985 Series B Power Bonds.

B—Purchase Awards

B1. Negotiation 6-121043—Rebuild Four 500-kV Power Transformers from Two Winding Step Up Units to Three Winding Transmission Units for Use at Maury, Tennessee, Substation.

B2. Amendment to Contract 71C62-54114-2 with Babcock & Wilcox Company for the Nuclear Steam Supply Systems for Bellefonte Nuclear Plant Units 1 and 2.

C—Power Items

C1. Renewal Power Contract with City of Hickman, Kentucky.

D—Personnel Items

D1. Personal Services Contracts with Datronics, Inc. (New York, New York); Consultants & Designers Inc. (McLean, Virginia); American Computer Professionals, Inc. (Charlotte, North Carolina); and Genasys Corporation (Rockville, Maryland) for Computer Systems Services. Requested by the Office of Corporate Services.

D2. Contract with Coopers & Lybrand, Philadelphia, Pennsylvania, for Professional Accounting Services. Requested by the Comptroller.

E—Real Property Transactions

E1. Grant of Permanent Easement to Seward B. Norris for the Construction of a Restaurant, Shopping Area, and Associated Parking Facilities, Affecting Approximately 5.8 acres of Melton Hill Reservoir Land in Anderson County, Tennessee—Tract No. XMHR-48CDE.

E2. Proposed Abandonment of Easement Rights Affecting Approximately 0.83 Acre of Chatuge Reservoir Land in Clay County, North Carolina—Tract No. CHR-92F.

F—Unclassified

F1. Supplement to Interagency Agreement with the Federal Emergency Management Agency to Provide Additional Funding to TVA for the Inclusion of 10 Additional Communities in the Evaluation of the Effectiveness of Floodplain Management Programs.

F2. Revised TVA Code Relating to Flood Control an Flood Damage Reduction.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, (202) 245-0101.

Dated: March 12, 1985.

W.F. Willis,

General Manager.

[FR Doc. 85-6316 Filed 3-13-85; 12:16 pm]

BILLING CODE 8120-01-M

federal register

Friday
March 15, 1985

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations. Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations. Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

California: CA84–5022	Oct. 5, 1984.
Idaho:	
ID85–5013	Mar. 1, 1985.
ID85–5014	Mar. 1, 1985.
Illinois: IL85–5008	Feb. 8, 1985.
Kentucky:	
KY84[1007	Mar. 16, 1984.
KY84–1011	Mar. 23, 1984.
KY84–1003	Jan. 9, 1984.
KY94–1006	Mar. 16, 1984.
KY84–1010	Mar. 30, 1984.
KY84–1009	Mar. 23, 1984.
Minnesota: MN85–5006	Feb. 1, 1985.
New York:	
NY81–3039	June 12, 1981.
NY83–3027	July 22, 1983.
NY84–3044	Dec. 7, 1984.
Oklahoma: OK84–4049	Sept. 7, 1984.
Virginia: VA82–3033	Dec. 3, 1982.
Wisconsin:	
WI84–5038	Oct. 19, 1984.
WI84–5029	Oct. 12, 1984.
WI84–5036	Oct. 19, 1984.
WI84–5034	Nov. 2, 1984.
WI84–5039	Oct. 19, 1984.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Colorado: CO83–5113(CO85–5015)	July 15, 1984.
Massachusetts:	
MA84–3010(MA85–3013)	Apr. 6, 1984.
MA84–3008(MA85–3014)	Mar. 30, 1984.
MA84–3007(MA85–3015)	Apr. 6, 1984.

Signed at Washington, D.C. this 8th day of March 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION NO. CA84-5022-MOD #5
(49 FR 39416-(10/5/84)

	Basic Hourly Rates	Fringe Benefits
Alameda, Alpine, Amador Counties, etc., California		
Change: "Footnote a," published on February 15, 1985, to read: "Footnote b."		
Add: Glaziers: Area 7	$20.95	$6.31
Definition of Area 7: Lake, Marin, Mendocino, San Francisco, San Mateo and Sonoma Counties		

DECISION NUMBER MN85-5006 - MOD. #3
(50 FR 483) - February 1, 1985)
Anoka, Benton, Carlton, Carver, Cook, Dakota, Hennepin, Itasca, Koochiching, Lake, Ramsey, St. Louis, Scott, Sherburne, Stearns, & Washington Counties, Minnesota

	Basic Hourly Rates	Fringe Benefits
Add: Painters: Area 1:		
Drywall Tapers	$17.01	$1.72
Sanders	12.76	1.72

DECISION NO. ID85-5013 - Mod#1
(50 FR 8567 - March 1, 1985)
Adams, Bannock, Bear Lake, Bingham, Blaine, Boise, Bonneville, Butte, Canas, Caribou, Cassia, Clark, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Idaho (South of the 46th Parallel), Jefferson, Jerome, Lemhi, Lincoln, Madison, Minidoka, Oneida, Owyhee, Payette, Power, Teton, Twin Falls, Valley, and Washington Counties, Idaho

	Basic Hourly Rates	Fringe Benefits
CHANGE: CARPENTERS: Area 1	$10.17	$1.03
PLUMBERS: Area 2	12.39	3.41
SHEET METAL WORKERS: Area 1	10.00	1.24

DECISION NO. ID85-5014 - Mod#1
(50 FR 8567 - March 1, 1985)
Ada and Canyon Counties, Idaho

	Basic Hourly Rates	Fringe Benefits
CHANGE: DRYWALL HANGERS & FINISHERS: Area 1: Finishers	$12.25	$1.68
PLUMBERS: Area 1	14.17	3.86
Area 2	14.05	3.49
SOFT FLOOR LAYERS: Area 1	10.94	
TRUCK DRIVERS: Area 1	9.69	
ROOFERS: Area 2	12.00	1.63

DECISION #KY84-1007-Mod#6
(49 FR 9999-March 16, 1984)
Hardin, Jefferson and Meade Cos., Kentucky

	Basic Hourly Rates	Fringe Benefits
CHANGE: POWER EQUIPMENT OPERATORS: CLASS A	14.92	2.75
CLASS B	12.18	2.75
CLASS C	11.41	2.75

DECISION #KY84-1011-Mod#3
(49 FR 11066-March 23, 1984)
Fayette and Franklin Cos., Kentucky

CHANGE: POWER EQUIPMENT OPERATORS: CLASS A	14.92	2.75
CLASS B	12.18	2.75
CLASS C	11.41	2.75

DECISION #KY84-1003-Mod#7
(49 FR 9057-January 9, 1984)
McCracken Co., Kentucky

CHANGE POWER EQUIPMENT OPERATORS: CLASS A	14.92	2.75
CLASS B	12.18	2.75
CLASS C	11.41	2.75

DECISION #KY84-1006-Mod#5
(49 FR 9997-March 16, 1984)
Warren Co., Kentucky

CHANGE: POWER EQUIPMENT OPERATORS: CLASS A	14.92	2.75
CLASS B	12.18	2.75
CLASS C	11.41	2.75

DECISION #KY84-1010-Mod#3
(49 FR 12888-March 30, 1984)
Fort Campbell (Christian County, Kentucky & Montgomery County, Tennessee)

	Basic Hourly Rates	Fringe Benefits
CHANGE: POWER EQUIPMENT OPERATORS: Kentucky portion: CLASS A	14.92	2.75
CLASS B	12.18	2.75
CLASS C	11.41	2.75

DECISION #KY84-1009-Mod#1
(49 FR 11065-March 23, 1984)
Boyd Co., Kentucky

CHANGE: ASBESTOS WORKERS	19.15	2.78
POWER EQUIPMENT OPERATORS: CLASS A	14.94	2.75
CLASS B	12.20	2.75
CLASS C	11.43	2.75

DECISION NO. IL85-5008 - Mod #1
(50 FR 5486 - February 8, 1985)
Adams, Bond, Boone, Brown, Bureau, Calhoun, Carroll, Cass, Clinton, DeKalb, Fulton, Greene Hancock, Henderson, Henry, Jersey, JoDaviess, Knox, LaSalle, Lee, Livingston, Logan, McDonough, McLean, Macoupin, Marshall, Mason, Menard, Mercer Monroe, Montgomery, Morgan, Ogle Pike, Putnam, Randolph, Rock Island, Schuyler, Scott, Stark, Stephenson, Warren, Washington, Whiteside, Winnebago & Woodford Counties, Illinois

	Basic Hourly Rates	Fringe Benefits
ADD: AREA DESCRIPTIONS: Carpenters: Area 17: JoDaviess County Electricians: Area 8: Rock Island and Whiteside Counties		
CHANGE: BRICKLAYERS; CAULKERS; CLEANERS & STONEMASONS: Area 6	$17.22	$1.88

DECISION NO. NY81-3039 - MOD. #12
(46 FR 31189 - June 12, 1981)
MONROE COUNTY, NEW YORK

CHANGE:

Federal Register citation on MODS. 6 through 11, published on April 15, 1983, July 8, 1983, February 17, 1984, May 25, 1984, June 22, 1984 and December 21, 1984, respectively, to read: "(46 FR 31189 - June 12, 1981)"

	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Brush; Roller; Taper	13.77	4.01
Drywall wiper	13.97	4.01
Walloovering: Stilts	14.02	4.01
Swing scaffold, window brackets or other hanged scaffold, cherry pickers, mechanical lifts & mechanical aerial ladders on or in buildings or structures 2 or more stories in height; Structural steel or iron up to 40ft.	14.27	4.01
Spray painting, water hydroblasting & metal blasting; Mechanical taper	14.37	4.01
Structural steel and iron 40 ft. and over	14.47	4.01
Sandblasting (from ground or solid platform)	14.52	4.01
Sandblasting (from any hanging platform	14.77	4.01
Steeplejack:		
Brush & Roll	15.27	4.01
Spray painting	15.87	4.01
Sandblasting	16.27	4.01
Bridges:		
Brush & Roll	15.27	4.01
Spray	15.87	4.01
Sandblasting	16.27	4.01

DECISION NO. NY83-3027 - MOD. #7
(48 FR 33622 - July 22, 1983
NASSAU & SUFFOLK COUNTIES, NEW YORK

ADD:

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION	20.30	.25+ 38.5%
CHANGE:		
ELECTRICIANS:		
Building	20.30	.75+ 35.5%
Wiring of single or multiple family dwellings and apartments up to and including 2 stories	14.00	35.7%
Installation of television receivers, radio receivers, record players and associated apparatus and antenna and home appliances and closed circuit TV and multiple outlet distribution systems, sound and intercommunication systems and commercial electromechanical devices and appliances where such is not part of an electrical contract	11.075	a
PAINTERS		
Nassau County (Remainder of County) & Suffolk Co.		
Painters & Drywall finishers	16.98	5.28
Spraying: scaffold or rolling scaffold over 18 ft.		
Sandblasting: structural steel	20.24	5.28
Repaint of hospitals, schools and apartment houses	13.55	5.28

DECISION NO. NY84-3044 - MOD. #2
(49 FR 47964 - December 7, 1984)
ST. LAWRENCE, LEWIS & JEFFERSON COUNTIES, NEW YORK

CHANGE:

The heading on the modification published on March 1, 1985 to cite "NY84-3044" and to read "MOD. #1"

DECISION # OK84-4049
MOD. No. 6
(49 FR 35473 - September 7, 1984
Adair, Atoka, Bryan, Coal, Cherokee, Craig, Creek, Delaware, Haskell, Hughes, Leflore, Latimer, McIntosh, Mayes, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Pittsburg, Pushmataha, rogers, Tulsa, Sequoyah, Wagoner, and Washington Cos., Oklahoma

	Basic Hourly Rates	Fringe Benefits

CHANGE:

CLASSIFICATION DEFINITION

Carpenters, Millwrights and Piledrivermen:

Area IV

Tulsa, Rogers, Mayes, Creek, Craig, Delaware and that part of Osage County, South of Hwy. #20, including all of the town of Hominy and that part of Pawnee County east of State Highway #99.

DECISION NO. VA82-3033-MOD. #9
(47 FR 54744-December 3, 1982)
HENRICO COUNTY & THE INDEPENDENT CITY OF RICHMOND

	Basic Hourly Rates	Fringe Benefits

OMIT:

ELECTRICIANS:
ZONE I-within a 12 air mile radius of Staples Mills Road and Broad Street in the City of Richmond — 13.85 — 15%
ZONE II-remainder of city of Richmond and Henrico County — 14.60 — 15%

ADD:
ELECTRICIANS — 14.35 — 13%

DECISION NO. WI84-5038-
MOD. #2
(49 FR 41149
October 19, 1984)
Milwaukee, Ozaukee, Waukesha and Washington Counties

	Basic Hourly Rates	Fringe Benefits
OMIT:		
Forklift from Group 3 and Group 4 Power Equipment Operators		
ADD:		
Forklift to Group 5 Power Equipment Operators		
Plasterers Laborers	12.73	3.82
CHANGE:		
Bricklayers	15.63	3.75
Electricians	16.67	2.24+ 13⅛%
Ironworkers:		
Structural, Ornamental and Reinforcing	14.81	5.75
Roofers	14.35	3.44
Sheet Metal Workers	15.78	4.86
Residential	11.54	4.86
Laborers:		
Group 1	12.62	3.83
Group 2	12.73	3.83
Group 3	12.84	3.83
Group 4	12.93	3.83
Group 5	13.13	3.83
Group 6	13.23	3.83
Group 7	13.28	3.83
Group 8	13.48	3.83

DECISION NO. WI84-5029 -
MOD. #1
(49 FR 40151 -
October 12, 1984)
Barron, Dunn, Polk and St Croix Counties, Wisconsin

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos Workers	$18.32	$3.65
Bricklayers	15.35	2.09
Ironworkers:		
Structural, Ornamental and reinforcing	17.10	3.64
Plasterers	15.35	2.09

DECISION NUMBER WI-~~84~~5036-
MOD. No. 1
(49 FR 41147 -
October 19, 1984)
Juneau County, Wisconsin

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos Workers	$17.10	$2.88
Bricklayers	14.30	2.35
Carpenters:		
South of Hwy. 321 and East of County Trunk #80:		
Carpenters & Soft floor layers	13.61	2.21
Millwrights & Piledrivermen	14.01	2.21
Electricians	15.51	.90+ 10-1/8%
Glaziers	16.27	.93
Lathers	12.66	3.16
Sheet Metal Workers	14.48	2.00+ 3%
Tile Setters	14.05	2.35

DECISION NO. WI84-5039 -
MOD. #1
49 FR 41149 -
October 19, 1984
Racine County Wisconsin

	Basic Hourly Rates	Fringe Benefits
OMIT:		
Fork lift Operators from Group 3 and Group 4 Power Equipment Operators		
ADD:		
Fork lift Operators to Group 5, Power Equipment Operators		
CHANGE:		
Carpenters:		
(West of Highway #75		
Millwrights	16.29	2.51
Piledrivermen	15.74	2.51
Carpenters:		
(Remainder of County:)		
Carpenters & Soft Floor Layers	15.11	1.96
Millwrights	15.40	1.96
Piledrivermen	15.20	1.96
Cement Masons	13.32	1.95
Ironworkers	14.81	5.75

DECISION WI84-5034 -
MOD #2
(49 FR 44191 -
November 2, 1984)
Green and Rock Counties
Wisconsin

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Electricians	$15.92	5.87+ 13-1/8%
Glaziers:		
Northern 2/3 of Cos.	16.23	.93
Plumbers & Steamfitters	17.37	2.50
Tile Setters:		
Contract over $850,000	14.08	2.55
Contract $850,000 or less	10.78	2.55

SUPERSEDEAS DECISION

STATE: COLORADO

COUNTIES: Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, Eagle, Elbert, Gilpin, Grand, Jefferson, Lake, Larimer, Morgan, Park, Summit, and Weld

DECISION NUMBER CO85-5015

DATE: Date of Publication

Supersedes Decision No. CO83-5113 dated July 15, 1983, in 48 FR 32451

DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$10.75	$3.04
BOILERMAKERS	14.97	2.575
BRICKLAYERS: Stonemasons:		
Area 1	14.49	2.01
Area 2	14.35	2.00
Area 3	14.05	1.96
Area 4	12.29	2.00
Area 5	14.49	2.01
CARPENTERS:		
Adams, Arapahoe, Boulder, Denver and Jefferson Counties:		
Projects under $2,500,000	10.38	3.12
Projects $2,500,000 and over	12.63	3.12
Remaining Counties	10.38	3.12
CEMENT MASONS:		
Cement Masons	13.79	2.32
Working with composition materials and color	14.29	2.32
Working on scaffold, swing stage, or temporary platform over 25'	14.04	2.32
DRYWALL INSTALLERS	14.87	2.32
ELECTRICIANS:		
Elbert, Park Counties:		
Electrician, Technicians	16.12	2.31 +3%
Remaining Counties:		
Electrical work - total cost $150,000.00 or more:		
Electricians, Technicians	16.70	2.60 3+3/10%
Electricial work total cost $150,000.00 or less		
Electricians, Technicians	15.20	2.60+ 3-3/10%

	Basic Hourly Rates	Fringe Benefits
ELEVATOR CONSTRUCTORS		
Mechanics	$17.97	a+2.69
Helpers	12.58	a+2.69
Probationary Helpers	8.985	
GLAZIERS	13.89	b+1.52
IRONWORKERS:		
Structural, Ornamental, and Reinforcing	15.50	3.53
LABORERS:		
Zone 1:		
Group 1	5.20	.15
Group 2	8.65	2.04
Group 3	8.90	2.04
Zone 2:		
Group 1	5.20	.15
Group 2	7.65	2.04
Group 3	7.90	2.04
LATHERS	13.44	.01
MARBLE SETTERS:		
Area 1	13.31	1.55
Area 2	15.53	2.79
MILLWRIGHTS	14.66	2.39
PAINTERS:		
Area 1:		
Brush and Roll; Hardwood Finishers; Sandblast, Pot Tenders	12.19	1.88
Drywall Finishers (hand); Spray; Swing Stage and Chair; Sandblast (exterior); Hazardous Work; Paperhangers;	12.44	1.88
Drywall Finishers (tool); Sandblast (interior);	12.79	1.88
Steeplejack	14.11	1.88
Area 2:		
Brush and Roll; Hardwood Finishers; Sandblast, Pot Tenders	15.89	2.33
Drywall Finishers (hand)	16.14	2.33
Spray; Swing Stage and Chair; Sandblast (exterior); Hazardous work; Paperhanger;		
Drywall Finishers (tool)	16.49	2.33
Sandblast (interior);		
Steeplejack	17.81	2.33

DECISION NO. CO85-5015

Page 2

	Basic Hourly Rates	Fringe Benefits
PLASTERERS	$13.44	$ .01
PLUMBERS: Steamfitters:		
Area 1	12.90	3.60
Area 2	15.15	3.65
Area 3	17.27	3.13
ROOFERS	13.32	3.13
SHEET METAL WORKERS	16.03	3%+3.53
SOFT FLOOR LAYERS	13.14	3.23
SPRINKLER FITTERS	16.67	2.83
TERRAZZO WORKERS	15.53	2.79
TILE LAYERS:		
Area 1	13.31	1.55
Area 2	15.53	2.54
TILE, MARBLE AND TERRAZZO FINISHERS:		
Finishers	9.55	3.00
Floor Grinders	9.70	3.00
Base Grinders	10.25	3.00
POWER EQUIPMENT OPERATORS:		
(Other than for work in Tunnels, Shafts, and Raises):	ZONE 1	ZONE 2
Group 1	11.26	11.93
Group 2	11.61	12.28
Group 3	11.96	12.63
Group 4	12.11	12.78
Group 5	12.26	12.93
Group 6	13.41	13.08
(For work in Tunnels, Shafts, and Raises):		
Group 1	13.41	14.08
Group 2	13.76	14.43
Group 3	13.96	14.53
Group 4	14.11	14.78
Group 5	14.26	15.33
Group 6	14.66	15.33
Group 7	14.41	15.08
FRINGE BENEFITS: $3.20		

TRUCK DRIVERS:	Basic Hourly Rates ZONE 1	Fringe Benefits ZONE 2
Group 1	$12.41	$11.65
Group 2	13.01	11.78
Group 3	13.11	11.91
Group 4	13.21	12.03
Group 5	14.81	11.91
Group 6	14.86	11.98
Group 7	14.91	11.91
Group 8	14.96	12.16
Group 9	15.01	12.15
Group 10	15.06	12.22
Group 11	15.16	12.30
Group 12	15.21	12.41
Group 13	15.31	12.53
Group 14	15.46	12.73
Group 15	15.51	12.78
Group 16	15.61	12.90
Group 17	15.71	13.28
Group 18	15.81	13.16
Group 19	15.91	13.28
Group 20	16.11	13.54

FRINGE BENEFITS: $2.94

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental

FOOTNOTES:
a. Employer contributes 8% basic hourly rate for over 5 years' service and 6% basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Seven Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; and Christmas Day
b. 15 days Paid Vacation after 1600 hours

AREA DESCRIPTIONS

BRICKLAYERS: Stonemasons:
Area 1: Eagle County
Area 2: Boulder and Grand Counties
Area 3: Elbert, Lake and Park Counties
Area 4: Larimer County
Area 5: Remaining Counties

MARBLE SETTERS:
Area 1: Elbert, Lake, and Park Counties
Area 2: Remaining Counties

PAINTERS:
Area 1: Park County (southern half)
Area 2: Remaining Counties including northern half of Park County

PLUMBERS: Steamfitters:
Area 1: Southern portion of Douglas, Elbert, and Park Counties
Area 2: Boulder County
Area 3: Remaining Counties (including northern portions of Douglas, Elbert, and Park Counties)

Tile Layers:
Area 1: Elbert, Lake and Park Counties
Area 2: Remaining Counties

LABORERS:
LABORERS ZONE 1
Adams, Arapahoe, Boulder, Denver and Jefferson Counties.

Group 1: Final Cleanup Laborers
Group 2: General Laborers
Group 3: Mechanical, Air, Gas and Electric Power Tool Operator, Burners on Demolition, Gunnite Nozzlemen and Sand Blasters

LABORERS ZONE 2

Clear Creek, Douglas, Eagle, Elbert, Gilpin, Grand, Lake, Larimer, Morgan, Park, Summit and Weld Counties.

Group 1: Final Cleanup Laborers
Group 2: General Laborers
Group 3: Mechanical, Air, Gas and Electric Power Tool Operator; Burners on Demolition; Gunnite Nozzlemen; and Sand Blasters

A. Counties entirely within Zone 1:
Boulder, Denver, Douglas, Clear Creek, Gilpin, Jefferson, Larimer, Morgan, Weld
B. Counties entirely within Zone 2:
Grand, Lake, Park, Summit
C. Legal description of the portions of Adams, Arapahoe, Eagle and Elbert Coutnies which are included within Zone 1, as follows:
All of Adams, Arapahoe, Elbert Counties lying west of the Township line between R59W and R60W of the 6th Guide Meridian West; and all of Eagle County lying West of the Township line between R81W of the 10th Guide Meridian West
D. Legal description of the portions of Adams, Arapahoe, Eagle and Elbert Counties which are included within Zone 2, as follows:
All of Adams, Arapahoe, Elbert Counties lying East to of the Township line between R59 and R60W of the 6th Guide Meridian West, and all of Eagle County lying East of the Township line between R80W & R81W of the 9th Guide Meridian West

(Other than for work in Tunnels, shafts and Raises)

Group 1: Air Compressor; Asphalt Screed; Oiler; Brakeman; Drill Operator - smaller than Williams MF and similar; Tender to Heavy Duty Mechanic and/or Welder; Operators of 5 or more light Plants, Welding Machines, Generators, single unit conveyor; Pumps: Vacuum Well Point System; Tractor, under 70 HP with or without attachments; Grade Checker; Compressors, 360 C.F.M. or less

Group 2: Conveyor, handling building materials; Ditch Witch and similar Trenching Machine; Fireman or Tank Heater, road; Forklift; Haulage Motor Man; Pugmill; Portable Screening Plant with or without a Spray Bar; Screening Plants, with Classifier; Self-propelled Roller, rubber-tired under 5 tons

Group 3: Asphalt Plant; Backfiller, Bituminous Spreader or Laydown Machine; Cableway Signalman; Caisson Drill: Williams MF, similar and larger; C.M.I. and similar; Concrete Batching Plants; Concrete Finish Machine: Concrete Gang Saws on concrete paving; Concrete Mixer, less than 1 yd.: Concrete Placement Pumps, under 8 inches: Distributors, Bituminous Surfaces; Drill, Diamond and Core; Drill Rigs, Rotary, Churn, or Cable Tool; Elevating Graders, Equipment Lubricating and Service Engineer; Engineer Fireman; Grout Machine: Gunnite Machine: Hoist, 1 drum: Hydraulic Backhoes, wheel mounted under 3/4 yd: Loader, Barber Green, etc.; Loader up to and including 6 cu. yds.; Machine Doctor: Mechanic; Motor Grader/Blade, rough; Road Stabilization Machine: Rollers, self-propelled, all types over 5 tons; Sandblasting Machine: single unit portable Crusher, with or without Washer; Tie Tamper, wheel mounted; tractor, 70 HP and over with or without attachments; Trenching Machine Operator; Welder; Winch on Truck

Group 4: Cable Operated Crane, Truck Mounted; Cable Operated Power Shovels, Draglines, Clamshells, and Backhoes, 5 cu. yds. and under; Concrete Mixer over 1 cu. yd.: Concrete Paver 34E or similar; Concrete Placement Pumps, 8 inches and over; Crane, 50 tons and under; Hoist, 2 drums; Hydraulic Backhoe, 3/4 yd. and over; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer Mobile; Motor Grader/Blade, Finish; Multiple unit portable Crusher, with or without Washer; Piledriver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck mounted Hydraulic Crane

POWER EQUIPMENT OPERATORS (CONT'D)

Group 5: Cable Operated Power Shovels, Draglines, Camshells and Backhoes over 5 cu. yds.; Crane over 50 tons carrier mounted; Derrick; Electric rail type Tower Crane; Hoist, 3 drum or more; Quad Nine and similar push unit; Scrapers single bowl including pups 40 cu. yds. and tandem bowls and over

Group 6: Cableway; Climbing Tower Crane; Crawler or truck mounted Tower Crane; Wheel Excavator, Tower Crane, truck type

(For work in Tunnels, Shafts and Raises)

Group 1: Brakeman

Group 2: Motorman

Group 3: Compressor (900 CFM and over) serving Tunnels, Shafts and Raises

Group 4: Air Tractors; Grout Machine; Gunnite Machine; Jumbo Form; Mechanic; Welder

Group 5: Concrete Placement Pumps, 8" and over discharge; Mucking Machines and Front End Loaders, underground, Slusher; Mine Hoist Operator

Group 6: Mole

Group 7: Mechanic - Welder, heavy duty

TRUCK DRIVERS

TRUCK DRIVERS ZONE DEFINITIONS

COUNTIES WITHIN ZONE 1:

Eagle, Grand, Lake, Morgan, Park, and Summit

COUNTIES WITHIN ZONE 2:

Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, Elbert, Gilpin, Jefferson, Larimer and Weld.

TRUCK DRIVERS

Group 1: Pick Up, Truck Driver Tenders, Dumpmen, Washers, Greasemen

Group 2: Dump Truck Driver to including 6 cu. yds, Sweeper Truck, Flat rack single axle, and manhaul, shuttle truck or bus
Liquid and bulk tankers - single axle

Group 3: Flat rack tandem axle
Battery men, mechanics tenders

TRUCK DRIVERS (CONT'D)

Group 4: Fork Lift Driver

Group 5: Dump Truck Driver over 6 cu. yds., to and including 14 cu. yds.

Group 6: Straddle Truck Driver, lumber carrier, Liquid and bulk tankers-tandem axle

Group 7: Truck Drivers-fuel truck, grease truck, combination fuel and grease

Group 8: Cement Mixer- agitator truck to and including 10 cu. yds.,
Distributor truck driver
Liquid and bulk tankers - semi or combination

Group 9: Multi purpose truck-specialty and hoisting

Group 10: Dump truck driver over 14 cu. yds., to and including 29 cu. yds.
Highboy, lowboy, floats, semi
Cab operated distributor truck driver - semi
Liquid and bulk tankers - Euclid - Electric or similar
Truck Driver dumptor type, Youngbuggy, Jumbo and similar type equipment

Group 11: Truck Driver, snow plow

Group 12: Cement Mixer - agitator truck over 10 cu. yds, to and including 15 cu. yds.

Group 13: Dump Truck Driver over 29 cu. yds., to and including 30 cu. yds.

Group 14: Cement Mixer - agitator truck over 15 cu. yds.

Group 15: Tire man
Dump Truck Driver over 39 cu. yds., to and including 54 cu. yds.

Group 16: Mechanic

Group 17: Dump Truck Driver over 54 cy. yds., to and including 79 cu. yds.

Group 18: Heavy duty diesel mechanic, body men, welders or combination men

Group 19: Dump Truck Driver over 79 cu. yds., to and including 104 cu. yds.

Group 20: Dump Truck Driver over 104 cu. yds.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii))

STATE: MASSACHUSETTS

COUNTIES: ESSEX, SUFFOLK, MIDDLESEX, NORFOLK, BRISTOL, PLYMOUTH, BARNSTABLE, DUKES, NANTUCKET

DECISION NUMBER: MA85-3013

DATE: DATE OF PUBLICATION

Supersedes Decision No. MA84-3010 dated, April 6, 1984, in 49 FR 13809.

DESCRIPTION OF WORK: Building Projects (including Residential), Heavy and Highway Project, and Marine Projects.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS		
Area 1	18.56	4.33
Area 2	17.63	4.13
BOILERMAKERS	18.93	3.765
BRICKLAYERS; CEMENT MASONS (except in areas 2,3,4,5,7&8); PLASTERERS; STONE MASONS; POINTERS; CAULKERS and CLEANERS:		
Areas 1, 2, &3	18.76	3.87
Area 4		
Except Plasterers	19.16	3.47
Plasterers	18.48	4.15
Area 5, 6, 7	19.26	3.37
Area 8 & 9	20.11	2.52
Area 10	18.21	4.42
Area 11	18.15	4.05
Area 12	18.21	4.42
Area 13	19.16	3.47
Area 14	18.41	4.22
CARPENTERS		
Area 1	16.56	4.57
Area 2	16.06	5.07
Area 3	16.51	4.57
Area 4	17.86	4.70
Area 5	15.73	3.47
Area 5A	15.43	3.47
CEMENT MASONS:		
Areas 1, 6, 9, 10, 11, 12, 13, 14, 15, & 16 - See BRICKLAYERS		
Area 2	19.25	3.53
Areas 3, 4 & 5	20.00	2.85
Areas 7 & 8:		
Projects $1 million and over	16.55	2.77
Projects $250,000 to $1 million	14.90	2.77
Projects less than $250,000	13.24	2.77
Residential	13.24	2.77
ELECTRICIANS:		
Area 1:		
Contracts over $40,000	17.35	3.15+3%
Contracts under $40,000	15.25	3.15+3%
Area 2	16.77	3.70+3%
Residential (Single Family Housing)	12.00	2.50+3%
Area 3	17.25	4.55+3%
Residential (Single Family Housing)	12.00	2.45+ 3%
Area 4	18.05	2.12+ 3%
Residential (Single Family Housing)	11.75	2.27+ 3%
Area 5	16.50	2.26+ 11%
Residential (Single Family Housing)	12.00	1.81+ 3%
Area 6	19.95	5.18+ 3%
Residential (Single Family Housing)	10.50	2.68+ 10%
Area 7	17.35	30%
Area 8	16.00	4.75+ 3½%
Residential	11.00	3.75+ 3½%
Area 9	15.75	2.60+ 18.5%
Residential	10.00	1.00+ 10%
Area 10	16.65	28%+ .10
Residential	1.85	21%
Area 11	19.23	17.5%
Residential (Single Family Housing)	10.50	2.60+ 3%
ELEVATOR CONSTRUCTORS	19.31	3.00+ a+b
ELEVATOR CONSTRUCTORS HELPERS	13.52	3.00+ a+b
ELEVATOR CONSTRUCTORS' PROBATIONARY HELPERS	9.655	
GLAZIERS:		
Area 1	18.45	3.65
Area 2	15.88	2.53

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	Basic Hourly Rates	Fringe Benefits
IRONWORKERS:		
Area 1	15.64	6.81
Area 2	18.75	5.25
Area 3	18.75	4.25
Area 4	16.03	5.70
LABORERS (BUILDING):		
Class I	13.95	3.00
Class II	14.20	3.00
Class III	14.45	3.00
Class IV	14.70	3.00
Class V	14.95	3.00
LABORERS (WRECKING):		
Area 1:		
Class I	10.70	3.00
Class II	13.80	3.00
Class III	13.90	3.00
Class IV	14.05	3.00
Class V	14.30	3.00
Class VI	14.55	3.00
Area 2	13.95	3.05
LABORERS (HEAVY & HIGHWAY):		
Class I	13.95	3.05
Class II	14.20	3.05
Class III	14.70	3.05
Class IV	14.95	3.05
Tunnels, caisson and Cylinder Work in Compressed Air:		
Class V-A	19.78	3.05
Class V-B	21.28	3.05
Class V-C	21.45	3.05
Class V-D	22.42	3.05
Class V-E	22.21	3.05
Free Air Operation:		
Shield driven and liner plate in free air:		
Class VI-A	15.25	3.05
Class VI-B	14.40	3.05
Cleaning concrete and caulking tunnel (both new and existing):		
Class VI-C	14.40	3.05
Class VI-D	14.725	3.05
Rock shaft, concrete lining of same and tunnel in free air:		
Class VI-E	14.15	3.05
Class VI-F	14.30	3.05
Class VI-G	14.40	3.05
Class VI-H	15.25	3.05

	Basic Hourly Rates	Fringe Benefits
LABORERS (OPEN AIR CAISSONS, UNDERPINNING AND TEST BORING INDUSTRIES):		
Open Air Caisson, Underpinning Work and Boring Crew:		
Class I-A	13.95	3.05
Class I-B	14.70	3.05
Test Boring:		
Class II-A	13.95	3.05
Class II-B	14.82	3.05
LATHERS	11.90	1.58
LINE CONSTRUCTION:		
Lineman	18.05	2.70+c +4.375%
Equipment Operators & Cablemen	15.34	2.70+c +4.375%
Driver Groundmen	14.44	2.70+c +4.375%
Groundman	9.93	2.70+c +4.375%
MARBLE, TILE & TERRAZZO WORKERS	18.45	3.45
MILLWRIGHTS	17.10	4.85
PAINTERS:		
Sign Painters (Statewide)	13.44	2.05
Area 1:		
New Construction:		
Brush; Taper	18.20	5.27
Spray; Sandblast	19.20	5.27
Steel	21.32	5.27
Repaint:		
Brush; Taper	16.38	5.27
Spray; Sandblast	17.38	5.27
Steel	21.32	5.27
Area 2:		
Brush; Taper; Paperhanging	17.81	5.28
Sandblasting; swing stage	18.81	5.28
Spray; Steel	19.31	5.28
Repaint up to 3 stories (including basements and sub-basements) and new housing 2 stories and less:		
Brush; Taper; Paperhanging	15.14	5.28
Sandblasting; Swing stage	15.99	5.28
Spray; Sandblast Steel	16.41	5.28

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	Basic Hourly Rates	Fringe Benefits
Area 3:		
Brush	$16.08	3.55
Wall Coverings	16.33	3.55
Spray; Sandblast	17.08	3.55
Steel	18.20	3.55
Repaint	13.67	3.55
Residential	12.06	3.55
Area 4:		
New Construction:		
Brush	15.05	3.23
Spray; Sandblasting	16.05	3.23
Steel	16.30	3.23
Repaint & Residential:		
Brush	14.50	3.23
Spray; Sandblasting	15.50	3.23
Steel	15.75	3.23
Area 5:		
Brush; Roller	14.13	2.81
Taping	14.23	2.81
Paperhangers:		
Vinyl Installers	14.63	2.81
Spray	15.63	2.81
Sandblast; chipping; hammer; power brush	15.86	2.81
Steel	17.38	2.81
Steel spray	18.88	2.81
Steel: sandblast; chipping; hammers; power tools	19.13	2.81
Interior repaint (except power plants):		
Brush; Roller	12.72	2.81
Sprayers	14.07	2.81
Sandblasters; chipping; hammers; power tools	14.27	2.81
PILEDRIVERMEN	17.90	3.20
PLASTERERS-SEE BRICKLAYERS, ETC.		
PLASTERERS TENDERS	14.20	3.00
PLUMBERS, PIPEFITTERS & STEAMFITTERS:		
Area 1:		
Plumbers	18.98	5.75
Repairs: Replacing defective fixtures, appliances and defective piping, valves or fittings serving same (which means the fixtures and appliances in a single family house, one apartment, or not more than one group of fixtures in same building that tie into the same soil or waste stack. Replacing of piping limited to piping in the same immediate area of items served by the piping.)	18.03	5.75
Pipefitters	19.67	5.13
Area 2	18.75	4.42
Area 3	18.32	3.15
Area 4		
Plumbers & pipefitters	19.37	2.34
Area 5		
Plumbers & Pipefitters	12.91	1.85+ 4%
Area 6		
Plumbers & pipefitters	17.45	6.13
Area 7		
Plumbers & pipefitters	19.93	3.47
Area 8:		
Plumbers & steamfitters	16.64	3.45
Nursing homes and rest homes that do not exceed 4 stories; Repair or renovation in an existing building without change in exterior dimension by way of addition thereto;	12.83	3.13
Residential	12.83	3.13
POWER EQUIPMENT OPERATORS (BUILDING, HEAVY & HIGHWAY, & MARINE CONSTRUCTION)		
Class I	18.91	3.68+e
Hourly premium for boom lengths including jib:		
Over 150 ft. + .64		
Over 185 ft. + 1.14		
Over 210 ft. + 1.59		
Over 250 ft. + 2.43		
Over 295 ft. + 3.75		
Class II	18.79	3.68+e
Class III	15.79	3.68+e
Class IV	17.22	3.68+e
Class V	13.98	3.68+e
Class VI	14.85	3.68+e
ROOFERS:		
Roofers	17.76	4.82
Slaters	18.01	4.82
Hot pitch	18.76	4.82

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	Basic Hourly Rates	Fringe Benefits
SHEET METAL WORKERS		
Area 1	20.10	5.29
Residential	14.07	3.79
Area 2	14.38	3.65+ 3%
SPRINKLER FITTERS		
Area 1	18.30	2.41
Area 2	16.37	3.23
TILE & MARBLE FINISHERS	16.16	2.85
TERRAZZO FINISHERS	19.25	1.50
TRUCK DRIVERS (BUILDING, HEAVY & HIGHWAY CONSTRUCTION):		
Class I	12.86	3.00+ d+e
Class II	13.03	3.00+ d+e
Class III	13.10	3.00+ d+e
Class IV	13.22	3.00+ d+e
Class V	13.32	3.00+ d+e
Class VI	13.61	3.00+ d+e
Class VII	13.90	3.00+ d+e

WELDERS - Receive rate prescribed for craft to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5 (a)(1)(ii)).

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FOOTNOTES:

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day F-Christmas Day.

a. Paid holidays: A through F and the day after Thanksgiving Day.

b. Employer contributes 5% of basic hourly rate for 5 years or more of service or 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.

c. Paid Holidays: A through F and Bunker Hill Day, provided the employee has been employed 5 working days prior to any one of the listed holidays.

d. Paid holidays: A through F, Washington's Birthday, Patriots Day, Columbus Day and Veterans Day.

e. Paid Vacation: 4 months to 1 year - ½ day's pay per month; 1-5 years - 1 week; 5-10 years - 2 weeks; 10 years or more - 3 weeks. Employee must have received pay for 120 days during last year of employment.

AREA DESCRIPTIONS

ASBESTOS WORKERS:

AREA 1: ESSEX; SUFFOLK; MIDDLESEX; BARNSTABLE (except Barnstable, Borne, Falmouth, Mashpee, Sandwich).

AREA 2: NORFOLK (Bellingham, Franklin, Plainville, Wrenham); BRISTOL (except Easton); PLYMOUTH (Lakeville, Mattapoisett, Middleboro, Rochester, Wareham); BARNSTABLE (Barnstable, Borno, Falmouth, Mashpee, Sandwich); DUKES: NATUCKET.

BRICKLAYERS; CEMENT MASONS; PLASTERERS; STONE MASONS; POINTER, CAULKERS AND CLEANERS:

AREA 1: ESSEX (Beverly, Manchester, Gloucester, Rockport, Wenham, Hamilton, Essex, Ipswich, Rowley, Newbury, Newburyport, Lynn, Lynnfield, Wakefield, Saugus, Swampscott, Nahant, Marblehead, Salem, Peabody, Danvers, Middleton, Topsfield).

AREA 2: ESSEX (Amesbury, Andover, Boxford, Georgetown, Groveland, Haverhill, Lawrence, Merrimac, Methuen, North Andover, Salisbury, West Newbury); MIDDLESEX (Reading, North Reading).

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BRICKLAYERS; CEMENT MASONS; PLASTERERS; STONE MASONS; POINTERS, CAULKERS AND CLEANERS: (CONTINUED)

AREA 3: MIDDLESEX (Wakefield).

AREA 4: SUFFOLK; MIDOLESEX (Arlington, Cambridge, Everett, Malden, Medford, Melrose, Somerville); NORFOLK (Brookline, Milton).

AREA 5: MIDDLESEX (Stoneham, Winchester, Woburn).

AREA 6: MIDDLESEX (Belmont, Concord, Lexington, Lincoln, sudbury, Waltham, Watertown, Wayland, Weston).

AREA 7: MIDDLESEX (Burlington).

AREA 8: MIDDLESEX (Acton, Bedford, Billerica, Carlisle, Chemsford, Dracut, Dunstable, Littleton, Lowell, Tewksbury, Tyngsboro, Westford, Wilmington).

AREA 9: MIDDLESEX (Ashby, Ayer, Boxboro, Ft. Devens, Groton, North Acton, Pepperell, South Acton, Townsend, Shirley, West Acton).

AREA 10: MIDDLESEX (Ashland, Framingham, Holliston, Hopkinton, Hudson, Maynard, Natick, Sherborn, Stow); NORFOLK (Medfield, Medway, Millis).

AREA 11: MIDDLESEX (Newton only); NORFOLK (Dover, Needham, Wellesley).

AREA 12 NORFOLK (Bellingham, Canton, Dedham, Foxboro, Franklin, Norfolk Norwood, Plainville, Sharon, Walpole, Westwood, Wrentham); PLYMOUTH (Lakeville only); BRISTOL (Attleboro, North Attleboro, Mansfield, Raynham, Taunton, Berkley, Norton, Dighton, Rehoboth, Seekonk).

AREA 13: NORFOLK (Avon, Braintree, Cohasset, Holbrook, Quincy, Randolph, Soughton, Weymouth); PLYMOUTH (Abington, Bridgewater, Brockton, Carver, Duxbury, East Bridgewater, Halifax, Hanover, Hanson, Hingham, Hull Kingston, Marshfield, Middleboro, Norwell, Pembroke, Plymouth, Rockland, Scituate, West Bridgewater, Whitman).

AREA 14: BRISTOL (Acushnet, Darmouth, Fairheven, Fall River, Freetown, New Bedford, Somerset, Swansea, Wesport); PLYMOUTH (Marion, Mattapoiserr, Rochester, Wareham); BARNSTABLE , DUKES ,NANTUCKET.

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CARPENTERS:

AREA 1: ESSEX (Ipswich, Essex, Gloucester, Rockport, Topsfield, Hamilton, Wendham, Middleton, Danvers, Beverly, Manchester, Peabody, Salem, Marblehead).

AREA 2: ESSEX (Amesbury, Boxford, Georgetown, Groveland, Haverhill, Merrimack, Newbury, Newburyport, Rowley, Salisbury, West Newbury, Andover, Lawrence, Methuen, North Andover, West Andover); MIDDLESEX (Acton, Billerica, Boxboro, Carlisle, Chlemsford, Dracut, Dunstable, Littleton, Lowell, Tewksbury, Tyngsboro, Westford).

AREA 3: ESSEX (Lynn, Lynnfield, Wahant, Saugus, Swampscoot); MIDDLESEX (Remainder of County); NORFOLK (except Brookline, Deham, Milton, Avon, Randolph, Holbrook, Staughton); PLYMOUTH (Duxbury, Hanover, Hingham, Hull, Marsfield, Norwell, Pembroke, Rockwell, Scituate); BRISTOL (Attleborough, North Attleborough).

AREA 4: SUFFOLK; MIDDLESEX (Belmont, Cambridge, Everett, Malden, Medford, Somerville); NORFOLK (Brookline, Deham, Miston).

AREA 5: NORFOLK (Avon Holbrook, Randolph, Stoughton); BRISTOL (Easton, North Easton, South Easton); PLYMOUTH (Remainder of County) BARNSTABLE.

AREA 5A: PLYMOUTH (Lakeville, Marion, Mattapoisett, Middleboro, Rochester); BRISTOL (Remainder of County) DUKES & NANTUCKET.

ELECTRICIANS:

AREA 1: ESSEX (Salem, Marblehead, Peabody, Danvers, Beverly, Hamilton, Wenham, Topsfield, Ipswich, Essex, Manchester, Gloucester, Rockport).

AREA 2: ESSEX (Andover, Lawrence, Methuen, North Andover, Salisbury, West Newbury, Amesbury, Boxford, Georgetown, Groveland, Haverhill, Merrimac, Newbury, Newburyport, Rowley).

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ELECTRICIANS: CONT'D

AREA 3: MIDDLESEX (Bedford, Billerica, Boxboro, Burlington, Carlisle, Chelmsford, Dracut, Dunstable, Littleton, Lowell, Tewksbury, Tyngsboro, Westford, Wilmington).

AREA 4: MIDDLESEX (Asby, Ayer, Ft. Devens, Groton, Pepperell, Shirley, Townsend).

AREA 5: MIDDLESEX (Ashland, Hopkinton, Hudson, Marlboro, Stow).

AREA 6: ESSEX (Lynn, Lynnfield, Wahant, Saugus, Swampscott); SUFFOLK; MIDDLESEX (Remainder of County); NORFOLK (except Avon, Holbrook, Randolph, Stoughton, Plainville); PLYMOUTH (Hingham, Hull).

AREA 7: NORFOLK (Plainville); BRISTOL (Attleboro, North Attleboro, Seekonk).

AREA 8: BRISTOL (Mansfield, Norton, Taunton, Raynham, Rehoboth, Dighton, Berkley); PLYMOUTH (Lakeville, Middleboro).

AREA 9: BRISTOL (Fall River, Freetown, Somerset, Sawnsea, Westport).

AREA 10: BRISTOL (Acushnet, Dartmouth, Fairhaven, New Bedford, North Dartmouth, South Dartmouth); PLYMOUTH (Mattapoisett, Rochester, Wareham); BARNSTABLE; DUKES; NANTUCKET.

AREA 11: NORFOLK (Avon, Holbrook, Randolph, Stoughton); BRISTOL (Easton); PLYMOUTH (Remainder of County).

GLAZIERS:

AREA 1: ESSEX; SUFFOLK; MIDDLESEX; NORFOLK; PLYMOUTH (except Carver, Lakeville, Middleboro, Marion, Mattapoisett, Rochester, Wareham); DUKES; NANTUCKET.

AREA 2: BRISTOL; PLYMOUTH (Carver, Lakeville, Middleboro, Marion, Mattapoisett, Rochester, Wareham); BARNSTABLE.

IRONWORKERS:

AREA 1: ESSEX (Lawrence, Methuen, North Andover, Andover, Haverhill, Boxford, Danvers, Georgetown, West Newbury, Merrimac, Rowley, Topsfield, Gloucester, Newburyport, Salisbury, Amesbury, Hamilton, Ipswich, Newbury, Wenham, Essex, Rockport); MIDDLESEX (Groveland, Lowell, Tewksbuty, Dracut, Billerica, Chlemsford, Dunstable, Tyngsboro, North Reading, Wilmington, Middleton, Acton, Groton, Pepperell, Carlisle, Littleton, Townsend, Westford).

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IRONWORKERS: CONT'D

AREA 2: ESSEX (Beverly, Swampscott, Lynn, Lynnfield, Manchester, Marblehead, Nahant, Salem, Saugus, Swampscott); SUFFOLK; MIDDLESEX (Arlington, Bedford, Belmont, Burlington, Cambridge, Concord, Everett, Framingham, Lexington, Lincoln, Malden, Maynard, Medford, Melrose, Natick, Newton, Reading, Sherborn, Somerville, Stoneham, Sudbury, Wakefield, Waltham, Watertown, Wayland, Weston, Winchester, Woburn); NORFOLK (Avon, Braintree, Brookline, Canton, Cohassett, Dedham, Dover, Foxboro, Holbrook, Medfield, Millis, Milton, Needham, Norfolk, Norwood, Quincy, Randolph, Sharon, Stoughton, Walpole, Wellesley, Westwood, Weymouth); BRISTOL (Easton); PLYMOUTH (Abington, Bridgewater, Brockton, Duxbury, East Bridgewater, Halifax, Hanover, Hanson, Hingham, Hull, Kingston, Marshfield, Norwell, Pembroke, Plymouth, Plympton, Rockland, Scituate, West Bridgewater, Whitman).

AREA 3: MIDDLESEX (Ashby, Shirley, Ayer, Boxboro, Stow, Hudson, Marlborough, Ashland, Hopkinton, Holliston, Medway).

AREA 4: NORFOLK (Billingham, Franklin, Plainville, Wrentham); BRISTOL (Acushnet, Attleboro, Berkley, Dartmouth, Dighton, Fairhaven, Fall River, Freetown, Mansfield, New Bedford, North Attleboro, Norton, Raynham, Rehoboth, Seekonk, Somerset, Swansea, Taunton, Westport); PLYMOUTH (Lakeville, Marion, Mattapoisett, Middleboro, Rochester, Wareham); BARNSTABLE; DUKES; NANTUCKET.

LABORERS (WRECKING):

AREA 1: ESSEX; SUSSEX; MIDDLESEX; NORFOLK; PLYMOUTH.

AREA 2: BRISTOL; BARNSTABLE; DUKES; NANTUCKET.

PAINTERS:

AREA 1: ESSEX: SUFFOLK; MIDDLESEX (Arlington, Belmont, Cambridge, Everett, Malden, Medford, Melrose, North Reading, Reading, Somerville, Stoneham, Wakefield, Winchester, Woburn); NORFOLK (Except Dover, Medfield, Medway, Millis, Needham, Wellesley); BRISTOL (except Acushnet, Dartmouth, Fairhaven, New Bedford); PLYMOUTH (except Marion, Mattapoisett, Rochester, Wareham).

AREA 2: MIDDLESEX (Bedford, Billerica, Burlington, Carlisle, Chlemsford, Dracut, Dunstable, Littleton, Lowell, Tewksbury, Tyngsboro, Westford, Wilmington).

AREA 3: MIDDLESEX (Ashby, Townsend, Pepperell, Groton, Shirley, Ayer).

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PAINTERS: CONT'D

AREA 4: MIDDLESEX (Boxboro, Acton, Concord, Stow, Manyard, Lincoln, Lexington, Hudson, Sudbury, Wayland, Weston, Waltham, Watertown, Newton, Marlboro, Framingham, Natick, Ashland, Sherborn, Hopkinton, Holliston); NORFOLK (Dover, Medfield, Medway, Millis, Needham, Wellesley).

AREA 5: BRISTOL (Acushnet, Dartmouth, Fairhaven, New Bedford); PLYMOUTH (Marion, Mattapoisett, Rochester, Wareham); BARNSTABLE; DUKES; NANTUCKET.

PLUMBERS, PIPEFITTERS & STEAMFITTERS:

AREA 1: ESSEX (Lynn, Lynnfield, Nanhant, Saugus, Swampscott); SUFFOLK; MIDDLESEX (Arlington, Cambridge, Everett, Malden, Medford, Melrose, Newton, North Reading, Reading, Somerville, Stoneham, Wakefield, Watertown, Winchester, Woburn); NORFOLK (Bellingham, Braintree, Brookline, Canton, Cohasset, Dedham, Foxboro, Franklin, Millis, Milton, Needham, Norfolk, Norwood, Plainville, Quincy, Sharon, Walpole, Westwood, Weymouth, Wrenthram); PLYMOUTH (Hingham, Hull, Scituate).

AREA 2: ESSEX (Methuen, Lawrence, Groveland, Georgetown, Andover, North Andover).

AREA 3: ESSEX (Remainder of County).

AREA 4: MIDDLESEX (Acton, Ayer - except West of Greenville branch of the Boston and Maine Railroad, Bedford, Billerica, Boxboro, Burlington, Carlisle, Chelmsford, Dracut, Dunstable, Littleton, Lowell, Pepperell, Tewksbury, Tyngsboro, Westford, Wilmington).

AREA 5: MIDDLESEX (Ashby, Townsend, Groton, Shirley, Ft. Devens, Ayer - West of Greenville branch of the Boston and Maine Railroad).

AREA 6: MIDDLESEX (Ashland, Belmont, Concord, Framington, Holliston, Hopkington, Lexington, Lincoln, Marlboro, Maynard, Natick, Sherborn, Sudbury, Stow, Waltham, Wayland, Weston, Hudson); NORFOLK (Medway, Medfield, Dover, Wellesley).

AREA 7: NORFOLK (Avon, Holbrook, Randolph, Stoughton); BRISTOL (Attleboro, Berkley, Dighton, Easton, Mansfield, North Attleboro, Norton, Raynham, Rehoboth, Taunton; PLYMOUTH (except Marion, Mattapoisett, Rochester, Wareham).

AREA 8: BRISTOL (Acushnet, Dartmouth, Fairhaven, Fall River, Freetown, New Bedford, Somerset, Swansea, Westport, Seekonk); PLYMOUTH (Marion, Mattapoisett, Rochester, Wareham); BARNSTABLE; DUKES; NANTUCKET.

SHEET METAL WORKERS:

AREA 1: ESSEX; SUFFOLK; MIDDLESEX; NORFOLK; BRISTOL (Attleboro, North Attleboro, Mansfield, Easton, Norton, Taunton, Raynham Berkley); PLYMOUTH (except Marion, Mattapoisett, Rochester, Wareham).

AREA 2: BRISTOL (Acushnet, Dartmouth, Dighton, Fairhaven, Fall River, Freetown, Rehoboth, Seekonk, Somerset, Swansea, Westport, New Bedford); PLYMOUTH (Marion, Mattapoisett, Rochester, Wareham); BARNSTABLE; DUKES; NANTUCKET.

SPRINKLER FITTERS:

AREA 1: ESSEX; SUFFOLK; MIDDLESEX (except Ashby, Townsend, and portions of Pepperell and Shirley beyond 35 mile radius from Boston City Hall); NORFOLK; BRISTOL (portion within 35 mile radius of Boston City Hall); PLYMOUTH (portion within 35 mile radius of Boston City Hall).

AREA 2: MIDDLESEX (Ashby, Townsend, portions of Pepperell and Shirley beyond 35 mile radius of Boston City Hall); NORFOLK (beyond 35 mile radius of Boston City Hall); PLYMOUTH (beyond 35 mile radius of Boston City Hall); BARNSTABLE; DUKES; NANTUCKET.

LABORERS (BUILDING):

CLASS I: Laborers, carpenters tenders.
CLASS II: Jackhammer operator, pavement breakers, asphalt rakers, carbide core drilling machine, chain saw operator, pipelayer, barco type jumping tampers, laser beam, concrete pump, mason tenders, motorized mixers, ride-on motorized buggy, fence and beam rail erectors.
CLASS III: Air track, block pavers, rammers, curb setter.
CLASS IV: Blasters, powdermen.
CLASS V: Pre-cast floor and roof plank erectors.

LABORERS (WRECKING - AREA 1):

CLASS I: Yardmen laborers.
CLASS II: Yardmen burners, sawyers.
CLASS III: Wrecking laborers.
CLASS IV: Adreman.
CLASS V: Burners, Jackhammers.
CLASS VI: Asbestos removers, small front loaders on tracks and bobcat operators.

LABORERS (HEAVY & HIGHWAY):

CLASS I: Laborers, carpenter tenders, cement finisher tenders.
CLASS II: Asphalt rakers, fence and guard rail erector, laser beam operator, mason tender, pipelayer, pneumatic drill operator, pneumatic drill operator, pneumatic tool operator, wagon drill operator.
CLASS III: Air track operator, block pavers, rammer, curb setters.
CLASS IV: Blasters, powdermen.

Tunnels, Caisson and Cylinder Work in Compressed Air:

CLASS V-A: Powder watchmen, top men on iron bolt, change house attendant.
CLASS V-B: Brakeman, trackman, groutman, laborerer, outside lock tender, lock tender, guage tenders.
CLASS V-C: Motormen.
CLASS V-D: Blaster.
CLASS V-E: Mucking machine operator.

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LABORERS (HEAVY & HIGHWAY):

Free Air Operation:

Shield driven and liner plate tunnel in free air:
CLASS VI-A: Miners, miner welder, conveyor operator, motormen, mucking machine operator, nozzle men, grout men, shaft and tunnel steel and rodmen, shield and erector arm operators.
CLASS VI-B: Brakemen, trackmen.
Cleaning concrete and caulking tunnel (both new and existing):
CLASS VI-C: Concrete workers, strippers and form movers (wood & steel).
Rock shaft, concrete lining of same and tunnel in free air:
CLASS VI-E: Change house attendants.
CLASS VI-F: Laborers, topside.
CLASS VI-G: Brakeman, trackman, tunnel laborers, shaft laborers.
CLASS VI-H: Miner, cage tender, bellman.

LABORERS (OPEN AIR CAISSONS, UNDERPINNING AND TEST BORING INDUSTRIES)
Includes installation and performance of caissons of all types, underpinning, soil test borings, core borings, diamond drill soundings, wash borings, auger borings, shot drilling, grouting (cement, chemical, etc.), installation of earth and rock anchors, tiebacks, ground water observation wells and monitoring wells, installation of instrumentation, drilling and installation of horizontal drains, lagging (carrying of bands and settling bands in place), installation and extraction of grout pipes, pit work, hand excavation and labor required in pile driving and related work, welding of caissons not driven by pile driving equipment, pouring of concrete piles and caissons of all types, cutting-off concrete piles and clean-up:

Open Air Caisson, Underpinning Work and Boring Crew:

CLASS I-A: Laborers, top man.
CLASS I-B: Bottom man.

Test Boring:

CLASS II-A: Laborer.
CLASS II-B: Driller.

POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION):

CLASS I: Cranes, shovels, truck cranes, cherry pickers, dragline, trench hoes, backhoes, three drum machines, derricks, pile drivers, elevator towers, hoists, gradalls, shovel dozers, front end loaders, fork lifts, augers, bor-

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POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION): CONT'D

CLASS I: (CONT'D) ing machines, rotary drills, post hole hammers, post hole diggers, pumpcrete machines, asphalt plant (on site), concrete batching and/or mixing plant (on site), crusher plant (on site), paving concrete mixers, timber jacks.
CLASS II: Sonic or vibratory hammers, graders, tandem scrapers, concrete pumps, bulldozers, tractors, york rakes, mulching machines, portable steam boiler, portable steam generators, rollers, spreaders, tampers (self propelled or tractor drawn), asphalt pavers, mechanics maintenance, paving screed machines, stationary steam boilers, paving concrete finishing machines, cal trucks, ballast regulators, switch tampers, rail anchor machinery, tire trucks (when operated by the employer on the job site).
CLASS III: Pumps (1-3 grouped), compressors, welding machines (1-3 grouped), generators, concrete vibrators, lighting plants, heaters (power driven 1-5), well-point systems (operating and installing), syphones-pullsometers, concrete mixers, values controlling permanent plant air or steam, conveyors, Jackson type tampers, single diaphragm pump, lighting plants.
CLASS IV: Assistant engineers (firemen).
CLASS V: Assistant engineers (other than truck cranes and gradalls).
CLASS VI: Assistant engineers (on truck cranes and gradalls).

POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY CONSTRUCTION):

CLASS I: Power shovels, cranes, truck cranes, derricks, pile drivers, trenching machines, mechanical hoist pavement breakers, cement concrete pavers, draglines, hoisting engines, three drum machines, pumpcrete machines, uke loaders, shovel dozers, front end loaders, mucking machines, shaft hoists, steam engines, backhoe, gradalls, cable ways fork lifts, cherry pickers, boring machines, rotary drills, post hole hammers, port hole diggers, asphalt plant on job site, concrete batching and/or mixing plant on job site, crusher plant on job site, paving concrete mixers, timber jacks.
CLASS II: Sonic or vibratory hammers, graders; scrapers; tandem scrapers, bulldozer, tractors, mechanic maintenance, York rakes, mulching machines paving screed machines, stationary steam boilers, paving concrete finishing machines, grout pumps, potable steam boilers, portable steam generators, rollers, spreaders, asphalt pavers, locomotives or machines used in place thereof, tampers, self propelled or tractor drawn, cal tracks, ballast regulators, rail anchor machines, switch tampers.
CLASS III: Pump (1-3 grouped), compressors; welding machine (1-3 grouped), generators, lighting plants, heaters (power driven) (1-5), syphons-plulsometers, concrete mixers, valves controlling permanent plant air steam, conveyors, wellpoint system (operating and installing).

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POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY CONSTRUCTION): CONT'D

CLASS IV: Assistant engineers (firemen).
CLASS V: Assistant engineers (other than truck cranes and gradalls).
CLASS VI: Assistant engineers (on truck cranes and gradalls).

POWER EQUIPMENT OPERATOR (MARINE CONSTRUCTION):

CLASS I: Shovels, Cranes, Truck Cranes, Cherry Pickers, Derricks, Pile Drivers two or more Drum Machines, Lighterns, Derrick Boats, Trenching, Mechanic Hoists Pavement Breakers, Cement Concrete Paveers, Draglines, Hoisting Engines, Pumpcrete Machines, Elevating Graders, Shovels, Dozers, Frontend Loaders, Backhoe, Gradalls, Cable Way, Boring Machines, Rotary Drills, Post Hole Hammer, Post Hole Diggers, Fork Lifts, Timber Jacks, Asphalt Plant (on site), Concrete Batching &/or Mixing Plant (on site), Crusher Plant, (on site), Paving Concrete Mixers.
CLASS II: Portable Steam Boilers, Portable Steam Generators, Sonic or Vibratory Hammer, Graders, Scrapers, Tandem Scrapers, Concrete Pumps, Bulldozers, Tractors, York Rakes, Mulching Machines, Rollers, Spreader, Tamper self-propelled or Tractor Drawn, Asphalt Pavers, Concrete Mixers with side Loaders, Mechanics - Maintenance, Cal Truck, Ballast, Regulator, Switch Tampers, Rail Anchor Machines, Tire Trucks.
CLASS III: Pumps, Compressors, Welding Machines, Heaters (Power Driven), Valves controlling Permanent Plan Air or Steam, Well Point Systems, Augers - Powered by Independence Engines & Attached to Pile Drivers, Hydraulic Saws, Generators, Lighting Plants, Syphons-Pulsometers, Concrete Mixers, Conveyors.
CLASS IV: Assistant engineers (firemen).
CLASS V: Assistant engineers (other than truck cranes and gradalls).
CLASS VI: Assistant engineers (on truck cranes and gradalls).

TRUCK DRIVERS (HEAVY & HIGHWAY CONSTRUCTION):

CLASS I: Station wagons, panel trucks and pickup trucks.
CLASS II: Two axle equipment; helpers on low bed when assigned at the discretion of the employer, warehousemen, forklift operators.
CLASS III: Three axle equipment and tiremen.
CLASS IV: Four and five axle equipment.
CLASS V: Specialized earth moving equipment under 35 tons other than conventional type trucks, low bed, vachual, mechanics, paving restoration equipment, mechanics.
CLASS VI: Specialized earth moving equipment over 35 tons.
CLASS VII: Trailers for earth moving equipment (double hookup).

SUPERSEDEAS DECISION

STATE: Massachusetts
COUNTY: Worcester
DECISION NUMBER: MA85-3014
DATE: Date of Publication
Supersedes Decision Number MA84-3008 dated March 30, 1984, in 49 FR 12889.
DESCRIPTION OF WORK: Building construction Projects (including Residential Projects) Heavy and Highway construction Projects

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	17.98	2.92 +a
BOILERMAKERS	18.93	3.765
BRICKLAYERS; CEMENT MASONS; PLASTERERS; and STONEMASONS:		
Area 1	14.75	4.54
Area 2	17.46	4.42
Area 3	18.06	2.52
Area 4	17.40	3.90
CARPENTERS; LATHERS; SOFT FLOOR LAYERS:		
Area 1	15.10	4.07
Area 2	16.56	4.57
ELECTRICIANS:		
Area 1	16.33	3.78+ 3%
Residential (Single Family Housing)	12.00	2.03+ 3%
Area 2	16.40	4.30+ 3%
Residential (Single Family Housing)	11.75	2.23+ 3%
Area 3	16.50	2.20+ 11%
Residential (Single Family Housing)	12.00	1.84+ 3%
ELEVATOR CONSTRUCTORS:		
Mechanics	16.71	3.00+ b+c
Helpers	11.70	3.00+ b+c
Probationary Helpers	8.355	
GLAZIERS:		
Area 1	14.12	3.32
Area 2	18.45	3.65
IRONWORKERS	18.75	4.25
LABORERS:		
BUILDING CONSTRUCTION:		
Group 1	13.95	3.00
Group 2	14.20	3.00
Group 3	14.45	3.00
Group 4	14.70	3.00
Group 5	14.95	3.00

	Basic Hourly Rates	Fringe Benefits
WRECKING:		
Group 1	10.70	3.00
Group 2	13.80	3.00
Group 3	13.90	3.00
Group 4	14.05	3.00
Group 5	14.30	3.00
Group 6	14.55	3.00
HEAVY & HIGHWAY CONSTRUCTION:		
Group 1	13.95	3.05
Group 2	14.20	3.05
Group 3	14.70	3.05
Group 4	14.95	3.05
Tunnels, Caisson and Cylinder Work in Compressed Air:		
Group 5-A	19.78	3.05
Group 5-B	21.28	3.05
Group 5-C	21.45	3.05
Group 5-D	22.42	3.05
Group 5-E	22.21	3.05
Free Air Operation: Shield driven and Liner Plate in Free Air:		
Group 6-A	15.25	3.05
Group 6-B	14.40	3.05
Cleaning Concrete and Caulking Tunnel (both new and existing):		
Group 6-C	14.40	3.05
Group 6-D	14.725	3.05
Rock shaft, Concrete Lining of same and Tunnel in Free Air:		
Group 6-E	14.15	3.05
Group 6-F	14.30	3.05
Group 6-G	14.40	3.05
Group 6-H	15.25	3.05
OPEN AIR CAISSON, UNDERPINNING and TEST BORING INDUSTRIES:		
Open Air Caisson, Underpinning Work and Boring Crew:		
Group 1-A	13.95	3.05
Group 1-B	14.70	3.05
Test Boring:		
Group 2-A	13.95	3.05
Group 2-B	14.82	3.05

DECISION NO. MA85-3014	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION		
Line	18.00	2.60+ 4.375% +d
Equipment Operator	15.30	2.60 4.375% +d
Driver Groundman	14.40	2.60+ 4.375% +d
Groundman	9.90	2.60+ 4.375% +d
MARBLE, TILE and TERRAZZO WORKERS:		
Area 1	18.45	3.45
MARBLE & TILE FINISHERS	16.81	2.85
TERRAZZO FINISHERS	19.25	1.50
MILLWRIGHTS	17.10	4.85
PAINTERS:		
Areas 1, 2, and 3:		
Sign Painters, Erectors and Fabricators	13.00	2.05
Area 1:		
Brush and Tapers	14.16	3.29
Spray and Sandblasting	17.43	3.29
Swing and chair work and steel riding under 40 feet	14.35	3.29
Swing and chair work and steel riding 40 feet and over	14.66	3.29
Area 2:		
New Commercial Work		
Brush	15.05	3.23
Spray and Sandblast	16.05	3.23
Steel	16.30	3.23
Repaints & Residential:		
Brush	14.50	3.23
Spray and Sandblast	15.50	3.23
Steel	15.75	3.23
Area 3:		
Brush	16.08	3.55
Wall Coverings	16.33	3.55
Spray, Sandblasting	18.08	3.55
Steel	18.08	3.55
Repaint	13.67	3.55
Residential	12.06	3.55
PILEDRIVERMEN	17.90	3.20
PLUMBERS and PIPEFITTERS:		
Area 1	17.54	6.13
Area 2	15.08	3.70
Area 3		
Plumbers	17.63	3.55
Pipefitters	15.98	2.45

	Basic Hourly Rates	Fringe Benefits
ROOFERS	17.76	4.82
SHEET METAL WORKERS:		
Area 1	20.10	5.29
Residential	14.07	3.79
Area 2	15.66	5.09
SPRINKLER FITTERS	16.37	3.23
POWER EQUIPMENT OPERATORS		
Area 1:		
BUILDING CONSTRUCTION:		
Group 1	16.33	2.60+e
Group 2	16.13	2.60+e
Group 3	15.93	2.60+e
Group 3-A	15.56	2.60+e
Group 4	14.03	2.60+e
Group 5	13.33	2.60+e
Group 6	12.18	2.60+e
Group 7	17.08	2.60+e
Group 8	13.36	2.60+e
Group 9	16.91	2.60+e
Group 10	16.83	2.60+e
Group 11	17.33	2.60+e
HEAVY and HIGHWAY CONSTRUCTION:		
Group 1	16.33	2.60+f
Group 2	16.13	2.60+f
Group 3	15.93	2.60+f
Group 3-A	15.56	2.60+f
Group 4	14.03	2.60+f
Group 5	13.33	2.60+f
Group 6	12.18	2.60+f
Group 7	17.08	2.60+f
Group 8	13.36	2.60+f
Group 9	16.91	2.60+f
Group 10	16.83	2.60+f
Group 11	17.33	2.60+f
Area 2:		
BUILDING, HEAVY, HIGHWAY and MARINE CONSTRUCTION:		
Group 1:	18.91	3.68+f
Hourly Premium for boom lengths including jib:		
Over 150 ft.:	+ 0.64	
Over 185 ft.:	+ 1.14	
Over 210 ft.:	+ 1.59	
Over 250 ft.:	+ 2.41	
Over 295 ft.:	+ 3.35	
Group 2	18.79	3.68+f
Group 3	15.79	3.68+f
Group 4	17.22	3.68+f
Group 5	13.98	3.68+f
Group 6	14.85	3.68+f

DECISION NO. MA85-3014	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS:		
Group 1	12.86	3.00+ g+h
Group 2	13.03	3.00+ g+h
Group 3	13.10	3.00+ g+h
Group 4	13.22	3.00+ g+h
Group 5	13.32	3.00+ g+h
Group 6	13.61	3.00+ g+h
Group 7	13.90	3.00+ g+h

Basic Hourly Rates	Fringe Benefits

WELDERS: Receive rate for craft to which welding is incidental

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day;
D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:
a. Paid Holiday: Day before Christmas, providing the employee works the three days prior to the holiday
b. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit
c. Paid Holidays: A through F and the Friday after Thanksgiving
d. Paid Holidays: A through F and Bunker Hill Day, provided the employee has worked 10 days prior to the holiday
e. Paid Holidays: A through F, Washington's Birthday and Veterans Day
f. Paid Holidays: A through F, Washington's Birthday, Columbus Day and Veterans Day
g. Paid Holidays: A through F, Washington's Birthday, Patriots Day, Columbus Day and Veterans Day
h. Paid Vacation: 4 months to 1 year - half (1/2) day's pay per month; 1-5 years - 1 week; 5-10 years - 2 weeks; 10 years or more - 3 weeks. Employee must have received pay for 120 days during last year of employment

AREA DESCRIPTIONS

BRICKLAYERS; CEMENT MASONS; PLASTERERS; and STONEMASONS:
Area 1: Warren Township
Area 2: Hopedale, Milford, and Southboro Townships
Area 3: Ashburnham, Athol, Fitchburg, Gardner, Harvard, Hubbardston, Lancaster, Leominster, Lunenburg, Petersham, Phillipston, Princeton, Royalston, Sterling, Templeton, Westminister and Winchendon Townships
Area 4: Remainder of County

CARPENTERS, LATHERS, and SOFT FLOOR LAYERS:
Area 1: Hardwick, Warren, and West Brookfield, Gilbertville Twps.
Area 2: Remainder of County

ELECTRICIANS:
Area 1: Warren, and West Warren Townships
Area 2: Ashburnham, Athol, Bolton, Fitchburg, Gardner, Harvard, Hubbardston, Lancaster, Leominster, Lunenburg, Phillipston, Westminister, and Winchendon Townships
Area 3: Remainder of County

GLAZIERS:
Area 1: Warren, and West Warren Townships
Area 2: Remainder of County

AREA DESCRIPTIONS (Cont'd)

MARBLE, TILE, and TERRAZZO WORKERS:
Area 1: Ashburnham, Fitchburg, Harvard, Lancaster, Leominster, Lunenburg, Princeton, Sterling, and Westminister Townships

PAINTERS:
Area 1: Warren and West Warren Townships
Area 2: Hopedale, Mendon, Milford, Southboro, Upton, and Westboro Townships
Area 3: Remainder of County

PLUMBERS and PIPEFITTERS:
Area 1: Hopedale and Southboro
Area 2: Ashburnham, Athol, Bolton, Fitchburg, Gardner, Harvard, Hubbardston, Lancaster, Leominster, Lunenburg, Petersham, Phillipston, Royalston, Templeton, Westminister, and Windendon Townships
Area 3: Remainder of County

SHEET METAL WORKERS:
Area 1: Harvard and Lancaster Townships
Area 2: Remainder of County

POWER EQUIPMENT OPERATORS:
Area 1: Royalston, Phillipston, Athol, Petersham, Hardwick, New Braintree, Brookfield, East Brookfield, North Brookfield, Oakham, Barre, Templeton, Winchendon, Strubridge, West Brookfield, and Warren Townships
Area 2: Remainder of County

LABORERS CLASSIFICATONS
BUILDING CONSTRUCTION

Group 1: Laborers, Carpenters Tenders

Group 2: Jackhammer Operator; Pavement Breakers; Asphalt Rakers; Carbide Core Drilling Machine; Chain Saw Operator; Pipelayer; Barco Type Jumping Tampers; Laser Beam; Concrete Pump; Mason Tenders; Motorized Mixers; Ride-on Motorized Buggy; Fence and Beam Rail Erectors

Group 3: Air Track; Block Pavers; Rammers; Curb Setter

Group 4: Blasters, Powdermen

Group 5: Pre-cast Floor and Roof Plank Erectors

WRECKING CONSTRUCTION

Group 1: Yardmen Laborers

Group 2: Yardmen Burners; Sawyers

Group 3: Wrecking Laborers

Group 4: Adzeman

LABORERS CLASSIFICATIONS (Cont'd)

WRECKING CONSTRUCTION (Cont'd)

Group 5: Burners; Jackhammers

Group 6: Asbestos Removers; Small Front Loaders on Tracks and Bobcat Operators

HEAVY and HIGHWAY CONSTRUCTION

Group 1: Laborers; Carpenter Tenders; Cement Finisher Tenders

Group 2: Asphalt Rakers; Fence and Guard Rail Erector; Laser Beam Operator; Mason Tender; Pipelayer; Pneumatic Drill Operator; Pneumatic Tool Operator, Wagon Drill Operator

Group 3: Air Track Operator; Block Pavers; Rammer; Curb Setters

Group 4: Blasters, Powdermen

Tunnel, Caisson and Cylinder Work in Compressed Air:

Group 5-A: Powder Watchmen; Top Men on Iron Bolt; Change House Attendant

Group 5-B: Brakeman; Trackman; Groutman; Laborer; Outside Lock Tender; Lock Tender; Guage Tenders

Group 5-C: Motormen

Group 5-D: Blaster

Group 5-E: Mucking Machine Operator

Free Air Operation - Shield Driven and Liner Plate Tunnel in Free Air:

Group 6-A: Miners; Miner Welder; Conveyor Operator; Motormen; Mucking Machine Operator; Nozzle Men; Grout Men; Shaft and Tunnel Steel and Rodmen; Shield and Erector Arm Operators

Group 6-B: Brakemen, Trackmen

Cleaning Concrete and Caulking Tunnel (both new and existing):

Group 6-C: Concrete Workers; Strippers and Form Movers (wood and steel)

Rock Shaft, Concrete Lining of Same and Tunnel in Free Air:

Group 6-E: Change House Attendants

Group 6-F: Laborers; Topside

Group 6-G: Brakeman; Trackman; Tunnel Laborers; Shaft Laborees

Group 6-H: Miner, Cage Tender; Bellman

LABORERS CLASSIFICATIONS (Cont'd)

OPEN AIR CAISSONS, UNDERPINNING And TEST BORING INDUSTRIES:

Includes installation and performance of caissons of all types, underpinning, soil test borings, core borings, diamond drill soundings, wash borings, auger borings, shot drilling, grouting (cement, chemical, etc.), installation of earth and rock anchors, tiebacks, ground water observation wells and monitoring wells, installation of instrumentation, drilling and installation of horizontal drains, lagging (carrying of bands and settling bands in place), installation and extraction of grout pipes, pit work, hand excavation and labor required in piledriving and related work, welding of caissons not driven by pile driving equipment, pouring of concrete piles and caissons of all types, cutting-off concrete piles and clean-up:

Air Air Caisson, Underpinning Work and Boring Crew:

Group 1-A: Laborers; Top Man

Group 1-B: Bottom Man

Test Boring:

Group 2-A: Laborers

Group 2-B: Driller

POWER EQUIPMENT OPERATORS CLASSIFICATIONS
AREA 1

BUILDING CONSTRUCTION

Group 1: Shovels; Cranes (including all Tower, Climbing and Bridge Cranes, as used in Building Construction); Hydraulic Cranes, 10 ton capacity or over; Draglines; Derricks; Elevators with Chicago Boom; Backhoes; Gradalls; Elevating Graders; Pile Driving Rigs; Concrete Road Pavers; all three Drum Hoisting and Trenching Machines; Belt-type Loaders; Front End Loaders, 5½ yds. or over; Dual Drum Paver; Automatic Grader (i.e. C.M.I.); Combination Backhoe/Loader, 3/4 yd. or over; Jet Engine Dryer; Tree Shredder; Post Hole Digger; Post Hole Hammer; Post Extractor; Truck-mounted Concrete Pump with Boom; Roto-mill

Group 2: Rotary Drill (with mounted Compressor); Compressor House (3 to 6 Compressors); Rock and Earth Boring Machines (excluding McCarthy and similar Drills); Graders; Front End Loaders, 4 yds. to 5½ yds.; two Drum Hoists; High Fork Lifts with capacity of 15 ft. and over; Scraper, 21 yds. and over (struck load); Sonic Hammer Console; Road Planer; Cal Tracks; Ballast Regulators; Rail Anchor Machines; Switch Tampers

POWER EQUIPMENT OPERATORS CLASSIFICATIONS (Cont'd)
AREA 1 (Cont'd)

BUILDING CONSTRUCTION (Cont'd)

Group 3: Combination Backhoe/Loader, up to 3/4 yd. Hoe; Bulldozers; Push Cats; Scrapers, up to 21 yds. (struck load) (self-propelled or tractor drawn); Tireman; Front End Loaders, up to 4 yds.; Asphalt Paver; Well Drillers; Mechanics; Welder; Pumpcrete Machines; Concrete Pumps and similar type Pumps; Engineer or Fireman on High Pressure Boiler (on job); Self-loading Batch Plant; Well Point Operators (including installing); Electric Pumps used in Well Point System; Pumps, 12 inches and over (total discharge); Compressor, one or two 900 cu. ft. and over; Engineers in charge of Powered Grease Truck; all Automatic Elevators (permanent or temporary)(operated manually or remote control) (not to be confused with elevators operating from conventional hoist, 1, 2, or 3 drum); Grout Pumps; Boom Truck; Hydraulic Cranes, under 10 ton

Group 3-A: Asphalt Rollers; Self-powered Rollers and Compactors; Tractor without blade drawing Sheepsfoot Roller; Rubber Tire Roller; Vibratory Roller, or other type of Compactors including Machines for pulverizing and aerating Soil

Group 4: Single Drum Hoist; Power Pavement Breakers; Concrete Pavement Finishing Machines; Two Bag Mixers with Skip; McCarthy and similar Drills; Batch Plants (not self-loading); Bulk Cement Plants; Self-propelled Material Spreaders; A-Frame Trucks; Fork Lifts, up to 15 ft.; 3 or more 10 KW Light Plants; 30 KW or more Generators

Group 5: Compressors (one or two)(315 cu. ft. to 900 cu. ft.); Pumps, 4 inches to 12 inches (total discharge)

Group 6: Compressors, up to 315 cu. ft.; Small Mixers; Pumps, up to 4 inches; Power Heaters, except when 3 or more Heaters are used on one job, classification 4 rate shall be paid; Welding Machines, except when 3 or more Welding Machines are used on one job, classification 4 rate will be paid; Conveyors; Oiler; Helpers on Grease Trucks with hand greasing equipment

Group 7: Truck Crane Crews

Group 8: Oiler

Group 9: Master Mechanic

Group 10: Boom lengths over 184 ft. including Jib

Group 11: Boom lengths over 225 ft., including Jib

POWER EQUIPMENT OPERATORS CLASSIFICATIONS (Cont'd)
AREA 1 (Cont'd)

HEAVY and HIGHWAY CONSTRUCTION

Group 1: Shovels; Crawler and Truck Cranes; Derricks; Backhoes; Trenching Machines; Elevator Graders; Belt-type Loaders; Gradalls; Pile Drivers; Concrete Pavers, On-site Processing Plant (Engineer in charge); Dragline; Clamshell; Cableways; Shaft Hoists; Mucking Machines; Front End Loader, 5½ yds. and over Tower Cranes; Self-propelled Hydraulic Cranes, 10 tons and over; Dual Pavers; Automatic Grader, Excavator (C.M.I. or equal); Scrapers towing Pan or Wagon; Tandem Dozers or Push Cats (2 units in Tandem); Welder using Semi-automatic Welding Machine; Shotcrete Machine; Tunnel Boring Machine; Combination Back Hoe/Loader, 3/4 yd. Hoe or over; Jet Engine Dryer; Tree Shredder; Post Hole Digger; Post Hole Hammer; Post Extractor; Truck mounted Concrete Pumps with boom; Roto-mill

Group 2: Rotary Drill, with mounted Compressor; Compressor House, 3 to 6 Compressors; Rock and Earth Boring Machines, excluding McCarthy and similar Drills; Grader; Front End Loaders, 4 yds. to 5½ yds.; Scraper, 21 yds. and over (struck load); Forklifts, 7 ft. lift and over or 3 ton capacity and over; Sonic Hammer Console; Road Planer; Cal Tracks; Ballast Regulators; Rail Anchor Machines; Switch Tampers

Group 3: Bulldozer; Push Cats; Scrapers, up to 21 yds., struck load, self-propelled or Tractor Drawn; Self-powered Asphalt Paver; Front End Loaders, up to 4 yds.; Mechanics, Welders; Well Driller; Pumpcrete Machine; Engineer or Fireman on High Pressure Boiler (on job); Self-loading Batch Plant (on job); Well Point Operators; Electric Pumps used in Well Point System; Tireman; Pumps, 16 in. or over total discharge; Compressors (1 or 2) 900 cu. ft. and over; Powered Grease Truck; Tunnel Locomotives and Dinkeys; Grout Pumps; Hydraulic Jacks (jacking pipe, slip forms, etc.); Boom Truck, self-propelled Hydraulic Cranes, up to 10 ton; Combination Backhoe Hoe/Loader, up to 3/4 yd. Hoe

Group 3A: Asphalt Rollers; Self-powered Rollers and Compactors; Tractor without blade drawing Sheeps Foot Roller; Rubber Tire Roller; Vibratory Roller or other type of Compactors including Machines for pulverizing and aerating soil

Group 4: Hoists; Conveyors; Power Pavement Breaker; Self-propelled Material Spreader; Self-powered Concrete Finishing Machine; Two bag Mixer with Skip; McCarthy and similar Drills; Batch Plant (not self-loading); Bulk Cement Plant; 3 or more 10 KW Light Plants; 30 KW or more Generators

Group 5: Compressor, 315 cu. ft. to 900 cu. ft., 1 or 2; Pumps, 4" to 16" total discharge

POWER EQUIPMENT OPERATORS CLASSIFICATIONS (Cont'd)
AREA 1 - HEAVY and HIGHWAY CONSTRUCTION (Cont'd)

Group 6: Compressor, up to 315 cu. ft.; Small Mixers with Skip; Oiler; Pumps up to 4"; Grease Truck; Helper on powered Grease Trucks; Power Heaters; Welding Machines, when 3 or more Welding Machines are used, Classification 4 rate shall be paid; A-Frame Trucks; Forklifts, up to 7 ft. Lift and up to 3 ton capacity; Hydro Boom; Power Safety Boat

Group 7: Truck Crane Crews

Group 8: Oiler

Group 9: Master Mechanic

Group 10: Boom Lengths over 184 feet, including Jib

Group 11: Boom Lenghts over 225 feet, including Jib

AREA 2

BUILDING CONSTRUCTION

Group 1: Cranes; Shovels; Truck Cranes; Cherry Pickers; Dragline; Trench Hoes; Backhoes; Three Drum Machines; Derricks; Pile Drivers; Elevator Towers; Hoists; Gradalls; Shovel Dozers; Front End Loaders; Fork Lifts; Augers; Boring Machines; Rotary Drills; Post Hole Hammers; Post Hole Diggers; Pumpcrete Machines; Asphalt Plant, on site; Concrete Batching and/or Mixing Plant, on site; Crusher Plant, on site; Paving Concrete Mixers; Timber Jacks

Group 2: Sonic or Vibratory Hammers; Graders; Tandem Scrapers; Concrete Pumps; Bulldozers; Tractors; York Rakers; Mulching Machines; Portable Steam Boiler; Portable Steam Generators; Rollers; Spreaders; Tampers (self-propelled or tractor drawn); Asphalt Pavers; Mechanics Maintenance; Paving Screed Machines; Stationary Steam Boilers; Paving Concrete Finishing Machines; Cal track; Ballast Regulators; Switch Tampers; Rail Anchor Machinery; Tire Trucks (when operated by the employer on the job site)

Group 3: Pumps, 1-3 grouped; Compressors; Welding Machines, 1-3 grouped; Generators; Concrete Vibrators; Lighting Plants; Heaters (power driven, 1-5); Well-point Systems, operating and installing; Syphones/Pulsometers; Concrete Mixers; Valves controlling Permanent Plant, air or steam; Conveyors; Jackson type Tampers; Single Diaphragm Pump; Lighting Plants

Group 4: Assistant Engineers (Fireman)

Group 5: Assistant Engineers (other than Truck Cranes and Gradalls)

Group 6: Assistant Engineers (on Truck Cranes and Gradalls)

POWER EQUIPMENT OPERATORS CLASSIFICATIONS (Cont'd)
AREA 2 (Cont'd)

HEAVY and HIGHWAY CONSTRUCTION

Group 1: Power Shovels; Cranes; Truck Cranes; Derricks; Pile Drivers; Trenching Machines; Mechaniclal Hoist Pavement Breakers; Cement Concrete Pavers; Draglines; Hoisting Engines; Three Drum Machines; Pumpcrete Machines; Uke Loaders; Shovel Dozers; Front End Loaders; Mulching Machines; Shaft Hoists; Steam Engine; Backhoe; Gradalls; Cable Ways Fork Lifts; Cherry Pickers; Boring Machines; Rotary Drills; Post Hole Hammer; Post Hole Diggers; Asphalt Plant on job site, Concrete Batching and/or Mixing Plant on job site; Crusher Plant on job site; Paving Concrete Mixers; Timber Jacks

Group 2: Sonic or Vibratory Hammers; Graders; Scrapers; Tandem Scrapers; Bulldozer; Tractors; Mechanic Maintenance; York Rakes; Mulching Machines Paving Screed Machines; Stationary Steam Boilers; Paving Concrete Finishing Machines; Grout Pumps; Potable Steam Boilers; Portable Steam Generators; Rollers; Spreaders; Asphalt Pavers; Locomotives or Machines used in place thereof; Tampers, self-propelled or tractor drawn; Cal Tracks; Ballast Regulators; Rail Anchor Machines; Switch Tampers

Group 3: Pump, 1-3 grouped; Compressors; Welding Machine, 1-3 grouped; Generators; Lighting Plants; Heaters, power driven, 1-5; Syphons/Pulsometers; Concrete Mixers; Valves controlling Permanent Plant, air or steam; Conveyors; Wellpoint System, operating and installing

Group 4: Assistant Engineers (Firemen)

Group 5: Assistant Engineers (other than Truck Cranes and Gradalls)

Group 6: Assistant Engineers (on Truck Cranes and Gradalls)

MARINE CONSTRUCTION

Group 1: Shovels; Cranes; Truck Cranes; Cherry Pickers; Derricks; Pile Drivers two or more Drum Machines; Lighterns; Derrick Boats; Trenching; Mechanic Hoists; Pavement Breakers; Cement Concrete Pavers; Draglines; Hoisting Engines; Pumpcrete Machines; Elevating Graders; Shovels; Dozers; Front End Loaders; Backhoe; Gradalls; Cable Way; Boring Machines; Rotary Drills; Post Hole Hammer; Post Hole Diggers; Fork Lifts; Timber Jacks; Asphalt Plant (on site); Concrete Batching and/or Mixing Plant (on site); Crusher Plant (on site); Paving Concrete Mixers

Group 2: Portable Steam Boilers; Portable Steam Generators; Sonic or Vibratory Hammer; Graders; Scrapers; Tandem Scrapers; Concrete Pumps; Bulldozers; Tractors; York Rakers; Mulching Machines; Rollers; Spreader; Tamper, self-propelled or tractor drawn; Asphalt Pavers; Concrete Mixers with side Loaders; Mechanics, maintenance; Cal Track; Ballast Regulator; Switch Tampers; Rail Anchor Machines; Tire Trucks

POWER EQUIPMENT OPERATORS CLASSIFICATIONS (Cont'd)
AREA 2 - MARINE CONSTRUCTION (Cont'd)

Group 3: Pumps; Compressors; Welding Machines; Heaters (power driven); Valves controlling Permanent Plant, air or steam; Well Point Systems; Augers, powered by Independence Engines and attached to Pile Drivers; Hydraulic Saws; Generators; Lighting Plants; Syphons-Pulsometers; Concrete Mixers; Conveyors

Group 4: Assistant Engineers (Piremen)

Group 5: Assistant Engineers (other than Truck Cranes and Gradalls)

Group 6: Assistant Engineers (on Truck Cranes and Gradalls)

TRUCK DRIVERS

Group 1: Station Wagons; Panel Trucks and Pickup Trucks

Group 2: Two Axle Equipment; Helpers on Low Bed when assigned at the discretion of the employer; Warehousemen; Forklift Operators

Group 3: Three axle equipment and Tiremen

Group 4: Four and five axle equipment

Group 5: Specialized earth moving equipment, under 35 tons other than conventional type trucks; Low Bed; Vac-haul; Paving Restoration equipment; Mechanics

Group 6: Specialized earth moving equipment over 35 tons

Group 7: Trailers for earth moving equipment (double hookup)

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii))

SUPERSEDEAS DECISION

STATE: MASSACHUSETTS COUNTIES: BERKSHIRE, FRANKLIN, HAMPDEN AND HAMPSHIRE

DECISION NO.: MA85-3015 DATE: DATE OF PUBLICATION

Supersedes Decision No. MA84-3007, dated April 6, 1984, in 49 FR 13804.

DESCRIPTION OF WORK: Building, Heavy, Highway and Residential Construction

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	18.23	4.53
BOILERMAKERS	18.93	3.765
BRICKLAYERS; CEMENT MASONS; PLASTERERS; STONE MASONS; MARBLE, TILE & TERRAZZO WORKERS; POINTERS; CLEANERS; CAULKERS:		
Area 1	14.75	4.54
Area 2	18.38	
Area 3	16.00	2.13
CARPENTERS; SOFT FLOOR LAYERS; DRYWALL CARPENTERS; LATHERS:		
Area 1	14.79	2.99
Area 2	16.18	4.90
Area 3	15.10	4.07
Area 4	16.03	2.92
ELECTRICIANS:		
Area 1	15.54	1.96+ 3%
Area 2:		
Electrical Contracts $125,000 and over	15.41	3.92+ 3%
Electrical Contracts under $125,000	13.41	3.92+ 3%
Residential Single Family housing	12.00	2.22+ 3%
Area 3:	16.33	3.78+ 3%
ELEVATOR CONSTRUCTORS	16.56	3.29+ a+b
ELEVATOR CONSTRUCTORS HELPERS	11.59	3.29+ a+b
ELEVATORS CONSTRUCTORS' PROBATIONARY HELPERS	9.28	
GLAZIERS	14.12	3.32
IRONWORKERS:		
Area 1	15.75	6.32
Area 2:		
Building, Heavy and Highway	14.90	3.99
Residential (4 stories or less)	11.18	3.99
LABORERS (BUILDING):		
Group 1	13.25	3.05
Group 2	13.50	3.05
Group 3	14.00	3.05
Group 4	15.00	3.05
Group 5	14.25	3.05
HEAVY & HIGHWAY		
Area 1		
Class I	13.25	3.05
Class II	13.50	3.05
Class III	15.00	3.05
Class IV	14.25	3.05
Area 2:		
Class I	13.95	3.05
Class II	14.20	3.05
Class III	14.70	3.05
Class IV	14.95	3.05
LINE CONSTRUCTION		
Area 1		
Lineman, cable splicer dynamite man	15.97	2.90+ 4.75%
Heavy equipment operator	14.37	2.90+ 4.75%
Equipment operator, tractor trailer dirver, field mechanic	13.57	2.90+ 4.75%
Driver groundman	11.98	2.90+ 4.75%
Groundman	8.78	2.90+ 4.75%
Area 2:		
Lineman, cable splicer dynamite man	16.23	2.90+ 4.75%
Heavy equipment operator	14.61	2.90+ 4.75%
Equipment operator, tractor trailer driver, field mechanic	13.80	2.90+ 4.75%

DECISION NO. MA85-3015	Basic Hourly Rates	Fringe Benefits
Driver Groundman	12.17	2.90+ 4.75%
Groundman	8.93	2.90+ 4.75%
Area 3: Lineman, cable splicer, dynamite man	17.00	2.30+ 4.75%
Heavy equipment operator	15.30	2.30+ 4.75%
Equipment operator, tractor, trailer, driver field mechanic	14.45	2.30+ 4.75%
Driver groundman	12.75	2.30+ 4.75%
Groundman	9.35	2.30+ 4.75%
Areas 1, 2 & 3: Traffic Control, Illumination & Maintenance: Lineman, technicians & cable splicers	17.20	2.90+ 4.75%
Equipment operator	14.62	2.90+ 4.75%
Driver groundman	12.90	2.90+ 4.75%
Groundman	12.04	2.90+ 4.75%
Railroad Construction (including electrical distribution, transmission lines, substation and signal construction: Linemen, cable splicers & dynamite man	17.95	2.90+ 4.75%
Heavy equipment operator	16.16	2.90+ 4.75%
Equipment operator, tractor trailer driver, & field mechanic	15.26	2.90+ 4.75%
Driver groundman	13.46	2.90+ 4.75%
Groundman	9.87	2.90+ 4.75%
MARBLE, TILE & TERRAZZO FINISHERS	11.45	
MILLWRIGHTS	17.10	4.85
PAINTERS: Brush and Taper	14.16	3.29
Spray and Sandblasting	17.43	3.29
Swing stage and steel riding under 40'	14.35	3.29
Swing stage and steel riding over 40'	14.66	3.29
Sign Painters	13.44	2.05
PILEDRIVERMEN	17.90	3.20
PLUMBERS & STEAMFITTERS: Area 1	16.29	1.85+ A%
Area 2	18.10	3.59
Area 3	16.82	4.29+ C
POWER EQUIPMENT OPERATORS BUILDING CONSTRUCTION Class I	16.33	2.60+d
Class II	16.13	2.60+d
Class III	15.93	2.60+d
Class IIIA	15.56	2.60+d
Class IV	14.03	2.60+d
Class V	13.33	2.60+d
Class VI	12.18	2.60+d
Class VII	17.08	2.60+d
Class VIII	13.36	2.60+d
Class IX	16.91	2.60+d
Class X	16.83	2.60+d
Class XI	17.33	2.60+d
POWER EQUIPMENT OPERATORS HEAVY AND HIGHWAY CONSTRUCTION: Class I	16.33	2.60+e
Class II	16.13	2.60+e
Class III	15.93	2.60+e
Class IIIA	15.56	2.60+e
Class IV	14.03	2.60+e
Class V	13.33	2.60+e
Class VI	12.18	2.60+e
Class VII	17.08	2.60+e
Class VIII	13.36	2.60+e
Class IX	16.91	2.60+e
Class X	16.83	2.60+e
Class XI	17.33	2.60+e
ROOFERS: Composition, Damp Waterproof	10.565	3.13
Slate, Tile, Precast Concrete	11.065	3.13
SHEET METAL WORKERS	15.66	5.09
SPRINKLER FITTERS	18.95	4.23

DECISION NO. MA85-3015	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS Class I	12.86	3.00+ f+g
Class II	13.03	3.00+ f+g
Class III	13.10	3.00+ f+g
Class IV	13.22	3.00+ f+g
Class V	13.32	3.00+ f+g
Class VI	13.61	3.00+ f+g
Class VII	13.90	3.00+ f+g

AREA DESCRIPTIONS

Bricklayers; Cement Masons; Plasterers; Stonemasons; Marble; Tile & Terrazzo Workers; Painters; Cleaners & Caulkers:

Area 1: HAMPDEN: HAMPSHIRE; FRANKLIN; BERKSHIRE (Becket, Otis, Standisfield)

Area 2: BERKSHIRE (Adams, North Adams, Cheshire, Florida, Savoy, Clarksbury, Williamstown)

Area 3: BERKSHIRE (Remainder of County)

Carpenters; Soft Floor Layers; Drywall Carpenters:

Area 1: BERKSHIRE; FRANKLIN (Monroe, Monroe Bridge)

Area 2: FRANKLIN (Erving, Warwick, Orange, North Orange)

Area 3: HAMPDEN; HAMPSHIRE; (South Hadley, Granby, Belchertown, Huntington, Pelham, Amherst, Ware) FRANKLIN (Leverett, Shutesbury, Sunderland)

Area 4: HAMPSHIRE (Remainder of County); FRANKLIN (Remainder of County)

DECISION NO. MA85-3015

AREA DESCRIPTIONS CONTINUED

Electricians & Line Construction:

Area 1: BERKSHIRE; FRANKLIN (Hawley, Monroe, Rowe); HAMPSHIRE: (Middlefield, Cummington, Plainfield)

Area 2: FRANKLIN (Remainder of County); HAMPSHIRE (Remainder of County); HAMPDEN (Chester, Holyoke and North Portion of Chicopee - North of Mckinstry Avenue from the connecticut River to Grattan Street, Lafayette Street to York Street, McKinstry to Granby Road, and projected to the Westover Air Force Base fence, continuing northeastly along this boundary to the county line).

Area 3: HAMPDEN (Remainder of County - including Westover Air Force Base); HAMPSHIRE (Belchertown, ware).

Ironworkers:

Area 1: HAMPSHIRE; HAMPDEN; FRANKLIN; BERKSHIRE Becket, Washington, Lee, Sandisfield, New Marlboro, Hinsdale, Peru, Savoy, Monterey, Sheffield, Windsor, Otis, N. & E. Otis

Area 2: BERKSHIRE (Remainder of County);

Laborers: Heavy & Highway:

Area 1: Except Twps. of Warrick and Orange in FRANKLIN

Area 2: FRANKLIN (Orange, Warrick):

Line Construction: (See Electricians & Line Construction)

Plumbers & Steam fitters:

Area 1: FRANKLIN (Orange)

Area 2: BERKSHIRE (Except Otis, Becket, Sandisfield); FRANKLIN (Monroe, Towe, and Western part of Charlemont)

Area 3: HAMPDEN; HAMPSHIRE; BERKSHIRE (Otis, Becket, Sandisfield; FRANKLIN (Remainder of County)

DECISION NO. MA85-3015

Welders - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

FOOTNOTES:

Paid Holidays: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

a. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

b. 6 paid holidays: A through F providing employee has worked 5 consecutive days before and the working day after the holiday.

c. 2 paid holidays: C & D, provided the employee has been employed seven days prior to the holiday by the same employer.

d. 8 paid holidays: A through F, Washington's Birthday and Veterans Day.

e. 9 paid holidays: A through F, Washington's Birthday, Columbus Day and Veterans Day.

f. 10 paid holidays: A through F, Washington's Birthday, Patriot's Day, Columbus Day, and Veterans Day.

g. Paid Vacation: 4 months to 1 year - ½ day's pay per month; 1-5 years - 1 week; 5-10 years - 2 weeks; 10 years or more - 3 weeks. Employee must have received pay for 120 days during last year of employment.

DECISION NO. MA85-3014

CLASSIFICATIONS

LABORERS BUILDING

GROUP 1 - Laborers, carpenter tenders and wrecking laborers

GROUP 2 - Asphalt Rakers, Carbide Core Driller Operators, Chain Saw Operators, Pipelayers, Jackhammer and Paving Breaker Operators, Barco-type Jumping Tampers, Laser Beam Operators, Concrete Pump Operators, Mason-Tenders, Mortar Mixers, Ride-on Motorized Buggy Operators and Wagon Drill Operators

GROUP 3 - Pre-cast Floor and Roof Plank Erectors and Asbestos Removers

GROUP 4 - Air Track Operators, Block Pavers, Rammers and Curb Setters

GROUP 5 - Powdermen and Blasters

LABORERS HEAVY & HIGHWAY

CLASS I - Carpenter Tenders, Cement Finisher Tenders, Laborers, Wrecking Laborers

CLASS II - Asphalt Rakers, Fence and Guard Rail Erectors, Laser Beam Op., Mason Tender, Pipelayer, Pneumatic Drill Op., Pneumatic Tool Op., Wagon Drill Op.

CLASS III - Air Track Op., Block Pavers, Rammers, Curb Setters

CLASS IV - Blasterers, Powdermen

DECISION NO. MA85-3015

POWER EQUIPMENT OPERATORS: BUILDING

CLASS I - Shovels, Cranes (including all tower, climbing and bridge cranes, as used in Building Construction as defined in Scope of Employment), Hydraulic Cranes--10 ton capacity or over, Draglines, Derricks, Elevators with Chicago Boom, Backhoes, Gradalls, Elevating Graders, Pile Driving Rigs, Concrete Road Pavers, all three Drum Hoisting and Trenching Machines, Belt-type Loaders, Foreman Mechanics, Front End Loaders--5½ yards or over, Dual Drum Paver, Automatic Grader (i.e. C.M.I.), Combination Backhoe-Loader--3/4 yard or over, Jet Engine Dryer, Tree Shredder, Post Hole Digger, Post Hole Hammer, Post Extractor, Truck Mounted Concrete Pump with boom, Roto-Mill.

CLASS II - Rotary Drill (with mounted compressor), Compressor House (3 to 6 compressors), rock and earth boring machines (excluding McCarthy and similar drills), Graders, Front End Loaders-4 yards to 5½ yards, two Drum Hoists, High Fork Lifts with capacity of 15 ft. and over, Scraper--21 yards and over (struck load), Sonic Hammer Console, Road Planer, Cal Tracks, Ballast Regulators, Rail Anchor Machines, Switch Tampers.

CLASS III - Combination Backhoe-Loader--up to 3/4 yard hoe, Bulldozers, Push Cats, Scrapers--up to 21 yards (struck load) selfpropelled or tractor drawn, Fireman, Front End Loaders--up to 4 yards, Asphalt Paver, Well Drillers, Mechanics, Welders, Pumpcrete Machines, Concrete pumps, and similar type pumps, Engineer or Fireman on High Pressure Boiler (on job), Self-Loading Batch Plant, Well Point Operators (including installing), Electric pumps used in Well Point System, Pumps--12 inches and over (total discharge), Compressor (one or two 900 cu. ft. and over, Engineers in charge of Powered Grease Truck, all automatic elevators (permanent or temporary) operated manually or remote control (not to be confused with elevators operating from conventional hoist--1, 2 or 3 Drum), Grout pumps, Boom Truck, Hydraulic Cranes--under 10 ton.

CLASS IIIA - Asphalt Rollers, Self-powered Rollers and Compactors, Tractor without blade drawing sheepsfoot roller, rubber tire roller, vibratory roller, or other type of compactors including machines for pulverizing and aerating soil.

CLASS IV - Single Drum Hoist, Power Pavement Breakers, Concrete Pavement Finishing Machines, Two Bag Mixers with Skip, McCarthy and similar drills, Batch Plants (not self-loading), Bulk Cement Plants, Self-propelled material spreaders, A-Frame Trucks, Fork Lifts--up to 15 ft., 3 or more 10KW Light Plants, 30 KW or more Generators.

CLASS V - Compressors (one or two) 315 cu. ft. to 900 cu. ft., Pumps--4 inches to 12 inches (total discharge).

DECISION NO. WA85-3015

POWER EQUIPMENT OPERATORS: BUILDING CONT'D

CLASS VI - Compressors (up to 315 cu. ft.), small mixers, pumps (up to 4 inches), power heaters, welding mahines, (when 3 or more heaters or welding machines are used on one job, classification 4 rate will be paid), Conveyors, Oiler, helpers on grease trucks with hand greasing equipment.

CLASS VII - Truck Crane Crews

CLASS VIII - Oiler

CLASS IX - Master Mechanic

CLASS X - Boom lengths over 184 feet (including jib)

CLASS XI - Boom lengths over 225 feet (including jib)

POWER EQUIPMENT OPERATORS: HEAVY & HIGHWAY

CLASS I - Shovels, Crawler and Truck Cranes, Derricks, Backhoes, Trenching Machines, Elevating Graders, Belt-type Loaders, Gradalls, Pile Drivers, Concrete Pavers, on site Processing Plant (Engineer in charge), Dragline, Clam Shell, Cableways, Shaft Hoists, Mucking Machines, Front End Loader--5½ yards and over Tower Cranes, Self-propelled Hydraulic Cranes--10 tons and over, Dual Pavers, Automatic Grader--Excavator (C.M.I. or equal), Scrapers towing pan or wagon, Tandem Dozers or Push Cats (2 units in tandem), Welder using semi-automatic Welding Machine, Shotcrete Machine, Tunnel Boring Machine, Combination Back Hoe-Loader--3/4 yard hoe or over, Jet Engine Dryer, Tree Shredder, Post Hole Digger, Post Hole Hammer, Post Extractor, Truck Mounted Concrete Pumps with boom, Roto-Mill.

CLASS II - Rotary Drill (with mounted Compressor), Compressor House (3 to 6 Compressors), Rock and Earth Boring Machines (excluding McCarthy and similar drills), Grader, Front End Loaders-- 4 yards to 5½ yards, Scraper--21 yards and over (struck load), Forklifts--7 ft. lift and over or 3 ton capacity and over, Sonic Hammer Concole, Road Planer, Cal Tracks, Ballast Regulators, Rail Anchor Machines, Switch Tampers.

CLASS III - Bulldozer, Push Cats, Scrapers--up to 21 yards (struck load) self-propelled or Tractor Drawn, Self-powered Asphalt Paver, Front End Loaders--up to 4 yards, Mechanics, Welders, Well Driller, Pumpcrete Machine, Engineer or Fireman on High Pressure Boiler (on job), Self-loading Batch Plant(on job), Well Point Operators, Electric Pumps used in Well point system, Tireman, Pumps--16 inches or over total discharge, Compressors (1 or 2) 900 cu. ft. and over, Powered Grease Truck, Tunnel Locomotives and Dinkeys, Grout pumps, Hydraulic Jacks (jacking pipe, slip forms, etc.), Boom Truck, self-propelled Hydraulic Cranes--up to 10 ton, Combination Back Hoe-Loader--up to 3/4 yard hoe.

DECISION NO. WA85-3015

POWER EQUIPMENT OPERATORS: HEAVY & HIGHWAY CONT'D

CLASS IIIA - Asphalt Rollers, Self-Powered Rollers and Compactors, Tractor without blade drawing sheeps foot roller, Rubber tire roller, Vibratory roller, or other type of compactors including machines for pulverizing and aerating soil.

CLASS IV - Hoists, Conveyors, Power Pavement Breaker, Self-propelled Material Spreader, Self-powered Concrete Finishing Machine, Two Bag Mixer with skip, MCarthy and similar Drills, Batch Plant (not self-loading), Bulk Cement Plant, 3 or more 10KW Light Plants, 30 Kw or more Generators.

CLASS V - Compressor (315 cu. ft. to 900 cu. dt., 1 or 2), Pumps-4" to 16" total discharge.

CLASS VI - Compressor (up to 315 cu. ft.), Small Mixers with skip, Oiler, Pumps up to 4", Grease Truck, Helper on powered Grease Trucks, Power Heaters, Welding Machines (when 3 or more welding machines are used, Classification 4 rate shall be paid), A-Frame Trucks, Forklifts--up to 7 ft. lift and up to 3 ton capacity, Hydro Boom, Power Safety Boat.

CLASS VII - Truck Crane Crews

CLASS VIII - Oiler

CLASS IX - Master Mechanic

CLASS X - Boom lengths over 184 feet (including jib)

CLASS XI - Boom lengths over 225 feet (including jib)

TRUCK DRIVERS

CLASS I - Station Wagons, Panel Trucks and Pickup Trucks

CLASS II - Two axle Equipment; Helpers on Low Bed When Assigned at the Discretion of the Employer, Warehousemen, Forklift Operators

CLASS III - Three Axle Equipment and Tiremen

CLASS IV - Four and Five Axle Equipment

CLASS V - Specialized Earth Moving Equipment under 35 tons other than Convential type trucks, Low Bed, Vachual, Mechanics, Paving Restoration Equipment, Mechanic

CLASS VI - Specialized Earth Moving Equipment over 35 Tons

CLASS II - Trailers for Earth Moving Equipment (Double Hookup)

[FR Doc. 85-6006 Filed 3-12-85; 8:45 am]

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federal register

Friday
March 15, 1985

Part III

Environmental Protection Agency

40 CFR Parts 86 and 600

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Gaseous Emission and Particulate Emission Regulations

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 86 and 600

[AMS-FRL-2780-7]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Gaseous Emission Regulations for 1987 and Later Model Year Light-Duty Vehicles, and for 1988 and Later Model Year Light-Duty Trucks and Heavy-Duty Engines; Particulate Emission Regulations for 1988 and Later Model Year Heavy-Duty Diesel Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's notice announces EPA's decisions on new standards for emissions of oxides of nitrogen from light-duty trucks and heavy-duty engines, and of particulate matter from heavy-duty diesel engines. The new oxides of nitrogen emission standards are: For 1988 and later model year light-duty trucks, 1.2 or 1.7 grams per mile, depending on vehicle test weight; for 1988 and later model year heavy-duty engines, 6.0 grams per brake horsepower-hour; and for 1991 and later model year heavy-duty engines, 5.0 grams per brake horsepower-hour. The new particulate emission standards, which apply only to heavy-duty diesel engines, are: 0.60 grams per brake horsepower-hour for 1988 and later model years, 0.25 grams per brake horsepower-hour (0.10 grams per brake horsepower-hour for urban buses) for 1991 and later model years, and 0.10 grams per brake horsepower-hour for 1994 and later model years. Emissions averaging, of both particulate and oxides of nitrogen emissions from heavy-duty engines, is allowed beginning with the 1991 model year. Averaging of NO_x emissions from light-duty trucks is allowed beginning in 1988. High-altitude standards for oxides of nitrogen, particulate, and idle carbon monoxide emissions which are equal to the corresponding low-altitude standards are promulgated for 1988 and later model year light-duty trucks. Revisions to the allowable maintenance regulations, and extension of their scope to include light-duty vehicles, are also promulgated by today's notice. Certain revisions to the heavy-duty engine test procedures are included.

The oxides of nitrogen emission standards contained in today's notice will prevent significant growth in national emission inventories of nitrogen dioxide, and resulting health and welfare effects, including violations of the National Ambient Air Quality Standard, through at least the middle of the next decade. The particulate emission standards included here will reduce the exposure of the population to inhalable particulate and will have beneficial impacts on visibility and soiling.

DATES: These regulations except for §§ 86.088–23 and 86.091–23 take effect on April 15, 1985.

The information collection requirements as they apply to particulate emissions contained in 40 CFR 86.088–23 and 86.091–23 have not been approved by the Office of Management and Budget and are not effective until approved and published in the **Federal Register.**

Note.—Under section 307(b)(1) of the Clean Air Act, EPA hereby finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication. Under section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

ADDRESSES: Material relevant to this final rule is contained in Public Docket No. A–80–18. The docket is located at the U.S. EPA Central Docket Section, in the West Tower Lobby, Gallery 1, 401 M Street SW, Washington, DC 20460; phone (202) 382–7548. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying. In addition, single copies of the Regulatory Impact Analysis (containing analyses of environmental and economic impacts and technological feasibility, and including the NO_x Pollutant Specific Study required by section 202(a)(3)(E) of the Clean Air Act) may be obtained by request from: Director, Emission Control Technology Division, U.S. EPA, 2565 Plymouth Road, Ann Arbor, MI 48105, Attention: Heavy-Duty Section.

FOR FURTHER INFORMATION CONTACT: Mr. Terry P. Newell, U.S. EPA (SDSB–12), Emission Control Technology Division, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (313) 668–4482.

SUPPLEMENTARY INFORMATION:

I. Introduction

Today's final rule is the completion of several previous actions initiated by EPA in response to the requirements of section 202(a)(3) of the Clean Air Act as amended in 1977. Section 202(a)(3) includes requirements for reducing emissions of oxides of nitrogen (NO_x) from heavy-duty engines, and for controlling emissions of particulate matter (PM) from heavy-duty engines. In addition to the statutory provisions, EPA's projections of future emissions growth and the resulting impacts on national air quality show a strong need for significant reductions in heavy-duty diesel engine PM emissions. While the environmental need for reductions in NO_x emissions is not as immediate, action is also required, particularly in the case of heavy-duty engines.

The statutory provisions for reductions in particulate and NO_x emissions from heavy-duty engines have been the subject of several proposals by EPA, and of considerable comment by the affected industry, environmental organizations, state and local governments, and private citizens. EPA published a proposal for heavy-duty diesel particulate control on January 7, 1981 (46 FR 1910), and an advance notice of EPA's intent to promulgate revised NO_x standards for heavy-duty engines and light-duty trucks on January 19, 1981 (46 FR 5838).

In 1982 and 1983, while not taking any formal regulatory action, EPA remained active in the effort to resolve the complex issues associated with NO_x and particulate control. A public hearing was held in Ann Arbor, Michigan, in July 1982 on both the particulate proposal and the NO_x advance notice. After the hearing, EPA engaged in an information-gathering effort to gain a more thorough understanding of the potential for current and foreseeable technology to reduce NO_x and particulate emissions. As part of this effort, EPA representatives met with all of the major heavy-duty manufacturers, giving them additional opportunity to demonstrate the progress being made and the major difficulties remaining in the development of significantly less polluting heavy-duty engines.

Section 202(a)(3) of the Act, in addition to giving EPA specific instructions as to the degree of control of heavy-duty engine NO_x and particulate emissions, set dates for the implementation of these controls. Section 202(a)(3)(A)(iii) directs that particulate control regulations, requiring "the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available * * * giving appropriate consideration to the cost * * * and to noise, energy, and safety factors," were to have been applicable to 1981 and later model year production. Section

202(a)(3)(A)(ii) requires that heavy-duty engine NO_x emission standards, requiring a reduction of at least 75 percent from the baseline emissions of gasoline-fueled engines, be in place for 1985 and later model year production. There are provisions for revising the level of the NO_x standard, but they do not affect the initial deadlines for implementation of the standards.

The Natural Resources Defense Council (NRDC) filed suit against EPA in 1984, challenging the Agency's failure to promulgate the NO_x and particulate regulations described above. NRDC was granted summary judgment on September 14, 1984, by the U.S. District Court for the District of Columbia, which found that EPA had failed to fulfill non-discretionary statutory duties under the Clean Air Act Amendments of 1977. The court ordered EPA to publish proposed heavy-duty engine NO_x and particulate standards no later than October 15, 1984, and the corresponding final regulations no later than March 15, 1985. In accordance with the court's order, EPA published a notice of proposed rulemaking on October 15, 1984 (49 FR 40258). Today's final rule completes action on the proposed NO_x and particulate standards for heavy-duty engines and light-duty trucks.

As noted above, a combined NO_x and particulate proposal was published on October 15, 1984. Two public hearings were held one month later, one in Ann Arbor, Michigan, on November 13 and 14, and another in Denver, Colorado, on November 15, 1984. Attendance was high at the hearings. Following these hearings, the official public comment period remained open through December 17, 1984. The volume of written comments received was also heavy, with more than 150 different manufacturers, environmental groups, state and local governmental units, and individual citizens submitting material to the public docket.

The remaining sections of this preamble describe EPA's resolution of the issues raised during the rulemaking process. Section II sets forth a brief description of the contents of this final rule. Section III, titled "Public Participation," reviews the comments received and EPA's analysis of these comments. It examines the issues of environmental impacts and the need for control, the proposed emission standards, and comments on the other aspects of the proposal. Lastly, Section IV discusses the economic impacts and cost-effectiveness of today's action.

II. Description of the Action

The following discussion describes each provision of the final rule. In most cases, changes from the October 15, 1984 proposal were made in response to public comments.

A. Emission Standards for 1988 and Later Model Year Light-Duty Trucks

Today's action promulgates revised standards for emissions of oxides of nitrogen (NO_x) from 1988 and later model year light-duty trucks. Except for their effective dates, the standards promulgated are the same as those proposed: 1.2 grams per mile (g/mi) for the lighter portion of the fleet and 1.7 g/mi for the heavier portion. An emissions averaging program is included for determining compliance with these standards. The separation of light-duty trucks into two subclasses is based on loaded vehicle weight (LVW), with those light-duty trucks up to and including 3,750 lbs LVW (LDT_1s) required to meet the 1.2 g/mi standard, and those light-duty trucks of 3,751 lbs and greater LVW (LDT_2s) required to meet the 1.7 g/mi standard. This distinction between LDT_1s and LDT_2s is effectively the same as that used by the State of California.

B. NO_x Emission Standards for 1988 and Later Model Year Heavy-Duty Engines

Revised standards for oxides of nitrogen (NO_x) emissions from heavy-duty engines are also promulgated by today's notice. The standards are 6.0 grams per brake horsepower-hour (g/BHP-hr) for 1988 through 1990 model year heavy-duty engines, and 5.0 g/BHP-hr for 1991 and later model year engines. These standards are applicable to both gasoline-fueled and diesel heavy-duty engines. An averaging program for heavy-duty engine NO_x emissions is also being promulgated, to be effective with the 5.0 g/BHP-hr standard in 1991 (discussed further in paragraph E of this section).

C. Particulate Emission Standards for 1988 and Later Model Year Heavy-Duty Diesel Engines

Today's notice promulgates the first particulate control regulations applicable to heavy-duty diesel engines. Several different standards are included: 0.60 g/BHP-hr for 1988 and later model year engines, 0.25 g/BHP-hr for 1991 and later model year engines, and 0.10 g/BHP-hr for 1994 and later model year engines. In addition, a separate 0.10 g/BHP-hr standard for heavy-duty diesel engines used in urban bus applications is promulgated for model years 1991–93. No separate standards for those heavy-duty diesel engines used in "line-haul" applications are being promulgated. As in the case of NO_x standards, an averaging program for particulate emissions is promulgated, to be effective beginning with the 1991 model year (see paragraph E of this section). This program will not include urban buses.

D. High-Altitude Emission Standards

For reasons discussed in the "Public Participation" section, EPA is withdrawing its proposal to issue high-altitude standards for heavy-duty diesel engine particulate emissions. The high-altitude emission standards that were proposed for light-duty trucks are promulgated today, to be effective for 1988 and later model years. These standards, which are all equal to the corresponding low-altitude standards, are: NO_x 1.2 grams per mile (g/mi) for LDT_1s (those light-duty trucks up to and including 3,750 lbs loaded vehicle weight), and 1.7 g/mi for LDT_2s (those light-duty trucks over 3,750 lbs loaded vehicle weight); particulate (diesel light-duty trucks only), 0.26 g/mi; and idle carbon monoxide (gasoline-fueled light-duty trucks only), 0.50 percent of exhaust gas flow at idle.

E. Emissions Averaging

A program allowing the averaging of particulate emissions from heavy-duty diesel engines, beginning with the 1991 model year, is promulgated by today's notice. This program is being implemented in the same form as was presented in the proposal. In addition, EPA has included a similar program for the averaging of NO_x emissions from heavy-duty engines, also beginning in model year 1991, as well as from light-duty trucks beginning in 1988. The particulate and NO_x programs are the same in most aspects, but differ in a few specific provisions as noted in the following discussion. Additional information on the background and development of these provisions may be found in the proposal, and in the averaging discussion in the "Public Participation" section of today's notice.

The new programs are largely patterned after the particulate averaging program for light-duty vehicles and trucks, implemented by a final rule published July 21, 1983 (48 FR 33456). They are most clearly presented in terms of the two aspects of compliance which will exist: Compliance by engine families with their individual emission limits, and compliance by the manufacturer with the applicable emission standards.

Compliance with family emission limits. Manufacturers electing to participate in an averaging program will determine, prior to production, emission limits for each engine family to be

produced in a given model year. Each limit will have the same relationship to a particular engine family as emission standards currently have to all engine families taken as a whole. The criteria used to distinguish engine families are the same as those currently in effect.

The engine family emission limits are to be set by the manufacturer at levels not greater than a ceiling, above which no engine family will be certified. The particulate ceiling is 0.60 g/BHP-hr, and the NO_x ceilings are 6.0 g/BHP-hr for heavy-duty engines and 2.3 g/mi for light-duty trucks.

As in the light-duty particulate averaging program, it is the engine family emission limit determined by the manufacturer that will be enforced by EPA. These limits will be averaged in determining compliance with the applicable standards, as explained below; certification or other test data will not be used in the averaging calculations.

$$\text{Weighted particulate or NOx emission level} = \frac{\sum_{i=1}^{n} \left(\text{PROD}_i \times \text{HP}_i \times \text{FEL}_i \right)}{\sum_{i=1}^{n} \left(\text{PROD}_i \times \text{HP}_i \right)}$$

Where:

i = subscript, denoting individual engine families,

$PROD_i$ = model year production of family i (units),

HP_i = production-weighted rated power of family i (horsepower), and

FEL_i = family i emission limit (g/BHP-hr).

The production-weighted rated power for each heavy-duty engine family is defined as the production-weighted average of the rated power of all of the configuration included within the family. The family emission limit for each family is determined by the manufacturer, is specified to 0.01 g/BHP-hr precision for particulate and to 0.1 g/BHP-hr for NO_x, and is required to be less than or equal to 0.60 g/BHP-hr for particulate or 6.0 g/BHP-hr for NO_x. In order to demonstrate compliance, the weighted emission level must be at or below the applicable standards of 0.25 g/BHP-hr for model years 1991–93 and 0.10 g/BHP-hr for 1994 and later model years (particulate), or 5.0 g/BHP-hr (NO_x).

In order to deal with the varying useful life periods for heavy-duty diesel engines, EPA is restricting the averaging of both NO_x and particulate emissions to within each of the three useful life subclasses established in the November 16, 1983 final rule setting hydrocarbon and carbon monoxide standards for heavy-duty engines (48 FR 52170). Family emission limits for all of the families in each of the subclasses (light, medium, and heavy) will be averaged to determine compliance by each subclass with the applicable emission standards. In addition to limiting averaging to vehicles having similar useful lives, averaging only within useful-life subclasses reduces the potential for adverse competitive impacts of the averaging programs, as discussed in Section III.F of today's notice.

Manufacturers will be required to label each engine, either on a new label or by an addition to an existing label, with the applicable emission limit for that engine's family at the time the engine was produced. In this way, EPA can ensure that every individual engine is associated with its proper emission limit throughout its life, even if the manufacturer changes an emission limit applicable to that family part way through the model year (as discussed below).

Compliance with the emission standards. Compliance with the applicable standard for heavy-duty engines will be determined by calculating a production- and horsepower-weighted average emission level. This method weights the emission contribution from each engine family not only by production volume, but also by the useful work that the engines perform (the rated power). The weighting equation is:

Procedures for the averaging of light-duty truck NO_x emissions parallel those already established for averaging of light-duty diesel particulate emissions (48 FR 33456, July 21, 1983). The average emission level is based upon a production-weighted average of the family emission limits. Since two different standards apply to light-duty trucks, a composite NO_x standard will be required for comparison with the actual production weighted average. This composite standard will be computed by production weighting the applicable standard (either 1.2 g/mi or 1.7 g/mi) for each family. The precise formula for this calculation can be found in the regulations published today.

Participation in the averaging programs is completely voluntary. For manufacturers electing to use averaging, EPA will grant a certificate of conformity to each family that demonstrates compliance with its particulate or NO_x family emission limit. It will be a condition of each such certificate that the manufacturer's weighted emission levels, when averaged, meet the applicable emission standard(s) (particulate, NO_x, or both) at the end of the model year. The certificate(s) of conformity will be rendered void *ab initio* at the conclusion of the model year for those engines or vehicles causing any exceedance of the applicable standard. While some commenters felt this provision to be unwarranted and severe, EPA intends to apply it reasonably. For more details regarding conditional certification and EPA's intended handling of remedies and/or penalties in the event that the terms of such conditions are violated, see the light-duty particulate averaging final rule (July 21, 1983, 48 FR *at* 33459).

For those engine families in the averaging program, EPA will permit the creation of new family emission limits for particulate or NO_x during the model year without making any changes to the engine. A manufacturer may wish to revise family emission limits (generally by lowering them) during the model year in order to ensure that its year-end fleet average complies with the applicable standard(s). In changing a family emission limit, however, the manufacturer cannot establish a revised limit lower than can be demonstrated by the certification data. Any time that a family limit is changed, EPA will issue a new certificate applicable to subsequent production of engines or vehicles in that family, and each engine or vehicle produced thereafter will require a revised label recording this new family emission limit.

Restrictions on averaging. NO_x averaging is restricted by fuel type; gasoline-fueled and diesel engines must be averaged separately to establish compliance with the standards. No comparable restriction is required in the case of particulate emissions, since only diesel engines are regulated. As noted earlier, the particulate and NO_x averaging programs are also restricted by engine subclass (light, medium, heavy) for heavy-duty diesel engines, while no such subclass restriction applies to gasoline-fueled heavy-duty engines or to light-duty trucks. Finally, heavy-duty diesel engines used in urban buses are excluded from the particulate averaging program entirely. These engines may be averaged together with other heavy-duty diesel engines, however, in the NO_x averaging program.

The averaging programs are also restricted by geographic region. For the purposes of the heavy-duty averaging programs, there are two regions, California and the remaining 49 states. Averaging can be chosen by the manufacturer and applied in accordance with the provisions just described for one or both of these regions, to the extent not precluded by California's own regulations. However, heavy-duty engine families designated for sale and use in one region cannot be averaged together with families intended for sale and use in the other region. For light-duty trucks, there is the additional restriction that engine families

designated for sale in low-altitude areas cannot be averaged with engine families designated for sale in high-altitude areas.

F. Allowable Maintenance Provisions

EPA today is extending the basic structure of the existing light-duty truck and heavy-duty engine allowable maintenance regulations to cover light-duty vehicles as well. This basic structure includes the designation of maintenance as emission-related or non-emission-related, with minimum intervals specified for emission-related maintenance.

EPA is also adding maintenance on the following components to the list of emission-related maintenance for all types of vehicles: Electronic engine controls (EEC) and associated sensors and actuators, including oxygen sensors; evaporative emission canisters, air injection systems, turbochargers and carburetors for gasoline-fueled vehicles and engines; and particulate trap-oxidizers for diesel vehicles and engines.

Today's notice also establishes the new category of "critical emission-related" maintenance, as a subset of all emission-related maintenance for all vehicles. For maintenance on components designated as "critical emission-related," the manufacturer is required to show a "reasonable likelihood" that the specified maintenance will actually be performed in-use.

Maintenance on the following components is defined as critical emission-related maintenance: Catalytic converter, trap-oxidizer and related components, all components of the air injection system, EEC unit and associated sensors and actuators (including oxygen sensor, if installed), exhaust gas recirculation (EGR) system and associated sensors, positive crankcase ventilation (PCV) valve, and evaporative emission system (excluding the crankcase air filter) and associated sensors.

The "reasonable likelihood" requirement may be met in one of five ways: (1) By a showing that, as emissions increase due to a lack of maintenance, performance quickly deteriorates to a point unacceptable for normal driving, (2) for components that have accumulated in-use experience, by survey results showing, with 80 percent confidence, that the maintenance is performed at least 80 percent of the time, (3) for new items for which there is no in-use experience, by a random sampling of vehicles without signals installed showing that at least 80 percent of owners are performing required maintenance, (4) by a visible signal that indicates the need for maintenance and that cannot be easily defeated or reset without the maintenance being performed, or (5) by the manufacturer providing the maintenance at no cost to the consumer. Other methods may exist and could be used, if approved in advance by the Administrator.

Several clarifications to provisions of the existing allowable maintenance regulations are also promulgated here. As discussed in the proposal, these do not alter the regulatory requirements, but merely clarify existing language. Therefore, these clarifications are implemented beginning with the 1987 model year.

G. Heavy-Duty Engine Test Procedure Chonges and Technical Amendments

A number of modifications to the heavy-duty engine test procedures contained in Subpart N of the regulations are being promulgated today. In addition to incorporating procedures for the measurement of particulate emissions from heavy-duty diesel engines, as proposed, some changes are being made in response to comments on the proposal.

In addition, on December 10, 1984, EPA published numerous minor amendments to 40 CFR Parts 86 and 600 (49 FR 48128). These amendments introduced several inadvertant errors. For example, the optional provisions for measuring smoke contained in §§ 86.082–1 and 86.082–23 were inadvertently omitted from the provisions of §§ 86.085.1 and 86.085.23. Technical amendments promulgated today correct this oversight and others. These test procedure revisions and technical amendments are summarized in a table which appears as the Appendix to today's notice.

III. Public Participation

As noted above, the proposed NO_x and particulate standards (and to a lesser extent, the other provisions of the proposal) drew a heavy response during the public comment period. Since the issues raised in the comments had a significant effect on the contents of today's final rule, EPA felt it important to make the connection between the comments and the development of this final rule as clear as possible. This section of today's notice serves that purpose.

There are separate discussions below for each part of the proposal that drew comments in which issues of major importance were raised. In order of presentation, these parts are: Environmental impacts, light-duty truck oxides of nitrogen (NO_x) emission standards, heavy-duty engine NO_x standards, heavy-duty diesel engine particulate standards, averaging of NO_x and particulate emissions, and allowable maintenance provisions.

Each discussion opens with a brief review of what was proposed. This is followed by a summary of the issues raised by the commenters. In the cases of environmental impacts and the various emission standards, the reader is referred to the appropriate chapter of the Regulatory Impact Analysis (RIA) for the complete summary and analysis of the comments, while in the other cases the following discussions serve that purpose.

A. Environmental Impacts

1. Nitrogen Oxides

Review of the Proposal. In the proposal, future projections of NO_x emissions were presented for eight non-California urban areas, selected because the 1980 ambient NO_2 concentration in each of the areas was within 25 percent of the National Ambient Air Quality Standard (NAAQS). Combined projections for those eight areas indicated a 20 percent increase in total NO_x emissions between 1980 and 1995, with the most significant growth occurring in heavy-duty diesel vehicle emissions, which were projected to double by 1995. Based on this, EPA concluded that a significant need existed to offset growth in other categories and attempt to keep total discounted emissions from increasing. Without such control, EPA projected that the level of growth in NO_x emissions would cause a deterioration in future urban air quality, causing some cities to fall into non-compliance with the NO_2 NAAQS.

Issues raised by the comments. A number of commenters (primarily vehicle and engine manufacturers) criticized the input information used to develop the NO_x emissions projections presented in the proposal. The key parameters focused on were: (1) Projected growth rates for vehicle miles travelled (VMT), (2) estimated future diesel sales penetrations, and (3) heavy-duty engine emission conversion factors.

In general, the manufacturers that commented believed that the VMT growth rates used in the original analysis were too high—particularly for the heavy-duty diesel class—and recommended the use of lower rates based on population and economic projections. They also suggested equal growth rates for light-duty vehicles and light-duty trucks, as opposed to the

higher light-duty truck rate used for the original projections. Manufacturers cited a second possible overestimation in the projections of future diesel penetration into the light-duty vehicle and light-duty truck markets. Based on recent cutbacks in diesel production, General Motors and other manufacturers recommended significantly lower penetration rates than those used in the proposal.

The manufacturers also commented that the factors used to convert heavy-duty engine NO_x emissions, computed in terms of grams per brake-horsepower-hour (g/BHP-hr), into grams per mile figures were excessive. They recommended the use of conversion factors significantly lower than those used in EPA's original analysis.

Comments were also received on the methodology and specific inputs used to convert the projected NO_x emissions inventories into estimates of future air quality. Several commenters (primarily Ford) expressed doubt about the validity of EPA's "rollback" approach to air quality modelling, where any change in emissions is assumed to translate proportionately into a change in ambient pollutant concentrations. Instead, based on dispersion model results, Ford suggested an adjustment factor of one-fifth to one-third be applied to the growth in NO_x emissions before projecting ambient NO_2 concentrations. Ford also recommended the use of average NO_2 concentrations over a 3-year period as the base-year "design values" for the cities being modelled, in order to minimize the effect of year-to-year fluctuations. This was in response to the use of 1980 NO_2 concentrations in the original analysis.

Other comments focused on various impacts of the NO_x emissions projections. A significant comment from manufacturers was that the NO_x projections presented in the proposal did not adequately demonstrate a need for further control of NO_x emissions. Overall, they argued that the projected 20 percent increase in total NO_x emissions between 1980 and 1995 did not justify the light-duty truck and heavy-duty engine standards proposed. In contrast, environmental interests, along with state and local governments, argued that the need for further NO_x control was much greater than acknowledged by EPA. They argued that EPA's apparent goal of holding future emissions to current levels was inappropriate (under the statute) because current levels of NO_x already represent significant environmental degradation.

State and local authorities also commented that the need for NO_x control is even greater in high-altitude and California cities than it is on average and, therefore, that projections for these areas should have been highlighted in the proposal. According to testimony from representatives of the Colorado Department of Health, high-altitude cities, such as Denver, are currently in only marginal attainment of the NAAQS and with projections of higher growth than the rest of the country, are in danger of non-attainment in the near future. The California Air Resources Board (CARB) commented that Federally-certified line-haul trucks frequently cross over the state boundary and contribute to NO_x emissions in California cities; of particular interest is the South Coast Air Basin, which includes Los Angeles—the only U.S. city currently not in compliance with the NO_2 ambient standard.

Comments were also received on other effects of NO_x control, including impacts on ambient ozone and sulfate concentrations, acid rain formation, visibility reduction, and short-term NO_2 levels. General Motors (GM) cited various studies as support for its position that reductions in NO_x emissions will result in increased ozone levels in urban areas and increased sulfate concentrations downwind of the areas of NO_x reductions. The Natural Resources Defense Council (NRDC), however, disagreed with GM's view on ozone formation, citing various sources who maintain that NO_x control (as well as HC control) is essential in the reduction of ozone levels. NRDC does suggest that an increase in urban NO_x emissions may lower ozone levels locally (as GM contends), but it will also result in increased ozone concentrations downwind of the higher NO_x emissions, merely delaying peak ozone formation. NRDC argued that EPA had failed to consider a significant environmental problem by neglecting to evaluate the role of NO_x in acid rain formation. Manufacturers commented on what they perceived to be the limited impact that NO_x control will have on the acid rain problem, estimating that sulphurous oxides (SO_x) emissions represent 70 percent of the precursors to acid rain, while light-duty truck and heavy-duty engine NO_x emissions represent less than 5 percent. NRDC also noted that NO_x emissions can play a substantial part in visibility degradation, indicating that 31 percent of the light extinction attributed to mobile sources in Denver in 1980 was due to motor vehicle NO_x emissions. Finally, NRDC expressed concern about the adverse health impacts that recent studies suggest are caused by short-term exposure to relatively low levels of NO_2.

EPA response to the comments. All of the comments discussed in the preceding paragraphs have been analyzed by EPA and were considered in the promulgation of the final NO_x standards. Brief responses to the various comments are provided below, beginning with those pertaining to the specific input parameters used to develop the NO_x emission projections.

The first key input parameters discussed are the VMT growth rates used to project future VMT and, thus, emissions. The growth rates used in the final rulemaking projections (published in Chapter 4 of the RIA) were developed using EPA's MOBILE3-based Fuel Consumption Model,* which estimates future nationwide and urban VMT for each of the gasoline and diesel vehicle classes. These revised growth rates are different from those used in the proposal and several interim analyses, which were based on projections made by Energy and Environmental Analysis, Inc. (EEA), under contract to the Department of Energy. Briefly, the improved VMT growth rates for both light-duty trucks and heavy-duty diesels are significantly lower than those estimates used in the original analysis. In addition, the rates for light-duty vehicles and light-duty trucks are now almost equal, as suggested by the manufacturers' comments. For further explanation of the changes EPA made to its VMT growth projections and the differences that still remain between EPA's and commenters' estimates, see Chapter 4 of the RIA.

The second basic input parameter addressed is projected diesel penetration of the light-duty markets. The diesel sales fractions used in the FRM analysis (presented in the final RIA) represent EPA's current best estimates, and for some model years are slightly different from those used in the original analysis. The estimates for 1985–94 model year light-duty vehicles and light-duty trucks are somewhat lower than before; however, the 1995 diesel sales fractions used in the proposal were retained as best estimates for the FRM analysis. These estimates are consistent with projections of future fuel economy improvements, which in turn suggest that demand for diesel vehicles will continue to increase in the future. Again, further explanation of EPA's changes to its diesel penetration projections and its

*MOBILE3 is EPA's current version of the MOBILE emission factor model, which has been updated periodically as new and improved information has become available. The recently developed Fuel Consumption Model utilizes fleet characterization data from the MOBILE3 data base.

remaining disagreements with commenters' projections are provided in Chapter 4 of the RIA.

However, given the difficulty inherent in predicting future diesel penetration of the light-duty vehicle and light-duty truck markets, a sensitivity analysis was performed wherein the 1990 penetrations were held constant through model year 2000; this low growth case represents a move toward the manufacturers' predictions for 1995, with the 5 percent penetration of the light-duty vehicle market in total agreement with GM's estimate. However, the impact of lower light-duty diesel penetration was negligible with respect to NO_x emissions due to the similarity in light-duty gas and diesel emission rates. (Of course, the impact on diesel particulate emissions is more significant and will be discussed in later sections.)

The final major input parameters addressed in the comments—heavy-duty engine emission conversion factors—were dealt with extensively by EPA in the course of developing the MOBILE3 emission factor model. The MOBILE3 conversion factors are significantly lower than those used in the original analysis which was based on the earlier MOBILE2.5 model. The contention by GM that even greater fuel economy improvements should have been accepted by EPA (thus lowering conversion factors and emissions) is in direct conflict with its own projections of lower diesel penetration in the future. EPA finds no basis for modifying the MOBILE3 conversion factors and has use those factors in the final analyses.

In response to the comments on the "rollback" approach to air quality modelling, EPA has analyzed Ford's dispersion analysis and uncovered several weaknesses in Ford's assumptions that appear to have biased the results of the study. (For more detail on this matter, see Chapter 4 of the RIA.) In view of the extensive use of the rollback model by EPA and others (including states in projecting compliance in their State Implementation Plans), it would be inappropriate to discard or significantly adjust the model based on one study. In addition, the model used does not play a critical role in this action, since the emphases is placed on emission increases with respect to existing levels. In other words, since today's action only offsets projected growth in NO_x emissions, and since a number of cities are only marginally in attainment, the precise year that these cities will likely become non-attainment is not of paramount importance. Therefore, the rollback approach has been used in the FRM analyses.

In response to those comments suggesting use of a 3-year average NO_2 concentration to represent baseline levels, EPA notes that such a change has already been incorporated into its analyses. Futher, the average design values have been updated for the FRM analysis, based on NO_2 concentrations for various cities measured between 1981 and 1983 (the most recent figures available).

In response to the question of environmental need based on the NO_x projections made in the proposal, EPA has not been persuaded that there is no need for new NO_x standards. As the revised projections (to be presented in a later section) will show, growth in NO_x emissions is still projected to occur in the absence of new standards. Although the growth is somewhat lower than that estimated in the proposal, due to revised input parameters, it is still significant and represents an environmental need for further NO_x control. With no control, the existing NO_2 problem can only worsen, leading to increased non-attainment of the NAAQS. Furthermore other impacts of NO_x emissions, which are discussed below, would continue even if no growth occurred.

Briefly,in response to the suggested inclusion of California cities and the separate treatment of high-altitude areas in the NO_x analysis, EPA is in agreement. Therefore, EPA has considered the effect of NO_x control on specific areas such as the South Coast Air Basin in California, and has examined growth in two high-altitude cities (Denver and Reno) in relation to low-altitude growth.

EPA's response to comments on the other effects of NO_x control begins by addressing the manufacturers' contention that significant reductions in ambient NO_2 levels will result in increased ozone and downwind sulfate concentrations. The relationships between NO_x and these other two pollutants are complex and rather controversial. For both ozone and sulfate, the relationship with NO_x is highly dependent upon the characteristics of the urban area being modeled; in the case of ozone, relevant characteristics include meteorology, topography, and existing ratios of HC and NO_x concentrations. Therefore, a general statement is difficult to make without individual evaluation of each of the urban areas. In addition, existing scientific studies of the NO_x/sulfate and NO_x/ozone relationships are limited, and their results have not yet been adequately reviewed or accepted by the scientific community. An EPA-sponsored study is currently underway, but has not yet been completed. Even if EPA later finds that NO_x emission reductions do adversely impact ozone and sulfate production, EPA will most likely address the need for further ozone and sulfate control in the context of HC control strategies and acid rain policy. In any event, as shown in the next section, no significant reductions in total NO_x emissions are projected under the standards promulgated today; rather, these standards will result in current levels staying fairly constant through the year 2000. Therefore, the effect of significant NO_x reductions on ozone and sulfate concentrations are not relevant here.

EPA agrees with those commenters who argued that NO_x emissions also play a role in acid rain formation. Some commenters asserted that NO_x contributes only about one-third of the precursors to acid precipitation, with truck emissions making up an even smaller fraction. EPA acknowledges that the dominant contributions to acid rain formation are sulfate emissions, and thus acid rain reduction is not the primary purpose behind today's promulgation of stricter truck NO_x standards. Indeed, the Agency is currently not in a position to make a quantitative assessment of the role that motor vehicle NO_x emissions play in acid rain formation. Nevertheless, EPA agrees that the Agency could not say that technologically feasible NO_x controls are not environmentally necessary (as the manufacturers suggest), since NO_x emissions do contribute to acid precipitation formation.

The effect of NO_x emissions on atmospheric visibility was reviewed in the formation of the NAAQS for NO_2, and EPA concluded that no quantitative assessment can currently be made with respect to the impact of motor vehicle NO_x on visibility. However, this potential added benefit was considered qualitatively in the determination of the need for the final NO_x standards.

Finally, in response to its comment on the need for a short-term NO_2 standard, NRDC is reminded that the NAAQS for NO_2 is currently under Agency review. The potential need for a short-term NO_2 standard is being analyzed, and EPA may choose to propose such a standard in the future as new information becomes available. However, suggestions of this type are more appropriately handled as part of the periodic NAAQS review process and cannot be dealt with effectively within this particular rulemaking.

Revised Emission Projections. Both in response to the above comments and as part of the ongoing process of re-evaluation and improvement of EPA's modeling efforts, EPA has revised its projections of future NO_x emissions. Several of the input parameters to EPA's NO_x emissions model were revised with the adoption of MOBILE 3, an update of earlier models used by EPA to generate mobile source emission factors. As mentioned earlier, the comments received on the model inputs were also given full consideration in the development of final estimates for each parameter. Finally, using EPA's best estimates for the various parameters, revised NO_x projections were made.

This final NO_x analysis also includes projections of nationwide NO_x emissions (not present in the proposal) as well as projections for key urban areas. Nationwide projections are especially useful in evaluating other effects of NO_x control, such as the impact on acid rain formation. The methodology for these nationwide projections differs somewhat from that used for individual urban areas in that no discount factor is included for stationary point sources, due to the larger scale regional concerns usually associated with nationwide emissions; also, nationwide VMT growth rates are used in these projections instead of urban growth rates (as outlined in Chapter 4 of the RIA).

Nationwide NO_x emission projections are presented in Figures 1a and 1b, which differ only in the future motor vehicle NO_x standards scenarios assumed. "Base case" (shown in Figure 1a) represents no further control of NO_x with a light-duty truck standard of 2.3 g/mi and a heavy-duty engine standard of 10.7 g/BHP-hr. The "controlled case" (in Figure 1b) refers to the NO_x standards promulgated in today's action: 1.2 and 1.7 g/mi for lighter light-duty trucks (LDT_1s) and heavier light-duty trucks (LDT_2s), respectively, and 6.0 g/BHP-hr in 1988, followed by 5.0 g/BHP-hr in 1991, for heavy-duty engines.

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Figure 1a

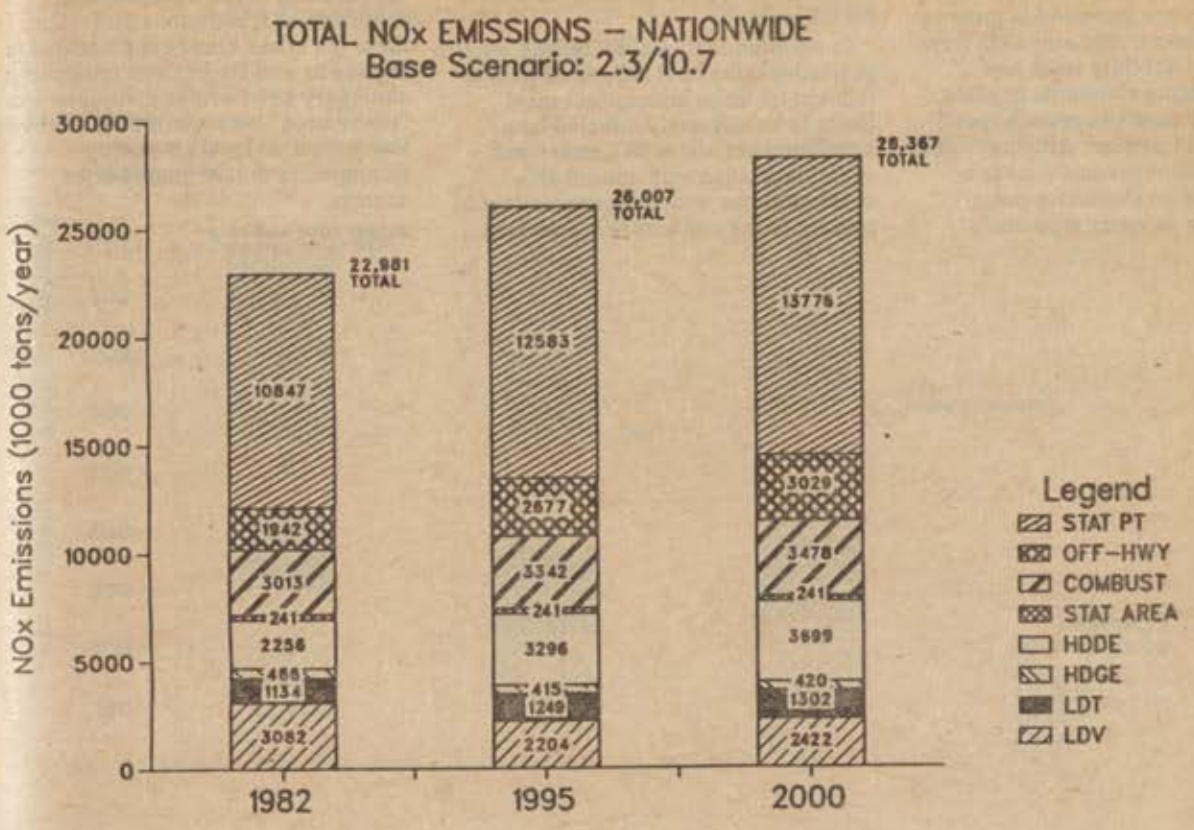
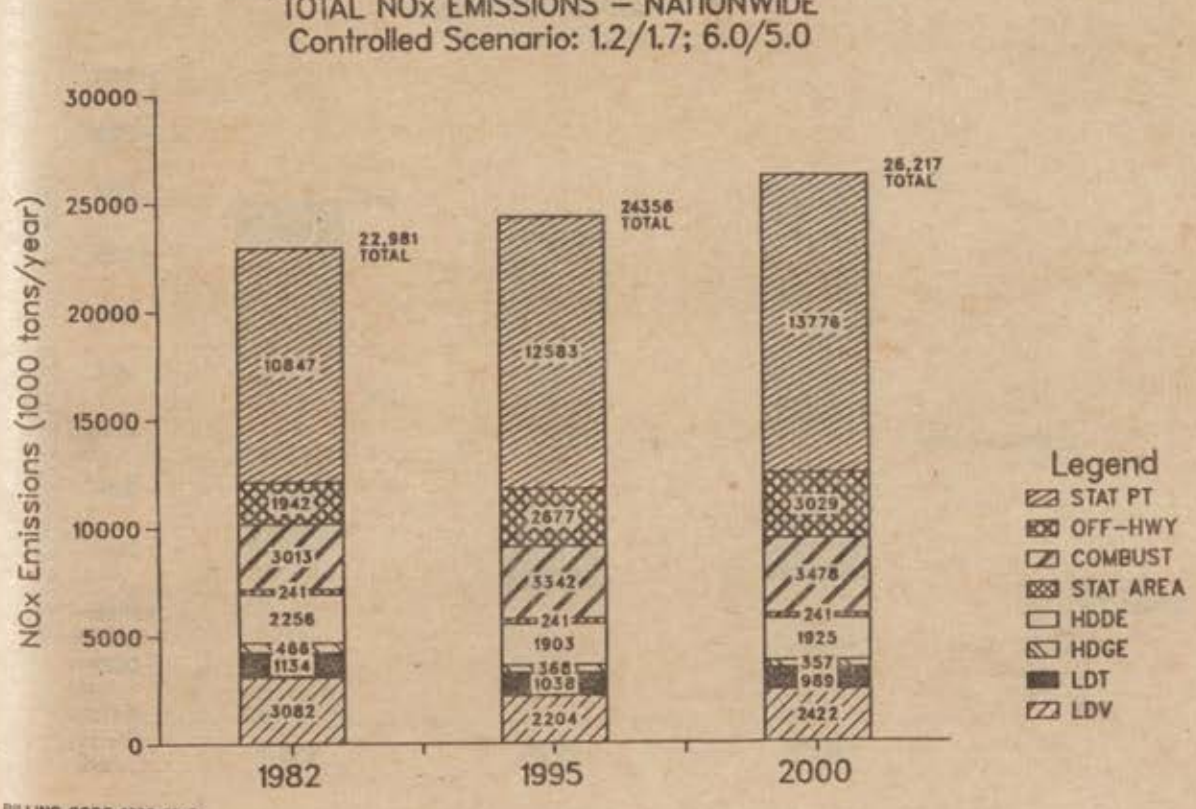


Figure 1b



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As shown in Figure 1a, representing no further NO_x control, total nationwide NO_x emissions are projected to grow by 23 percent between 1982 and 2000. Even with the final light-duty truck and heavy-duty engine standards in place (as shown in Figure 1b), growth is still significant at 14 percent. Although both sets of projections assume a certain level of control on stationary point emissions, this category represents approximately half of the total emissions projected for the year 2000 in both figures.

In addition to these nationwide projections, the final NO_x analysis also focused on those urban areas most likely to be adversely affected by a significant growth in NO_x emissions, evaluating cities with current NO_2 concentrations within approximately 35 percent of the ambient NO_2 standard (0.053 ppm). Eight low-altitude and two high-altitude areas were modelled; the combined NO_x emissions projections for these ten urban areas are presented in Figures 2a and 2b. In these projections, stationary point source emissions are "discounted" because of their relatively low impact on local air quality compared to that of ground-level sources.

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Figure 2a

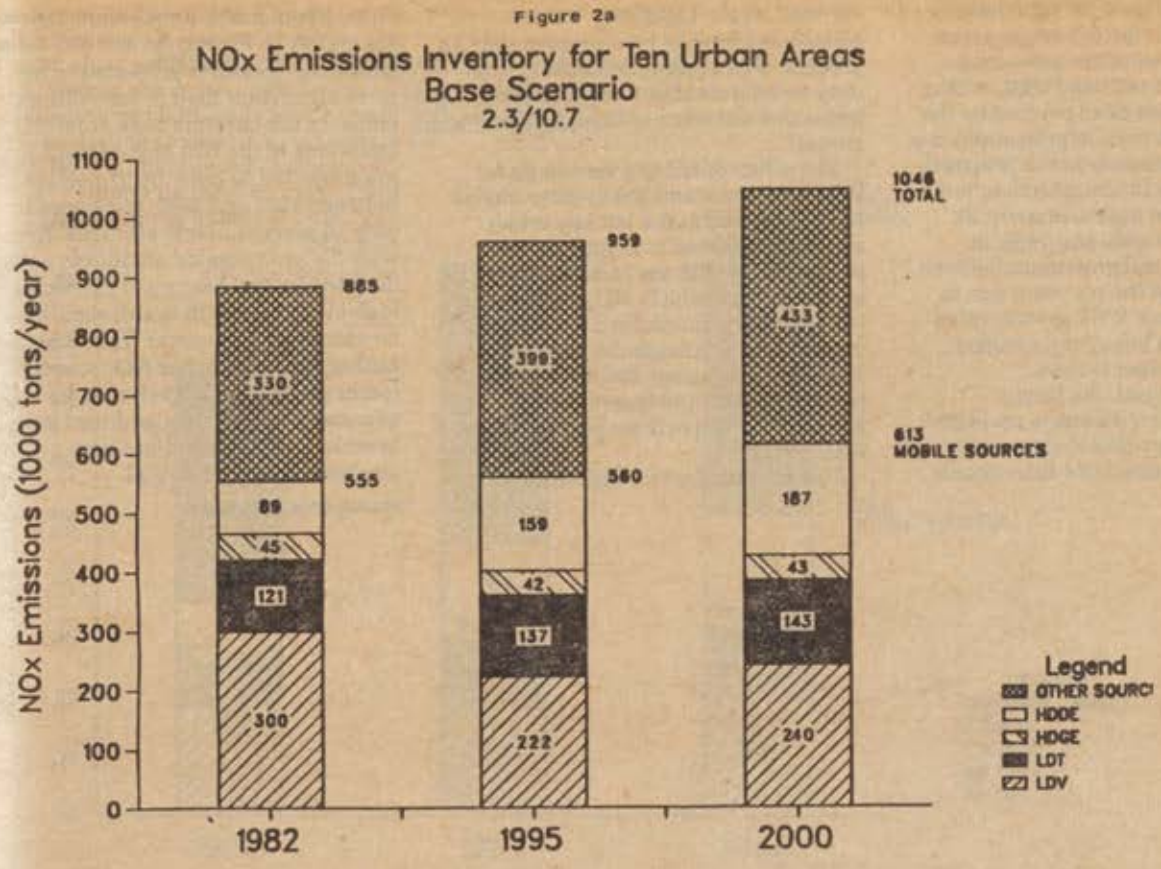
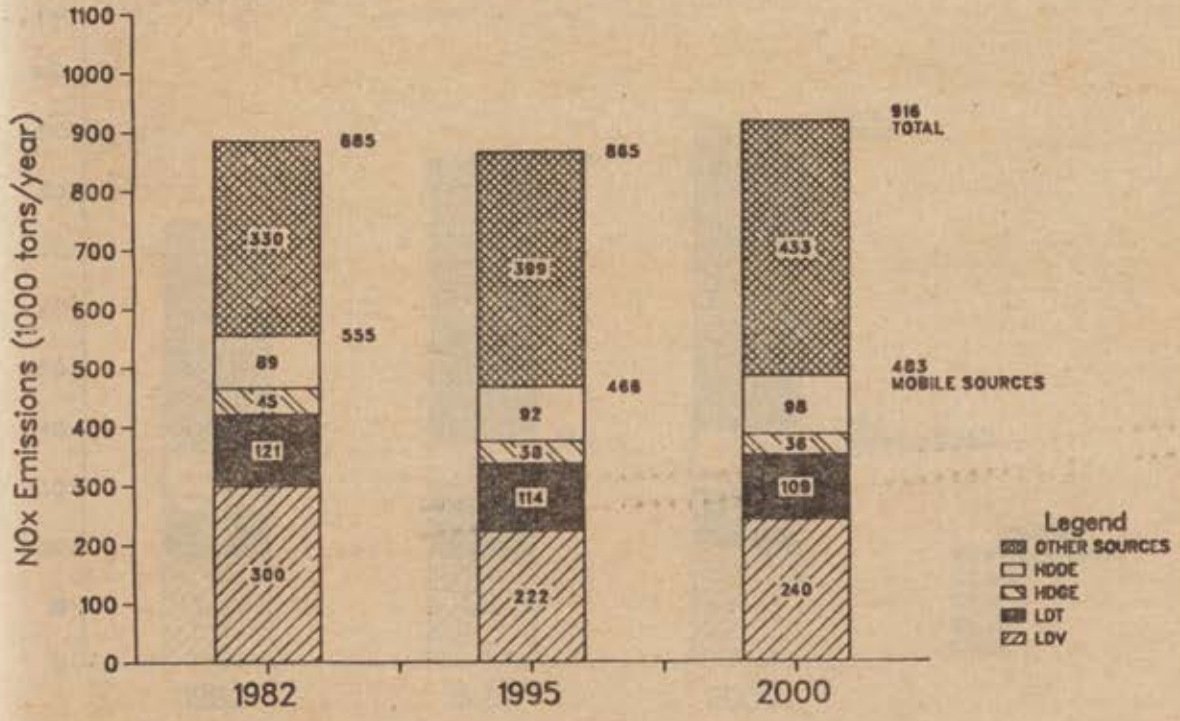


Figure 2b



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As shown in Figure 2a, total base-case NO_x emissions in the ten urban areas modeled are expected to grow by 8 percent between 1982 and 1995, with a projected increase of 18 percent by the year 2000. These growth projections are lower than those made in the proposal, which estimated future growth in total NO_x emissions at approximately 20 percent between 1980 and 1995. In general, the revised growth projections are lower than in the proposal due in large part to lower VMT growth rates and lower future heavy-duty engine emission conversion factors.

As in the proposal, the largest increase in NO_x emissions is projected for the heavy-duty diesel class, with year 2000 emissions more than double the 1982 levels. Light-duty truck emissions increase by approximately 18 percent, while gasoline-fueled heavy-duty vehicle and light-duty vehicle emissions decrease without further control.

The effect of today's standards for light-duty truck and heavy-duty engine NO_x emissions in the ten key urban areas is estimated in Figure 2b. As shown, even with the reductions due to stricter motor vehicle NO_x control, emissions are maintained roughly at current levels through the year 2000. Total NO_x emissions are reduced by 2 percent in 1995 and increase by 3 percent in 2000 (with respect to 1982 emissions).

Focusing on the two high-altitude cities (Denver and Reno) alone (shown separately in Figures 3a and 3b), future emissions growth is projected to be more significant than in low-altitude cities. In the baseline case, total NO_x emissions in the two high-altitude areas are projected to grow by 37 percent between 1982 and 2000, compared to only 16 percent at low altitudes. Even with the promulgated standards on light-duty trucks and heavy-duty vehicles, high-altitude growth is still significant at an estimated 23 percent. Therefore, even further control of other NO_x sources (perhaps on a local level) may be necessary to prevent significant growth in emissions and resultant non-attainment of the NAAQS.

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Figure 3a

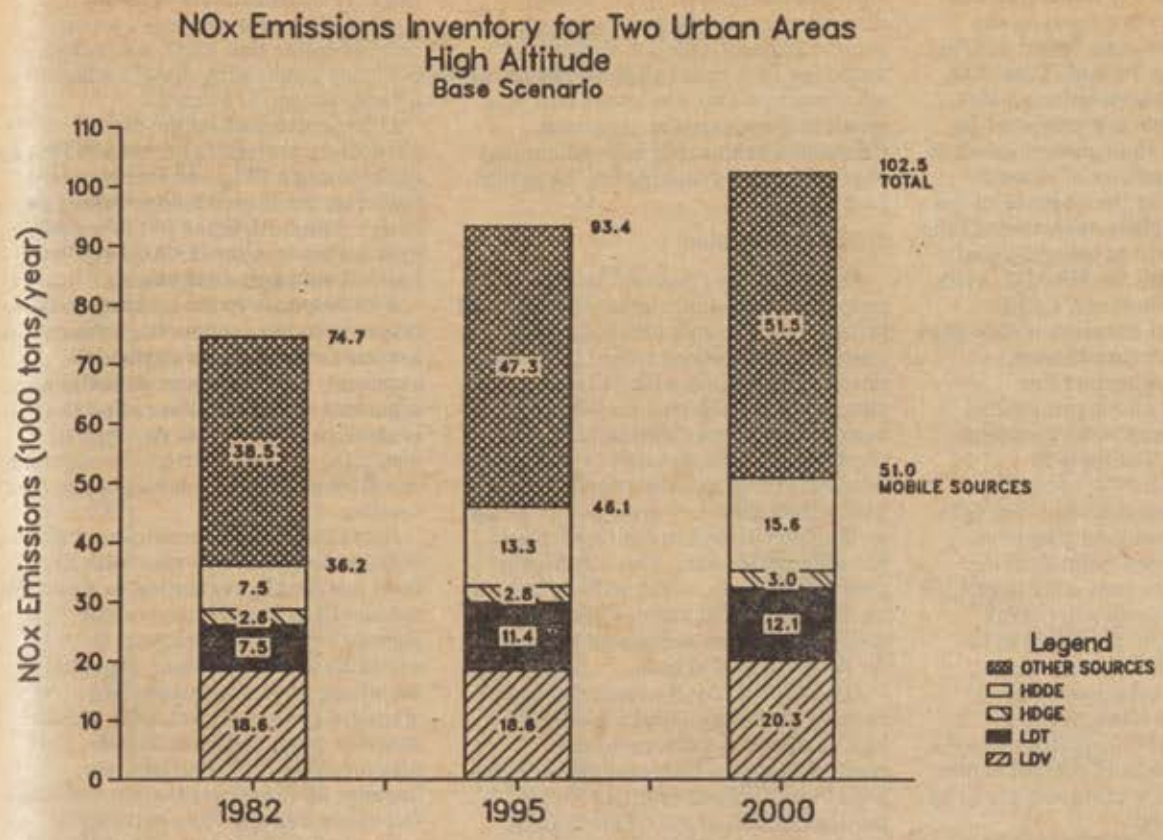
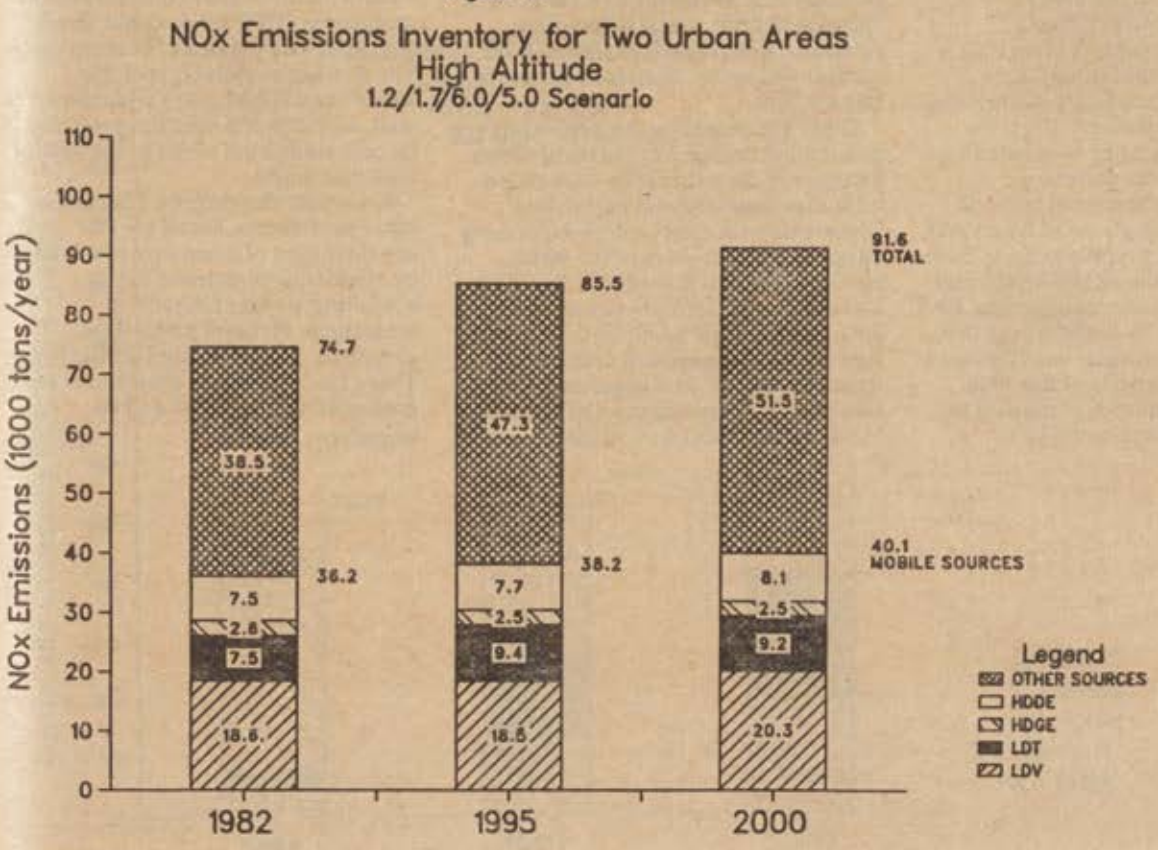


Figure 3b



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Projections of future NO_x emissions for the South Coast Air Basin (the Los Angeles area) were provided by the California Air Resources Board (CARB) and are detailed in the RIA. Total NO_x emissions (including stationary point sources) in the basin are projected by CARB to be lower than current levels in the year 2000, regardless of Federal control. However, in the absence of the new Federal standards, these reductions will not be sufficient to bring the basin into attainment with the NAAQS. With today's standards in place, CARB projects a marginal situation with regard to attainment or non-attainment.

Conclusions. It is against the background of the above projections that EPA must evaluate the comments by manufacturers that there is insufficient need for NO_x control to justify the proposed standards for light-duty trucks and heavy-duty engines. Even with the revised input data that project lower future emissions than anticipated in the proposal, overall growth in NO_x is still projected to be significant for both the nation as a whole and for the urban areas of concern. The same basic need for further NO_x control demonstrated in the proposal still exists, and current action is necessary if future problems are to be dealt with effectively.

Moreover, section 202(a)(3)(E) of the Act allows EPA to relax the No_x standards from statutory levels requiring a 75 percent reduction only if the agency finds that the statutory standards are not needed to protect the public health and welfare. Thus, the burden is on the Agency to substantiate a lack of need for the statutory standards on environmental grounds. Based upon its projections of future NO_x emissions and their relationship to both the attainment of the NO_2 NAAQS and to other actual or potential impacts, EPA finds it impossible to demonstrate that there is no environmental need for more stringent NO_x standards at this time. Therefore, the standards contained in today's action (which are not as stringent as the standards described in section 202(a)(3)(A)(ii)) have been developed under the provisions of section 202(a)(3) (B)–(D), which authorize EPA to temporarily revise the statutory standards to levels that will result in the maximum emissions reductions achievable with technology expected to be available for the period in question.

2. Diesel Particulate

Review of the Proposal. In the proposal, projections indicated that 1983 levels of nationwide urban diesel particulate emissions would more than double by 1995. As with NO_x, the most significant growth was projected for heavy-duty diesel emissions, representing an estimated 74 percent of total emissions in 1995. Based on this, heavy-duty diesels were again targeted as the key element in limiting future growth in emissions. This significant projected growth, along with its impacts on air quality and various health and welfare concerns, supported the need for the proposed action.

Issues raised by the comments. Several of the key input parameters highlighted in the discussion of comments on the NO_x analysis are also used in projections of future diesel particulate emissions. Therefore, comments and EPA's responses to comments on estimates of VMT growth, diesel penetration, and heavy-duty emission conversion factors (included earlier) will not be discussed further in this section.

Other comments on the particulate projections included criticism of EPA's estimate of the cancer risk associated with exposure to diesel particulate emissions, with commenters expressing opinions on both sides of the issue. NRDC expressed the opinion that EPA had underestimated the cancer risk potential of diesel particulate when the Agency (in the proposal) assessed the threat as "small" in comparison with other known carcinogens. On the other hand, General Motors and the American Trucking Association questioned the negative health effects of diesel particulate exposure, based on their determination that there is a lack of evidence implicating diesel emissions as a "serious cancer hazard."

Other comments on the diesel particulate projections criticized EPA for anticipating a PM_{10} ambient standard based on the March 1984 proposal for such a standard. Some felt this was premature since the NAAQS for PM_{10} had not yet been established.

EPA response to the comments. In response to the comments on cancer risk associated with diesel particulate exposure, EPA disagrees with GM's argument and still believes that the risk is small but significant. Actual risk estimates of diesel particulate exposure are presented and discussed in the next section.

In response to the question concerning anticipation of a PM_{10} standard, EPA feels justified in evaluating its standards against PM_{10} levels based on the Agency's published proposal to establish such a standard. Potential violations of the proposed PM_{10} standard are significant, with 105–329 counties projected to be in non-attainment in 1987. Furthermore, because all diesel particulate emissions fall easily into the PM_{10} category, it seems logical to evaluate the effect of control on this basis. Total suspended particulate (TSP) levels could also be considered as the basis for comparison. The number of violations of this established NAAQS are widespread as well, with 300–525 counties projected to be non-attainment areas in the 1987 to 1989 time frame.

Emissions Projections. Changes in input parameters, based on consideration of comments received and on continuing updates of EPA's modelling, resulted in revised projections of diesel particulate emissions and associated air quality. These final emissions projections are presented in Figures 4a and 4b.

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Figure 4a

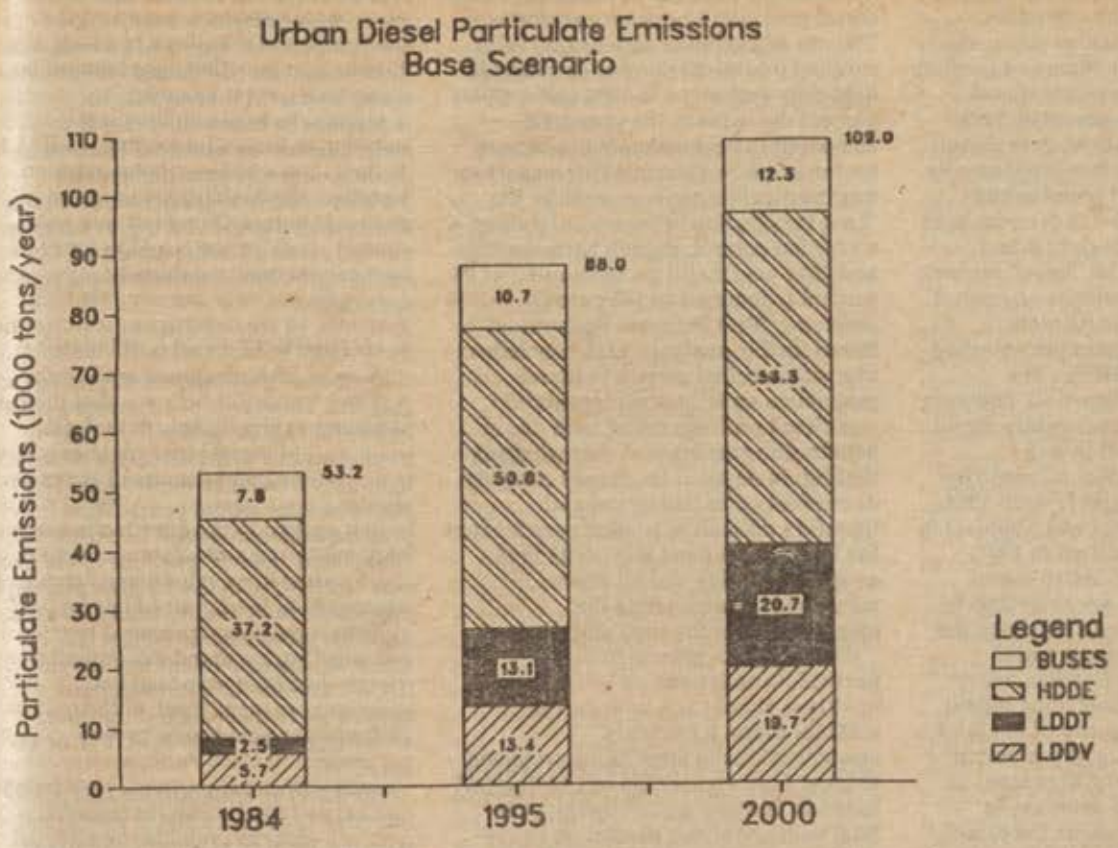
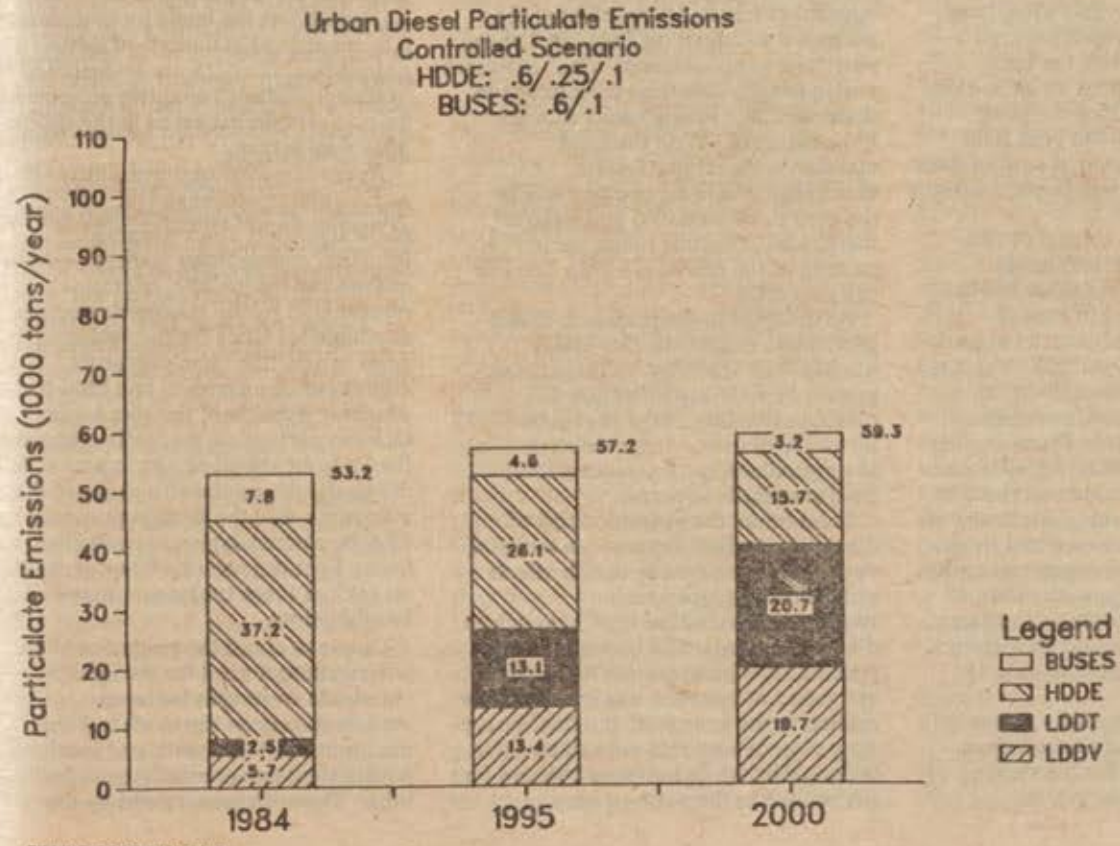


Figure 4b



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Unlike NO_x, diesel particulate emissions are modelled for urban areas across the nation in the aggregate, without focus on particular cities. The scenarios presented in Figures 4a and 4b differ only in the heavy-duty diesel particulate standards assumed. Both scenarios assume the light-duty diesel particulate standards that are currently set to come into effect with the 1987 model year—0.20 and 0.26 g/mi for light-duty vehicles and light-duty diesel trucks respectively. The "base" scenario shown in Figure 4a assumes no control of heavy-duty diesel particulate emissions, *i.e.*, it assumes uncontrolled emissions at 0.70 g/BHP-hr. The "controlled" case in Figure 4b, however, is based on the final heavy-duty diesel standards promulgated in this rulemaking—0.60 in 1988, followed by 0.25 in 1991 and 0.10 g/BHP-hr in 1994, with urban diesel buses being subject to the 0.10 g/BHP-hr standard in 1991.

As Figure 4a shows, urban diesel particulate emissions are projected to grow to twice the current levels by the year 2000 if no heavy-duty diesel controls are imposed. It is this heavy-duty diesel category (including buses) that makes up the majority of the total emissions, representing 84 percent in 1984 and approximately 63 percent of the total in 2000. (This decrease in heavy-duty share occurs as the diesel penetration of the light-duty market increases.)

The effect of heavy-duty diesel and urban bus control is significant, as shown in Figure 4b, with the final standards bringing about an estimated 46 percent decrease from the base (uncontrolled) case in the year 2000. However, even this level of control does not prevent some growth beyond current levels.

The more stringent control (0.10 g/BHP-hr standard) of urban buses beginning in 1991 and of other heavy-duty classes beginning in 1994 is projected to have a substantial impact on emissions by the year 2000. The 0.10 g/BHP-hr standard accounts for 23 percent of the reduction in emissions from uncontrolled levels. From another perspective, if the 1994 0.10 g/BHP-hr standard were eliminated and the 0.25 g/BHP-hr standard simply continued on through 2000 for both buses and trucks, total diesel particulate emissions in the year 2000 would be approximately 33 percent higher than in 1982. In contrast, the final more stringent standards limit growth during this period to only 11 percent.

The emissions projections presented in Figures 4a and 4b are based upon EPA's best estimates for the various input parameters; however, as mentioned earlier, a sensitivity analysis examining the impact of lower light-duty diesel pentration rates was performed. The use of the lower penetration rates resulted in a 29–30 percent decrease in light-duty emissions in 1995 and a 47–50 percent decrease in the year 2000, compared to best estimate projections for the same two years. With respect to total particulate emissions under the "Low Penetration" scenario, assuming no further control, growth between 1984 and 2000 would still be substantial at 68 percent (compared to 105 percent assuming "Best Estimate Penetration"). Based on this analysis, EPA concludes that uncontrolled growth in diesel particulate emissions represents a significant problem under both diesel penetration scenarios. Acknowledging that future demand for diesels is highly dependent upon fuel prices and therefore difficult to predict very far into the future, EPA must rely on its best estimates for this and all other parameters in evaluating the effectiveness of the final standards.

The impact of growth in diesel particulate emissions on urban air quality is significant, with current ambient diesel particulate concentrations in large cities projected to grow from an average of 1 to 3 $\mu g/m^3$ to levels of 3 to 7 $\mu g/m^3$ by the year 2000 with no further control on heavy-duty diesels. These future diesel particulate levels represent approximately 5 to 12 percent of the proposed standard for PM_{10}. (All diesel particulate is considered "fine" in nature and is usually less than 2.5 microns in diameter, thus falling easily into the PM_{10} category.) With the final standards, diesel particulate concentrations in large cities will be reduced to between 1.5 and 4 $\mu g/m^3$, thereby contributing roughly 2 to 7 percent of the allowable PM_{10} level in the year 2000.

As outlined in the proposal, diesel particulate emissions also affect atmospheric visibility. In large cities, growth in visibility reduction due to diesel particulate in the year 2000 could be lessened from a baseline 22 percent to approximately 12 percent with the final standards in place.

In addition, the estimated risk of diesel particulate exposure in terms of cancer and non-cancer health effects will also be reduced with implementation of the final heavy-duty diesel standards. The baseline (uncontrolled) cancer risk factor is estimated at between one and eight per million in the year 2000; the final heavy-duty diesel standards are estimated to reduce this risk to between one and four per million in the same year.

Conclusions. Based on the above projections, EPA believes that diesel particulate emissions are a serious environmental concern with respect to their impact on health and welfare. It seems apparent that significant reductions in heavy-duty diesel emissions are an essential element in dealing with this environmental problem. Today's stringent controls on heavy-duty diesels and urban buses are viewed as an effective means of reducing the future growth in particulate emissions.

B. Light-Duty Truck NO_x Standards

Review of the proposal. EPA proposed that NO_x standards of 1.2 grams per mile (g/mi) for LDT_1s (lighter light-duty trucks) and 1.7 g/mi for LDT_2s (heavier light-duty trucks) be implemented for 1987 and later model years. The proposed discrimination between the "light" and "heavy" portions of the fleet was twofold, with the 1.2 g/mi standard applicable to light-duty trucks less than 6,000 lbs gross vehicle weight (GVW) and 4,000 lbs equivalent test weight (ETW), and the 1.7 g/mi standard applicable to those light-duty trucks exceeding either 6,000 lbs GVW or 4,000 lbs ETW.

The 1.2 g/mi standard for LDT_1s was intended to reflect a rough equivalence with the 1.0 g/mi standard already in effect for passenger cars. The 1.7 g/mi level for LDT_2s was intended to reflect the fact that larger trucks will tend to have higher emission rates and that a more stringent standard could cause potential compliance problems with the particulate standard for heavier light-duty diesel trucks.

Issues raised by the comments. Commenters addressed several aspects of the light-duty truck proposal. Principal among these were the question of the need for the NO_x control represented by the standards and the available leadtime for the 1987 model year. In addition, manufacturers addressed comments to potential fuel economy impacts of the standards, adverse particulate tradeoffs claimed for the 1.7 g/mi standard, the impact of full-life useful life on the stringency of the standards, and the criteria proposed by EPA for distinguishing between light and heavy light-duty trucks. The comments on each of these topics are reviewed briefly below.

Opinions about the existence of an environmental need for the new standards were split between manufacturers on the one hand and environmental and state and local government representatives on the other. The criticisms voiced by the

manufacturers about EPA's emissions projections (discussed in the previous section of this preamble) led them to conclude that EPA had overstated the need for additional NO_x control. This position led some of the manufacturers to claim that no revisions to the light-duty truck NO_x standard were justified on the basis of air quality need, or failing that, that only the lighter trucks should be regulated. From a different viewpoint, environmental and governmental interests argued that the need for NO_x control was actually much greater than acknowledged by EPA, and that standards even more stringent than those proposed are feasible and should be required.

While the feasibility of the proposed NO_x standards was generally uncontested (and cost comments supported EPA's cost estimates), the issue of effective model year was raised by most of the manufacturers. Two light-duty truck manufacturers (Ford and Chrysler) stated that they could comply with the standards in model year 1987, as proposed, but all others claimed that a delay of at least one year was necessary in order to give them enough time to develop and certify conforming vehicles. Two manufacturers even argued for a delay until the 1989 model year, citing leadtime constraints facing their firms. In addition, several manufacturers argued that they were entitled to 4 years leadtime under section 202(a)(3)(B) of the Act before any standards for LDT_2s can be implemented.

As for fuel economy impacts, a few manufacturers claimed that the proposed standards would result in fuel economy penalties. GM claimed up to a six percent penalty for light-duty gasoline trucks. Others felt the impact would be less. For example, Ford cited a value of one to one-and-a-half percent. Most of the fuel economy estimates were derived from data on current engines certified to a 1.0 g/mi NO_x standard for California.

Commenting on the impact of the proposed standards on its diesel light-duty trucks, GM argued that the proposed standards would adversely affect the ability of its heavier diesel trucks to meet the 1987 particulate standard. Because of this, GM felt that the standard for heavier light-duty trucks should remain at 2.3 g/mi.

The impact of full-size useful life on the effective stringency of the proposed standards (both 1.2 and 1.7 g/mi) was cited by several manufacturers, who claimed that the level of each should be raised to account for full-life compliance requirements. (Under the statute, light-duty vehicles must meet emission standards for only 5 years or 50,000 miles.) Otherwise, the commenters argued, the standards do not provide equivalent stringency to the light-duty vehicle standard as claimed by EPA; rather, they are more stringent than the light-duty level.

The criteria used to distinguish between light-duty trucks required to meet 1.2 g/mi or 1.7 g/mi were intended by EPA to correspond to California requirements, but some commenters claimed that they did not. EPA used "equivalent *test* weight" as one criterion, while California uses the slightly different "equivalent *inertia* weight." According to these comments, this difference, combined with EPA's inclusion of a gross vehicle weight (GVW) criterion, would lead to inconsistent classifications between EPA and California and cause manufacturers in some cases to have to certify to varying sets of standards. Arguments were also advanced as to why EPA would not need to retain the GVW discriminator to prevent possible migration of trucks from one class to the other.

EPA response to comments. EPA has carefully considered the comments received on the issue of light-duty truck NO_x standards. For a more complete treatment of the comments, the interested reader is referred to Chapter 2 of the Regulatory Impact Analysis. A summary of EPA's responses is provided in the following paragraphs to identify EPA's positions in each area.

The first issue identified above concerns the need for new light-duty truck standards. EPA's review and reanalysis of the environmental basis for future NO_x control appears earlier in this preamble. It suffices here to reiterate that EPA continues to believe that future NO_x emissions from light-duty trucks should be reduced.

As for the appropriate model year for new standards, EPA's review leads it to agree with those manufacturers who argued for an additional year of leadtime. Based upon a reanalysis of leadtime requirements and a March, 1985 promulgation date, EPA finds that the first model year for which the new standards can be generally applicable is 1988. EPA disagrees, however, with those manufacturers who argued that they were entitled to 4 years leadtime to meet new LDT_2 standards. As discussed in the proposal, EPA cannot comply with the leadtime provision of section 202(a)(2)(B) of the Act since the NO_x standards for LDT_2s are already several years behind schedule (due in part to the manufacturers' requests for delays in the standards proposed in 1981).

EPA has reviewed the issue of fuel economy impacts very carefully. The result of that review, as detailed in Chapter 2 of the Regulatory Impact Analysis, is that no adverse impacts can be substantiated. In fact, EPA continues to believe that a small benefit may result for the whole light-duty truck fleet on average (although no benefit was assumed in the economic impact analysis).

Turning to GM's comment concerning a possible adverse effect of the proposed standards on particulate emissions from its heavier light-duty trucks, the Agency must disagree with the GM position. The 1.7 g/mi level was introduced by EPA in part to prevent the difficulty alleged by GM. Based upon analysis of data in GM's own submission concerning the NO_x/particulate tradeoffs to be expected, EPA concludes that GM should be able to meet the particulate standard at a NO_x standard of 1.7 g/mi for heavier light-duty trucks.

The next issue raised is that of the relative stringency of the proposed standards compared to the existing light-duty vehicle NO_x standard. First, the 1.7 g/mi standard for LDT_2s is actually less stringent than the 1.0 g/mi light-duty vehicle standard. It is set at a level which deals with feasibility issues affecting some of the heavier members of the class. Even when the effects of full-life useful life are considered, 1.7 g/mi is still less stringent than the light-duty vehicle standard. Thus, manufacturers have no grounds for claiming that 1.7 g/mi for LDT_2s is more stringent than the light-duty vehicle standard.

As for the 1.2 g/mi level for LDT_1s, EPA's intent is to provide for approximate equivalence only. There is no specific statutory requirement for this approach; rather, it represents EPA's interpretation of the Act that Congress intended to establish some equity between light-duty vehicles and light-duty trucks. This standard accomplishes that objective. EPA's evaluation of the effect of an extended useful life indicates that making specific allowance for this effect would change the level of the standard by less than 0.1 g/mi. The only important issue in evaluating the appropriateness of 1.2 g/mi at this time is that of its general feasibility which, as already noted, has not been challenged by the manufacturers.

The final area of comment concerned the criteria used by EPA to separate light and heavy light-duty trucks. EPA agrees with the comments; the fact that the proposed criteria did not completely correspond to California's requirement

was inadvertent and is being corrected in this rule. EPA also agrees that the need for a second discriminator based on GVW is unnecessary. Therefore, that provision is being eliminated. Since the specific California parameter (equivalent inertia weight) does not appear in Federal regulations, EPA will instead use loaded vehicle weight, which defines the California equivalent inertia weight classes, for its cutpoint. On this basis, vehicles up to and including 3,750 pounds loaded vehicle weight will be considered to be light light-duty trucks (LDT_1s), and those over that limit will be considered to be heavy light-duty trucks (LDT_2s).

Options for the final rule. Based upon the public comments and EPA's evaluation of them as outlined above, the Agency evaluated four main options for potential inclusion in today's rule. These options, ranging from retention of the standards as proposed to no new light-duty truck NO_x standards at all, are identified and reviewed below. Further information on the costs, emission impacts and cost effectiveness of the options can be found in the Alternatives chapter of the Regulatory Impact Analysis.

1.2/1.7 in 1987: This option would retain the light-duty truck standards as originally proposed. It would have the maximum environmental benefit of any of the options under consideration, but would not, in EPA's judgment, allow sufficient leadtime for compliance by manufacturers.

1.2/1.7 g/mi in 1988: This option maintains the level of the standards as proposed, while responding to valid concerns expressed about available leadtime for the 1987 model year. With a one year delay of implementation, the technical feasibility of this approach is well established and therefore is not an issue. Comments did indicate the potential for an adverse impact of a 1.7 g/mi NO_x standard of particulate emissions from the heavier light-duty diesel trucks but, as already discussed, EPA has concluded that such impacts are unlikely.

On the other hand, there are legitimate reasons why the standard for heavier light-duty trucks should remain at the 1.7 g/mi level rather than being lowered. These trucks are not only heavier, they have increased frontal area and aerodynamic drag. This forces their average emission rates to be higher than those of the lighter trucks. In addition, reducing the standard below 1.7 g/mi would significantly impact the ability of affected diesel engines to comply with the diesel particulate standard.

In the mid to late 1990s, this option would produce a three to four percent reduction in NO_x emissions in the urban areas evaluated, and about a one percent reduction in total nationwide NO_x emissions. Its cost per vehicle is low, averaging less than $30 per truck. Much of the reason for the low cost comes from the fact that manufacturers, as indicated in confidential submissions to EPA, are generally moving toward the adoption of three-way closed loop control systems (the technology which would be used to meet these standards) even without new standards. This is being done because there are other benefits to this technology besides reduced emissions, principally in the areas of improved performance, driveability and fuel economy. The 1.2/1.7 g/mi standards option thus capitalizes on the emission reduction potential of this technology at very low cost. The overall cost effectiveness of this option is about $263/ton if benefits are undiscounted, or $405/ton if benefits are discounted at a rate of ten percent.

1.2/2.3 g/mi in 1988: Under this option, any potential compliance problem would be eliminated for heavier light-duty diesel trucks. However, as discussed above, EPA has concluded that the compliance issues claimed at 1.7 g/mi do not justify a relaxation in the proposed level. Overall, the cost per vehicle (sales-weighted fleetwide basis) would be reduced slightly from the previous option, as would the degree of NO_x control obtained.

This option suffers from a further problem in that it fails to address the statutory provisions applicable to the heavier light-duty trucks under section 202(a)(3). In order to avoid setting a new, lower standard for these vehicles, EPA would have to make a finding under section 202(a)(3)(E) that further NO_x control is environmentally unnecessary. As already noted, EPA cannot make such a finding.

No new standard: This option clearly results in no benefits and no cost. As with the previous option, which considered no control of the heavier light-duty trucks, EPA would have to make a finding of no environmental need for control of LDT_2 NO_x emissions to adopt this approach. As has already been shown, EPA is unable to reach such a conclusion based on its most recent emission projections and air quality analyses. In addition, it should be noted that the potential air quality benefits resulting from the use of three-way catalyst systems, which manufacturers have indicated in their comments are already planned in many cases, would potentially be sacrificed under this option.

Conclusions. Determining the appropriate choice among the above options is straight-forward. Both the overall environmental need and the feasibility of the new standards argue for maintaining the standards at the levels proposed. Thus, the choice is between options one and two. Based upon the leadtime problems which EPA has recognized, option two has been selected. Therefore, revised light-duty truck NO_x standards of 1.2 and 1.7 g/mi, depending on loaded vehicle weight, take effect for the 1988 model year. Light-duty trucks up to and including 3,750 lbs loaded vehicle weight must meet the 1.2 g/mi NO_x standard, and those of 3,751 lbs or greater loaded vehicle weight must meet the 1.7 g/mi standard. (This cutpoint corresponds to the 4,000 lbs equivalent inertia weight discriminator used in the California motor vehicle regulations.)

C. Heavy-Duty Engine NO_x Standards

Review of the proposal. Two stages of revised heavy-duty engine oxides of nitrogen (NO_x) emission standards were proposed. For 1987 and later model year heavy-duty engines, the proposed standard was 6.0 grams per brake horsepower-hour (g/BHP-hr). A 4.0 g/BHP-hr NO_x standard was proposed for 1990 and later model year heavy-duty engines. The 4.0 standard represented what the proposal deemed to be the approximate limit of reductions attainable by 1990 model year heavy-duty diesel engines using current and reasonably foreseeable technology, and was judged not to pose any serious feasibility issues for gasoline-fueled engines.

Issues raised by the comments. Commenters addressed both the levels of the proposed NO_x standards for heavy-duty engines and the proposed model year 1987 and 1990 effective dates. Issues raised by the manufacturers' comments are discussed first, and are followed by discussion of issues raised by commenters that challenged the proposed standards as insufficiently stringent.

The major points addressed by the manufacturers were the leadtime available for a 1987 model year standard, the environmental need for revising the heavy-duty NO_x standard, and the technical feasibility of a 4.0 g/BHP-hr standard for heavy-duty diesel engines. Other issues raised by the industry included potential fuel economy penalties associated with the proposed standards, particularly for diesel engines, along with the costs of

these standards and statutory leadtime provisions.

Manufacturers challenged any revision of the NO_x standard for 1987 model year heavy-duty engines on the grounds of insufficient leadtime to design, tool-up, produce, and certify conforming engines. The 6.0 g/BHP-hr standard was generally acknowledged as technologically feasible, but not for the 1987 model year. Most manufacturers instead suggested that model year 1988 be the effective date for the first revision of the NO_x standard. However, a few heavy-duty diesel engine manufacturers (Cummins, International Harvester, Mack) relied on the 4-year leadtime provision in section 202(a)(3)(B) of the Act to argue that no revision of the current heavy-duty engine NO_x standard of 10.7 g/BHP-hr can take effect until the 1989 or 1990 model year.

Manufacturers again claimed that the EPA emissions projections and air quality analyses, used in support of both the proposed light-duty truck and heavy-duty engine NO_x standards, overstated the need for additional NO_x control.

While most manufacturers accepted the 6.0 standard, at least if implemented sometime after model year 1987, General Motors (GM) claimed that no heavy-duty engine NO_x standard more stringent than 8.0 g/BHP-hr could be justified on the basis of environmental need in either the short- or long-term. The specific challenges manufacturers made to EPA's emission projections and air quality analyses were the same as those used to contest the need for the light-duty truck NO_x standards, and are discussed under the "Environmental Impacts" heading of this section.

Acknowledgment by the industry of the technological feasibility of the 6.0 g/BHP-hr NO_x standard did not translate into support for such a standard. Diesel engine manufacturers predicted fuel economy penalties ranging as high as 12 percent could result from the 6.0 g/BHP-hr NO_x standard, relative to the current 10.7 g/BHP-hr standard. However, most of the estimates were in the 3 to 6 percent range. Cost estimates for compliance varied and were not supplied by all manufacturers. Ford estimated that compliance for medium heavy-duty diesel engines would cost $350 on a sales-weighted basis. International Harvester's estimated cost ranged from $337 to $675 per engine, depending on whether electronic controls were required.

Comments on the 6.0 g/BHP-hr NO_x standard for gasoline-fueled heavy-duty engines were received from General Motors (GM), Ford Motor Co. (Ford), and the Chrysler Corporation. GM acknowledged that the standard was technologically feasible for most gasoline-fueled engines, but criticized EPA's assessment of how this standard would be met and claimed that a 1.5 percent fuel economy penalty would result. Ford also called the standard feasible, but said that additional hardware, beyond that assumed by EPA in the proposal, will be required to comply with a 6.0 g/BHP-hr NO_x standard. Chrysler agreed that a 6.0 g/BHP-hr NO_x standard was feasible for gasoline-fueled engines. The only cost estimate for gasoline-fueled heavy-duty engines, $180 for compliance with the 4.0 g/BHP-hr standard, was received from Chrysler, even though Chrysler claimed that the technology necessary to reach that level was not available.

Another major issue raised by the industry was the feasibility of the proposed 4.0 g/BHP-hr NO_x standard, which all manufacturers characterized as beyond the limits of technological feasibility for heavy-duty diesel engines. Any heavy-duty engine NO_x standard lower than 6.0 g/BHP-hr, commenters claimed, would result in unacceptably large fuel economy penalties for diesel engines. In addition, manufacturers said that compliance with the proposed particulate standard in 1990 would not be possible under a 4.0 g/BHP-hr NO_x standard. The lowest NO_x standards suggested by any of the manufacturers for the 1990–92 time frame were 5.1 g/BHP-hr (the current California standard) in 1990 by Daimler-Benz, 5.0 in 1991 by Volvo, and 4.5 in 1992 by Cummins, whose recommendation was contingent on EPA making a commitment to review the 1992 standards no later than calendar year 1987. (This point is also discussed below under "Heavy-Duty Diesel Engine Particulate Standards.")

Manufacturers of heavy-duty gasoline-fueled engines also termed a 4.0 g/BHP-hr NO_x standard for 1990 or 1991 infeasible. Ford claimed that a 4.0 g/BHP-hr NO_x standard would require three-way catalysts for these engines, a step that it described as not feasible. GM said that a 4.0 g/BHP-hr NO_x standard for gasoline-fueled engines would cause hydrocarbon (HC) emissions to double, making compliance with model year 1987 HC standards impossible, and would cause a 6 percent fuel economy penalty. Chrysler simply stated that it could not comply with a 4.0 g/BHP-hr NO_x standard using technology expected to be available for the 1990 model year.

Environmental interests and state and local government representatives, on the other hand, termed the proposed standards inadequate to address what they characterized as a crucial need for additional reductions in NO_x emissions. Most environmentalists argued that a 4.0 g/BHP-hr NO_x standard should be implemented in the 1987 model year, with a 1.7 g/BHP-hr standard (representing a 75 percent reduction from baseline gasoline-fueled engine NO_x emissions) taking effect in model year 1990. The Colorado Department of Health even recommended a 1.0 g/BHP-hr NO_x standard for those engines used in vehicles up to 14,000 lbs gross vehicle weight. NRDC pointed to California's current 5.1 g/BHP-hr heavy-duty engine NO_x standard as evidence that a short-term standard lower than 6.0 g/BHP-hr was feasible. For the most part, however, these recommendations were not necessarily based on the assumption that all, or even most, engines would be capable of compliance when the standards first took effect. Instead, these recommendations were based on the need for NO_x reductions as presented in the proposal, combined with a strong emphasis on the technology-forcing provisions of the Act and the availability of noncompliance penalties (NCPs) for technologically "laggard" manufacturers unable to meet the standards when they first take effect.

Several other issues were also raised by those requesting EPA to establish heavy-duty engine NO_x standards more stringent than those proposed. The California State Attorney General said that the NO_x standard for gasoline-fueled heavy-duty engines should be set low enough to force the use of three-way catalytic converters on those engines. The California Air Resources Board (CARB) joined the Attorney General in arguing that the State of California, despite their authority to set mobile source emission standards more stringent than Federal levels, will be unable to deal with increasing NO_x emissions and resulting problems with nonattainment of the ambient NO_2 standard unless more stringent Federal standards are established. This is because of the high amount of vehicle miles traveled (VMT) in California by heavy-duty diesel engines certified to Federal standards. CARB estimated that federally certified engines represent as much as 45 percent of all VMT accumulated by heavy-duty diesel engines in the Los Angeles area (currently the only NO_2 nonattainment area in the country).

EPA response to the comments. The first issue identified above concerns the leadtime required for implementation of a 6.0 g/BHP-hr NO_x standard. An analysis of the practical leadtime required for heavy-duty engine manufacturers to comply with a 6.0 g/

BHP-hr NO_x standard is presented in Chapter 2 of the RIA, with separate analyses for gasoline-fueled and diesel engines. Different analyses are required to account for the different control technology used by the two engine types, and the analysis for diesel engines also accounts for the simultaneous imposition of particulate regulations for those engines. For reasons discussed in the RIA, EPA concludes that the 21 months remaining after publication of this final rule until the beginning of the 1987 engine model year (January 1, 1987) is not adequate for most manufacturers and that additional time for compliance must be allowed. Delay of a 6.0 g/BHP-hr standard by one year, to the 1988 model year, makes approximately 33 months of leadtime available. Based on EPA's analysis of the leadtime requirements, this should provide all manufacturers with adequate, but not excessive, leadtime.

In response to those manufacturers that cited section 202(a)(3)(B) of the Act to argue that no revision to the heavy-duty engine NO_x standards can be implemented before the 1989 or 1990 model year, EPA reiterates the discussion presented in the proposal with respect to a 1987 model year standard. The now-conflicting statutory provisions, which call for NO_x standards to have been in place for the 1985 model year but also call for 4 years leadtime for any revisions of the statutory heavy-duty NO_x standards, cannot both be met and necessitate the approach taken by EPA today. EPA believes that the requirement to promulgate the statutory standards, or revised standards, as soon as practicable is paramount. EPA also believes the 1988 effective date to be an appropriate resolution of the statutory issues and the legitimate leadtime concerns expressed by the manufacturers. EPA notes again that more than 4 years have passed since the Agency's intent to revise the NO_x standards for heavy-duty engines was first announced, and since the manufacturers first requested their postponement. While this elapsed time is not, strictly speaking, part of the leadtime for the 1988 model year standard being promulgated today, EPA does not believe that it should be ignored in considering the implementation date for a near-term NO_x standard. The reader is also referred to the proposal (49 FR *at* 40259, October 15, 1984) for additional discussion of this issue.

EPA's responses to the manufacturers' criticisms of the emission projections and air quality analyses used in support of the proposal are presented under the "Environmental Impacts" heading in this section, and are not repeated here. As stated above in the discussion of environmental need, EPA has completely reanalyzed the need for future NO_x control and found that reductions in heavy-duty NO_x levels are necessary to deal appropriately with projected future growth in NO_x emissions.

While EPA continues to believe that a 6.0 g/BHP-hr NO_x standard is feasible for all heavy-duty engines in 1988, several of the specific comments on this topic have led to revisions in EPA's technical and economic analyses of this standard. EPA accepts the statement by Ford that more hardware than the proposal assumed will be used by some gasoline-fueled engines to comply with the standard while minimizing the fuel economy impacts, and has updated its analyses accordingly. EPA also accepts the assertion that slight fuel economy penalties may result from this standard, but disputes the manufacturers' claims of the magnitude of such penalties (*i.e.*, 3 to 12 percent). The technical analyses in Chapter 2 of the RIA show that the 6.0 g/BHP-hr NO_x standard may cause up to a 2 percent penalty for diesel engines, and should not cause any penalty for gasoline-fueled engines, in the first year that it is effective. However, EPA also believes that potential fuel economy penalties will be affected by the projected application of fuel efficiency improvements, and should diminish in future model years. The reader is referred to the "Technological Feasibility" chapter of the RIA for details of these analyses.

EPA does not agree with NRDC that an even lower short-term NO_x standard is feasible, in light of the significant trade-off between NO_x and particulate emissions and the likelihood of substantial fuel economy penalties in this time frame. Thus EPA concludes that 6.0 g/BHP-hr is the lowest feasible short-term (*i.e.*, 1988 model year) NO_x standard for heavy-duty engines. (For further discussion of this issue, see Chapter 2 of the RIA.)

Turning to the question of the feasibility of a 4.0 g/BHP-hr NO_x standard for heavy-duty diesel engines, EPA finds that there is some validity to the manufacturers' comments regarding this standard. The data on which EPA based its analyses in support of the 4.0 g/BHP-hr standard was limited and involved problematical extrapolations. During the comment period, data were submitted that EPA concluded represent the best estimate currently available of heavy-duty diesel engine technology in the 1991 time frame. These data suggest that 5.0 g/BHP-hr is the lowest feasible standard for 1991. At NO_x levels below 5.0 g/BHP-hr, particulate emissions begin increasing at distinctly higher rates and in some cases reach levels well above 0.60 g/BHP-hr. These increases in particulate emissions are of special concern to the Agency, since they have the potential to render the particulate standards promulgated by today's action unattainable. Such increases in particulate emissions make the application of traps, required to meet the 1991 bus and heavy-duty engine particulate standards, very difficult. For this reason, EPA does not consider 4.0 g/BHP-hr to be a feasible standard for 1991–93. (For further information about the feasibility problems associated with a 4.0 g/BHP-hr NO_x standard, see Chapter 2 of the RIA.)

EPA has determined, on the basis of the manufacturers' comments and subsequent reanalysis of the issues, that a NO_x standard of 5.0 g/BHP-hr for heavy-duty engines in 1991 is as stringent a standard as can be implemented by that time. This standard would reduce the adverse impact of reducing NO_x on engine-out particulate emissions, and an approximately equal standard (5.1 g/BHP-hr) is already being met by a number of engines in California, although without any accompanying particulate standard. EPA estimates that a NO_x standard of 5.0 g/BHP-hr may cause a first-year fuel economy penalty of up to one percent for heavy-duty diesel engines, which should be diminished to about 0.5 percent within a few years. For gasoline-fueled engines, EPA estimates that any potential fuel economy penalty will be very slight.

Of the arguments made by environmental organizations and state and local governmental representatives in support of their contention that even the proposed standards were insufficiently stringent, the most important was that noncompliance penalties (NCPs) can and should be taken into consideration in determining the levels of new heavy-duty engine emission standards. EPA views NCPs as a mechanism by which the Agency is freed from an obligation to establish standards that can be met by *all* engines, even those of technological laggards, and is allowed to base standards upon the capabilities of the technological leaders. However, EPA does not believe that Congress intended NCPs to force the Agency to set standards based solely on the cleanest possible engines, such that most manufacturers and most engines cannot

comply. In fact, section 202(a)(3) of the Act requires EPA to consider other factors (leadtime, cost, fuel economy) in setting standards, which implies that Congress intended standards to be achieveable by most manufacturers, if not all. In this case, EPA has determined (contrary to NRDC's suggestion) that most engines could *not* comply with a 4.0 g/BHP-hr standard in the time frame suggested by NRDC without incurring excessive costs and unreasonable fuel economy penalties. (See Chapter 2 of the RIA for a detailed discussion of the feasibility issue.) EPA does not believe that NCPs would be an appropriate remedy in such a case, or that NCPs can substitute for the feasibility determinations required by section 202(a)(3) (B)–(D) of the Act.

The California Attorney General argued that a lower NO_x standard, one which would force the use of three-way-catalyst technology, should be set for gasoline-fueled heavy-duty engines. without contesting the tenchical feasibility of such an approach, EPA believes that different NO_x standards for gasoline-fueled and diesel heavy-duty engines are not appropriate, since the legislative history of the Clean Air Act indicates that Congress generally contemplated common emission standards for both engine types. Although EPA did establish different hydrocarbon (HC) and carbon monoxide (CO) standards for gasoline-fueled and diesel heavy-duty engines (48 FR 52170, November 16, 1983), that uinque action was based on the unusual circumstances of that case. Specifically, diesel engines could meet the statutory HC and CO standards easily, while gasoline-fueled engines could meet these standards only at unreasonable cost.

This is not the case for the NO_x standards of today's rulemaking, where reference to the "Economic Impact" chapter of the RIA shows that the costs of compliance at the 6.0 and 5.0 g/BHP-hr NO_x levels are somewhat similar for both engine types, especially when the costs are considered in relation to the base cost of each type of engine. The cost of adding three-way-catalyst systems to gasoline-fueled heavy-duty engines would dramatically alter this balance, with the possible effect of forcing at least some gasoline-fueled engines out of the heavy-duty market. Yet the additional reductions in NO_x emissions would be insignificant, and the gasoline-fueled engines sales lost would be gained by diesel models that would be permitted higher NO_x emission levels. Thus, the benefits of the NO_x reductions attributable to such control of gasoline-fueled engines, already slight, would tend to be eliminated. Therefore, EPA is promulgating common NO_x standards for both engine types.

Options for the final rule. Two options were considered for the near-term, a 6.0 g/BHP-hr standard in the 1987 model year, as proposed, and a 6.0 standard in model year 1988. In the longer term, 6.0 and 5.0 g/BHP-hr were considered as options.

6.0 g/BHP-hr in model year 1987: As discussed in EPA's response to the comments, above, analyses of the leadtime required for manufacturers to comply with a 6.0 NO_x standard are presented in the RIA for both gasoline-fueled and diesel heavy-duty engines. The conclusion EPA draws from those analyses is that inadequate leadtime exists for a model year 1987 revision to the heavy-duty engine NO_x standard. However, those analyses also indicated that a delay of one year to the 1988 model year would provide sufficient leadtime (up to 33 months after today's notice) for all manufacturers.

6.0 g/BHP-hr in 1988: This option features the level of short-term heavy-duty engine NO_x control that was proposed, but delays implementation for one model year in response to the manufacturers' comments regarding leadtime requirements. The technological feasibility of this standard is established by the analysis in support of the proposal and was not contested by the industry in their comments. EPA's analysis indicates that any fuel economy penalties associated with this standard should be small (on the order of 2 percent or less for diesels, none for gasoline-fueled engines), and should diminish through continued technological advances in future model years.

This option alone would be projected to reduce NO_x emissions, from levels projected without revisions to the heavy-duty engine standard, in the ten urban areas evaluated by 6 to 8 percent in the mid-to-late 1990s. Reductions in nationwide NO_x emissions would be 5 to 6 percent lower in the same period. The cost per vehicle, over the long run, is estimated at $37 and the undiscounted cost effectiveness at $24 per ton of NO_x emission reduction.

6.0 g/BHP-hr in 1988 and in 1991: This option would establish the 6.0. g/BHP-hr heavy-duty NO_x standard in 1988, then leave it in place indefinitely. As such, it fails to take into account the progress that will be made in heavy-duty engine technology, and fails to respond completely to the need for NO_x control in the mid-to-late 1990s as still evidenced by the revised environmental support analyses. In addition, it fails to respond to section 202(a)(3)(B) of the Act, which mandates that standards set under that section that are less stringent than those prescribed in section 202(a)(3)(A)(ii) be applicable only for a period of three model years. Such revised standards must be followed by either the statutory standard or a more stringent revised standard.

In the discussion of the "6.0-in-1988" option, it was stated that NO_x emissions would be reduced by 6 to 8 percent in the ten urban areas modeled, and by 5 to 6 percent nationally, for the latter half of the next decade from levels projected without any new NO_x controls on heavy-duty engines. Despite this, those levels would be 2 to 10 percent greater in the urban areas, and 7 to 15 percent greater nationwide, than 1982 levels. Since this option merely retains the 6.0 g/BHP-hr standard through 1994, the cost and cost-effectiveness estimates are also the same.

6.0 g/BHP-hr in 1988 and 5.0 g/BHP-hr in 1991: EPA chose to evaluate this option as a result of the legitimate concerns expressed by the industry over the adverse impacts of the proposed 4.0 g/BHP-hr NO_x standard on heavy-duty diesel particulate emissions and on fuel economy, and because it provides needed additional NO_x emission reductions. This option represents a significant technical challenge for the manufacturers, while responding to the requirements of section 202(a)(3)(B) of the Act that revised heavy-duty engine NO_x standards promulgated under section 202(a)(3)(B) (*i.e.*, 6.0 g/BHP-hr model year 1988) be effective only for a period of three model years, and that subsequent revisions impose more stringent standards.

This option, which presumes establishment of the 6.0 g/BHP-hr NO_x standard model year 1988, is projected to hold mid-1990s NO_x emissions in the ten urban areas evaluated to essentially 1982 levels. This is a reduction of about 8 percent from the levels projected for the mid-1990s in the absence of new heavy-duty engine NO_x standards. On a nationwide basis, NO_x emission inventories would be about 7 percent lower in the mid-1990s than the levels projected without this control. The cost per vehicle, relative to the 1988–90 model years under a 6.0 g/BHP-hr NO_x standard, is estimated to range from $44 to $131 in the long run. When combined with the estimated benefits in terms of reduced NO_x emissions, this yields an undiscounted marginal cost-effectiveness estimate of $100 to $314 per ton. The inclusion in today's final rule of a NO_x averaging program for heavy-duty engines in conjunction with

the long-term NO_x standard will improve both of these estimates somewhat, although EPA is unable to precisely determine to what extent.

Conclusions. It is apparent from the above discussions that a need for reductions in heavy-duty engine NO_x emissions will continue to exist through the next decade, and that 6.0 g/BHP-hr in the 1988 model year is the only reasonable choice for a near-term heavy-duty engine NO_x standard. This option was generally accepted by the industry to be feasible in terms of both stringency and leadtime, and no more strigent standard appeared to be feasible in that timeframe. Thus, the level of the longer term standard poses the more difficult choice of options.

Based on the comments and on EPA's updated technical, environmental, and economic analyses, the 5.0 g/BHP-hr NO_x level reflects what EPA now believes to be the limit of foreseeable control technology for heavy-duty diesel engines without significant adverse impacts on engine-out particulate emissions (thereby rendering compliance with the particulate standards much more difficult), and without excessive fuel economy penalties. As discussed more fully in Chapter 2 of the RIA, the tradeoffs inherent in reducing NO_x and particulate emissions from diesel engines, combined with the relative need for NO_x and for particulate controls, favor a model year 1991 NO_x standard of 5.0 g/BHP-hr. Finally, such a level is approximately equal in stringency to the current California standard for heavy-duty engine NO_x, and is more than 50 percent lower than the currently effective Federal standard. While such a standard, alone, will not solve California's NO_x attainment problems, it is stringent enough to prevent federally certified heavy-duty engine NO_x emissions from increasing in California.

While the Agency has selected the 5.0 g/BHP-hr standard for today's rule, it acknowledges that the need for this standard is based upon future projections of NO_x emissions which are themselves somewhat uncertain. Therefore, EPA will, in the future, be open to the reconsideration under section 202(a)(3)(E) of the Act of the need to go to a 5.0 g/BHP-hr standard as revised projections of future NO_x emissions become available. Of course, if EPA's projections prove to be underestimates of the actual NO_x problem, EPA will also consider imposing more stringent standards under section 202(a)(3)(B) of the Act.

In summary, EPA is promulgating heavy-duty engine NO_x standards of 6.0 g/BHP-hr for 1988–90 model year heavy-duty engines, and of 5.0 g/BHP-hr for 1991 and later model year heavy-duty engines. Averaging of NO_x emissions, which is being promulgated for 1991 and later model years, will ease the burden of compliance with the latter standard to some extent by providing more flexibility to manufacturers without increasing total emissions under the standard. Adverse impacts on particulate emissions, as well as the potential for significant fuel economy penalties for heavy-duty diesel engines, render the 4.0 g/BHP-hr standard in 1991 infeasible at this time.

D. Heavy-Duty Diesel Particulate

Review of the proposal. EPA proposed that particulate emissions from heavy-duty diesel engines be regulated for the first time beginning with the 1987 model year, under a proposed standard of 0.60 grams per brake horsepower-hour (g/BHP-hr). For model year 1990, standards of 0.25 g/BHP-hr for heavy-duty diesel engines plus 0.10 g/BHP-hr for those engines used in urban buses were proposed. The possibilities of establishing a model year 1990 standard of 0.40 g/BHP-hr for those engines used in "line-haul" applications (to avoid the need for trap-oxidizer use on those vehicles), and of establishing a 0.10 g/BHP-hr standard for all heavy-duty diesel engines, were also discussed in the proposal.

Issues raised by the comments. There was general agreement among manufacturers that the 0.60 g/BHP-hr level was an attainable standard. However, manufacturers were nearly unanimous in opposing the feasibility of its implementation for 1987. Daimler-Benz and Mack were alone in suggesting that this level was attainable for 1987; and only Daimler-Benz thought it could be done in that year along with the 6.0 g/BHP-hr NO_x standard. Mack argued that it would take until 1990 to comply with both the NO_x and particulate standards together. Most manufacturers suggested 1988 as the earliest year for new standards, with some arguing for 1989. Environmental interests, based upon the technology forcing nature of the applicable provisions of the Clean Air Act, coupled with the fact that significant need for particulate control had been demonstrated, called for retention of the 1987 deadline.

The long-term trap-based levels received much stronger opposition from manufacturers than did the 0.60 g/BHP-hr standard. Most manufacturers characterized particulate traps as unavailable and infeasible for use on heavy-duty engines. However, very little new data was submitted to the Agency in support of this position beyond that which had been reviewed by EPA during preparation of the proposal. For example, GM submitted a summary of heavy-duty trap development and testing from 1981 through 1983, most of which had been previously submitted. Noteworthy in the new data in GM's submission was the successful accumulation to date of a total of nearly 50,000 miles on a trap-equipped heavy-duty dump truck. Other manufacturers, including International Harvester and Cummins, while currently pessimistic about traps, were willing to work toward trap-based standards in the 1991 to 1992 timeframe.

Two manufacturers, Daimler-Benz and Volvo White, supported EPA's belief that traps would be feasible, with Daimler-Benz predicting availability in 1990 and Volvo White in 1991. Daimler-Benz's position was based upon what appears to be the most advanced development and test program of any heavy-duty manufacturer. Current applications of its traps on urban buses have already demonstrated a service life of 100,000 miles. While this data indicates considerable progress, Daimler-Benz cautioned that considerable development work remained to be done before trap systems will be commercially viable.

The Manufacturers of Emission Controls Association (MECA), whose member companies are supplying the trap materials being tested by manufacturers, strongly supported the feasibility of trap-based standards. MECA cited worldwide test and development work by its member companies in support of this position.

Since most manufacturers continue to maintain that traps are not viable for the foreseeable future, most of their comments on the applicable model year for trap-based standards were either conditioned upon the assumed development of traps, or very tentative. Within that context, most manufacturers suggested alternative dates in the 1991–92 time period. Daimler-Benz was alone among the heavy-duty engine manufacturers in suggesting that 1990 might be feasible.

Environmental and state interests argued for speedy adoption of trap-based standards. Relying principally upon EPA's analysis of feasibility, they called for accelerated application of trap technology. These groups emphasized the technology forcing aspects of the statute and the use of non-conformance penalties (NCPs) for manufacturers unable to meet stringent requirements. The Colorado Department of Health even argued that the trap-based 0.25 g/

BHP-hr standard should be adopted for 1988.

Relative to the appropriate level for a trap-based standard, NRDC and CARB argued that EPA should adopt a 0.10 g/BHP-hr standard for 1990 making full use of trap technology rather than the approximately seventy percent application rate represented by the proposed 0.25 g/BHP-hr standard. The Colorado Department of Health supported a 0.10 g/BHP-hr standard for 1991. NRDC also argued that EPA should consider the use of methanol fuel as an available means of compliance and begin rulemaking action aimed at establishing a methanol fuel distribution system and methanol-based standards.

Manufacturers also commented on feasible levels for trap-based standards. They challenged EPA's assumptions about trap deterioration rates and trap efficiencies, but did not generally dispute the claim that a 0.25 g/BHP-hr standard could be met if traps were available. Manufacturers did argue, however, that a 0.10 g/BHP-hr standard could only be met using traps of the highest efficiency designs, and with substantially greater technological risks than at 0.25 g/BHP-hr. Most manufacturers did not address 0.10 g/BHP-hr for buses separately from their comments on trap standards in general. Daimler-Benz and Volvo White, however, both supported the general feasibility of a 0.10 g/BHP-hr bus standard if fuel sulfur were regulated. MECA supported the feasibility of both the 0.25 g/BHP-hr standard for all heavy-duty engines and the 0.10 g/BHP-hr level for buses.

Public transit groups, such as the American Public Transit Association, voiced strong opposition to the proposed 0.10 g/BHP-hr bus standard. They claimed that this standard would increase both initial bus prices and ongoing operating costs, thereby putting upward pressure on fares and causing reduced ridership on buses. They argued that buses represent too small a share of overall diesel emissions to justify such a restrictive standard.

Turning to another area, EPA indicated in the proposal that some fuel economy penalty was likely with trap oxidizers (on the order of 1 to 2 percent). Comment on this topic was not extensive, but those who did comment agreed that some penalty would be involved. Specific estimates were provided by Cummins, which projected an overall penalty of about 2.6 percent, and Ford, which placed the figure at 3 percent.

Manufacturers also provided cost estimates for the application of traps to heavy-duty engines. These costs, which may include fuel economy penalties, were considerably higher than EPA's estimates. The highest estimate was International Harvester's at $7,000 for a heavy-heavy-duty diesel engine. GM placed this figure at $4,000, while Cummins suggested about $2,500. The cost for traps on medium-duty diesels was placed at about $2,000 by Ford, GM and International Harvester. EPA had projected trap costs (exclusive of fuel economy impacts) of $400 for light-heavy-duty engines, $600 for medium and $700 for heavy-heavy-duty diesel engines.

Daimler-Benz, along with several other manufacturers, raised the issue of diesel fuel sulfur levels. According to the comments, sulfur from the fuel could be a problem either through trap plugging from engine-out sulfate emissions, or through the generation of significant measurable particulate sulfate emissions which would make it impossible to meet the 0.25 g/BHP-hr or 0.10 g/BHP-hr standards. Commenters' recommendations varied from regulating the sulfur content of diesel fuel to adopting a correction factor for particulate measurements to account for sulfate emissions.

The last key issue concerning the proposed particulate standards involves the possible exemption from trap-based standards for over-the-road line-haul vehicles. As explained in the proposal, EPA's main concern with diesel particulate emissions is their impact on urban air quality. EPA considered exempting line-haul vehicles from the more stringent standards, because these vehicles accumulate much of their mileage in rural, inter-city operation.

The basic concept of a relaxed standard for these trucks was strongly opposed by environmental groups, states and local agencies on the grounds that line-haul vehicles are an important contributor to the total diesel particulate emissions in urban areas. For example, CARB estimated that about seventy-five percent of urban heavy-duty diesel particulate in Southern California comes from line-haul trucks. Manufacturers generally supported the concept, but challenged the specific level suggested by EPA. Of those manufacturers who commented on the level of the standard only one (Volvo White) agreed with EPA that a standard of 0.40 g/BHP-hr could be reached without the use of traps. Some argued for 0.50 g/BHP-hr (including Ford, Daimler-Benz) while others said that a standard of 0.60 g/BHP-hr was required (Caterpillar, Mack). Manufacturers also recognized the difficulty EPA had in establishing a precise means of defining and regulating line-haul engines. Various possibilities were suggested using different combinations of engine and vehicle characteristics, although some manufacturers opposed the inclusion of any vehicle-related parameters in any definition of "line-haul engines."

EPA response to the comments. The comments on the short-term standard have indicated that EPA's proposed 0.60 g/BHP-hr level is feasible. However, those comments have prompted a review of the leadtime requirements for the standard. As detailed in Chapter 2 of the RIA, EPA now believes that new standards should not be applied before 1988. There is now insufficient time remaining before the start of the 1987 model year to complete the necessary design changes, emissions and durability testing and development, and complete the certification process. Therefore, the adoption of the 0.60 g/BHP-hr standard has been delayed from 1987 to 1988.

The Agency's review of new information submitted on the subject of trap oxidizer feasibility indicates that, for light-duty diesels, continued progress has been made in solving the various technical difficulties associated with traps. Daimler-Benz has already introduced traps on light-duty vehicles in California, and Volkswagen and other manufacturers will do so in the 1986 model year. In the heavy-duty area, where no trap-forcing standard currently exists, activity has been minimal. However, what little work has been done also indicates progress. (See Chapter 2 of the RIA for a description and analysis of trap development to date.) Traps are not fully developed today, but they were not expected to be. The important issue is whether they can reasonably be expected to be available for future standards, and on this issue EPA's position is unchanged. In fact, the new data which were included in manufacturers' comments were extremely promising, and EPA is confident in its projections of successful application of traps to heavy-duty engines.

The appropriate leadtime for the introduction of trap-based standards has been reexamined as part of EPA's review of overall trap feasibility. EPA now believes that the introduction of trap-based standards (*i.e.*, 0.10 g/BHP-hr for urban buses and 0.25 g/BHP-hr for other heavy-duty engines) should be delayed from 1990, as proposed, until 1991. A delay to 1991 will allow more time for manufacturers to compete the task of trap development successfully, and plan for orderly introduction. It also will allow the new particulate requirements to be introduced

simultaneously with revised NO_x standards also planned for 1991.

EPA's decision has been made in full awareness of both the technology-forcing aspects of the statutory requirements, and the expected existence of NCPs. While the forecasts of trap availability are positive, it is important not to lose sight of the fact that major advances in technology are still required. It will be a very difficult challenge for manufacturers to successfully apply traps to most of their engines by 1991. EPA does not believe that either the availability of NCPs or the technology-forcing requirements of the Act justify reducing leadtime below that actually needed by most manufacturers, even though it may be possible for one manufacturer (Daimler-Benz) to introduce traps in 1990.

In their comments on the appropriate level for trap-based standards, environmental and state groups argued that traps should be required on all engines, and that the standard should therefore be lowered to 0.10 g/BHP-hr in 1990 or before. EPA believes that this position arises from an incomplete understanding of the implications of such a change. The proposal discussed a 0.10 g/BHP-hr standard for all engines in 1990, indicating that it could be attained through 100 percent trap usage. However, the proposal also indicated that there likely would be substantial difficulties in meeting such a deadline and that EPA therefore did not propose that standard for that time period.

Not only would a 0.10 g/BHP-hr standard in 1990–91 required traps on *all* engines (including the most difficult engine applications otherwise avoided under a 0.25 g/BHP-hr standard), but it would also limit manufacturers to only the highest efficiency trap designs and result in increased technological risks that adequate traps won't be developed in time, or won't be sufficiently durable in use. These points were underscored in manufacturers comments on the 0.10 g/BHP-hr level. Higher efficiency traps would require either larger traps, to maintain regeneration frequency and back pressure rise, or more frequent regeneration, to handle the increased collection of particulate. Both of these aspects increase the engineering challenges involved in establishing long-term trap durability suitable for a wide variety of heavy-duty engines. For example, it may be harder to establish uniform regeneration conditions with larger traps, and a larger trap would be subject to more internal thermal stresses during regeneration. High efficiency traps could also tend to be more sensitive to plugging under adverse conditions. Through increased regeneration frequency or increased backpressure, higher efficiency traps would also tend to impact fuel economy to a greater degree than lower efficiency units.

Based upon its analysis of the issues surrounding adoption of a 0.10 g/BHP-hr trap standard, EPA has concluded that such a standard does not appear feasible for 1991 for most engines. (Feasibility for the subset of engines used in urban buses is another matter, and is discussed below). However, in light of the comments and reanalysis of other available information, the technical issues all appear to be subject to solution given additional time for development of, and experience with, trap systems. Added time also has the advantage of allowing for expected progress by manufacturers in reducing engine-out particulate levels, which will directly ease the impact of a more stringent standard. In addition, the adoption of a 5.0 g/BHP-hr NO_x standard in 1991, instead of the 4.0 g/BHP-hr level which was proposed, significantly eases the difficulty associated with these low particulate levels and make a uniform 0.10 g/BHP-hr particulate standard in 1994 more feasible. Therefore, based upon its analysis of the comments and other data in the record, EPA has determined that a 0.10 g/BHP-hr standard should be feasible for the 1994 model year, but not before.

As noted above, NRDC argued that EPA should establish both NO_x and particulate standards based upon the use of methanol as a fuel in new engines. The proposal discussed the potential reductions in emissions resulting from the conversion of heavy-duty diesel engines to methanol. While EPA continues to believe in the potential of methanol in this area, it considers it premature to actually set standards requiring the use of methanol. Many basic questions remain to be dealt with before widespread adoption of methanol fuel will be possible. Therefore, while continuing to study the issues involved and to encourage the development of methanol-based technology, EPA is taking no action at this time specifically on methanol-based standards. Nevertheless, the establishment of more stringent NO_x and particulate standards should have the effect of making methanol-based technology more desirable and relatively cost effective.

The proposal also included a 0.10 g/BHP-hr standard for urban buses in 1990, which did not draw extensive specific comment from manufacturers beyond their discussion of 0.10 g/BHP-hr in general. In its review of this issue, EPA has found nothing in the comments to change its evaluation that traps capable of meeting a 0.10 g/BHP-hr standard should be applicable to buses in the same time period that traps capable of meeting 0.25 g/BHP-hr will be available for heavy-duty engines in general. As a group, bus engines have less diversity in engine characteristics and operating conditions than do other types of heavy-duty engines. They also do not operate for sustained periods at high loads, meaning that problems of trap durability will be eased. Therefore, EPA believes that the engineering problems involved in meeting a 0.10 g/BHP-hr standard can be overcome for urban buses sooner than for other engine types, and that the 0.10 g/BHP-hr bus standard is feasible for 1991. For further discussion of this issue, see Chapter 2 of the RIA.

As for the comments that increased costs would adversely affect public transit systems, EPA cannot agree. The increases in both the price and operating costs of buses as a result of these standards are low compared to current costs (see Chapter 3 of the RIA). On the other hand, since these buses are driven only in urban settings, the cost effectiveness of applying traps to buses is much better than it is for other heavy-duty diesels. (Cost effectiveness is discussed in Chapter 5 of the RIA.) Therefore, EPA finds the urban bus standard to be fully justified.

As noted in the discussion of the comments, estimates of fuel economy impacts from manufacturers were slightly higher than those assumed by EPA. EPA has considered these comments in arriving at final estimates of the actual impacts to be expected. One result of the fuel economy data supplied to EPA has been an increase in the trap size EPA is projecting will be needed to insure a minimal impact on back pressure and fuel economy. In light of increased trap sizes, the data available do not justify the increased fuel penalties claimed by commenters. EPA's analysis, described in Chapter 2 of the RIA, leads to the conclusion that fuel economy impacts can be limited to 0.5 to 1.5 percent for trap-equipped engines. For urban buses under the 0.10 g/BHP-hr standard, EPA has assumed that the fuel economy penalty will correspond to the full 1.5 percent.

Based upon its review of manufacturers' estimates of the cost of trap technology, EPA believes that manufacturers substantially overestimated the actual cost to be expected. In response to the comments received, EPA has undertaken a

comprehensive review of all of its cost estimates for trap systems. As detailed in Chapter 3 of the RIA, the Agency has reviewed required components and trap design, and drawn upon contracted studies of the expected cost for such systems. EPA has increased its estimate of trap sizes based upon the comments. At the same time, the costs for the ceramic monolith trap material used in EPA's estimates has been reduced based upon information from suppliers. EPA's revised analysis estimates the cost of equipping heavy-duty diesel engines with complete trap systems at $460 per engine for light-heavy-duty engines, $540 for medium, and $660 for heavy-heavy-duty engines (not including the costs of any adverse fuel economy impacts).

The next issues raised by manufacturers concerned the potential impacts of fuel sulfur levels on either trap durability or measured levels of particulate emissions. Increased sulfate levels at current fuel sulfur contents should only occur with traps whose substrates are catalyzed. This catalytic conversion of sulfur dioxide also occurs with light-duty trap-oxidizers, and is the most significant drawback associated with such traps. However, as such traps do not appear to be the most promising for heavy-duty engines, increased sulfate levels for heavy-duty traps is probably not an issue here. While the data to fully assess this problem were not available, EPA will continue to investigate this issue and resolve any continuing difficulties. While it does not appear at present that regulating sulfur content of diesel fuel is a prerequisite to the feasibility of traps, if it is shown to be necessary based on this further analysis, EPA will investigate potential action under section 211(c) of the Act.

Commenters on the fuel sulfur issue also expressed concern that EPA's technique for measurement of particulate emissions includes in the measurement the water absorbed on sulfates. EPA is still in the process of examining a number of different approaches to minimizing the inclusion of water in particulate measurements, so no action on this issue is included in this rule. However, EPA is continuing its investigations and welcomes any additional pertinent data. As all past testing has included this absorbed water, feasibility of the 1988 standard is not at issue. It is only when trap-oxidizer usage increases sulfur conversion that inclusion of water poses a potentially significant problem. Nonetheless, EPA is confident that this issue can be resolved and will not prevent the development of traps capable of meeting the 0.25 and 0.10 >g/BHP-hr particulate standards.

The last issue commented upon was that of EPA's suggested exemption from trap-based standards for line-haul engines. The comments raised two significant problems with such an exemption. The first is that of the impact of the exemption on overall diesel particulate emissions. At the proposed level of 0.40 g/BHP-hr, EPA had evaluated this effect and concluded that the impact was acceptable in consideration of the high percentage of non-urban operation experienced by these vehicles and the overall cost savings which were realized.

Whether EPA's judgment was correct has now become moot, because of manufacturers' arguments that 0.40g/BHP-hr cannot be reached with non-trap-based control techniques, and that 0.50 g/BHP-hr is the approximate lower limit for a non-trap-based standard. EPA agrees with the manufacturers' conclusions on this point. EPA has also examined the impact of a line-haul exemption at a 0.50 g/BHP-hr level and has found that such a standard would substantially increase urban diesel particulate emissions. Total emissions of diesel particulate in 1995 would be increased by about 10 percent in urban areas if a 0.50 g/BHP-hr line-haul standard were adopted. In the year 2000 this increase would be 12 percent. EPA believes.that such increases are excessive given the overall need for particulate control indicated by its future emissions projections. Thus, accepting 0.50 g/BHP-hr as the lowest non-trap-based standard achievable, EPA agrees with those commenters who said that the line-haul exemption presents an unacceptable tradeoff.

Since the impact of this decision on line-haul vehicles is so great, EPA remains open to the possibility of a workable line-haul exemption becoming available in the future. Such a solution would hinge upon the ability of manufacturers to eventually meet a standard below 0.50 g/BHP-hr, and on the ability of EPA to develop an acceptable regulatory framework for defining line-haul engines or vehicles. The opposition of some manufacturers to including vehicle-related parameters into the certification process has already been noted. Further, the issues of how to properly define the line-haul category so as to avoid the exemption of some engines which are actually going into urban use (either through cross-over of use patterns or through the deliberate purchase for urban use of what would be a line-haul engine to avoid the use of traps) still remain to be settled.

Options for the Final Rule. In view of the issues discussed above and EPA's responses, several options were developed for consideration in developing today's final rule. These include options for the short term standard, the long term standard and the special standards for urban bus engines and line-haul engines. These options are reviewed below.

Short term options

0.60 g/BHP-hr in 1987: This option represents retention of the short term standard as originally proposed. Based upon the analysis of comments received, the 0.60 g/BHP-hr level remains a feasible standard. However, EPA's leadtime analysis has indicated that there is insufficient leadtime for the implementation of a new standard for 1987.

0.60 g/BHP-hr in 1988: Because of the leadtime issue associated with the first option, this option would delay the 0.60 g/BHP-hr standard until 1988. EPA has determined that an additional delay of one year should be sufficient to allow compliance with this standard.

Long term Standards

0.25 g/BHP-hr in 1990: This option represents the proposed standard unchanged. However, the leadtime now available to meet this standard in 1990 has been judged inadequate by EPA (see next paragraph, as well as Chapter 2 of the RIA), and a delay in the standard is required. A delay for one year would also serve to synchronize implementation of the particulate standard with the new heavy-duty NO_x standard in 1991.

0.25 g/BHP-hr in 1991: This option implements trap-based standards for heavy-duty engines in the earliest year for which EPA believes traps will be generally available. Approximately 70 percent of all engines produced in 1991 will require the use of traps under this standard. Because of projected reductions in engine-out particulate levels over time, this fraction will decline to about 60 percent by 1994. The long-term cost of this option with a 60 percent trap application rate is about $585–690 per engine (including an estimated fuel economy penalty of between 1 and 1.5 percent). Its impact on emissions will be to reduce total diesel particulate emissions nearly 25 percent in 1995 and nearly 30 percent in 2000, compared to the case where only the 1988 option is implemented.

0.10 g/BHP-hr in 1991: The possibility of adopting 0.10 g/BHP-hr in 1990 rather than the 0.25 g/BHP-hr level was reviewed in the proposal and rejected.

The analysis of comments outlined above indicates that EPA still does not consider this to be an appropriate option for 1991 for all engines because of the increased technological risks associated with requiring high-efficiency traps on all engines.

0.10 g/BHP-hr in 1994: While concluding that the 0.10 g/BHP-hr standard is not suitable for 1991, EPA's analysis does support the feasibility of that standard for 1994. This determination is based on comments submitted to the Agency and other available information concerning the feasibility of the 0.10 g/BHP-hr level in general. The problems identified in those comments all appear to be solvable given more time for further trap development. In addition, the relaxation of the 1991 NO_x standard from 4.0 g/BHP-hr as proposed to 5.0 g/BHP-hr serves to ease the difficulty of complying with a 0.10 g/BHP-hr particulate standard. Therefore, 0.10 g/BHP-hr for 1994 is feasible.

Special bus and line-haul engine standards

Since leadtime for the primary standards has already been shown to be inadequate for 1990, both of these special standards are considered here as options for 1991.

0.10 g/BHP-hr for urban buses in 1991: While EPA does not intend to promulgate a fleetwide 0.10 g/BHP-hr standard for 1991, the adoption of this level for urban buses is still appropriate. Since buses accumulate essentially all of their mileage within the urban environment, bus engine control is an extremely effective means of reducing urban particulate levels. Adding the extra bus control to a 0.25 g/BHP-hr standard would reduce overall particulate by approximately an additional 2.5 percent in 1995, and 3 percent in 2000. As outlined earlier in today's notice, EPA considers a 0.10 g/BHP-hr standard to be technologically feasible for buses in 1991.

0.50 g/BHP-hr line-haul standard in 1991: This option is based upon the lowest projected level for a non-trap particulate standard for line-haul vehicles in 1991. As noted earlier, relaxing the line-haul standard from 0.25 g/BHP-hr to 0.50 g/BHP-hr would produce substantial increases in overall urban particulate emissions (about 10 percent in 1995 and 12 percent in 2000). At this time, EPA is not aware of any technology difficulty with applying traps to these vehicles (so that they could meet the 0.25 g/BHP-hr general standard) which would justify such a large emissions increase.

Conclusions. To aid in the evaluation of the options described above, pertinent information on their cost and environmental impacts are collected in Table 1. This table is extracted from the analysis of alternatives presented in the Chapter 2 of the RIA, and the reader is referred to that document for more details. The options beginning in 1987 (0.60 g/BHP-hr) and 1990 (0.25 g/BHP-hr, 0.10 g/BHP-hr for urban buses) are not included in Table 1. EPA has determined these options to be infeasible based upon insufficient leadtime, so they have not been evaluated further. While EPA has also determined that a 0.10 g/BHP-hr standard is inappropriate for 1991, that option has still been included for comparison purposes.

TABLE 1.—IMPACTS OF DIESEL PARTICULATE OPTIONS

Option	Total particulate emissions (1,000 tons per year)		Cost per engine	Discounted cost effectiveness (dollar per ton)
	1995	2000		
No control	87.9 +65%*	108.9 +105%		
0.60 in 1988	80.3 +51%	99.3 +87%	46	2,710
0.25 in 1991(A) (averaging (A))	61.2 +15%	70.6 +33%	631–736	8,690–10,400
0.25 in 1991(A) w/.10 for buses	59.7 +12%	68.3 +28%	671–774	8,950–10,300
0.25 in 1991(A) w/.50 for line-haul	67.0 +26%	78.9 +45%	388–491	7,050–8,930
0.10 in 1991(A)	52.9 0%	58.2 +9%	1,211–1,382	12,900–14,700
0.10 in 1994(A)	57.2 +8%	59.3 +11%	966–1,122	10,300–11,900

*Note: Percentages refer to change relative to 1984. Those given for the 1991 and 1994 options include the change brought about by implementation of the 1988 option. In addition, those given for the 1994 option include the effects of the 0.25/0.10 option for 1991.

As indicated in Table 1, the short-term 0.60 g/BHP-hr standard provides significant benefits at low cost, as indicated by its cost effectiveness. For comparison purposes, the cost effectiveness of most alternative strategies for particulate control are in the range of $14,000–50,000/ton, with some even higher. The 0.60 g/BHP-hr standard represents a feasible near-term emissions reduction. Clearly, it is a good first step in diesel particulate control. It is also clear in light of the long-term environmental impacts of diesel particulate emissions that substantially more control is needed in the future than that represented by this option, although more stringent standards will not be feasible before 1991.

The adoption of a trap-based standard no higher than 0.25 g/BHP-hr in 1991 to follow the 1988 standard of 0.60 g/BHP-hr is also clearly supported by the data in Table 1. That level would substantially reduce particulate levels for both 1995 and 2000 at a cost which is also quite cost effective.

Among the other 1991 options, the line-haul option must be disqualified on the basis of emissions impacts. It has already been noted that under this option emissions would increase 10 to 12 percent in 1995 and 2000, respectively, compared to emissions under the 0.25 g/BHP-hr standard. While the cost effectiveness of the line-haul option is somewhat improved compared to the 0.25 g/BHP-hr standard, it is a relatively modest improvement, and insufficient to warrant serious consideration of this approach. However, as noted in the analysis of comments on this issue, EPA remains open to the possibility of a more appropriate line-haul option in the future.

The bus option, on the other hand, improves overall particulate control at the same time that cost effectiveness is improved. Thus, this option is attractive to EPA for the final rule.

The only other choice is between a 0.10 g/BHP-hr standard in 1991 and the same level in 1994. Implementation in 1991 would bring a slightly greater emission reduction than would implementation in 1994. However, it has been pointed out that EPA does not consider 0.10 g/BHP-hr to be within reach for 1991, therefore 1994 is the appropriate choice here.

In summary, EPA's analysis of comments and comparison of options available for the final rule has led to the selection of a 0.60 g/BHP-hr standard for

1988, a 0.25 g/BHP-hr standard for 1991 with a 0.10 g/BHP-hr urban bus standard, and a 0.10 g/BHP-hr standard for all heavy-duty engines in 1994. These choices have been made on the basis of their overall technological feasibility, and represent a substantial contribution to the needed control of particulate emissions.

E. High-Altitude Standards

1. Heavy-Duty Diesel Engine Particulate

Review of the proposal. The following high-altitude standards were proposed for heavy-duty diesel engine particulate emissions: 0.72 g/BHP-hr for model year 1987 and 0.30 g/BHP-hr for 1990 and later model years, with a separate standard of 0.12 g/BHP-hr for 1990 and later model year urban bus engines. These are proportional to the corresponding low-altitude standards in the proposal, being 20 percent greater in each case. The 20 percent increase was EPA's best estimate, at the time of proposal, of the likely impact of operation at high altitudes on heavy-duty diesel engines.

Issues raised by the comments. Comments on the proposed high-altitude particulate standards for heavy-duty diesel engines were received from the manufacturers that would be affected, the Engine Manufacturers Association (EMA), the Colorado Department of Health, the City of Denver, local and national environmental protection groups, and a number of individuals residing in and near the designated high-altitude counties.

The comments from individuals and from environmental groups were supportive of the need for separate particulate standards for heavy-duty diesel engines operated at high altitude, with some commenters claiming that such standards should be even more stringent than the corresponding low-altitude standards. The Colorado Department of Health and the City of Denver also were in favor of high-altitude particulate standards more stringent than those contained in the proposal. Reduction in visibility in high-altitude areas was often cited as a reason for requiring such stringent particulate controls.

Manufacturers' comments tended to focus more on EPA's methodology in setting the proposed levels of these standards and on the very short leadtime provided, considering the lack of appropriate test facilities, than on the environmental need for such standards. The Engine Manufacturers Association (EMA), a trade group of manufacturers of heavy-duty diesel engines, noted that high-altitude emission standards are "unprecedented" for the heavy-duty market. EMA went on to criticize the extrapolation, from limited light-duty data, of the likely impact of altitude on particulate emissions from heavy-duty diesel engines. Due to the major differences in engine design between light- and heavy-duty applications, EMA said that the validity of such extrapolations should not be assumed. These criticisms were echoed by individual manufacturers, all of whom said that EPA should not be proposing standards when, admittedly, no directly relevant data on which to base them exist.

The data cited by the industry as necessary to a proper standard-setting process are not available because no facilities currently exist with transient cycle test capabilities either at high altitude or that are capable of simulating high altitude. This lack of facilities was noted by every manufacturer in its comments. General Motors (GM) estimated the cost of adding a single test cell with heavy-duty engine transient cycle capabilities to its Denver facility at over $1.1 million; a test cell capable of simulating high altitude ambient conditions at a low altitude site could cost over $4 million. In either case, GM stated that 18 to 24 months would be required for construction. The International Harvester Co. (IHC) estimated a cost of $3.7 million for adding an appropriate cell to its existing test facilities. In more general terms, Volvo White called proof of conformance with a high-altitude standard "extremely expensive, if not impossible."

Only Cummins Engine Co., Inc. (Cummins) described some limited testing it had performed in which it simulated high-altitude operation by throttling the air intake, thus reducing intake pressures. The resulting data on the sensitivity of particulate emissions to air/fuel ratio changes can be combined with knowledge of changes in air density at altitude to estimate the impact of altitude on emissions. Based on this work, Cummins stated that its products appear to be capable of holding increases in particulate emissions at high-altitude to no more than 20 percent over low-altitude levels.

Cummins also raised the issue of enforcement of high-altitude standards for the heavy-duty engine fleet. As a result of the structure of the heavy-duty engine manufacturing and sales industries, it is impossible for the engine manufacturer to ensure that all engines registered and operating in high-altitude counties are appropriately certified. Cummins recommended that the enforcement of heavy-duty engine high-altitude standards be the responsibility of the states, based on proof of compliance at registration.

In summary, all of the manufacturers recommended that EPA withdraw the proposed standards and commence a program of collecting baseline data. They urged that only after analyzing valid data on high-altitude particulate emissions from HDDEs should EPA propose a technically supportable standard, allowing the industry adequate leadtime for both test facility construction and development of complying engines.

EPA response to the comments. EPA recognizes the need for additional control of diesel particulate emissions at high-altitude that was cited by many commenters. At the same time, valid objections to the proposed standards, particularly with respect to test facility availability, leadtime, and enforcement, have been raised by the comments.

Cummins stated that it understood the goal of the proposed standards to be the limiting of particulate emissions from heavy-duty diesels to no more than a 20 percent increase in high- relative to low-altitude areas. Preliminary indications are that Cummins products will be able to meet this goal. Thus, while EPA acknowledges that the proposed standard may not be attainable for all engines, particularly naturally aspirated heavy-duty diesels, it appears that the level of the proposed standard may be within range for much of the market.

However, EPA concurs with those commenters claiming that setting truly proportional high-altitude paticulate standards (*i.e.*, ones that simply reflect the increases expected in particulate emissions at high altitude), such as those proposed, would accomplish little. While it would serve to prevent a given engine family from emitting more than the average increase in particulate at high altitude, this represents a fairly small benefit in terms of emissions reduction. This is particularly true when the testing and facility costs cited by the industry are considered.

The questions about enforcement of high-altitude heavy-duty engine emission standards raised another difficulty with the proposal. The draft regulations accompanying the proposal embody the "two-vehicle strategy," in which different engine configurations are certified for compliance with high-altitude versus low-altitude standards. For some of the same reasons cited by Cummins, EPA believes that the "one-vehicle strategy," in which all engines would have to comply with the high-altitude standards, is appropriate. This is especially true in the case of heavy-

duty engines, due to the extremely transient nature of their operations. It would be all but impossible to limit heavy-duty diesel engine use in high-altitude regions to those engines that had been certified to the high-altitude standards.

Based on the need for high-altitude test facilities and the time that would be required for their construction, EPA acknowledges that inadequate leadtime now remains for a high-altitude heavy-duty diesel particulate standard to take effect as proposed in model year 1987. However, EPA does not believe that such standards are unnecessary, nor that any issues of technical feasibility block the eventual promulgation of such a standard.

Conclusions. In recognition of the inadequate leadtime, the minimal emission benefits that the standard as proposed would bring, the test and facility costs that would be incurred, and the issue of one- versus two-vehicle regulatory strategies, EPA is withdrawing the proposed high-altitude particulate standards for heavy-duty diesel engines from this final rule. Since the need for reductions in particulate emissions at high-altitude is unlikely to ease without action, however, EPA will study the problems of high-altitude particulate control and will consider the development of a separate proposal for such emission standards if warranted by the results of such study.

2. Light-Duty Truck Standards

Review of the proposal. The high-altitude light-duty truck emission standards were proposed in order to complete previous regulatory activities in this area. The idle carbon monoxide (CO) and particulate standards were included because of their inadvertant omission from previous high-altitude rulemaking actions. The oxides of nitrogen (NO_x) standards were proposed to prevent excessive increases in NO_x emissions as a result of compliance with the particulate standard, and the proposed level of the NO_x standards was equal to the low-altitude NO_x standards since NO_x emissions do not tend to increase at altitude.

These standards were proposed to take effect in model year 1987. The proposed standards were all equal to the corresponding low-altitude standards: For NO_x, 1.2 grams per mile (g/mi) for light-duty trucks up to and including 6,000 lbs gross vehicle weight (GVW) and 3,999 lbs equivalent test weight (ETW), and 1.7 g/mi for light-duty trucks over either 6,000 lbs GVW or 3,999 lbs ETW; for particulate (diesel light-duty trucks only), 0.26 g/mi; and for idle CO (gasoline-fueled light-duty trucks only), 0.50 percent of exhaust gas flow at idle.

Issues raised by the comments. The particulate standard drew the most comment of the three high-altitude standards proposed for light-duty trucks. All of the manufacturers said that the high-altitude standard should be proportional to the low-altitude standard, to reflect the increase in engine-out particulate emissions known to occur at high-altitude. The manufacturers also criticized the apparent inconsistency in EPA's positions regarding high-altitude particulate standards for diesel light-duty trucks and for heavy-duty engines.

General Motors (GM) and Toyota both submitted a limited amount of test data on high-altitude particulate emissions from light-duty trucks. The GM data were all from GM's 6.2L engine and showed an average increase of 0.13 g/mi relative to low-altitude, while data from both turbocharged and naturally aspirated engines submitted by Toyota showed increases of 0.10 to 0.24 g/mi, representing increases of 48 to 100 percent over low-altitude levels. Other manufacturers did not submit data, but several indicated that a standard 50 percent greater than the low-altitude standard would be appropriate.

EPA's reasoning for not proposing a porportional high-altitude particulate standard for light-duty trucks was characterized by manufacturers as "severely flawed" for several reasons. One, available light-duty vehicle and light-duty truck data all indicate substantial increases in engine-out particulate emissions at high altitude. Two, EPA has not presented evidence in support of its assertion that the only impact of the proposed standard will be to force a higher percentage of light-duty diesel trucks to be equipped with traps. Three, trap-equipped light-duty trucks will also exhibit increased particulate emissions at high-altitude. Finally, the availability of light-duty diesel particulate averaging will not help smaller manufacturers to meet the proposed high-altitude particulate standards, since some of them may market only one light-duty diesel truck engine family.

GM and Toyota both said that the proposed standard would be likely to result in the unavailability of light-duty diesel trucks at high altitude. Ford Motor Co. recommended that no light-duty truck high-altitude particulate standard be set until engineering data are available showing that traps having the increased efficiency necessary to compensate for increased engine-out levels are feasible.

The idle carbon monoxide (CO) standard was criticized on the grounds of questionable methodology in determining its level, lack of need, and the lack of correlation between idle CO emissions and CO emissions during the Federal Test Procedure used in certification. While several manufacturers requested that EPA drop *all* idle CO standards, others stated that they had no objection to the proposed high-altitude standard. No manufacturer raised any question concerning the feasibility of the standard.

Nor were any feasibility issues noted with respect to the proposed NO_x standards. Ford said that its comments on the low-altitude light-duty truck NO_x standards were applicable here. American Motors Corporation said that its major concern with all high-altitude emission standards for light-duty trucks is the added test burden and cost necessary to show compliance with these standards, which could result in a price increase.

EPA response to the comments. In response to comments criticizing the apparent inconsistency of proposing proportional high-altitude particulate standards for heavy-duty engines, but the same standard at all altitudes for light-duty trucks, EPA notes several points. First, light-duty trucks are more similar to light-duty vehicles than to heavy-duty engines in their engine design, emission control technology, certification test procedures, and in-use duty cycles. It is thus appropriate for EPA to extend its approach to setting high-altitude particulate standards for diesel light-duty vehicles to light-duty trucks. EPA still believes this approach is the preferable control strategy, and it is consistent with past EPA regulatory actions in the light-duty area.

Second, EPA has presented its analysis indicating that the impact of setting the same light-duty truck particulate standard at both altitudes will be to require a somewhat higher fraction of trap-equipped vehicles in high-altitude areas. EPA believes that a large number of light-duty trucks could be sold without being equipped with traps in the absence of a high-altitude particulate standard for light-duty trucks. Many of these vehicles could be equipped with traps, if necessary, thereby considerably lowering a manufacturer's average high-altitude particulate emissions.

Finally, the serious need for reductions in diesel particulate emissions at high-altitude, combined with the decision not to promulgate high-altitude particulate standards for heavy-duty diesel engines at this time,

means that all other available controls should be implemented as soon as possible. EPA maintains that the increased use of traps on light-duty diesel trucks at high-altitude will be the major effect of this standard, and that this is clearly justified on the grounds of environmental need and technological feasibility.

It may well be true that trap-equipped light-duty trucks will also display increased particulate emissions at high altitude relative to low altitude. The Toyota data from two naturally aspirated light-duty trucks showed high-altitude particulate emissions of 0.31 g/mi, while data from one turbocharged light-duty truck showed 0.41 g/mi at high altitude. Application of trap-oxidizers of 50 to 60 percent efficiency in reducing emissions would allow all of these vehicles to certify to the 0.26 g/mi standard at high altitude. GM did not supply absolute emission levels, but only the increases observed in moving from low to high altitude; thus, EPA cannot respond to those data in the same way. However, EPA believes that use of traps will allow other manufacturers to comply as well.

Volkswagen (VW) complained that averaging is of no advantage in meeting high-altitude particulate standards to a small manufacturer who may offer only a single light-duty truck diesel engine family. As EPA stated in promulgating the averaging concept for light-duty diesel particulate, no averaging program is entirely free of competitive impacts. However, the ability of a manufacturer to average light-duty diesel vehicles and trucks together should assist smaller manufacturers in this respect.

As for the idle CO standard, EPA rejects the arguments based on lack of need or on the methodology used to determine the level of the standard. Idle CO standards raise no issues of feasibility, the need for CO control remains strong in high-altitude areas (several high-altitude areas exceed the National Ambient Air Quality Standard for CO), and the methodology used to set the level of the standard was not effectively challenged by commenters in this rulemaking, nor in the rulemaking in which the low-altitude light-duty truck idle CO standard was set (48 FR 52170, November 16, 1983).

The NO_x standards at high-altitude were not questioned, except for AMC's comments on the increased test burden and the potential for increased cost. EPA believes that high-altitude NO_x standards for light-duty trucks are necessary to prevent increased per-vehicle NO_x emissions, and that the costs of compliance will be essentially the same as those at low altitude.

Finally, EPA notes that the discriminator proposed for determining which light-duty trucks are required to meet the 1.2 g/mi 1.7 g/mi standards at high altitude was the same as was proposed for low altitude, and therefore has the same problems identified in comments on the low-altitude light-duty truck NO_x standards. EPA is therefore changing the discriminator for the high-altitude light-duty truck NO_x standards to correspond to the revised low-altitude regulations: Light-duty trucks up to and including 3,750 lbs loaded vehicle weight (LDT_1s) will have to meet the 1.2 g/mi NO_x standards, while those over 3,750 lbs loaded vehicle weight (LDT_2s) will have to meet the 1.7 g/mi standard. This makes the high-altitude light-duty truck NO_x regulations consistent with both the California regulations and the low-altitude Federal regulations.

Conclusions. EPA is proceeding with promulgation of all of the high-altitude emission standards that were proposed for light-duty trucks. For NO_x and for idle CO, no questions of technical feasibility were raised, and the objections that were voiced by a few manufacturers are not substantial, and not serious enough to override EPA's reasons for proposing the standards. In the case of particulate, EPA has responded to the criticisms focused on the level of the standard, and continues to believe in the validity of its approach to high-altitude particulate control. Today's final rule also maintains consistency with the approach to light-duty vehicle and light-duty truck regulations for high altitude followed in the past.

F. Emissions Averaging

Review of the proposal. EPA proposed that manufacturers be given the option of averaging particulate emissions to meet the 0.25 g/BHP-hr low-altitude and 0.30 g/BHP-hr high-altitude particulate standards, effective with the 1990 model year. The implementation scheme proposed was, in all substantive aspects, similar to that promulgated for light-duty diesel vehicles and trucks (48 FR *at* 33456, July 21, 1983).

A participating manufacturer would be required to determine emission limits (subject to ceilings of 0.60 g/BHP-hr at low-altitude and 0.72 g/BHP-hr at high-altitude) for each heavy-duty engine family to be produced in a given model year. This family emission limit would serve as the effective standard by which EPA would determine compliance of all engines within the family.

The participating manufacturer's year end sales and power-weighted average (subject to restrictions concerning subclasses and high-altitude, low-altitude, and California sales regions) of all engine families' emissions would then be required to comply with the applicable 0.25 g/BHP-hr standard. Urban bus engines were excluded from the averaging option.

The Administrator would grant a certificate of conformity to each family that demonstrated compliance with its family emission limit. It would be a condition of the certificate that the manufacturer's weighted emission level meet the applicable particulate emission standard (0.25 or 0.30 g/BHP-hr) at the end of the model year. The certificate would be rendered void *ab initio* at the conclusion of the model year for those engines causing any exceedance of the applicable standard.

Comments were requested on various aspects of the program, including the desirability of EPA's establishing a NO_x averaging program for heavy-duty engines and light-duty trucks patterned after the proposed particulate averaging scheme. EPA also requested comment on the possibility of establishing an emissions credits trading program between manufacturers.

Issues raised by the comments. Commenters who opposed the averaging option for particulate and/or NO_x emissions did so on one or more of the bases of legality, environmental impact, or adverse competitive impact. Several commenters opposed allowing averaging for either of the two pollutants but no commenter opposed averaging for one while supporting it for the other.

Private and state sponsored environmental groups, as well as the Manufacturers of Emission Controls Association (MECA), claimed that averaging as proposed was inconsistent with EPA's responsibility under section 202(a)(3)(A)(iii) of the Act to set standards that require use of the best technology that is expected to be available at the time the standards are implemented. Several of these commenters noted EPA's own estimate that, under the particulate averaging proposal, approximately 30 percent of the heavy-duty diesel fleet would be able to avoid the use of particulate traps. According to the Coalition for Clean Air and others, averaging should be allowed only after standards are set such that all vehicles would be required to install the best available control technology (*i.e.*, trap-oxidizers for particulate control).

Several state environmental organizations were concerned that averaging might result in localized increases in pollutant concentrations. This could result, they claimed, from factors which would produce a non-

homogeneous distribution of vehicles for which averaging was being used. For example, a manufacturer might apply differing levels of control to over-the-road engines compared to urban engines, or to engines produced to meet special California standards compared to engines intended for use in other states. The American Lung Association and MECA expressed concern that averaging might result in fleet-wide emission increases.

Caterpillar, Chrysler, and AM General opposed the program on the grounds that it would result in adverse competitive impacts on manufacturers with more limited model lines. Caterpillar also felt that allowing NO_x averaging would compound the inequity introduced by particulate averaging "due to the close relationship between NO_x and fuel economy which is an important competitive feature of the heavy-duty diesel engine." Caterpillar also stated that allowing averaging would be unfair to companies that manufacture heavy-duty engines but not vehicles. Caterpillar argued that such manufacturers are unable to control the demands of their client companies for specific engines.

Commenters who favored the particulate averaging option were generally supportive of the implementation of NO_x averaging as well, due to the close relationship between these two pollutants. Although a few commenters did request the opportunity to review any NO_x averaging proposal before a rule was promulgated, most either favored NO_x averaging along similar lines as proposed for particulate averaging or offered specific comments on how such a program should be implemented. For example, GM favored NO_x averaging between gasoline and diesel engines, but several other parties noted concerns about the adverse competitive effects such an arrangement would have.

The comments of those who favored the general concept of averaging can be divided broadly into two categories: (1) Requests for rules that would place fewer restrictions on averaging than EPA proposed, and (2) requests for rules that would place more restrictions on averaging than EPA proposed.

Daimler-Benz requested that smaller volume manufacturers be allowed to average across subclasses in an effort to mitigate some of the anti-competitive effects of averaging. General Motors (GM) also suggested that averaging be allowed between light-heavy and medium-heavy duty (predominantly urban) engines, with a factor for useful life included in the averaging equation.

GM further requested that, even if urban bus engines are restricted from averaging with other heavy-duty engines, they be designated as an averaging group on their own. GM argued that total urban emissions would not be affected as a result.

Numerous manufacturers and the Engine Manufacturers Association (EMA) felt that the basic averaging unit should be the engine configuration rather than the engine family. They argued that averaging by family would result in a manufacturer receiving no credit for producing a configuration that has relatively low emissions, even if the configuration has significant sales. As proposed, actual total emissions would be less than the sales-weighted average; averaging by configuration would provide a more accurate representation of a manufacturer's actual emissions. If averaging were to be implemented based on the family concept, International Harvester suggested that the sales-weighted average emission level of the family be used to represent the family, not the emission level of the highest emitting engine configuration. Commenters also suggested that averaging by configuration would also make it easier to identify sources of in-use noncompliance than would averaging by family.

Another specific argument advanced by manufacturers and EMA was that the use of conditionally granted certificates of conformity is neither necessary nor legally authorized. EMA quoted section 206(b)(2)(A)(i) of the Act, which states that a suspension or revocation of a certificate of conformity "* * * shall apply in the case of any new motor vehicles or new motor vehicle engines manufactured after the date of such notification" of the manufacturer by EPA regarding suspension or revocation. From this, EMA inferred that suspension or revocation may only apply prospectively. EMA argued that the implementation of nonconformance penalties (NCPs), as well as EPA's authority to revoke or suspend certificates prospectively and EPA's recall authority, provide sufficient deterrents and/or corrective responses to the exceedance of emissions standards. An additional argument against the granting of conditional certificates was that identification of culpable engine families might prove difficult, resulting in the recall of a manufacturer's entire subclass of engines. As an alternative, several manufacturers suggested that manufacturers be allowed to average emissions forward into the succeeding model year, if noncompliance was found to be likely in the current year.

EMA argued against EPA's setting the precedent of establishing an emission ceiling at the level of a previous standard. Given the relationship between NO_x and particulate emissions, should the standard for one of these pollutants be lowered, it is likely that some increase in emissions of the other would result. That a previous standard had been achieved would not guarantee its feasibility under such a circumstance.

Among those commenters that appeared to favor averaging with more restrictions than were proposed were DOE and Mack, which felt that the averaging classes were too broadly defined to avoid significant adverse competitive impact. Specifically, Mack foresaw difficulties in selling trap-equipped engines to some customers and non-trap-equipped engines to others; it therefore felt averaging should be restricted to the family level (i.e., the engines within a family would be averaged to assess compliance with the 0.25 g/BHP-hr standard). Under such a proposal, trap usage would be maximized.

The NPRM also discussed the possibility of EPA's creating an emission credit trading program. GM favored such a program, noting the incentive to reduce emissions it would provide. Three other manufacturers (Ford, Daimler-Benz, and Nissan) were sufficiently interested to request specific proposals. Four manufacturers (Mack, Caterpillar, International Harvester, and Volvo White) opposed a trading program on the grounds that it is either not necessary or would have adverse competitive impacts. Of those commenters who do not manufacture engines or vehicles, only one, the Rhode Island Department of Environmental Management, specifically addressed this topic; it opposed allowing manufacturers to "buy their way out" of NO_x compliance.

EPA response to the comments. Many of the arguments summarized above are identical to those that were presented in response to the proposal to allow averaging of particulate emissions from light-duty diesel vehicles and trucks. The reader is therefore referred to the relevant discussions beginning at 48 FR 33456 (July 21, 1983), in addition to the responses below.

The Agency finds the averaging concept, as applied by the standards promulgated, to be fully consistent with the technology-forcing mandate of the Act. Particulate trap technology is heretofore untried on the fleet level. EPA believes that the 0.25 g/BHP-hr

standard which, through averaging, effectively requires use of traps on 70 percent of all heavy-duty vehicles will significantly reduce the risk of widespread noncompliance while allowing manufacturers to gain valuable experience with this new technology. To promulgate this standard without allowing averaging, or to promulgate, prior to 1994, a significantly lower standard with averaging, would increase the technological risk associated with the standard because traps would have to be used in even the most difficult design applications. This might result in significant fuel economy penalties and might adversely impact other performance-related factors. The issue of the appropriate level for the 1991 standard is reviewed in greater detail under the discussion of EPA's proposed and final particulate standards earlier in this preamble. It should also be noted that this rule includes a 0.10 g/BHP-hr standard for 1994 based upon projections that high-efficiency traps should be available for essentially all engines by that time. Thus manufacturers still have the incentive to continue to develop particulate control technology. Use of the best available control technology (traps) will be maximized according to a reasonable and feasible time table, regardless of whether any manufacturer chooses to utilize the averaging scheme.

Allowing manufacturers to average emissions to comply with the 5.0 g/BHP-hr NO_x standard is also consistent with the Act's technology-forcing mandate. The 5.0 g/BHP-hr standard represents the lowest level which EPA believes can be reached for the heavy-duty engine class as a whole without significantly increasing particulate levels or causing significant fuel economy penalties. For some engines the 5.0 g/BHP-hr NO_x standard will be particularly difficult to meet without significantly impacting particulate emissions and fuel economy. The availability of an averaging program will ease the compliance burden for these engines by mitigating the undesirable particulate increases and fuel economy penalties associated with tighter control of NO_x emissions.

EPA has addressed the issue of potential localized urban impacts of averaging through several conditions of the averaging program. First, averaging has not been permitted between California and 49-state engines. Thus, if California were to establish more stringent NO_x or particulate standards than the Federal levels, manufacturers would be prevented from compensating for the more stringent California standard by marketing their higher emitting engines throughout the 49-state region.

Second, averaging has been restricted to within the various subclasses of heavy-duty diesel engines for both particulate and NO_x emissions. The urban fraction of truck mileage varies considerably between subclasses and averaging between subclasses could result in trading control of predominantly urban vehicles for control of predominantly non-urban vehicles. For example, without restrictions, manufacturers might choose to control their inter-city line-haul (heavy heavy-duty) engines more strictly in order to offset lesser control over their light-heavy and medium-heavy engines, which are predominantly urban in operation.

Finally, as discussed below, urban buses are excluded from the particulate averaging program, precluding the possibility of some cities receiving high emitting buses while others receive low emitting buses. EPA had also proposed to restrict averaging at high-altitude locations; however, since high-altitude standards for heavy-duty engines are no longer included in this rulemaking, that restriction has been dropped for all except light-duty truck NO_x.

EPA believes that the above restrictions are both reasonable and necessary for the proper functioning of the averaging program without adverse local impacts. They should adequately guard against the possibility of undesirable localized impacts while still providing the maximum available flexibility to manufacturers.

EPA does not believe that allowing emissions averaging will lead to significant increases in fleetwide emission levels. Under averaging, the emission level of each engine family will relate to the family emission limit in exactly the same fashion as it currently relates to the non-averaging standard. Thus, since all the family emission limits must average out to equal the standard, there would be no change in fleetwide emissions. While there may be some incentive, under averaging, for a manufacturer to reduce the safety margin between a family's emission level and its emission limit, EPA does not believe that this incentive is substantially different from that which exists under a non-averaging approach.

EPA has considered carefully the comments relating to the effects of averaging on marketplace competition. The reader is referred to the "Competitive Impacts" discussion in the final rule for light-duty diesel particulate emissions averaging (48 FR *at* 33460, July 21, 1983). The issues raised there are identical in scope to most of those outlined above. In summary, EPA recognizes that a larger, more diverse manufacturer will realize a somewhat greater benefit from this proposal than a smaller, more specialized one. However, competitive advantages have always been available to larger manufacturers due to their ability to lower the prices for engines in more competitive classes and raise them in less competitive classes. A program that allows both NO_x and particulate averaging should not substantially increase the ability of large manufacturers to engage in such pricing practices for two reasons. One, the restriction that presents averaging between families in different diesel subclasses limits the scope of adjustments that a broad line manufacturer may make in improving his competitive position. Two, a manufacturer who attempts, through averaging, to gain a competitive advantage in a specific model line will find that he can make only limited excess sales of that line before falling into potential noncompliance with his sales-weighted subclass emission average. EPA believes that the lower overall cost of compliance, due to the increased flexibility afforded by averaging, will outweigh the possible small competitive effects. The overall efficiency of most of the affected parties should increase under this proposal, and no single party should be unduly burdened.

EPA does not agree with Caterpillar that engine-only manufacturers have inherently less ability to market—and therefore control the sales of—specific engine models to their clients than do manufacturers of both vehicles and engines. Furthermore, the ability of each manufacturer to project the sales of specific engine models is substantially equivalent. (It is basic to the successful operation of any manufacturing concern that it be able to forecast its clients' demands with some degree of accuracy.) Caterpillar presented no evidence to substantiate its position on this issue; furthermore, the other engine-only manufacturer that commented on averaging did not advance a similar argument. The averaging program has been designed so that the manufacturer may adjust the emission limits of any engine family to account for uncertainty in the total sales of that family's engines. The emission limit may then be revised throughout the year to reflect recent and projected sales trends. This built-in flexibility should serve to alleviate the concerns of manufacturers that project, as a model year progresses, marginal exceedence of the standard.

EPA agrees with those commenters who pointed out that, due to the strong relationship between NO_x and particulate, it is appropriate to allow manufacturers to average NO_x emissions if they are allowed to average particulate emissions. Such an allowance, by increasing manufacturers' flexibility, will enhance the expected gain in efficiency resulting from the use of averaging. NO_x averaging is therefore being implemented for both light-duty trucks, for which diesel particulate averaging is already available, and heavy-duty engines, in a fashion almost identical to that for particulate, the major difference being that gasoline engines are included in the NO_x averaging program. EPA agrees with those commenters who felt that the competitive impact of allowing NO_x averaging between gasoline and diesel engines would be unduly adverse. NO_x averaging between engine families is therefore restricted by fuel type.

Daimler-Benz suggested that smaller manufacturers be allowed to average emissions across subclasses, as discussed above, but EPA is not convinced that the program as promulgated will create enough of an adverse competitive impact to justify such a change to the rule. Furthermore, one of the reasons for prohibiting averaging between subclasses is environmental in nature, as described above. Should no such restriction exist, the opportunity exists for different control levels to be applied to engines of widely varying urban mileage fractions, with the potential result of localized pockets of high pollutant concentrations. In the same sense that the Agency does not wish to provide an unfair advantage to larger firms, it does not intent to risk the environmental goals of this rule in favor of less diverse companies.

EPA also rejects GM's suggestion that averaging be allowed between light and medium heavy-duty engines. It may be true that GM could make greater use of averaging under such an approach. However, EPA's concerns over adverse competitive and environmental effects of averaging between subclasses remains, and the Agency believes that the restrictions in this program are necessary to curtail those effects.

The agency also cannot accept GM's request that a separate averaging class be established for emissions of particulate from urban bus engines. EPA is especially concerned with urban bus particulate emissions. Bus operation is almost entirely urban in nature and buses make a significant and disproportionate contribution to overall urban particulate loading. Consequently, EPA has determined that these vehicles should be controlled fully with trap technology (which poses less technological risk for buses than for other HDE's, as noted above), and should be excluded from any averaging program in order to maximize the control gained. Moreover, a separate averaging class for buses would be of limited usefulness since it is very unlikely that bus emissions could be reduced significantly below the 0.10 g/BHP-hr standard.

Since NO_x emissions in urban corridors pose a less acute problem than particulate emissions, urban bus emissions of NO_x may be averaged with emissions of NO_x from other heavy-duty engines, subject only to the restrictions described in a later discussion. Such a provision should enhance manufacturers' flexibility in complying with the more stringent model year 1991–93 urban bus particulate emission standard.

With respect to the arguments relating to averaging by configuration instead of by family, EPA agrees that adopting the configuration-based approach (or adopting International Harvester's family average approach) would result in a more accurate representation of a manufacturer's fleetwide emissions. However, the promulgated standards currently take into account the fact that actual emissions will be less than those indicated by the family emission limits. Were the program to have been based on averaging by configuration, more stringent standards would be necessary to achieve reductions comparable to those predicted from the progrm as currently designed. EPA does not see any practical difference between the two approaches when viewed in this manner.

EPA does not agree with the argument that it might be easier to identify sources of in-use noncompliance under a configuration-based, rather than a family-based, approach to averaging. Under the family-based averaging approach, in-use testing and recall protocols would remain essentially equivalent to methods to be used under a non-averaging program. Under a configuration-based approach, however, assessments of in-use compliance would be more difficult to achieve for two reasons. First, a separate sample of engines of each configuration within a family would need to be tested in order to effect a recall of those configurations, even though the case of the noncompliance might obviously be associated with each configuration in the family. Second, it would be difficult to locate and bring in for testing the requisite number of engines of each specific configuration (as compared to accomplishing this at the family level where the potential sample population is much larger).

Other reasons for choosing the family-based approach are outlined in detail in the discussion labeled "Emission Limit Basis: Engine Family vs. Vehicle Configuration" which was published with the light-duty diesel particulate averaging rules (48 FR *at* 33458, July 21, 1983). To summarize that discussion, implementation on a configuration basis would be unduly burdensome for EPA. An entirely new certification program would need to be designed to allow for the testing and certification of each engine configuration. The result would be a greatly increased testing burden on the industry. The monitoring of such a program would be beyond EPA's current capabilities.

In regard to EPA's authority to render certificates void *ab initio* at the end of the model year, the reader is referred to section 206 of the Act, whereby the Administrator is granted authority to issue a certificate of conformity "upon such terms * * * he may prescibe." Moreover, averaging is neither required by the statute nor required of manufacturers. EPA thus may condition voluntary participation in the averaging program on compliance with terms the Agency may set in the reasonable exercise of its discretion. EPA must ensure that it can enforce emissions standards under an averaging scheme. NCPs, prospective suspension or revocation of certificates, and the recall program by themselves may not, in some cases, provide sufficient enforcement authority.

It is anticipated that the NCP program will be structured so that a penalty will be assessable against a manufacturer who chooses the averaging option only when an engine is found to exceed its family emission limit. A manufacturer's sales weighted average emissions might exceed the applicable standard though all engines be in compliance with their respective family limits. NCPs may not be able to deter or correct this situation, should it occur.

EPA is not in a position to evaluate a manufacturer's compliance with the standard under averaging at any time prior to year end; therefore, prospective suspension or revocation of certificates is not seen as a viable enforcement tool. As stated previously, it is the manufacturer's basic responsiblity under averaging to ensure that, at the end of a model year, his sales weighted emission levels do not exceed their respective standards. The program as

structured provides maximum flexibility to the manufacturer in setting family emission limits and revising those limits to insure compliance with the standard. In the extreme, a manufacturer unable to predict its average emissions level could simply meet the standard with all families and thereby eliminate any risk. If a manufacturer is unwilling to accept responsibility for meeting the standard under averaging then it need not participate in the program.

Finally, use of EPA's recall authority under section 207 of the Act to enforce end-of-year compliance with a standard may be difficult or inappropriate in those instances where there is no identifiable defect in any vehicles (i.e., where the nonconformity is caused simply by producing too many of a manufacturers' higher emitting vehicles). EPA therefore has incorporated into the certificate the condition that the year-end sales weighted emission level be in compliance with applicable standards. This approach is both necessary for efficient enforcement and consistent with section 206 of the Act.

The reader is referred to the discussion of this issue with respect to light-duty diesel particulate averaging under the title "Conditional Certification" (48 FR *at* 33459, July 21, 1983). It is noted there that manufacturers themselves have set a precedent for conditional certification. Ford has in the past "sought and been given conditioned certificates * * * in an effort to avoid delays in product introduction dates where durability testing would not be completed on schedule. The Agency sees no legal differences between those former conditioned certificates and those which will be issued under these new regulations."

Any engine whose certificate is rendered void *ab initio* would be in violation of section 203 of the Act. A manufacturer would be subject, under section 205, to a $10,000 fine for each engine found to be in such violation. However, engine manufacturers should realize that EPA's objective in granting conditioned certificates is not to impose "draconian" or "senseless" penalties (as characterized by one commenter), but simply to give itself the ability to seek some remedy through a negotiated settlement in the event of noncompliance. The Agency of course would have some discretion in choosing which remedies and/or penalties to pursue where violations occurred. Since EPA's primary goal would be to eliminate the nonconformance, it would likely seek recall of certain affected vehicles, where appropriate, for the purpose of adjusting overall emissions to bring the manufacturer's average into compliance. If a subclass or fleet average standard is exceeded, EPA will certainly consider which engines are most efficiently recalled to achieve redress. It should not be necessary to recall an entire subclass (unless, of course, the subclass comprises only one family). Finally, it is again noted that the averaging program as promulgated here is completely voluntary. A manufacturer who does not believe he can adequately implement its requirements is under no obligation to participate.

The concept of allowing a manufacturer to average his emissions into the following model year as an alternative to being found out of compliance in the current model year is, in essence, equivalent to the banking of emission credits (or in this case, debits). The issue of credit trading was discussed briefly in the proposal and, due to interest on the part of several commenters and within the Agency inself, is being explored further (see below). However, no such program is included in today's rulemaking.

In regard to EPA's approach to setting family emission limit ceilings, the Agency concurs with EMA that choosing previously achieved standards might not always be appropriate. While EPA recognizes that some tradeoff may be inherent in any adjustment of NO_x or particulate, the function of an emissions ceiling is to prevent manufacturers from effecting a tradeoff with undue environmental impacts from individual vehicles. In the present rulemaking, emission ceilings for the 1991 standards are set at levels which EPA has determined to be feasible, given the relative reductions effected in both NO_x and particulate emissions. For the 1994 0.10 g/BHP-hr particulate standard, EPA will maintain the emission ceiling at 0.60 g/BHP-hr in order to insure that manufacturers have the flexibility neededto include non-trap equipped engines in their averaging programs. While the ceiling for non-trapped emissions could undoubtedly be lowered somewhat between 1991 and 1994, the Agency sees little benefit in doing so. EPA is satisfied that the 0.10 g/BHP-hr standard is stringent enough to effectively preclude inclusion of any significant number of high emitting engines into an average.

Mack's suggestion that averaging be allowed between engines within a family but not between families within a subclass would result in maximized trap usage and minimized flexibility for manufacturers. EPA believes that such an approach would have little overall benefit and would nullify most of the advantages of averaging. The restrictions on averaging as promulgated represent what EPA believes to be the best compromise between the interests of larger manufacturers such as GM, who would prefer no restrictions, and smaller or less diverse manufacturers, such as Mack and Caterpillar.

EPA recognizes the sensitive and complex nature of the emission credit trading concept. While credit trading could enhance manufacturer flexibility and incentive in meeting standards, an improperly structured program could adversely affect competition. As no specific proposals were presented in the NPRM, and as the program requires careful consideration, it would be inappropriate to promulgate rules at present. EPA does intend to explore this possibility further and to make a specific proposal in the near future if such a proposal is warranted.

Summary of final rule. The averaging programs promulgated by today's final rule are identical in many aspects to the particulate averaging program that was proposed and described above under *"Review of the proposal."* These basic aspects are as follows:

For heavy-duty engines, the particulate averaging scheme is promulgated such that, from the 1991 through 1993 model years, an average 0.25 g/BHP-hr standard is applicable to all engines except urban bus engines. The proposed high-altitude heavy-duty diesel engine particulate standards have been deleted, as discussed elsewhere in this document. Therefore, the high-altitude restriction is no longer needed. The standard for 1991–93 model year urban bus engines is 0.10 g/BHP-hr, and may not be achieved through the use of averaging. A ceiling of 0.60 g/BHP-hr is imposed on the family emission limits to be set by a manufacturer which chooses the averaging option. Effective with the 1994 model year, the particulate standard for all heavy-duty diesel engines is lowered to 0.10 g/BHP-hr (while the family emission unit ceiling remains at 0.60 g/BHP-hr). Urban bus engines will remain a separate class which is not permitted to participate in the averaging program.

As noted previously, a NO_x averaging scheme is also being effected beginning in 1991. For heavy-duty engines, the sales- and power-weighted NO_x emission limit is set at 5.0 g/BHP-hr, with a 6.0 g/BHP-hr ceiling on individual family emission limits. Like the particulate averaging program, its use is entirely optional to the manufacturer. It differs from the particulate averaging program in the following aspects. NO_x

emissions from gasoline-fueled heavy-duty engines may be averaged. NO_x emissions from gasoline-fuled engines may not, however, be averaged together with emissions from diesel engines, but they may be averaged among all gasoline-fueled heavy-duty engine families. NO_x emissions from urban bus engines may be averaged with emissions from other heavy-duty engines, subject to applicable fuel type, subclass, and sales region restrictions, effective with the 1991 model year.

All other aspects of the heavy-duty engine averaging program for particulate and NO_x emissions stand as proposed.

EPA has also decided to implement a NO_x averaging program for light-duty trucks with this rulemaking along similar lines as the programs for heavy-duty engine NO_x and particulate and for light-duty diesel particulate (48 FR *at* 33456). This averaging option will be effective with the 1988 model year. The comments reviewed in this section apply equally in many respects to light- and heavy-duty averaging; EPA's rationale for the concept applies to both a light-duty and a heavy-duty averaging program.

A manufacturer who chooses to participate in the averaging program for light-duty truck NO_x emissions will determine emission limits for each of its light-duty truck families (subject to a 2.3 g/mi ceiling). NO_x emissions will then be averaged among all light-duty truck engine families of the same fuel type. The difference between vehicles certified to the two different light-duty truck emission standards will be handled in a fashion identical to the method currently used in averaging particulate emissions from light-duty diesel vehicles and trucks. Each participating manufacturer will calculate a weighted light-duty truck standard that will be equal to its sales weighted average of the lighter light-duty truck standard (1.2 g/mi) and the heavier light-duty truck standard (1.7 g/mi).

Light-duty truck NO_x averaging will not be permitted between gasoline and diesel engine families nor between families intended for use in California, high altitude and low-altitude regions.

The concept of inter-manufacturer trading of emission credits is being explored further. Due to the complexity of this issue and the fact that no specific scheme was proposed by EPA, it is not addressed by today's rulemaking. However, EPA has noted the interest by manufacturers in emissions trading. The Agency is, therefore, developing a separate proposal on this topic for possible issuance in the near future.

G. Allowable Maintenance

Review of the proposal. The proposal addressed several basic aspects of allowable maintenance. The first was the extension of provisions already implemented for light-duty vehicles as well. This part of the proposal assigned minimum technologically necessary maintenance intervals for the emission-related components of light-duty vehicles, which were the same intervals specified for light-duty trucks in an earlier rulemaking (45 FR 63734, September 25, 1980).

Second, EPA proposed the addition of several new items to the existing list of "emission-related components." Electronic engine controls and related actuators and sensors would be added to the list for all vehicles and trucks. For gasoline-fueled vehicles and trucks, EPA proposed that turbochargers, carburetors, evaporative canisters, and air injection systems be added to the list of emission-related components. For diesels, particulate trap-oxidizer systems were added to the list. The interval proposed for all of these components was 100,000 miles, with the exception of 150,000 miles for trap-oxidizers on the heavier diesel engines.

A third aspect of the proposal was introduction of the "critical emission-related components" concept, a subset of emission-related components. These critical components were defined in the proposal as those which either are designed exclusively for emission control purposes, or whose failure may result in a significant increase in emissions accompanied by no significant impairment in performance, driveability, and/or fuel economy.

With designation of these critical components, EPA proposed that manufacturers be required to demonstrate a "reasonable likelihood" that maintenance recommended for these critical components will actually be performed by owners. Five specific methods of meeting the reasonable likelihood requirement were proposed, with manufacturers given the option to have other methods approved in advance by the Administrator.

The proposal included minor amendments aimed at the clarification of some existing aspects of the allowable maintenance regulations. One of these was the relationship between maintenance specified by EPA for certification testing and that required by manufacturers of vehicle purchasers in their owner's manuals. To prevent further misinterpretation of this relationship, a proposed wording change would clarify that no emission-related maintenance can normally be recommended to owners at shorter intervals than allowed for durability testing as part of certification, except with the Administrator's approval.

Also included in the proposal was a clarification of the distinction between maintenance and inspections. Inspections do not constitute maintenance, since they do not assure the proper functioning of the emission control system, and thus are not items of scheduled maintenance. However, it was proposed to allow the inclusion of inspections in maintenance schedules required by manufacturers of vehicle purchasers, provided that such schedules clearly state that the inspections are not required for warranty or recall coverage.

A final area covered in the proposal was improvement of the warning systems designed to indicate when maintenance is needed. Based on survey data (available in the public docket) indicating that current systems are somewhat ineffective, EPA proposed that warning lights be required to stay on until the required maintenance is performed. Other measures, such as improved content of the message displayed by the signal and the addition of a second warning light, were also proposed.

Issues raised by the comments. The majority of the comments on allowable maintenance were submitted by vehicle and engine manufacturers and associated organizations, with a few submittals by local, state, and Federal authorities. The majority of the comments raised issues that can be grouped into these four major categories: (1) Legal authority and justification of need, (2) maintenance intervals, (3) proof of likelihood requirements, and (4) clarification of existing provisions.

Legal questions focused largely on EPA's authority to establish for vehicle and engine manufacturers the maintenance intervals which may be recommended to their customers. The Motor Vehicle Manufacturers Association (MVMA), General Motors (GM), Ford, and others contended that the Act gives manufacturers and not EPA both the right and the responsibility to determine that level of maintenance which is "reasonable and necessary to assure the proper functioning of the emission control system," and to in turn recommend these proper maintenance intervals to their customers. Further, GM maintained that the change from "reasonable and necessary" to "technologically necessary," with respect to recommended maintenance intervals, was "monumental and

revolutionary," and not founded on any authority delegated by Congress.

Most manufacturers also pointed out that EPA does not have the authority to specify any maintenance interval beyond the useful life of a vehicle. This issue was raised in response to the apparent extension of light-duty truck maintenance intervals to light-duty vehicles, even though some of the intervals were greater than the 50,000-mile useful life defined by the Act for passengers cars. Though this error was acknowledged by EPA during the public hearing on the proposal, manufacturers felt it important that the final rule should clarify this matter.

Ford and others criticized EPA for not having justified the need or feasibility of the proposed actions by conducting thorough environmental and economic impact analyses. Ford was joined by GM and MVMA in characterizing EPA's proposal as "arbitrary and capricious" and an "abuse of the Agency's discretion." The American Automobile Association (AAA), on the other hand, supported the allowable maintenance provisions strongly and commented that the proposed actions were "long overdue."

For various reasons, many of the manufacturers suggested reproposal of the allowable maintenance provisions in a separate rulemaking. This comment was mainly in response to the light-duty vehicle provisions, with GM, Ford, Chrysler, Nissan and others expressing the need for more leadtime and time for proper comment and response. However, a delay was also suggested by some members (Cummins, Caterpillar) of the Engine Manufacturers Association (EMA), in order to gain more experience and information on the maintenance requirements of certain components, particularly those not yet in use in heavy-duty engine applications (*i.e.*, particulate traps and electronic engine controls).

The second major issue raised by the comments dealt with the specific maintenance intervals proposed. Although GM challenged the feasibility of all intervals (except for idle mixture), most frequently criticized was the proposed 100,000-mile interval for oxygen sensors. Basing their arguments primarily on the lack of evidence that an oxygen sensor can function properly for the interval proposed, manufacturers recommended oxygen sensor maintenance intervals ranging from 30,000 to 60,000 miles.

As mentioned earlier, those intervals proposed for light-duty vehicles that went beyond the 50,000-mile useful life specified in the Act were uniformly opposed by the manufacturers, while AAA recommended that intervals for certain emission-related automobile components be greater than 50,000 miles. Several commenters (MVMA, GM, Chrysler, and American Motors) challenged all 100,000-mile intervals, including those already implemented for certain light-duty truck and heavy-duty engine components.

Ford questioned the proposed 100,000-mile interval for carburetors in particular, citing the proposed stipulation that "no adjustment, cleaning, repair or replacement" would be permitted prior to 100,000 miles of use. Ford pointed out an apparent inconsistency with respect to the interval of 50,000 miles set for idle mixture (associated with the carburetor system), and expressed its difficulty in determining whether or not its recommended maintenance intervals were in compliance with the proposed regulations.

A third broad category of issues raised by the comments dealt with the concept of "critical" emission-related components and the requirement that manufacturers provide reasonable proof of likelihood that maintenance recommended for these components will actually be performed in use. In general, most commenters (including Cummins and other manufacturers) accepted the classification of some components as "critical," with the exceptions of Volkswagen (which found the categories confusing and redundant) and GM (which opposed strict maintenance requirements on any item not strictly designed for emission control, such as the entire closed-loop system). The Oregon Department of Environmental Quality supported the concept of "critical" components and recommended that the components be explicitly identified in the owner's manuals for the benefit of consumers.

Opposition to the proof of likelihood requirement was widespread, with most manufacturers unwilling and reportedly unable to accept responsibility for the consequences of inadequate in-use maintenance. Most felt this additional burden should not be placed on the manufacturers; instead, American Motors and others recommended that vehicle owners be encouraged to have maintenance performed through increased public awareness or the implementation of state inspection/maintenance plans. Some commenters, such as Caterpillar, felt that adequate market incentives already exist for maintenance (especially on heavy-duty diesels), and that vehicles and engines should be treated like other marketplace products, where the responsibility rests with the owners.

Numerous comments were received on EPA's suggested methods of satisfying the proof of likelihood requirements. With respect to warning lights that stay on until the recommended maintenance is performed, both Volvo White and the Department of Energy (DOE) pointed out the likelihood that such devices would be disabled in heavy-duty diesels if perceived as a hindrance, even though disconnection of warning lights would be considered a form of tampering by EPA. Chrysler, GM, and Ford questioned the value of a second warning light if one light is currently ineffective, and Chrysler suggested the impracticality of separate lights for each of the individual critical components. AAA agreed that warning lights are helpful, but they advised against messages that are too vague (*e.g.*, "Check Engine"). GM and others felt that surveys of owners' intentions would be a needless waste of time and expense because the majority of the customers asked would respond in a positive manner; furthermore, GM viewed the 80 percent favorable response requirement as "arbitrary and without foundation." Finally, GM opposed the option requiring manufacturers to provide for pre-payment of maintenance on critical emission-related components, questioning both EPA's authority to require prepayment and the cost-effectiveness of a such a measure.

The remaining issues raised by the comments dealt with the points of clarification included in the proposal. The first area covered is clarification of the relationship between maintenance allowed during certification and that recommended to vehicle purchasers in their owner's manuals. EPA's position that the maintenance intervals specified for durability testing must correspond to those which are recommended for in-use vehicles was strongly opposed by most of the manufacturers and by GM in particular. Aside from the issue of EPA's legal authority to establish in-use maintenance recommendations (mentioned earlier), manufacturers questioned the ability to precisely duplicate in-use conditions (*e.g.*, driving cycles, fuels, environmental conditions) during certification. Based on this, GM, Ford, Chrysler, and others expressed the need for flexibility to specify more frequent maintenance intervals to their customers. GM stated that this limitation on the in-use maintenance allowed to be recommended would force manufacturers to stop production of certain vehicles and engines unless they were willing to assume an unacceptable built-in risk of recall.

Finally, comments were received in response to the proposal's clarification of the difference between inspections and maintenance. Both GM and Chrysler contended that disallowing inspections as a condition for recall or warranty would increase costs to the consumer, because the manufacturers would be forced to call for automatic replacements rather than relatively inexpensive inspections. Ford, on the other hand, supported the distinction between the two as long as manufacturers would still be permitted to recommend inspections that are explicitly identified as not being required for warranty or recall purposes; in this way, Ford feels that customers would not be biased into thinking that inspections and related maintenance are unnecessary.

EPA response to the comments. All of the comments received on the allowable maintenance provisions of the proposal were reviewed by EPA and considered in today's promulgation of allowable maintenance requirements.

In order to assess the comments on allowable maintenance in the proper context, it is first necessary to realize that the proposed provisions arose from a significant amount of past action by the Agency. Thus, while at first glance it might appear from the comments that EPA was introducing a significant conceptual change deserving of an independent rulemaking proposal of its own, the facts are quite the opposite. Allowable maintenance regulations have been in place since the early 1970s (*see, e.g.*, 36 FR 16905, August 26, 1971; 38 FR 21348, August 7, 1973). The fundamentals of the allowable maintenance provisions in today's action have been the subject of rulemaking dialogue between manufacturers and EPA since 1979. The basic concepts of allowable maintenance and the intervals for heavy-duty engines were presented in a final rulemaking (45 FR 4136, January 21, 1980) and discussed in these supporting documents: (1) *Regulatory Analysis and Environmental Impact of Final Emission Regulations for 1984 and Later Model Year Heavy-Duty Engines*, and (2) *Summary and Analysis of Comments to the NPRM: "1983 and Later Model Year Heavy-Duty Engines Proposed Gaseous Emission Regulations,"* both published in December 1979. These heavy-duty regulations were followed by a final rulemaking promulgating allowable maintenance requirements for light-duty trucks (45 FR 63734, September 25, 1980) and these accompanying documents: (1) *Regulatory Analysis and Environmental Impact of Final Emission Regulations for 1984 and Later Model Year Light-Duty Trucks*, and (2) *Summary and Analysis of Comments on the NPRM for Gaseous Emission Regulations for 1983 and Later Model Year Light-Duty Trucks*, both released in May 1980.

Even the concept of requiring proof of reasonable likelihood that emission related maintenance will be performed, although not finalized in either of those actions, was proposed and commented upon. For both light-duty trucks and heavy-duty engines, EPA indicated that these provisions would probably be needed for future technology and would probably be reproposed when the new NO_x standards were proposed (45 FR 63738, September 25, 1980; 45 FR 4141, January 21, 1980).

Finally, EPA indicated in its Advanced Notice of Proposed Rulemaking for today's NO_x standards that promulgation of allowable maintenance provisions was being anticipated, and discussed the concept of "critical" emission-related components in detail (46 FR 5843, January 19, 1981). The Advance Notice included draft regulations detailing the anticipated program. These provisions were commented upon by manufacturers, and because of the comments, the final proposal was modified somewhat to respond to objections raised.

The majority of the allowable maintenance issues raised in the previous section were analyzed as part of the light-duty truck and heavy-duty engine rulemakings. These include the basic concepts of emission-related and non-emission-related maintenance, technologically necessary maintenance intervals, the establishment of all the existing intervals, and the other provisions already embodied in the 1985 allowable maintenance regulations (§§ 86.085–25 and 86.085–38). No re-analysis of these matters beyond that which is presented below has been performed (*i.e.*, the allowable maintenance issue is not examined in the Regulatory Impact Analysis). By way of the references to the above-mentioned documents, the analyses and responses contained therein are incorporated into the following discussion.

This analysis will now turn to the specific areas of comment outlined in the previous section. The issue of EPA's legal authority to establish the maintenance intervals to be recommended to vehicle owners was addressed extensively in both of the earlier rulemakings. As stated then, the necessary authority is given to the Administrator in sections 206(d) and 207(c)(3)(A) of the Act, which provide the basis for EPA's entire certification and durability programs. Section 207(c)(3) of the Act specifically requires that vehicle and engine manufacturers provide owners with maintenance instructions which "correspond to regulations which the Administrator shall promulgate." Based on these provisions and their legislative history (H.R. Rep. No. 294, 95th Cong., 1st Sess. 295 (1977); S. Rep. No. 252, 95th Cong., 1st Sess. 82 (1977)), EPA concludes that it has adequate legal authority to establish technologically necessary maintenance intervals for certification and to require that in-use maintenance recommendations be consistent with these specifications (*see also* Automotive Parts Rebuilders *v.* EPA, 720 S. 2d 142, 150–151 (D.C. Cir. 1983)). Furthermore, the claim by GM that today's regulations embody a "monumental" change is undercut by the fact that the basic concept of technologically necessary intervals for emission-related maintenance was established in 1980, and linking owner's manual maintenance to certification goes back to the early 1970's, as detailed above. GM had ample opportunity to raise this issue in the earlier forums in which it actively participated.

The statutory provisions on certification testing and maintenance instructions also provide EPA with the authority to limit allowable maintenance to that which manufacturers can show is likely to be performed. This limitation is a natural extension of EPA's efforts to ensure that the vehicles certified by manufacturers will comply with the applicable emission standards in actual use. Thus, it is a reasonable exercise of EPA's authority to define certification testing parameters and regulate the content of maintenance instructions.

In response to the proposed extension of existing light-duty truck maintenance intervals which are greater than 50,000 miles to light-duty vehicles, EPA acknowledges its error. Manufacturers are correct in citing the Act's definition of useful life for light-duty vehicles as 50,000 miles. This matter has been clarified in today's regulations, which state that no allowable maintenance provisions apply beyond the useful life of the vehicle, as defined by the Act.

In response to criticisms of inadequate justification of the need for and levels selected for light-duty vehicle maintenance intervals, EPA feels that this action in fact represents a logical progression from regulations for the other vehicle classes. The basic reasons for establishing the light-duty truck and heavy-duty engine provisions—to direct

the focus from certification to in-use compliance and to encourage manufacturers to develop more durable components that require less maintenance—are just as valid for light-duty vehicles. The extension of light-duty truck maintenance intervals to light-duty vehicles was based on the close similarity between the two classes in terms of technology and usage patterns. The technical feasibility of the light-duty truck intervals, except for those components newly added by this rulemaking, has been addressed in the previously mentioned rulemakings, and the intervals that have been judged appropriate for light-duty trucks will inherently be suitable for light-duty vehicles. If anything, light-duty vehicles would experience a less demanding service environment than do light-duty trucks, arguing for somewhat less needed maintenance for that class of vehicles. Therefore, EPA finds that the manufacturers' references to the light-duty vehicle intervals as "arbitrary and capricious" are incorrect and not supported by the record.

With respect to the lack of specific discussion of the economic and environmental impacts associated with the proposed regulations, the reader is again referred to the previous rulemakings. In support of the heavy-duty engine rule (45 FR 4136, January 21, 1980), the costs and benefits associated with the allowable maintenance provisions were estimated. The only significant costs projected were those of increasing the noble metal loading and volume of catalyst systems to extend the useful life from 50,000 miles to 100,000 miles (the effective impact of the extended maintenance requirement). Other components were found to be affected in such minor ways as to prevent assignment of specific cost estimates. The situation was similar with regard to benefits. The only quantifiable benefit was that due to reduced emissions from improved catalyst lifetimes. For other components, the effects were describable in qualitative terms, but there was insufficient information to allow for quantitative assessments. While the premise that reduced requirements for in-use maintenance would in turn produce reduced instances of improperly maintained vehicles was clear, the means to assign specific values to those improvements were generally lacking. EPA believed that limiting provisions for allowable maintenance would lead to improved durability of components, improved in-use performance, and overall reductions in emissions. Based upon the quantifiable costs and benefits, the allowable maintenance provisions were found to be one of the most cost effective aspects of the rulemaking. EPA believes that the non-quantifiable effects of those provisions made the rule more reasonable and appropriate.

Costs and benefits were also developed in support of the light-duty truck regulations, and again, the significant costs were associated with extending catalyst durability. Benefits in terms of HC and CO reductions were projected to result from fewer improperly maintained vehicles in the field. Again, quantifiable impacts were found to be very cost effective for light-duty trucks.

Thus, experience from prior rulemakings has shown that the individual impacts of the allowable maintenance provisions are generally small, and that their cost effectiveness is very good. The impacts described below associated with today's allowable maintenance provisions, when compared to those of prior rulemakings, fall within the small, non-quantifiable category (*i.e.*, the most significant costs of past rulemakings were associated with extending the catalyst durability, which is not affected here). Those impacts that are identifiable were shown to be cost effective in the previous analyses; therefore, because the situation is basically the same here, no additional quantitative analysis was performed.

Beyond the quantifiable areas, there are very important intangible reasons for the adoption of today's allowable maintenance provisions. They serve to focus the attention of manufacturers away from the narrow task of passing a carefully defined certification procedure and toward better in-use performance of vehicles and engines. They also provide insurance that manufacturers' cost control pressures do not take priority over the design and use of durable emission-related components and that vehicle owners are not required to perform maintenance that should not be necessary for the proper performance of their vehicles.

It should also be noted that, while not generally identified separately, any known cost impacts of the allowable maintenance provisions are included in the cost estimates for today's action. For example, EPA has, partly in response to comments about the need for continued improvements in the in-use durability of trap oxidizers, increased its estimates of necessary trap sizes. Costs associated with other hardware components are also considered to be for items of sufficient durability to comply with the allowable maintenance restrictions.

With regard to costs for light-duty vehicles under the new allowable maintenance provisions, no significant expense is expected because the relatively small extensions of recommended maintenance intervals to 50,000 miles (the full useful life of light-duty vehicles) from current practice (which generally calls for maintenance at about the 35,000-mile point) will not cause significant hardware changes.

With respect to the items newly added to the list of emission-related components, no significant costs are expected because of the basic mechanical durability of such components as turbochargers, carburetors, and evaporative canisters. Some development costs might have been incurred in further reducing the failure rate of oxygen sensors at high mileages under the 100,000 mile maintenance interval EPA had proposed. However, with that interval reduced to a mileage range already being attained by most current oxygen sensors (to be discussed below), no significant new costs should be involved.

In response to comments that the light-duty vehicle provisions should be delayed due to inadequate leadtime, EPA has reviewed this question carefully and finds no basis for delay. Two basic reasons for needing more leadtime would be, first, insufficient time to comment, or second, inadequate time to comply with the provisions. With respect to the first point, the basic aspects of the proposal have been extensively reviewed and commented upon in the other rulemakings cited above. The Agency believes that this fact, plus the amount of time for public comment provided in the course of today's rulemaking, has been more than adequate. As for providing adequate time to comply with the allowable maintenance provisions, the Agency sees no significant burden beyond that of compliance with the NO_x and particulate standards promulgated today. EPA's analysis of required leadtime for these standards includes, for example, the need to develop a high-mileage particulate trap-oxidizer, which is the component EMA identified as needing more time to gain high-mileage experience.

With respect to the heavy-duty engine manufacturers' desire to gain more knowledge of trap-oxidizer performance before being subject to required maintenance intervals on traps, EPA believes that the intervals set for traps represent the minimum acceptable life

for this component. Reasonable high-mileage performance with minimal maintenance requirements is essential in ensuring effective operation of the trap throughout the useful life of the vehicle. Therefore, this requirement should be viewed as a design parameter in the development of diesel particulate traps and thus is appropriately introduced at this time. EPA's analysis of trap feasibility and cost has included consideration of lifetime durability issues, and the Agency has concluded that long-lived traps will be available as required. Of course, the Agency remains open to further evaluation of this issue as trap development proceeds. The minimum maintenance interval for traps can be reviewed in the future if the situation warrants.

Probably the most uniformly criticized maintenance requirement was the 100,000-mile interval proposed for oxygen sensors, with manufacturers recommending 30,000 to 60,000 miles as appropriate intervals. In response to these comments, EPA has closely reviewed available information on current maintenance practices within the industry and the high-mileage performance of oxygen sensors. As detailed in the report "*Durability of Oxygen Sensors*," [1] EPA's in-use data show that the majority of oxygen sensors currently in use perform satisfactorily to at least 80,000 miles, with a failure rate of approximately 10 percent or less. Based on these findings, EPA blieves that extension of the current 50,000-mile interval (as already established for light-duty trucks) is justified. However, since currently available data do not support the originally proposed 100,000-mile interval, EPA has revised the maintenance interval for oxygen sensors to 80,000 miles.

No revisions have been made to the 100,000-mile intervals proposed for other components, including evaporative canisters, electronic engine controls, air injection systems, and carburetors, which are all viewed as components with no extensive routine maintenance requirements. Manufacturers' comments, in general, included no evidence or rationale to effectively dispute this position. Instead, manufacturers expressed the opinion that the intervals were excessively long, but provided no substantive data to support this position. The 100,000-mile interval specified for turbochargers on gasoline-fueled vehicles and trucks was carried over from the specification for the lighter classes of heavy-duty diesels, implemented with the earlier rulemaking. This is appropriate, considering the common useful-life and use patterns of gasoline-fueled and diesel engines in these vehicles. In response to Ford's interpretation of the carburetor maintenance allowed by the proposed regulations, the final regulations clarify that the carburetor cannot be *rebuilt* or *overhauled* prior to 100,000 miles of use; however, adjustments to the idle mixture can be made at 50,000 miles (as specified by the maintenance interval assigned to this component).

In requiring that manufacturers offer reasonable proof that recommended maintenance on critical components will indeed be performed in use, EPA has been mindful of the parallel responsibility of the vehicle or engine owner to perform reasonable maintenance. It is for this reason that EPA has carefully limited the requirement to only those components which are critical for emissions control and which will not otherwise visibly affect the vehicle's operation. Further, EPA has provided specific and reasonable means for making an acceptable showing of likelihood, some of which fall well short of conclusively establishing proof of actual maintenance. This has been done to limit the responsibility of the manufacturer to a reasonable level, while at the same time providing the incentive to not require maintenance on these components unless truly needed.

Because of the way it has been established and limited, EPA believes that the proof of maintenance requirement for critical emission-related components presents minimal burden to manufacturers. Indeed, if market incentives already exist for heavy-duty diesel maintenance, as Caterpillar contends, then the impact of additional EPA regulation in this area should be minor. If it is not, the additional burden placed on the manufacturers will be small in view of the limited number of components affected and the leniency of the proof requirements as described above.

EPA would again like to emphasize (as was done in the proposal) the limited number of components affected by the proof of likelihood requirement. Because proof of likelihood is not required for components whose maintenance intervals are beyond full useful life, this requirement has no impact on light-duty vehicles whatsoever. Further, since the intervals for four of the six critical components of light-duty trucks and heavy-duty gasoline-fueled engines fall within 10,000 to 20,000 miles of the full useful life periods for these two classes, EPA expects that most manufacturers will extend these intervals by the slight additional mileage necessary to avoid the proof-of-likelihood requirement. For heavy-duty diesel engines, only particulate traps, exhaust gas recirculation systems, electronic engine controls, and positive crankcase ventilation valves are subject to this requirement.

One specific aspect of the means available for demonstration of reasonable likelihood which received significant adverse comment was the requirement for dual warning light indicators. EPA agrees with the comments that an additional light will not significantly enhance the effectiveness of this option. Therefore, in the final rule the requirement has been reduced to that of only a single light.

EPA's final responses address the allowable maintenance issues clarified in the proposal: Certification versus in-use maintenance and inspections versus maintenance. In response to comments on the first issue, EPA emphasizes that the certification program is intended to demonstrate the reasonable likelihood that vehicles will meet their emission standards in use as warranted by the manufacturer. To make this demonstration, the certification program must take into account maintenance practices upon which the manufacturers are warranting their vehicles. To preserve the integrity of the demonstration, no additional emission-related maintenance than that conducted during certification can be required in use as a condition for emissions warranty coverage. However, the Agency will allow manufacturers to recommend additional maintenance provided that the instructions clearly state, in a form approved by the Administrator, that such maintenance is not necessary to maintain emission warranty coverage or manufacturer recall liability.

In making the connection between certification and in-use, it is important to note that the maintenance intervals as originally developed for heavy-duty vehicles and light-duty trucks were established based upon in-use performance and practice. Manufacturers in their comments have implied that the maintenance intervals are appropriate for certification testing, but not for in-use. This position is contrary to the facts.

The derivation of all allowable maintenance intervals has been based exclusively on data concerning in-use

[1] "Durability of Oxygen Sensors," Snapp, L., U.S. EPA, OAR, OMS, ECTD, EPA-AA-SDSB-85-04.

operation. As described in the preamble to the final light-duty truck provisions (45 FR 63738, September 25, 1980), maintenance intervals for most of the components addressed were the longest intervals that any manufacturer recommended for that item in its owner's manual. Starting from that point, some intervals were adjusted as needed in response to public comments (e.g., spark plug change intervals were adjusted to account for the difference between using leaded versus unleaded fuels in some vehicles).

The fact that all of the allowable maintenance intervals are in-use intervals eliminates the contention of those manufacturers arguing for the option of requiring more maintenance in their owner's manuals. If indeed there is a difference in the amount of maintenance which is required on certification durability vehicles compared to in-use vehicles (which there should not be in a properly designed program), then that difference indicates the need for less maintenance on the durability vehicles than what is specified in the regulations. While manufacturers are not free to require additional maintenance of users, they are, of course, free to reduce maintenance on durability vehicles if they so desire.

The final point commented upon was the wording change to make it clear that inspections do not constitute maintenance because they reveal rather than prevent part failure (*see* 40 CFR 86.082–2). Thus inspections do not assure the proper functioning of the emission control system, and may not be specified as scheduled maintenance items required to maintain emissions warranty or recall protection. Some manufacturers argued that this would lead to increased cost, whereas Ford said it would not and supported the distinction.

There are two reasons why EPA does not expect this requirement to actually increase costs. First, the areas where inspections are currently employed by manufacturers are in low-mileage applications, well below 50,000 miles. These requirements are eliminated entirely by today's maintenance intervals, which are at 50,000 miles or above for all items except spark plugs. For light-duty vehicles, then, essentially no emission-related maintenance is allowed within the vehicle's useful life, whether inspection or otherwise. Beyond that point, the regulations do not govern and the manufacturer is able to establish its own requirements. Therefore, the issue does not significantly affect light-duty vehicles. For light-duty trucks and heavy-duty engines, again no significant emission-related maintenance is permitted below 50,000 miles. At higher mileages, current manufacturer practice is generally to require maintenance rather than inspection, so no significant impact is expected for these vehicles either.

EPA recognizes that some manufacturers believe that inspections at relatively low mileages may lead to early identification and correction of isolated problems. This may be the case and EPA intends to allow such inspections. However, these inspections, being more frequent than that maintenance which should be technologically necessary, cannot be a requirement for emissions warranty or recall coverage. Thus, the final regulations allow the inclusion of recommended inspections in the maintenance instructions, provided that the instructions clearly state, in a form approved by the Administrator, that such inspections are not necessary for emission warranty coverage or manufacturer recall liability.

Conclusions. In summary, today's allowable maintenance provisions establish minimum technologically necessary maintenance intervals for emission-related components of light-duty vehicles and revise certain existing requirements for light-duty trucks and heavy-duty engines. The concept of "critical" emission-related components and the associated proof-of-likelihood requirements for maintenance during the vehicle's useful life are also established in this rule.

This action also promulgates wording changes clarifying the existing provisions specifying the relationships between certification and in-use maintenance requirements and inspections versus maintenance. These two items, since they involve only matters of clarification to the existing regulations, are not affected by the leadtime constraints which have led to the delay in the rest of the rulemaking from 1987 to 1988. Therefore they are being retained as effective for the 1987 model year as proposed.

Today's regulations on allowable maintenance are consistent with those provisions proposed (49 FR 40258, October 15, 1984). Except for a few clarifications of wording, there are only two changes from the proposal. The first is the reduction in the minimum technologically necessary maintenance interval for oxygen sensors, from the proposed 100,000 miles to an interval of 80,000 miles. The second change is the deletion of the requirement to use two indicator lights in systems used to signal the owner of the need for critical emission related maintenance. Only one light is now required.

H. Heavy-Duty Engine Test Procedure Revisions

Review of the proposal. The proposed rule included several revisions to the heavy-duty engine test procedures contained in Subpart N of 40 CFR Part 86. These were the inclusion of particulate testing and measurement procedures for heavy-duty diesel engines, the specification of continuous NO_x measurement for diesel engines, and other minor technical corrections.

The incorporation of particulate testing procedures for heavy-duty diesel engines is fundamentally related to the establishment of particulate emission standards. This action required numerous revisions within Subpart N, which are detailed in Table 1 of the Appendix. The procedure is basically the same as that proposed in the heavy-duty diesel particulate proposal (46 FR 1910, January 7, 1981).

The particulate measurement procedure requires that the exhaust be cooled to 125°F primarily by dilution with room air (in a dilution tunnel) and proportional sampling of the diluted exhaust stream. Dilution and cooling can be accomplished in either one or two steps. Proportional sampling can also be accomplished in either of two ways: through the use of two constant mass samplers (one for the sample and one for the entire diluted exhaust), or through the use of a variable mass sampler which maintains a constant proportion with the standard constant volume sampler. For complete details, the reader is referred to the regulations appearing at the end of today's notice.

Issues raised by the comments. Individual manufacturers did not have many comments on the proposed revisions to Subpart N. The comments made were, for the most part, coordinated by the Engine Manufacturers Association (EMA). The issues raised by the comments can be placed in four general groups.

The first group of issues includes those which were essentially accepted by EPA and incorporated into the final regulations. These included clarification of engine exhaust system specifications, elimination of the need to filter primary and secondary dilution air, clarification of the temperature specifications for gas flowing into sampling system instrumentation and sample pumps applied to the specific type of sampling being described, relaxation of the specifications for weighing balance accuracy and precision, filter handling

procedures, plus a number of minor technical changes, clarifications and typographical corrections.

The second group of issues includes those which were not accepted by EPA. These recommendations all had the potential to significantly affect the mass of particulate measured. Overall, the amount of data available was inadequate or showed conflicting results, but supported the possibility that measured particulate mass could be affected. These recommendations included the elimination of the 86°F upper temperature limit on dilution air (primary and secondary), applying the 125°F temperature specification for single dilution systems at the primary tunnel sample zone rather than the filter face, raising the non-proportionality limit (between tunnel and sample flow) from ±5 percent to ±7 percent, adding a humidity-related correction factor for particualte measurements, adding a fuel sulfur correction for particualte measurement, and raising or eliminating the upper test cell temperature limit during natural engine cool-down of 86°F.

The third group of issues are those upon which EPA specifically requested comment in the proposed rule. These issues were the accuracy of the current NO_x humidity correction factor for diesel engines, the appropriateness of the current cycle performance statistic pertaining to the standard error for horsepower, the desirability of adding a standard calibration procedure for the throttle control system for gasoline-fueled engines, and the desirability of changing the current primary torque measurement method to an electronically-compensated case-load system.

The fourth group of comments did not relate to Subpart N *per se*, but were still related to heavy-duty engine testing. These comments requested the elimination of the current smoke standard for diesel engines, the designation of a third party to generate official test data when the measurements of EPA and manufacturers disagree, and allowance to use instrumentation which EPA had approved as being equivalent to CFR-specified instrumentation.

EPA response to the comments. A thorough summary and analysis of all comments related to the test procedures is included in an appendix to the RIA.

The first group of comments were of a relatively minor nature, and were able to be addressed quickly. Most involved matters of consistency or the correction of obvious errors. The rest could be analyzed without gathering additional data, such as the precision and accuracy required of the particulate weighing balance. In all cases but one, this consisted of accepting the recommended revisions. This one exception concerned the proposed specifications for accurately measuring and maintaining flow proportionality between the primary tunnel and the sample flow. EMA recommended a performance specification. However, EPA retained the proposed design specifications but included both clarifications on proportionality and conditioned acceptance of alternate procedures. EPA believes that resolution of the issue in this manner will satisfy the manufacturers' concerns even though it does not take the exact form recommended by the manufacturers.

The second group of comments listed above involved procedural changes which could substantially affect the mass of particulate measured. While there was a general lack of adequate data upon which to base a decision, the limited data available supported retention of the current procedures. The proposed particulate procedure has been used by EPA and industry since its publication as an EPA recommended practice in 1979. Thus, no substantive revisions should be made lightly. Also, since all particulate data referred to in this rulemaking were generated using the proposed test procedure, the technical feasibility of the standards being finalized today is not in question. EPA remains open to receiving additional data pertaining to these issues which demonstrate an absence of effect on particulate measurements, or provide for suitable correction of such effects. However, the only issue raised which appears to require further resolution is that pertaining to the inclusion of water associated with sulfate in the measured particulate mass. While this is not a substantive issue with respect to the model year 1988 standards, as outlined above, it may be with respect to the model year 1991 standards if sulfate levels in the exhaust change dramatically. Sufficient time is available to provide for the timely resolution of this issue.

The third group of issues listed above, which had been raised by EPA, were analyzed and, based on this analysis, no changes to the proposed rules were made.

As the issues contained in the fourth group vary widely in nature, the resolution of each is described separately. A comment recommending elimination of the smoke regulations was based on the belief that low particulate standard levels will also result in low smoke levels. However, the purpose of the smoke standards is to control smoke under worst-case conditions, which are quite different from the average transient cycle conditions which are the focus of the particulate standards being finalized today. High smoke and thus high particulate levels during these short worst-case conditions will not significantly affect average particulate levels, so the current level of smoke control would not be guaranteed with only the particulate standards. Thus, the smoke standards should be retained.

The issue concerning instrumentation specified in the CFR refers to the requirement that manufacturers must provide equipment "specified by the Administrator when testing is being performed at the manufacturer's facility at EPA's request." The commenter requested this be changed to equipment "approved by the Administrator," the difference being the additional allowance of equipment "approved" by EPA as being "equivalent" to that specified in the CFR. As this is clearly reasonable, this change is being made.

The comment regarding the designation of "official test data" recommended that official test data be determined by using an independent lab rather than use of EPA's data (in the event of a substantial difference between EPA and the manufacturers). The designation of EPA's data as the official data has been in effect since the implementation of emission standards in the early 1970's. As no evidence was presented demonstrating why the current approach was inadequate, no change is being made at this time.

IV. Economic Impact

The complete economic analysis of this rule is contained in the Regulatory Impact Analysis (RIA), which is available in the docket. The highlights of the analysis are summarized here. All figures are in 1984 dollars, and a 10 percent discount rate is assumed.

Light-Duty Trucks. Only the cost of the NO_x standards at low altitude are summarized here. As has already been discussed above, as well as in the proposal, EPA believes that the costs of the high-altitude standards and other regulatory provisions for light-duty trucks will be insignificant. Thus, the estimates in the following discussion refer to only the costs of the low-altitude light-duty truck NO_x standards.

The total 5-year (1988–92) cost to the manufacturers, discounted to 1988, is estimated to be $427 million. This estimate includes research and development costs, the costs of recertification testing, and all necessary hardware for 1988 through 1992 model year light-duty trucks. Since no changes

in fuel economy or other operating and maintenance costs are projected to result from these standards, the total 5-year aggregate cost to the nation for these standards is also $427 million discounted to 1988.

Manufacturers are projected to recover these costs through estimated increases in the prices of average new 1988-92 model year light-duty trucks of $27 (gasoline-fueled) and $37 (diesel).

Gasoline-fueled heavy-duty engines. The 6.0 NO_x standard being implemented in model year 1988 is estimated to result in costs to the manufacturers of $7.9 million over the 1988-90 period, discounted to 1988. This estimate includes research and development costs and recertification testing prior to 1988, as well as the cost of necessary hardware on 1988, 1989, and 1990 model year gasoline-fueled heavy-duty engines. With no fuel economy impact or changes in operating and maintenance costs projected, $7.9 million is also the estimated 3-year (1988–90) aggregate cost to the nation discounted to 1988. Manufacturers are expected to recover these costs through an estimated increase of about $7 in the purchase price of a new 1988 through 1990 model year gasoline-fueled heavy-duty engine.

The 5.0 NO_x standard being implemented in model year 1991 is estimated to result in costs to the manufacturers of $14.2 million over the 1991–93 period, discounted to 1991. As in the previous estimates, this includes research and development and recertification testing prior to 1991, as well as the cost of necessary hardware on 1991–93 model year gasoline-fueled heavy-duty engines. No fuel economy impacts or changes in operating and maintenance costs are expected to result, thus $14.2 million also represents EPA's estimate of the 3-year (1991–93) aggregate cost to the nation of this standard, discounted to 1991.

Manufacturers are projected to recover these costs through and estimated increase of about $14 in the purchase price of an average new 1991–93 model year gasoline-fueled heavy-duty engine. This estimated increase is relative to 1988–90 costs.

Heavy-duty diesel engines. Today's notice promulgates revised NO_x standards for the 1988 through 1990 model years, and for 1991 and later model years. Various particulate standards are being promulgated for the 1988 through 1990 model years, the 1991 through 1993 model years, and for 1994 and later model years. Cost estimates are presented for 1988–90 and 1991–93 for each pollutant and in total, and for 1994–96 for the third phase particulate standard. In all cases, the term "cost to the manufacturer" refers to the total costs of research and development, recertification testing, and necessary hardware for three model years' production of heavy-duty diesel engines.

1988: The cost to the manufacturers of the 6.0 NO_x standard is estimated to be $66.4 million and the cost of the 0.60 particulate standard is estimated to be $43.9 million, for a total cost to the manufacturers of $110.3 million. All of these estimates are discounted to 1988.

These costs are expected to be recovered by the manufacturer through increases of $115 in the purchase price of an average 1988–90 model year heavy-duty diesel engine. Of this estimate, $69 is attributable to the NO_x standard and $46 is attributable to the particulate standard. Fuel economy penalties in the range of 0 to 2 percent may occur in the first year (1988) as a result of the NO_x standard. These penalties are projected to decrease, and eventually be eliminated, over time.

The 3-year aggregate cost to the nation, discounted to 1988, for the model year 1988 NO_x and particulate standards is thus estimated to be $111 million to $592 million, depending on the degree of fuel economy penalty. This breaks down as $67 million to $548 million for the NO_x standard, again depending on the fuel economy penalty, and $44 million for the particulate standard.

1991: The 3-year cost to the manufacturers of the 5.0 NO_x standard is estimated to be $73 million, and the cost to the manufacturers of the trap-based 0.25 particulate standard (with 0.10 for urban buses) is estimated to be $403 million, both discounted to 1991. The total discounted cost to the manufacturers of the 1991 model year standards is thus estimated to be $476 million.

These standards are expected to result in a first price increase for an average new heavy-duty diesel engine of $404. Of this estimate, $68 is attributable to the NO_x standard and $336 is attributable to the particulate standard. The particulate-related portion of the first price increase, and therefore the total as well, will be somewhat higher initially due to the increased need for traps in the first few years; the $336 and $404 estimates thus represent estimates of the stabilized first price increase.

The estimated fuel economy penalty due to the NOx standard is between 0 and 1 percent in the first year (1991), decreasing by 1993 to the stabilized penalty estimated at 0.5 percent. The maximum 1 percent penalty translates to an estimated $348 per vehicle increase in discounted lifetime fuel costs on a fleetwide basis.

In the case of particulate, a fuel economy penalty of 1 to 1.5 percent is projected to occur for those non-bus engines equipped with traps, with only the higher estimate applicable to urban bus engines which must meet a more stringent 0.10 particulate standard in model years 1991–93. This translates to an estimated $227 to $330 per vehicle increase in discounted lifetime fuel costs on a fleetwide basis, with about 60 percent of non-bus engines and 100 percent of bus engines being equipped with traps. Traps will also result in an estimated fleetwide average increase of $62 in discounted lifetime maintenance costs. As was true in the case of estimated first price increase, these costs may be somewhat higher initially due to the increased need for traps in the first few years, and these figures thus represent estimates of the stabilized changes in operating and maintenance costs. Combining the stabilized estimates of first price increase and operating (fuel economy penalty and maintenance) cost increases yields an estimate of $625 to $728 for the stabilized total increase in cost for an average heavy-duty diesel engine on a fleetwide basis.

The three-year (1991–93) aggregate cost to the nation of the 1991 model year NO_x standard is estimated to be between $73 million and $358 million, discounted to 1991, with the range corresponding to the 0-to-1 percent range in estimated fuel economy penalty. The 3-year aggregate cost to the nation of the 1991 model year particulate standards, also discounted to 1991, is estimated to be between $746 million and $868 million, with the range resulting from the range of estimated fuel economy penalties on a fleetwide basis.

1994: The particulate standard will drop to 0.10 g/BHP-hr for all heavy-duty diesel engines in model year 1994, which will push trap usage between 60–70 percent in 1991–93 to 90 percent in 1994 and beyond. The 3-year cost to the manufacturers of this standard is estimated to be $185 million, discounted to 1994. As stated at the beginning of the discussion of heavy-duty diesel engine economic impact, this cost includes research and development and recertification testing prior to 1994 and all necessary hardware for 1994–96 model year production.

The model year 1994 particulate standard will result in an estimated first price increase of $163 for an average 1994 or later model year heavy-duty diesel engine, on a fleetwide basis. Operating and maintenance costs to the consumer, expressed in terms of the

incremental cost increases incurred by about 30 percent of the non-bus heavy-duty diesel engine fleet, here spread across the entire HDDE fleet, are estimated to be between $133 and $184. Of this estimate, $30 is attributable to trap maintenance and between $103 and $154 is attributable to fuel economy penalties of 1 to 1.5 percent. Combining these estimates yields an estimated total cost increase to the consumer, on a fleetwide basis and discounted to 1994, of $296 to $347 per vehicle.

The 3-year (1994–96) aggregate cost to the nation of the model year 1994 particulate standard, discounted to 1994, is thus estimated to be between $336 million and $394 million. The range in this estimate is, again, a result of the range of projected fuel economy penalties.

V. Statutory Authority

The NO_x standards for light-duty trucks and heavy-duty engines promulgated today are based on Section 202(a)(3)(B) of the Clean Air Act Amendments of 1977. The heavy-duty diesel particulate standards are based on Section 202(a)(3)(A) of the Act. These provisions have been discussed in detail in earlier sections of today's notice.

Authority for the averaging programs, allowable maintenance provisions, test procedure revisions, and the light-duty truck high-altitude standards is provided by the following sections of the Act: 202, 206(a)(1), 207, 208, and 301(a).

Administrative Designation and Regulatory Analysis

The Administrator has determined that this action constitutes a major regulation, and accordingly a Regulatory Impact Analysis has been prepared as rquired under Executive Order 12291. This analysis includes updated, detailed assessments of the estimated economic and environmental impacts of the regulations promulgated here, as well as more thorough analyses of the technological feasibility of the emission standards and other regulatory provisions promulgated here and the alternatives that were considered in the development of the Final Rule.

The Regulatory Impact Analysis has been placed in the public docket referenced at the beginning of today's notice. In addition, interested parties may obtain single copies through a written request to: Director, Emission Control Technology Division, Office of Mobile Sources, 2565 Plymouth Road, Ann Arbor, MI 48105, Attn: Heavy-Duty Section.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB and any EPA response to those comments are in the public docket for this rulemaking.

Impact on Small Entities

Section 605 of the Regulatory Flexibility Act requires that the Administrator certify regulations that do not have a significant impact on a substantial number of small entities. I certify that this regulation does not have such an effect because it directly affects manufacturers of motor vehicles and motor vehicle engines, a group which does not contain a substantial number of small entities.

Information Collection Requirements

Except as noted below, information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 U.S.C. 3501 *et seq.*, and have been assigned OMB Control Number 2060–0104.

The information collection requirement of this rule for heavy-duty diesel particulate emissions has been disapproved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 U.S.C. 3501 *et seq.* EPA's response to this disapproval is summarized below, and revisions have been submitted for OMB approval. No person will be subject to any penalty for failing to maintain or provide the diesel particulate information required by this final rule until notice is published in the **Federal Register** that OMB approval has been obtained.

The first objection raised by OMB concerned their inability to evaluate the "practical utility" of the required information. The information to be collected is that data needed to enable EPA to establish the fact of compliance with the heavy-duty diesel particulate emission standards. Lacking the requested emissions test data and related information, EPA would be unable to determine whether a manufacturer's engines meet the particulate standards. Thus, the data have a very high degree of practical utility.

Beyond this, OMB asked for a better description of the information and how it is to be generated, recorded, collected, processed and used by the Agency. EPA has identified two areas where added information will be required from manufacturers under these new requirements. Both are related to similar information already approved for collection with regard to other pollutant emission standards. As such, they will increase the amount of information required from any heavy-duty diesel engine manufacturer, but not the types of information required. The two areas, as identified in the application, are the description of any particulate emissions control system hardware and test data on the emission rates achieved by engines to be certified.

The first area, description of particulate emission control hardware, provides data by which EPA can evaluate the specific control systems to be used to meet the particulate standards. This allows an assessment to be made of the general capability of the technology to control particulate emissions, the potential for unique measurement requirements (*e.g.*, the treatment of trap regeneration systems and associated emissions), potential for in-use tampering with the hardware, etc. This information will also form an essential base from which to evaluate emissions test data.

It should be noted that, as pointed out in the application, design information is already required for heavy-duty diesel engines. Thus, the only new data required would be that on hardware added solely for the control of particulate emissions. The only anticipated item to which this new requirement will apply will be the adoption of trap-oxidizer technology, expected for 1991 and later heavy-duty diesel engines.

As for test data required, again there is a close parallel with existing requirements. The new regulations simply add particulate emissions to the list of pollutants for which data must be provided. The data will be generated by testing which has been integrated into the existing gaseous emissions test procedure for HC, CO, and NO_x, and thus represents only a small incremental change. Testing is expected to be performed on both low-mileage and high-mileage engines to allow an assessment to be made by the manufacturer of: (a) The basic ability of its engines to meet the standards and (b) the in-use durability of its engines from an emissions standpoint.

Since the requirement for new data is incremental to requirements which are already in effect, the impact of the requirement is minimal. Manufacturers already possess the basic recordkeeping procedures and data processing equipment needed to handle this task, most of which is highly automated. Thus, the OMB questions relating to the recording and processing of the data really apply to existing procedures. Although there are variations, test data

gathered by manufacturers is generally handled in electronic form by automated processes. This extends to computer control of the actual measurement system in many cases, so that very little hand processing of data is involved. Computers record, collect, and process the data for submission to EPA.

In response to questions about the reliability of the actual burden estimates prepared by EPA, the Agency has carefully reviewed its basis for the estimates in light of new information received since the filing of the original application. The number of manufacturers and engine families expected to be certified has not changed, and those estimates are still accurate. Based upon its review of the annual hours per response estimates, both for reporting and recordkeeping, one area of potential change was identified. This area concerns the annual recordkeeping requirement. In its estimates for this area, EPA computed a six hour per engine family recordkeeping burden. However, EPA failed to account for the fact that certification is not required on an annual basis, but rather is required only when new standards begin or when the manufacturer introduces a new or substantially changed engine family. Since in this rule new standards occur on a three-year cycle, the average recordkeeping will approach only one-third of the original estimate. On the other hand, recognizing the existence of a degree of uncertainty in the original estimate, and in light of the *de minimus* nature of the total estimate, EPA did not revise its original estimate.

List of Subjects

40 CFR Part 86

Administrative practice and procedure, Air pollution control, Environmental protection, Gasoline, Labeling, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 600

Administrative practice and procedure, Electric power, Energy conservation, Fuel economy, Gasoline, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

Authority for the actions taken in this notice is granted EPA by sections 202, 203, 206, 207, 208 and 301 of the Amended Clean Air Act (42 U.S.C. 7521, 7522, 7525, 7541, 7542 and 7601).

Dated: March 8, 1985.

Lee M. Thomas,

Administrator.

APPENDIX: TABLE OF CHANGES MADE TO VARIOUS SUBPARTS

Section	Change	Reason
1. Part 86 Authority	None	
2. § 86.085-1(b), (e), (f)	Reinstate paragraphs (b) and (f), correct paragraph (e).	Revisions to paragraph (b) were not carried forward, and paragraph (f) was inadvertently deleted by 49 FR 48128.
3. § 86.085-23(f)	Correct paragraph (d)	To be consistent with 49 FR 48128.
	Reinstate paragraph (f)	Inadvertently omitted by 49 FR 48128.
4. § 86.087-9(a)(1)	Change "1984" to "1987"	Correction.
5. § 86.087-23(f)	Correct paragraph (d)	To be consistent with 49 FR 48128.
	Reinstate paragraph (f)	Inadvertently omitted by 49 FR 48128.
6. § 86.144-78(c)(3)	Change carbon hydrogen ratio from 1:1.35 to 1:1.85.	Correction.
7. § 86.1336-84	Change "on" to "one"	Do.
8. § 86.1341-84(f)	Add paragraph (f)(1) and redesignate paragraph (f) to (f)(2).	Clarify requirements for diesel engines.
9. § 86.1342-84(c)(3)	Add the multiplier * to the CO_{cv} equation.	Correction.
10. § 86.1310-88(a)(1)	Add "and a heat exchanger" to PDP-CVS description.	Clarification.
11. § 86.1310-88(b)(1)(iv)	Eliminate "shall"	Do.
12. § 86.1310-88(b)(1)(iv)(A)	Add "Shall"	Do.
13. § 86.1310-88(b)(1)(iv)(B)	Exchange "may be" for "be"	To allow manufacturers flexibility to filter dilution air.
14. § 86.1310-88(b)(1)(iv)(C)	Add optional use of background particulate correction.	To allow manufacturers flexibility to correct for particulate background.
15. § 86.1310-88(b)(3)(iv)	Change ". . . no farther than 4 inches from . . ." to ". . . as close as practicable. . . ".	To make consistent with Technical Amendments 49 FR 48144.
16. § 86.1310-88(b)(3)(vii)(A)	Change ". . . probe . . ." to ". . . port . . . ".	Do.
17. § 86.1310-88(b)(5)(iii)	Add ". . . or analyzer voltage output . . ."	To allow manufacturers flexibility to use automatic data collection systems.
18. § 86.1310-88(b)(6)	Add proportionality criteria	Clarifies proportionality requirement.
19. § 86.1310-88(b)(6)(i)(D)	Add statement allowing equivalent systems.	To clarify provisions allowing manufacturers flexibility to use systems that give equivalent results.
20. § 86.1310-88(b)(6)(ii)(E)	Add ". . . or less . . ."	Correction.
21. § 86.1310-88(b)(6)(ii)(I)	Add statement allowing equivalent systems.	To clarify provisions allowing manufacturers flexibility to use systems that give equivalent results.
22. § 86.1310-88(b)(7)(ii)	Change ". . . 60 mm stain area . . ." to ". . . 60 mm stain diameter . . .".	Correction.
23. § 86.1310-88(b)(7)(iii)	Add statement prohibiting contact of primary and back-up filters.	Clarification.
24. § 86.1310-88(b)(7)(iv)	Change ". . . 70 mm loading . . ." to ". . . 70 mm filter . . .".	Do.
25. § 86.1312-88(a)(3)	Add word "unused" to describe reference filters.	Clarification.
26. § 86.1312-88(a)(3)	Change ". . . a minimum of 5.3 milligrams, if possible . . ." to ". . . a recommended minimum of 5.3 milligrams . . .".	Do.
27. § 86.1312-88(b)	Change balance requirement to precision of, 20 mg, readability of 10 mg.	Allow manufacturers flexibility in balance selection.
28. § 86.1327-88(e)	Change ". . . dilution air is prefiltered . . ." to ". . . dilution air may be prefiltered . . .".	To make consistent with § 86.1310-88(b)(7)(iv)(B).
29. § 86.1327-88(e)	Change to allow antifreeze	To make consistent with Technical Amendments 49 FR 48144.
30. § 86.1327-88(f)(2)	Reword to emphasize requirement that both chassis type and facility type exhaust systems can be used simultaneously.	Clarification.
31. § 86.1327-88(f)(2)(i)	Redefine exhaust system requirement	Do.
(f)(2)(ii)(A)	....do	Do.
(f)(2)(ii)(B)	....do	Do.
(f)(2)(ii)(C)	....do	Do.
(f)(2)(ii)(D)	....do	Do.
(f)(2)(ii)(E)	....do	Do.
(f)(2)(ii)(F)	....do	Do.
(f)(2)(ii)(A)	....do	Do.
(f)(2)(ii)(C)	Delete	Do.
32. § 86.1337-88(a)(1)	Add cautionary note	Do.
33. § 86.1337-88(a)(6)	Add provision for using assembled filter holders.	Do.
34. § 86.1337-88(a)(12)	Add statement regarding use of assembled holders.	To make consistent with § 86.1337-88(a)(6).
35. § 86.1337-88(a)(18)	....do	Do.
36. § 86.1337-88(a)(24)	....do	Do.
37. § 86.1339-88(b)	Reiterate balance specification stated in § 86.1312-87(6).	Clarification.
38. § 86.1339-88(d)	Add provision expanding 1-hour limit to 8 hours if filters are in sealed filter holder.	Provides manufacturers with additional flexibility.
39. § 86.1339-88(h)	Adds optional weighing procedure	Do.
40. § 86.1343-88(b)	Adds description of calculations as applying to background filter case. Also typographical error corrected.	Clarification.

APPENDIX: TABLE OF CHANGES MADE TO VARIOUS SUBPARTS—Continued

Section	Change	Reason
41. § 86.1343-88(a)(2)(ii)(J)	Change "Average temperature of the dilute exhaust sample . . ." to "Average temperature of the secondary dilution air . . ."	Correction.
42. § 86.1343-86(b)(8)	Add statement permitting alternative calculations for alternative systems.	Clarification.
43. § 86.1344-88(a)(18)	Add ". . . or pair of filters"	To make consistent with § 86.1339-88(h).
44. § 86.1544-86(b)(4)	Change the numerator from "CO" to "CO_2"	Correction.
45. § 600.307-86(b)(2)(ii)	Change (0.2×0.15 mm) to (5×15 mm)	Do.

For the reasons set forth in the Preamble, Parts 86 and 600 of Title 40 of the Code of Federal Regulations are amended as set forth below:

Authority: Secs. 202, 203, 206, 207, 208, 301a, Clean Air Act as Amended; 42 U.S.C. 7521, 7522, 7525, 7541, 7542, 7601a.

PART 86—[AMENDED]

1. A new Subpart AA consisting of § 86.2500 is added to Part 86, to read as follows:

Subpart AA—Reporting and Recordkeeping Requirements for Part 86

§ 86.2500 Reporting and recordkeeping requirements.

All reporting and recordkeeping requirements contained in Part 86, except for those requirements contained in Subparts G and K, have been approved by the Office of Management and Budget under control number 2060-0104.

Subpart A—[Amended]

2. Section 86.085-1 is amended by revising paragraphs (b) and (e), and adding a new paragraph (f), to read as follows:

§ 86.085-1 General applicability.

* * * * *

(b) *Optional applicability.* A manufacturer may request to certify any heavy-duty vehicle 10,000 pounds GVWR or less to the light-duty truck exhaust emission standards. Heavy-duty engine or vehicle provisions do not apply to such a vehicle.

* * * * *

(e) *Small volume manufacturers.* Special certification procedures are available for any manufacturer whose projected combined U.S. sales of light-duty vehicles, light-duty trucks, and heavy-duty engines in its product line are fewer than 10,000 units for the model year in which the manufacturer seeks certification. In order to certify its product line under these optional procedures, the small-volume manufacturer must first obtain the Administrator's approval. Vehicles produced at facilities leased, operated, controlled, supervised, or in 10 percent or greater part owned by the manufacturer shall be counted in calculating the total sales of the manufacturer. The small-volume manufacturer's certification procedures are described in § 86.084-14.

(f) *Optional Procedures for Determining Exhaust Opacity.*

(1) The provisions of Subpart I apply to tests which are performed by the Administrator, and optionally, by the manufacturer.

(2) Measurement procedures, other than that described in Subpart I, may be used by the manufacturer provided the manufacturer satisfies the requirements of § 86.085-23(f).

(3) When a manufacturer chooses to use an alternative measurement procedure it has the responsibility to determine whether the results obtained by the procedure will correlate with the results which would be obtained from the measurement procedure in Subpart I. Consequently, the Administrator will not routinely approve or disapprove any alternative opacity measurement procedure or any associated correlation data which the manufacturer elects to use to satisfy the data requirements of Subpart I.

(4) If a confirmatory test(s) is performed and the results indicate there is a systematic problem suggesting that the data generated under an optional alternative measurement procedure do not adequately correlate with Subpart I data, EPA may require that all certificates of conformity not already issued by based on data from Subpart I procedures.

3. A new § 86.088-2 is added to Subpart A, to read as follows:

§ 86.088-2 Definitions.

The definitions in § 86.085-2 remain effective. The definitions in this section apply beginning with the 1988 model year.

Composite NO_x standard, for a manufacturer which elects to average light-duty trucks subject to the NO_x standard of § 86.088-9(a)(iii)(A) together with those subject to the NO_x standard of § 86.088-9(a)(iii)(B) in the light-duty truck NO_x averaging program, means that standard calculated according to the following equation and rounded to the nearest one-tenth gram per mile:

$$\frac{[(PROD_A)(STD_A)+(PROD_B)(STD_B)]}{[(PROD_A)+(PROD_B)]} = \text{Manufacturer's Composite } NO_x \text{ Standard.}$$

Where:

$PROD_A$ = The manufacturer's total light-duty truck production for those engine families subject to the standard of § 86.088–9(a)(iii)(A) and included in the average for a given model year.

STD_A = The NO_x standard of § 86.088–9(a)(iii)(A).

$PROD_B$ = The manufacturer's total light-duty truck production for those engine families subject to the standard of § 86.088–9(a)(iii)(B) and included in the average for a given model year, and

STD_B = The NO_x standard of § 86.088–9(a)(iii)(B).

Critical emission-related components are those components which are designed primarily for emission control, or whose failure may result in a significant increase in emissions accompanied by no significant impairment (or perhaps even an improvement) in performance, driveability, and/or fuel economy as determined by the Administrator.

Critical emission-related maintenance means that maintenance to be performed on critical emission-related components.

Emission-related maintenance means that maintenance which does substantially affect emissions or which is likely to affect the emissions deterioration of the vehicle or engine during normal in-use operation, even if the maintenance is performed at some time other than that which is recommended.

Family NO_x emission limit means the NO_x emission level to which an engine family is certified in the light-duty truck NO_x averging program, expressed to one-tenth of a gram per mile accuracy.

Non-emission-related maintenance means that maintenance which does not substantially affect emissions and which does not have a lasting effect on the emissions deterioration of the vehicle or engine during normal in-use operation once the maintenance is performed.

Production-weighted NO_x average means the manufacturer's production-weighted average NO_x emission level, for certification purposes, of all of its light-duty truck engine families included in the NO_x averaging program. It is calculated at the end of the model year by multiplying each family NO_x emission limit by its respective production, summing those terms, and dividing the sum by the total production of the effected families. Those vehicles produced for sale in California or at high altitude shall each be averaged separately from those produced for sale in any other area.

Production-weighted particulate average means the manufacturer's production-weighted average particulate emission level, for certification purposes, of all of its diesel engine families included in the particulate averaging program. It is calculated at the end of the model year by multiplying each family particulate emission limit by its respective production, summing those terms, and dividing the sum by the total production of the effected families. Those vehicles produced for sale in California or at high altitude shall each be averaged separately from those produced for sale in any other area.

4. A new § 86.091–2 is added, to read as follows:

§ 86.091–2 Definitions.

The definitions of § 86.088–2 remain effective. The definitions listed in this section apply beginning with the 1991 model year.

Production-weighted NO_x average, for heavy-duty engines, means the average of the manufacturer's family NO_x emission limits within the subclass (gasoline-fueled; or, light, medium, or heavy diesel) being averaged, weighted to account for differences in production volume and rated BHP. It is calculated at the end of the model year for determining compliance with the standard by summing, for all engine families in the subclass being averaged, the products (per engine family) of production volume, BHP rating, and the family NO_x emission limit, and dividing by the sum, for these engine families, of the products (per engine family) of production volume and BHP rating. Expressed mathematically, the calculation is as follows:

$$\text{Production-weighted NOx Average} = \frac{\sum_{i=1}^{n} \left[(PROD_i \times BHP_i \times FEL_i) \right]}{\sum_{i=1}^{n} \left[(PROD_i \times BHP_i) \right]}$$

Where:

n = the number of engine families included in the subclass (gasoline-fueled; or, light, medium, or heavy diesel) being averaged.

PROD = the manufacturer's production of a given engine family during the model year.

BHP = the production-weighted horsepower rating for that engine family, in brake horsepower.

FEL = the family NO_x emission limit for that engine family, in grams per brake horsepower-hour.

Those engines produced for sale in California or in 49-state areas shall each be averaged separately. Gasoline-fueled engines shall be averaged separately from diesel engines. Engines for use in urban buses may be averaged with other engines of the same subclass.

Production-weighted particulate average, for heavy-duty diesel engines, means the average of the manufacturer's family particulate emission limits within the subclass (light, medium, or heavy) being averaged, weighted to account for differences in production volume and rated BHP. It is calculated at the end of the model year for determining compliance with the standard by summing, for all engine families in the subclass being averaged, the products (per engine family) of production volume, BHP rating, and family particulate emission limit, and dividing by the sum, for these engine families, of the products (per engine family) of production volume and BHP rating. Expressed mathematically, the calculation is as follows:

$$\text{Production-weighted particulate average} = \frac{\sum_{i=1}^{n}\left[(\text{PROD}_i \times \text{BHP}_i \times \text{FEL}_i)\right]}{\sum_{i=1}^{n}\left[(\text{PROD}_i \times \text{BHP}_i)\right]}$$

Where:

n = the number of engine families included in the subclass (light, medium, or heavy) being averaged.

PROD = the manufacturer's production of a given engine family during the model year.

BHP = the production-weighted horsepower rating for that engine family, in brake horsepower.

FEL = the family particulate emission limit for that engine family, in grams per brake horsepower-hour.

Those engines produced for sale in California or in 49-state areas shall each be averaged separately. Engines for use in urban buses shall be excluded from participation in the particulate averaging program.

Urban bus means a heavy-duty diesel-powered passenger-carrying vehicle with a load capacity of fifteen or more passengers and intended primarily for intra-city operation, *i.e.*, within the confines of a city or greater metropolitan area. Urban bus operation is characterized by short rides and frequent stops. To facilitate this type of operation, more than one set of quick-opening entrance and exist doors would normally be installed. Since fares are usually paid in cash or tokens rather than purchased in advance in the form of tickets, urban buses would normally have equipment installed for collection of fares. Urban buses are also typically characterized by the absence of equipment and facilities for long distance travel, *e.g.*, rest rooms, large luggage compartments, and facilities for stowing carry-on luggage.

5. Section 86.087–9 is amended by revising the introductory text of paragraph (a)(1), to read as follows:

§ 86.087–9 Emission standards for 1987 and later model year light-duty trucks.

(a)(1) The standards set forth in paragraphs (a) through (c) of this section shall apply to light-duty trucks sold for principal use at other than a designated high-altitude location. Exhaust emissions from 1987 and later model year light-duty trucks shall not exceed:

* * * * *

6. A new §86.088–9 is added, to read as follows:

§ 86.088–9 Emission standards for 1988 and later model year light-duty trucks.

(a)(1) The standards set forth in paragraphs (a) through (c) of this section shall apply to light-duty trucks sold for principal use at other than a designated high-altitude location. Exhaust emissions from 1988 and later model year light-duty trucks shall not exceed:

(i) *Hydrocarbons.* 0.8 gram per vehicle mile (0.5 gram per vehicle kilometer).

(ii)(A) *Carbon monoxide.* 10 grams per vehicle mile (6.2 grams per vehicle kilometer).

(B) 0.50 percent of exhaust gas flow at curb idle (gasoline-fueled light-duty trucks only).

(iii) *Oxides of nitrogen.* (A) For light-duty trucks up to and including 3,750 lbs loaded vehicle weight, 1.2 grams per vehicle mile (0.75 grams per vehicle kilometer).

(B) For light-duty trucks 3,751 lbs and greater loaded vehicle weight, 1.7 grams per vehicle mile (1.1 grams per vehicle kilometer).

(C) A manufacturer may elect to include all or some of its light-duty truck engine families in the NO_x averaging program, provided that trucks produced for sale in California or in designated high-altitude areas may be averaged only within each of those areas. Diesel and gasoline-fueled engine families may not be averaged together. If the manufacturer elects to average together NO_x emissions of light-duty trucks subject to the standards of paragraphs (a)(1)(iii)(A) and (a)(1)(iii)(B) of this section, its composite NO_x standard applies to the combined fleets of light-duty trucks up to and including, and over, 3,750 lbs loaded vehicle weight included in the average and is calculated as defined in §86.088–2.

(iv) *Particulate emissions* (diesel light-duty trucks only). 0.26 gram per vehicle mile (0.16 gram per vehicle kilometer). A manufacturer may elect to include all or some of its diesel light-duty truck engine families in the particulate averaging program, provided that trucks produced for sale in California or in designated high-altitude areas may be averaged only within each of those areas. If the manufacturer elects to average both diesel light-duty vehicles and diesel light-duty trucks together in the particulate averaging program, its composite particulate standard applies to the combined set of diesel light-duty vehicles and diesel light-duty trucks included in the average and is calculated as defined in § 86.085–2.

(2) The standards set forth in paragraph (a)(1)(i), (a)(1)(ii)(A), (a)(1)(iii), and (a)(1)(iv) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part and measured and calculated in accordance with those procedures. The standard set forth in paragraph (a)(1)(ii)(B) of this section refers to the exhaust emitted at curb idle and measured and calculated in accordance with the procedures set forth in Subpart P of this part.

(b)(1) Fuel evaporative emissions from 1988 and later model year gasoline-fueled light-duty trucks shall not exceed:

(i) *Hydrocarbons.* 2.0 grams per test.

(2) The standard set forth in paragraph (b)(1) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any 1988 and later model year light-duty truck.

(d)(1) Model year 1988 and later light-duty trucks sold for principal use at a designated high-altitude location shall be capable of meeting the following exhaust emission standards when tested under high-altitude conditions:

(i) *Hydrocarbons.* 1.0 grams per vehicle mile (0.62 grams per vehicle kilometer);

(ii) *Carbon Monoxide.* (A) 14 grams per vehicle mile (8.7 grams per vehicle kilometer).

(B) 0.50 percent of exhaust gas flow at curb idle (gasoline-fueled light-duty trucks only).

(iii) *Oxides of Nitrogen.* (A) For light-duty trucks up to and including 3,750 lbs loaded vehicle weight, 1.2 grams per vehicle mile (0.75 grams per vehicle kilometer).

(B) For light-duty trucks 3,751 lbs and greater loaded vehicle weight, 1.7 grams per vehicle mile (1.1 grams per vehicle kilometer).

(iv) *Particulate emissions* (diesel light-duty trucks only). 0.26 gram per vehicle mile (0.16 gram per vehicle kilometer).

(2) The standards set forth in paragraph (d)(1)(i), (d)(1)(ii)(A), (d)(1)(iii), and (d)(1)(iv) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part and measured and calculated in accordance with those procedures. The standard set forth in paragraph (d)(1)(ii)(B) of this section refers to the exhaust emitted at curb idle and measured and calculated in accordance with the procedures set forth in Subpart P of this part.

(e)(1) Fuel evaporative emissions from 1988 and later model year gasoline-fueled light-duty trucks sold for principal use at a designated high-altitude location shall not exceed 2.6 grams per test when tested under high-altitude conditions.

(2) The standard set forth in paragraph (e)(1) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(f) No crankcase emissions shall be discharged into the ambient atmosphere from any 1988 and later model year light-duty trucks sold for principal use at a designated high-altitude location.

(g)(1) Any light-duty truck that a manufacturer wishes to certify for sale at low altitude must be capable of meeting high-altitude emission standards (specified in paragraphs (d) through (f) of this section). The manufacturer may specify vehicle adjustments or modifications to allow the vehicle to meet high-altitude standards but these adjustments or modifications may not alter the vehicle's basic engine, inertia weight class, transmission configuration, and axle ratio.

(i) A manufacturer may certify unique configurations to meet the high-altitude standards but is not required to certify these vehicle configurations to meet the low-altitude standards.

(ii) Any adjustments or modifications that are recommended to be performed on vehicles to satisfy the requirements of paragraph (g)(1) of this section:

(A) Shall be capable of being effectively performed by commercial repair facilities, and

(B) Must be included in the manufacturer's application for certification.

(2) The manufacturer may exempt 1985 and later model year vehicles from compliance with the high-altitude emission standards set forth in paragraphs (d) and (e) of this section if the vehicles are not intended for sale at high altitude and if the following requirements are met. A vehicle configuration shall only be considered eligible for exemption if the requirements of either paragraph (g)(2)(i), (ii), (iii), or (iv) of this section are met.

(i) Its design parameters (displacement-to-weight ratio (D/W) and engine speed-to-vehicle-speed ratio (N/V)) fall within the exempted range for that manufacturer for that year. The exempted range is determined according to the following procedure:

(A) The manufacturer shall graphically display the D/W and N/V data of all vehicle configurations it will offer for the model year in question. The axis of the abscissa shall be D/W (where (D) is the engine displacement expressed in cubic centimeters and (W) is the gross vehicle weight (GVW) expressed in pounds), and the axis of the ordinate shall be N/V (where (N) is the crankshaft speed expressed in revolutions per minute and (V) is the vehicle speed expressed in miles per hour). At the manufacturer's option, either the 1:1 transmission gear ratio or the lowest numerical gear ratio available in the transmission will be used to determine N-V. The gear selection must be the same for all N/V data points on the manufacturer's graph. For each transmission/axle ratio combination, only the lowest N/V value shall be used in the graphical display.

(B) The product line is then defined by the equation, $N/V = C(D/W)^{-0.9}$, where the constant, C, is determined by the requirement that all the vehicle data points either fall on the line or lie to the upper right of the line as displayed on the graphs.

(C) The exemption line is then defined by the equation, $N/V = C(0.84\ D/W)^{-0.9}$, where the constant, C is the same as that found in paragraph (g)(2)(i)(B) of this section.

(D) The exempted range includes all values of N/V and D/W which simultaneously fall to the lower left of the exemption line as drawn on the graph.

(ii) Its design parameters fall within the alternate exempted range for that manufacturer that year. The alternate exempted range is determined by substituting rated horsepower (hp) for displacement (D) in the exemption procedure described in paragraph (g)(2)(i) of this section and by using the product line $N/V = C(hp/W)^{-0.9}$.

(A) Rated horsepower shall be determined by using the Society of Automotive Engineers Test Procedure J 1349, or any subsequent version of that test procedure. Any of the horsepower determinants within that test procedure may be used, as long as it is used consistently throughout the manufacturer's product line in any model year.

(B) No exemptions will be allowed under paragraph (g)(2)(ii) of this section to any manufacturer that has exempted vehicle configurations as set forth in paragraph (g)(2)(i) of this section.

(iii) Its acceleration time (the time it takes a vehicle to accelerate from 0 to a speed not less than 40 miles per hour and not greater than 50 miles per hour) under high-altitude conditions is greater than the largest acceleration time under low-altitude conditions for that manufacturer for that year. The procedure to be followed in making this determination is:

(A) The manufacturer shall list the vehicle configuration and acceleration time under low-altitude conditions of that vehicle configuration which has the highest acceleration time under low-altitude conditions of all the vehicle configurations it will offer for the model year in question. The manufacturer shall also submit a description of the methodology used to make this determination.

(B) The manufacturer shall then list the vehicle configurations and acceleration times under high-altitude conditions of all those vehicle configurations which have higher acceleration times under high-altitude conditions than the highest acceleration time at low altitude identified in paragraph (g)(2)(iii)(A) of this section.

(iv) In lieu of performing the test procedure of paragraph (g)(2)(iii) of this section, its acceleration time can be estimated based on the manufacturer's engineering evaluation, in accordance with good engineering practice, to meet the exemption criteria of paragraph (g)(2)(iii) of this section.

(3) The sale of a vehicle for principal use at a designated high-altitude location that has been exempted as set forth in paragraph (g)(2) of this section will be considered a violation of Section 203(a)(1) of the Clean Air Act.

7. A new § 86.088–10 is added, to read as follows:

§ 86.088–10 Emission standards for 1988 and later model year gasoline-fueled heavy-duty engines and vehicles.

(a)(1) Exhaust emissions from new 1988 and later model year gasoline-fueled heavy-duty engines shall not exceed:

(i) For engines intended for use in all vehicles except as provided in paragraph (a)(3) of this paragraph,

(A) *Hydrocarbons.* 1.1 grams per brake horsepower-hour, as measured under transient operating conditions.

(B) *Carbon monoxide.* (*1*) 14.4 grams per brake horsepower-hour, as measured under transient operating conditions.

(*2*) *Gasoline-fueled heavy-duty engines utilizing aftertreatment technology.* 0.50 percent of exhause gas flow at curb idle.

(C) *Oxides of nitrogen.* 6.0 grams per brake horsepower-hour, as measured under transient operating conditions.

(ii) For engines intended for use only in vehicles with a Gross Vehicle Weight Rating of greater than 14,000 pounds,

(A) *Hydrocarbons.* 1.9 grams per brake horsepower-hour, as measured under transient operating conditions.

(B) *Carbon Monoxide.* (*1*) 37.1 grams per brake horsepower-hour as measured under transient operating conditions.

(*2*) *Gasoline-fueled heavy-duty engines utilizing aftertreatment technology.* 0.50 percent of exhaust gas flow at curb idle.

(C) *Oxides of nitrogen.* 6.0 grams per brake horsepower-hour, as measured under transient operating conditions.

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over the operating schedule set forth in paragraph (f)(1) of Appendix I to this part, and measured and calculated in accordance with the procedures set forth in Subparts N or P.

(3)(i) A manufacturer may certify one or more gasoline-fueled heavy-duty engine configurations intended for use in all vehicles to the emission standards set forth in paragraph (a)(1)(ii) of this paragraph: *Provided,* that the total model year sales of such configuration(s) being certified to the emission standards in paragraph (a)(1)(ii) of this section represent no more than 5 percent of total model year sales of all gasoline-fueled heavy-duty engines intended for use in vehicles with a Gross Vehicle Weight Rating of up to 14,000 pounds by the manufacturer.

(ii) The configurations certified to the emission standards of paragraph (a)(1)(ii) of this section under the provisions of paragraph (a)(3)(i) of this section shall still be required to meet the evaporative emission standards set forth in paragraphs (b)(1)(i)(A) and (b)(2)(i) of this section.

(b)(1) Evaporative emissions from 1988 and later model year gasoline-fueled heavy-duty vehicles shall not exceed:

(i) *Hydrocarbons.* (A) For vehicles with a Gross Vehicle Weight Rating of up to 14,000 pounds, 3.0 grams per test.

(B) For vehicles with a Gross Vehicle Weight Rating of greater than 14,000 pounds, 4.0 grams per test.

(2)(i) For vehicles with a Gross Vehicle Weight Rating of up to 26,000 pounds, the standards set forth in paragraph (b)(1) of this section refer to a composite sample of fuel evaporative emissions collected under the conditions set forth in Subpart M and measured in accordance with those procedures.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 26,000 pounds, the standard set forth in paragraph (b)(1)(i)(B) of this section refers to the manufacturer's engineering design evaluation using good engineering practice (a statement of which is required in § 86.088–23(b)(4)(ii)).

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 1988 or later model year gasoline-fueled heavy-duty engine.

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in Subparts N or P of this part to ascertain that such test engines meet the requirements of paragraphs (a) and (c) of this section.

8. A new § 86.091–10 is added, to read as follows:

§ 86.091–10 Emission standards for 1991 and later model year gasoline-fueled heavy-duty engines and vehicles.

(a)(1) Exhaust emissions from new 1991 and later model year gasoline-fueled heavy-duty engines shall not exceed:

(i) For engines intended for use in all vehicles except as provided in paragraph (a)(3) of this paragraph,

(A) *Hydrocarbons.* 1.1 grams per brake horsepower-hour, as measured under transient operating conditions.

(B) *Carbon monoxide.* (*1*) 14.4 grams per brake horsepower-hour, as measured under transient operating conditions.

(*2*) *Gasoline-fueled heavy-duty engines utilizing aftertreatment technology.* 0.50 percent of exhaust gas flow at curb idle.

(C) *Oxides of nitrogen.* (*1*) 5.0 grams per brake horsepower-hour, as measured under transient operating conditions.

(*2*) A manufacturer may elect to include some or all of its gasoline-fueled heavy-duty engine families in the heavy-duty engine NO_x averaging program, provided that engines produced for sale in California or in 49-state areas may be averaged only within each of those areas. Averaging is limited to within engine types (gasoline-fueled or diesel). If the manufacturer elects to participate in the NO_x averaging program, individual family NO_x emission limits may not exceed 6.0 grams per brake horsepower-hour.

(ii) For engines intended for use only in vehicles with a Gross Vehicle Weight Rating of greater than 14,000 pounds,

(A) *Hydrocarbons.* 1.9 grams per brake horsepower-hour, as measured under transient operating conditions.

(B) *Carbon Monoxide.* (*1*) 37.1 grams per brake horsepower-hour as measured under transient operating conditions.

(*2*) *Gasoline-fueled heavy-duty engines utilizing aftertreatment technology.* 0.50 percent of exhaust gas flow at curb idle.

(C) *Oxides of nitrogen.* (*1*) 5.0 grams per brake horsepower-hour, as measured under transient operating conditions.

(*2*) A manufacturer may elect to include some or all of its gasoline-fueled heavy-duty engine families in the heavy-duty engine NO_x averaging program, provided that engines produced for sale in California or in 49-state areas may be averaged only within each of those areas. Averaging is limited to within engine types (gasoline-fueled or diesel). If the manufacturer elects to participate in the NO_x averaging program, individual family NO_x emission limits may not exceed 6.0 grams per brake horsepower-hour.

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over the operating schedule set forth in paragraph (f)(1) of Appendix I to this part, and measured and calculated in accordance with the procedures set forth in Subpart N or P.

(3)(i) A manufacturer may certify one or more gasoline-fueled heavy-duty engine configurations intended for use in all vehicles to the emission standards set forth in paragraph (a)(1)(ii) of this paragraph: *Provided,* that the total model year sales of such configuration(s) being certified to the emission standards in paragraph (a)(1)(ii) of this section represent no more than 5 percent of total model year sales of all gasoline-fueled heavy-duty engines intended for use in vehicles with a Gross Vehicle Weight Rating of up to 14,000 pounds by the manufacturer.

(ii) The configurations certified to the emission standards of paragraph (a)(1)(ii) of this section under the provisions of paragraph (a)(3)(i) of this section shall still be required to meet the evaporative emission standards set forth in paragraphs (b)(1)(i)(A) and (b)(2)(i) of this section.

(b)(1) Evaporative emissions from 1991 and later model year gasoline-fueled heavy-duty vehicles shall not exceed:

(i) *Hydrocarbons.* (A) For vehicles with a Gross Vehicle Weight Rating of up to 14,000 pounds, 3.0 grams per test.

(B) For vehicles with a Gross Vehicle Weight Rating of greater than 14,000 pounds, 4.0 grams per test.

(2)(i) For vehicles with a Gross Vehicle Weight Rating of up to 26,000 pounds, the standards set forth in paragraph (b)(1) of this section refer to a composite sample of fuel evaporative emissions collected under the conditions set forth in Subpart M and measured in accordance with those procedures.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 26,000 pounds, the standard set forth in paragraph (b)(1)(i)(B) of this section refers to the manufacturer's engineering design evaluation using good engineering practice (a statement of which is required in § 86.088–23(b)(4)(ii)).

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 1991 or later model year gasoline-fueled heavy-duty engine.

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in Subpart N or P of this part to ascertain that such test engines meet the requirements of paragraphs (a) and (c) of this section.

9. A new § 86.088–11 is added, to read as follows:

§ 86.088–11 Emission standards for 1988 and later model year diesel heavy-duty engines.

(a)(1) Exhaust emissions from new 1988 and later model year diesel heavy-duty engines shall not exceed the following:

(i) *Hydrocarbons.* 1.3 grams per brake horsepower-hour, as measured under transient operating conditions.

(ii) *Carbon monoxide.* 15.5 grams per brake horsepower-hour, as measured under transient operating conditions.

(iii) *Oxides of nitrogen.* 6.0 grams per brake horsepower-hour, as measured under transient operating conditions.

(iv) *Particulate emissions.* 0.60 gram per brake horsepower-hour, as measured under transient operating conditions.

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over the operating schedule set forth in paragraph (f)(2) of Appendix I to this part, and measured and calculated in accordance with the procedures set forth in Subpart N of this part, except as noted in § 86.088–23(c)(2)(i) and (ii).

(b)(1) The opacity of spoke emission from new 1988 and later model year diesel heavy-duty engines shall not exceed:

(i) 20 percent during the engine acceleration mode.

(ii) 15 percent during the engine lugging mode.

(iii) 50 percent during the peaks in either mode.

(2) The standards set forth in paragraph (b)(1) of this section refer to exhaust smoke emissions generated under the conditions set forth in Subpart I of this part and measured and calculated in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the atmosphere from any new 1988 model year naturally aspirated diesel heavy-duty engine. This provision does not apply to engines using turbochargers, pumps, blowers, or superchargers for air induction.

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in Subpart I or N of this part to ascertain that such test engines meet the requirements of (a), (b), and (c) of this section.

10. A new § 86.091–11 is added, to read as follows:

§ 86.091–11 Emission standards for 1991 and later model year diesel heavy-duty engines.

(a)(1) Exhaust emissions from new 1991 and later model year diesel heavy-duty engines shall not exceed the following:

(i) *Hydrocarbons.* 1.3 grams per brake horsepower-hour, as measured under transient operating conditions.

(ii) *Carbon monoxide.* 15.5 grams per brake horsepower-hour, as measured under transient operating conditions.

(iii) *Oxides of nitrogen.* (A) 5.0 grams per brake horsepower-hour, as measured under transient operating conditions.

(B) A manufacturer may elect to include some or all of its diesel heavy-duty engine families in the heavy-duty engine NO_x averaging program, provided that engines produced for sale in California or in 49-state areas may be averaged only within each of those areas. Averaging is limited to within engine types (gasoline-fueled or diesel). Averaging is limited to engines within a given primary service class as defined in § 86.085–2. Averaging across primary service classes is not permitted. If the manufacturer elects to participate in the NO_x averaging program, individual family NO_x emission limits may not exceed 6.0 grams per brake horsepower-hour.

(iv) *Particulate emissions.* (A) For engines to be used in urban buses, 0.10 gram per brake horsepower-hour, as measured under transient operating conditions.

(B) For all other engines, 0.25 gram per brake horsepower-hour, as measured under transient operating conditions.

(C) A manufacturer may elect to include all or some of its heavy-duty diesel engine families, exclusive of engines to be used in urban buses, in the heavy-duty particulate averaging program, provided that engines produced for sale in California or in 49-state areas may be averaged only within each of those areas. Engines for use in urban buses may not be included in the heavy-duty particulate averaging program. Averaging is limited to engines within a given primary service class as defined in § 86.085–2. Averaging across primary service classes is not permitted. If the manufacturer elects to participate in the averaging program, individual family particulate limits may not exceed 0.60 gram per brake horsepower-hour.

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over operating schedules as set forth in paragraph (f)(2) of Appendix I of this part, and measured and calculated in accordance with the procedures set forth in Subpart N of this part, except as noted in § 86.091–23(c)(2)(i) and (iii).

(b)(1) The opacity of smoke emission from new 1991 and later model year diesel heavy-duty engines shall not exceed:

(i) 20 percent during the engine acceleration mode.

(ii) 15 percent during the engine lugging mode.

(iii) 50 percent during the peaks in either mode.

(2) The standards set forth in paragraph (b)(1) of this section refer to exhaust smoke emissions generated under the conditions set forth in Subpart I of this part and measured and calculated in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 1991 model year naturally-aspirated diesel heavy-duty engine. This provision does not apply to engines using turbochargers, pumps, blowers, or superchargers for air induction.

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in Subpart I or N of this part to ascertain that such test engines meet the requirements of paragraphs (a), (b), and (c) and (d) of this section.

11. A new § 86.094–11 is added, to read as follows:

§ 86.094–11 Emission standards for 1994 and later model year diesel heavy-duty engines.

(a)(1) Exhaust emissions from new 1994 and later model year diesel heavy-duty engines shall not exceed the following:

(i) *Hydrocarbons.* 1.3 grams per brake horsepower-hour, as measured under transient operating conditions.

(ii) *Carbon monoxide.* 15.5 grams per brake horsepower-hour, as measured under transient operating conditions.

(iii) *Oxides of nitrogen.* [Reserved]

(iv) *Particulate emissions.* (A) 0.10 gram per brake horsepower-hour, as measured under transient operating conditions.

(B) A manufacturer may elect to include all or some of its heavy-duty diesel engine families, exclusive of engines to be used in urban buses, in the heavy-duty particulate averaging program, provided that engines produced for sale in California or in 49-state areas may be averaged only within each of those areas. Engines for use in urban buses may not be included in the heavy-duty particulate averaging program. Averaging is limited to engines within a given primary service class as defined in § 86.085–2. Averaging across primary service classes is not permitted. If the manufacturer elects to participate in the averaging program, individual family particulate limits may not exceed 0.60 gram per brake horsepower-hour.

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over operating schedules as set forth in paragraph (f)(2) of Appendix I of this part, and measured and calculated in accordance with the procedures set forth in Subpart N of this part, except as noted in § 86.091–23(c)(2)(i) and (iii).

(b)(1) The opacity of smoke emission from new 1994 and later model year diesel heavy-duty engines shall not exceed:

(i) 20 percent during the engine acceleration mode.

(ii) 15 percent during the engine lugging mode.

(iii) 50 percent during the peaks in either mode.

(2) The standards set forth in paragraph (b)(1) of this section refer to exhaust smoke emissions generated under the conditions set forth in Subpart I of this part and measured and calculated in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 1994 model year naturally-aspirated diesel heavy-duty engine. This provision does not apply to engines using turbochargers, pumps, blowers, or superchargers for air induction.

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in Subpart I or N of this part to ascertain that such test engines meet the requirements of paragraphs (a), (b), and (c) and (d) of this section.

12. A new § 86.088–21 is added, to read as follows:

§ 86.088–21 Application for certification.

(a) A separate application for a certificate of conformity shall be made for each set of standards (or family particulate emission limits, or family NO_x emission limits, as appropriate) and each class of new motor vehicles or new motor vehicle engines. Such application shall be made to the Administrator by the manufacturer and shall be updated and corrected by amendment.

(b) The application shall be in writing, signed by an authorized representative of the manufacturer, and shall include the following:

(1)(i) Identification and description of the vehicles (or engines) covered by the application and a description of their engine (vehicles only), emission control system and fuel system components. This shall include a detailed description of each auxiliary emission control device (AECD) to be installed in or on any certification test vehicle (or certification test engine).

(ii)(A) The manufacturer shall provide to the administrator in the application for certification:

(*1*) A list of those parameters which are physically capable of being adjusted (including those adjustable parameters for which access is difficult) and that, if adjusted to settings other than the manufacturer's recommended setting, may affect emissions;

(*2*) A specification of the manufacturer's intended physically adjustable range of each such parameter, and the production tolerances of the limits or stops used to establish the physically adjustable range;

(*3*) A description of the limits or stops used to establish the manufacturer's intended physically adjustable range of each adjustable parameter, or any other means used to inhibit adjustment;

(*4*) The nominal or recommended setting, and the associated production tolerances, for each such parameter.

(B) The manufacturer may provide, in the application for certification, information relating to why certain parameters are not expected to be adjusted in actual use and to why the physical limits or stops used to establish the physically adjustable range of each parameter, or any other means used to inhibit adjustment, are expected to be effective in preventing adjustment of parameters on in-use vehicles to settings outside the manufacturer's intended physically adjustable ranges. This may include results of any tests to determine the difficulty of gaining access to an adjustment or exceeding a limit as intended or recommended by the manufacturer.

(C) The Administrator may require to be provided detailed drawings and descriptions of the various emission-related components, and/or hardware samples of such components, for the purpose of making his determination of which vehicle or engine parameter will be subject to adjustment for new certification and Selective Enforcement Audit testing and of the physically adjustable range for each such vehicle or engine parameter.

(2) Projected U.S. sales data sufficient to enable the Administrator to select a test fleet representative of the vehicles (or engines) for which certification is requested. The sales data shall also include the altitude of intended sale for light-duty trucks.

(3) A description of the test equipment and fuel proposed to be used.

(4)(i) For light-duty vehicles and light-duty trucks, a description of the test procedures to be used to establish the evaporative emission deterioration factors required to be determined and supplied in § 86.088–23(b)(2).

(ii) For gasoline-fueled heavy-duty vehicles, the Administrator does not assume that each evaporative emission family-evaporative emission control system combination will deteriorate in a unique manner during the useful life of the vehicle. The manufacturer shall therefore identify those evaporative emission deterioration factors which shall be applied to the various evaporative emission family-

evaporative emission control system combinations which are expected to exhibit similar deterioration characteristics during the useful life of the vehicle.

(iii)(A) a description of the test procedures to be used to establish the durability data or the exhaust emission deterioration factors required to be determined and supplied in § 86.088–23(b)(1).

(B)(*1*) For engine families provided an alternative useful-life period under paragraph (f) of this section, a statement of that alternative period and a brief synopsis of the justification.

(*2*) For heavy-duty diesel engine families, a statement of the primary intended service class (light, medium, or heavy) and an explanation as to why that service class was selected. Each diesel engine family shall be certified under one primary intended service class only. After reviewing the guidance in § 86.085–2, the class shall be determined on the basis of which class best represents the majority of the sales of their engine family.

(C)(*1*) A statement of recommended maintenance and procedures necessary to assure that the vehicles (or engines) covered by a certificate of conformity in operation conform to the regulations, and a description of the program for training of personnel for such maintenance, and the equipment required.

(*2*) A description of vehicle adjustments or modifications necessary, if any, to assure that light-duty vehicles and light-duty trucks covered by a certificate of conformity conform to the regulations while being operated at any altitude locations, and a statement of the altitude at which the adjustments or modifications apply.

(D) At the option of the manufacturer, the proposed composition of the emission-data test fleet or (where applicable) the durability-data test fleet.

(5)(i)(A) If the manufacturer elects to participate in the particulate averaging program for diesel light-duty vehicles and/or diesel light-duty trucks, the application must list the family particulate emission limit and the projected U.S. production volume of the family for the model year.

(B) The manufacturer shall choose the level of the family particulate emission limits, accurate to one-hundredth of a gram per mile.

(C) The manufacturer may at any time during production elect to change the level of any family diesel particulate emission limit(s) by submitting the new limit(s) to the Administrator and by demonstrating compliance with the limit(s) as described in § 86.085–2 and § 86.088–28(b)(5)(i).

(ii)(A) If the manufacturer elects to participate in the NO_x averaging program for light-duty trucks, the application must list the family NO_x emission limit and the projected U.S. production volume of the family for the model year.

(B) The manufacturer shall choose the level of the family NO_x emission limits, accurate to one-tenth of a gram per mile.

(C) The manufacturer may at any time during production elect to change the level of any family NO_x emission limit(s) by submitting the new limits to the Administrator and by demonstrating compliance with the limit(s) as described in § 86.088–2 and § 86.088–28(b)(5)(ii).

(6)(i) For gasoline-fueled heavy-duty engines, the application must state whether the engine family is being certified for use in all vehicles regardless of their Gross Vehicle Weight Rating (see § 86.088–10 (a)(1)(i) and (a)(3)(i)), or, only for use in vehicles with a Gross Vehicle Weight Rating greater than 14,000 pounds.

(ii) If the engine family is being certified for use in all vehicles and, is being certified to the emission standards applicable to gasoline-fueled heavy-duty engines for use only in vehicles with a Gross Vehicle Weight Rating over 14,000 pounds under the provisions of paragraph (a)(3) of § 86.088–10, then the application must also attest that the engine family, together with all other engine families being certified under the provisions of paragraph (a)(3) of § 86.088–10, represent no more than 5 percent of model year sales of the manufacturer of all gasoline-fueled heavy-duty engines for use in vehicles with Gross Vehicle Weight Ratings of up to 14,000 pounds.

(iii)(A) A description of the test procedures to be used to establish the durability data or the exhaust emission deterioration factors required to be determined and supplied in § 86.088–23(b)(1).

(B)(*1*) A statement of the useful life of use of each light-duty truck engine family and heavy-duty engine family.

(*2*) For engine families provided an alternative useful life period under paragraph (f) of this section, a statement of that alternative period and a brief synopsis of the justification.

(*3*) For heavy-duty diesel engine families, a statement of the primary intended service class (light, medium, or heavy) and an explanation as to why that service class was selected. Each diesel engine family shall be certified under one primary intended service class only. After reviewing the guidance in § 86.085–2, the class shall be determined on the basis of which class best represents the majority of the sales of that engine family.

(c) Complete copies of the application and of any amendments thereto, and all notifications under § 86.079–32, § 86.079–33, and § 86.082–34 shall be submitted in such multiple copies as the Administrator may require.

(d) Incomplete light-duty trucks shall have a maximum completed curb weight and maximum completed frontal area specified by the manufacturer.

(e) For gasoline-fueled heavy-duty vehicles the manufacturer shall specify a maximum nominal fuel tank capacity for each evaporative emission family-evaporative emission control system combination.

(f) Light-duty truck and heavy-duty engine manufacturers who believe that the useful life periods of § 86.085–2 are significantly unrepresentative for one or more engine families (either too long or too short), may petition the Administrator to provide an alternative useful-life period. This petition must include the full rationale behind the request together with any supporting data and other evidence. Based on this or other information the Administrator may assign an alternative useful-life period. Any petition should be submitted in a timely manner, to allow adequate time for a thorough evaluation.

13. A new § 86.091–21 is added, to read as follows:

§ 86.091–21 Application for certification.

(a) A separate application for a certificate of conformity shall be made for each set of standards (or family particulate emission limits, or family NO_x emission limits, as appropriate) and each class of new motor vehicles or new motor vehicle engines. Such application shall be made to the Administrator by the manufacturer and shall be updated and corrected by amendment.

(b) The application shall be in writing, signed by an authorized representative of the manufacturer, and shall include the following:

(1)(i) Identification and description of the vehicles (or engines) covered by the application and a description of their engine (vehicles only), emission control system and fuel system components. This shall include a detailed description of each auxiliary emission control device (AECD) to be installed in or on any certification test vehicle (or certification test engine).

(ii)(A) The manufacturer shall provide to the Administrator in the preliminary application for certification:

(1) A list of those parameters which are physically capable of being adjusted (including those adjustable parameters for which access is difficult) and that, if adjusted to settings other than the manufacturer's recommended setting, may affect emissions;

(2) A specification of the manufacturer's intended physically adjustable range of each such parameter, and the production tolerances of the limits or stops used to establish the physically adjustable range;

(3) A description of the limits or stops used to establish the manufacturer's intended physically adjustable range of each adjustable parameter, or any other means used to inhibit adjustment;

(4) The nominal or recommended setting, and the associated production tolerances, for each such parameter.

(B) The manufacturer may provide, in the preliminary application for certification, information relating to why certain parameters are not expected to be adjusted in actual use and to why the physical limits or stops used to establish the physically adjustable range of each parameter, or any other means used to inhibit adjustment, are expected to be effective in preventing adjustment of parameters on in-use vehicles to settings outside the manufacturer's intended physically adjustable ranges. This may include results of any tests to determine the difficulty of gaining access to an adjustment or exceeding a limit as intended or recommended by the manufacturer.

(C) The Administrator may require to be provided detailed drawings and descriptions of the various emission related components, and/or hardware samples of such components, for the purpose of making his determination of which vehicle or engine parameter will be subject to adjustment for new certification and Selective Enforcement Audit testing and of the physically adjustable range for each such vehicle or engine parameter.

(2) Projected U.S. sales data sufficient to enable the Administrator to select a test fleet representative of the vehicles (or engines) for which certification is requested. The sales data shall also include the altitude of intended sale for light-duty trucks.

(3) A description of the test equipment and fuel proposed to be used.

(4)(i) For light-duty vehicles and light-duty trucks, a description of the test procedures to be used to establish the evaporative emission deterioration factors required to be determined and supplied in § 86.088–23(b)(2).

(ii) For gasoline-fueled heavy-duty vehicles, the Administrator does not assume that each evaporative emission family-evaporative emission control system combination will deteriorate in a unique manner during the useful life of the vehicle. The manufacturer shall therefore identify those evaporative emission deterioration factors which shall be applied to the various evaporative emission family-evaporative emission control system combinations which are expected to exhibit similar deterioration characteristics during the useful life of the vehicle.

(iii)(A) A description of the test procedures to be used to establish the durability data or the exhaust emission deterioration factors required to be determined and supplied in § 86.091–23(b)(1).

(B)(1) For engine families provided an alternative useful-life period under paragraph (f) of this section, a statement of that alternative period and a brief synopsis of the justification.

(2) For heavy-duty diesel engine families, a statement of the primary intended service class (light, medium, or heavy) and an explanation as to why that service class was selected. Each diesel engine family shall be certified under one primary intended service class only. After reviewing the guidance in § 86.085–2, the class shall be determined on the basis of which class best represents the majority of the sales of their engine family.

(C)(1) For each light-duty truck engine family and each heavy-duty engine family, a statement of recommended maintenance and procedures necessary to assure that the vehicles (or engines) covered by a certificate of conformity in operation conform to the regulations, and a description of the program for training of personnel for such maintenance, and the equipment required.

(2) A description of vehicle adjustments or modifications necessary, if any, to assure that light-duty trucks covered by a certificate of conformity conform to the regulations while being operated at any altitude locations, and a statement of the altitude at which the adjustments or modifications apply.

(D) At the option of the manufacturer, the proposed composition of the emission-data test fleet or (where applicable) the durability-data test fleet.

(5)(i)(A) If the manufacturer elects to participate in the particulate averaging program for diesel light-duty vehicles and/or diesel light-duty trucks, or the particulate averaging program for heavy-duty diesel engines, the application must list the family particulate emission limit and the projected U.S. production volume of the family for the model year.

(B) The manufacturer shall choose the level of the family particulate emission limits, accurate to one-hundredth of a gram per mile for light-duty vehicles and light-duty trucks, or, to one-hundredth of a gram per brake horsepower-hour for heavy-duty engines.

(C) The manufacturer may at any time during production elect to change the level of any family diesel particulate emission limit(s) by submitting the new limit(s) to the Administrator and by demonstrating compliance with the limit(s) as described in § 86.085–2 and § 86.091–28(b)(5)(i).

(ii)(A) If the manufacturer elects to participate in the NO_x averaging program for light-duty trucks, or the NO_x averaging program for heavy-duty engines, the application must list the family NO_x emission limit and the projected U.S. production volume of the family for the model year.

(B) The manufacturer shall choose the level of the family NO_x emission limits, accurate to one-tenth of a gram per mile for light-duty trucks, or, to one-tenth of a gram per brake horsepower-hour for heavy-duty engines.

(C) The manufacturer may at any time during production elect to change the level of any family NO_x emission limit(s) by submitting the new limits to the Administrator and by demonstrating compliance with the limit(s) as described in § 86.068–2 and § 86.091–28(b)(5)(ii).

(6)(i) For gasoline-fueled heavy-duty engines, the application must state whether the engine family is being certified for use in all vehicles regardless of their Gross Vehicle Weight Rating (see § 86.091–10(a)(1)(i) and (a)(3)(i)), or, only for use in vehicles with a Gross Vehicle Weight Rating greater than 14,000 pounds.

(ii) If the engine family is being certified for use in all vehicles and, is being certified to the emission standards applicable to gasoline-fueled heavy-duty engines for use only in vehicles with a Gross Vehicle Weight Rating over 14,000 pounds under the provisions of paragraph (a)(3) of § 86.091–10, then the application must also attest that the engine family, together with all other engine families being certified under the provisions of paragraph (a)(3) of § 86.091–10, represent no more than 5 percent of model year sales of the manufacturer of all gasoline-fueled heavy-duty engines for use in vehicles with Gross Vehicle Weight Ratings of up to 14,000 pounds.

(iii)(A) A description of the test procedures to be used to establish the

durability data or the exhaust emission deterioration factors required to be determined and supplied in § 86.091-23(b)(1).

(B)(*1*) A statement of the useful life of use of each light-duty truck engine family and heavy-duty engine family.

(*2*) For engine families provided an alternative useful life period under paragraph (f) of this section, a statement of that alternative period and a brief synopsis of the justification.

(*3*) For heavy-duty diesel engine families, a statement of the primary intended service class (light, medium, or heavy) and an explanation as to why that service class was selected. Each diesel engine family shall be certified under one primary intended service class only. After reviewing the guidance in § 86.085-2, the class shall be determined on the basis of which class best represents the majority of the sales of that engine family.

(C)(*1*) For each light-duty truck engine family and each heavy-duty engine family, a statement of recommended maintenance and procedures necessary to assure that the vehicles (or engines) covered by a certificate of conformity in operation conform to the regulations, and a description of the program for training of personnel for such maintenance, and the equipment required.

(*2*) A description of vehicle adjustments or modifications necessary, if any, to assure that light-duty trucks covered by a certificate of conformity conform to the regulations while being operated at any altitude locations, and a statement of the altitude at which the adjustments or modifications apply.

(D) At the option of the manufacturer, the proposed composition of the emission-data test fleet or (where applicable) the durability-data test fleet.

(c) Complete copies of the application and of any amendments thereto, and all notifications under § 86.079-32, § 86.079-33, and § 86.082-34 shall be submitted in such multiple copies as the Administrator may require.

(d) Incomplete light-duty trucks shall have a maximum completed curb weight and maximum completed frontal area specified by the manufacturer.

(e) For gasoline-fueled heavy-duty vehicles the manufacturer shall specify a maximum nominal fuel tank capacity for each evaporative emission family-evaporative emission control system combination.

(f) Light-duty truck and heavy-duty engine manufacturers who believe that the useful life periods of § 86.085-2 are significantly unrepresentative for one or more engine families (either too long or too short), may petition the Administrator to provide an alternative useful-life period. This petition must include the full rationale behind the request together with any supporting data and other evidence. Based on this or other information the Administrator may assign an alternative useful-life period. Any petition should be submitted in a timely manner, to allow adequate time for a thorough evaluation.

14. Section 86.085-23 is amended by revising paragraph (d) and adding a new paragraph (f), to read as follows:

§ 86.085-23 Required data.

* * * * *

(d) A statement that the vehicles (or engines) for which certification is requested conform to the requirements in § 86.084-5(b), and that the descriptions of tests performed to ascertain compliance with the general standards in § 86.084-5(b), and the data derived from such tests, are available to the Administrator upon request.

* * * * *

(f) If the manufacturer elects to use a measurement procedure other than that specified in Subpart I to determine compliance with the standards of § 86.085-11(b), the manufacturer will:

(1) Determine the correlation between the alternative measurement procedure chosen and the procedure set forth in Subpart I for each of the opacity measurements required in § 86.085-11(b).

(2) Maintain a description of the procedure and test(s) used to determine the correlation and the data derived from such tests.

(3) Make available to the Administrator, upon request, any of the information or data required in paragraphs (f) (1) and (2), and

(4) For each engine family for which a certificate is requested:

(i) Provide a statement that the results obtained by the alternative measurement procedure correlate with the results which would be expected when determined by the procedure in Subpart I, and

(ii) Provide these results, adjusted if necessary with the applicable correlation offset, to be compared with the opacity standards of § 86.085-11(b).

15. Section 86.087-23 is amended by revising paragraph (d) and adding a new paragraph (g), to read as follows:

§ 86.087-23 Required data.

* * * * *

(d) A statement that the vehicles (or engines) for which certification is requested conform to the requirements in § 86.084-5(b), and that the descriptions of tests performed to ascertain compliance with the general standards in § 86.084-5(b), and the data derived from such tests, are available to the Administrator upon request.

* * * * *

(g) If the manufacturer elects to use a measurement procedure other than that specified in Subpart I to determine compliance with the standards of § 86.085-11(b), the manufacturer will:

(1) Determine the correlation between the alternative measurement procedure chosen and the procedure set forth in Subpart I for each of the opacity measurements required in § 86.085-11(b).

(2) Maintain a description of the procedure and test(s) used to determine the correlation and the data derived from such tests.

(3) Make available to the Administrator, upon request, any of the information or data required in paragraphs (g) (1) and (2), and

(4) For each engine family for which a certificate is requested:

(i) Provide a statement that the results obtained by the alternative measurement procedure correlate with the results which would be expected when determined by the procedure in Subpart I, and

(ii) Provide these results, adjusted if necessary with the applicable correlation offset, to be compared with the opacity standards of § 86.085-11(b).

16. A new § 86.088-23 is added, to read as follows:

§ 86.088-23 Required data.

(a) The manufacturer shall perform the tests required by the applicable test procedures, and submit to the Administrator the following information: *Provided, however,* that if requested by the manufacturer, the Administrator may waive any requirement of this section for testing of vehicles (or engines) for which emission data are available or will be made available under the provisions of § 86.088-29.

(b)(1)(i) Exhaust emission durability data on such light-duty vehicles tested in accordance with applicable test procedures and in such numbers as specified, which will show the performance of the systems installed on or incorporated in the vehicle for extended mileage, as well as a record of all pertinent maintenance performed on the test vehicles.

(ii) Exhaust emission deterioration factors for light-duty trucks and heavy-duty engines and all test data that are derived from the testing described under § 86.088-21(b)(4)(iii)(A) as well as a record of all pertinent maintenance. Such testing shall be designed and conducted in accordance with good

engineering practice to assure that the engines covered by a certificate issued under § 86.088–30 will meet the emission standards (or family particulate emission limits or family NO_x emission limits, as appropriate) in § 86.088–9, § 86.088–10, or § 86.088–11 as appropriate, in actual use for the useful life of the engine.

(2) For light-duty vehicles and light-duty trucks, evaporative emission deterioration factors for each evaporative emission family-evaporative emission control system combination and all test data that are derived from testing described under § 86.088–21(b)(4)(i) designed and conducted in accordance with good engineering practice to assure that the vehicles covered by a certificate issued under § 86.088–30 will meet the evaporative emission standards in § 86.087–8 or § 86.088–9, as appropriate, for the useful life of the vehicle.

(3) For gasoline-fueled heavy-duty vehicles, evaporative emission deterioration factors for each evaporative emission family-evaporative emission control system combination identified in accordance with § 86.088–21(b)(4)(ii). Furthermore, a statement that the test procedure(s) used to derive the deterioration factors includes, but need not be limited to, a consideration of the ambient effects of ozone and temperature fluctuations, and the service accumulation effects of vibration, time, and vapor saturation and purge cycling. The deterioration factor test procedure shall be designed and conducted in accordance with good engineering practice to assure that the vehicles covered by a certificate issued under § 86.088–30 will meet the evaporative emission standards in § 86.088–10 in actual use for the useful life of the engine. Furthermore, a statement that a description of the test procedure, as well as all data, analyses and evaluations, is available to the Administrator upon request.

(4)(i) For gasoline-fueled heavy-duty vehicles with a Gross Vehicle Weight Rating of up to 26,000 pounds, a written statement to the Administrator certifying that the manufacturer's vehicles meet the standards of § 86.088–10 as determined by the provisions of § 86.088–28. Furthermore, a written statement to the Administrator that all data, analyses, test procedures, evaluations, and other documents, on which the above statement is based, are available to the Administrator upon request.

(ii) For gasoline-fueled, heavy-duty vehicles with a Gross Vehicle Weight Rating of greater than 26,000 pounds, a written statement to the Administrator certifying that the manufacturer's evaporative emission control systems are designed, using good engineering practice, to meet the standards of § 86.088–10 as determined by the provisions of § 86.088–28. Furthermore, a written statement to the Administrator that all data, analyses, test procedures, evaluations, and other documents, on which the above statement is based, are available to the Administrator upon request.

(c) *Emission data.* (1) Emission data on such vehicles tested in acordance with applicable test procedures and in such numbers as specified. These data shall include zero-mile data, if generated, and emission data generated for certification as required under § 86.084–26(a)(3)(i) or § 86.084–26(a)(3)(ii).

(2) *Certification engines.* (i) Emission data on such engines tested in accordance with applicable emission test procedures of this subpart and in such numbers as specified. These data shall include zero-hour data, if generated, and emission data generated for certification as required under § 86.084–26(c)(4). In lieu of providing emission data on CO emissions from diesel certification engines the Administrator may, on request of the manufacturer, allow the manufacturer to demonstrate (on the basis of previous emission tests, development tests, or other information) that the engine will conform with the CO emission standard of § 86.088–11.

(ii) For heavy-duty diesel engines, a manufacturer may submit hot-start data only, in accordance with Subpart N, when making application for certification. However, for conformity SEA and recall testing by the Agency, both the cold-start and hot-start test data, as specified in Subpart N, will be included in the official results.

(d) A statement that the vehicles (or engines) for which certification is requested conform to the requirements in § 86.084–5(b), and that the descriptions of tests performed to ascertain compliance with the general standards in § 86.084–5(b), and the data derived from such tests, are available to the Administrator upon request.

(e)(1) A statement that the test vehicles (or test engines) with respect to which data are submitted to demonstrate compliance with the applicable standards (or family particulate emission limits, or family NO_x emission limits, as appropriate) of this subpart are in all material respects as described in the manufacturer's application for certification, have been tested in accordance with the applicable test procedures utilizing the fuels and equipment described in the application for certification and that on the basis of such tests the vehicles (or engines) conform to the requirements of this part. If such statements cannot be made with respect to any vehicle (or engine) tested, the vehicle (or engine) shall be identified, and all pertinent data relating thereto shall be supplied to the Administrator. If, on the basis of the data supplied and any additional data as required by the Administrator, the Administrator determines that the test vehicles (or test engine) was not as described in the application for certification or was not tested in accordance with the applicable test procedures utilizing the fuels and equipment as described in the application for certification, the Administrator may make the determination that the vehicle (or engine) does not meet the applicable standards (or family particulate emission limits, or family NO_x emission limits, as appropriate). The provisions of § 86.088–30(b) shall then be followed.

(2) For evaporative emission durability, or light-duty truck or heavy-duty engine exhaust emission durability, a statement of compliance with paragraph (b)(1)(ii), (b)(2), or (b)(3) of this section, as applicable.

(f) Additionally, manufacturers participating in the diesel particulate averaging program shall submit:

(1) In the application for certification, a statement that the vehicles for which certification is requested will not, to the best of the manufacturer's belief, when included in the manufacturer's production-weighted average emission level, cause the applicable particulate standard(s) to be exceeded.

(2) No longer than 90 days after the end of a given model year of production of engine families included in the diesel particulate averaging program, the number of vehicles produced in each engine family at each certified family diesel particulate emission limit, along with the resulting production-weighted average particulate emission level.

(g) Additionally, manufacturers participating in the light-duty truck NO_x averaging program shall submit:

(1) In the application for certification, a statement that the vehicles for which certification is requested will not, to the best of the manufacturer's belief, when included in the manufacturer's production-weighted average emission level, cause the applicable NO_x standard(s) to be exceeded.

(2) No longer than 90 days after the end of a given model year of production of engine families included in the light-duty truck NO_x averaging program, the

number of vehicles produced in each engine family at each certified family NO_x particulate emission limit, along with the resulting production-weighted average NO_x emission level.

17. A new § 86.091–23 is added, to read as follows:

§ 86.091–23 Required data.

(a) The manufacturer shall perform the tests required by the applicable test procedures, and submit to the Administrator the following information: *Provided, however,* that if requested by the manufacturer, the Administrator may waive any requirement of this section for testing of vehicle (or engine) for which emission data are available or will be made available under the provisions of § 86.091–29.

(b)(1)(i) Exhaust emission durability data on such light-duty vehicles tested in accordance with applicable test procedures and in such numbers as specified, which will show the performance of the systems installed on or incorporated in the vehicle for extended mileage, as well as a record of all pertinent maintenance performed on the test vehicles.

(ii) Exhaust emission deterioration factors for light-duty trucks and heavy-duty engines and all test data that are derived from the testing described under § 86.091–21(b)(4)(iii)(A) as well as a record of all pertinent maintenance. Such testing shall be designed and conducted in accordance with good engineering practice to assure that the engines covered by a certificate issued under § 86.091–30 will meet the emission standards (or family particulate emission limits, or family NO_x emission limits, as appropriate) in § 86.088–9, § 86.091–10, or § 86.091–11 as appropriate, in actual use for the useful life of the engine.

(2) For light-duty vehicles and light-duty trucks, evaporative emission deterioration factors for each evaporative emission family-evaporative emission control system combination and all test data that are derived from testing described under § 86.091–21(b)(4)(i) designed and conducted in accordance with good engineering practice to assure that the vehicles covered by a certificate issued under § 86.091–30 will meet the evaporative emission standards in § 86.087–8 or § 86.088–9, as appropriate, for the useful life of the vehicle.

(3) For gasoline-fueled heavy-duty vehicles, evaporative emission deterioration factors for each evaporative emission family-evaporative emission control system combination identified in accordance with § 86.091–21(b)(4)(ii). Furthermore, a statement that the test procedure(s) used to derive the deterioration factors includes, but need not be limited to, a consideration of the ambient effects of ozone and temperature fluctuations, and the service accumulation effects of vibration, time, and vapor saturation and purge cycling. The deterioration factor test procedure shall be designed and conducted in accordance with good engineering practice to assure that the vehicles covered by a certificate issued under § 86.091–30 will meet the evaporative emission standards in § 86.091–10 in actual use for the useful life of the engine. Furthermore, a statement that a description of the test procedure, as well as all data, analyses and evaluations, is available to the Administrator upon request.

(4)(i) For gasoline-fueled heavy-duty vehicles with a Gross Vehicle Weight Rating of up to 26,000 pounds, a written statement to the Administrator certifying that the manufacturer's vehicles meet the standards of § 86.091–10 as determined by the provisions of § 86.091–28. Furthermore, a written statement to the Administrator that all data, analyses, test procedures, evaluations, and other documents, on which the above statement is based, are available to the Administrator upon request.

(ii) For gasoline-fueled, heavy-duty vehicles with a Gross Vehicle Weight Rating of greater than 26,000 pounds, a written statement to the Administrator certifying that the manufacturer's evaporative emission control systems are designed, using good engineering practice, to meet the standards of § 86.091–01 as determined by the provisions of § 86.091–28. Furthermore, a written statement to the Administrator that all data, analyses, test procedures, evaluations, and other documents, on which the above statement is based, are available to the Administrator upon request.

(c) *Emission data.* (1) Emission data on such vehicles tested in accordance with applicable test procedures and in such numbers as specified. These data shall include zero-mile data, if generated, and emission data generated for certification as required under § 86.084–26(a)(3)(i) or § 86.084–26(a)(3)(ii).

(2) *Certification engines.* (i) Emission data on such engines tested in accordance with applicable emission test procedures of this subpart and in such numbers as specified. These data shall include zero-hour data, if generated, and emission data generated for certification as required under § 86.084–26(c)(4). In lieu of providing emission data on CO emissions from diesel certification engines the Administrator may, on request of the manufacturer, allow the manufacturer to demonstrate (on the basis of previous emission tests, development tests, or other information) that the engine will conform with the CO emission standard of § 86.091–11.

(ii) For heavy-duty diesel engines, a manufacturer may submit hot-start data only, in accordance with Subpart N, when making application for certification. However, for conformity SEA and recall testing by the Agency, both the cold-start and hot-start test data, as specified in Subpart N, will be included in the official results.

(d) A statement that the vehicles (or engines) for which certification is requested conform to the requirements in § 86.084–5(b), and that the descriptions of tests performed to ascertain compliance with the general standards in § 86.084–5(b), and the data derived from such tests, are available to the Administrator upon request.

(e)(1) A statement that the text vehicles (or test engines) with respect to which data are submitted to demonstrate compliance with the applicable standards (or family particulate emission limits, or family NO_x emission limits, as appropriate) of this subpart are in all material respects as described in the manufacturer's application for certification, have been tested in accordance with the applicable test procedures utilizing the fuels and equipment described in the application for certification and that on the basis of such tests the vehicles (or engines) conform to the requirements of this part. If such statements cannot be made with respect to any vehicle (or engine) tested, the vehicle (or engine) shall be identified, and all pertinent data relating thereto shall be supplied to the Administrator. If, on the basis of the data supplied and any additional data as required by the Administrator, the Administrator determines that the test vehicles (or test engine) was not as described in the applicable for certification or was not tested in accordance with the application test procedures utilizing the fuels and equipment as described in the application for certification, the Administrator may make the determination that the vehicle (or engine) does not meet the applicable standards (or family particulate emission limits, or family NO_x emission limits, as appropriate). The provisions of § 86.091–30(b) shall then be followed.

(2) For evaporative emission durability, or light-duty truck or heavy-duty engine exhaust emission durability,

a statement of compliance with paragraph (b)(1)(ii), (b)(2), or (b)(3) of this section, as applicable.

(f) Additionally, manufacturers participating in any of the diesel particulate averaging programs shall submit:

(1) In the application for certification, a statement that the vehicles (or engines) for which certification is requested will not, to the best of the manufacturer's belief, when included in the manufacturer's production-weighted average emission level, cause the applicable particulate standard(s) to be exceeded.

(2) No longer than 90 days after the end of a given model year of production of engine families included in one of the diesel particulate averaging programs, the number of vehicles (or engines) produced in each engine family at each certified family diesel particulate emission limit, along with the resulting production-weighted average particulate emission level.

(g) Additionally, manufacturers participating in the light-duty truck or heavy-duty engine NO_x averaging programs shall submit:

(1) In the application for certification, a statement that the vehicles (or engines) for which certification is required will not, to the best of the manufacturer's belief, when included in the manufacturer's production-weighted average emission level, cause the applicable NO_x standard(s) to be exceeded.

(2) No longer than 90 days after the end of a given model year of production of engine families included in one of the NO_x averaging programs, the number of vehicles (or engines) produced in each engine family at each certified family NO_x particulate emission limit, along with the resulting production-weighted average NO_x emission level.

18. A new § 86.087–25 is added, to read as follows:

§ 86.087–25 Maintenance.

(a) *Applicability.* This section applies to light-duty vehicles, light-duty trucks, and heavy-duty engines. Manufacturers of light-duty vehicles may elect the option of complying with § 86.085–25(a) for any engine family.

(1) Maintenance performed on vehicles, engines, subsystems, or components used to determine exhaust or evaporative emission deterioration factors is classified as either emission-related or non emission-related and each of these can be classified as either scheduled or unscheduled.

(b) This section specifies emission-related scheduled maintenance for purposes of obtaining durability data and for inclusion in maintenance instructions furnished to purchasers of new motor vehicles and new motor vehicle engines under § 86.087–38.

(1) All emission-related scheduled maintenance for purposes of obtaining durability data must occur at the same mileage intervals (or equivalent intervals if engines, subsystems, or components are used) that will be specified in the manufacturer's maintenance instructions furnished to the ultimate purchaser of the motor vehicle or engine under §86.087–38. This maintenance schedule may be updated as necessary throughout the testing of the vehicle/engine provided that no maintenance operation is delected from the maintenance schedule after the operation has been performed on the test vehicle or engine.

(2) Any emission-related maintenance which is performed on vehicles, engines, subsystems, or components must be technologically necessary to assure in-use compliance with the emission standards. The manufacturer must submit data which demonstrate to the Administrator that all of the emission-related scheduled maintenance which is to be performed is technologically necessary. Scheduled maintenance must be approved by the Administrator prior to being performed or being included in the maintenance instructions provided to purchasers under § 86.087–38. As provided below, EPA has determined that emission-related maintenance at shorter intervals than that outlined in paragraphs (b)(3) and (b)(4) of this section is not technologically necessary to ensure in-use compliance. However, the Administrator may determine that maintenance even more restrictive (*e.g.*, long intervals) than that listed in paragraphs (b)(3) and (b)(4) of this section is also not technologically necessary.

(3) For gasoline-fueled light-duty vehicles, light-duty trucks and heavy-duty engines, emission-related maintenance in addition to, or at shorter intervals than, the following will not be accepted as technologically necessary, except as provided in paragraph (b)(7) of this section.

(i)(A) The cleaning or replacement of light-duty vehicle or light-duty truck spark plugs at 30,000 miles of use and at 30,000-mile intervals thereafter.

(B) The cleaning or replacement of gasoline-fueled heavy-duty engine spark plugs at 12,000 miles (or 360 hours) of use and at 12,000-mile (or 360-hour) intervals thereafter, for engine certified for use with leaded fuel.

(C) The cleaning or replacement of gasoline-fueled heavy-duty engine spark plugs at 25,000 miles (or 750 hours) of use and at 25,000-mile (or 750-hour) intervals thereafter, for engines certified for use with unleaded fuel only.

(ii) For light-duty vehicles, the adjustment, cleaning, repair, or replacement of the following may not be performed within the 50,000-mile useful life of the vehicle:

(A) Positive crankcase ventilation valve.

(B) Emission-related hoses and tubes.

(C) Ignition wires.

(D) Carburetors (including idle mixture).

(E) Catalytic converter.

(F) Exhaust gas recirculation system (including all related filters and control valves).

(G) Air injection system components.

(H) Fuel injectors.

(I) Electronic engine control unit and its associated sensors (including oxygen sensor) and actuators.

(J) Evaporative emission canister.

(K) Turbochargers.

(iii) For light-duty trucks and heavy-duty engines, the adjustment, cleaning, repair, or replacement of the following at 50,000 miles (or 1,500 hours) of use and at 50,000-mile (or 1,500-hour) intervals thereafter:

(A) Positive crankcase ventilation valve.

(B) Emission-related hoses and tubes.

(C) Ignition wires.

(D) Idle mixture.

(E) Oxygen sensor.

(iv) [Reserved]

(v) For light-duty trucks and heavy-duty engines, the adjustment, cleaning, repair, or replacement of the following at 100,000 miles (or 3,000 hours) of use and at 100,000-mile (or 3,000-hour) intervals thereafter:

(A) Catalytic converter.

(B) Fuel injectors.

(vi)(A) For heavy-duty engines certified for use with leaded fuel, the adjustment, cleaning, repair, or replacement of the exhaust gas recirculation (EGR) system (including all related filters and control valves) at 24,000 miles (or 720 hours) of use and at 24,000-mile (or 720-hour) intervals thereafter.

(B) For light-duty trucks, and for heavy-duty engines certified for use with unleaded fuel only, the adjustment, cleaning, repair, or replacement of the EGR system (including all related filters and control valves) at 50,000 miles (or 1,500 hours) of use and at 50,000-mile (or 1,500-hour) intervals thereafter.

(4) For diesel powered light-duty vehicles, light-duty trucks, and heavy-duty engines, emission-related maintenance in addition to, or at shorter intervals than, the following will not be

accepted as technologically necessary, except as provided in paragraph (b)(7) of this section.

(i) For light-duty vehicles, the adjustment, cleaning, repair, or replacement of the following may not be performed within the 50,000-mile useful life of the vehicle:

(A) Exhaust gas recirculation system (including all related filters and control valves).

(B) Positive crankcase ventilation valve.

(C) Fuel injectors.

(D) Turbocharger.

(ii) For light-duty trucks and heavy-duty engines, the adjustment, cleaning, repair, or replacement of the following at 50,000 miles (or 1,500 hours) of use and at 50,000-mile (or 1,500-hour) intervals thereafter:

(A) Exhaust gas recirculation system (including all related filters and control valves).

(B) Positive crankcase ventilation valve.

(C) Fuel injector tip (cleaning *only*).

(iii) The adjustment, cleaning, repair, or replacement of the following at 100,000 miles (or 3,000 hours) of use and at 100,000-mile (or 3,000-hour) intervals thereafter for light-duty trucks and light heavy-duty engines, or, at 150,000 miles (or 4,500 hours) of use and at 150,000-mile (or 4,500-hours) intervals thereafter for medium and heavy heavy-duty engine:

(A) Turbocharger.

(B) Fuel injectors.

(5) Manufacturers may schedule service to the EGR system at the intervals indicated in paragraph (b) of this section only if a visible signal, approved by the Administrator, alerts the engine operator to the need for EGR maintenance at each of those mileage points.

(6) [Reserved]

(7) *Changes to scheduled maintenance.*

(i) For maintenance practices that existed prior to the 1980 model year, only the maintenance items listed in paragraphs (b)(3) and (b)(4) of this section are currently considered by EPA to be emission-related. The Administrator may, however, determine additional scheduled maintenance items that existed prior to the 1980 model year to be emission-related by announcement in a **Federal Register** Notice. In no event may this notification occur later than September 1 of the calendar year two years prior to the affected model year.

(ii) In the case of any new scheduled maintenance, the manufacturer must submit a request for approval to the Administrator for any maintenance that it wishes to recommend to purchasers and perform during durability determination. New scheduled maintenance is that maintenance which did not exist prior to the 1980 model year, including that which is a direct result of the implementation of new technology not found in production prior to the 1980 model year. The manufacturer must also include its recommendations as to the category (*i.e.*, emission-related or non-emission-related) of the subject maintenance, and, for suggested emission-related maintenance, the maximum feasible maintenance interval. Such requests must include detailed evidence supporting the need for the maintenance requested, and supporting data or other substantiation for the recommended maintenance category and for the interval suggested for emission-related maintenance. Requests for new scheduled maintenance must be approved prior to the introduction of the new maintenance. The Administrator will then designate the maintenance as emission-related or non-emission-related. For each maintenance item designated as emission-related, the Administrator will also establish a technologically necessary maintenance interval, based on industry data and any other information available to EPA. Designations of emission-related maintenance items and establishment of technologically necessary maintenance intervals, will be announced in the **Federal Register.**

(iii) Any manufacturer may request a hearing on the Administrator's determinations in paragraph (b)(7) of this section. The request shall be in writing, signed by an authorized representative of the manufacturer, and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objections. If, after review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078–6 with respect to such issue.

(c) Non-emission-related scheduled maintenance which is reasonable and technologically necessary (*e.g.*, oil change, oil filter change, fuel filter change, air filter change, cooling system maintenance, adjustment of idle speed, governor, engine bolt torque, valve lash, injector lash, timing, etc.) may be performed on durability-data vehicles at the intervals recommended by the manufacturer to the ultimate purchaser.

(d) *Unscheduled maintenance on light-duty durability data vehicles.*

(1) Unscheduled maintenance may be performed during the testing used to determine deterioration factors, except as provided in paragraph (d)(2) and (d)(3) of this section, only under the following provisions:

(i) A fuel injector or spark plug may be changed if a persistent misfire is detected.

(ii) Readjustment of a gasoline-fueled vehicle cold-start enrichment system may be performed if there is a problem of stalling.

(iii) Readjustment of the engine idle speed (curb idle and fast idle) may be performed in addition to that performed as scheduled maintenance under paragraph (c) of this section, if the idle speed exceeds the manufacturer's recommended idle speed by 300 rpm or more, or if there is a problem of stalling.

(2) Any other unscheduled vehicle, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement during testing to determine deterioration factors shall be performed only with the advance approval of the Administrator. Such approval will be given if the Administrator:

(i) Has made a preliminary determination that the part failure or system malfunction, or the repair of such failure or malfunction, does not render the vehicle or engine unrepresentative of vehicles or engines in-use, and does not require direct access to the combustion chamber, except for spark plug, fuel injection component, or removable prechamber removal or replacement; and,

(ii) Has made a determination that the need for maintenance or repairs is indicated by an overt indication of malfunction such as persistent misfiring, engine stalling, overheating, fluid leakage, loss of oil pressure, excessive fuel consumption or excessive power loss. The Administrator shall be given the opportunity to verify the existence of an overt indication of part failure and/or vehicle/engine malfunction (*e.g.*, misfiring, stalling, black smoke), or an activation of an audible and/or visible signal, prior to the performance of any maintenance to which such overt indication or signal is relevant under the provisions of this section.

(3) Emission measurement may not be used as a means of determining the need for unscheduled maintenance under paragraph (d)(2) of this section, except under the following conditions:

(i) The Administrator may approve unscheduled maintenance on durability-data vehicles based upon a significant change in emission levels that indicates a vehicle or engine malfunction. In these

cases the Administrator may first approve specific diagnostic procedures to identify the source of the problem. The Administrator may further approve of specific corrections to the problem after the problem has been identified. The Administrator may only approve the corrective action after it is determined that:

(A) The malfunction was caused by nonproduction build practices or by a previously undetected design problem,

(B) The malfunction will not occur in production vehicles or engines in-use, *and*

(C) The deterioration factor generated by the durability-data vehicle or engine will remain unaffected by the malfunction or by the corrective action (*e.g.* the malfunction was present for only a short period of time before detection, replacement parts are functionally representative of the proper mileage or hours, etc.).

(ii) Following any unscheduled maintenance approved under paragraph (d)(3)(i) of this section, the manufacturer shall perform and after-maintenance emissions test. If the Administrator determines that the after-maintenance emission levels for any pollutant indicates that the deterioration factor is no longer representative of production, the Administrator may disqualify the durability-data vehicle or engine.

(4) If the Administrator determines that part failure or system malfunction occurrence and/or repair rendered the vehicle/engine unrepresentative of vehicles in-use, the vehicle/engine shall not be used for determining deterioration factors.

(5) Repairs to vehicle components of a durability data vehicle other than the engine, emission control system, or fuel system, shall be performed only as a result of part failure, vehicle system malfunction, or with the advance approval of the Administrator.

(e) *Maintenance on emission data vehicles and engines.* (1) Adjustment of engine idle speed on emission data vehicles may be performed once before the low-mileage/low-hour emission test point. Any other engine, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement on emission data vehicles shall be performed only with the advance approval of the Administrator.

(2) Maintenance on light-duty truck emission-data vehicles selected under § 86.085–24(b)(1) (v) or (viii), and permitted to be tested for purposes of § 86.087–23(c)(1)(i) under the provisions of § 86.085–24(b)(2), may be performed in conjunction with emission control system modifications at the low-mileage test point, and shall be performed in accordance with the maintenance instructions to be provided to the ultimate purchaser required under § 86.087–38.

(3) Maintenance on those light-duty truck emission-data vehicles selected under § 86.085–24(b)(1)(v) which are not capable of being modified in the field for the purpose of complying with emission standards at an altitude other than that intended by the original design, may be performed in conjunction with the emission control system modifications at the low-mileage test point, and shall be approved in advance by the Administrator.

(4) Repairs to vehicle components of an emission data vehicle other than the engine, emission control system, or fuel system, shall be performed only as a result of part failure, vehcile system malfunction, or with the advance approval of the Administrator.

(f) Equipment, instruments, or tools may not be used to identify malfunctioning, maladjusted, or defective engine components unless the same or equivalent equipment, instruments, or tools will be available to dealerships and other service outlets and:

(1) Are used in conjunction with scheduled maintenance on such components, or

(2) Are used subsequent to the identification of a vehicle or engine malfunction, as provided in paragraph (d)(2) of this section for durability data vehicles or in paragraph (e)(1) of this section for emission-data vehicles, or

(3) Unless specifically authorized by the Administrator.

(g)(1) Paragraph (g) of this section applies to light-duty vehicles.

(2) Complete emission tests (see §§ 86.106 through 86.145) are required, unless waived by the Administrator, before and after scheduled maintenance approved for durability data vehicles. The manufacturer may perform emission tests before unscheduled maintenance. Complete emission tests are required after unscheduled maintenance which may reasonably be expected to affect emissions. The Administrator may waive the requirement to test after unscheduled maintenance. These test data may be submitted weekly to the Administrator, but shall be air posted or delivered within 7 days after completion of the tests, along with a complete record of all pertinent maintenance, including a preliminary engineering report of any malfunction diagnosis and the corrective action taken. A complete engineering report shall be delivered to the Administrator concurrently with the manufacturer's application for certification.

(h) All test data, maintenance reports, and required engineering reports shall be compiled and provided to the Administrator in accordance with § 86.087–23.

19. A new § 86.088–25 is added, to read as follows:

§ 86.088–25 Maintenance.

(a) *Applicability.* This section applies to light-duty vehicles, light-duty trucks, and heavy-duty engines.

(1) Maintenance performed on vehicles, engines, subsystems, or components used to determine exhaust or evaporative emission deterioration factors is classified as either emission-related or non-emission-related and each of these can be classified as either scheduled or unscheduled. Further, some emission-related maintenance is also classified as critical emission-related maintenance.

(b) This section specifies emission-related scheduled maintenance for purposes of obtaining durability data and for inclusion in maintenance instructions furnished to purchasers of new motor vehicles and new motor vehicle engines under § 86.087–38.

(1) All emission-related scheduled maintenance for purposes of obtaining durability data must occur at the same mileage intervals (or equivalent intervals if engines, subsystems, or components are used) that will be specified in the manufacturer's maintenance instructions furnished to the ultimate purchaser of the motor vehicle or engine under § 86.088–35. This maintenance schedule may be updated as necessary throughout the testing of the vehicle/engine provided that no maintenance operation is deleted from the maintenance schedule after the operation has been performed on the test vehicle or engine.

(2) Any emission-related maintenance which is performed on vehicles, engines, subsystems, or components must be technologically necessary to assure in-use compliance with the emission standards. The manufacturer must submit data which demonstrate to the Administrator that all of the emission-related scheduled maintenance which is to be performed is technologically necessary. Scheduled maintenance must be approved by the Administrator prior to being performed or being included in the maintenance instructions provided to purchasers under § 86.087–38. As provided below, EPA has determined that emission-related maintenance at shorter intervals than that outlined in paragraphs (b)(3) and (b)(4) of this

section is not technologically necessary to ensure in-use compliance. However, the Administrator may determine that maintenance even more restrictive (*e.g.*, longer intervals) than that listed in paragraphs (b)(3) and (b)(4) of this section is also not technologically necessary.

(3) For gasoline-fueled light-duty vehicles, light-duty trucks and heavy-duty engines, emission-related maintenance in addition to, or at shorter intervals than, the following will not be accepted as technologically necessary, except as provided in paragraph (b)(7) of this section.

(i)(A) The cleaning or replacement of light-duty vehicle or light-duty truck spark plugs at 30,000 miles of use and at 30,000-mile intervals thereafter.

(B) The cleaning or replacement of gasoline-fueled heavy-duty engine spark plugs at 12,000 miles (or 360 hours) of use and at 12,000-mile (or 360-hour) intervals thereafter, for engine certified for use with leaded fuel.

(C) The cleaning or replacement of gasoline-fueled heavy-duty engine spark plugs at 25,000 miles (or 750 hours) of use and at 25,000-mile intervals (or 750-hour) intervals thereafter, for engines certified for use with unleaded fuel only.

(ii) For light-duty vehicles, the adjustment, cleaning, repair, or replacement of the following may not be performed within the 50,000-mile useful life of the vehicle:

(A) Positive crankcase ventilation valve.

(B) Emission-related hoses and tubes.

(C) Ignition wires.

(D) Carburetors (including idle mixture).

(E) Catalytic converter.

(F) Exhaust gas recirculation system (including all related filters and control valves).

(G) Air injection system components.

(H) Fuel injectors.

(I) Electronic engine control unit and its associated sensors (including oxygen sensor) and actuators.

(J) Evaporative emission canister.

(K) Turbochargers.

(iii) For light-duty trucks and heavy-duty engines, the adjustment, cleaning, repair, or replacement of the following at 50,000 miles (or 1,500 hours) of use and at 50,000-mile (or 1,500-hour) intervals thereafter:

(A) Positive crankcase ventilation valve.

(B) Emission-related hoses and tubes.

(C) Ignition wires.

(D) Idle mixture.

(iv) For light-duty trucks and heavy-duty engines, the adjustment, cleaning, repair, or replacement of the following at 80,000-miles (or 2,400-hours) of use and at 80,000-mile (or 2,400-hour) intervals thereafter:

(A) Oxygen sensor.

(v) For light-duty trucks and heavy-duty engines, the adjustment, cleaning, repair, or replacement of the following at 100,000 miles (or 3,000 hours) of use and at 100,000-mile (or 3,000-hour) intervals thereafter:

(A) Catalytic converter.

(B) Air injection system components.

(C) Fuel injectors.

(D) Electronic engine control unit and its associated sensors (except oxygen sensor) and actuators.

(E) Evaporative emission canister.

(F) Turbochargers.

(G) Carburetors.

(vi)(A) For heavy-duty engines certified for use with leaded fuel, the adjustment, cleaning, repair, or replacement of the exhaust gas recirculation (EGR) system (including all related filters and control valves) at 24,000 miles (or 720 hours) of use and at 24,000-mile (or 720-hour) intervals thereafter.

(B) For light-duty trucks, and for heavy-duty engines certified for use with unleaded fuel only, the adjustment, cleaning, repair, or replacement of the EGR system (including all related filters and control valves) at 50,000 miles (or 1,500 hours) of use and at 50,000-mile (or 1,500-hour) intervals thereafter.

(4) For diesel powered light-duty vehicles, light-duty trucks, and heavy-duty engines, emission-related maintenance in addition to, or at shorter intervals than, the following will not be accepted as technologically necessary, except as provided in paragraph (b)(7) of this section.

(i) For light-duty vehicles, the adjustment, cleaning, repair, or replacement of the following may not be performed within the 50,000-mile useful life of the vehicle:

(A) Exhaust gas recirculation system (including all related filters and control valves).

(B) Positive crankcase ventilation valve.

(C) Fuel injectors.

(D) Turbocharger.

(E) Electronic engine control unit and its associated sensors and actuators.

(F) Particulate trap or trap-oxidizer system (including related components).

(ii) For light-duty trucks and heavy-duty engines, the adjustment, cleaning, repair, or replacement of the following at 50,000 miles (or 1,500 hours) of use and at 50,000-mile (or 1,500-hour) intervals thereafter:

(A) Exhaust gas recirculation system (including all related filters and control valves).

(B) Positive crankcase ventilation valve.

(C) Fuel injector tip (cleaning *only*).

(iii) The following maintenance at 100,000 miles (or 3,000 hours) of use and at 100,000-mile (or 3,000-hour) intervals thereafter for light-duty trucks and light heavy-duty engines, or, at 150,000 miles (or 4,500 hours) of use and at 150,000-mile (or 4,500-hour) intervals thereafter for medium and heavy heavy-duty engines: The adjustment, cleaning, repair, or replacement of:

(A) Fuel injectors.

(B) Turbocharger.

(C) Electronic engine control unit and its associated sensors and actuators.

(D) Particulate trap or trap-oxidizer system (including related components).

(5) [Reserved]

(6)(i) The following components are currently defined as critical emission-related components:

(A) Catalytic converter.

(B) Air injection system components.

(C) Electronic engine control unit and its associated sensor (including oxygen sensor if installed) and actuators.

(D) Exhaust gas recirculation system (including all related filters and control valves).

(E) Positive crankcase ventilation valve.

(F) Evaporative emission system (excluding canister air filter).

(G) Particulate trap or trap-oxidizer system.

(ii) All critical emission-related scheduled maintenance must have a reasonable likelihood of being performed in-use. The manufacturer shall be required to show the reasonable likelihood of such maintenance being performed in-use, and such showing shall be made prior to the performance of the maintenance on the durability data vehicle. Critical emission-related scheduled maintenance items which satisfy one of the following conditions will be accepted as having a reasonable likelihood of the maintenance item being performed in-use:

(A) Data are presented which establish for the Administrator a connection between emissions and vehicle performance such that as emissions increase due to lack of maintenance, vehicle performance will simultaneously deteriorate to a point unacceptable for typical driving.

(B) Survey data are submitted which adequately demonstrate to the Administrator that, at an 80 percent confidence level, 80 percent of such engines already have this critical maintenance item performed in-use at the recommended interval(s).

(C) A clearly displayed visible signal system approved by the Administrator is installed to alert the vehicle driver that maintenance is due. A signal bearing the message "maintenance needed" or "check engine," or a similar message approved by the Administrator, shall be actuated at the appropriate mileage point or by component failure. This signal must be continuous while the engine is in operation, and not be easily eliminated without performance of the required maintenance. Resetting the signal shall be a required step in the maintenance operation. The method for resetting the signal system shall be approved by the Administrator.

(D) A manufacturer may desire to demonstrate through a survey that a critical maintenance item is likely to be performed without a visible signal on a maintenance item for which there is no prior in-use experience without the signal. To that end, the manufacturer may in a given model year market up to 200 randomly selected vehicles per critical emission related maintenance item without such visible signals, and monitor the performance of the critical maintenance item by the owners to show compliance with paragraphs (b)(6)(ii)(B) of this section. This option is restricted to two consecutive model years and may not be repeated until any previous survey has been completed. If the critical maintenance involves more than one engine family, the sample will be sales weighted to ensure that it is representative of all the families in question.

(E) The manufacturer provides the maintenance free of charge, and clearly informs the customer that the maintenance is free in the instructions provided under § 86.087–38.

(F) Any other method which the Administrator approves as establishing a reasonable likelihood that the critical maintenance will be performed in-use.

(iii) Visible signal systems used under paragraph (b)(6)(ii)(C) of this section are considered an element of design of the emission control system. Therefore, disabling, resetting, or otherwise rendering such signals inoperative without also performing the indicated maintenance procedure is a prohibited act under Section 203(a)(3) of the Clean Air Act, as amended in August 1977 (42 U.S.C. 7522(a)(3)).

(7) *Changes to scheduled maintenance.* (i) For maintenance practices that existed prior to the 1980 model year, only the maintenance items listed in paragraphs (b)(3) and (b)(4) of this section are currently considered by EPA to be emission-related. The Administrator may, however, determine additional scheduled maintenance items that existed prior to the 1980 model year to be emission-related by announcmeent in a **Federal Register** Notice. In no event may this notification occur later than September 1 of the calendar year two years prior to the affected model year.

(ii) In the case of any new scheduled maintenance, the manufacturer must submit a request for approval to the Administrator for any maintenance that it wishes to recommend to purchasers and perform during durability determination. New scheduled maintenance is that maintenance which did not exist prior to the 1980 model year, including that which is a direct result of the implementation of new technology not found in production prior to the 1980 model year. The manufacturer must also include its recommendations as to the category (*i.e.*, emission-related or non-emission-related, critical or non-critical) of the subject maintenance and, for suggested emission-related maintenance, the maximum feasible maintenance interval. Such requests must include detailed evidence supporting the need for the maintenance requested, and supporting data or other substantiation for the recommended maintenance category and for the interval suggested for emission-related maintenance. Requests for new scheduled maintenance must be approved prior to the introduction of the new maintenance. The Administrator will then designate the maintenance as emission-related or non-emission-related. For maintenance items established as emission-related, the Administrator will further designate the maintenance as critical if the component which receives the maintenance is a critical component under paragraph (b)(6) of this section. For each maintenance item designated as emission-related, the Administrator will also establish a technologically necessary maintenance interval, based on industry data and any other information available to EPA. Designations of emission-related maintenance items, along with their identification as critical or non-critical, and establishment of technologically necessary maintenance intervals, will be announced in the **Federal Register.**

(iii) Any manufacturer may request a hearing on the Administrator's determinations in paragraph (b)(7) of this section. The request shall be in writing, signed by an authorized representative of the manufacturer, and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objections. If, after review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078–6 with respect to such issue.

(c) Non-emission-related scheduled maintenance which is reasonable and technologically necessary (*e.g.*, oil change, oil filter change, fuel filter change, air filter change, cooling system maintenance, adjustment of idle speed, governor, engine bolt torque, valve lash, injector lash, timing, etc.) may be performed on durability-data vehicles at the intervals recommended by the manufacturer to the ultimate purchaser.

(d) *Unscheduled maintenance on light-duty durability data vehicles.* (1) Unscheduled maintenance may be performed during the testing used to determine deterioration factors, except as provided in paragraph (d)(2) and (d)(3) of this section, only under the following provisions:

(i) A fuel injector or spark plug may be changed if a persistent misfire is detected.

(ii) Readjustment of a gasoline-fueled vehicle cold-start enrichment system may be performed if there is a problem of stalling.

(iii) Readjustment of the engine idle speed (curb idle and fast idle) may be performed in addition to that performed as scheduled maintenance under paragraph (c) of this section, if the idle speed exceeds the manufacturer's recommended idle speed by 300 rpm or more, or if there is a problem of stalling.

(2) Any other unscheduled vehicle, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement during testing to determine deterioration factors shall be performed only with the advance approval of the Administrator. Such approval will be given if the Administrator:

(i) Has made a preliminary determination that the part failure or system malfunction, or the repair of such failure or malfunction, does not render the vehicle or engine unrepresentative of vehicles or engines in-use, and does not require direct access to the combustion chamber, except for spark plug, fuel injection component, or removable prechamber removal or replacement; and,

(ii) Has made a determination that the need for maintenance or repairs is indicated by an overt indication of malfunction such as persistent misfiring, engine stalling, overheating, fluid leakage, loss of oil pressure, excessive fuel consumption or excessive power loss. The Administrator shall be given the opportunity to verify the existence of

an overt indication of part failure and/or vehicle/engine malfunction (*e.g.*, misfiring, stalling, black smoke), or an activation of an audible and/or visible signal, prior to the performance of any maintenance to which such overt indication or signal is relevant under the provisions of this section.

(3) Emission measurement may not be used as a means of determining the need for unscheduled maintenance under paragraph (d)(2) of this section, except under the following conditions:

(i) The Administrator may approve unscheduled maintenance on durability-data vehicles based upon a significant change in emission levels that indicates a vehicle or engine malfunction. In these cases the Administrator may first approve specific diagnostic procedures to identify the source of the problem. The Administrator may further approve of specific corrections to the problem after the problem has been identified. The Administrator may only approve the corrective action after it is determined that:

(A) The malfunction was caused by nonproduction build practices or by a previously undetected design problem,

(B) The malfunction will not occur in production vehicles or engines in-use, *and*

(C) The deterioration factor generated by the durability-data vehicle or engine will remain unaffected by the malfunction or by the corrective action (*e.g.*, the malfunction was present for only a short period of time before detection, replacement parts are functionally representative of the proper mileage or hours, etc.).

(ii) Following any unscheduled maintenance approved under paragraph (d)(3)(i) of this section, the manufacturer shall perform an after-maintenance emissions test. If the Administrator determines that the after-maintenance emission levels for any pollutant indicates that the deterioration factor is no longer representative of production, the Administrator may disqualify the durability-data vehicle or engine.

(4) If the Administrator determines that part failure or system malfunction occurrence and/or repair rendered the vehicle/engine unrepresentative of vehicles in-use, the vehicle/engine shall not be used for determining deterioration factors.

(5) Repairs to vehicle components of a durability data vehicle other than the engine, emission control system, or fuel system, shall be performed only as a result of part failure, vehicle system malfunction, or with the advance approval of the Administrator.

(e) *Maintenance on emission data vehicles and engines.*

(1) Adjustment of engine idle speed on emission data vehicles may be performed once before the low-mileage/low-hour emission test point. Any other engine, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement on emission data vehicles shall be performed only with the advance approval of the Administrator.

(2) Maintenance on light-duty truck emission-data vehicles selected under § 86.085–24(b)(1) (v) or (vii), and permitted to be tested for purposes of § 86.088–23(c)(1)(ii) under the provisions of § 86.085–24(b)(2), may be performed in conjunction with emission control system modifications at the low-mileage test point, and shall be performed in accordance with the maintenance instructions to be provided to the ultimate purchaser required under § 86.087–38.

(3) Maintenance on those light-duty truck emission-data vehicles selected under § 86.085–24(b)(1)(v) which are not capable of being modified in the field for the purpose of complying with emission standards at an altitude other than that intended by the original design, may be performed in conjunction with the emission control system modifications at the low-mileage test point, and shall be approved in advance by the Administrator.

(4) Repairs to vehicle components of an emission data vehicle other than the engine, emission control system, or fuel system, shall be performed only as a result of part failure, vehicle system malfunction, or with the advance approval of the Administrator.

(f) Equipment, instruments, or tools may not be used to identify malfunctioning, maladjusted, or defective engine components unless the same or equivalent equipment, instruments, or tools will be available to dealerships and other service outlets and:

(1) Are used in conjuction with scheduled maintenance on such components, or

(2) Are used subsequent to the identification of a vehicle or engine malfunction, as provided in paragraph (d)(2) of this section for durability data vehicles or in paragraph (e)(1) of this section for emission-data vehicles, or

(3) Unless specifically authorized by the Administrator.

(g)(1) Paragraph (g) of this section applies to light-duty vehicles.

(2) Complete emission tests (see §§ 86.106 through 86.145) are required, unless waived by the Administrator, before and after scheduled maintenance approved for durability data vehicles. The manufacturer may perform emission tests before unscheduled maintenance. Complete emission tests are required after unscheduled maintenance which may reasonably be expected to affect emissions. The Administrator may waive the requirement to test after unscheduled maintenance. These test data may be submitted weekly to the Administrator, but shall be air posted or delivered within 7 days after completion of the tests, along with a complete record of all pertinent maintenance, including a preliminary engineering report of any malfunction diagnosis and the corrective action taken. A complete engineering report shall be delivered to the Administrator concurrently with the manufacturer's application for certification.

(h) All test data, maintenance reports, and required engineering reports shall be compiled and provided to the Administrator in accordance with § 86.088–23.

20. Section 86.087–28 is amended by revising paragraph (b)(6)(ii)(C), to read as follows:

§ 86.087–28 Compliance with emission standards.

* * * * *

(b) * * *

(6) * * *

(ii) * * *

(C) *Line crossing.* For the purposes of paragraph (b)(5) of this section, line crossing occurs when either of the interpolated 4,000- and 120,000-mile points of the best fit straight line exceed the applicable emission standard and at least one applicable data point exceeds the standard.

* * * * *

21. A new § 86.088–28 is added, to read as follows:

§ 86.088–28 Compliance with emission standards.

(a)(1) Paragraph (a) of this section applies to light-duty vehicles.

(2) The applicable exhaust and fuel evaporative emission standards (and family particulate emission limits, as appropriate) of this subpart apply to the emissions of vehicles for their useful life.

(3) Since it is expected that emission control efficiency will change with mileage accumulation on the vehicle, the emission level of a vehicle which has accumulated 50,000 miles will be used as the basis for determining compliance with the standards (or family particulate emission limit, as appropriate).

(4) The procedure for determining compliance of a new motor vehicle with exhaust emission standards (or family particulate emission limit, as appropriate) is as follows, except where

specified by paragraph (a)(7) of this section for the Alternative Durability Program:

(i) Separate emission deterioration factors shall be determined from the exhaust emission results of the durability-data vehicle(s) for each engine-system combination. A separate factor shall be established for exhaust HC, exhaust CO, exhaust NO_x, and exhaust particulate (diesel vehicles only) for each engine-system combination. A separate evaporative emission deterioration factor shall be determined for each evaporative emission family-evaporative emission control system combination from the testing conducted by the manufacturer (gasoline-fueled vehicles only).

(A) The applicable results to be used unless excluded by paragraph (a)(4)(i)(A)(*4*) of this section in determining the exhaust emission deterioration factors for each engine-system combination shall be:

(*1*) All valid exhaust emission data from the tests required under § 86.084–26(a)(4) except the zero-mile tests. This shall include the official test results, as determined in § 86.088–29 for all tests conducted on all durability-data vehicles of the combination selected under § 86.085–24(c) (including all vehicles elected to be operated by the manufacturer under § 86.085–24(c)(1)(ii)).

(*2*) All exhaust emission data from the tests conducted before and after the scheduled maintenance provided in § 86.088–25.

(*3*) All exhaust emission data from tests required by maintenance approved under § 86.088–25, in those cases where the Administrator conditioned his approval for the performance of such maintenance on the inclusion of such data in the deterioration factor calculation.

(*4*) The manufacturer has the option of applying an outlier test point procedure to completed durability data within its certification testing program for a given model year. The outlier procedure will be specified by the Administrator. For any pollutant, durability-data test points that are identified as outliers shall not be included in the determination of deterioration factors if the manufacturer has elected this option. The manufacturer shall specify to the Administrator before the certification of the first engine family for that model year, if it intends to use the outlier procedure. The manufacturer may not change procedures after the first engine family of the model year is certified. Where the manufacturer chooses to apply both the outlier procedure and averaging (as allowed under § 86.084–26(a)(6)(i)) to the same data set, the outlier procedure shall be completed prior to applying the averaging procedure.

(B) All applicable exhaust emission results shall be plotted as a function of the mileage on the system, rounded to the nearest mile, and the best fit straight lines, fitted by the method of least squares, shall be drawn through all these data points. The data will be acceptable for use in the calculation of the deterioration factor only if the interpolated 4,000-mile and 50,000-mile points on this line are within the low-altitude standards provided in § 86.087–8. Exceptions to this where data are still acceptable are when a best fit straight line crosses an applicable standard but no data points exceeded the standard, or the best fit straight line crosses an applicable standard with a negative slope (the 4,000-mile interpolated point is higher than the 50,000-mile interpolated point) but the 50,000-mile actual data point is below the standard. A multiplicative exhaust emission deterioration factor shall be calculated for each engine-system combination as follows:

Factor = Exhaust emissions interpolated to 50,000 miles divided by exhaust emissions interpolated to 4,000 miles.

These interpolated values shall be carried out to a minimum of four places to the right of the decimal point before dividing one by the other to determine the deterioration factor. The results shall be rounded to three places to the right of the decimal point in accordance with ASTM E 29–67.

(C) An evaporative emissions deterioration factor (gasoline-fueled vehicles only) shall be determined from the testing conducted as described in § 86.088–21(b)(4)(i), for each evaporative emission family-evaporative emission control system combination to indicate the evaporative emission level at 50,000 miles relative to the evaporative emission level at 4,000 miles as follows:

Factor = Evaporative emission level at 50,000 miles minus the evaporative emission level at 4,000 miles.

The factor shall be established to a minimum of two places to the right of the decimal.

(ii)(A) The official exhaust emission test results for each emission-data vehicle at the selected test point shall be multiplied by the appropriate deterioration factor: *Provided*, that if a deterioration factor as computed in paragraph (a)(4)(i)(B) of this section is less than one, that deterioration factor shall be one for the purposes of this paragraph.

(B) The official evaporative emission test results (gasoline-fueled vehicles only) for each evaporative emission-data vehicle at the selected test point shall be adjusted by addition of the appropriate deterioration factor: *Provided*, that if a deterioration factor as computed in paragraph (a)(4)(i)(C) of this section is less than zero, that deterioration factor shall be zero for the purposes of this paragraph.

(iii) The emissions to compare with the standard (or the family particulate emission limit, as appropriate) shall be the adjusted emissions of paragraphs (a)(4)(ii) (A) and (B) of this section for each emission-data vehicle. Before any emission value is compared with the standard (or the family particulate emission limit, as appropriate), it shall be rounded, in accordance with ASTM E 29–67, to two significant figures. The rounded emission values may not exceed the standard (or the family particulate emission limit, as appropriate).

(iv) Every test vehicle of an engine family must comply with the exhaust emission standards (or the family particulate emission limit, as appropriate), as determined in paragraph (a)(4)(iii) of this section, before any vehicle in that family may be certified.

(v) Every test vehicle of an evaporative emission family must comply with the evaporative emission standard, as determined in paragraph (a)(4)(iii) of this section, before any vehicle in that family may be certified.

(5) If a manufacturer chooses to change the level of any family particulate emission limit(s) in the particulate averaging program, compliance with the new limit(s) must be based upon existing certification data.

(6) If a manufacturer chooses to participate in the diesel particulate averaging program, the production-weighted average of the family particulate emission limits of all affected engine families must comply with the particulate standard in § 86.087–8(a)(1)(iv), or the composite particulate standard defined in § 86.085–2, as appropriate, at the end of the production year.

(7) The procedure to determine the compliance of new motor vehicles in the Alternative Durability Program (described in § 86.085–13) is the same as described in paragraphs (a)(4)(iii) through (a)(4)(v) of this section. For the engine families that are included in the Alternative Durability Program, the exhaust emission deterioration factors used to determine compliance shall be those that the Administrator has approved under § 86.085–13(c). The

evaporative emission deterioration factor for each evaporative emission family shall be determined and applied according to paragraph (a)(4) of this section. The procedures to determine the minimum exhaust emissions deterioration factors required under § 86.085–13(d) are as follows:

(i) Separate deterioration factors shall be determined from the exhaust emission results of the durability-data vehicles for each engine family group. A separate factor shall be established for exhaust HC, exhaust CO, and exhaust NOx for each engine family group. The evaporative emission deterioration factor for each evaporative family will be determined and applied in accordance with paragraph (a)(4) of this section.

(ii) The deterioration factors for each engine family group shall be determined by the Administrator using historical durability data from as many as three previous model years. These data will consist of deterioration factors generated by durability-data vehicles representing certified engine families and of deterioration factors from vehicles selected under § 86.085–24(h). The Administrator shall determine how these data will be combined for each engine family group.

(A) The test results to be used in the calculation of each deterioration factor to be combined for each engine family group shall be those test results specified in paragraph (a)(4)(i)(A) of this section.

(B) For each durability-data vehicles selected under § 86.085–24(h), all applicable exhaust emissions results shall be plotted as a function of the mileage on the system rounded to the nearest mile, and the best fit straight lines, fitted by method of least squares, shall be drawn through all these data points. The exhaust deterioration factor for each durability-data vehicles shall be calculated as specified in paragraph (a)(4)(i)(B) of this section.

(C) *Line-crossing.* For the purposes of paragraph (a)(5) of this section, line crossing occurs when either of the interpolated 4,000- and 50,000-mile points of the best fit straight line exceeds the applicable emission standard and at least one applicable data point exceeds the standard.

(*1*) The Administrator will not accept for certification line-crossing data from preproduction durability-data vehicles selected under § 86.085–24(c), § 86.085–24(h)(2), or (h)(3).

(*2*) The Administrator will not accept for certification line-crossing data from production durability-data vehicles selected under § 86.085–24(h)(1) unless the 4,000-mile test result multiplied by the engine family group deterioration factor does not exceed the applicable emission standards. The deterioration factors used for this purpose shall be those that were used in the certification of the production vehicle. Manufacturers may calculate this product immediately after the 4,000-mile test of the vehicle. If the product exceeds the applicable standards, the manufacturer may, with the approval of the Administrator, discontinue the vehicle and substitute a new vehicle. The manufacturer may continue the original vehicle, but the data will not be acceptable if line crossing occurs.

(b)(1) Paragraph (b) of this section applies to light-duty trucks.

(2) The exhaust and fuel evaporative emission standards (and family particulate emission limits, and family NO_x emisssion limits, as appropriate) of § 86.088–9 apply to the emissions of vehicles for their useful life.

(3) Since emission control efficiency generally decreases with the accumulation of mileage on the vehicle, deterioration factors will be used in combination with emission-data vehicle test results as the basis for determining compliance with the standards (or family particulate emission limit, or family NO_x emission limit, as appropriate).

(4)(i) Paragraph (b)(4) of this section describes the procedure for determining compliance of a new vehicle with exhaust emission standards (or family particulate emission limit, or family NO_x emission limit, as appropriate), based on deterioration factors supplied by the manufacturers, except where specified by paragraph (b)(5) of this section for the Alternative Durability Program.

(ii) Separate exhaust emission deterioration factors, determined from tests of vehicles, engines, subsystems, or components conducted by the manufacturer, shall be supplied for each engine-system combination. Separate factors shall be established for transient HC, CO, and NO_x, idle CO (gasoline vehicles only), and exhaust particulate (diesel vehicles only).

(iii) For transient HC, CO, and NO_x, idle CO (gasoline vehicles only), and exhaust particulate (diesel vehicles only), the official exhaust emission results for each emission-data vehicle at the selected test point shall be adjusted by multiplication by the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragraph.

(iv) The emission values to compare with the standards (or family particulate emission limit, or family NO_x emission limit, as appropriate) shall be the adjusted emission values of paragraph (b)(4)(iii) of this section rounded to two significant figures in accordance with ASTM E 29–67 for each emission-data engine.

(5)(i) Paragraph (b)(5)(i) of this section applies only to manufacturers electing to participate in the particulate averaging program.

(A) If a manufacturer chooses to change the level of any family particulate emission limit(s), compliance with the new limit(s) must be based upon existing certification data.

(B) The production-weighted average of the family particulate emission limits of all applicable engine families, rounded to two significant figures in accordance with ASTM E 29–67, must comply with the particulate standards in § 86.088–9 (a)(1)(iv) or (d)(1)(iv), or the composite particulate standard defined in § 86.085–2, as appropriate, at the end of the product year.

(ii) Paragraph (b)(5)(ii) of this section applies only to manufacturers electing to participate in the NO_x averaging program.

(A) If a manufacturer chooses to change the level of any family NO_x emission limit(s), compliance with the new limit(s) must be based upon existing certification data.

(B) The production-weighted average of the family NO_x emission limits of all applicable engine families, rounded to two significant figures in accordance with ASTM E 29–67, must comply with the NO_x emission standards of § 86.088–9(a)(1)(iii) (A) or (B), or of § 86.088–9(d)(1)(iii) (A) or (B), or the composite NO_x standard as defined in § 86.088–2, at the end of the product year.

(6) The procedure to determine the compliance of new motor vehicles in the Alternative Durability Program (described in § 86.085–13) is the same as described in paragraphs (b)(4)(iv), (b)(7)(iv) and (b)(8) of this section. For the engine families that are included in the Alternative Durability Program, the exhaust emission deterioration factors used to determine compliance shall be those that the Administrator has approved under § 86.085–13(c). The evaporative emission deterioration factor for each evaporative emission family shall be determined and applied according to paragraph (b)(7) of this section. The procedures to determine the minimum exhaust emissions deterioration factors required under § 86.085–13(d) are as follows:

(i) Separate deterioration factors shall be determined from the exhaust emission results of the durability-data vehicles for each engine family group. A separate factor shall be established for

exhaust HC, exhaust CO, and exhaust NO_x for each engine family group. The evaporative emission deterioration factor for each evaporative family will be determined and applied in accordance with paragraph (b)(6) of this section.

(ii) The deterioration factors for each engine family group shall be determined by the Administrator using historical durability data from as many as three previous model years. These data will consist of deterioration factors generated by durability-data vehicles representing certified engine families and of deterioration factors from vehicles selected under § 86.085–24(h). The Administrator shall determine how these data will be combined for each engine family group.

(A) The test results to be used in the calculations of each deterioration factor to be combined for each engine family group shall be those test results specified in paragraph (a)(4)(i)(A) of this section.

(B) For each durability-data vehicle selected under § 86.085–24(h), all applicable exhaust emission results shall be plotted as a function of the mileage on the system rounded to the nearest mile, and the best fit straight lines, fitted by the method of least squares, shall be drawn through all these data points. The exhaust deterioration factor for each durability-data vehicle shall be calculated as specified in paragraph (a)(4)(i)(B) of this section.

(C) *Line crossing.* For the purposes of paragraph (b)(5) of this section, line crossing occurs when either of the interpolated 4,000– and 120,000 mile points of the best fit straight line exceeds the applicable emission standard and at least one applicable data point exceeds the standard.

(*1*) The Administrator will not accept for certification line-crossing data from preproduction durability-data vehicles selected under § 86.085–24(c)(1), or § 86.085–24(h)(2) or (h)(3).

(*2*) The Administrator will not accept for certification line-crossing data from production durability-data vehicles selected under § 86.085–24(h)(1) unless the 4,000-mile test result multiplied by the engine family group deterioration factor does not exceed the applicable emission standard. The deterioration factors used for this purpose shall be those that were used in the certification of the production vehicle. Manufacturers may calculate this product immediately after the 4,000-mile test of the vehicle. If the product exceeds the applicable standard, the manufacturer may, with the approval of the Administrator, discontinue the vehicle and substitute a new vehicle. The manufacturer may continue the original vehicle, but the data will not be acceptable if line crossing occurs.

(7)(i) Paragraph (b)(7) of this section describes the procedure for determining compliance of a new vehicle with fuel evaporative emission standards. The procedure described here shall be used for all vehicles in all model years.

(ii) The manufacturer shall determine, based on testing described in § 86.088–21(b)(4)(i), and supply an evaporative emission deterioration factor for each evaporative emission family-evaporative emission control system combination. The factor shall be calculated by subtracting the emission level at the selected test point from the emission level at the useful life point.

(iii) The official evaporative emission test results for each evaporative emission-data vehicle at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(iv) The emission value to compare with the standards shall be the adjusted emission value of paragraph (b)(7)(iii) of this section rounded to two significant figures in accordance with ASTM E 29–67 for each evaporative emission-data vehicle.

(8) Every test vehicle of an engine family must comply with all applicable standards (and family particulate emission limits, and family NO_x emission limits, as appropriate), as determined in paragraphs (b)(4)(iv) and (b)(7)(iv) of this section, before any vehicle in that family will be certified.

(c)(1) Paragraph (c) of this section applies to heavy-duty engines.

(2) The exhaust emission standards for gasoline-fueled engines in § 86.088–10 or for diesel engines in § 86.088–11 apply to the emissions of engines for their useful life.

(3) Since emission control efficiency generally decreases with the accumulation of service on the engine, deterioration factors will be used in combination with emission-data engine test results as the basis for determining compliance with the standards.

(4)(i) Paragraph (c)(4) of this section describes the procedure for determining compliance of an engine with emission standards, based on deterioration factors supplied by the manufacturer.

(ii) Separate exhaust emission deterioration factors, determined from tests of engines, subsystems, or components conducted by the manufacturer, shall be supplied for each engine-system combination. For gasoline engines, separate factors shall be established for transient HC, CO, and NO_x; and for idle CO, for those engines utilizing aftertreatment technology (*e.g.*, catalytic converters). For diesel engines, separate factors shall be established for transient HC, CO, NO_x, and exhaust particulate. For diesel smoke testing, separate factors shall also be established for the acceleration mode (designated as "A"), the lugging mode (designated as "B"), and peak opacity (designated as "C").

(iii)(A) Paragraph (c)(4)(iii)(A) of this section applies to gasoline-fueled heavy-duty engines.

(*1*) *Gasoline-fueled heavy-duty engines not utilizing aftertreatment technology (e.g., catalytic converters).* For transient HC, CO, and NO_x, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(*2*) *Gasoline-fueled heavy-duty engines utilizing aftertreatment technology (e.g., catalytic converters).* For transient HC, CO, and NO_x, and for idle CO, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by multiplication by the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragraph.

(B) Paragraph (c)(4)(iii)(B) of this section applies to diesel heavy-duty engines.

(*1*) *Diesel heavy-duty engines not utilizing aftertreatment technology e.g., particulate traps).* For transient HC, CO, NO_x, and particulate, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(*2*) *Diesel heavy-duty engines utilizing aftertreatment technology (e.g., particulate traps).* For transient HC, CO, NO_x, and particulate, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by multiplication by the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragraph.

(3) For acceleration smoke ("A"), lugging smoke ("B"), and peak smoke ("C"), the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(iv) The emission values to compare with the standards shall be the adjusted emission values of paragraph (c)(4)(iii) of this section rounded to two significant figures in accordance with ASTM E 29–67 for each emission-data engine.

(5) [Reserved]

(6) [Reserved]

(7) Every test engine of an engine family must comply with all applicable standards, as determined in paragraph (c)(4)(iv) of this section, before any engine in that family will be certified.

(d)(1) Paragraph (d) of this section applies to gasoline-fueled heavy-duty vehicles.

(2) The applicable fuel evaporative emission standard in § 86.088–10 applies to the emissions of vehicles for their useful life.

(3)(i) For vehicles with a GVWR of up to 26,000 pounds, because it is expected that emission control efficiency will change during the useful life of the vehicle, an evaporative emission deterioration factor shall be determined from the testing described in § 86.088–23(b)(3) for each evaporative emission family-evaporative emission control system combination to indicate the evaporative emission control system deterioration during the useful life of the vehicle (minimum 50,000 miles). The factor shall be established to a minimum of two places to the right of the decimal.

(ii) For vehicles with a GVWR of greater than 26,000 pounds, because it is expected that emission control efficiency will change during the useful life of the vehicle, each manufacturer's statement as required in § 86.088–23(b)(4)(ii) shall include, in accordance with good engineering practice, consideration of control system deterioration.

(4) The evaporative emission test results, if any, shall be adjusted by the addition of the appropriate deterioration factor: *Provided*, that if the deterioration factor as computed in paragraph (d)(3) of this section is less than zero, that deterioration factor shall be zero for the purposes of this paragraph.

(5) The emission level to compare with the standard shall be the adjusted emission level of paragraph (d)(4) of this section. Before any emission value is compared with the standard, it shall be rounded, in accordance with ASTM E 29–67, to two significant figures. The rounded emission values may not exceed the standard.

(6) Every test vehicle of an evaporative emission family must comply with the evaporative emission standard, as determined in paragraph (d)(5) of this section, before any vehicle in that family may be certified.

22. A new § 86.091–28 is added, to read as follows:

§ 86.091–28 Compliance with emission standards.

(a)(1) Paragraph (a) of this section applies to light-duty vehicles.

(2) The applicable exhaust and fuel evaporative emissions standards (and family particulate emission limits, as appropriate) of this subpart apply to the emissions of vehicles for their useful life.

(3) Since it is expected that emission control efficiency will change with mileage accumulation on the vehicle, the emission level of a vehicle which has accumulated 50,000 miles will be used as the basis for determining compliance with the standards (or family particulate emission limit, as appropriate).

(4) The procedure for determining compliance of a new motor vehicle with exhaust emission standards (or family particulate emission limit, as appropriate) is as follows, except where specified by paragraph (a)(7) of this section for the Alternative Durability Program:

(i) Separate emission deterioration factors shall be determined from the exhaust emission results of the durability-data vehicle(s) for each engine-system combination. A separate factor shall be established for exhaust HC, exhaust CO, exhaust NO_x, and exhaust particulate (Diesel vehicles only) for each engine-system combination. A separate evaporative emission deterioration factor shall be determined for each evaporative emission family-evaporative emission control system combination from the testing conducted by the manufacturer (gasoline fueled vehicles only).

(A) The applicable results to be used unless excluded by paragraph (a)(4)(i)(A)(*4*) of this section in determining the exhaust emission deterioration factors for each engine-system combination shall be:

(*1*) All valid exhaust emission data from the tests required under § 86.084–26(a)(4) except the zero-mile tests. This shall include the official test results, as determined in § 86.091–29 for all tests conducted on all durability-data vehicles of the combination selected under § 86.085–24(c) (including all vehicles elected to be operated by the manufacturer under § 86.085–24(c)(1)(ii)).

(*2*) All exhaust emission data from the tests conducted before and after the scheduled maintenance provided in § 86.088–25.

(*3*) All exhaust emission data from tests required by maintenance approved under § 86.088–25, in those cases where the Administrator conditioned his approval for the performance of such maintenance on the inclusion of such data in the deterioration factor calculation.

(*4*) The manufacturer has the option of applying an outlier test point procedure to completed durability data within its certification testing program for a given model year. The outlier procedure will be specified by the Administrator. For any pollutant, durability-data test points that are identified as outliers shall not be included in the determination of deterioration factors if the manufacturer has elected this option. The manufacturer shall specify to the Administrator before the certification of the first engine family for that model year, if it intends to use the outlier procedure. The manufacturer may not change procedures after the first engine family of the model year is certified. Where the manufacturer chooses to apply both the outlier procedure and averaging (as allowed under § 86.084–26(a)(6)(i)) to the same data set, the outlier procedure shall be completed prior to applying the averaging procedure.

(B) All applicable exhaust emission results shall be plotted as a function of the mileage on the system, rounded to the nearest mile, and the best fit straight lines, fitted by the method of least squares, shall be drawn through all these data points. The data will be acceptable for use in the calculation of the deterioration factor only if the interpolated 4,000-mile and 50,000-mile points on this line are within the low-altitude standards provided in § 86.087–8. Exceptions to this where data are still acceptable are when a best fit straight line crosses an applicable standard but no data points exceeded the standard, or the best fit straight line crosses an applicable standard with a negative slope (the 4,000-mile interpolated point is higher than the 50,000-mile interpolated point) but the 50,000-mile actual data point is below the standard. An multiplicative exhaust emission deterioration factor shall be calculated for each engine-system combination as follows:

Factor = Exhaust emissions interpolated to 50,000 miles divided by exhaust emissions interpolated to 4,000 miles.

These interpolated values shall be carried out to a minimum of four places to the right of the decimal point before dividing one by the other to determine the deterioration factor. The results shall be rounded to three places to the right of the decimal point in accordance with ASTM E 29–67.

(C) An evaporative emissions deterioration factor (gasoline-fueled vehicles only) shall be determined from the testing conducted as described in § 86.091–21(b)(4)(i), for each evaporative emission family-evaporative emission control system combination to indicate the evaporative emission level at 50,000 miles relative to the evaporative emission level at 4,000 miles as follows:

Factor = Evaporative emission level at 50,000 miles minus the evaporative emission level at 4,000 miles.

The factor shall be established to a minimum of two places to the right of the decimal.

(ii)(A) The official exhaust emission test results for each emission-data vehicle at the selected test point shall be multiplied by the appropriate deterioration factor: *Provided*, that if a deterioration factor as computed in paragraph(a)(4)(i)(B) of this section is less than one, that deterioration factor shall be one for the purposes of this paragraph.

(B) The official evaporative emission test results (gasoline-fueled vehicles only) for each evaporative emission-data vehicle at the selected test point shall be adjusted by addition of the appropriate deterioration factor: *Provided*, that if a deterioration factor as computed in paragraph (a)(4)(i)(C) of this section is less than zero, that deterioration factor shall be zero for the purposes of this paragraph.

(iii) The emissions to compare with the standard (or the family particulate emission limit, as appropriate) shall be the adjusted emissions of paragraphs (a)(4)(ii) (A) and (B) of this section for each emission-data vehicle. Before any emission value is compared with the standard (or the family particulate emission limit, as appropriate), it shall be rounded, in accordance with ASTM E 29–67, to two significant figures. The rounded emission values may not exceed the standard (or the family particulate emission limit, as appropriate).

(iv) Every test vehicle of an engine family must comply with the exhaust emission standards (or the family particulate emission limit, as appropriate), as determined in paragraph (a)(4)(iii) of this section, before any vehicle in that family may be certified.

(v) Every test vehicle of an evaporative emission family must comply with the evaporative emission standard, as determined in paragraph (a)(4)(iii) of this section, before any vehicle in that family may be certified.

(5) If a manufacturer chooses to change the level of any family particulate emission limit(s) in the particulate averaging program, compliance with the new limit(s) must be based upon existing certification data.

(6) If a manufacturer chooses to participate in the diesel particulate averaging program, the production-weighted average of the family particulate emission limits of all affected engine families must comply with the particulate standards in § 86.087–8(a)(1)(iv), or the composite particulate standard defined in § 86.085–2, as appropriate, at the end of the production year.

(7) The procedure to determine the compliance of new motor vehicles in the Alternative Durability Program (described in § 86.085–13) is the same as described in paragraphs (a)(4)(iii) through (a)(4)(v) of this section. For the engine families that are included in the Alternative Durability Program, the exhaust emission deterioration factors used to determine compliance shall be those that the Administrator has approved under § 86.085–13(c). The evaporative emission deterioration factor for each evaporative emission family shall be determined and applied according to paragraph (a)(4) of this section. The procedures to determine the minimum exhaust emissions deterioration factors required under § 86.085–13(d) are as follows:

(i) Separate deterioration factors shall be determined from the exhaust emission results of the durability-data vehicles for each engine family group. A separate factor shall be established for exhaust HC, exhaust CO, and exhaust NO_x for each engine family group. The evaporative emission deterioration factor for each evaporative family will be determined and applied in accordance with paragraph (a)(4) of this section.

(ii) The deterioration factors for each engine family group shall be determined by the Administrator using historical durability data from as many as three previous model years. These data will consist of deterioration factors generated by durability-data vehicles representing certified engine families and of deterioration factors from vehicles selected under § 86.085–24(h). The Administrator shall determine how these data will be combined for each engine family group.

(A) The test result to be used in the calculation of each deterioration factor to be combined for each engine family group shall be those test results specified in paragraph (a)(4)(i)(A) of this section.

(B) For each durability-data vehicles selected under § 86.085–24(h), all applicable exhaust emissions results shall be plotted as a function of the mileage on the system rounded to the nearest mile, and the best fit straight lines, fitted by method of least squares, shall be drawn through all these data points. The exhaust deterioration factor for each durability-data vehicles shall be calculated as specified in paragraph (a)(4)(i)(B) of this section.

(C) *Line-crossing.* For the purposes of paragraph (a)(5) of this section, line crossing occurs when either of the interpolated 4,000- and 50,000-mile points of the best fit straight line exceeds the applicable emission standard and at least one applicable data point exceeds the standard.

(*1*) The Administrator will not accept for certification line-crossing data from preproduction durability-data vehicles selected under § 86.085–24(c), § 86.085–24(h)(2), or (h)(3).

(*2*) The Administrator will not accept for certification line-crossing data from production durability-data vehicles selected under § 86.085–24(h)(1) unless the 4,000-mile test result multiplied by the engine family group deterioration factor does not exceed the applicable emission standards. The deterioration factors used for this purpose shall be those that were used in the certification of the production vehicle. Manufacturers may calculate this product immediately after the 4,000-mile test of the vehicle. If the product exceeds the applicable standards, the manufacturer may, with the approval of the Administrator, discontinue the vehicle and substitute a new vehicle. The manufacturer may continue the original vehicle, but the data will not be acceptable if line crossing occurs.

(b)(1) Paragraph (b) of this section applies to light-duty trucks.

(2) The exhaust and fuel evaporative emission standards of § 86.088–9 (and the family particulate emission limits, and family NO_x emission limits, as appropriate) apply to the emissions of vehicles for their useful life.

(3) Since emission control efficiency generally decreases with the accumulation of mileage on the vehicle, deterioriation factors will be used in combination with emission-data vehicle test results as the basis for determining compliance with the standards (or the family particulate emission limit, or

family NO_x emission limit, as appropriate).

(4)(i) Paragraph (b)(4) of this section describes the prodedure for determining compliance of a new vehicle with exhaust emission standards (or the family particulate emission limit, or the family NO_x emission limit, as appropriate), based on deterioration factors supplied by the manufacturers, except where specified by paragraph (b)(5) of this section for the Alternative Durability Program.

(ii) Separate exhaust emission deterioration factors, determined from tests of vehicles, engines, subsystems, or components conducted by the manufacturer, shall be supplied for each engine-system combination. Separate factors shall be established for transient HC, CO, and NO_x, idle CO (gasoline vehicles only), and exhaust particulate (diesel vehicles only).

(iii) For transient HC, CO, and NO_x, idle CO (gasoline vehicles only), and exhaust particulate (diesel vehicles only), the official exhaust emission results for each emission-data vehicle at the selected test point shall be adjusted by multiplication by the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purpose of this paragraph.

(iv) The emission values to compare with the standards (or family particulate emission limit, or family NO_x emission limit, as appropriate) shall be the adjusted emission values of paragraph (b)(4)(iii) of this section rounded to two significant figures in accordance with ASTM E 29–67 for each emission-data engine.

(5)(i) Paragraph (b)(5)(i) of this section applies only to manufacturers electing to participate in the particulate averaging program.

(A) If a manufacturer chooses to change the level of any family particulate emission limit(s), compliance with the new limit(s) must be based upon existing certification data.

(B) The production-weighted average of the family particulate emission limits of all applicable engine families, rounded to two significant figures in accordance with ASTM E 29–67, must comply with the particulate standards in § 86.088–9 (a)(1)(iv) or (d)(1)(iv), or the composite particulate standard as defined in § 86.085–2, as appropriate, at the end of the product year.

(ii) Paragraph (b)(5)(ii) of this section applies only to manufacturers electing to participate in the NO_x averaging program.

(A) If a manufacturer chooses to change the level of any family NO_x emission limit(s), compliance with the new limit(s) must be based upon existing certification data.

(B) The production-weighted average of the family NO_x emission limits of all applicable engine families, rounded to two significant figures in accordance with ASTM E 29–67, must comply with the NO_x emission standards of § 86.088–9(a)(1)(iii) (A) or (B), or of § 86.088–9(d)(1)(iii) (A) or (B), or the composite NO_x standard as defined in § 86.088–2, at the end of the product year.

(6) The procedure to determine the compliance of new motor vehicles in the Alternative Durability Program (described in § 86.085–13) is the same as described in paragraph (b)(4)(iv), (b)(7)(iv) and (b)(8) of this section. For the engine families that are included in the Alternative Durability Program, the exhause emission deterioration factors used to determine compliance shall be those that the Administrator has approved under § 86.085–13(c). The evaporative emission deterioration factor for each evaporative emission family shall be determined and applied according to paragraph (b)(7) of this section. The procedures to determine the minimum exhaust emissions deterioration factors required under § 86.085–13(d) are as follows:

(i) Separate deterioration factors shall be determined from the exhaust emission results of the durability-data vehicles for each engine family group. A separate factor shall be established for exhaust HC, exhaust CO, and exhaust NO_x for each engine family group. The evaporative emission deterioration factor for each evaporative family will be determined and applied in accordance with paragraph (b)(6) of this section.

(ii) The deterioration factors for each engine family group shall be determined by the Administrator using historical durability data from as many as three previous model years. These data will consist of deterioration factors generated by durability-data vehicles representing certified engine families and of deterioration factors from vehicles selected under § 86.085–24(h). The Administrator shall determine how these data will be combined for each engine family group.

(A) The test results to be used in the calculations of each deterioration factor to be combined for each engine family group shall be those test results specified in paragraph (a)(4)(i)(A) of this section.

(B) For each durability-data vehicle selected under § 86.085–24(h), all applicable exhaust emission results shall be plotted as a function of the mileage on the system rounded to the nearest mile, and the best fit straight lines, fitted by the method of least squares, shall be drawn through all these data points. The exhaust deterioration factor for each durability-data vehicle shall be calculated as specified in paragraph (a)(4)(i)(B) of this section.

(C) *Line crossing.* For the purposes of paragraph (b)(5) of this section, line crossing occurs when either of the interpolated 4,000- and 120,000-mile points of the best fit straight line exceeds the applicable emission standard and at least one applicable data point exceeds the standard.

(*1*) The Administrator will not accept for certification line-crossing data from preproduction durability-data vehicles selected under § 86.085–24(c)(1), or § 86.085–24 (h)(2) or (h)(3).

(*2*) The Administrator will not accept for certification line-crossing data from production durability-data vehicles selected under § 86.085–24(h)(1) unless the 4,000-mile test result multiplied by the engine family group deterioration factor does not exceed the applicable emission standard. The deterioration factors used for this purpose shall be those that were used in the certification of the production vehicle. Manufacturers may calculate this product immediately after the 4,000-mile test of the vehicle. If the product exceeds the applicable standard, the manufacturer may, with the approval of the Administrator, discontinue the vehicle and substitute a new vehicle. The manufacturer may continue the original vehicle, but the data will not be acceptable if line crossing occurs.

(7)(i) Paragraph (b)(7) of this section describes the procedure for determining compliance of a new vehicle with fuel evaporative emission standards. The procedure described here shall be used for all vehicles in all model years.

(ii) The manufacturer shall determine, based on testing described in § 86.091–21(b)(4)(i), and supply an evaporative emission deterioration factor for each evaporative emission family-evaporative emission control system combination. The factor shall be calculated by subtracting the emission level at the selected test point from the emission level at the useful life point.

(iii) The official evaporative emission test results for each evaporative emission-data vehicle at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(iv) The emission value to compare with the standards shall be the adjusted

emission value of paragraph (b)(7)(iii) of this section rounded to two significant figures in accordance with ASTM E 29–67 for each evaporative emission-data vehicle.

(8) Every test vehicle of an engine family must comply with all applicable standards (and family particulate emission limits, and family NO_x emission limits, as appropriate), as determined in paragraphs (b)(4)(iv) and (b)(7)(iv) of this section, before any vehicle in that family will be certified.

(c)(1) Paragraph (c) of this section applies to heavy-duty engines.

(2) The exhaust emission standards for gasoline fueled engines in § 86.091–10 or for diesel engines in § 86.091–11 apply to the emissions of engines for their useful life.

(3) Since emission control efficiency generally decreases with the accumulation of service on the engine, deterioration factors will be used in combination with emission-data engine test results as the basis for determining compliance with the standards.

(4)(i) Paragraph (c)(4) of this section describes the procedure for determining compliance of an engine with emission standards (or family particulate limits, or family NO_x emission limits, as appropriate), based on deterioration factors supplied by the manufacturer.

(ii) Separate exhaust emission deterioration factors, determined from tests of engines, subsystems, or components conducted by the manufacturer, shall be supplied for each engine-system combination. For gasoline-fueled engines, separate factors shall be established for transient HC, CO, and NO_x; and idle CO, for those engines utilizing aftertreatment technology (*e.g.*, catalytic converters). For diesel engines, separate factors shall be established for transient HC, CO, NO_x, and exhaust particulate. For diesel smoke testing, separate factors shall also be established for the acceleration mode (designated as "A"), the lugging mode (designated as "B"), and peak opacity (designated as "C").

(iii)(A) Paragraph (c)(4)(iii)(A) of this section applies to gasoline-fueled heavy-duty engines.

(*1*) *Gasoline-fueled heavy-duty engines not utilizing aftertreatment technology (e.g., catalytic converters).* For transient HC, CO, and NO_x, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(*2*) *Gasoline-fueled heavy-duty engines utilizing aftertreatment technology (e.g., catalytic converters).* For transient HC, CO, and NO_x, and for idle CO, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by multiplication by the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragraph.

(B) Paragraph (c)(4)(iii)(B) of this section applies to diesel heavy-duty engines.

(*1*) *Diesel heavy-duty engines not utilizing aftertreatment technology (e.g., particulate traps).* For transient HC, CO, NO_x, and exhaust particulate, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(*2*) *Diesel heavy-duty engines utilizing aftertreatment technology (e.g., particulate traps).* For transient HC, CO, NO_x, and exhaust particulate, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by multiplication by the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragraph.

(*3*) For acceleration smoke ("A"), lugging smoke ("B"), and peak smoke ("C"), the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(iv) The emission values to compare with the standards (or family particulate emission limits, or family NO_x, emission limits, as appropriate) shall be the adjusted emission values of paragraph (c)(4)(iii) of this section rounded to two significant figures in accordance with ASTM E 29–67 for each emission-data engine.

(5) [Reserved]

(6) [Reserved]

(7) Every test engine of an engine family must comply with all applicable standards (or family particulate emission limits, or family NO_x emission limits, as appropriate), as determined in paragraph (c)(4)(iv) of this section, before any engine in that family will be certified.

(d)(1) Paragraph (d) of this section applies to gasoline-fueled heavy-duty vehicles.

(2) The applicable fuel evaporative emission standard in § 86.088–10 applies to the emissions of vehicles for their useful life.

(3)(i) For vehicles with a GVWR of up to 26,000 pounds, because it is expected that emission control efficiency will change during the useful life of the vehicle, an evaporative emission deterioration factor shall be determined from the testing described in § 86.088–23(b)(3) for each evaporative emission family-evaporative emission control system combination to indicate the evaporative emission control system deterioration during the useful life of the vehicle (minimum 50,000 miles). The factor shall be established to a minimum of two places to the right of the decimal.

(ii) For vehicles with a GVWR of greater than 26,000 pounds, becaue it is expected that emission control efficiency will change during the useful life of the vehicle, each manufacturer's statement as required in § 86.088–23(b)(4)(ii) shall include, in accordance with good engineering practice, consideration of control system deterioration.

(4) The evaporative emission test results, if any, shall be adjusted by the addition of the appropriate deterioration factor: *Provided*, that if the deterioration factor as computed in paragraph (d)(3) of this section is less than zero, that deterioration factor shall be zero for the purposes of this paragraph.

(5) The emission level to compare with the standard shall be the adjusted emission level of paragraph (d)(4) of this section. Before any emission value is compared with the standard, it shall be rounded, in accordance with ASTM E 29–67, to two significant figures. The rounded emission values may not exceed the standard.

(6) Every test vehicle of an evaporative emission family must comply with the evaporative emission standard, as determined in paragraph (d)(5) of this section, before any vehicle in that family may be certified.

23. A new § 86.088–29 is added, to read as follows:

§ 86.088–29 Testing by the Administrator.

(a)(1) Paragraph (a) of this section applies to light-duty vehicles and light-duty trucks.

(2) The Administrator may require that any one or more of the test vehicles be submitted to him, at such place or places as he may designate, for the

purposes of conducting emissions tests. The Administrator may specify that he will conduct such testing at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator shall be made available by the manufacturer for test operations. Any testing conducted at a manufacturer's facility pursuant to this paragraph shall be scheduled by the manufacturer as promptly as possible.

(3)(i) Whenever the Administrator conducts a test on a test vehicle, the results of that test shall, unless subsequently invalidated by the Administrator, comprise the official data for the vehicle at the prescribed test point and the manufacturer's data for that prescribed test point shall not be used in determining compliance with emission standards (or family particulate emission limits, or family NO_x emission limits, as appropriate).

(ii) Whenever the Administrator does not conduct a test on a test vehicle at a test point, the manufacturer's test data will be accepted as the official data for that point: *Provided,* that if the Administrator makes a determination based on testing under paragraph (a)(2) of this section, that there is a lack of correlation between the manufacturer's test equipment and the test equipment used by the Administrator, no manufacturer's test data will be accepted for purposes of certification until the reasons for the lack of correlation are determined and the validity of the data is established by the manufacturer, *and further provided,* that if the Administrator has reasonable basis to believe that any test data submitted by the manufacturer is not accurate or has been obtained in violation of any provisions of this part, the Administrator may refuse to accept that data as the official data pending retesting or submission or further information. If the manufacturer conducts more than one test on a vehicle, as authorized under § 86.084–26(a)(3)(i)(A) or (b)(4)(i)(A), the data from the last test in that series of tests on that vehicle, will constitute the official data.

(iii)(A)(*1*) The Administrator may adjust or cause to be adjusted any adjustable parameter of an emission data vehicle or engine which the Administrator has determined to be subject to adjustment for certification and Selective Enforcement Audit testing in accordance with § 86.085–22(e)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.085–22(e)(3)(i), prior to the performance of any tests to determine whether such vehicle or engine conforms to applicable emission standards, including tests performed by the manufacturer under § 86.088–23(c)(1). However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to a setting which causes a higher engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter on the engine before it accumulated any dynamometer service, all other parameters being identically adjusted for the purpose of the comparison. The Administrator, in making or specifying such adjustments, will consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use light-duty vehicles or light-duty trucks. In determining likelihood, the Administrator will consider factors such as, but not limited to, the effect of the adjustment on vehicle performance characteristics and surveillance information from similar in-use vehicles.

(*2*) For those vehicles or engine parameters which the Administrator has not determined to be subject to adjustment during certification and Selective Enforcement Audit testing in accordance with § 86.085–22(e)(1), the emission-data vehicle presented to the Administrator for testing shall be calibrated within the production tolerances applicable to the manufacturer's specifications to be shown on the vehicle label (see § 86.088–35(a)(1)(iii)(D) or (a)(2)(iii)(D)) as specified in the application for certification. If the Administrator determines that a vehicle is not within such tolerances, the vehicle will be adjusted, at the facility designated by the Administrator, prior to the test and an engineering report shall be submitted to the Administrator describing the corrective action taken. Based on the engineering report, the Administrator will determine if the vehicle will be used as an emission-data vehicle.

(B) If the Administrator determines that the test data developed on an emission-data vehicle under paragraph (a)(3)(i) of this section would cause that vehicle to fail due to excessive 4,000-mile emissions or by application of the appropriate deterioration factor, then the following procedure shall be observed:

(*1*) The manufacturer may request a retest. Before the retest, those vehicle or engine parameters which the Administrator has not determined to be subject to adjustment for certification and Selective Enforcement Audit testing in accordance with § 86.085–22(e)(1) may be readjusted to manufacturer's specification, if these adjustments were made incorrectly prior to the first test. The Administrator may adjust or cause to be adjusted any parameter which the Administrator has determined to be subject to adjustment to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.085–22(e)(3)(i). Other maintenance or repairs may be performed in accordance with § 86.088–25. All work on the vehicle shall be done at such location and under such conditions as the Administrator may prescribe.

(*2*) The vehicle will be retested by the Administrator and the results of this test shall comprise the official data for the emission-data vehicle.

(iv) If sufficient durability data are not available at the time of any emission test conducted under paragraph (a)(2) of this section to enable the Administrator to determine whether an emission-data vehicle would fail, the manufacturer may request a retest in accordance with the provisions of paragraphs (a)(3)(iii) (A) and (B) of this section. If the manufacturer does not promptly make such request, he shall be deemed to have waived the right to a retest. A request for retest must be made before the manufacturer removes the vehicle from the test premises.

(b)(1) Paragraph (b) of this section applies to heavy-duty engines.

(2) The Administrator may require that any one or more of the test engines be submitted to him, at such place or places as he may designate, for the purpose of conducting emissions tests. The Administrator may specify that he will conduct such testing at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator shall be made available by the manufacturer for test operations. Any testing conducted at a manufacturer's facility pursuant to this paragraph shall be scheduled by the manufacturer as promptly as possible.

(3)(i) Whenever the Administrator conducts a test on a test engine the results of that test, unless subsequently invalidated by the Administrator, shall comprise the official data for the engine at that prescribed test point and the manufacturer's data for that prescribed test point shall not be used in determining compliance with emission standards.

(ii) Whenever the Administrator does not conduct a test on a test engine at a test point, the manufacturer's test data

will be accepted as the official data for that test point: *Provided*, that if the Administrator makes a determination based on testing under paragraph (b)(2) of this section, that there is a lack of correlation between the manufacturer's test equipment and the test equipment used by the Administrator, no manufactuturer's test data will be accepted for purposes of certification until the reasons for the lack of correlation are determined and the validity of the data is established by the manufacturer, *and further provided*, that if the Administrator has reasonable basis to believe that any test data submitted by the manufacturer is not accurate or has been obtained in violation of any provision of this part, the Administrator may refuse to accept that data as the official data pending retesting or submission of further information.

(iii)(A)(*1*) The Administrator may adjust or cause to be adjusted any adjustable parameter of an emission-data engine which the Administrator has determined to be subject to adjustment for certification testing in accordance with § 86.085–22(e)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.085–22(e)(3)(i), prior to the performance of any tests to determine whether such engine conforms to applicable emission standards, including tests performed by the manufacturer under § 86.088–23(c)(2). The Administrator, in making or specifying such adjustments, may consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use heavy-duty engines. In determining likelihood, the Administrator may consider factors such as, but not limited to, the effect of the adjustment on engine performance characteristics and surveillance information from similar in-use engines.

(*2*) For those engine parameters which the Administrator has not determined to be subject to adjustment for certification testing in accordance with § 86.085–22(e)(1), the emission-data engine presented to the Administrator for testing shall be calibrated within the production tolerances applicable to the manufacturer's specifications to be shown on the engine label (see § 86.088–35(a)(3)(iii)) as specified in the application for certification. If the Administrator determines that an engine is not within such tolerances, the engine shall be adjusted at the facility designated by the Administrator prior to the test and an engineering report shall be submitted to the Administrator describing the corrective action taken. Based on the engineering report, the Administrator will determine if the engine shall be used as an emission-data engine.

(B) If the Administrator determines that the test data developed under paragraph (b)(3)(iii)(A) of this section would cause the emission-data engine to fail due to excessive 125-hour emission values or by the application of the appropriate deterioration factor, then the following procedure shall be observed:

(*1*) The manufacturer may request a retest. Before the retest, those engine parameters which the Administrator has not determined to be subject to adjustment for certification testing in accordance with § 86.085–22(e)(1) may be readjusted to the manufacturer's specifications, if these adjustments were made incorrectly prior to the first test. The Administrator may adjust or cause to be adjusted any parameter which the Administrator has determined to be subject to adjustment in accordance with § 86.085–22(e)(3)(i). However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to a setting which causes a higher engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter on the engine before if accumulated any dynamometer service, all other parameters being identically adjusted for the purpose of the comparison. Other maintenance or repairs may be performed in accordance with § 86.088–25. All work on the vehicle shall be done at such location and under such conditions as the Administrator may prescribe.

(*2*) The engine will be retested by the Administrator and the results of this test shall comprise the official data for the emission-data engine.

(iv) If sufficient durability data are not available at the time of any emission test conducted under paragraph (b)(2) of this section to enable the Administrator to determine whether an emission-data engine would fail, the manufacturer may request a retest in accordance with the provisions of paragraph (b)(3)(iii)(B) (*1*) and (*2*) of this section. If the manufacturer does not promptly make such request, he shall be deemed to have waived the right to a retest. A request for retest must be made before the manufacturer removes the engine from the test premises.

(c)(1) Paragraph (c) of this section applies to gasoline-fueled heavy-duty vehicles.

(2) The Administrator may require that any one or more of the evaporative emission family-system combinations included in the manufacturer's statement(s) of compliance be installed on an appropriate vehicle and such vehicle be submitted to him, at such place or places as he may designate, for the purpose of conducting emissions tests. The Administrator may specify that he will conduct such testing at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator shall be made available by the manufacturer for test operations. Any testing conducted at a manufacturer's facility pursuant to this paragraph shall be scheduled by the manufacturer as promptly as possible.

(3)(i) Whenever the Administrator conducts a test on an evaporative emission family-system combination the results of that test, unless subsequently invalidated by the Administrator, shall comprise the official data for the evaporative emission family-system combination and the manufacturer's data, analyses, etc., shall not be used in determining compliance with emission standards.

(ii) Whenever the Administrator does not conduct a test on an evaporative emission family-system combination, the manufacturer's test data will be accepted as the official data: *Provided*, that if the Administrator makes a determination, based on testing under paragraph (c)(2) of this section, that there is a lack of correlation between the manufacturer's test equipment and the test equipment used by the Administrator, no manufacturer's test data will be accepted for purposes of certification until the reasons for the lack of correlation are determined and the validity of the data is established by the manufacturer, *and further provided*, that if the Administrator has reasonable basis to believe that any test data, analyses, or other information submitted by the manufacturer is not accurate or has been obtained in violation of any provision of this part, the Administrator may refuse to accept those data, analyses, etc., as the official data pending retesting or submission of further information.

24. A new § 86.091–29 is added, to read as follows:

§ 86.091–29 Testing by the Administrator.

(a)(1) Paragraph (a) of this section applies to light-duty vehicles and light-duty trucks.

(2) The Administrator may require that any one or more of the test vehicles be submitted to him, at such place or places as he may designate, for the purposes of conducting emissions tests. The Administrator may specify that he will conduct such testing at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator shall be made available by the manufacturer for test operations. Any testing conducted at a manufacturer's facility pursuant to this paragraph shall be scheduled by the manufacturer as promptly as possible.

(3)(i) Whenever the Administrator conducts a test on a test vehicle, the results of that test shall, unless subsequently invalidated by the Administrator, comprise the official data for the vehicle at the prescribed test point and the manufacturer's data for that prescribed test point shall not be used in determining compliance with emission standards (or family particulate emission limits, or family NO_x emission limits, as appropriate).

(ii) Whenever the Administrator does not conduct a test on a test vehicle at a test point, the manufacturer's test data will be accepted as the official data for that point: *Provided,* that if the Administrator makes a determination based on testing under paragraph (a)(2) of this section, that there is a lack of correlation between the manufacturer's test equipment and the test equipment used by the Administrator, no manufacturer's test data will be accepted for purposes of certification until the reasons for the lack of correlation are determined and the validity of the data is established by the manufacturer, *and further provided,* that if the Administrator has reasonable basis to believe that any test data submitted by the manufacturer is not accurate or has been obtained in violation of any provisions of this part, the Administrator may refuse to accept that data as the official data pending retesting or submission or further information. If the manufacturer conducts more than one test on a vehicle, as authorized under § 86.084–26 (a)(3)(i)(A) or (b)(4)(i)(A), the data from the last test in that series of tests on that vehicle, will constitute the official data.

(iii)(A)(*1*) The Administrator may adjust or cause to be adjusted any adjustable parameter of an emission-data vehicle or engine which the Administrator has determined to be subject to adjustment for certification and Selective Enforcement Audit testing in accordance with § 86.085–22(e)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.085–22(e)(3)(i), prior to the performance of any tests to determine whether such vehicle or engine conforms to applicable emission standards, including tests performed by the manufacturer under § 86.091–23(c)(1). However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to a setting which causes a higher engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter on the engine before it accumulated any dynamometer service, all other parameters being identically adjusted for the purpose of the comparison. The Administrator, in making or specifying such adjustments, will consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use light-duty vehicles or light-duty trucks. In determining likelihood, the Administrator will consider factors such as, but not limited to, the effect of the adjustment on vehicle performance characteristics and surveillance information from similar in-use vehicles.

(*2*) For those vehicles or engine parameters which the Administrator has not determined to be subject to adjustment during certification and Selective Enforcement Audit testing in accordance with § 86.085–22(e)(1), the emission-data vehicle presented to the Administrator for testing shall be calibrated within the production tolerances applicable to the manufacturer's specifications to be shown on the vehicle label (see § 86.091–35 (a)(1)(iii)(D) or (a)(2)(iii)(D)) as specified in the application for certification. If the Administrator determines that a vehicle is not within such tolerances, the vehicle will be adjusted, at the facility designated by the Administrator, prior to the test and an engineering report shall be submitted to the Administrator describing the corrective action taken. Based on the engineering report, the Administrator will determine if the vehicle will be used as an emission-data vehicle.

(B) If the Administrator determines that the test data developed on an emission-data vehicle under paragraph (a)(3)(i) of this section would cause that vehicle to fail due to excessive 4,000-mile emissions or by application of the appropriate deterioration factor, then the following procedure shall be observed:

(*1*) The manufacturer may request a retest. Before the retest, those vehicle or engine parameters which the Administrator has not determined to be subject to adjustment for certification and Selective Enforcement Audit testing in accordance with § 86.085–22(e)(1) may be readjusted to manufacturer's specification, if these adjustments were made incorrectly prior to the first test. The Administrator may adjust or cause to be adjusted any parameter which the Administrator has determined to be subject to adjustment to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.085–22(e)(3)(i). Other maintenance or repairs may be performed in accordance with § 86.088–25. All work on the vehicle shall be done at such location and under such conditions as the Administrator may prescribe.

(*2*) The vehicle will be retested by the Administrator and the results of this test shall comprise the official data for the emission-data vehicle.

(iv) If sufficient durability data are not available at the time of any emission test conducted under paragraph (a)(2) of this section to enable the Administrator to determine whether an emission-data vehicle would fail, the manufacturer may request a retest in accordance with the provisions of paragraphs (a)(3)(iii)(A) and (B) of this section. If the manufacturer does not promptly make such request, he shall be deemed to have waived the right to a retest. A request for retest must be made before the manufacturer removes the vehicle from the test premises.

(b)(1) Paragraph (b) of this section applies to heavy-duty engines.

(2) The Administrator may require that any one or more of the test engines be submitted to him, at such place or places as he may designate, for the purpose of conducting emissions tests. The Administrator may specify that he will conduct such testing at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator shall be made available by the manufacturer for test operations. Any testing conducted at a manufacturer's facility pursuant to this paragraph shall be scheduled by the manufacturer as promptly as possible.

(3)(i) Whenever the Administrator conducts a test on a test engine the results of that test, unless subsequently invalidated by the Administrator, shall comprise the official data for the engine at that prescribed test point and the manufacturer's data for that prescribed test point shall not be used in determining compliance with emission

standards (or family particulate emission limits, or family NO_x emission limits, as appropriate).

(ii) Whenever the Administrator does not conduct a test on a test engine at a test point, the manufacturer's test data will be accepted as the official data for that test point: *Provided,* that if the Administrator makes a determination based on testing under paragraph (b)(2) of this section, that there is a lack of correlation between the manufacturer's test equipment and the test equipment used by the Administrator, no manufacturer's test data will be accepted for purposes of certification until the reasons for the lack of correlation are determined and the validity of the data is established by the manufacturer, *and further provided,* that if the Administrator has reasonable basis to believe that any test data submitted by the manufacturer is not accurate or has been obtained in violation of any provision of this part, the Administrator may refuse to accept that data as the official data pending retesting or submission of further information.

(iii)(A)(*1*) The Administrator may adjust or cause to be adjusted any adjustable parameter of an emission-data engine which the Administrator has determined to be subject to adjustment for certification testing in accordance with § 86.085–22(e)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.085–22(e)(3)(i), prior to the performance of any tests to determine whether such engine conforms to applicable emission standards, including tests performed by the manufacturer under § 86.088–23(c)(2). The Administrator, in making or specifying such adjustments, may consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use heavy-duty engines. In determining likelihood, the Administrator may consider factors such as, but not limited to, the effect of the adjustment on engine performance characteristics and surveillance information from similar in-use engines.

(*2*) For those engine parameters which the Administrator has not determined to be subject to adjustment for certification testing in accordance with § 86.085–22(e)(1), the emission-data engine presented to the Administrator for testing shall be calibrated within the production tolerances applicable to the manufacturer's specifications to be shown on the engine label (see § 86.091–35(a)(3)(iii)) as specified in the application for certification. If the Administrator determines that an engine is not within such tolerances, the engine shall be adjusted at the facility designated by the Administrator prior to the test and an engineering report shall be submitted to the Administrator describing the corrective action taken. Based on the engineering report, the Administrator will determine if the engine shall be used as an emission-data engine.

(B) If the Administrator determines that the test data developed under paragraph (b)(3)(iii)(A) of this section would cause the emission-data engine to fail due to excessive 125-hour emission values or by the application of the appropriate deterioration factor, then the following procedure shall be observed:

(*1*) The manufacturer may request a retest. Before the retest, those engine parameters which the Administrator has not determined to be subject to adjustment for certification testing in accordance with § 86.085–22(e)(1) may be readjusted to the manufacturer's specifications, if these adjustments were made incorrectly prior to the first test. The Administrator may adjust or cause to be adjusted any parameter which the Administrator has determined to be subject to adjustment in accordance with § 86.085–22(e)(3)(i). However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to a setting which causes a higher engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter on the engine before it accumulated any dynamometer service, all other parameters being identically adjusted for the purpose of the comparison. Other maintenance or repairs may be performed in accordance with § 86.088–25. All work on the vehicle shall be done at such location and under such conditions as the Administrator may prescribe.

(*2*) The engine will be retested by the Administrator and the results of this test shall comprise the official data for the emission-data engine.

(iv) If sufficient durability data are not available at the time of any emission test conducted under paragraph (b)(2) of this section to enable the Administrator to determine whether an emission-data engine would fail, the manufacturer may request a retest in accordance with the provisions of paragraph (b)(3)(iii)(B) (1) and (2) of this section. If the manufacturer does not promptly make such request, he shall be deemed to have waived the right to a retest. A request for retest must be made before the manufacturer removes the engine from the test premises.

(c)(1) Paragraph (c) of this section applies to gasoline-fueled heavy-duty vehicles.

(2) The Administrator may require that any one or more of the evaporative emission family-system combinations included in the manufacturer's statement(s) of compliance be installed on an appropriate vehicle and such vehicle be submitted to him, at such place or places as he may designate, for the purpose of conducting emissions tests. The Administrator may specify that he will conduct such testing at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator shall be made available by the manufacturer for test operations. Any testing conducted at a manufacturer's facility pursuant to this paragraph shall be scheduled by the manufacturer as promptly as possible.

(3)(i) Whenever the Administrator conducts a test on an evaporative emission family-system combination the results of that test, unless subsequently invalidated by the Administrator, shall comprise the official data for the evaporative emission family-system combination and the manufacturer's data, analyses, etc., shall not be used in determining compliance with emission standards.

(ii) Whenever the Administrator does not conduct a test on an evaporative emission family-system combination, the manufacturer's test data will be accepted as the official data: *Provided,* that if the Administrator makes a determination, based on testing under paragraph (c)(2) of this section, that there is a lack of correlation between the manufacturer's test equipment and the test equipment used by the Administrator, no manufacturer's test data will be accepted for purposes of certification until the reasons for the lack of correlation are determined and the validity of the data is established by the manufacturer, *and further provided,* that if the Administrator has reasonable basis to believe that any test data, analyses, or other information submitted by the manufacturer is not accurate or has been obtained in violation of any provision of this part, the Administrator may refuse to accept those data, analyses, etc., as the official data pending retesting or submission of further information.

25. A new § 86.088–30 is added, to read as follows:

§ 86.088–30 Certification.

(a)(1)(i) If, after a review of the test reports and data submitted by the manufacturer, data derived from any inspection carried out under § 86.078–7(c), and any other pertinent data or information, the Administrator determines that a test vehicle(s) (or test engine(s)) meet(s) the requirements of the Act and of this subpart, he will issue a certificate of conformity with respect to such vehicle(s) (or engine(s)) except in cases covered by paragraphs (a)(1)(ii) and (c) of this section.

(ii) *Gasoline-fueled heavy-duty vehicles.* If, after a review of the statement(s) of compliance submitted by the manufacturer under § 86.088–23(b)(4) and any other pertinent data or information, the Administrator determines that the requirements of the Act and this subpart have been met, he will issue one certificate of conformity per manufacturer with respect to the evaporative emission family(s) covered by such statement(s) except in cases covered by paragraph (c) of this section.

(2) Such certificate will be issued for such period not to exceed one model year as the Administrator may determine and upon such terms as he may deem necessary or appropriate to assure that any new motor vehicle (or new motor vehicle engine) covered by the certificate will meet the requirements of the Act and of this part.

(3)(i) One such certificate will be issued for each engine family. For gasoline-fueled light-duty vehicles and light-duty trucks, one such certificate will be issued for each engine family-evaporative emission family combination.

(A) *Light-Duty Vehicles.* Each certificate will certify compliance with no more than one set of standards (or one family particulate emission limit, as appropriate).

(B) *Light-Duty Trucks.* Each certificate will certify compliance with no more than one set of standards (or one family particulate emission limit, or one family NO_x emission limit, as appropriate), except for low-altitude standards and high-altitude standards. The certificate shall state that it covers vehicles sold or delivered to an ultimate purchaser for principal use at a designated high-altitude location only if the vehicle conforms in all material respects to the design specifications that apply to those vehicles described in the application for certification at high altitude.

(ii) For gasoline-fueled heavy-duty vehicles, one such certificate will be issued for each manufacturer and will certify compliance for those vehicles previously identified in that manufacturer's statement(s) of compliance as required in § 86.088–23(b)(4) (i) and (ii).

(iii) For diesel light-duty vehicles and light-duty trucks included in the particulate averaging program, the manufacturer may at any time during production elect to change the level of any family particulate emission limit by demonstrating compliance with the new limit as described in §§ 86.088–28(a)(6) and 86.088–28(b)(5)(i). New certificates issued under this paragraph will be applicable only for vehicles produced subsequent to the date of issuance.

(iv) For light-duty trucks included in the NO_x averaging program, the manufacturer may at any time during production elect to change the level of any family NO_x emission limit by demonstrating compliance with the new limit as described in § 86.088–28(b)(5)(ii). New certificates issued under this paragraph will be applicable only for vehicles produced subsequent to the day of issue.

(4)(i) The adjustment or modification of any light-duty truck in accordance with instructions provided by the manufacturer for the altitude where the vehicle is principally used will not be considered a violation of Section 203(a)(3) of the Clean Air Act.

(ii) A violation of Section 203(a)(1) of the Clean Air Act occurs when a manufacturer sells or delivers to an ultimate purchaser any light-duty vehicle or light-duty truck, subject to the regulations under the Act, under any of the conditions specified in the remainder of this paragraph.

(A) When a light-duty vehicle or light-duty truck is not configured to meet high-altitude requirements:

(*1*) At a designated high-altitude location, unless such manufacturer has reason to believe that such vehicle will not be sold to an ultimate purchaser for principal use at a designated high-altitude location; or

(*2*) At a location other than a designated high-altitude location, when such manufacturer has reason to believe that such motor vehicle will be sold to an ultimate purchaser for principal use at a designated high-altitude location.

(B) When a light-duty vehicle is not configured to meet low-altitude requirements, as provided in § 86.087–8(i):

(*1*) At a designated low-altitude location, unless such manufacturer has reason to believe that such vehicle will not be sold to an ultimate purchaser for principal use at a designated low-altitude location; or

(*2*) At a location other than a designated low-altitude location, when such manufacturer has reason to believe that such motor vehicle will be sold to an ultimate purchaser for principal use at a designated low-altitude location.

(iii) A manufacturer shall be deemed to have reason to believe that a light-duty vehicle that has been exempted from compliance with emission standards at high altitude, or a light-duty truck which is not configured to meet high-altitude requirements, will not be sold to an ultimate purchaser for principal use at a designated high-altitude location if the manufacturer has informed its dealers and field representatives about the terms of these high-altitude regulations, has not caused the improper sale itself, and has taken reasonable action which shall include, but not be limited to, either paragraph (a)(4)(iii) (A) or (B), and (a)(4)(iii)(C) of this section:

(A) Requiring dealers in designated high-altitude locations to submit written statements to the manufacturer signed by the ultimate purchaser that a vehicle which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitude location; requiring dealers in counties contiguous to designated high-altitude locations to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated high-altitude location, that a vehicle which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitude location; and for each sale or delivery of fleets of ten or more such vehicles in a high-altitude location or in counties contiguous to high-altitude locations, requiring either the selling dealer or the delivering dealer to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated high-altitude location, that a vehicle which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitude location. In addition, the manufacturer will make available to EPA, upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold), sales, warranty, or other information pertaining to sales of vehicles by the dealers described above maintained by the manufacturer in the normal course of business relating to the altitude configuration of vehicles and the locations of ultimate purchasers; or

(B) Implementing a system which monitors factory orders of low-altitude vehicles by high-altitude dealers, or through other means, identifies dealers that may have sold or delivered a vehicle not configured to meet the high-altitude requirements to an ultimate purchaser for principal use at a designated high-altitude location; and making such information available to EPA upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold); and

(C) Within a reasonable time after receiving written notice from EPA or a State or local government agency that a dealer may have improperly sold or delivered a vehicle not configured to meet the high-altitude requirements to an ultimate purchaser residing in a designated high-altitude location, or based on information obtained pursuant to paragraph (a)(4)(iii) of this section that a dealer may have improperly sold or delivered a significant number of such vehicles to ultimate purchasers so residing, reminding the dealer in writing of the requirements of these regulations, and, where appropriate, warning the dealer that sale by the dealer of vehicles not configured to meet high-altitude requirements may be contrary to the terms of its franchise agreement with the manufacturer and the dealer certification requirements of § 85.2108 of this chapter.

(iv) A manufacturer shall be deemed to have reason to believe that a light-duty vehicle which has been exempted from compliance with emission standards at low-altitude, as provided in § 86.087–8(i), will not be sold to an ultimate purchaser for principal use at a designated low-altitude location if the manufacturer has informed its dealers and field representatives about the terms of these high-altitude regulations, has not caused the improper sale itself, and has taken reasonable action which shall include, but not be limited to, either paragraph (a)(4)(iv) (A) or (B), and (a)(4)(iv)(C) of this section:

(A) Requiring dealers in designated low-altitude locations to submit written statements to the manufacturer signed by the ultimate purchaser that a vehicle which is not configured to meet low-altitude requirements will not be used principally at a designated low-altitude location; requiring dealers in counties contiguous to designated low-altitude locations to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated low-altitude location, that a vehicle which is not configured to meet low-altitude requirements will not be used principally at a designated low-altitude location; and for each sale or delivery of fleets of ten or more such vehicles in a low-altitude location or in counties contiguous to low-altitude locations, requiring either the selling dealer or the delivering dealer to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated low-altitude location, that a vehicle which is not configured to meet low-altitude requirements will not be used principally at a designated high-altitude location. In addition, the manufacturer will make available to EPA, upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold), sales, warranty, or other information pertaining to sales of vehicles by the dealers described above maintained by the manufacturer in the normal course of business relating to the altitude configuration of vehicles and the locations of ultimate purchasers; or

(B) Implementing a system which monitors factory orders of high-altitude vehicles by low-altitude dealers, or through other means, identifies dealers that may have sold or delivered a vehicle not configured to meet the low-altitude requirements to an ultimate purchaser for principal use at a designated low-altitude location; and making such information available to EPA upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold); and

(C) Within a reasonable time after receiving written notice from EPA or a state or local government agency that a dealer may have improperly sold or delivered a vehicle not configured to meet the low-altitude requirements to an ultimate purchaser residing in a designated low-altitude location, or based on information obtained pursuant to paragraph (a)(4)(iv) of this section that a dealer may have improperly sold or delivered a significant number of such vehicles to ultimate purchasers so residing, reminding the dealer in writing of the requirements of these regulations, and, where appropriate, warning the dealer that sale by the dealer of vehicles not configured to meet low-altitude requirements may be contrary to the terms of its franchise agreement with the manufacturer and the dealer certification requirements of § 85.2108 of this chapter.

(5)(i) For the purpose of paragraph (a) of this section, a "designated high-altitude location" is any county which has substantially all of its area located above 1,219 meters (4,000 feet) and:

(A) Requested an extension past the attainment date of December 31, 1982, for compliance with either the National Ambient Air Quality Standards for carbon monoxide or ozone, as indicated in Part 52 (Approval and Promulgation of Implementation Plans) of this title; or

(B) Is the same state as a county designated as a high-altitude location according to paragraph (a)(5)(i)(A) of this section.

(ii) The designated high-altitude locations defined in paragraph (a)(5)(i) of this section are listed below:

State of Colorado

Adams	Kit Carson
Alamosa	Lake
Arapahoe	La Plata
Archuleta	Larimer
Boulder	Las Animas
Chaffee	Lincoln
Cheyenne	Mesa
Clear Creek	Mineral
Conejos	Moffat
Costilla	Montezuma
Crowley	Montrose
Custer	Morgan
Delta	Otero
Denver	Ouray
Dolores	Park
Douglas	Pitkin
Eagle	Pueblo
Elbert	Rio Blanco
El Paso	Rio Grande
Fremont	Routt
Garfield	Saguache
Gilpin	San Juan
Grand	San Miguel
Gunnison	Summit
Hinsdale	Teller
Huerfano	Washington
Jackson	Weld
Jefferson	

State of Nevada

Carson City	Lyon
Douglas	Mineral
Elko	Nye
Esmeralda	Pershing
Eureka	Storey
Humboldt	Washoe
Lander	White Pine
Lincoln	

State of New Mexico

Bernalillo	Mora
Catron	Rio Arriba
Colfax	Roosevelt
Curry	Sandoval
De Baca	San Juan
Grant	San Miguel
Guadalupe	Santa Fe
Harding	Sierra
Hidalgo	Socorro
Lincoln	Taos
Los Alamos	Torrance
Luna	Union
McKinley	Valencia
Otero	

State of Utah

Beaver	Morgan
Box Elder	Piute
Cache	Rich
Carbon	Salt Lake
Daggett	San Juan
Davis	Sanpete
Duchesne	Sevier
Emery	Summit
Garfield	Tooele
Grand	Uintah
Iron	Utah
Juab	Wasatch
Kane	Wayne
Millard	Weber

(iii) For the purpose of paragraph (a) of this section, a "designated low-altitude location" is any county which has substantially all of its area located below 1,219 meters (4,000 feet).

(iv) The designated low-altitude locations so defined include all counties in the United States which are not listed in either paragraph (a)(5)(ii) of this section or in the list below:

State of Arizona

Apache	Navajo
Cochise	Yavapai
Coconino	

State of Idaho

Bannock	Franklin
Bear Lake	Fremont
Bingham	Jefferson
Blaine	Lemhi
Bonneville	Madison
Butte	Minidoka
Camas	Oneida
Caribou	Power
Cassia	Teton
Clark	Valley
Custer	

State of Montana

Beaverhead	Meagher
Deer Lodge	Park
Gallatin	Powell
Jefferson	Sivler Bow
Judith Basin	Wheatland
Madison	

State of Nebraska

Banner	Kimball
Cheyenne	Sioux

State of Oregon

Harney	Lake
Klamath	

State of Texas

Jeff Davis	Parmer
Hudspeth	

State of Wyoming

Albany	Natrona
Campbell	Niobrara
Carbon	Park
Converse	Platte
Fremont	Sublette
Goshen	Sweetwater
Hot Springs	Teton
Johnson	Uinta
Laramie	Washakie
Lincoln	Weston

(6) Catalyst-equipped vehicles, otherwise covered by a certificate, which are driven outside the United States, Canada, and Mexico will be presumed to have been operated on leaded gasoline resulting in deactivation of the catalysts. If these vehicles are imported or offered for importation without retrofit of the catalyst, they will be considered not to be within the coverage of the certificate unless included in a catalyst control program operated by a manufacturer or a United States Government agency and approved by the Administrator.

(7) For incomplete light-duty trucks, a certificate covers only those new motor vehicles which, when completed by having the primary load-carrying device or container attached, conform to the maximum curb weight and frontal area limitations described in the application for certification as required in § 86.088–21(d).

(8) For heavy-duty engines, a certificate covers only those new motor vehicle engines installed in heavy-duty vehicles which conform to the minimum gross vehicle weight rating, curb weight, or frontal area limitations for heavy-duty vehicles described in § 86.082–2.

(9) For incomplete gasoline-fueled heavy-duty vehicles a certificate covers only those new motor vehicles which, when completed, conform to the nominal maximum fuel tank capacity limitations as described in the application for certification as required in § 86.088–21(e).

(10) For diesel light-duty vehicles and diesel light-duty truck familes which are included in particulate averaging program, the manufacturer's production-weighted average of the particulate emission limits of all engine families in a participating class or classes shall not exceed the applicable diesel particulate standard, or the composite particulate standard defined in § 86.085–2, as appropriate, at the end of the model year, as determined in accordance with 40 CFR Part 86. The certificate shall be void *ab initio* for those vehicles causing any exceedance of the particulate standard.

(11) For light-duty truck families which are included in the NO_x averaging program, the manufacturer's production-weighted average of the NO_x emission limits of all such engine families shall not exceed the applicable light-duty truck NO_x standard, or the composite NO_x standard defined in § 86.088–2, as appropriate, at the end of the model year, as determined in accordance with 40 CFR Part 86. The certificate shall be void *ab initio* for those vehicles causing any exceedance of the NO_x standard.

(b)(1) The Administrator will determine whether a vehicle (or engine) covered by the application complies with applicable standards (or family particulate emission limit, or family NO_x emission limit, as appropriate) by observing the following relationships:

(i) *Light-duty vehicles.* (A) The durability-data vehicle(s) selected under § 86.085–24(c)(1)(i) shall represent all vehicles of the same engine-system combination.

(B) The emission-data vehicle(s) selected under § 86.085–24(b)(1) (ii) through (iv) shall represent all vehicles of the same engine-system combination as applicable.

(C) The emission-data vehicle(s) selected under § 86.085–24(b)(1)(vii) (A) and (B) shall represent all vehicles of the same evaporative control system within the evaporative family.

(ii) *Light-duty trucks.* (A) The emission-data vehicle(s) selected under § 86.085–24(b)(1)(ii), shall represent all vehicles of the same engine-system combination as applicable.

(B) The emission-data vehicle(s) selected under § 86.085–24(b)(1)(vii) (A) and (B) shall represent all vehicles of the same evaporative control system within the evaporative family.

(C) The emission-data vehicle(s) selected under § 86.085–24(b)(1)(v) shall represent all vehicles of the same engine-system combination as applicable.

(D) The emission-data vehicle(s) selected under § 86.085–24(b)(1)(viii) shall represent all vehicles of the same evaporative control system within the evaporative emission family, as applicable.

(iii) *Heavy-duty engines.* (A) A gasoline-fueled emission-data test engine selected under § 86.085–24(b)(2)(iv) shall represent all engines in the same family of the same engine displacement-exhaust emission control system combination.

(B) A gasoline-fueled emission-data test engine selected under § 86.085–24(b)(2)(iii) shall represent all engines in the same engine family of the same engine displacement-exhaust emission control system combination.

(C) A diesel emission-data test engine selected under § 86.085–24(b)(3)(ii) shall represent all engines in the same engine-system combination.

(D) A diesel emission-data test engine selected under § 86.085–24(b)(3)(iii) shall represent all engines of that emission control system at the rated fuel delivery of the test engine.

(iv) *Gasoline-fueled heavy-duty vehicles.* A statement of compliance submitted under § 86.088–23(b)(4) (i) or (ii) shall represent all vehicles in the same evaporative emission family-evaporative emission control system combination.

(2) The Administrator will proceed as in paragraph (a) of this section with respect to the vehicles (or engines) belonging to an engine family or engine family-evaporative emission family combination (as applicable), all of which comply with all applicable standards (or family emission limits, as appropriate).

(3) If, after a review of the test reports and data submitted by the manufacturer, data derived from any additional testing conducted pursuant to § 86.088–29, data or information derived from any inspection carried out under § 86.078–7(c) or any other pertinent data or information, the Administrator determines that one or more test vehicles (or test engines) of the certification test fleet do not meet applicable standards (or family particulate emission limits, as appropriate), he will notify the manufacturer in writing, setting forth the basis for his determination. Within 30 days following receipt of the notification, the manufacturer may request a hearing on the Administrator's determination. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determination and data in support of such objections. If, after a review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078–6 with respect to such issue.

(4) For light-duty vehicles and light-duty trucks the manufacturer may, at its option, proceed with any of the following alternatives with respect to an emission-data vehicle determined not in compliance with all applicable standards (or family particulate emission limits or family NO_x emission limits, as appropriate) for which it was tested:

(i) Request a hearing under § 86.078–6; or

(ii) Remove the vehicle configuration (or evaporative vehicle configuration as applicable) which failed, from his application;

(A) If the failed vehicle was tested for compliance with exhaust emission standards (or the family particulate emission limit, or the family NO_x emission limit, as appropriate) only: The Administrator may select, in place of the failed vehicle, in accordance with the selection criteria employed in selecting the failed vehicle, a new emission-data vehicle to be tested for exhaust emission compliance only.

(B) If the failed vehicle was tested for compliance with both exhaust and evaporative emission standards: The Administrator may select, in place of the failed vehicle, in accordance with the selection criteria employed in selecting the failed vehicle, a new emission-data vehicle which will be tested for compliance with both exhaust and evaporative emission standards. If one vehicle cannot be selected in accordance with the selection criteria employed in selecting the failed vehicle, then two vehicles may be selected (*i.e.*, one vehicle to satisfy the exhaust emission vehicle selection criteria and one vehicle to satisfy the evaporative emission vehicle selection criteria). The vehicle selected to satisfy the exhaust emission vehicle selection criteria will be tested for compliance with exhaust emission standards only. The vehicle selected to satisfy the evaporative emission vehicle selection criteria will be tested for compliance with both exhaust and evaporative emission standards; or

(iii) Remove the vehicle configuration (or evaporative vehicle configuration, as applicable) which failed from the application and add a vehicle configuration(s) (or evaporative vehicle configuration(s), as applicable) not previously listed. The Administrator may require, if applicable, that the failed vehicle be modified to the new engine code (or evaporative emission code, as applicable) and demonstrate by testing that it meets applicable standards (or the family particulate emission limit, or the family NO_x emission limit, as appropriate) for which it was originally tested. In addition, the Administrator may select, in accordance with the vehicle selection criteria given in § 86.085–24(b), a new emission-data vehicle or vehicles. The vehicles selected to satisfy the exhaust emission vehicle selection criteria will be tested for compliance with exhaust emission standards (or the family particulate emission limit, or the family NO_x emission limit, as appropriate) only. The vehicles selected to satisfy the evaporative emission vehicle selection criteria will be tested for compliance with both exhaust and evaporative emission standards (or the family particulate emission limit, or the family NO_x emission limit, as appropriate); or

(iv) Correct a component or system malfunction and show that with a correctly functioning system or component the failed vehicle meets applicable standards (or the family particulate emission limit, or the family NO_x emission limit, as appropriate) for which it was originally tested. The Administrator may require a new emission-data vehicle, of identical vehicle configuration (or evaporative vehicle configuration, as applicable) to the failed vehicle, to be operated and tested for compliance with the applicable standards (or the family particulate emission limit, or the family NO_x emission limit, as appropriate) for which the failed vehicle was originally tested.

(5) For heavy-duty engines the manufacturer may, at his option, proceed with any of the following alternatives with respect to any engine family represented by a test engine(s) determined not in compliance with applicable standards:

(i) Request a hearing under § 86.078–6; or

(ii) Delete from the application for certification the engines represented by the failing test engine. (Engines so deleted may be included in a later request for certification under § 86.079–32.) The Administrator may then select in place of each failing engine an alternate engine chosen in accordance with selection criteria employed in selecting the engine that failed; or

(iii) Modify the test engine and demonstrate by testing that it meets applicable standards. Another engine which is in all material respects the same as the first engine, as modified, may then be operated and tested in accordance with applicable test procedures.

(6) If the manufacturer does not request a hearing or present the required data under paragraph (b)(4) or (b)(5) of this section (as applicable) of this section, the Administrator will deny certification.

(c)(1) Notwithstanding the fact that any certification vehicle(s) (or certification engine(s)) may comply with other provisions of this subpart, the Administrator may withhold or deny the issuance of a certificate of conformity (or suspend or revoke any such certificate which has been issued) with respect to any such vehicle(s) (or engine(s)) if:

(i) The manufacturer submits false or incomplete information in his application for certification thereof;

(ii) The manufacturer renders inaccurate any test data which he submits pertaining thereto or otherwise circumvents the intent of the Act, or of this part with respect to such vehicle (or engine);

(iii) Any EPA Enforcement Officer is denied access on the terms specified in § 86.078–7(c) to any facility or portion thereof which contains any of the following:

(A) The vehicle (or engine)

(B) Any components used or considered for use in its modification or

buildup into a certification vehicle (or certification engine);

(C) Any production vehicle (or production engine) which is or will be claimed by the manufacturer to be covered by the certificate;

(D) Any step in the construction of a vehicle (or engine) described in paragraph (c)(iii)(C) of this section;

(E) Any records, documents, reports, or histories required by this part to be kept concerning any of the above;

(iv) Any EPA Enforcement Officer is denied "reasonable assistance" (as defined in § 86.078–7(c)) in examining any of the items listed in paragraph (c)(1)(iii) of this section.

(2) The sanctions of withholding, denying, revoking, or suspending of a certificate may be imposed for the reasons in paragraph (c)(1) (i), (ii), (iii), or (iv) of this section only when the infraction is substantial.

(3) In any case in which a manufacturer knowingly submits false or inaccurate information or knowingly renders inaccurate or invalid any test data or commits any other fraudulent acts and such acts contribute substantially to the Administrator's decision to issue a certificate of conformity, the Administrator may deem such certificate void *ab initio*.

(4) In any case in which certification of a vehicle (or engine) is proposed to be withheld, denied, revoked, or suspended under paragraph (c)(1) (iii) or (iv) of this section, and in which the Administrator has presented to the manufacturer involved, reasonable evidence that a violation of § 86.078–7(c) in fact occurred, the manufacturer, if he wishes to contend that, even though the violation occurred, the vehicle (or engine) in question was not involved in the violation to a degree that would warrant withholding denial, revocation, or suspension of certification under either paragraph (c)(1) (iii) or (iv) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(5) Any revocation or suspension of certification under paragraph (c)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.078–6 hereof.

(ii) Extend no further than to forbid the introduction into commerce of vehicles (or engines) previously covered by the certification which are still in the hands of the manufacturer, except in cases of such fraud or other misconduct as makes the certification invalid *ab initio*.

(6) The manufacturer may request in the form and manner specified in paragraph (b)(3) of this section that any determination made by the Administrator under paragraph (c)(1) of this section to withhold or deny certification be reviewed in a hearing conducted in accordance with § 86.078–6. If the Administrator finds, after a review of the request and supporting data, that the request raises a substantial factual issue, he will grant the request with respect to such issue.

(d)(1) *For light-duty vehicles.* Notwithstanding the fact that any vehicle configuration or engine family may be covered by a valid outstanding certificate of conformity, the Administrator may suspend such outstanding certificate of conformity in whole or in part with respect to such vehicle configuration or engine family if:

(i) The manufacturer refuses to comply with the provisions of a test order issued by the Administrator pursuant to § 86.603; or

(ii) The manufacturer refuses to comply with any of the requirements of § 86.603; or

(iii) The manufacturer submits false or incomplete information in any report or information provided pursuant to the requirements of § 86.609; or

(iv) The manufacturer renders inaccurate any test data which he submits pursuant to § 86.609; or

(v) Any EPA Enforcement Officer is denied access to a facility on the terms specified in § 86.606; or

(vi) Any EPA Enforcement Officer is denied the opportunity on the terms specified in § 86.606, to:

(A) Monitor vehicle selection pursuant to § 86.607, or

(B) Select vehicles for testing pursuant to § 86.607; or

(C) Monitor vehicle testing performed to satisfy any of the requirements of this part; or

(vii) Any EPA Enforcement Officer is denied "reasonable assistance" as defined in § 86.606 in examining any of the items listed in that section; or

(viii) The manufacturer refuses to comply with the requirements of §§ 86.604(a), 86.605, and 86.607, 86.608, 86.610, or 86.611.

(2) The sanction of suspending a certificate may not be imposed for the reasons in paragraph (d)(1) (i), (ii), or (viii) of this section where such refusal is caused by conditions and circumstances outside the control of the manufacturer which renders it impossible to comply with those requirements. Such conditions and circumstances shall include, but not be limited to, any uncontrollable factors which result in the temporary unavailability of equipment and personnel needed to conduct the required tests, such as equipment breakdown or failure or illness of personnel, but shall not include failure of the manufacturer to adequately plan for and provide the equipment and personnel needed to conduct the tests. The manufacturer will bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(3) The sanctions of suspending a certificate may be imposed for the reasons in paragraph (d)(1) (iii), (iv), (v), (vi), or (vii) of this section only when the infraction is substantial.

(4) In any case in which a manufacturer knowingly submitted false or inaccurate information or knowingly rendered inaccurate any test data or committed any other fraudulent acts, and such acts contributed substantially to the Administrator's original decision not to suspend or revoke a certificate of conformity in whole or in part, the Administrator may deem such certificate void from the date of such fraudulent act.

(5) In any case in which certification of a vehicle is proposed to be suspended under paragraph (d)(1) (v), (vi), or (vii) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.606 in fact occurred, the manufacturer, if he wishes to contend that even though the violation occurred, the vehicle configuration or engine family in question was not involved in the violation to the degree that would warrant suspension of certification under either paragraph (d)(1) (v), (vi), or (vii) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) Any suspension of certification under paragraph (d)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.613 hereof, and

(ii) Not apply to vehicles no longer in the hands of the manufacturer.

(e) *For light-duty trucks and heavy-duty engines.* (1) Notwithstanding the fact that any vehicle configuration or engine family may be covered by a valid outstanding certificate of conformity, the Administrator may suspend such outstanding certificate of conformity in whole or in part with respect to such vehicle or engine configuration or engine family if:

(i) The manufacturer refuses to comply with the provisions of a test order issued by the Administrator pursuant to § 86.1003; or

(ii) The manufacturer refuses to comply with any of the requirements of § 86.1003; or

(iii) The manufacturer submits false or incomplete information in any report or information provided pursuant to the requirements of § 86.1009; or

(iv) The manufacturer renders inaccurate any test data submitted pursuant to § 86.1009; or

(v) Any EPA Enforcement Officer is denied the opportunity to conduct activities related to entry and access as authorized in § 86.1006 of this part and in a warrant or court order presented to the manufacturer or the party in charge of a facility in question; or

(vi) EPA Enforcement Officers are unable to conduct activities related to entry and access as authorized in § 86.1006 of this part because a manufacturer has located a facility in a foreign jurisdiction where local law prohibits those activities; or

(vii) The manufacturer refuses to or in fact does not comply with the requirements of §§ 86.1004(a), 86.1005, 86.1007, 86.1008, 86.1010, 86.1011, or 86.1013.

(2) The sanction of suspending a certificate may not be imposed for the reasons in paragraphs (e)(1) (i), (ii), or (vii) of this section where such refusal or denial is caused by conditions and circumstances outside the control of the manufacturer which renders it impossible to comply with those requirements. Such conditions and circumstances shall include, but are not limited to, any uncontrollable factors which result in the temporary unavailability of equipment and personnel needed to conduct the required tests, such as equipment breakdown or failure or illness of personnel, but shall not include failure of the manufacturers to adequately plan for and provide the equipment and personnel needed to conduct the tests. The manufacturer will bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(3) The sanction of suspending a certificate may be imposed for the reasons outlined in paragraph (e)(1) (iii), (iv), or (v) of this section only when the infraction is substantial.

(4) In any case in which a manufacturer knowingly submitted false or inaccurate information or knowingly rendered inaccurate any test data or committed any other fraudulent acts, and such acts contributed substantially to the Administrator's original decision not to suspend or revoke a certificate of conformity in whole or in part, the Administrator may deem such certificate void from the date of such fraudulent act.

(5) In any case in which certification of a light-duty truck or heavy-duty engine is proposed to be suspended under paragraph (e)(1)(v) of this section and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.1006 in fact occurred, if the manufacturer wishes to contend that, although the violation occurred, the vehicle or engine configuration or engine family in question was not involved in the violation to a degree that would warrant suspension of certification under paragraph (e)(1)(v) of this section, he shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) Any suspension of certification under paragraph (e)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.1014, and

(ii) Not apply to vehicles or engines no longer in the hands of the manufacturer.

(7) Any voiding of a certificate of conformity under paragraph (e)(4) of this section shall be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.1014.

26. A new § 86.091–30 is added, to read as follows:

§ 86.091–30 Certification.

(a)(1)(i) If, after a review of the test reports and data submitted by the manufacturer, data derived from any inspection carried out under § 86.078–7(c), and any other pertinent data or information, the Administrator determines that a test vehicle(s) (or test engine(s)) meet(s) the requirements of the Act and of this subpart, he will issue a certificate of conformity with respect to such vehicles(s) (or engine(s)) except in cases covered by paragraphs (a)(1)(ii) and (c) of this section.

(ii) *Gasoline-fueled heavy-duty vehicles.* If, after a review of the statement(s) of compliance submitted by the manufacturer under § 86.091–23(b)(4) and any other pertinent data or information, the Administrator determines that the requirements of the Act and this subpart have been met, he will issue one certificate of conformity per manufacturer with respect to the evaporative emission family(s) covered by such statement(s) except in cases covered by paragraph (c) of this section.

(2) Such certificate will be issued for such period not to exceed one model year as the Administrator may determine and upon such terms as he may deem necessary or appropriate to assure that any new motor vehicle (or new motor vehicle engine) covered by the certificate will meet the requirements of the Act and of this part.

(3)(i) One such certificate will be issued for each engine family. For gasoline-fueled light-duty vehicles and light-duty trucks, one such certificate will be issued for each engine family-evaporative emission family combination.

(A) *Light-Duty Vehicles.* Each certificate will certify compliance with no more than one set of standards (or one family particulate emission limit, as appropriate).

(B) *Light-Duty Trucks.* Each certificate will certify compliance with no more than one set of standards (or one family particulate emission limit, or one family NO_x emission limit, as appropriate), except for low-altitude standards and high-altitude standards. The certificate shall state that it covers vehicles sold or delivered to an ultimate purchaser for principal use at a designated high-altitude location only if the vehicle conforms in all material respects to the design specifications that apply to those vehicles described in the application for certification at high altitude.

(ii) For gasoline-fueled heavy-duty vehicles, one such certificate will be issued for each manufacturer and will certify compliance for those vehicles previously identified in that manufacturer's statement(s) of compliance as required in § 86.088–23(b)(4) (i) and (ii).

(iii) For diesel light-duty vehicles and light-duty trucks, or diesel heavy-duty engines, included in the applicable particulate averaging program, the manufacturer may at any time during production elect to change the level of any family particulate emission limit by demonstrating compliance with the new limit as described in §§ 86.091–28(a)(6) and 86.091–28(b)(5)(i). New certificates issued under this paragraph will be applicable only for vehicles (or engines) produced subsequent to the date of issuance.

(iv) For light-duty trucks or heavy-duty engines included in the applicable NO_x averaging program, the manufacturer may at any time during production elect to change the level of any family NO_x emission limit by demonstrating compliance with the new limit as described in § 86.091–28(b)(5)(ii) New certificates issued under this paragraph will be applicable only for

vehicles (or engines) produced subsequent to the day of issue.

(4)(i) The adjustment or modification of any light-duty truck in accordance with instructions provided by the manufacturer for the altitude where the vehicle is principally used will not be considered a violation of section 203(a)(3) of the Clean Air Act.

(ii) A violation of section 203(a)(1) of the Clean Air Act occurs when a manufacturer sells or delivers to an ultimate purchaser any light-duty vehicle or light-duty truck, subject to the regulations under the Act, under any of the conditions specified in the remainder of this paragraph.

(A) When a light-duty vehicle or light-duty truck is not configured to meet high-altitude requirements:

(*1*) At a designated high-altitude location, unless such manufacturer has reason to believe that such vehicle will not be sold to an ultimate purchaser for principal use at a designated high-altitude location; or

(*2*) At a location other than a designated high-altitude location, when such manufacturer has reason to believe that such motor vehicle will be sold to an ultimate purchaser for principal use at a designated high-altitude location.

(B) When a light-duty vehicle is not configured to meet low-altitude requirements, as provided in § 86.087–8(i):

(*1*) At a designated low-altitude location, unless such manufacturer has reason to believe that such vehicle will not be sold to an ultimate purchaser for principal use at a designated low-altitude location; or

(*2*) At a location other than a designated low-altitude location, when such manufacturer has reason to believe that such motor vehicle will be sold to an ultimate purchaser for principal use at a designated low-altitude location.

(iii) A manufacturer shall be deemed to have reason to believe that a light-duty vehicle that has been exempted from compliance with emission standards at high-altitude, or a light-duty truck which is not configured to meet high-altitude requirements, will not be sold to an ultimate purchaser for principal use at a designated high-altitude location if the manufacturer has informed its dealers and field representatives about the terms of these high-altitude regulations, has not caused the improper sale itself, and has taken reasonable action which shall include, but not be limited to, either paragraph (a)(4)(iii)(A) or (B), and (a)(4)(ii)(C) of this section:

(A) Requiring dealers in designated high-altitude locations to submit written statements to the manufacturer signed by the ultimate purchaser that a vehicle which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitude location; requiring dealers in counties contiguous to designated high-altitude locations to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated high-altitude location, that a vehicle which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitude location; and for each sale or delivery of fleets of ten or more such vehicles in a high-altitude location or in counties contiguous to high-altitude locations, requiring either the selling dealer or the delivering dealer to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated high-altitude location, that a vehicle which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitude location. In addition, the manufacturer will make available to EPA, upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold), sales, warranty, or other information pertaining to sales of vehicles by the dealers described above maintained by the manufacturer in the normal course of business relating to the altitude configuration of vehicles and the locations of ultimate purchasers; or

(B) Implementing a system which monitors factory orders of low-altitude vehicles by high-altitude dealers, or through other means, identifies dealers that may have sold or delivered a vehicle not configured to meet the high-altitude requirements to an ultimate purchaser for principal use at a designated high-altitude location; and making such information available to EPA upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold); and

(C) Within a reasonable time after receiving written notice from EPA or a State or local government agency that a dealer may have improperly sold or delivered a vehicle not configured to meet the high-altitude requirements to an ultimate purchaser residing in a designated high-altitude location, or based on information obtained pursuant to paragraph (a)(4)(iii) of this section that a dealer may have improperly sold or delivered a significant number of such vehicles to ultimate purchasers so residing, reminding the dealer in writing of the requirements of these regulations, and, where appropriate, warning the dealer that sale by the dealer of vehicles not configured to meet high-altitude requirements may be contrary to the terms of its franchise agreement with the manufacturer and the dealer certification requirements of § 85.2108 of this chapter.

(iv) A manufacturer shall be deemed to have reason to believe that a light-duty vehicle which has been exempted from compliance with emission standards at low-altitude, as provided in § 86.087–8(i), will not be sold to an ultimate purchaser for principal use at a designated low-altitude location if the manufacturer has informed its dealers and field representatives about the terms of the high-altitude regulations, has not caused the improper sale itself, and has taken reasonable action which shall include, but not be limited to, either paragraph (a)(4)(iv) (A) or (B), and (a)(4)(iv)(C) of this section:

(A) Requiring dealers in designated low-altitude locations to submit written statements to the manufacturer signed by the ultimate purchaser that a vehicle which is not configured to meet low-altitude requirements will not be used principally at a designated low-altitude location; requiring dealers in counties contiguous to designated low-altitude locations to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated low-altitude location, that a vehicle which is not configured to meet low-altitude requirements will not be used principally at a designated low-altitude location; and for each sale or delivery of fleets of ten or more such vehicles in a low-altitude location or in counties contiguous to low-altitude locations, requiring either the selling dealer or the delivering dealer to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated low-altitude location, that a vehicle which is not configured to meet low-altitude requirements will not be used principally at a designated high-altitude location. In addition, the manufacturer will make available to EPA, upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been

sold), sales, warranty, or other information pertaining to sales of vehicles by the dealers described above maintained by the manufacturer in the normal course of business relating to the altitude configuration of vehicles and the locations of ultimate purchasers; or

(B) Implementing a system which monitors factory orders of high-altitude vehicles by low-altitude dealers, or through other means, identifies dealers that may have sold or delivered a vehicle not configured to meet the low-altitude requirements to an ultimate purchaser for principal use at a designated low-altitude location; and making such information available to EPA upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold); and

(C) Within a reasonable time after receiving written notice from EPA or a state or local government agency that a dealer may have improperly sold or delivered a vehicle not configured to meet the low-altitude requirements to an ultimate purchaser residing in a designated low-altitude location, or based on information obtained pursuant to paragraph (a)(4)(iv) of this section that a dealer may have improperly sold or delivered a significant number of such vehicles to ultimate purchasers so residing, reminding the dealer in writing of the requirements of these regulations, and, where appropriate, warning the dealer that sale by the dealer of vehicles not configured to meet low-altitude requirements may be contrary to the terms of its franchise agreement with the manufacturer and the dealer certification requirements of § 85.2108 of this chapter.

(5)(i) For the purpose of paragraph (a) of this section, a "designated high-altitude location" is any county which has substantially all of its area located above 1,219 meters (4,000 feet) and:

(A) Requested and extension past the attainment date of December 31, 1982, for compliance with either the National Ambient Air Quality Standards for carbon monoxide or ozone, as indicated in Part 52 (Approval and Promulgation of Implementation Plans) of this title; or

(B) Is in the same state as a county designated as a high-altitude location according to paragraph (a)(5)(i)(A) of this section.

(ii) The designated high-altitude locations defined in paragraph (a)(5)(i) of this section are listed below:

State of Colorado

Adams	Alamosa
Arapahoe	Lake
Archuleta	La Plata
Boulder	Larimer
Chaffee	Las Animas
Cheyenne	Lincoln
Clear Creek	Mesa
Conejos	Mineral
Costilla	Moffat
Crowley	Montezuma
Custer	Montrose
Delta	Morgan
Denver	Otero
Dolores	Ouray
Douglas	Park
Eagle	Pitkin
Elbert	Pueblo
El Paso	Rio Blanco
Fremont	Rio Grande
Garfield	Routt
Gilpin	Saguache
Grand	San Juan
Gunnison	San Miguel
Hinsdale	Summit
Huerfano	Teller
Jackson	Washington
Jefferson	Weld
Kit Carson	

State of Nevada

Carson City	Lyon
Douglas	Mineral
Elko	Nye
Esmeralda	Pershing
Eureka	Storey
Humboldt	Washoe
Lander	White Pine
Lincoln	

State of New Mexico

Bernalillo	Otero
Catron	Rio Arriba
Colfax	Roosevelt
Curry	Sandoval
De Baca	San Juan
Grant	San Miguel
Guadalupe	Santa Fe
Harding	Sierra
Hidalgo	Socorro
Lincoln	Taos
Los Alamos	Torrance
Luna	Union
McKinley	Valencia
Mora	

State of Utah

Beaver	Morgan
Box Elder	Piute
Cache	Rich
Carbon	Salt Lake
Daggett	San Juan
Davis	Sanpete
Duchesne	Sevier
Emery	Summit
Garfield	Tooele
Grand	Uintah
Iron	Utah
Juab	Wasatch
Kane	Wayne
Millard	Weber

(iii) For the purpose of paragraph (a) of this section, a "designated low-altitude location" is any county which has substantially all of its area located below 1,219 meters (4,000 feet).

(iv) The designated low-altitude locations so defined include all counties in the United States which are not listed in eithir paragraph (a)(5)(ii) of this section or in the list below:

State of Arizona

Apache	Navajo
Cochise	Yavapai
Coconino	

State of Idaho

Bannock	Franklin
Bear Lake	Fremont
Bingham	Jefferson
Blaine	Lemhi
Bonneville	Madison
Butte	Minidoka
Camas	Oneida
Caribou	Power
Cassia	Treton
Clark	Valley
Custer	

State of Montana

Beaverhead	Meagher
Deer Lodge	Park
Gallatin	Powell
Jefferson	Silver Bow
Judith Basin	Wheatland
Madison	

State of Nebraska

Banner	Kimball
Cheyenne	Sioux

State of Oregon

Harney	Lake
Klamath	

State of Texas

Jeff Davis	Parmer
Hudspeth	

State of Wyoming

Albany	Natrona
Campbell	Niobrara
Carbon	Park
Converse	Platte
Fremont	Sublette
Goshen	Sweetwater
Hot Springs	Teton
Johnson	Uinta
Laramie	Washakie
Lincoln	Weston

(6) Catalyst-equipped vehicles, otherwise covered by a certificate, which are driven outside the United States, Canada, and Mexico will be presumed to have been operated on leaded gasoline resulting in deactivation of the catalysts. If these vehicles are imported or offered for importation without retrofit of the catalyst, they will be considered not to be within the coverage of the certificate unless included in a catalyst control program operated by a manufacturer or a United States Government agency and approved by the Administrator.

(7) For incomplete light-duty trucks, a certificate covers only those new motor vehicles which, when completed by having the primary load-carrying device or container attached, conform to the maximum curb weight and frontal area limitations described in the application for certification as required in § 86.091-21(d).

(8) For heavy-duty engines, a certificate covers only those new motor

vehicle engines installed in heavy-duty vehicles which conform to the minimum gross vehicle weight rating, curb weight, or frontal area limitations for heavy-duty vehicles described in § 86.082–2.

(9) For incomplete gasoline-fueled heavy-duty vehicles a certificate covers only those new motor vehicles which, when completed, conform to the nominal maximum fuel tank capacity limitations as described in the application for certification as required in § 86.091–21(e).

(10) For diesel light-duty vehicle and diesel light-duty truck families, or diesel heavy-duty engine familes, which are included in a particulate averaging program, the manufacturer's production-weighted average of the particulate emission limits of all engine families in a participating class or classes shall not exceed the applicable diesel particulate standard, or the composite particulate standard defined in § 86.085–2, as appropriate, at the end of the model year, as determined in accordance with 40 CFR Part 86. The certificate shall be void *ab initio* for those vehicles causing any exceedance of the particulate standard.

(11) For light-duty truck families, or heavy-duty engine families, which are included in a NO_x averaging program, the manufacturer's production-weighted average of the NO_x emission limits of all such engine families shall not exceed the applicable NO_x emission standard, or the composite NO_x emission standard defined in § 86.088–2, as appropriate, at the end of the model year, as determined in accordance with 40 CFR Part 86. The certificate shall be void *ab initio* for those vehicles causing any exceedance of the NO_x standard.

(b)(1) The Administrator will determine whether a vehicle (or engine) covered by the application complies with applicable standards (or family particulate emission limit, or family NO_x emission limit, as appropriate) by observing the following relationships:

(i) *Light-duty vehicles.* (A) The durability-data vehicle(s) selected under § 86.085–24(c)(1)(i) shall represent all vehicles of the same engine-system combination.

(B) The emission-data vehicle(s) selected under § 86.085–24(b)(1) (ii) through (iv) shall represent all vehicles of the same engine-system combination as applicable.

(C) The emission-data vehicle(s) selected under § 86.085–24(b)(1)(vii) (A) and (B) shall represent all vehicles of the same evaporate control system within the evaporative family.

(ii) *Light-duty trucks.* (A) The emission-data vehicle(s) selected under § 86.085–24(b)(1)(ii), shall represent all vehicles of the same engine-system combination as applicable.

(B) The emission-data vehicle(s) selected under § 86.085–24(b)(1)(vii) (A) and (B) shall represent all vehicles of the same evaporative control system within the evaporative family.

(C) The emission-data vehicle(s) selected under § 86.085–24(b)(1)(v) shall represent all vehicles of the same engine-system combination as applicable.

(D) The emission-data vehicle(s) selected under § 86.085–24(b)(1)(viii) shall represent all vehicles of the same evaporative control system within the evaporative emission family, as applicable.

(iii) *Heavy-duty engines.* (A) A gasoline-fueled emission-data test engine selected under § 86.085–24(b)(2)(iv) shall represent all engines in the same family of the same engine displacement-exhaust emission control system combination.

(B) A gasoline-fueled emission-data test engine selected under § 86.085–24(b)(2)(iii) shall represent all engines in the same engine family of the same engine displacement-exhaust emission control system combination.

(C) A diesel emission-data test engine selected under § 86.085–24(b)(3)(ii) shall represent all engines in the same engine-system combination.

(D) A diesel emission-data test engine selected under § 86.085–24(b)(3)(iii) shall represent all engines of that emission control system at the rated fuel delivery of the test engine.

(iv) *Gasoline-fueled heavy-duty vehicles.* A statement of compliance submitted under § 86.088–23(b)(4)(i) or (ii) shall represent all vehicles in the same evaporative emission family-evaporative emission control system combination.

(2) The Administrator will proceed as in paragraph (a) of this section with respect to the vehicles (or engines) belonging to an engine family or engine family-evaporative emission family combination (as applicable), all of which comply with all applicable standards (or family emission limits, as appropriate).

(3) If, after a review of the test reports and data submitted by the manufacturer, data derived from any additional testing conducted pursuant to § 86.091–29, data or information derived from any inspection carried out under § 86.078–7(c) or any other pertinent data or information, the Administrator determines that one or more test vehicles (or test engines) of the certification test fleet do not meet applicable standards (or family particulate emission limits, as appropriate), he will notify the manufacturer in writing, setting forth the basis for his determination. Within 30 days following receipt of the notification, the manufacturer may request a hearing on the Administrator's determination. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determination and data in support of such objections. If, after a review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078–6 with respect to such issue.

(4) For light-duty vehicles and light-duty trucks the manufacturer may, at its option, proceed with any of the following alternatives with respect to an emission-data vehicle determined not in compliance with all applicable standard (or family particulate emission limits, or family NO_x emission limits, as appropriate) for which it was tested:

(i) Request a hearing under § 86.078–6; or

(ii) Remove the vehicle configuration (or evaporative vehicle configuration, as applicable) which failed, from his application;

(A) If the failed vehicle was tested for compliance with exhaust emission standards (or the family particulate emission limit, or the family NO_x emission limit, as appropriate) only: The Administrator may select, in place of the failed vehicle, in accordance with the selection criteria employed in selecting the failed vehicle, a new emission-data vehicle to be tested for exhaust emission compliance only.

(B) If the failed vehicle was tested for compliance with both exhaust and evaporative emission standards: The Administrator may select, in place of the failed vehicle, in accordance with the selection criteria employed in selecting the failed vehicle, a new emission-data vehicle which will be tested for compliance with both exhaust and evaporative emission standards. If one vehicle cannot be selected in accordance with the selection criteria employed in selecting the failed vehicle, then two vehicles may be selected (*i.e.*, one vehicle to satisfy the exhaust emission vehicle selection criteria and one vehicle to satisfy the evaporative emission vehicle selection criteria). The vehicle selected to satisfy the exhaust emission vehicle selection criteria will be tested for compliance with exhaust emission standards (or family emission limits, as appropriate) only. The vehicle selected to satisfy the evaporative

emission vehicle selection criteria will be tested for compliance with both exhaust and evaporative emission standards; or

(iii) Remove the vehicle configuration (or evaporative vehicle configuration, as applicable) which failed from the application and add a vehicle configuration(s) (or evaporative vehicle configuration(s), as applicable) not previously listed. The Administrator may require, if applicable, that the failed vehicle be modified to the new engine code (or evaporative emission code, as applicable) and demonstrate by testing that it meets applicable standards (or the family particulate emission limit, or the family NO_x emission limit, as appropriate) for which it was originally tested. In addition, the Administrator may select, in accordance with the vehicle selection criteria given in § 86.085–24(b), a new emission-data vehicle or vehicles. The vehicles selected to satisfy the exhaust emission vehicle selection criteria will be tested for compliance with exhaust emission standards (or the family particulate emission limit, or the family NO_x emission limit, as appropriate) only. The vehicle selected to satisfy the evaporative emission vehicle selection criteria will be tested for compliance with both exhaust and evaporative emission standards (or the family particulate emisson limit, or the family NO_x emission limit, as appropriate); or

(iv) Correct a component or system malfunction and show that with a correctly functioning system or component the failed vehicle meets applicable standards (or the family particulate emission limit, or the family NO_x emission limit, as appropriate) for which it was originally tested. The Administrator may require a new emission-data vehicle, of identical vehicle configuration (or evaporative vehicle configuration, as applicable) to the failed vehicle, to be operated and tested for compliance with the applicable standards (or the family particulate emission limit, or the family NO_x emission limit, as appropriate) for which the failed vehicle was originally tested.

(5) For heavy-duty engines the manufacturer may, at his option, proceed with any of the following alternatives with respect to any engine family represented by a test engine(s) determined not in complinace with applicable standards (or family emission limit, as appropriate):

(i) Request a hearing under § 86.078–6; or

(ii) Delete from the application for certification the engines represented by the failing test engine. (Engines so deleted may be included in a later request for certification under § 86.079–32.) The Administrator may then select in place of each failing engine an alternate engine chosen in accordance with selection criteria employed in selecting the engine that failed; or

(iii) Modify the test engine and demonstrate by testing that it meets applicable standards. Another engine which is in all material respect the same as the first engine, as modified, may then be operated and tested in accordance with applicable test procedures.

(6) If the manufacturer does not request a hearing or present the required data under paragraphs (b)(4) or (b)(5) of this section (as applicable) of this section, the Administrator will deny certification.

(c) (1) Notwithstanding the fact that any certification vehicle(s) (or certification engine(s)) may comply with other provisions of this subpart, the Administrator may withhold or deny the issuance of a certificate of conformity (or suspend or revoke any such certificate which has been issued) with respect to any such vehicle(s) (or engine(s)) if:

(i) The manufacturer submits false or incomplete information in his application for certification thereof;

(ii) The manufacturer renders inaccurate any test data which he submits pertaining thereto or otherwise circumvents the intent of the Act, or of this part with respect to such vehicle (or engine);

(iii) Any EPA Enforcement Officer is denied access on the terms specified in § 86.078–7(c) to any facility or portion thereof which contains any of the following:

(A) The vehicle (or engine);

(B) Any components used or considered for use in its modification or buildup into a certification vehicle (or certification engine);

(C) Any production vehicle (or production engine) which is or will be claimed by the manufacturer to be covered by the certificate;

(D) Any step in the construction of a vehicle (or engine) described in paragraph (c)(iii)(C) of this section;

(E) Any records, documents, reports, or histories required by this part to be kept concerning any of the above;

(iv) Any EPA Enforcement Officer is denied "reasonable assistance" (as defined in § 86.078–7(c)) in examining any of the items listed in paragraph (c)(1)(iii) of this section.

(2) The sanctions of withholding, denying, revoking, or suspending of a certificate may be imposed for the reasons in paragraphs (c)(1)(i),(ii),(iii), or (iv) of this section only when the infraction is substantial.

(3) In any case in which a manufacturer knowingly submits false or inaccurate information or knowingly renders inaccurate or invalid any test data or commits any other fraudulent acts and such acts contribute substantially to the Administrator's decision to issue a certificate of conformity, the Administrator may deem such certificate void *ab initio*.

(4) In any case in which certification of a vehicle (or engine) is proposed to be withheld, denied, revoked, or suspended under paragraph (c)(1)(iii) or (iv) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.078–7(c) in fact occurred, the manufacturer, if he wishes to contend that, even though the violation occurred, the vehicle (or engine) in question was not involved in the violation to a degree that would warrant withholding, denial, revocation, or suspension of certification under either paragraph (c)(1)(iii) or (iv) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(5) Any revocation or suspension of certification under paragraph (c)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.078–6 hereof.

(ii) Extend no further than to forbid the introduction into commerce of vehicles (or engines) previously covered by the certification which are still in the hands of the manufacturer, except in cases of such fraud or other misconduct as makes the certification invalid *ab initio*.

(6) The manufacturer may request in the form and manner specified in paragraph (b)(3) of this section that any determination made by the Administrator under paragraph (c)(1) of this section to withhold or deny certification be reviewed in a hearing conducted in accordance with § 86.078–6. If the Administrator finds, after a review of the request and supporting data, that the request raises a substantial factual issue, he will grant the request with respect to such issue.

(d)(1) *For light-duty vehicles.* Notwithstanding the fact that any vehicle configuration or engine family may be covered by a valid outstanding certificate of conformity, the Administrator may suspend such outstanding certificate of conformity in

whole or in part with respect to such vehicle configuration or engine family if:

(i) The manufacturer refuses to comply with the provisions of a test order issued by the Administrator pursuant to § 86.603; or

(ii) The manufacturer refuses to comply with any of the requirements of § 86.603; or

(iii) The manufacturer submits false or incomplete information in any report or information provided pursuant to the requirements of § 86.609; or

(iv) The manufacturer renders inaccurate any test data which he submits pursuant to § 86.609; or

(v) Any EPA Enforcement Officer is denied access to a facility on the terms specified in § 86.606; or

(vi) Any EPA Enforcement Officer is denied the opportunity on the terms specified in § 86.606, to:

(A) Monitor vehicle selection pursuant to § 86.607, or

(B) Select vehicles for testing pursuant to § 86.607, or

(C) Monitor vehicle testing performed to satisfy any of the requirements of this part; or

(vii) Any EPA Enforcement Officer is denied "reasonable assistance" as defined in § 86.606 in examining any of the items listed in that section; or

(viii) The manufacturer refuses to comply with the requirements of §§ 86.604(a), 86.605, and 86.607, 86.608, 86.610, or 86.611.

(2) The sanction of suspending a certificate may not be imposed for the reasons in paragraph (d)(1) (i), (ii), or (viii) of this section where such refusal is caused by conditions and circumstances outside the control of the manufacturer which renders it impossible to comply with those requirements. Such conditions and circumstances shall include, but not be limited to, any uncontrollable factors which results in the temporary unavailability of equipment and personnel needed to conduct the required tests, such as equipment breakdown, or failure, or illness of personnel, but shall not include failure of the manufacturer to adequately plan for and provide the equipment and personnel needed to conduct the tests. The manufacturer will bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(3) The sanctions of suspending a certificate may be imposed for the reasons in paragraph (d)(1) (iii), (iv), (v), (vi), or (vii) of this section only when the infraction is substantial.

(4) In any case in which a manufacturer knowingly submitted false or inaccurate information or knowingly rendered inaccurate any test data or committed any other fraudulent acts, and such acts contributed substantially to the Administrator's original decision not to suspend or revoke a certificate of conformity in whole or in part, the Administrator may deem such certificate void from the date of such fraudulent act.

(5) In any case in which certification of a vehicle is proposed to be suspended under paragraph (d)(1) (v), (vi), or (vii) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.606 in fact occurred, the manufacturer, if he wishes to contend that even though the violation occurred, the vehicle configuration or engine family in question was not involved in the violation to the degree that would warrant suspension of certification under either paragraph (d)(1) (v), (vi), or (vii) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) Any suspension of certification under paragraph (d)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.613 hereof, and

(ii) Not apply to vehicles no longer in the hands of the manufacturer.

(e) *For light-duty trucks and heavy-duty engines.* (1) Notwithstanding the fact that any vehicle configuration or engine family may be covered by a valid outstanding certificate of conformity, the Administrator may suspend such outstanding certificate of conformity in whole or in part with respect to such vehicle or engine configuration or engine family if:

(i) The manufacturer refuses to comply with the provisions of a test order issued by the Administrator pursuant to § 86.1003; or

(ii) The manufacturer refuses to comply with any of the requirements of § 86.1003; or

(iii) The manufacturer submits false or incomplete information in any report or information provided pursuant to the requirements of § 86.1009; or

(iv) The manufacturer renders inaccurate any test data submitted pursuant to § 86.1009; or

(v) Any EPA Enforcement Officer is denied the opportunity to conduct activities related to entry and access as authorized in § 86.1006 of this part and in a warrant or court order presented to the manufacturer or the party in charge of a facility in question; or

(vi) EPA Enforcement Officers are unable to conduct activities related to entry and access as authorized in § 86.1006 of this part because a manufacturer has located a facility in a foreign jurisdiction where local law prohibits those activities; or

(vii) The manufacturer refuses to or in fact does not comply with the requirements of §§ 86.1004(a), 86.1005, 86.1007, 86.1008, 86.1010, 86.1011, or 86.1013.

(2) The sanction of suspending a certificate may not be imposed for the reasons in paragraphs (e)(1)(i), (ii), or (vii) of this section where such refusal or denial is caused by conditions and circumstances outside the control of the manufacturer which renders it impossible to comply with those requirements. Such conditions and circumstances shall include, but are not limited to, any uncontrollable factors which result in the temporary unavailability of equipment and personnel needed to conduct the required tests, such as equipment breakdown or failure or illness of personnel, but shall not include failure of the manufacturers to adequately plan for and provide the equipment and personnel needed to conduct the tests. The manufacturer will bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(3) The sanction of suspending a certificate may be imposed for the reasons outlined in paragraph (e)(1) (iii), (iv), or (v) of this section only when the infraction is substantial.

(4) In any case in which a manufacturer knowingly submitted false or inaccurate information or knowingly rendered inaccurate any test data or committed any other fraudulent acts, and such acts contributed substantially to the Administrator's original decision not to suspend or revoke a certificate of conformity in whole or in part, the Administrator may deem such certificate void from the date of such fraudulent act.

(5) In any case in which certification of a light-duty truck or heavy-duty engine is proposed to be suspended under paragraph (e)(1)(v) of this section and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.1006 in fact occurred, if the manufacturer wishes to contend that, although the violation occurred, the vehicle or engine configuration or engine family in question was not involved in the violation to a degree that would warrant suspension of certification under paragraph (e)(1)(v) of this section,

he shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) Any suspension of certification under paragraph (e)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.1014, and

(ii) Not apply to vehicles or engines no longer in the hands of the manufacturer.

(7) Any voiding of a certificate of conformity under paragraph (e)(4) of this section shall be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.1014.

27. A new § 86.088–35 is added, to read as follows:

§ 86.088–35 Labeling.

(a) The manufacturer of any motor vehicle (or motor vehicle engine) subject to the applicable emission standards (and family particulate emission limits and family NO_x emission limits, as appropriate) of this subpart shall, at the time of manufacture, affix a permanent legible label, of the type and in the manner described below, containing the information hereinafter provided, to all production models of such vehicles (or engines) available for sale to the public and covered by a certificate of conformity under § 86.088–30(a).

(1) *Light-duty vehicles.* (i) A permanent, legible label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches), engine, family identification and evaporative family identification;

(D) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards (or family particulate emission limit, as applicable), including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and valve (*e.g.*, idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing, and valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tune-up and what accessories (*e.g.*, air conditioner), if any, should be in operation;

(E) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to light-duty vehicles;

(F) For vehicles which are part of the diesel particulate averaging program, the family particulate emission limit to which the vehicle is certified;

(G) For vehicles that have been exempted from compliance with the emission standards at high altitude, as specified in § 86.087–8(h),

(*1*) A highlighted statement (*e.g.*, underscored or boldface letters) that the vehicle is certified to applicable emission standards at low altitude only,

(*2*) A statement that the vehicle's unsatisfactory performance under high-altitude conditions makes it unsuitable for principal use at high altitude, and

(*3*) A statement that the emission performance warranty provisions of 40 CFR Part 85, Subpart V do not apply when the vehicle is tested at high altitude, and

(H) For vehicles that have been exempted from compliance with the emission standards at low altitude, as specified in § 86.087–8(i),

(*1*) A highlighted statement (*e.g.*, underscored or boldface letters) that the vehicle is certified to applicable emission standards at high altitude only, and

(*2*) A statement that the emission performance warranty provisions of 40 CFR Part 85, Subpart V do not apply when the vehicle is tested at low altitude.

(2) *Light-duty trucks.* (i) A legible, permanent label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label.

(A) The label heading: Important Vehicle Information;

(B) Full coroprate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches) and engine family identification;

(D) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards (or family particulate limit, as appropriate), including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (*e.g.*, idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing, and valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tune-up and what accessories (*e.g.*, air conditioner), if any, should be in operation. If adjustments or modifications to the vehicle are necessary to insure compliance with emission standards (or family particulate limit, or family NO_x emission limit, as appropriate) at either high or low altitude, the manufacturer shall either include the instructions for such adjustments on the label, or indicate on the label where instructions for such adjustments may be found. The label shall indicate whether the engine tune-up or adjustment specifications are applicable to high altitude, low altitude or both;

(E) The prominent statement: "This vehicle conforms to U.S. EPA regulations applicable to 19— Model Year New Light-Duty Trucks."

(F) If the manufacturer is provided an alternate useful-life period under the provisions of § 86.088–21(f), the prominent statement: "This vehicle has been certified to meet U.S. EPA standards for a useful-life period of — years or —— miles of operation, whichever occurs first. This vehicle's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than years of miles (*e.g.*, hours, or miles only);

(G) A statement, if applicable, that the adjustments or modifications indicated on the label are necessary to ensure emission control compliance at the altitude specified;

(H) A statement, if applicable, that the high-altitude vehicle was designated or modified for principal use at high altitude. This statement must be affixed by the manufacturer at the time of assembly or by any dealer who performs the high-altitude modification

or adjustment prior to sale to an ultimate purchaser;

(I) For vehicles that have been exempted from compliance with the high-altitude emission standards, as specified in § 86.088–9(g)(2),

(*1*) A highlighted statement (*e.g.*, underscored or boldface letters) that the vehicle is certified to applicable emission standards at low altitude only,

(*2*) A statement that the vehicle's unsatisfactory performance under high-altitude conditions makes it unsuitable for principal use at high altitude, and

(*3*) A statement that the emission performance warranty provisions of 40 CFR Part 85, Subpart I do not apply when the vehicle is tested at high altitude; and,

(J) For vehicles which are included in the diesel particulate averaging program, the family particulate emission limit to which the vehicle is certified.

(K) For vehicles which are included in the light-duty truck NO_x averaging program, the family NO_x emission limit to which the vehicle is certified.

(3) *Heavy-duty engines.* (i) A permanent legible label shall be affixed to the engine in a position in which it will be readily visible after installation in the vehicle.

(ii) The label shall be attached to an engine part necessary for normal engine operation and not normally requiring replacement during engine life.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals which shall be of a color that contrasts with the background of the label:

(A) The label heading: Important Engine Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches) and engine family and model designations;

(D) Date of engine manufacture (month and year). The manufacturer may, in lieu of including the date of manufacture on the engine label, maintain a record of the engine manufacture dates. The manufacturer shall provide the date of manufacture records to the Administrator upon request;

(E) Engine specifications and adjustments as recommended by the manufacturer. These specifications should indicate the proper transmission position during tuneup and what accessories (*e.g.*, air conditioner), if any, should be in operation;

(F) For gasoline-fueled engines the label should include the idle speed, ignition timing, and the idle air-fuel mixture setting procedure and value (*e.g.*, idle CO, idle air-fuel ratio, idle speed drop), and valve lash;

(G) For diesel engines the label should include the advertised hp at rpm, fuel rate at advertised hp in mm^3/stroke, valve lash, initial injection timing, and idle speed;

(H) The prominent statement: "This engine conforms to U.S. EPA regulations applicable to 19— Model Year New Heavy-Duty Engines."

(I) If the manufacturer is provided with an alternate useful-life period under the provisions of § 86.088–21(f), the prominent statement: "This engine has been certified to meet U.S. EPA standards for a useful-life period of —— miles or —— hours of operation, whichever occurs first. This engine's actual life may very depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than miles or hours (*e.g.*, years, or hours only);

(J) *For diesel engines.* The prominent statement: "This engine has a primary intended service application as a —— heavy-duty diesel engine." (The primary intended service applications are light, medium, and heavy, as defined in § 86.085–2);

(K) *For gasoline-fueled engines.* One of the following statements, as applicable:

(*1*) For engines certified to the emission standards under § 86.088–10(a)(1)(i), the statement: "This engine is certified for use in all heavy-duty vehicles."

(*2*) For engines certified under the provisions of § 86.088–10(a)(3)(i), the statement: "This engine is certified for use in all heavy-duty vehicles under the special provision of 40 CFR § 86.088–10(a)(3)(i)."

(*3*) For engines certified to the emission standards under § 86.088–10(a)(1)(ii), the statement: "This engine is certified for use only in heavy-duty vehicles with a gross vehicle weight rating above 14,000 lbs."

(iv) The label may be made up of one or more pieces: *Provided,* that all pieces are permanently attached to the same engine or vehicle part as applicable.

(4)(i) *Gasoline-fueled heavy-duty vehicles.* A permanent, legible label shall be affixed in a readily visible position in the engine compartment. If such vehicles do not have an engine compartment, the label required in paragraphs (a)(4) and (g)(1) of this section shall be affixed in a readily visible position on the operator's enclosure or on the engine.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numericals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Evaporative family identification;

(D) The maximum nominal fuel tank capacity (in gallons) for which the evaporative control system is certified; and,

(E) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to gasoline-fueled heavy-duty vehicles.

(b) The provisions of this section shall not prevent a manufacturer from also reciting on the label that such vehicle (or engine) conforms to any applicable state emission standards for new motor vehicles (or new motor vehicle engines) or any other information that such manufacturer deems necesary for, or useful to, the proper operation and satisfactory maintenance of the vehicle (or engine).

(c)(1) The manufacturer of any light-duty vehicle or light-duty truck subject to the emission standards (or family particulate emission limits, or family NO_x emission limits, as appropriate) of this subpart shall, in addition and subsequent to setting forth those statements on the label required by the Department of Transportation (DOT) pursuant to 49 CFR 567.4, set forth on the DOT label or on an additional label located in proximity to the DOT label and affixed as described in 40 CFR 567.4(b), the following information in the English language, lettered in block letters and numerals not less than three thirty-seconds of an inch high, of a color that contrasts with the background of the label:

(i) The Heading: "Vehicle Emission Control Information."

(ii)(A) *For light-duty vehicles,* the statement: "This Vehicle Conforms to U.S. EPA Regulations Applicable to 19— Model Year New Motor Vehicles."

(B) *For light-duty trucks.* (*1*) The statement: "This vehicle conforms to U.S. EPA regulations applicable to 19— Model Year New Light-Duty Trucks."

(*2*) If the manufacturer is provided an alternate useful-life period under the provisions of § 86.088–21(f), the

prominent statement: "This vehicle has been certified to meet U.S. EPA standards for a useful-life period of — years or —— miles of operation, whichever occurs first. This vehicle's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than years or miles (*e.g.*, hours, or miles only).

(iii) One of the following statements, as applicable, in letters and numerals not less than six thirty-seconds of an inch high and of a color that contrasts with the background of the label:

(A) For all vehicles certified as non-catalyst-equipped: "NON-CATALYST"

(B) For all vehicles certified as catalyst-equipped which are included in a manufacturer's catalyst control program for which approval has been given by the Administrator: "CATALYST—APPROVED FOR IMPORT"

(C) For all vehicles certified as catalyst-equipped which are not included in a manufacturer's catalyst control program for which prior approval has been given by the Administrator: "CATALYST"

(2) In lieu of selecting either of the labeling options of paragraph (c)(1) of this section, the manufacturer may add the information required by paragraph (c)(1)(iii) of this section to the label required by paragraph (a) of this section. The required information will be set forth in the manner prescribed by paragraph (c)(1)(iii) of this section.

(d) Incomplete light-duty trucks or incomplete heavy-duty vehicles optionally certified as light-duty trucks shall have the following prominent statement printed on the label required by paragraph (a)(2) of this section in lieu of the statement required by paragraph (a)(2)(iii)(E) of this section: "This vehicle conforms to U.S. EPA regulations applicable to 19— Model Year New Light-Duty Trucks when completed at a maximum curb weight of —— pounds or at a maximum gross vehicle weight rating of —— pounds or with a maximum frontal area of — square feet."

(e) Incomplete heavy-duty vehicles having a gross vehicle weight rating of 8,500 pounds or less shall have one of the following statements printed on the label required by paragraph (a)(3) of this section in lieu of the statement required by paragraph (a)(3)(iii)(H) of this section: "This engine conforms to U.S. EPA regulations applicable to 19— Model Year New Heavy-Duty Engines when installed in a vehicle completed at a curb weight of more than 6,000 pounds or with a frontal area of greater than 45 square feet."

(f) The manufacturer of any incomplete light-duty vehicle or light-duty truck shall notify the purchaser of such vehicle of any curb weight, frontal area, or gross vehicle weight rating limitations affecting the emission certificate applicable to that vehicle. This notification shall be transmitted in a manner consistent with National Highway Traffic Safety Administration safety notification requirements published in 49 CFR Part 568.

(g)(1) Incomplete gasoline-fueled heavy-duty vehicles shall have the following prominent statement printed on the label required in paragraph (a)(4) of this section: "(Manufacturer's corporate name) has determined that this vehicle conforms to U.S. EPA regulations applicable to 19— Model Year New Gasoline-Fueled Heavy-Duty Vehicles when completed with a nominal fuel tank capacity not to exceed —— gallons. Persons wishing to add fuel tank capacity beyond the above maximum must submit a written statement to the Administrator that the hydrocarbon storage system has been upgraded according to the requirements of 40 CFR 86.085-35(g)(2)."

(2) Persons wishing to add fuel tank capacity beyond the maximum specified on the label required in paragraph (g)(1) of this section shall:

(i) Increase the amount of fuel tank vapor storage material according to the following function:

$$Cap_f = Cap_i \left(\frac{\text{T. Vol.}}{\text{Max. Vol.}} \right)$$

Where:

Cap_f = final amount of fuel tank vapor storage material, grams.

Cap_i = initial amount of fuel tank vapor storage material, grams.

T. Vol. = total fuel tank volume of completed vehicle, gallons.

Max. Vol. = maximum fuel tank volume as specified on the label required in paragraph (g)(1) of this section, gallons.

(ii) Use, if applicable, hosing for fuel vapor routing which is at least as impermeable to hydrocarbon vapors as that used by the primary manufacturer.

(iii) Use vapor storage material with the same adsorptive characteristics as that used by the primary manufacturer.

(iv) Connect, if applicable, any new hydrocarbon storage device to the existing hydrocarbon storage device in series such that the original hydrocarbon storage device is situated between the fuel tank and the new hydrocarbon storage device. The original hydrocarbon storage device shall be sealed such that vapors cannot reach the atmosphere. The elevation of the original hydrocarbon storage device shall be equal to or lower than the new hydrocarbon storage device.

(v) Submit a written statement to the Administrator that paragraphs (g)(2)(i) through (g)(2)(iv) of this section have been complied with.

(3) If applicable, the Administrator will send a return letter verifying the receipt of the written statement required in paragraph (g)(2)(v) of this section.

28. A new § 86.091-35 is added, to read as follows:

§ 86.091-35 Labeling.

(a) The manufacturer of any motor vehicle (or motor vehicle engine) subject to the applicable emission standards (and family particulate emission limits and family NO_x emission limits, as appropriate) of this subpart, shall, at the time of manufacture, affix a permanent legible label, of the type and in the manner described below, containing the information hereinafter provided, to all production models of such vehicles (or engines) available for sale to the public and covered by a certificate of conformity under § 86.091-30(a).

(1) *Light-duty vehicles.* (i) A permanent, legible label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches), engine, family identification and evaporative family identification;

(D) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards (or family particulate emission limit, as applicable), including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (*e.g.*, idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing, and valve lash (as

applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tune-up and what accessories (*e.g.*, air conditioner), if any, should be in operation;

(E) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to light-duty vehicles;

(F) For vehicles which are part of the diesel particulate averaging program, the family particulate emission limit to which the vehicle is certified;

(G) For vehicles that have been exempted from compliance with the emission standards at high altitude, as specified in § 86.087–8(h),

(*1*) A highlighted statement (*e.g.*, underscored or boldface letters) that the vehicle is certified to applicable emission standards at low altitude only,

(*2*) A statement that the vehicle's unsatisfactory performance under high-altitude conditions makes it unsuitable for principal use at high altitude, and

(*3*) A statement that the emission performance warranty provisions of 40 CFR Part 85, Subpart V do not apply when the vehicle is tested at high altitude; and

(H) For vehicles that have been exempted from compliance with the emission standards at low altitude, as specified in § 86.087–8(i),

(*1*) A highlighted statement (*e.g.*, underscored or boldface letters) that the vehicle is certified to applicable emission standards at high altitude only, and

(*2*) A statement that the emission performance warranty provisions of 40 CFR Part 85, Subpart V do not apply when the vehicle is tested at low altitude.

(2) *Light-duty trucks.* (i) A legible permanent label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label.

(A) The label heading: Important Vehicle Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches) and engine family identification;

(D) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the applicable standards standards (or family particulate limit, as appropriate), including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (*e.g.*, idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing, and valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tune-up and what accessories (*e.g.*, air conditioner), if any, should be in operation. If adjustments or modifications to the vehicle are necessary to insure compliance with emission standards (or family particulate limit, or family NO_x emission limit, as appropriate) at either high or low altitude, the manufacturer shall either include the instructions for such adjustments on the label, or indicate on the label where instructions for such adjustments may be found. The label shall indicate whether the engine tune-up or adjustment specifications are applicable to high altitude, low altitude or both;

(E) The prominent statement: "This vehicle conforms to U.S. EPA regulations applicable to 19— Model Year New Light-Duty Trucks."

(F) If the manufacturer is provided an alternate useful-life period under the provisions of § 86.088–21(f), the prominent statement: "This vehicle has been certified to meet U.S. EPA standards for a useful-life period of — years or —— miles of operation, whichever occurs first. This vehicle's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than years of miles (*e.g.*, hours, or miles only);

(G) A statement, if applicable, that the adjustments or modifications indicated on the label are necessary to ensure emission control compliance at the altitude specified;

(H) A statement, if applicable, that the high-altitude vehicle was designated or modified for principal use at high altitude. This statement must be affixed by the manufacturer at the time of assembly or by any dealer who performs the high-altitude modification or adjustment prior to sale to an ultimate purchaser;

(I) For vehicles that have been exempted from compliance with the high-altitude emission standards, as specified in § 86.088–9(g)(2),

(*1*) A highlighted statement (*e.g.*, underscored or boldface letters) that the vehicle is certified to applicable emission standards at low altitude only,

(*2*) A statement that the vehicle's unsatisfactory performance under high-altitude conditions makes it unsuitable for principal use at high altitude, and

(*3*) A statement that the emission performance warranty provisions of 40 CFR Part 85, Subpart I do not apply when the vehicle is tested at high altitude; and,

(J) For vehicles which are included in the diesel particulate averaging program, the family particulate emission limit to which the vehicle is certified.

(K) For vehicles which are included in the light-duty truck NO_x averaging program, the family NO_x emission limit to which the vehicle is certified.

(3) *Heavy-duty engines.* (i) A permanent legible label shall be affixed to the engine in a position in which it will be readily visible after installation in the vehicle.

(ii) The label shall be attached to an engine part necessary for normal engine operation and not normally requiring replacement during engine life.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals which shall be of a color that contrasts with the background of the label:

(A) The label heading: Important Engine Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches) and engine family and model designations;

(D) Date of engine manufacture (month and year). The manufacturer may, in lieu of including the date of manufacture on the engine label, maintain a record of the engine manufacture dates. The manufacturer shall provide the date of manufacture records to the Administrator upon request;

(E) Engine specifications and adjustments as recommended by the manufacturer. These specifications should indicate the proper transmission position during tuneup and what accessories (*e.g.*, air conditioner), if any, should be in operation;

(F) For gasoline-fueled engines the label should include the idle speed, ignition timing, and the idle air-fuel mixture setting procedure and value (*e.g.*, idle CO, idle air-fuel ratio, idle speed drop), and valve lash;

(G) For diesel engines the label should include the advertised hp at rpm, fuel rate at advertised hp in mm^3/stroke, valve lash, initial injection timing, and idle speed;

(H) The prominent statement: "This engine conforms to U.S. EPA regulations applicable to 19— Model Year New Heavy-Duty Engines."

(I) If the manufacturer is provided with an alternate useful-life period under the provisions of § 86.088–21(f), the prominent statement: "This engine has been certified to meet U.S. EPA standards for a useful-life period of —— miles or — hours of operation, whichever occurs first. This engine's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than miles or hours (*e.g.*, years, or hours only);

(J) *For diesel engines.* The prominent statement: "This engine has a primary intended service application as a —— - heavy-duty diesel engine." (The primary intended service applications are light, medium, and heavy, as defined in § 86.085–2);

(K) *For gasoline-fueled engines.* One of the following statements, as applicable:

(*1*) For engines certified to the emission standards under § 86.088–10(a)(1)(i), the statement: "This engine is certified for use in all heavy-duty vehicles."

(*2*) For engines certified under the provisions of § 86.088–10(a)(3)(i), the statement: "This engine is certified for use in all heavy-duty vehicles under the special provision of 40 CFR 86.088–10(a)(3)(i)."

(*3*) For engines certified to the emission standards under § 86.088–10(a)(1)(ii), the statement: "This engine is certified for use only in heavy-duty vehicles with a gross vehicle weight rating above 14,000 lbs."

(L) For diesel engines which are included in the diesel heavy-duty particulate averaging program, the family particulate emission limit to which the engine is certified.

(M) For any heavy-duty engines which are included in the heavy-duty NO_x averaging program, the family NO_x emission limit to which the engine is certified.

(iv) The label may be made up of one or more pieces: *Provided*, that all pieces are permanently attached to the same engine or vehicle part as applicable.

(4)(i) *Gasoline-fueled heavy-duty vehicles.* A permanent, legible label shall be affixed in a readily visible position in the engine compartment. If such vehicles do not have an engine compartment, the label required in paragraphs (a)(4) and (g)(1) of this section shall be affixed in a readily visible position on the operator's enclosure or on the engine.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The lable shall contain the following information lettered in the English language in block letters and numericals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Evaporative family identification;

(D) The maximum nominal fuel tank capacity (in gallons) for which the evaporative control system is certified; and

(E) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to gasoline-fueled heavy-duty vehicles.

(b) The provisions of this section shall not prevent a manufacturer from also reciting on the label that such vehicle (or engine) conforms to any applicable state emission standards for new motor vehicles (or new motor vehicle engines) or any other information that such manufacturer deems necessary for, or useful to, the proper operation and satisfactory maintenance of the vehicle (or engine).

(c)(1) The manufacturer of any light-duty vehicle or light-duty truck subject to the emission standards (or family particulate emission limits, or family NO_x emission limits, as appropriate) of this subpart shall, in addition and subsequent to setting forth those statements on the label required by the Department of Transportation (DOT) pursuant to 49 CFR 567.4, set forth on the DOT label or on an additional label located in proximity to the DOT label and affixed as described in 40 CFR 567.4(b), the following information in the English language, lettered in block letters and numerals not less than three thirty-seconds of an inch high, of a color that contrasts with the background of the label:

(i) The Heading: "Vehicle Emission Control Information."

(ii)(A) *For light-duty vehicles*, the statement: "This Vehicle Conforms to U.S. EPA Regulations Applicable to 19— Model Year New Motor Vehicles."

(B) *For light-duty trucks.* (*1*) The statement: "This vehicle conforms to U.S. EPA regulations applicable to 19— Model Year New Light-Duty Trucks."

(*2*) If the manufacturer is provided an alternate useful-life period under the provisions of § 86.088–21(f), the prominent statement: "This vehicle has been certified to meet U.S. EPA standards for a useful-life period of — years or —— miles of operation, whichever occurs first. This vehicle's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternative useful life in terms other than years or miles (*e.g.*, hours, or miles only).

(iii) One of the following statements, as applicable, in letters and numerals not less than six thirty-seconds of an inch high and of a color that contrasts with the background of the label:

(A) For all vehicles certified as non-catalyst-equipped: "NON-CATALYST";

(B) For all vehicles certified as catalyst-equipped which are included in a manufacturer's catalyst control program for which approval has been given by the Administrator: "CATALYST—APPROVED FOR IMPORT";

(C) For all vehicles certified as catalyst-equipped which are not included in a manufacturer's catalyst control program for which prior approval has been given by the Administrator: "CATALYST";

(2) In lieu in of selecting either of the labeling options of paragraph (c)(1) of this section, the manufacturer may add the information required by paragraph (c)(1)(iii) of this section to the labeling required by paragraph (a) of this section. The required information will be set forth in the manner prescribed by paragraph (c)(1)(iii) of this section.

(d) Incomplete light-duty trucks or incomplete heavy-duty vehicles optionally certified as light-duty trucks shall have the following prominent statement printed on the label required by paragraph (a)(2) of this section in lieu of the statement required by paragraph (a)(2)(iii)(E) of this section: "This vehicle conforms to U.S. EPA regulations applicable to 19—— Model Year New Light-Duty Trucks when completed at a maximum curb weight of ——— pounds or at a maximum gross vehicle weight rating of ——— pounds or with a maximum frontal area of —— square feet."

(e) Incomplete heavy-duty vehicles having a gross vehicle weight rating of 8,500 pounds or less shall have one of the following statements printed on the label required by paragraph (a)(3) of this

section in lieu of the statement required by paragraph (a)(3)(iii)(H) of this section: "This engine conforms to U.S. EPA regulations applicable to 19—— Model Year New Heavy-Duty Engines when installed in a vehicle completed at a curb weight of more than 6,000 pounds or with a frontal area of greater than 45 square feet."

(f) The manufacturer of any incomplete light-duty vehicle or light-duty truck shall notify the purchaser of such vehicle of any curb weight, frontal area, or gross vehicle weight rating limitations affecting the emission certificate applicable to that vehicle. This notification shall be transmitted in a manner consistent with National Highway Traffic Safety Administration safety notification requirements published in 49 CFR Part 568.

(g)(1) Incomplete gasoline-fueled heavy-duty vehicles shall have the following prominent statement printed on the label required in paragraph (a)(4) of this section: "(Manufacturer's corporate name) has determined that this vehicle conforms to U.S. EPA regulations applicable to 19 —— Model Year New Gasoline-Fueled Heavy-Duty Vehicles when completed with a nominal fuel tank capacity not to exceed —— gallons. Persons wishing to add fuel tank capacity beyond the above maximum must submit a written statement to the Administrator that the hydrocarbon storage system has been upgraded according to the requirements of 40 CFR 86.085-35(g)(2)."

(2) Persons wishing to add fuel tank capacity beyond the maximum specified on the label required in paragraph (g)(1) of this section shall:

(i) Increase the amount of fuel tank vapor storage material according to the following function:

$$Cap_f = Cap_i \left(\frac{T.\ Vol.}{Max.\ Vol.} \right)$$

Where:

Cap_f = final amount of fuel tank vapor storage material, grams.

Cap_i = initial amount of fuel tank vapor storage material, grams.

T. Vol. = total fuel tank volume of completed vehicle, gallons.

Max. Vol. = maximum fuel tank volume as specified on the label required in paragraph (g)(1) of this section, gallons.

(ii) Use, if applicable, hosing for fuel vapor routing which is at least as impermeable to hydrocarbon vapors as that used by the primary manufacturer.

(iii) Use vapor storage material with the same adsorptive characteristics as that used by the primary manufacturer.

(iv) Connect, if applicable, any new hydrocarbon storage device to the existing hydrocarbon storage device in series such that the original hydrocarbon storage device is situated between the fuel tank and the new hydrocarbon storage device. The original hydrocarbon storage device shall be sealed such that vapors cannot reach the atmosphere. The elevation of the original hydrocarbon storage device shall be equal to or lower than the new hydrocarbon storage device.

(v) Submit a written statement to the Administrator that paragraphs (g)(2)(i) through (g)(2)(iv) of this section have been complied with.

(3) If applicable, the Administrator will send a return leter verifying the recipt of the written statement required in paragraph (g)(2)(v) of this section.

29. A new § 86.087-38 is added to Subpart A, to read as follows:

§ 86.087-38 Maintenance instructions.

(a) The manufacturer shall furnish or cause to be furnished to the purchaser of each new motor vehicle (or motor vehicle engine) subject to the standards prescribed in § 86.087-8, § 86.087-9, § 86.087-10, or § 86.087-11, as applicable, written instructions for the proper maintenance and use of the vehicle (or engine), by the purchaser consistent with the provisions of § 86.087-25, which establishes what scheduled maintenance the Administrator approves as being reasonable and necessary. For light-duty vehicle manufacturers optionally complying with § 86.087-25(a) for the 1987 model year, the Administrator approves any scheduled maintenance allowed by § 86.087-25(a) as being reasonable and necessary.

(1) The maintenance instructions required by this section shall be in clear, and to the extent practicable, nontechnical language.

(2) The maintenance instructions required by this section shall contain a general description of the documentation which the manufacturer will require from the ultimate purchaser or any subsequent purchaser as evidence of compliance with the instructions.

(b) Instructions provided to purchasers under pargraph (a) of this section shall specify the performance of all scheduled maintenance performed by the manufacturer on certification durability vehicles and, in cases where the manufacturer performs less maintenance on certification durability vehicles than the allowed limit, may specify the performance at any scheduled maintenance allowed under § 86.087-25 (or under § 86.087-25(a), for light-duty vehicle families optionally complying with this section for the 1987 model year).

(c) Scheduled emission-related maintenance in addition to that performed under § 86.087-25(b) may only be recommended to offset the effects of abnormal in-use operating conditions, except as provided in paragraph (d) of this section. The manufacturer shall be required to demonstrate, subject to the approval of the Administrator, that such maintenance is reasonable and technologically necessary to assure the proper functioning of the emission control system. Such additional recommended maintenance shall be clearly differentiated, in a form approved by the Administrator, from that approved under § 86.087-25(b).

(d) Inspections of emission-related parts or systems with instructions to replace, repair, clean, or adjust the parts or systems if necessary, are not considered to be items of scheduled maintenance which insure the proper functioning of the emission control system. Such inspections, and any recommended maintenance beyond that approved by the Administrator as reasonable and necessary under paragraphs (a), (b), and (c) of this section, may be included in the written instructions furnished to vehicle owners under paragraph (a) of this section: *Provided*, that such instructions clearly state, in a form approved by the Administrator, that the owner need not perform such inspections or recommended maintenance in order to maintain the emission warranty or manufacturer recall liability.

(e) If the vehicle has been granted an alternative useful-life period under the provisions of § 86.087-21(f) the manufacturer may choose to include in such instructions an explanation of the distinction between the alternative useful life specified on the label, and the emissions defect and emissions performance warranty period. The explanation must clearly state that the useful life period specified on the label represents the average period of use up to retirement or rebuld for the engine family used in the vehicle. An explanation of how the actual useful lives of engines used in various applications are expected to differ from the average useful life may be included. The explanation(s) shall be in clear, nontechnical language that is understandable to the ultimate purchaser.

(f) If approved by the Administrator, the instructions provided to purchasers under paragraph (a) of this section shall

indicate what adjustments or modifications, if any, are necessary to allow the vehicle to meet applicable emission standards at elevations above 4,000 feet, or at elevations of 4,000 feet or less.

30. Section 86.144–78 is amended by revising paragraph (c) (3), to read as follows:

§ 86.144–78 Calculations; exhaust emissions.

* * * * *

(c) * * *

(3) CO_{mass} = Carbon monoxide emissions, in grams per test phase.

$Density_{co}$ = Density of carbon monoxide is 32.97 g/ft³ (1.164 kg/m³), at 68°F (20°C) and 760 mm Hg (101.3 kPa) pressure.

CO_{conc} = Carbon monoxide concentration of the dilute exhaust sample corrected for background, water vapor, and CO_2 extraction, in ppm.

$CO_{conc} = CO_e - CO_d[1-(1/DF)]$

Where:

CO_e = Carbon monoxide concentration of the dilute exhaust volume corrected for water vapor and carbon dioxide extraction, in ppm. The calculation assumes the carbon to hydrogen ratio of the fuel is 1:1.85.

$CO_e = (1-0.01925\ CO_{2_e} - 0.000323\ R)\ CO_e$

Where:

CO_{dm} = Carbon monoxide concentration of the dilution air sample as measured, in ppm.

Notes.—If a CO instrument which meets the criteria specified in § 86.111 is used and the conditioning column has been deleted, CO_{em} must be substituted directly for CO^T and CO_{dm} must be substituted directly for CO_d.

* * * * *

31. Section 86.1336–84 is amended by revising paragraph (d)(2)(ii) to read as follows:

§ 86.1336–84 Engine starting and restarting.

* * * * *

(d) * * *

(2) * * *

(ii) Only one hot start resoak and restart is permitted per test.

32. Section 86.1341–84 is amended by revising paragraph (f) to read as follows:

§ 86.1341–84 Test cycle validation criteria.

* * * * *

(f)(1) The integrated brake horsepower-hour for each cycle (cold and hot start) shall be between −15 percent and +5 percent of the integrated brake horsepower-hour for the reference cycle, or the test is void.

(2) For gasoline engines, the integrated brake horsepower-hour of the feedback cycle shall be within 5 percent of the integrated brake horsepower-hour of the reference cycle for the cold cycle, or the test is void. The tolerance for the hot cycle shall be 4 percent.

* * * * *

33. Section 86.1342–84 is amended by revising paragraph (c)(3), to read as follows:

§ 86.1342–84 Calculations; exhaust emissions.

* * * * *

(c) * * *

(3) CO_{mass} = Carbon monoxide emissions, in grams per test phase.

$Density_{CO}$ = Density of carbon monoxide is 32.97 g/ft³ (1.164 kg/m³), at 68 °F (20 °C) and 760 mm Hg (101.3 kPa) pressure.

CO_{conc} = Carbon monoxide concentration of the dilute exhaust sample corrected for background, water vapor, and CO_2 extraction, in ppm.

$CO_{conc} = CO_e - CO_d\ [1-(1/DF)]$.

Where:

CO_e = Carbon monoxide concentration of the dilute exhaust bag sample volume corrected for water vapor and carbon dioxide extraction, in ppm. For flow compensated sample systems (CO_e)$_i$ is the instantaneous concentration. (The calculation assumes the carbon to hydrogen ratio of the fuel is 1:1.85.)

$CO_e = [1-0.01925CO_{2_e} - 0.000323R]CO_{em}$

Where:

CO_{em} = Carbon monoxide concentration of the dilute exhaust sample as measured, in ppm.

CO_{2_e} = Carbon dioxide concentration of the dilute exhaust bag sample, in percent, if measured. For flow compensated sample systems, (CO_{2_e})$_i$ is the instantaneous concentration. For cases where exhaust sampling of CO_2 is not performed, the following approximation is permitted:

$$CO_{2_e} = \frac{44.010}{12.011+(1.008)} \frac{M'\ (453.6)}{Density_{CO2}} \frac{100}{V_{mix}}$$

= Average carbon to hydrogen ratio.

M' = Fuel mass consumed during the test cycle.

R = Relative humidity of the dilution air, in percent.

CO_d = Carbon monoxide concentration of the dilution air corrected for water vapor extraction, in ppm.

$CO_d = (1-0.000323R)\ CO_{dm}$

Where:

CO_{dm} = Carbon monoxide concentration of the dilution air sample as measured, in ppm.

Note.—If a CO instrument which meets the criteria specified in § 86.1311–84 is used and the conditioning column has been deleted, CO_{em} must be substituted directly for CO_e and CO_{dm} must be substituted directly for CO_d.

* * * * *

34. A new § 86.1301–88 is added, to read as follows:

§ 86.1301–88 Scope; applicability.

This subpart contains gaseous emission test procedures for gasoline-fueled heavy-duty engines and gaseous and particulate emission test procedures for heavy-duty diesel engines. It applies to 1988 and later model years.

35. A new § 86.1306–88 is added, to read as follows:

§ 86.1306–88 Equipment required and specifications; overview.

(a) *Exhaust emission tests.* All engines subject to this subpart are tested for exhaust emissions. Diesel and gasoline-fueled engines are tested identically with the exception of the systems used to measure hydrocarbon, nitrogen oxide, and particulate; diesel engines require a heated, continuous hydrocarbon detector and a continuous nitrogen oxide detector (§ 86.1310–88); gasoline-fueled engines are not tested for particulate emissions (§ 86.1309–84). Necessary equipment and specifications appear in §§ 86.1306–84, 86.1309–84, 86.1310–87 and 86.1311–84.

(b) *Fuel, analytical gas, and engine cycle specifications.* Fuel specifications for exhaust emission testing are specified in § 86.1313–84. Analytical gases are specified in § 86.1314–84. The EPA heavy-duty transient engines cycles for use in exhaust testing are described in § 86.1333–84 and specified in Appendix I to this part.

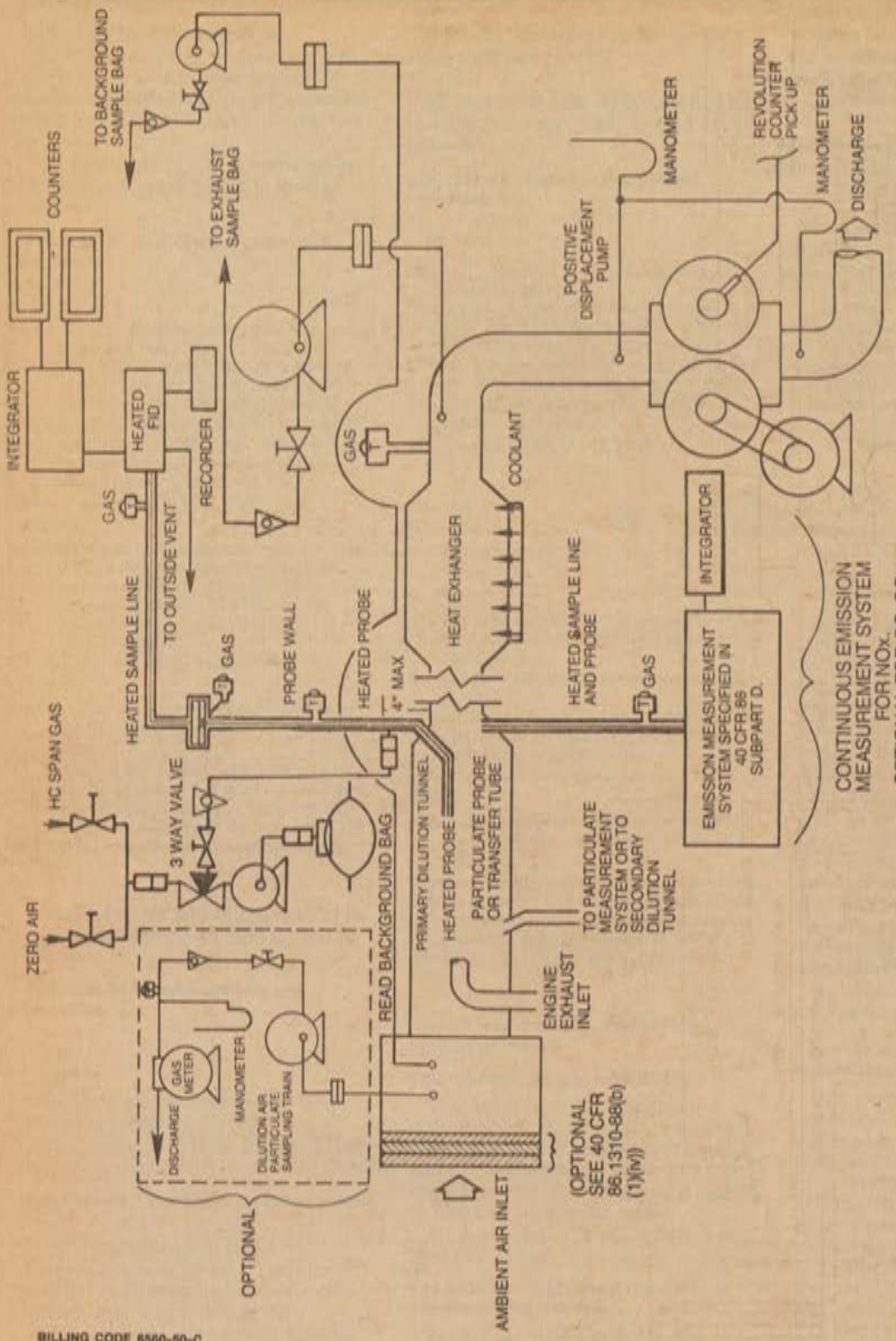
36. A new § 86.1310–88 is added, to read as follows:

§ 86.1310–88 Exhaust gas sampling and analytical system; diesel engines.

(a) *General.* The exhaust gas sampling system described in this paragraph is designed to measure the true mass of both gaseous and particulate emissions in the exhaust of heavy-duty diesel engines. This system utilizes the CVS concept (described in § 86.1309–84) of measuring mass emissions of CO, CO_2, and particulate. A continuously integrated system is required for HC and NO_x measurement, and is allowed for CO, and CO_2. The mass of gaseous emissions is determined from the sample concentration and total flow over the test period. The mass of particulate emissions is determined from a proportional mass sample collected on a filter and from the sample flow and total

flow over the test period. As an option, the measurement of total fuel mass consumed over a cycle may be substituted for the exhaust measurement of CO_2. General requirements are as follows:

(1) This sampling system requires the use of a PDP–CVS and a heat exchanger, or a CFV–CVS with either a heat exchanger or electronic flow compensation. Figure N88–3 is a schematic drawing of the PDP system. Figure N88–4 is a schematic drawing of the CFV system.



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FIGURE N88-3
GASEOUS EMISSIONS SAMPLING SYSTEM (PDP-CVS)
(FOR DIESEL ENGINES ONLY)
(SEE FIGURE N84-5 FOR SYMBOL LEGEND)

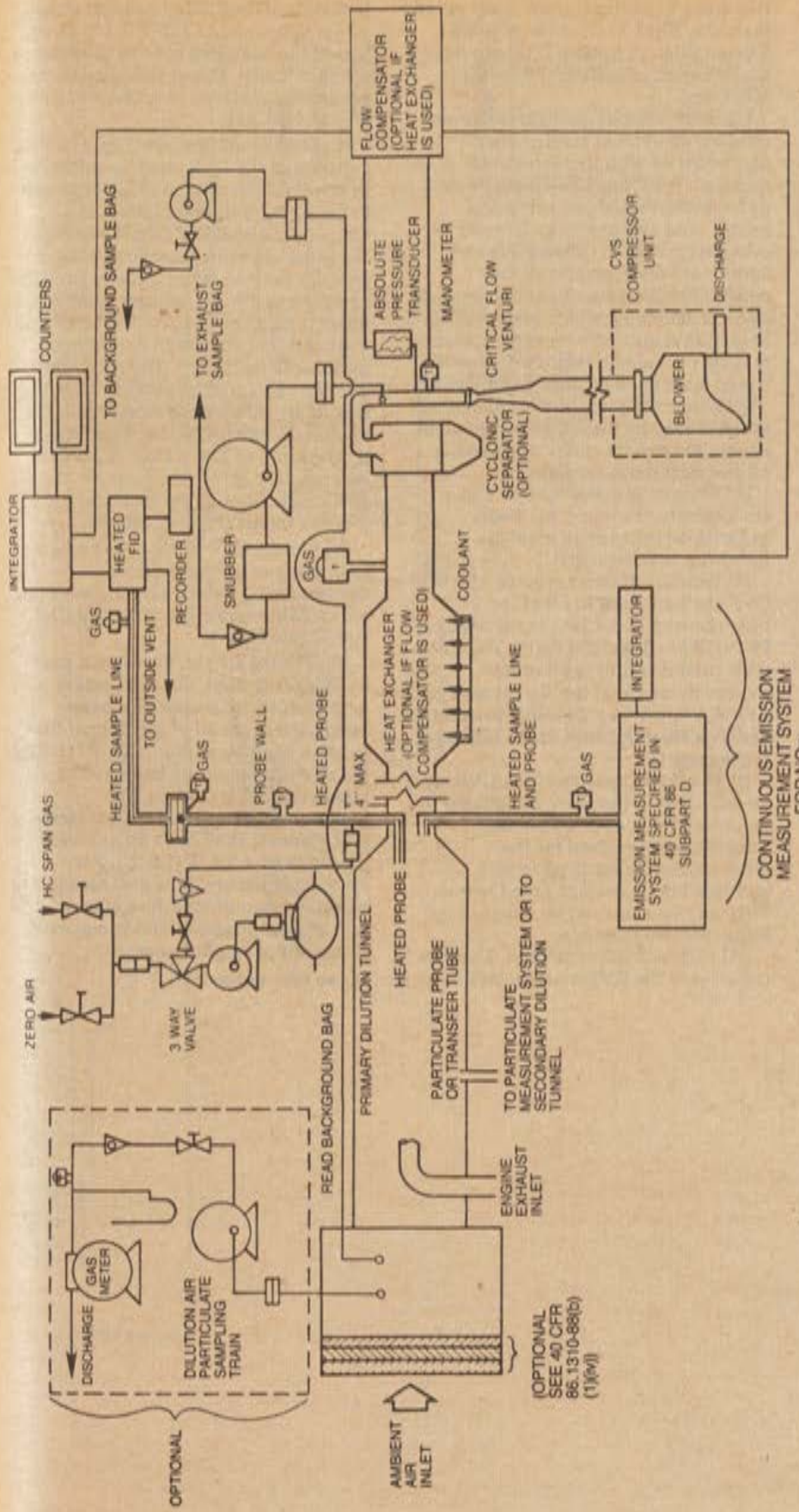


FIGURE N88-4
GASEOUS EMISSIONS SAMPLING SYSTEM (CFV-CVS)
(FOR DIESEL ENGINES ONLY)
(SEE FIGURE N84-5 FOR SYMBOL LEGEND)

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(2) The HC analytical system for diesel engines requires a heated flame ionization detector (HFID) and heated sample system.

(i) The HFID sample must be taken directly from the diluted exhaust stream through a heated probe and integrated continuously over the test cycle. Unless compensation for varying flow is made, the HFID must be used with a constant flow system to ensure a representative sample.

(ii) The heated probe shall be located in the primary dilution tunnel and far enough downstream of the mixing chamber to ensure a uniform sample distribution across the CVS duct at the point of sampling.

(3) The CO and CO_2 analytical system for diesel engines requires:

(i) Bag sampling (§ 86.1309–84) and analytical (§ 86.1311–84) capabilities as shown in Figure N88–3 (or Figure N88–4), or

(ii) Continuously integrated measurement of diluted CO and CO_2 meeting the minimum requirements and technical specifications contained in paragraph (b)(5) of this section. Unless compensation for varying flow is made, a constant flow system must be used to ensure a representative sample.

(4) The NO_x analytical system for diesel engines requires a continuously integrated measurement of diluted NO_x meeting the minimum requirements and technical specifications contained in paragraph (b)(5) of this section. Unless compensation for varying flow is made, a constant flow system must be used to ensure a representative sample.

(5) The mass of particulate in the exhaust is determined via filtration. The particulate sampling system requires dilution of the exhaust in either one or two steps to a temperature never greater than 125 °F (51.7 °C) at the primary sample filter. A backup filter provides a confirmation of sufficient filtering efficiency.

(6) Since various configurations can produce equivalent results, exact conformance with these drawings is not required. Additional components such as instruments, valves, solenoids, pumps, and switches may be used to provide additional information and coordinate the functions of the component systems. Other components, such as snubbers, which are not needed to maintain accuracy on some systems, may be excluded if their exclusion is based upon good engineering judgment.

(7) Other sampling and/or analytical systems may be used if shown to yield equivalent results and if approved in advance by the Administrator.

(b) *Component description.* The components necessary for diesel exhaust sampling shall meet the following requirements:

(1) *Exhaust dilution system.* The PDP–CVS shall conform to all of the requirements listed for the exhaust gas PDP–CVS in § 86.1309–84(b). The CFV–CVS shall conform to all of the requirements listed for the exhaust gas CFV–CVS in § 86.1309–84(c). In addition, the CVS must conform to the following requirements:

(i) The flow capacity of the CVS must be sufficient to maintain the diluted exhaust stream at or below the temperatures required for the measurement of particulate and hydrocarbon emissions noted below. This may be achieved by either of the following two methods.

(A) *Single-dilution method.* The flow capacity of the CVS must be sufficient to maintain the diluted exhaust stream at a temperature of 125 °F (51.7 °C) or less at the sampling zone in the primary dilution tunnel. Direct sampling of the particulate material may then take place (Figure N88–4a).

(B) *Double-dilution method.* The flow capacity of the CVS must be sufficient to maintain the diluted exhaust stream in the primary dilution tunnel at a temperature of 375 °F (191 °C) or less at the sampling zone. Gaseous emission samples may be taken directly from this sampling point. An exhaust sample must then be taken at this point to be diluted a second time for use in determining particulate emissions. The secondary dilution system must provide sufficient secondary dilution air to maintain the double-diluted exhaust stream at a temperature of 125 °F (51.7 °C) or less immediately before the primary particulate filter in the secondary dilution tunnel (Figure N88–4b).

(ii) For the CFV–CVS, either a heat exchanger or electronic flow compensation (which also includes the particulate sample flows) is required (see Figure N88–4).

(iii) For the CFV–CVS when a heat exchanger is used, the gas mixture temperature, measured at a point immediately ahead of the critical flow venturi, shall be within ±20 °F (11 °C) of the average operating temperature observed during the test. The temperature measuring system (sensors and readout) shall have an accuracy and precision of ±3.4 °F (1.9 °C). For systems utilizing a flow compensator to maintain proportional flow, the requirement for maintaining constant temperature is not necessary.

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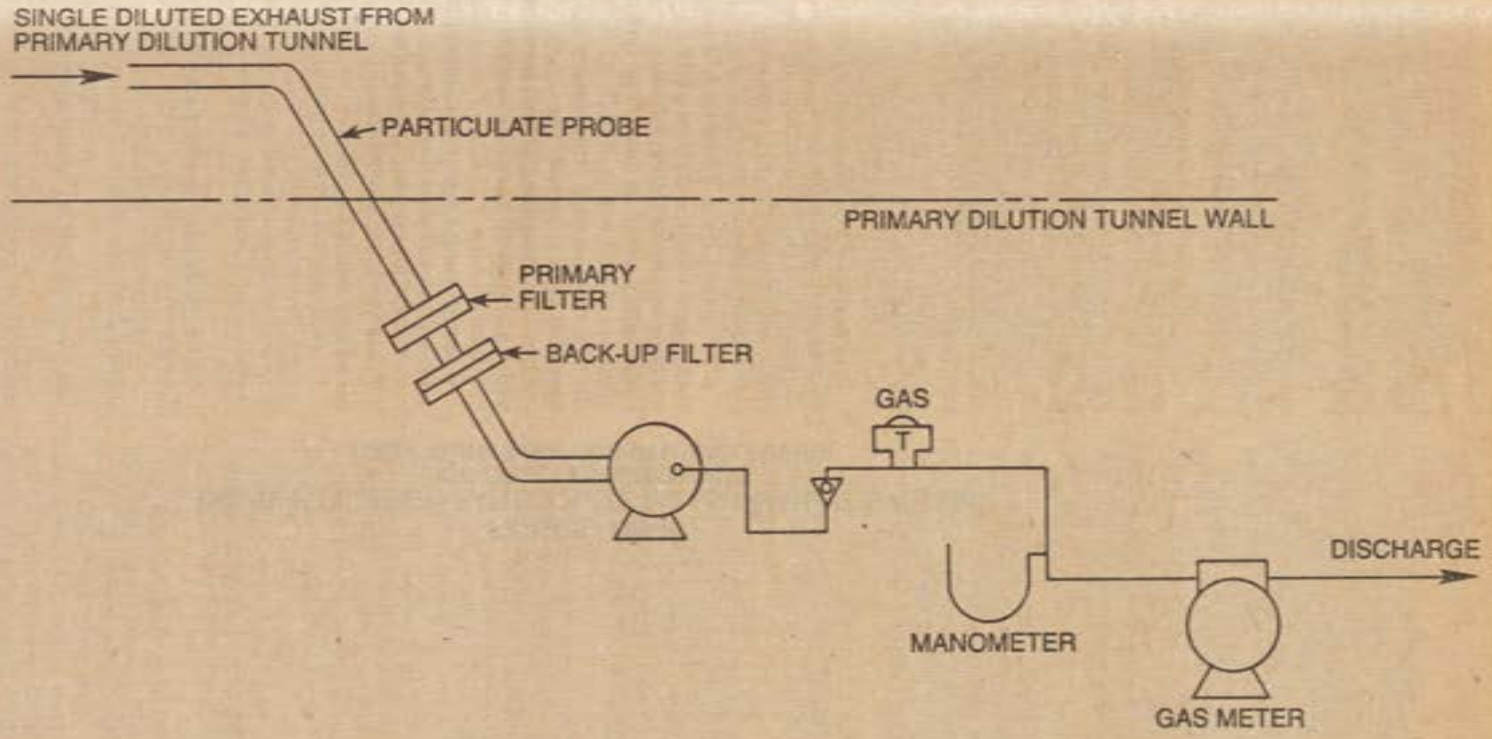
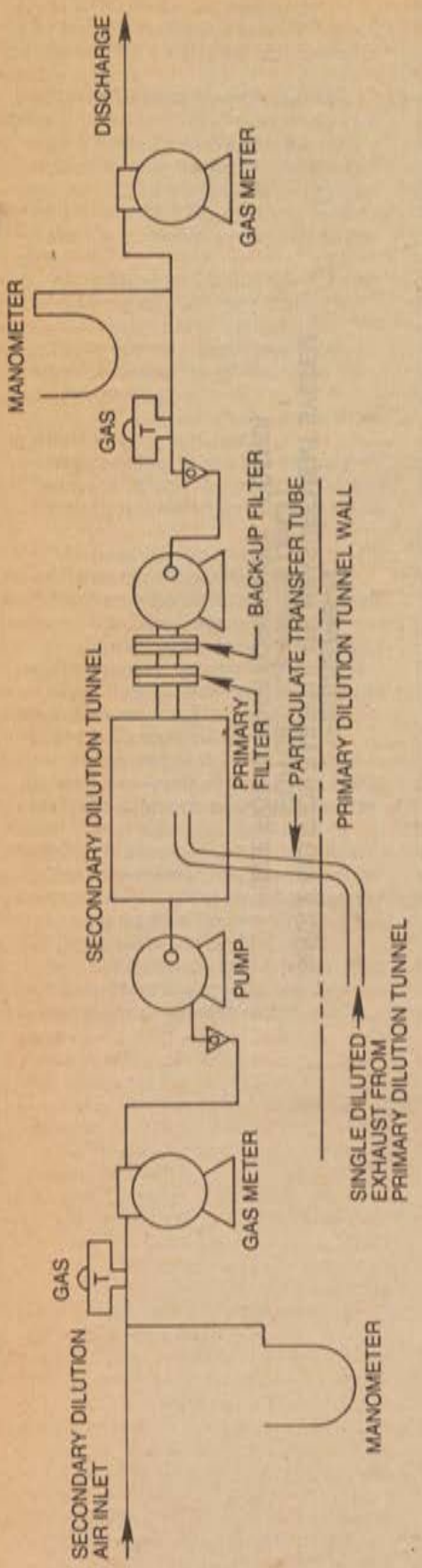


FIGURE N88-4a
SINGLE DILUTION PARTICULATE MEASUREMENT SYSTEM
(FOR DIESEL ENGINES ONLY)
(SEE FIGURE N84-5 FOR SYMBOL LEGEND)



BILLING CODE 6560-50-C

FIGURE N88-4b
DOUBLE DILUTION PARTICULATE MEASUREMENT SYSTEM
(FOR DIESEL ENGINES ONLY)
(SEE FIGURE N84-5 FOR SYMBOL LEGEND)

(iv) The primary dilution air and secondary dilution air (if applicable):

(A) Shall have a temperature of 77°±9 °F (25°±5 °C).

(B) May be filtered at the dilution air inlet.

(C) May be sampled to determine background particulate levels, which can then be subtracted from the values measured in the detailed exhaust stream.

(2) [Reserved]

(3) *Continuous HC measurement system.*

(i) The continuous HC sample system (as shown in Figure N88-3 or N88-4) uses an "overflow" zero and span system. In this type of system, excess zero or span gas spills out of the probe when zero and span checks of the analyzer are made. The "overflow" system may also be used to calibrate the HC analyzer per § 86.1321-84(b), although this is not required.

(ii) No other analyzers may draw a sample from the continuous HC sample probe, line or system, unless a common sample pump is used for all analyzers and the sample line system design reflects good engineering practice.

(iii) The overflow gas flow rates into the sample line shall be at least 105 percent of the sample system flow rate.

(iv) The overflow gases shall enter the heated sample line as close as practicable to the outside surface of the CVS duct or dilution tunnel.

(v) The continuous hydrocarbon probe shall be:

(A) Installed in the primary dilution tunnel at a point where the dilution air and exhaust are well mixed (*i.e.*, approximately 10 tunnel diameters downstream of the point where the exhaust enters the dilution tunnel).

(B) Sufficiently distant (radially) from other probes and the tunnel wall so as to be free from the influence of any wakes or eddies.

(C) Heated over the entire length to maintain a 375° ±20°F (191°±11°C) *wall* temperature. (Insulation and other techniques may also be used to maintain the temperature.)

(D) 0.19 in. (0.457 cm) minimum inside diameter.

(E) Free from cold spots (*i.e.*, free from spots where the probe *wall* temperature is less than 355°F (180°C)).

(vi) The dilute exhaust *gas* flowing in the total hydrocarbon sample system shall be:

(A) At 375°±10°F (191°±6°C) immediately before the heated filter. This *gas* temperature will be determined by a temperature sensor located immediately upstream of the filter. The sensor and its readout shall have an accuracy and precision of ±3.4°F (1.9°C).

(B) At 375°±10°F (191°±10°C) immediately beforse the HFID. This *gas* temperature will be determined by a temperature sensor located at the exit of the heated sample line. The sensor and its readout shall have an accuracy and precision of ±3.4°F (1.9°C).

(vii) The response time of the continuous measurement system shall be no greater than:

(A) 1.5 seconds from an instantaneous step change at the port entrance to the analyzer to within 90 percent of the step change.

(B) 20 seconds from an instantaneous step change at the entrance to the sample probe or overflow span gas port to within 90 percent of the step change. Analysis system response time shall be coordinated with CVS flow fluctuations and sampling time/test cycle offsets if necessary.

(C) For the purpose of verification of response times, the step change shall be at least 60 percent of full-scale chart deflection.

(4) *Primary-dilution tunnel.* (i) The primary dilution tunnel shall be:

(A) Small enough in diameter to cause turbulent flow (Reynolds Number greater than 4,000) and of sufficient length to cause complete mixing of the exhaust and dilution air;

(B) At least 18 inches (45.7 cm) in diameter with a single-dilution system or at least 8 inches (20.3 cm) in diameter with a double-dilution system;

(C) Constructed of electrically conductive material which does not react with the exhaust components; and

(D) Electrically grounded.

(ii) The temperature of the diluted exhaust stream inside of the primary dilution tunnel shall be sufficient to prevent water condensation.

(iii) The engine exhaust shall be directed downstream at the point where it is introduced into the primary dilution tunnel.

(5) *Continuously integrated NO_x CO, and CO_2 measurement systems.*

(i) The sample probe shall:

(A) Be in the same plane as the continuous HC probe, but shall be sufficiently distant (radially) from other probes and the tunnel wall so as to be free from the influences of any wakes or eddies.

(B) Heated and insulated over the entire length, to prevent water condensation, to a minimum temperature of 131°F (55°C). Sample *gas* temperature immediately before the first filter in the system shall be at least 131°F(55°C).

(ii) The continuous NO_x, CO, or CO_2 sampling and analysis system shall conform to the specifications of 40 CFR Part 86, Subpart D with the following exceptions and revisions:

(A) The system components required to be heated by Subpart D need only be heated to prevent water condensation, the minimum component temperature shall 131°F(55°C)]

(B) The system response defined in § 86.329-79 shall be no greater than 20 seconds. Analysis system respone time shall be coordinated with CVS flow fluctuations and sampling time/test cycle offsets, if necessary.

(C) Alternative NO_x measurement techniques outlined in § 86.346-79 are not permitted for NO_x measurement in this Subpart.

(D) All analytical gases shall conform to the specifications of § 86.1314-84.

(E) Any range on a linear analyzer below 155 ppm shall have and use a calibration curve conforming to § 86.330-79.

(F) The measurement accuracy requirements specified in § 86.338-79 are superseded by those specified in § 86.1338-84.

(iii) The chart deflections or voltage output of analyzers with non-linear calibration curves shall be converted to concentration values by the calibration curve(s) specified in Subpart D (§ 86.330-79) before flow correction (if used) and subsequent integration takes place.

(6) *Particulate sampling system.* The particulate collection system must be configured in either of two ways. The *single-dilution* method collects a proportional sample from the primary tunnel, and then passes this sample through the collection filter (Figure N88-4a). The *double-dilution* method collects a proportional sample from the primary tunnel, and then transfers this sample to a secondary dilution tunnel where the sample is further diluted; the double-diluted sample is then passed through the collection filter (Figure N88-4b). Proportionality (*i.e.*, mass flow ratio) between the primary tunnel flow rate and the sample flow rate must be maintained within ±5 percent for systems with or without flow compensation. Without flow compensation, proportional sampling is achieved by introducing the secondary dilution air at a constant mass flow rate, and removing the double-diluted sample at a constant mass flow rate. The requirements for these two systems are:

(i) *Single Dilution Method.* (A) The particulate sample probe shall be:

(*1*) Installed facing upstream at a point where the dilution air and exhaust air are well mixed (*i.e.*, on the primary tunnel centerline, approximately 10

tunnel diameters downstream of the point where the exhaust enters the primary dilution tunnel).

(2) Sufficiently distant (radially) from other sampling probes so as to be free from the influence of any wakes or eddies produced by the other probes.

(3) 0.5 in. (1.27 cm) minimum inside diameter.

(4) The distance from the sampling tip to the filter holder shall be at least 5 probe diameters for filters located inside the primary dilution tunnel, and not more than 40 inches (102 cm) for filters located outside the primary dilution tunnel.

(5) Designed to minimize the deposition of particulate in the probe (*i.e.*, bends should be as gradual as possible, protrusions (due to sensors, etc.) should be smooth and not sudden, etc.).

(B) The particulate sample pump(s) shall be located sufficiently distant from the dilution tunnel so that the inlet gas temperature is maintained at a constant temperature (±5 °F (±2.8 °C)) if flow compensation is not used.

(C) The gas meters or flow instrumentation shall be located sufficiently distant from the tunnel so that the inlet gas temperature remains constant (±5 °F (±2.8 °C)) if flow compensation is not used.

(D) Other sample flow handling and/or measurement systems may be used if shown to yield equivalent results and if approved in advance by the Administrator.

(ii) *Double-dilution method.* (A) The particulate sample transfer tube shall be configured and installed so that:

(1) The inlet faces upstream in the primary dilution tunnel at a point where the primary dilution air and exhaust are well mixed (*i.e.*, on the primary tunnel centerline, approximately 10 tunnel diameters downstream of the point where the exhaust enters the primary dilution tunnel).

(2) The particulate sample exits on the centerline of the secondary tunnel and points downstream.

(B) The particulate sample transfer tube shall be:

(1) Sufficiently distant (radially) from other sampling probes (in the primary dilution tunnel) so as to be free from the influence of any wakes or eddies produced by the other probes.

(2) 0.5 in. (1.27 cm) minimum inside diameter.

(3) No longer than 36 in. (91.4 cm) from inlet plane to exit plane.

(4) Designed to minimize the deposition of particulate during transfer (*i.e.*, bends should be as gradual as possible, protrusions (due to sensors, etc.) should be smooth and not sudden, etc.).

(5) Constructed of electrically conductive material which does not react with the exhaust components, and electrically grounded.

(C) The secondary dilution air shall be at a temperature of 77°±9°F (25°±5°C).

(D) The secondary-dilution tunnel shall be:

(1) 3.0 inches (7.62 cm) minimum inside diameter.

(2) Of sufficient length so as to provide a residence time of at least 0.25 seconds for the double-diluted sample.

(3) Constructed of electrically conductive material which does not react with the exhaust components, and electrically grounded.

(E) Additional dilution air must be provided so as to maintain a sample temperature of 125°F (51.7°C) or less immediately before the primary sample filter. This dilution air must be introduced at a known constant mass flow rate in order to maintain proportional sampling. This can be achieved by either of the following methods:

(1) A PDP-type pump flowing filtered dilution air at a temperature of 77°±9°F (25°±5°C) and essentially constant pressure (atmospheric is acceptable) along with a gas meter or flow instrumentation for mass determination. (See § 86.1320–87 for calibration specifics.) The gas meter or flow instrumentation shall be located so that the inlet gas temperature remains 77°±9°F (25°±5°C).

(2) A choked critical flow orifice flowing filtefed dilution air. For mass determination, a gas meter or other flow instrumentation is acceptable. The gas meter or flow instrumentation shall be located so that the inlet gas temperature remains at 77°±9°F (25°±5°C).

(F) The primary filter holder shall be located within 12.0 in. (30.5 cm) of the exit of the secondary dilution tunnel.

(G) The particulate sample pump shall be located sufficiently distant from the dilution tunnel so that the inlet gas is maintained at a constant temperature (±5°F (±2.8°C)) if flow compensation is not used.

(H) The gas meter or flow instrumentation (if double-dilution, this means the downstream device) shall be located sufficiently distant from the tunnel (either primary or secondary) so that the inlet gas temperature remains essentially constant (±5°F (±2.8°C)) if flow compensation is not used.

(I) Other sample flow handling and/or measurement systems may be used if shown to yield equivalent results and if approved in advance by the Administrator.

(7) *Particulate sampling filters.*

(i) Fluorocarbon-coated glass fiber filters or fluorocarbon-based (membrane) filters are required.

(ii) Particulate filters must have a minimum diameter of 70 mm (60 mm stain diameter). Larger diameter filters are acceptable.

(iii) The dilute exhaust will be simultaneously sampled by a pair of filters (one primary and one back-up filter) during the cold-start test and by a second pair of filters during the hot-start test. The back-up filter holder shall be located no more than 4 inches downstream of the primary filter holder. The primary and back-up filters shall not be in contact with each other.

(iv) The recommended minimum loading on a primary 70 mm filter is 5.3 milligrams. Equivalent loadings (*i.e.*, mass/stain area) are recommended for larger filters. For equivalency calculations assume the 70 mm filter has a 60 mm strain diameter.

37. A new § 86.1312–88 is added, to read as follows:

§ 86.1312–88 Weighing chamber and microgram balance specifications.

(a) *Ambient conditions.* (1) *Temperature.* The temperature of the chamber (or room) in which the particulate filters are conditioned and weighed shall be maintained to within ±10 °F (±6 °C) of a set point between 68 °F (20 °C) and 86 °F (30 °C) during all filter conditioning and weighing.

(2) *Humidity.* The relative humidity of the chamber (or room) in which the particulate filters are conditioned and weighed shall be maintained to within ±10 percent (relative humidity) of a set point between 30 and 70 percent during all filter conditioning and weighing.

(3) The chamber (or room) environment shall be free of any ambient contaminates (such as dust) that would settle on the particulate filters during their stabilization. It is required that two unused reference filters remain in the weighing room at all times, and that these filters be weighed once each 24-hour period. If the weight of either or both of these two reference filters changes by more than ±1.0 percent of the nominal filter loading (a recommended minimum of 5.3 milligrams) during the conditioning period, then all filters in the process of being stabilized should be discarded, and any tests repeated. The reference filters shall be changed at least once per month.

(b) *Weighing balance specifications.* The microgram balance used to determine the weights of all filters shall have a precision (standard deviation) of

20 micrograms and readability of 10 micrograms.

38. A new § 86.1320–88 is added, to read as follows:

§ 86.1320–88 Gas meter or flow instrumentation calibration, particulate measurement.

(a) Sampling for particulate emissions requires the use of gas meters or flow instrumentation to determine flow through the particulate filters. This instrument shall receive initial and periodic calibrations as follows:

(1) Install a standard air flow measurement device upstream of the instrument. A critical flow orifice, a bellmouth nozzle, or a laminar flow element is recommended as the standard device.

(2) Flow air through the calibration system at the sample flow rate used for particulate testing and at the backpressure which occurs during the sample test.

(3) When the temperature and pressure in the system have stabilized, measure the indicated gas volume over a time period of at least 5 minutes and until a gas volume of at least ± 1 percent accuracy can be determined by the standard device. Record the stabilized air temperature and pressure upstream of the instrument and as required for the standard device.

(4) Calculate air flow at standard conditions as measured by both the standard device and the instrument. (Standard conditions are defined as 68 °F (20 °C) and 29.92 in. of mercury (101.3 kPa).)

(5) Repeat the procedures of paragraphs (a) (2) through (4) of this section using flow rates which are 10 percent above and 10 percent below the nominal sampling flow rate.

(6) If the air flow at standard conditions measured by the instrument differs by more than ±1 percent from the standard measurement at any of the three measured flow rates, then a correction shall be made by either of the following two methods:

(i) Mechanically adjust the instrument so that it agrees within 1 percent of the standard measurement at the three specified flow rates, or

(ii) Develop a continuous best fit calibration curve for the instrument (as a function of the standard device flow measurement) from the three calibration points that represents the data to within 1 percent at all points to determine corrected flow.

(b) *Other systems.* A bell prover may be used to calibrate the instrument if the procedure outlined in ANSI B109.1–1973 is used. Prior approval by the Administrator is not required to use the bell prover.

39. A new § 86.1327–88 is added, to read as follows:

§ 86.1327–88 Engine dynamometer test procedures; overview.

(a) The engine dynamometer test procedure is designed to determine the brake-specific emissions of hydrocarbons, carbon monoxide, oxides of nitrogen and particulate (diesels only). The test procedure consists of a "cold" start test following either natural or forced cool-down periods described in § 86.1334–84 and § 86.1335–84, respectively. A "hot" start test follows the "cold" start test after a hot soak of 20 minutes. The idle test of Subpart P may be run after the "hot" start test. The exhaust emissions are diluted with ambient air and a continuous proportional sample is collected for analysis during both the cold- and hot-start tests. The composite samples collected are analyzed either in bags or continuously for hydrocarbons (HC), carbon monoxide (CO), carbon dioxide (CO_2), and oxides of nitrogen (NO_x). A bag or continuous sample of the dilution air is similarly analyzed for background levels of hydrocarbon, carbon monoxide, carbon dioxide, and oxides of nitrogen. In addition, for diesels only, particulates are collected on fluorocarbon-coated glass fiber filters or fluorocarbon-based (membrane) filters, and the dilution air may be prefiltered.

(b) Engine torque and rpm shall be recorded continuously during both the cold and hot start tests. Data points shall be recorded at least once every second.

(c) Using the torque and rpm feedback signals the brake horsepower is integrated with respect to time for the cold and hot cycles. This producers a brake horsepower-hour value that enables the brake-specific emissions to be determined (see § 86.1342–84, Calculations; gaseous exhaust emissions and § 86.1343–87, Calculations; particulate exhaust emissions).

(d)(1) When an engine is tested for exhaust emissions or is operated for service accumulation on an engine dynamometer, the complete engine shall be tested, with all emission control devices installed and functioning.

(2) Evaporative emission controls need not be connected if data are provided to show that normal operating conditions are maintained in the engine induction system.

(3) On air-cooled engines, the fan shall be installed.

(4) Additional accessories (*e.g.*, oil cooler, alternators, air compressors, etc.) may be installed or their loading simulated if typical of the in-use application.

(5) The engine may be equipped with a production type starter.

(e) Means of engine cooling which will maintain the engine operating temperatures (*e.g.*, temperatures of intake air, oil, water, etc.) at approximately the same temperature as specified by the manufacturer shall be used. Auxiliary fan(s) may be used to maintain engine cooling during operation on the dynamometer. Rust inhibitors and lubrication additives may be used, up to the levels recommended by the additive manufacturer. Antifreeze mixtures and other coolants typical of those approved for use by the manufacturer may be used.

(f) *Exhaust system.* The exhaust system shall meet the following requirements:

(1) *Gasoline-fueled engines.* A chassis-type exhaust system shall be used. For all catalyst systems, the distance from the exhaust manifold flange(s) to the catalyst shall be the same as in the vehicle configuration unless the manufacturer provides data showing equivalent performance at another location.

(2) *Diesel engines.* Either a chassis-type or a facility-type exhaust system or both systems simultaneously may be used. The exhaust backpressure or restriction shall be typical of those seen in the actual average vehicle exhaust system configuration and may be set with a valve (muffler omitted).

(i) The diesel engine exhaust system shall meet the following requirements:

(A) The total length of the tubing from the exit of the engine exhaust manifold or turbocharger outlet to the primary dilution tunnel should not exceed 32 feet.

(B) The initial portion of the exhaust system may consist of a typical in-use (*i.e.*, length, diameter, material, etc.) chassis-type exhaust system.

(C) The distance from the exhaust manifold flange(s) to any exhaust aftertreatment device shall be the same as in the vehicle configuration unless the manufacturer is able to demonstrate equivalent performance at another location.

(D) If the exhaust system tubing from the exit of the engine exhaust manifold or turbocharger outlet to the primary dilution tunnel exceeds 12 feet in length, than all tubing in excess of 12 feet (chassis and/or facility type) shall be insulated.

(E) If the tubing is required to be insulated, the radial thickness of the insulation must be at least R inches, where R=16(k)—(2)r,

Where:

(1) k = Thermal conductivity of the insulating material (Btu/hr-ft-°F), and

(2) r = Outer radius of uninsulated tubing (inches).

(F) A smoke meter or other instrumentation may be inserted into the exhaust system tubing. If this option is exercised in the insulated portion of the tubing, then a minimal amount of tubing not to exceed 18 inches may be left uninsulated. However, no more than 12 feet of tubing can be left uninsulated in total, including the length at the smoke meter.

(ii) The facility-type exhaust system shall meet the following requirements:

(A) It must be composed of smooth tubing made of typical in-use steel or stainless steel. This tubing shall have a maximum inside diameter of 6.0 in. (15.2 cm).

(B) Short sections (altogether not to exceed 20 percent of the entire tube length) of flexible tubing at connection points are allowed.

40. A new § 86.1337–88 is added, to read as follows:

§ 86.1337–88 Engine dynamometer test run.

(a) The following steps shall be taken for each test:

(1) Prepare the engine, dynamometer, and sampling system for the cold-start test. Change filters, etc. and leak check as necessary.

Note.— For a single dilution particulate system, a propane check will not reveal a pressure side leak (that portion of the system downstream of the pump) since the volume concentration is ppm will not change if a portion of the sample is lost. A separate leak check is needed.

A leak check of a filter assembly that has only one seal ring in contact with the filter media will not detect a leak tested under vacuum. A pressure leak test should be performed.

(2) Connect evacuated sample collection bags to the dilute exhaust and dilution air sample collection systems.

(3) Attach the CVS to the engine exhaust system any time prior to starting the CVS.

(4) Start the CVS (if not already on), the sample pumps (except for the diesel particulate sample pump(s), if applicable), the engine cooling fan(s), and the data collection system. The heat exchanger of the constant volume sampler (if used), and the heated components of any continuous sampling system(s) (if applicable) shall be preheated to their designated operating temperatures before the test begins. (See § 86.1340–84(e) for continuous sampling procedures.)

(5) Adjust the sample flow rates to the desired flow rates and set the CVS gas flow measuring devices to zero.

Note.—CFV-CVS sample flow rate is fixed by the venturi design.

(6) For diesels only, carefully install a clean particulate sample filter into each of the filter holders and install the assembled filter holders in the sample flow line. (Filter holders may be preassembled.)

(7) Follow the manufacturer's choke and throttle instructions for cold starting. Simultaneously start the engine and begin exhaust and dilution air sampling. For diesel engines, turn on the hydrocarbon and NO_x (and CO and CO_2, if continuous) analyzer system integrators (if used) and turn on the particulate sample pumps and indicate the start of the test on the data collection medium.

(8) As soon as it is determined that the engine is started, start a "free idle" timer.

(9) Allow the engine to idle freely with no-lead for 24±1 seconds. This idle period for automatic transmission engines may be interpreted as an idle speed in neutral or park. All other idle conditions shall be interpreted as an idle speed in gear. It is permissible to lug the engine down to curb idle speed during the last 8 seconds of the free idle period for the purpose of engaging dynamometer control loops.

(10) Begin the transient engine cycles such that the first non-idle record of the cycle occurs at 25± seconds. The free idle time is included in the 25±1 seconds. During diesel particulate testing without the use of flow compensation, adjust the sample pump(s) so that the flow rate through the particulate sample probe or transfer tube is maintained at a constant value within ±5 percent of the set flow rate. Record the average temperature and pressure at the gas meter(s) or flow instrumentation inlet. If the set flow rate cannot be maintained because of high particulate loading on the filter, the test shall be terminated. The test shall be rerun using a lower flow rate and/or a larger diameter filter.

(11) On the last record of the cycle, cease sampling. Immediately turn the engine off, and start a hot-soak timer. For diesel engines, also turn off the particulate sample pumps, the gas flow measuring device(s) and any continuous analyzer system integrators and indicate the end of the test on the data collection medium. Sampling systems should continue to sample after the end of the test cycle until system response times have elapsed.

(12) Immediately after the engine is turned off, turn off the engine cooling fan(s) if used, and the CVS blower (or disconnect the exhaust system from the CVS). As soon as possible, transfer the "cold start cycle" exhaust and dilution air bag samples to the analytical system and process the samples according to § 83.1340–84. A stabilized reading of the exhaust sample on all analyzers shall be obtained within 20 minutes of the end of the sample collection phase of the test. For diesel engines, carefully remove the filter holder from the sample flow apparatus, and remove each particulate sample filter from its holder and place each in a petri dish and cover.

(13) Allow the engine to soak for 20±1 minutes.

(14) Prepare the engine and dynamometer for the hot start test.

(15) Connect evacuated sample collection bags to the dilute exhaust and dilution air sample collection systems.

(16) Start the CVS (if not already on) or connect the exhaust system to the CVS (if disconnected). Start the sample pumps (except the diesel particulate sample pump(s), if applicable), the engine cooling fan(s) and the data collection system. The heat exchanger of the constant volume sampler (if used) and the heated components of any continuous sampling system(s) (if applicable) shall be preheated to their designated operating temperatures before the test begins. See § 86.1340–84(e) for continuous sampling procedures.

(17) Adjust the sample flow rates to the desired flow rate and set the CVS gas flow measuring devices to zero.

(18) For diesels only, carefully install a clean particulate filter in each of the filter holders and install assembled filter holders in the sample flow line. (Filter holders may be preassembled.)

(19) Follow the manufacturer's choke and throttle instruction for hot starting. Simultaneously start the engine and begin exhaust and dilution air sampling. For diesel engines, turn on the hydrocarbon and NO_x (and CO and CO_2, if continuous) analyzer system integrators (if used), indicate the start of the test on the data collection medium, and turn on the particulate sample pump(s).

(20) As soon as it is determined that the engine is started, start a "free idle" timer.

(21) Allow the engine to idle freely with no-load for 24±1 seconds. The provisions and interpretations of paragraph (a)(9) of this section apply.

(22) Begin the transient-engine cycle such that the first non-idle record of the cycle occurs at 25±1 seconds. The free idle is included in the 25±1 seconds.

(23) On the last record of the cycle, allow sampling system response times to elapse and cease sampling. For diesel engines, turn off the particulate sample pump(s), the gas flow measuring device(s) and any continuous analyzer system integrators and indicate the end of the test on the data collection medium.

(24) As soon as possible, transfer the "hot start cycle" exhaust and dilution air bag samples to the analytical system and process the samples according to § 86.1340–84. A stabilized reading of the exhaust sample on all analyzers shall be obtained within 20 minutes of the end of the sample collection phase of the test. For diesel engines, carefully remove the assembled filter holder from the sample flow lines and remove each particulate sample filter from its holder and place in a clean petri dish and cover as soon as possible. Within 1 hour after the end of the hot start phase of the test, transfer the four particulate filters to the weighing chamber for post-test conditioning.

(25) The CVS and the engine may be turned off, if desired.

(b) The procedure in paragraph (a) of this section is designed for one sample bag for the cold-start protion and one for the hot-start protion. It is also permissible to use more than one sample bag per test portion.

(c) If a dynamometer test run is determined to be void, corrective action may be taken. The engine may then be allowed to cool (naturally or forced) and the dynamometer test rerun per paragraph (a) or (b) of this section.

41. A new § 86.1339–88 is added, to read as follows:

§ 86.1339–88 Diesel particulate filter handling and weighing.

(a) At least 1 hour, but not more than 80 hours, before the test, place each filter in an open petri dish and place in a weighing chamber meeting the specifications of § 86.1312–87 for stabilization.

(b) At the end of the stabilization period, weigh each filter on a balance having a precision of 20 micrograms and a readability of 10 micrograms. This reading is the tare weight and must be recorded (see § 86.1344–88(e)(18)).

(c) The filter shall then be stored in a covered petri dish or a sealed filter holder, either of which shall remain in the weighing chamber until needed for testing.

(d) If the filter is not used within 1 hour of its removal from the weighing chamber, it must be re-weighed before use. This limit of 1 hour may be replaced by an 8-hour limit if either of the following three conditions are met:

(1) A stabilized filter is placed and kept in a sealed filter holder assembly with the ends plugged, or

(2) A stabilized filter is placed in a sealed filter holder assembly, which is then immediately placed in a sample line through which there is no flow, or

(3) A combination of the conditions specified in paragraphs (1) and (2).

(e) After the emissions test, and after the sample and back-up filters have been returned to the weighing room after being used, they must be conditioned for at least 1 hour but not more than 80 hours and then weighed. This reading is the gross weight of the filter and must be recorded (see § 86.1344–88(e)(18)).

(f) The net weight of each filter is its gross weight minus its tare weight. Should the sample on the filter contact the petri dish or any other surface, the test is void and must be re-run.

(g) A ratio of net weights will be determined by the following formula:

$$\text{Ratio of net weights} = \frac{(\text{Net weight})_{\text{Primary filter}}}{(\text{Net weight})_{\text{Primary filter}} + (\text{Net weight})_{\text{Back up filter}}}$$

(1) If the ratio of net weights is greater than 0.95, then P_f is the net weight of the primary filter only.

(2) If the ratio of net weights is less than or equal to 0.95, then P_f is the sum of the net weights of the primary filter and the back-up filter.

(h) The following optional weighting procedure is permitted:

(1) At the end of the stabilization period, weigh both the primary and back-up filters as a pair on a balance having a precision of 20 micrograms and a readability of 10 micrograms. This reading is the tare weight and must be recorded (see § 86.1344–88(e)(18)).

(2) After the emissions test, in removing the filters from the filter holder, the back-up filter is inverted on

top of the primary filter. They must then be conditioned in the weighing chamber for at least one hour but not more than 80 hours. The filters are then weighed as a pair. This reading is the gross weight of the filters and must be recorded (see § 86.1344–88(e)(18)).

(3) Subsections (a), (c), (d), and (f) of this section apply to this option, except that the word "filter" is replaced by "filters."

$$P_{wm} = \frac{1/7\ P_C + 6/7\ P_H}{1/7\ BHP\text{-}hr_C + 6/7 BHP\text{-}hr_H}$$

(1) P_{wm} = Weighted mass particulate, grams per brake horsepower-hour.
(2) P_C = Mass particulate measured during the cold-start test, grams.
(3) P_H = Mass particulate measured during the hot-start test, grams.
(4) $BHP\text{-}hr_C$ = Total brake horsepower-hour (brake horsepower integrated with respect to time) for the cold-start test.
(5) $BHP\text{-}hr_H$ = Total brake horsepower-hour (brake horsepower integrated with respect to time) for the hot-start test.

42. A new § 86.1343–88 is added, to read as follows:

§ 86.1343–88 Calculations; particulate exhaust emissions (diesels only).

(a) The final reported transient emission test results shall be computed by use of the following formula:

(b) The mass of particulate for the cold-start test and the hot-start test is determined from the following equation when a heat exchanger is used (*i.e.*, no flow compensation), and when background filters are used to correct for background particulate levels:

$$P_{mass} = (V_{mix} + V_{ed}) \times \left[\frac{P_f}{V_{ed}} - \left(\frac{P_{bf}}{V_{bd}} \times [1 - (1/DF)] \right) \right]$$

(1) P_{mass} = Mass of particulate emitted per test phase, grams per test phase. ($P_H = P_{mass}$ for the hot-start test and $P_C = P_{mass}$ for the cold-start test.
(2) V_{mix} × Total dilute exhaust volume corrected to standard conditions (528°R (293°K) and 760 mm Hg (101.3 kPa)), cubic feet per test phase. For a PDP–CVS:

$$V_{mix} = V_o \times \frac{N\ (P_B - P_A)\ (528°R)}{(760\ mm\ H_g)\ (T_p)}$$

in SI units,

$$V^{mix} = V_o \times \frac{N\ (P_B - P_A)\ (293°K)}{(101.3\ kPa)\ (T_p)}$$

Where:
(i) V_o = Volume of gas pumped by the positive displacement pump, cubic feet (cubic meters) per revolution. This volume is dependent on the pressure differential across the positive displacement pump.
(ii) N = Number of revolutions of the positive displacement pump during the test phase while samples are being collected.
(iii) P_B = Barometric pressure, mm Hg (kPa).
(iv) P_A = Pressure depressions below atmospheric measured at the inlet to the positive displacement pump (during an idle mode), mm Hg (kPa).
(v) T_p = Average temperature of dilute exhaust entering the positive displacement pump during test, °R (°K).
(3) V_{ed} = Total volume of sample removed from the primary dilution tunnel, cubic feet at standard conditions.

(i) For a single-dilution system:

$$V_{ed} = \frac{V_{se} \times (P_B + P_{is}) \times 528°R}{T_{is} \times 760\ mm\ Hg}$$

Where:
(A) V_{se} = Actual volume of dilute sample removed from the primary-dilution tunnel, cubic feet.
(B) P_B = Barometric pressure, mm Hg.
(C) P_{is} = Pressure elevation above ambient measured at the inlet to the dilute exhaust sample gas meter or flow instrumentation, mm Hg. (For most gas meters or flow instruments with unrestricted discharge, P_{is} is negligible and can be assumed = 0.)
(D) T_{is} = Average temperature of the dilute exhaust sample at the inlet to the gas meter or flow instrumentation, °R.
(E) V_{ed} may require correction according to § 86.1320–87(a)(6).

(ii) For a double-dilution system:

$V_{ed} = V_{ed} - V_{bd}$

Where:

(A) $$V_{ed} = \frac{V_{se} \times (P_B + P_{is}) \times 528°R}{T_{is} \times 760\ mm\ Hg}$$

(B) V_{se} = Actual volume of double diluted sample which passed through the particulate filter, cubic feet.
(C) P_B = Barometric pressure, mm Hg.
(D) P_{is} = Pressure elevation above ambient measured at the inlet to the sample gas meter located at the exit side of the secondary-dilution tunnel, mm Hg. (For most gas meters with unrestricted discharge P_{is} is negligible and can be assumed = 0.)
(E) T_{is} = Average temperature of the dilute exhaust sample at the inlet to the exit side gas meter or flow instrumentation, °R.

(F) $$V_{bd} = \frac{V_{sb} \times (P_a + P_{ib}) \times 528°R}{T_{ib} \times 760\ mm\ Hg}$$

(G) V_{sb} = Actual volume of secondary dilution air, cubic feet.
(H) P_a = Barometric pressure, mm Hg.
(I) P_{ib} = Pressure elevation above ambient measured at the inlet to the sample gas meter or flow instrumentation located at the inlet side of the secondary dilution tunnel, mm Hg. (For most gas meters with unrestricted discharge P_{ip} is negligible and can be assumed = 0.)
(J) T_{ib} = Average temperature of the secondary dilution air at the inlet to the inlet side gas meter or flow instrumentation, °R.
(K) Both V_{ed} and V_{bd} may require correction according to § 86.1320–87(a)(6). These corrections must be applied before V_{ed} is determined.
(4) P_f = Mass of particulate on the sample filter (or sample and back-up filters if the back-up filter is required to be included, see § 86.1339–87(g) for determination), grams per test phase.
(5) P_{bf} = Net weight of particulate on the background particulate filter, grams.

(6) $$V_{bd} = \frac{V_{sb} \times (P_B + P_{ib}) \times 528°R}{T_{ib} \times 760\ mm\ Hg}$$

Where:
(i) V_{sb} = Actual volume of primary dilution air sampled by background particulate sampler, cubic feet.
(ii) P_{ib} = Pressure elevation above ambient measured at the inlet to the background gas meter or flow instrument, mm Hg. (for most gas meters or flow instruments with unrestricted discharge, P_{ib} is negligible and can be assumed = 0.)
(iii) T_{ib} = Average temperature of the background sample at the inlet to the gas meter or flow instrument, °R.

(7) For definition of DF see § 86.1342–84(d)(5).

(8) Other systems and options, as permitted under these regulations, may require calculations other than these, but these must be based on sound engineering principle and be approved in advance by the Administrator at the time the alternate system is approved.

43. A new § 86.1344–88 is added, to read as follows:

§ 86.1344–88 Required information.

(a) The required test data shall be grouped into the following three general categories:

(1) *Engine set-up and descriptive data.* This data must be provided to the EPA supervisor of engine testing for each engine sent to the Administrator for confirmatory testing prior to the initiation of engine set-up. This data is necessary to ensure that EPA test personnel have the correct data in order to set up and test the engine in a timely and proper manner. This data is not required for tests performed by the manufacturers.

(2) *Pre-test data.* This data is general test data that must be recorded for each test. The data is of a more descriptive nature such as identification of the test engine, test site number, etc. As such, this data can be recorded at any time within 24 hours of the test.

(3) *Test-data.* This data is physical test data that must be recorded at the time of testing.

(b) All data may be supplied to the Administrator by punch cards, magnetic tape, or other electronic data processing means. Acceptable data formats and transmission techniques will be provided in the Application Format for Certification of the applicable model year.

(c) *Engine set-up data.* Because specific test facilities may change with time, the specific data parameters and number of items may vary. The Application Format for Certification for the applicable model year will specify the exact requirements. In general, the following types of data will be required:

(1) Engine manufacturer.
(2) Engine system combination.
(3) Engine code and CID.
(4) Engine identification number.
(5) Applicable engine model year.
(6) Engine fuel type.
(7) Recommended oil type.
(8) Exhaust pipe configuration, pipe sizes, etc.
(9) Curb or low idle speed.
(10) Dynamometer idle speed. (Automatic transmission engines only.)
(11) Engine parameter specifications such as spark timing, operating temperature, advance curves, etc.
(12) Engine performance data, such as maximum BHP, previously measured rated rpm, fuel consumption, governed speed, etc.
(13) Recommended start-up procedure.
(14) Maximum safe engine operating speed.
(15) Number of hours of operation accumulated on engine.
(16) Manufacturer's recommended inlet depression limit and typical in-use inlet depression level.
(17) Exhaust system.
(i) *Diesel engines.*
(A) Header pipe inside diameter.
(B) Tailpipe inside diameter.
(C) Minimum distance in-use between the exhaust manifold flange and the exit of the chassis exhaust system.
(D) Manufacturer's recommended maximum exhaust backpressure limit for the engine.
(E) Typical backpressure as determined by typical application of the engine.
(F) Minimum backpressure required to meet applicable noise regulations.
(ii) *Gasoline-fueled engines.* Typical in-use backpressure in vehicle exhaust system.

(d) *Pre-test data.* The following data shall be recorded, and reported to the Administrator for each test conducted for compliance with the provisions of 40 CFR Part 86, Subpart A:

(1) Engine-system combination.
(2) Engine identification.
(3) Instrument operator(s).
(4) Engine operator(s).
(5) Number of hours of operation accumulated on the engine prior to beginning the test sequence (Figure N84–10).
(6) Identification and specifications of test fuel used.
(7) Date of most recent analytical assembly calibration.
(8) All pertinent instrument information such as tuning, gain, serial numbers, detector number, calibration curve number, etc. As long as this information is traceable, it may be summarized by system number or analyzer identification numbers.

(e) *Test data.* The physical parameters necessary to compute the test results and ensure accuracy of the results shall be recorded for each test conducted for compliance with the provisions of 40 CFR Part 86, Subpart A. Additional test data may be recorded at the discretion of the manufacturer. Extreme details of the test measurements such as analyzer chart deflections will generally not be required on a routine basis to be reported to the Administrator for each test, unless a dispute about the accuracy of the data arises. The following types of data shall be required to be reported to the Administrator. The Application Format for Certification for the applicable model year will specify the exact requirements which may change slightly from year to year with the addition or deletion of certain items.

(1) Date and time of day.
(2) Test number.
(3) Engine intake air or test cell temperature.
(4) Barometric pressure. (A central laboratory barometer may be used: *Provided,* that individual test cell barometric pressure are shown to be within ±0.1 percent of the barometric pressure at the central barometer location.
(5) Engine intake or test cell and CVS dilution air humidity.
(6) Maximum torque versus speed curve as determined in § 86.1332–84, with minimum and maximum engine speeds, and a description of the mapping technique used.
(7) Measured maximum horsepower and maximum torque speeds.
(8) Measured maximum horsepower and torque.
(9) Measured high idle engine speed (governed diesel engines only).
(10) Measured fuel consumption at maximum power and torque (diesel engines only).
(11) Cold-soak time interval and cool down procedures.
(12) Temperature set point of the heated continuous analysis system components (if applicable).
(13) Test cycle validation statistics as specified in § 86.1341–84 for each test phase (cold and hot).
(14) Total CVS flow rate with dilution factor for each test phase (cold and hot).
(15) Temperature of the dilute exhaust mixture and secondary dilution air (in the case of a double dilution system) at the inlet to the respective gas meter(s) or flow instrumentation used for particulate sampling (diesels only).
(16) The maximum temperature of the dilute exhaust mixture immediately before the particulate filter (diesels only).
(17) Sample concentrations (background corrected) for HC, CO, CO_2, and NO_x for each test phase (cold and hot).
(18) The stabilized pre-test weight and post-test weight of each particulate sample and back-up filter or pair of filters (diesels only).
(19) Brake specific emissions (g/BHP–hr) for HC, CO and NO_x for each test phase (cold and hot).
(20) The weighted (cold and hot) brake specific emissions (g/BHP–hr) for the total test.
(21) The weighted (cold and hot) carbon balance or mass-measured brake

specific fuel consumption for the total test.

(22) The number of hours of operation accumulated on the engine after completing the test sequences described in Figure N84–10.

44. Section 86.1544–84 is amended by revising paragraph (b)(4), to read as follows:

§ 86.1544–84 Calculations; idle exhaust emissions.

* * * * *

(b) * * *

(4) Calculate the CVS dilution factor (DF) by:

$$DF = \frac{\text{Raw Wet } CO_2\text{—background } CO_2}{\text{Dilute wet } CO_2\text{—background } CO_2}$$

* * * * *

PART 600—[AMENDED]

45. Section 600.307–86 amended by revising paragraph (b)(ii), to read as follows:

§ 600.307–86 Fuel economy label format requirements.

* * * * *

(b) * * *

(i) * * *

(ii) The digit "one," shall measure at least 0.2 inches by 0.6 inches (5 x 15 mm) in width and height respectively.

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Part IV

Department of Education

34 CFR Part 690
Pell Grant Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 690

Pell Grant Program

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary of Education amends the regulations for the Pell Grant Program. The regulations are amended as a result of the Secretary's review of current regulations. These regulations are being amended to simplify procedures, clarify requirements, and reduce administrative burdens on institutions while maintaining program integrity.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments, with the exceptions of §§ 690.72, 690.77, 690.81, 690.82, 690.92, 690.96, and 690.100. These sections will become effective following the Education Department's submission and OMB approval of reporting requirements contained in those sections under the Paperwork Reduction Act of 1980. It should be noted, however, that with the exception of § 690.66, these regulatory amendments apply to the awarding of Pell Grant assistance for award years following the 1984–1985 award year. Section 690.66, when it becomes effective, will also apply to the remainder of the 1984–1985 award year as well as to subsequent award years. As a result, correspondence schools having payment periods that begin before July 1, 1985 and end on or after July 1, 1985 may place those payment periods in either the 1984–1985 or 1985–86 award year. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Kerrigan, Mr. David Morgan or Mrs. Altia J. Jackson, U.S. Department of Education, Office of Student Financial Assistance, 400 Maryland Avenue, S.W. [Regional Office Building 3, Room 4318] Washington, D.C. 20202. Telephone number (202) 472–4300.

SUPPLEMENTARY INFORMATION: These regulations are being issued in accordance with the Department's deregulation initiative. They clarify requirements and delete provisions in the existing regulations that impose unnecessary administrative burdens on participating institutions. The following is a discussion of these final regulations, including a summary of the comments received and the Department's response to those comments.

Revisions to the Notice of Proposed Rulemaking

Only a few significant changes have been made to the Notice of Proposed Rulemaking (NPRM) published on May 9, 1984.

Section 690.2 General definitions.

The Secretary is adding the definitions of the terms "Electronic Pilot Project" and "Valid Student Aid Report" to § 690.2. The Pell Grant Program Electronic Pilot Project is a project under which students attending an RDS institution participating in the project are able to correct or verify information contained on their Student Aid Reports by using computer terminals at the institution. In contrast, students attending an RDS institution that is not participating in the project must make the corrections directly on their Student Aid Reports and must mail the Reports back to the Secretary. Participation by institutions in this project is strictly voluntary, and only a limited number of institutions will be involved in this project. The goal of this pilot project is to reduce the costs of current processing and provide improved information to the user community through electronic means.

In order to receive a Pell Grant award, a student must submit a valid Student Aid Report to the institution. A valid Student Aid Report is one that contains accurate and complete information. Under the electronic pilot project, as noted above, students correct or verify information contained on their Student Aid Reports. For RDS institutions participating in the electronic pilot project, a valid Student Aid Report must be accurate and complete, and, in addition, be signed by the applicant, his or her spouse, and his or her parents if the student is a dependent student.

Section 690.4 Eligible student.

The Secretary is revising § 690.4 to require a permanent resident to provide evidence from the Immigration and Naturalization Service that he or she is a permanent resident of the United States. This requirement has been added in response to a recommendation from the General Accounting Office and to ensure that Pell Grant funds are awarded to eligible students. The regulations for the Guaranteed Student Loan and the campus-based programs will also include this requirement.

Section 690.8 Enrollment status for students taking non-credit or reduced credit remedial courses or regular and correspondence courses.

Students will be limited to one academic year of non-credit or reduced credit remedial work except for courses relating to English as a Second Language. A number of commenters have questioned this restriction by referring to the statutory language in section 411(a)(3) of the Higher Education Act. That portion of the Act provides that "Nothing in this section shall exclude from eligibility courses of study which are non-credit or remedial in nature which are determined by the institution as necessary to help the student be prepared for the pursuit of a first undergraduate baccalaureate degree."

In strictly literal sense, every program offered by an institution of higher education, no matter now basic, elementary or far removed from the education level of an eligible postsecondary course of study, can be viewed as a remedial program which is "designed to increase the ability of the student to pursue an undergraduate course of study leading to that certificate or degree." Theoretically, a student enrolled in any type of "remedial" program of whatever length could be viewed as eligible to receive assistance under the Pell Grant Program. However, the Secretary does not believe that the statutory scheme of the Pell Grant Program premits such an interpretation.

The Pell Grant Program was designed to provide financial assistance to students pursuing postsecondary education. Thus, to receive such aid, a student must attend an eligible institution of higher education. One of the criteria defining such an institution is the type of student it admits as a regular student. Such a student must be a high school graduate, a GED recipient or recipient of a similar degree, or must be above the age of compulsory school attendance with the ability to benefit from the education or training offered by the institution in its degree or certificate programs. A remedial program that becomes part of an eligible program must be viewed in this context.

A remedial program, by design, offers instruction on less than a postsecondary level. However, the purpose of the program is to prepare a student, who is a high school graduate or who has the ability to benefit from the postsecondary education program provided by the institution, with the background and skills necessary to successfully complete

that postsecondary program. Presumably because the student is a high school graduate or has the ability to benefit from the postsecondary program, the remedial program, if it is to be considered part of an eligible postsecondary program, must have a reasonable relationship to the eligible postsecondary program both in terms of the level of instruction provided and the length of the program. Therefore, the Secretary has decided to limit eligibility for remedial work to one academic year.

Exception for English as a Second Language

An exception to the one year limitation has been made for English as a Second Language (ESL) courses because ESL students often have complete mastery of logical thinking, communication, and reading, as well as math skills in their own language. However, these students do not have the ability to express this knowledge in English. The difficulty of ESL courses is often comparable to the courses taken by students who enroll in French or German language courses. ESL courses are not designed to develop or improve elementary and secondary education skills, but instead are designed to permit a student who already has those skills to pursue a postsecondary education through a second language.

Section 690.77 Verification of information on the SAR—withholding of payments.

The Secretary initiated the verification of application information for the Pell Grant Program in the 1979–80 award year. In the succeeding years, the Secretary developed procedures to select students for verification based in part on the probability that a student's application contained errors. Recent studies by the Education Department on the Pell Grant application process have indicated that a substantial number of errors are still being made on Pell Grant applications. Accordingly, the Secretary anticipates a significant increase in the number of applicants who will be selected to verify their application information.

In response to a comment requesting a list of the items that must be verified under § 690.77 and the identification of the documents that must be collected by institutions to verify those items, and to clarify the Secretary's intent in the proposed rules, the Secretary has amended § 690.77. The procedures in § 690.77 are to be used to verify application information starting with applicants for the 1985–1986 award year. Most of the items set forth in § 690.77 and the documents needed to verify those items are similar to the items and documents currently being used by institutions for verifying application information in the 1984–1985 award year. However, as a result of the errors discovered in the above noted studies, the Secretary determined that additional items needed to be verified and that certain items needed to be verified with additional documents to reduce the application error rates. To assist institutions in carrying out these verification requirements, the Secretary will publish a handbook indicating procedures that institutions may use to carry out the requirements of § 690.77. That handbook for the 1985–86 award year is expected to be mailed to all institutions during the Spring of 1985.

The amended § 690.77 provides that if the applicant is selected for verification, he or she must verify the following items:

- Adjusted gross income (AGI) and U.S. income tax paid as reported on the U.S. individual income tax return.
- Household size.
- Number in the household enrolled in postsecondary educational institutions.
- Independent student status.
- Untaxed income and benefits.

If the household size or the number enrolled in postsecondary educational institutions has changed at the time the student is being verified by the institution, the student must update this information to reflect the change that has occurred since the time the student applied for a Pell Grant. Students who have not been selected for verification are responsible for updating any changes in household size or the number enrolled in postsecondary institutions at the time they submit the first Student Aid Report to the institution. If these two items change after a student who is not selected for verification has submitted the first Student Aid Report or after a student has been verified, the student may not update these changes. By not allowing changes after this time the institution can avoid making adjustments to a student's award after a disbursement has been made to a student.

If a student's dependency status changes at any time after the student has applied for a Pell Grant, he or she must revise that status. By definition, a student's dependency status changes whenever a change in the projected dependency criteria affects the student's dependency status. However, it should be noted that if a student's marital status changes after he or she has applied for a Pell Grant, the change in marital status will not be updated, and therefore will not affect a student's dependency status.

Under the amended § 690.77, an applicant selected for verification must submit to the institution a U.S. income tax return or comparable state income tax return to verify adjusted gross income, U.S. income taxes paid and number in household. The IRS transcript of tax account information that a taxpayer may request and receive from the Internal Revenue Service may be used as an alternative to a tax return. If no return was filed or will be filed an applicant selected for verification must provide to the institution a signed statement which certifies that no tax return was filed, indicates the amount and source of income received, and lists the household members.

Not all State income tax returns are comparable to the U.S. income tax return. The Secretary has determined that a comparable State income tax return is one that is based on the Federal income tax return and one which requires the filer to provide the amount of Federal income tax paid as well as the same information that he or she is required to provide on the Federal tax return with regard to information being verified. However, the responsibility for assuring that the State income tax return is comparable to the U.S. income tax return rests with the institution.

As a general rule for documenting independent student status, institutions shall require that an unmarried applicant document his or her independent student status by submitting the Federal or comparable State income tax return of the applicant's parents and a written statement signed by the parents concerning the amount of assistance they provided to the applicant and the number of days in a year the applicant lived with them. For a married applicant, the parents need to provide only the written statement regarding support and residency.

If the Secretary or the institution has conflicting documentation with regard to the three factors used to determine independent student status—tax exemption, receipt of $750 and six weeks residence—no other documentation is acceptable to verify the applicant's independent student status. However, if neither the Secretary nor the institution has such conflicting documentation, the following rules apply.

1. For an applicant who will be 23 or older on January 1 of an award year, the applicant need not submit the required tax return and statement and the

institution shall consider that the applicant has verified his or her independent student status.

2. For a married applicant who will not be 23 or older on January 1 of an award year, the institution shall consider that the applicant has verified his or her independent student status if the institution determines that the applicant's parents are unable or unwilling to provide the required statement.

3. For an unmarried applicant who will not be 23 or older on January 1 of an award year, the institution shall consider that the applicant has verified his or her independent student status if the institution determines that—

a. The applicant's parents are unable or unwilling to provide the required tax return and statement and

b. The applicant had sufficient income to support himself or herself and any dependents in both the calendar year preceding the first calendar year of the award year and the first calendar year of that award year.

For those situations where an institution needs to determine whether the applicant's parents are unable or unwilling to provide required tax returns or statements, the institution shall make a reasonable effort to obtain the tax returns or statements from the applicant's parents.

The Secretary will notify institutions if he has conflicting documentation concerning whether an unmarried applicant was claimed as an exemption by his or her parents in a base year of an award year, i.e., the calendar year preceding an award year, 1984 for the 1985–1986 award year. The Secretary will compare application information filed by an applicant for an award year with the application information filed by the applicant for the previous award year.

If an unmarried applicant claims independent student status for an award year, the applicant must indicate that his or her parents did not claim him or her as a tax exemption in the base year or the first year of an award year. If the applicant filed an application for the previous award year, the applicant would have also had to indicate whether his or her parents claimed him or her as a tax exemption for the base year or the first year of that award year. The base for an award year is the same calendar year as the first calendar year of the preceding award year. For example, for the 1985–86 award year, the base year is calendar year 1984; for the preceding award year, 1984–85, the first calendar year of that award year is also 1984. The Secretary considers that there is inconsistent documentation if an applicant indicated for the current award year that his or her parents did not claim him or her as an exemption in the base year, i.e. 1984 for the 1985–86 award year in the above example, while indicating in the application for the preceding award year, 1984–85, that for the first calendar year of that award year, i.e. 1984, the parents were going to claim him or her as an exemption. Beginning in the 1984–85 award year, the Student Aid Report of an applicant with this inconsistency has a comment noting this conflicting documentation.

If verification results in a change from independent student status to dependent student status, the applicant must submit a new student aid application providing parental data in order to recalculate the applicant's expected family contribution. The applicant must verify the parental data provided on the new application.

The Secretary recognizes that the documentation requirements for verifying independent student status are complex. However, the Secretary believes that the magnitude of the error in awards made on the basis of incorrect dependency status, as found in the quality control reports in the Pell Grant Program, justifies this requirement.

As set forth in the amended § 690.77, in certain cases an institution must obtain signed statements from applicants and parents, as appropriate, to verify the number in household, the number in postsecondary institutions, and untaxed income and benefits. For number in household, the institution must first collect a signed copy of an appropriate tax form which indicates the number of exemptions. If there is a discrepancy between the number of exemptions claimed on the tax form and the number in the household indicated on the application, the discrepancy must be resolved, either by a signed statement or by other documentation on file at the institution.

For the number of family members in postsecondary educational institutions, the institution may, in lieu of a signed statement, use the applicant's student aid application if it provides the names of the household members who are or will be attending postsecondary institutions as at least half-time students, their ages, and the names of the institutions that they are planning to attend. With regard to untaxed income, institutions must verify untaxed income and benefits by obtaining, in addition to a tax return, a copy of the student aid application worksheet for untaxed income and benefits which is part of the application package, or a comparable listing of that information, with a signed statement certifying that the information on the worksheet or listing is correct.

If the institution determines that it has any reason to doubt the information supplied by the student for these two areas, a signed statement is not sufficient documentation to verify the accuracy of the data. In these cases, the institution must require additional documentation, such as a statement from the institution the other family member is attending indicating the individual is enrolled as at least a half-time student or a statement from the agency supplying the untaxed benefit of the amount of the benefits provided, unless the institution the student is attending certifies that such a statement is unavailable or not obtainable in a reasonable period of time.

Section 690.84 Audit and examination.

The audit and examination provisions (§ 690.85) were removed from the Pell Grant regulations in the NPRM because these provisions will be transferred to the Student Assistance General Provisions regulations (see § 668.23 of the Student Assistance General Provisions regulations NPRM published in the **Federal Register** on December 12, 1984, 49 FR 48494–48518). However, the Pell Grant final regulations will become effective before the amendments to the Student Assistance General Provisions regulations. Thus, Secretary has reinstated the audit provisions in the Pell Grant final regulations under § 690.84 in order to avoid any uncertainty about the effectiveness of the audit requirements for institutions participating in the Pell Grant Program. This section will be removed from the Pell Grant regulations when the Student Assistance General Provisions final regulations are published.

A summary of the comments received and the Department's response to those comments follows.

In the Preamble to the Notice of Proposed Rulemaking, the Secretary solicited comments on two topics. The first topic related to recalculation of an award when there is a change in enrollment status, the second related to a tape exchange as a substitute for the SAR submission requirement.

Recalculation of Awards Because of a Change in Enrollment Status

Comment: Most of the commenters were opposed to a change in the rule that gives institutions the option of recalculating awards when a student's enrollment status changes within an academic term. Two commenters thought that recalculating should be mandatory, but over one hundred

commenters opposed such a requirement. A summary of the comments on this proposed change follows.

Several commenters questioned whether the problem was significant enough to merit a mandatory recalculation policy. Some of these commenters suggested that institutions can exercise the option of recalculation if there is a problem at their school.

Many commenters focused on the administrative burden for institutions in relation to the "potential" for abuse among students who change enrollment status. Among the burdens cited were monitoring the enrollment status of every Pell Grant recipient throughout the term if a school is required to recalculate in the same term, or the problem of adjusting awards in the subsequent term for students who receive incompletes, transfer from another institution or do not return to any school. One commenter stated that 40 percent of the entering freshmen at his institution do not enroll in the subsequent term. If a student did not return to the institution in a subsequent term, many commenters wondered whether the institution would be responsible for collecting the overpayment.

Several commenters suggested alternatives to recalculation. These alternatives included withholding the disbursement until after the drop/add period, or after the refund period. Another suggestion was to require two disbursements, one at the beginning of the term, and the second at the midpoint of the term when an adjustment could be made if the enrollment status changed. Many commenters suggested that an adjustment would not be necessary if the Pell Grant disbursement did not exceed direct institutional costs for that term.

Many commenters argued that mandatory recalculation was not necessary because institutions must have specific policies defining the effect of course incompletes and withdrawals for satisfactory progress. In addition, institutions must determine whether a student has completed a minimum percentage of work toward his degree within each increment established by the institution.

Several commenters expressed concern about the effect on Campus-based aid when an adjustment is made to the Pell Grant award. These commenters pointed out that an adjustment was not required for Campus-based aid and that this resulted in inconsistent treatment among the Title IV Higher Education Act programs. One commenter asked whether the adjustment in the Pell Grant award would qualify as unmet need for purposes of Campus-based assistance.

Finally, many commenters focused on the hardship for students, particularly those who withdrew from classes because of illness or other hardships. Many commenters suggested that students who were hardpressed financially would be discouraged from returning in subsequent terms.

Response: No change has been made. In the interest of minimizing the administrative burdens of institutions, the Secretary has decided not to change the current rule which gives institutions the option of recalculating when there is a change in enrollment status within a term. Even though Pell Grant recipients attending clock hour institutions must account for every hour they are paid for, the administrative problems of recalculating awards or collecting overpayments do not exist at most of those institutions because a student cannot receive a subsequent payment until he or she completes the hours for which he or she was originally paid. Unfortunately, this approach is not compatible with the nature of credit hour institutions that have academic terms. Students can enroll in subsequent terms without completing the credits in a previous term.

Although satisfactory progress requirements may deny assistance to students attending institutions that have strict standards, the intent of the recalculation policy is not to withhold completely assistance from students. Such a measure would not be appropriate for students who may have legitimate reasons for withdrawing from a course. Rather than withholding all assistance, a recalculation policy would merely hold students accountable for the courses they were paid for, but did not complete.

Since the recalculation proposals appear to be overly burdensome, the Secretary is soliciting comments on alternatives that will hold students more accountable for the courses they do not complete. Such an alternative should be less burdensome than recalculation, but more effective than satisfactory progress.

Tape Exchange Proposal

Comment: Many commenters supported, in principle, the proposal to eliminate the SAR submission requirement for students enrolled at an institution that participates in the full data tape exchange program provided by the Department of Education. In fact, several commenters suggested that this proposal should be implemented in the 1984–85 award year. Many commenters stated that this proposal would substantially reduce the administrative burden on institutions, but several commenters suggested several changes should be made to the tape exchange program to make the proposal more effective. Verification and edit codes would need to be included, and the tapes should be distributed to more than one institution, since a student will often attend an institution that is listed as his or her second or third choice.

A few commenters questioned the feasibility of the proposal for students who transfer to other institutions, or who have Student Aid Indexes that must be recalculated, or who have awards that must be adjusted. One commenter thought that students would become confused about different submission requirements, and another commenter suggested that students should be informed of this new procedure on the SAR. One commenter suggested that this proposal would create new opportunities for fraud and abuse.

Several commenters suggested alternatives to this proposal, such as sending SARs directly to the institution, or eliminating the central processor and allowing institutions to calculate the Student Aid Index.

Response: No change has been made. This proposal was suggested as an alternative to the SAR *submission* requirement. Transfer students or students who must change their SAR would still have to use the SAR. Additional planning is required before a tape exchange option can be implemented. Commenters provided many helpful suggestions for formulating a more specific proposal in the future.

Section 690.2 General definitions.

Comment: Several commenters stated that limiting students enrolled in the non-residential portion of a correspondence program to half-time enrollment was arbitrarily restrictive.

Response: No change has been made. Correspondence students have been restricted to half-time status because generally these students have a workload that is comparable to a part-time student.

Comment: Two commenters questioned the Secretary's statutory authority for limiting a student's Pell Grant eligibility to four academic years when the program the student was enrolled in exceeded five academic years.

Response: No change has been made. Section 411(a)(3) of the Higher Education Act states that, "The period during which a student may receive basic grants shall be the period required

for the completion of the first undergraduate baccalaureate course of study being pursued by that student . . .". If an academic program is longer than five years for a full-time student, the Secretary does not consider the entire program to be an undergraduate course of study, but instead a combined program of undergraduate and graduate study. For example, this provision in the definition of an undergraduate student applies to students enrolled in a six year program who will not receive a Bachelor's degree but will instead receive a Doctor of Osteopathy or Doctor of Chiropractic at the completion of that program. These students are obviously not enrolled in undergraduate study for their entire six years of postsecondary study but are considered undergraduate students for purposes of the Pell Grant Program for the first four academic years of postsecondary study.

Section 690.3 Definitions of payment period.

Comment: One commenter stated that the wording in proposed § 690.3(a)(2)(iii) is ambiguous for students who are allowed to make up clock hours in the previous term at the same time they are enrolled in new coursework.

Response: A change has been made. The Secretary agrees that the phrase in the NPRM that refers to "clock hours remaining in that term" is ambiguous for these students and a revision has been made to that part of the regulations so that all unpaid clock hours are taken into account in calculating subsequent disbursements. However, a student cannot be paid for these clock hours until he or she has completed the hours required for the preceding payment period. This restriction has been placed in § 690.75.

Comment: One commenter suggested that the minimum full-time standard for students attending institutions with quarter terms should be increased because quarter hours are not equal to semester hours.

Response: No change has been made. The fact that a quarter hour is not equal to a semester hour is offset by the fact that a full-time student must complete three quarters, as opposed to two semesters, to receive a full Pell Grant award. Thus, a student must receive at least 36 quarters hours or 24 semester hours in order to receive a full Pell Grant award.

Section 690.5 Eligible program.

Comment: One commenter noted that eligible six month programs can only be offered by proprietary or postsecondary vocatior al institutions, and questioned whether six month programs offered by community colleges were eligible.

Response: No change has been made. For purposes of offering an eligible six month program, a community college can be considered to be both a postsecondary vocational institution and a public or private non-profit institution of higher education.

Comment: One commenter questioned the Secretary's authority to require that students without a high school diploma or its equivalent must have the ability to benefit from the training offered.

Response: No change has been made. The ability to benefit requirement is referred to in the next to last sentence of section 1201(a) and section 481(b) of the Higher Education Act.

Section 690.6 Duration of student eligibility.

Comment: Several commenters have interpreted paragraph (b) to mean that institutions must determine when each student has completed the course requirements for completing the first undergraduate baccalaureate course of study. Other commenters suggested that paragraph (a) was sufficient and paragraph (b) was unnecessary.

Response: No change has been made. Paragraph (b) has been added to stress that the institution rather than the student shall determine when a student has completed the first baccalaureate course of study. An institution may detemine that a student has fulfilled all the course requirements for a baccalaureate, and is no longer eligible, or the institution may have a policy of waiting until the student has actually received a baccalaureate. In either case, the institution determines when the baccalaureate course of study has been completed.

Section 690.8 Enrollment status for students taking non-credit or reduced credit remedial courses or regular and correspondence courses.

Comment: Many commenters objected to the one-year restriction on non-credit or reduced credit remedial work in determining enrollment status for students receiving a Pell Grant. Many of these commenters felt that any limits on remedial work should be determined by the institution. Other commenters suggested that the satisfactory progress standard of the institution should be relied on the determine any limit on remedial work. A few commenters objected to the limitation because they claimed it would be difficult to monitor when a student had completed an academic year of remedial work. Three commenters contended that this restriction would disproportionately affect low income students who are the very students the Pell Grant Program was designed to help. Finally, some commenters throught the Secretary did not have the statutory authority to limit Pell Grant payments for remedial work.

Three commenters thought that remedial work should not be included at all in determining enrollment status for a Pell Grant. This work was considered not to be a part of a student's postsecondary education. One commenter agreed with the one year limitation.

Response: No change has been made. As discussed at the beginning of this preamble, the Secretary is not excluding remedial courses from eligibility, but there must be some limit to the number of remedial courses taken before there is a question of whether the student is really enrolled in a postsecondary program of study. The purpose of the Pell Grant Program is to assist students who are enrolled in postsecondary education. The Secretary does not consider a student who enrolls in the equivalent of more than one year of remedial work to be enrolled in postsecondary education. The Pell Grant should not be used to pay for a substantial portion of a student's elementary or secondary training.

Comment: A few commenters suggested that English as a Second Language should be excluded from the one-year limitation because much of this training involves learning a foreign language that extends beyond the level of elementary or secondary education.

Response: A change has been made. The Secretary agrees that students enrolled in English as a Second Language (ESL) coursework should be exempted from the one-year limitation, assuming the student is enrolled in an eligible program as a regular student at the time he or she is enrolled in the ESL Program. Such a student would usually have the knowledge and skills of a high school graduate, but needs to learn a second language as part of his or her postsecondary program. The students would still be subject to the one-year limitation for any other courses that are remedial in nature.

Comment: Several commenters objected to the specificity of the requirements in paragraph (a)(2) for attributing the number of credit or clock hours to non-credit remedial courses. Some of these commenters thought this interfered with the academic standards of an institution.

Response: No change has been made. The previous regulation required the institution to determine the equivalent number of clock or credit hours which

should be included for that work. In paragraph (a)(2) of these regulations, the Secretary has established specific procedures for determining equivalence in calculating enrollment status for a Pell Grant to ensure that the workload for non-credit remedial courses is comparable to that of regular courses. Institutions may apply different criteria for attributing the number of clock or credit hours to non-credit or reduced credit courses for academic purposes.

Comment: A few commenters objected to the chart in paragraph (b)(4) because the guidelines were too specific and interfered with an institution's academic standards while others objected because the chart was confusing. However, some commenters thought the chart was helpful.

Response: No change has been made. The chart reflects the established policy for determining enrollment status in calculating a Pell Grant award for students enrolled in both correspondence study and regular coursework. This procedure is only used to calculate Pell Grant awards and should not interfere with the academic standards of an institution.

Section 690.10 Administrative cost allowance to participating schools.

Comment: Several commenters objected to the phrase "Subject to available appropriations . . ." as a condition for paying an administrative cost allowance. Some of these commenters pointed out that this allowance is a part of the program funds rather than a separate appropriation.

Response: No change has been made. In 1981, Pub. L. 97-12 specifically prohibited the Secretary from making any payments to institutions for administrative expenses incurred in the 1981-82 award year. In case such a rescission is passed by Congress in the future, the phrase "Subject to available appropriations" is included in this section to avoid any potential conflict between the regulations and laws passed by Congress.

Comment: Two commenters suggested that the administrative cost allowance should be raised to $10.

Response: No change has been made. Section 489(a) of the Higher Education Act as amended by Pub. L. 97-35 only provides an allowance of $5 for each student.

Section 690.61 Submission process and deadline for student aid report.

Comment: Most commenters supported the single SAR submission deadline of June 30 because it is simpler to administer and less confusing for students. One commenter suggested the May 31 deadline date should be retained for students who enroll before May 1, so that the school could close its account in a timely manner. One commenter asked whether the June 30 deadline applied to students who must verify information on the SAR as required by § 690.77.

Response: No change has been made. The Secretary agrees with the majority of commenters that a single deadline date regardless of when the student first enrolls is easier to administer. The reference to § 690.77 in paragraph (b) indicates that the June 30 deadline date does not apply to students who must verify information on the SAR.

A student must still be enrolled at the time he submits the SAR to the institution, so a college that closes before June 30 can finalize its accounts for that year shortly after it closes. However, if a student submits an SAR when he is not enrolled at the school, but later enrolls on or before the June 30 deadline, he is eligible to receive payment for his entire period of enrollment during the award year.

Comment: Several commenters suggested that a student should not be required to be enrolled at the time he submits the SAR to the institution. They argued that as long as he has been enrolled at some time during the award year and has incurred educational expenses, he should be reimbursed for those expenditures. Students often submit the SARs late because of delays in the processing system.

Response: No change has been made. Some institutions may object to the administrative burden of allowing previously enrolled students to submit SARs at any time up to the June 30 deadline. However, the Secretary may propose in the future that the enrollment requirement for submission of the SAR should be eliminated, at which time further consideration would be given to this suggestion.

Section 690.62 Calculation of a Pell Grant.

Comment: Two commenters suggested that the Secretary was required under section 411(a)(2)(B)(iii) to publish criteria for when an institution can award a Pell Grant of less than $200 because of the requirement in division (i) that the amount of the grant cannot exceed a given percentage of the cost of attendance.

Response: No change has been made. Under division (i) the amount of a Pell Grant shall not exceed 50 percent of the cost of attendance. If the Pell Grant was less than $200 the award would not exceed 50 percent of the cost unless the cost of attendance was less than $400. All students other than those who are incarcerated or enrolled in correspondence study receive at least a standard maintenance allowance of $400. Accordingly, the Secretary has not published criteria for awards of less than $200 because it is highly unlikely that a student will have a cost of attendance of less than $400.

Section 690.65 Transfer student: attendance at more than one institution during an award year.

Comment: Several commenters found the more detailed description for calculating awards in paragraph (d) of the NPRM to be helpful, but a few suggested the distribution of Pell Grant disbursements at the second institution should be explained in the regulations.

Response: A change has been made. Paragraph (e) has been added to the final regulation to explain how the remaining percentage is to be distributed at the second institution.

Section 690.66 Correspondence study.

Comment: Several commenters suggested that paragraph (b)(1)(ii) of the NPRM should be eliminated because automatically limiting students to one-half the Scheduled Award is arbitrary and does not take into account students who have a workload that is greater than half-time.

Response: No change has been made. As stated in response to the comments on the definition of half-time student under § 690.2, correspondence students who are not enrolled in the residential portion of a program have been restricted to half-time status because generally these students have a workload that is comparable to a part-time student.

Comment: A few commenters objected to the double reduction proposed for correspondence students who were enrolled in a program that is less than an academic year. Under the proposed rule such a student's award would be calculated by multiplying one-half the Scheduled Award by the following fraction:

$$\frac{\text{hours in the program}}{\text{hours in the academic year}}$$

These commenters stated that the double reduction was unnecessarily restrictive.

Response: A change has been made. Since the half-time restriction ensures that a student enrolled in a six-month program will not be over-awarded, the Secretary agrees that a further reduction is not necessary.

Comment: Several commenters supported the proposal that allowed students who enrolled near the end of an award year to be placed in either the first or second award year when the payment period occurred in two award years. They thought this procedure would be easier to administer and that the award calculations were more equitable. However, two commenters questioned how this procedure affected institutions that participated under the Alternate Disbursement System (ADS).

Response: A change has been made. The option of placing students in either award year will not apply to ADS institutions. The second payment period at ADS institutions must end on June 30 for each award year. Paragraph (d) has been added to explain how calculations at ADS institutions must be made.

Section 690.73 Termination of institutional participation agreement—Regular Disbursement System (RDS).

Comment: Several commenters stated that the Secretary may not terminate a participation agreement with an institution without reasonable notice and an opportunity for a hearing according to section 487 of the HEA.

Response: No change has been made. Section 487 requires a hearing before an institution's eligibility to participate is not terminated under the provision of § 690.73. Under that section of the regulations, the Secretary is terminating the institution's agreement to participate under the RDS. An institution would still be eligible to participation, but under paragraph (e) of § 690.73 the Secretary will pay the institution's students only if the institution enters into an ADS agreement. The hearing requirement in section 487 applies to a suspension, limitation, or termination of the institution's eligibility to participate in the Pell Grant Program. The hearing requirement does not apply to the decision of whether the institution participates in the Pell Grant Program under the RDS or ADS Systems.

Section 690.74 Provision of funds to institutions.

Comment: Several commenters have interpreted the wording in this section to mean the Department of Education intends only to provide funds to institutions to cover reimbursement for Pell Grants awards already paid by the institution. Some commenters thought that institutions would have to borrow or use their own existing funds to make payments to students, after which the institution could seek reimbursement.

Response: No change has been made. As stated in the preamble to the Pell Grant Program regulations published in the Federal Register of October 6, 1983 the wording was changed to clarify the meaning of that section. Some institutions had previously interpreted this section to mean the Secretary was always required to provide funds to an institution in advance of its awarding of Pell Grants merely on the basis of a request of that institution for funds. The wording of this section was not revised to permit the Department of Education only to provide funds to institutions to cover reimbursements. The Secretary will continue to provide funds in advance of expenditures, but is not obligated to fulfill unwarranted requests for such funds. The Secretary must ensure that federal funds are not given for an unfounded or unreasonable institutional request.

Section 690.75 Determination of eligibility for payment.

Comment: Several commenters stated that the phrase "For each payment period" should be deleted from the beginning of § 690.75 because a student's satisfactory progress need not be determined every payment period.

Response: No change has been made. If all the elements of an institution's satisfactory progress standard are designed to be monitored only at the end of each academic year instead of at the end of each payment period, a student is maintaining satisfactory progress when payments are made during that academic year. However, if an institution's satisfactory progress standards are designed to be monitored at the end of each payment period a student may not be maintaining satisfactory progress within an academic year and therefore his status must be checked before any disbursement can be made.

Section 690.77 Verification of information on the SAR—withholding of payments.

Comment: Several commenters objected to the provision in paragraph (f) which grants an extension of the submission deadline for students who must resubmit a verified SAR when the SAR must be corrected. The student is then paid from the original SAR or the corrected SAR depending upon which SAR yields the lower award. These commenters suggested that the student should always be paid from the corrected SAR, citing section 411(a)(2)(A) of the Higher Education Act. That part of the statute states that the Secretary shall pay to each eligible student a Pell Grant in the amount he or she is eligible to receive.

Response: No change has been made. The Secretary has established a SAR submission deadline of June 30, or the latest date of enrollment, whichever come first. A valid SAR must be submitted within that time or else the student is not eligible for payment. A student whose original SAR must be corrected has never fulfilled that requirement because a valid SAR has not been submitted within the allowable time frame. Some deadline for submitting SAR's must be established for purposes of administrative efficiency. Students who submit SAR's that are not valid has misreported information on their applications. These students have been given a 60 day extension to correct the SAR and submit supporting documentation. A student who have misreported information and is given an extension to correct that error should not receive the additional benefit of a higher award.

Comment: One commenters indicated that § 690.77, describing requirements for verification, should specify the items to be verified, and the documentation required for verifying them. The commenter felt that items to be verified should include, at a minimum: Adjusted gross income, Federal income taxes paid, untaxed income and benefits, number of family members in the applicant's household, number of family members in postsecondary educational institutions, and independent student status.

Response: A change has been made. The Notice of Proposed Rulemaking would have required a student to submit documentation that the Secretary considers appropriate. The Secretary agrees with the commenter that the proposed rule needs clarification as to what the Secretary considers appropriate, and believes that at least the six items cited by the commenter should be verified: Adjusted gross income, Federal income taxes paid, untaxed income and benefits, number in household, number in postsecondary educational institutions, and independent student status. An institution may verify additional items if it wishes. The Secretary believes that the documentation for verifying these items should include a signed copy of the Federal income tax return, a comparable state income tax return or the IRS listing of tax account information from the Internal Revenue Service. If no income tax return was filed or will be filed, a signed statement providing the sources of income earned, the amount of income from each source, and a list of family members in the household must be provided. A signed statement must also be submitted to verify the number in postsecondary

educational institutions, factors relating to independent student status, and untaxed income or benefits. In some cases documentation for the Social Security Administration or Veterans Administration may be required to verify benefits from those agencies. In some circumstances an income tax return must be requested by the institution to verify independent student status.

Section 690.78 Method of disbursement—by check or credit to the student's account.

Comment: Two commenters asked whether the 15 day period for requesting payment in paragraph (d)(2) referred to business days or calendar days.

Response: No change has been made. Since the regulations do not specifically state business days, the 15-day period is measured by calendar days.

Section 690.80 Recalculation of a Pell Grant award.

Comment: One commenter, under the heading of this section, raised a question dealing with the calculation of an expected family contribution that is more appropriate to Subparts C & D of this part. The commenter asked whether a person who filed an application to have his expected family contribution calculated using estimated income must submit a new application using actual income if his estimate turned out to be inaccurate.

Response: No change has been made. The expected family contribution does not change if the estimates on the income turn out to be incorrect, as long as the applicant has made a good faith estimate based on what he knew at the time he applied.

Comment: One commenter objected to the requirement of recalculating for a change in the cost of attendance when a student's enrollment status changes between payment periods. The commenter thought this requirement was overly burdensome.

Response: No change has been made. If an institution must recalculate a student's enrollment status, verifying or correcting that student's cost of attendance should not be overly burdensome. An institution can assume that the costs have not changed unless it has documents that indicate the student's cost has changed.

Comment: One commenter pointed out that a recalculation for a change in enrollment status does not apply for clock hour institutions that do not have academic terms. The commenter suggested that paragraph (b)(1) should not apply to these institutions.

Response: A change has been made. The Secretary agrees that a recalculation is not relevant to these institutions since a change in enrollment status would only affect the timing of the disbursements. This paragraph has been revised to apply only to institutions that have academic terms.

Section 690.81 Fiscal control and fund accounting procedures.

Comment: Several commenters suggested that the option of sending a letter to a bank, listing the accounts in which the Federal funds will be deposited, should be retained. These commenters stated that including in the name of the account the fact that Federal funds are in that account is burdensome and expensive, particularly for large institutions that have funds from many different sources in their accounts.

Response: No change has been made. The difficulty of finding Federal funds deposited by institutions that have later closed has convinced the Secretary that the option of sending a letter to the bank must not be retained despite the additional burden this causes for some institutions.

Subpart H—Administration of Grant Payments—Alternate Disbursement System

Comment: One commenter objected to the verification and record retention requirements for ADS institutions in §§ 690.96 and 690.100. The commenter argued that institutions that select the Alternate Disbursement System should have fewer administrative responsibilities.

Response: No change has been made. Institutions participating in the Pell Grant Program under the Alternate Disbursement System still have fewer responsibilities than RDS institutions. There were no revisions to Subpart H in the Notice of Proposed Rulemaking. As stated in the preamble to the Pell Grant Program regulations published in the **Federal Register** of October 6, 1983, these requirements were made in response to recommendations of the former Department of Health, Education, and Welfare Audit Agency report on the ADS. The Secretary decided to include these requirements in the October 6, 1983 final regulations to close off an avenue of serious potential program abuse.

Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Paperwork Reduction Act of 1980

The information collection requirements contained in these regulations in §§ 690.72, 690.77, 690.81, 690.82, 690.92, 690.76, and 690.100 will become effective after they have been approved by the Office of Management and Budget.

Assessment of Educational Impact

In the Notice of Proposed Rulemaking the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the absence of any comments on this matter and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 690

Administrative practice and procedure, Education, Education of disadvantaged, Grant programs—education, Student aid.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance No. 84.063, Pell (Basic) Grant Program)

Dated: March 8, 1985.

William J. Bennett,

Secretary of Education.

PART 690—PELL GRANT PROGRAM

The Secretary revises Subparts A, B, F, G, and H of Part 690 of Title 34 of the Code of Federal Regulations to read as follows:

Subpart A—Scope, Purpose and General Definitions

Sec.

690.1 Scope and purpose.
690.2 General definitions.
690.3 Definitions of payment period.
690.4 Eligible student.
690.5 Eligible program.
690.6 Duration of student eligibility.
690.7 Institutional participation.
690.8 Enrollment status for students taking non-credit or reduced credit remedial courses or regular and correspondence courses.
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Authority: Section 411 of the Higher Education Act of 1965 as amended (20 U.S.C. 1070a), unless otherwise noted.

Subpart A—Scope, Purpose and General Definitions

§ 690.1 Scope and purpose.

The Pell Grant Program awards grants to help financially needy students meet the cost of their postsecondary education.
(20 U.S.C. 1070a)

§ 690.2 General definitions.

(a) Definitions of the following terms used in this part are described in Subpart A of the Student Assistance General Provisions, 34 CFR Part 668:

Academic year
Act
Award year
Clock hour
College Work-Study Program
Enrolled
Guaranteed Student Loan Program
National Direct Student Loan Program
National Defense Student Loan Program
National of the United States
One-year training program
Pell Grant Program
PLUS Loan Program
Proprietary institution of higher education
Postsecondary vocational institution
Public or private nonprofit institution of higher education
Recognized equivalent of a high school diploma
Regular student
Secretary
Six-month training program
State
State Student Incentive Grant Program
Supplemental Educational Opportunity Grant Program.

(b) Other terms used in this part are:

ADS institution: An institution that participates in the Pell Grant Program under the Alternate Disbursement System.

Comparable State income tax return: A state income tax return based on the Federal income tax return which requires the filer to provide the amount of Federal income tax paid as well as the same information that he or she is required to provide on the Federal income tax return with regard to information being verified.

Disbursement Schedule: A table showing the grant amounts three-quarter and half-time students at term based institutions using credit hours would receive for an academic year. This table, published annually by the Secretary is based on—

(1) A student's Effective Family Contribution;

(2) A student's attendance costs as defined in Subpart E; and

(3) The amount of funds available for making Pell Grants.

Electronic Pilot Project: An electronic exchange system between the Secretary and an institution under which a student is able to correct or verify information contained on his or her SAR at the institution he or she is attending and the institution is able to print out a Student Aid Report for that student which is based on the corrected or verified information.

Enrollment status: Full-time, three-quarter-time, of half-time depending on a student's credit hour work load per academic term at an institution using semesters, trimesters, quarters, or other academic terms and measuring progress by credit hours.

(2) Full-time or part-time depending on a student's credit hour work load per academic year, at an institution that does not use academic terms and measures progress by credit hours.

(3) Full-time or part-time depending on a student's clock hour work load per week at an institution that measures progress by clock hours.

Full-time student: An enrolled student who is carrying a full-time academic work load (other than by correspondence)—as determined by the institution—under a standard applicable to all students enrolled in a particular program. However, an institution's full-time standard must equal or exceed one of the following minimum requirements.

(1) 12 semester hours or 12 quarter hours per academic term in an institution using a semester, trimester, or quarters system;

(2) 24 semester hours or 36 quarter hours per academic year for an institution using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one academic year;

(3) 24 clock hours per week for an institution using clock hours;

(4) In an institution using both credit and clock hours, any combination of credit and clock hours where the sum of the following fractions is equal to or greater than one:

$$\frac{\text{Number of credit hours per term}}{12} + \frac{\text{Number of clock hours per week}}{24}$$

(5) A series of courses or seminars which equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks; or

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic work-load of a full-time student

Half-time student: (1) Except as provided in paragraph (2), an enrolled student who is carrying a half-time academic work load—as determined by the institution—which amounts to at least half the work load of the appropriate minimum requirement outlined in the definition of a full-time student.

(2) A student enrolled solely in a program of study by correspondence who is carrying a work load of at least 12 hours of work per week, or is earning at least 6 credit hours per semester, trimester or quarter. However, regardless of the work, no student enrolled solely in correspondence study is considered more than a half-time student.

Institution of higher education (Institution): A public or private non-profit or proprietary institution of higher education or a postsecondary vocational institution.

Payment Schedules: A table showing a full-time student's scheduled Pell Grant for a given award year. This table, published annually by the Secretary, is based on—

(1) The student's Expected Family Contribution;

(2) The student's cost of attendance as defined in Subpart E; and

(3) The amount of funds available to the Secretary for making Pell Grants.

RDS Institution: An institution that participates in the Pell Grant Program under the Regular Disbursement System.

Scheduled Pell Grant: The amount of a Pell Grant which would be paid to a full-time student for a full academic year.

Student aid index: The term used on the Student Aid Report (SAR) to designate a student's expected family contribution for the Pell Grant Program.

Student Aid Report (SAR): A report provided to an applicant showing the amount of his or her expected family contribution.

Student Aid Report (SAR) Payment Document: A part of the SAR that is provided to the Secretary by an institution showing an applicant's expected family contribution, cost of attendance, and enrollment status, at that institution.

Three-quarter-time student: An enrolled student who is carrying a three-quarter-time academic work load—as determined by the institution—which amounts to at least three quarters of the work of the appropriate minimum requirement outlined in the definition of a "full-time student."

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who—

(1) Has not earned a baccalaureate or first professional degree; and

(2) Is in an undergraduate course of study which usually does not exceed 4 academic years, or is enrolled in a 4 to 5 academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first 4 academic years of that program.

Valid Student Aid Report: A student Aid Report—

(a) On which all of the information used in the calculation of the applicant's expected family contribution is accurate and complete as of the date the application is signed; and

(b) For the Electronic Pilot Project, that is signed by the applicant, his or her spouse, and the applicant's parents if the applicant is a dependent student.

(20 U.S.C. 1070a unless otherwise noted.)

§ 690.3 Definitions of payment period.

(a) *Payment period for an RDS institution that has academic terms:*

(1) Except as noted in paragraph (a)(2) of this section, for an RDS institution that uses semesters, trimesters, quarters or other academic terms, the payment period is the semester, trimester, quarter or other academic term.

(2) For an RDS institution that uses semesters, trimesters, quarters or other academic terms and measures progress in clock hours—

(i) A payment period is a semester, trimester, quarter, or other academic term if the student completes all the clock hours scheduled for that term;

(ii) If at the end of a term, the student has not completed all of the clock hours scheduled for that term and the student has received a Pell Grant for that term, the payment period extends beyond that term for as long as it takes the student to complete the number of clock hours originally scheduled for that term; and

(iii) If a payment period extends into another term, the next payment period consists of the number of clock hours scheduled for that term that were not included in the previous payment period.

(b) *Payment period for an RDS institution that does not have academic terms:* (1) For a student whose educational program is one academic year—

(i) The first payment period is the period of time in which the student completes the first half of his or her academic year (in credit or clock hours); and

(ii) The second payment period is the period of time in which the student completes the second half of that academic year.

(2) For a student whose educational program is more than one academic year, the first and second payment periods must be calculated under paragraph (b)(1) of this section. For subsequent academic years, or fractions of academic years, each payment period must be the period of time in which a student completes—

(i) One-half of the academic year; or

(ii) The remaining hours in the student's educational program, which ever is to be completed first.

(3) For a student whose educational program is less than an academic year—

(i) The first payment period must be the period of time which the student completes the first half of his or her educational program (in credit or clock hours); and

(ii) The second payment period must be the period of time in which the student completes the second half of his or her educational program.

(4) If an RDS institution chooses to have more than two payment periods in an academic year or in a program of less than an academic year, the rules in paragraphs (b)(1) through (b)(3) of this section are modified to reflect the increased number of payment periods. For example, if an institution chooses to have three payment periods in an academic year, each payment period must correspond to one-third of the academic year.

(c) *Payment period for an ADS institution.* (1) If an ADS institution uses semesters, trimesters, quarters or other academic terms and measures progress in credit hours, the payment period must be the semester, trimester, quarter or other academic term.

(2) If an ADS institution measures progress in clock hours, or measures progress in credit hours but does not use academic terms, it shall have at least two payment periods, calculated as follows:

(i) If a student's academic year is within one award year and a student's educational program is at least one academic year—

(A) The first payment period must be the period of time in which a student completes the first half of his or her academic year; and

(B) The second payment period must be the period of time in which a student

completes the second half of his or her academic year.

(ii) If a student's academic year is not within one award year or the student's educational program is less than a full academic year—

(A) The first payment period must be the period of time in which a student completes the first half of the hour she or she is scheduled to complete within the award year; and

(B) The second payment period must begin when the first payment period ends and end when a student completes all hours he or she was schedule to complete between the beginning of the second payment period and June 30.

(iii) A student who does not complete all the clock hours required for the second payment period of any award year may complete them during the following award year. In this case, the first payment period of the new award year must begin when a student finishes all carried over hours for which he or she was paid.

(20 U.S.C. 1070a)

§ 690.4 Eligible student.

(a) A student is eligible to receive a Pell Grant if the student—

(1) Is a regular student;

(2) (i) Is a U.S. citizen or National;

(ii) Is a permanent resident of the Trust Territory of the Pacific Islands, or the Northern Marina Islands; or

(iii) Provides evidence from the U.S. Immigration and Naturalization Service that he or she—

(A) Is a permanent resident of the United States; or

(B) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;

(3) Is enrolled as at least a half-time undergraduate student; and

(4) Meets the requirements of § 690.75.

(b) A member of a religious order, community, society, agency of or organization who is pursuing a course of study in an institution of higher education is considered to have an expected family contribution of at least $3,000 if that religious order—

(1) Has as a primary objective the promotion of ideals and beliefs regarding a Supreme Being; and

(2) Provides subsistence support to its members, or has directed the member to pursue the course of study.

(20 U.S.C. 1070a)

§ 690.5 Eligible program.

(a) *General:* An eligible program is an undergraduate program of education or training which—

(1) Has an admission standard that admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have a General Education Development (G.E.D.) Certificate or a State certificate received after passing a State-authorized examination which the State recognizes as the equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution offering the program is located, and have the ability to benefit from the education or training offered; and

(2)(i) Leads to a bachelor, associate, or undergraduate professional degree;

(ii) Is at least a two-year program which is acceptable for full credit toward a bachelor degree;

(iii) Is a least a 1-year program leading to a certificate or degree, which prepares students for gainful employment in a recognized occupation; or

(iv) Is, if offered by a proprietary or postsecondary vocational institution, at least a six-month program leading to a certificate or degree, which prepares students for gainful employment in a recognized occupation.

(b) *Study by correspondence.* An eligible program of study by correspondence is an undergraduate program of education or training which meets the criteria for an eligible program in paragraph (a) of this section and which is designed to require at least 12 hours of preparation per week.

(20 U.S.C. 1070a)

§ 690.6 Duration of student eligibility.

(a) A student is eligible to receive a Pell Grant for the period of time required to complete his or her first undergraduate baccalaureate course of study.

(b) An institution shall determine when the student has completed the academic curriculum requirements for that first undergraduate baccalaureate course of study.

(20 U.S.C. 1070a)

§ 690.7 Institutional participation.

(a)(1) An institution of higher education is eligible to participate in the Pell Grant program if it—

(i) Meets the appropriate definition set forth in 34 CFR Part 668, Subpart A;

(ii) Enters into a program participation agreement with the Secretary; and

(iii) Complies with that agreement and with the applicable provisions of this part and 34 CFR Part 668.

(2) If an institution begins participation in the Pell Grant Program during an award year, a student enrolled and attending that institution is eligible to receive a Pell Grant for the payment period during which the institution enters into a program participation agreement with the Secretary and any subsequent payment period.

(b) If an institution becomes ineligible to participate in the Pell Grant Program during an award year, an eligible student who was attending the institution and who submitted a valid SAR to the institution (or to the Secretary if it is an ADS institution) before the date the institution became ineligible is paid a Pell Grant for that award year for—

(1) The payment periods that the student completed before the institution became ineligible; and

(2) The payment period in which the institution became ineligible.

(c) An RDS institution which becomes ineligible shall, within 45 days after the effective date of loss of eligibility, provide to the Secretary—

(1) The name and enrollment status of each eligible student who, during the award year, submitted a valid SAR to the institution before it became ineligible;

(2) The amount of funds paid to each Pell Grant recipient for that award year;

(3) The amount due each student eligible to receive a Pell Grant through the end of the payment period during which the institution became ineligible; and

(4) An accounting of the Pell Grant expenditures for that award year to the date of termination.

(d) An ADS institution which becomes ineligible shall, within 45 days after the effective date of loss of eligibility, provide to the Secretary the name and enrollment status of each student who applied for and was determined eligible for a Pell Grant, and who was attending the institution when its eligibility was terminated.

(20 U.S.C. 1070a)

§ 690.8 Enrollment status for students taking non-credit or reduced credit remedial courses or regular and correspondence courses.

(a) *Non-credit or reduced credit remedial course.* (1) A non-credit or reduced credit remedial course is a course of study designed to increase the ability of a student to pursue an undergraduate course of study leading to a certificate or degrees.

(i) A non-credit remedial course is one for which no credit is given toward a certificate or degree; and

(ii) A reduced credit remedial course is one for which reduced credit is given toward a certificate or degree.

(2) Except as provided in paragraphs (a)(3) and (a)(4) of this section, in determining a student's enrollment status, an institution and the Secretary shall include any non-credit or reduced credit remedial course in which the student is enrolled. The institution shall attribute the number of credit or clock hours to a non-credit or reduced credit remedial course by:

(i) Calculating the number of classroom and homework hours required for that course;

(ii) Comparing those hours with the hours required for non-remedial courses in a similar subject; and

(iii) Giving the remedial course the same number of credit or clock hours it gives the non-remedial course with the most comparable classroom and homework requirements.

(3) When calculating an eligible student's enrollment status, neither an institution nor the Secretary may take into account any non-credit or reduced credit remedial course in a program of instruction leading to a high school diploma or the recognized equivalent of a high school diploma, even if the course is necessary to enable the student to complete a degree or certificate program.

(4)(i) When calculating an eligible student's enrollment status, neither the institution nor the Secretary may take into account more than one academic year's worth of non-credit or reduced credit remedial coursework, regardless of whether that coursework was completed. However, courses in English as a second language do not count against the one year academic year limitation.

(ii) One academic year's worth of non-credit or reduced credit remedial coursework for the purpose of paragarph (a)(4)(i) of this section is equivalent to—

(A) 30 semester or 45 quarter hours; or

(B) 900 clock hours.

(b) *Combination of regular and correspondence study.* (1) If—in addition to regular coursework—a student takes correspondence courses from either his or her own institution or another institution having an agreement for this purpose with the student's institution, the correspondence work may be included in determining the student's enrollment status to the extent permitted under paragraph (b)(2) of this section.

(2) Except as noted in paragraph (b)(3) of this section, the correspondence work that may be included in determining a student's enrollment status is that amount of work which—

(i) Applies toward a student's degree or certificate or is remedial work taken by the student to help in his or her course of study;

(ii) Is completed within the period of time required for regular course work; and

(iii) Does not exceed the amount of a student's regular course work for the payment period for which the student's enrollment status is being calculated.

(3) Notwithstanding the limitation in paragraph (b)(2)(iii) of this section a student who would be a half-time student based solely on his or her correspondence work is considered a half-time student unless the calculation in paragraph (b)(2) of this section produces an enrollment status greater than half-time.

(4) The following chart provides examples of the rules set forth in paragraph (b) of this section. It assumes that the institution defines full-time enrollment as 12 credits per term, making the half-time enrollment equal to six credits per term.

Under § 690.8	Number of credit hours regular work	Number of credit hours correspondence work	Total course load in credit hours to determine enrollment status	Enrollment status
(b)(2)(ii)	3	3	6	Half-time.
(b)(2)(ii)	3	6	6	Half-time.
(b)(2)(ii)	3	9	6	Half-time.
(b)(2)(ii)	6	3	9	Three quarter time.
(b)(2)(ii)	6	6	12	Full-time
(b)(2)(iii) and (b)(3).	2	6	6	Half-time.

(20 U.S.C. 1070a)

§ 690.9 Written agreements between two or more eligible institutions.

(a) A student who is enrolled in an eligible program at one eligible institution and taking courses at one or more other eligible institutions which apply toward his or her degree or certificate at the first institution may receive Pell Grant assistance for attendance at both institutions only if there is a written agreement between the institutions.

(1) The institution at which the student is enrolled and expects to receive his or her degree or certificate shall determine and pay the student's Pell Grant assistance. However, the other institution may determine and pay the student's Pell Grant assistance if the institutions agree in writing to that arrangement.

(2) The institution which determines and pays the Pell Grant assistance shall—

(i) Take into account all courses which apply to the student's degree or certificate taken by the student at each eligible institution participating in the agreement when determining the student's enrollment status and cost of attendance; and

(ii) Maintain all records regarding the student's eligibility for and receipt of Pell Grant assistance.

(20 U.S.C. 1070a)

§ 690.10 Administrative cost allowance to participating schools.

(a) Subject to available appropriations, the Secretary pays to each participating institution $5.00 for each student who receives a Pell Grant at that institution for an award year.

(b) All funds an institution receives under this section must be used solely for the institution's cost of administering the Pell Grant, Supplemental Educational Opportunity Grant, College Work-Study and National Direct Student Loan programs.

(20 U.S.C. 1098a)

§ 690.11 Pell Grant payments from more than one institution.

A student is not entitled to receive Pell Grant payments concurrently from more than one institution or from the Secretary and an institution.

(20 U.S.C. 1070a)

Subpart B—Application Procedures for Determining Expected Family Contribution

§ 690.12 Application.

(a) As the first step to receiving a Pell Grant, a student shall apply on an approved form to the Secretary to have his or her expected family contribution determined. A copy of this form is not acceptable.

(b) The student shall provide the address of his or her residence unless the student is incarcerated and the educational institution has made special arrangements with the Secretary to receive relevant correspondence on behalf of the student. If such an arrangement is made, the student shall provide the address indicated by the institution.

(c) A student, and where required the student's parents or spouse, shall provide to the institution or the Secretary a copy of his or her Federal, State, and/or local income tax returns and any other documents, if requested by the Secretary or the institution for

verification of the accuracy of the information submitted.

(d) For each award year the Secretary, through publication in the **Federal Register**, establishes deadline dates for submitting these applications and for making corrections to the information contained in the applications.

(20 U.S.C. 1070a)

(Approved by the Office of Management and Budget under OMB control number 1840-0110)

§ 690.13 Notification of expected family contribution.

The Secretary sends to each eligible applicant a "Student Aid Report" (SAR) which states the amount of the applicant's expected family contribution (student aid index) and information used in that calculation. If any of the information is incorrect, an applicant shall correct it according to procedures established by the Secretary through publication in the **Federal Register**.

(20 U.S.C. 1070a)

(Approved by the Office of Management and Budget under OMB control number 1840-0132).

§ 690.14 Applicant's request for recalculation of expected family contribution because of clerical or arithmetic error, or updating of projected data.

(a) An applicant may request a recalculation of his or her expected family contribution if he or she believes a clerical or arithmetic error has occurred, or if the information submitted was inaccurate when the application was signed.

(b) An applicant, unless selected for verification under §§ 690.77 or 690.96 shall update the following items on his or her SAR so that these items are accurate as of the date he or she submits that SAR to the institution or the Secretary:

(1) Family members in the household.

(2) Family members enrolled as at least half-time students in institutions of higher education.

(3) Whether the applicant was claimed as a tax exemption by the parents.

(4) Whether the parents provided more than $750.

(5) Whether the applicant lives with the parents for more than 42 days.

(c) A request for recalculation must be made on an approved form and this form must be received by the Secretary no later than the deadline date established by the Secretary through publication in the **Federal Register**.

(20 U.S.C. 1070a)

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Subpart F—Determination of Pell Grant Awards

§ 690.61 Submission process and deadline for student aid report.

(a) *Submission process.* (1)(i) In order to receive a Pell Grant at an RDS institution, a student shall submit a valid Student Aid Report (SAR) to that institution.

(ii) In order to receive an initial Pell Grant payment for an award year at an ADS institution, a student shall submit a valid SAR to that institution and shall submit both that SAR and an ED Form 304 to the Secretary.

(iii) In order to receive subsequent Pell Grant payments at an ADS institution, the student shall submit an ED Form 304-1 to the Secretary.

(2) An institution is entitled to rely on SAR information except under conditions set forth in §§ 690.77, 690.96 and 668.16(f).

(b) *Student Aid Report deadline.* (1) Except as noted in §§ 690.77 and 690.96, to receive a Pell Grant for an award year, a student shall submit the relevant parts of the SAR to his or her institution by June 30 of that award year.

(2) Except as noted in §§ 690.77 and 690.96, to receive a Pell Grant for an award year, a student shall submit the relevant parts of the SAR to an institution while he or she is still enrolled and eligible for payment at that institution.

(c) *ED Form 304 and ED Form 304-1 deadlines.* (1) In order to receive the first Pell Grant payment for an award year, a student attending an ADS institution shall submit a certified ED Form 304 together with a valid SAR to the Secretary by July 15 of the subsequent award year.

(2) In order to receive additional Pell Grant payments for an award year, a student attending an ADS institution shall submit additional requests for payment and/or corrected ADS Student Reports (ED Form 304-1) to the Secretary by August 26 of the subsequent award year.

(20 U.S.C. 1070a)

§ 690.62 Calculation of a Pell Grant.

(a) The amount of a student's Pell Grant for an academic year is based upon the payment and disbursement schedules published by the Secretary for each award year.

(b) At full funding, no payment may be made to a student if the student's Scheduled Pell Grant is less than $200.

(c) At less-than-full-funding, no payment may be made if—

(1) The student's Scheduled Pell Grant is less than $50; or

(2) The student's Scheduled Pell Grant at full funding would have been less than $200.

(20 U.S.C. 1070a(a)(2))

§ 690.63 Calculation of a Pell Grant for a payment period.

(a) At an institution using semesters, trimesters, quarters, or other academic terms and measuring progress by credit hours, a student's Pell Grant for each payment period is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her annual award from the Payment Schedule (full-time students), or one of the Disbursement Schedules (part-time students), as appropriate; and

(3)(i) Dividing the amount determined in paragraph (a)(2) of this section by the number of terms in the academic year unless the terms of an RDS institution are not of equal length; or

(ii) If the terms of an RDS institution are not of equal length, multiplying the amount determined in paragraph (a)(2) of this section by the following fraction:

$$\frac{\text{The length of the term in question}}{\text{The length of the academic year}}$$

(b) A single disbursement may not exceed 50 percent of the award determined in paragraph (a)(2) of this section. To ensure this result, an institution shall make multiple disbursements within a term, if that term is longer than half the academic year. Subsequent disbursements within that term may not be made until the student has completed the portion of the term for which he or she was initially paid.

(c) At an institution which measures progress by clock hours or which measures progress by credit hours or units but does not use semesters, trimesters, quarters or other academic terms, a student's Pell Grant for each payment period is calculated by—

(1) Determining the student's Scheduled Pell Grant; and

(2) Multiplying the Scheduled Pell Grant by—

$$\frac{\text{The number of credit or clock hours the student is expected to take in a payment period}}{\text{The number of credit or clock hours in an academic year}}$$

(d) Notwithstanding paragraphs (a), (b), and (c) of this section—

(1) A student may not receive a Pell Grant if the amount which the student would receive, projected on the basis of a full academic year, would be less than either $200 at full funding or $50 at less than full funding; and

(2) The amount of a student's award for an award year may not exceed his or her Scheduled Pell Grant award for that award year.

(20 U.S.C. 1070a)

§ 690.64 Calculation of a Pell Grant for a payment period which occurs in two award years.

(a) If a student enrolls in a payment period which is scheduled to occur in two award years—

(1) The entire payment period must be considered to occur within one award year.

(2) The institution shall determine for each Pell Grant recipient the award year in which the payment period will be placed subject to the restrictions set forth in paragraph (a)(3) of this section.

(3) The institution shall place a payment period with more than six months scheduled to occur within one award year in that award year.

(4) If an institution places the payment period in the first award year, it shall pay a student with funds from the first award year.

(5) If an institution places the payment period in the second award year, it shall pay a student with funds from the second award year.

(b) An institution may not make a payment which will result in the student receiving more than his or her Scheduled Pell Grant for an award year.

(c)(1) If a term-based institution offers a series of mini-sessions which occurs in two award years, the combined sessions must be treated as one term. A student may not receive more than one term's award for completing any combination of these mini-sessions.

(2) For such mini-sessions, a term-based institution shall determine the student's enrollment status for the entire term. That enrollment status shall be based upon—

(i) The total number of credits enrolled for in all sessions if that number is known when the award is calculated; or

(ii) A projected number of credits based upon the credits enrolled for in the first session, if the number of credits to be taken in subsequent sessions is unknown when the award is calculated.

(20 U.S.C.1070a)

§ 690.65 Transfer student: Attendance at more than one institution during an award year.

(a)(1) If a student who receives a Pell Grant at one institution subsequently enrolls at a second institution in the same award year, the student shall submit an SAR to the second institution to receive a grant at the second institution. (The institution shall follow the procedures regarding transfer students set forth in 34 CFR 668.14.)

(2) If the second institution is an ADS institution, the student shall submit an SAR to that institution and that SAR and a certified ED Form 304 and/or ED Form 304–1 to the Secretary.

(b) The second institution (or the Secretary for an ADS institution) shall calculate the student's award according to § 690.63.

(c) The second institution (or the Secretary for an ADS institution) may pay a Pell Grant for only that portion of the award year in which a student is enrolled at that institution. The grant amount must be adjusted if necessary to ensure that the grant does not exceed the student's Scheduled Pell Grant for that award year.

(d) If a student's Scheduled Pell Grant at the second institution differs from the Scheduled Pell Grant at the first institution, the grant amount at the second institution is calculated as follows—

(1) The amount received at the first institution is compared to the Scheduled Pell Grant at the first institution to determine the percentage of the Scheduled Pell Grant that the student has received.

(2) That percentage is subtracted from 100 percent.

(3) The remaining percentage is the percentage of the Scheduled Pell Grant at the second institution to which the student is entitled.

(e) The student's Pell Grant for each payment period is calculated according to the procedures in § 690.63 unless the remaining percentage of the Scheduled Pell Grant at the second institution, referred to in paragraph (d)(3) of this section, is less than the amount the student would normally receive for that payment period. In that case, the student's Pell Grant is equal to that remaining percentage.

(f) A transfer student shall repay any amount received in an award year which exceeds his or her Scheduled Pell Grant.

(20 U.S.C. 1070a)

§ 690.66 Correspondence study.

A student enrolled in an eligible program of study by correspondence must be paid according to the following procedures:

(a) The institution shall determine the length of each correspondence program it offers by preparing a written schedule for submission of lessons, reflecting a workload of at least 12 hours of preparation per week.

(b)(1) For an RDS institution, if there is not a required period of residential training in the program, a student's Pell Grant for an academic year is calculated by—

(i) Determining the student's Scheduled Pell Grant; and

(ii) Multiplying the Schedule Pell Grant by one-half.

(2) An academic year must consist of two payment periods. The first payment period must be the period of time in which the student completes the first half of his or her academic year, or program if the program is less than an academic year. The second payment period must be the period of time in which the student completes the second half of the academic year or program.

(3) For the first payment period, the institution shall pay the student one-half of the amount calculated in paragraph (b)(1)(ii) of this section after he or she has submitted 25 percent of the lessons or otherwise completed 25 percent of the work scheduled for the academic year, or for the program if the program is less than an academic year.

(4) The institution shall make the final payment for the second payment period after the student has submitted 75 percent of the lessons or otherwise completed 75 percent of the work scheduled for the academic year or for the program.

(c)(1) For an RDS institution, if there is a required period of residential training in the program, a student's Pell Grant for an academic year is calculated by—

(i) Determining the student's Scheduled Pell Grant, and;

(ii) Multiplying the Scheduled Pell Grant by one-half.

(2) The non-residential portion of an academic year must consist of two payment periods. The first payment period must be the period of time in which the student completes the first half of his or her academic year or the non-residential portion of the program if it is less than an academic year. The second payment period must be the period of time in which the student completes the second half of the academic year or non-residential portion of the program.

(3) For the first payment period, the institution shall pay the student one-half of the amount calculated in paragraph (c)(1)(ii) of this section after he or she

has submitted 25 percent of the non-residential lessons or otherwise completed 25 percent of the work scheduled for the academic year or for the program if the program is less than an academic year.

(4) The institution shall make the final payment (for the non-residential portion of the program) for the second payment period after the student has submitted 75 percent of the non-residential lessons or otherwise completed 75 percent of the work scheduled for the academic year or for the program.

(5) A student's Pell Grant disbursement for the residential portion of the program is calculated according to the procedures in § 690.63(c) for a student enrolled in a regular course of study at an institution that measures progress by clock hours.

(d)(1) For an ADS institution, a student's Pell Grant for an award year is calculated by—

(i) Determining the student's Scheduled Pell Grant; and

(ii) Multiplying the Scheduled Pell Grant by one-half.

(2) An ADS institution shall have two payment periods in an award year.

(3) If a student's academic year is within one award year he or she must receive—

(i) One-half the amount calculated in paragraph (d)(1)(ii) of this section for the first payment period, which is the period of time in which a student completes the first half of his or her academic year; and

(ii) The final payment for the second payment period, which is the period of time in which a student completes the second half of his or her academic year.

(4) If a student's academic year is not within one award year he or she must receive—

(i) One-half the amount calculated in paragraph (d)(1)(ii) of this section for the first payment period which is the period of time in which a student completes the first half of the hours he or she is scheduled to complete within the award year; and

(ii) The final payment for the second payment period which begins when the first payment period ends and ends when a student completes all hours he or she was scheduled to complete between the beginning of the second payment period and June 30.

(5) A student who does not complete all the hours of preparation required for the second payment period of any award year may complete them during the following award year. In this case, the first payment period of the new award year begins when a student finishes all carried over hours for which he or she was paid.

(6) For the first payment period, the institution shall pay the student after he or she has submitted 25 percent of the lessons or otherwise completed 25 percent of the work scheduled for the award year.

(7) For the second payment period, the institution shall pay the student after he or she has submitted 75 percent of the work scheduled for the award year.

(20 U.S.C. 1070a)

Subpart G—Administration of Grant Payments—Regular Disbursement System (RDS)

§ 690.71 Scope.

This subpart deals with program administration by an RDS institution of higher education. An RDS institution shall enter into a program participation agreement with the Secretary so that is may calculate and pay Pell Grant awards to students.

(20 U.S.C. 1070a)

§ 690.72 Institutional participation agreement—Regular Disbursement System (RDS).

(a) The Secretary may enter into an agreement with an institution of higher education under which it will calculate and pay Pell Grant awards to its students. This RDS agreement is on a standard form provided by the Secretary which contains the necessary terms to carry out this part.

(b) The Secretary sends Payment and Disbursement Schedules for each award year to an RDS institution that has entered into an agreement under paragraph (a) of this section.

(20 U.S.C. 1070a)

§ 690.73 Termination of institutional participation agreement—Regular Disbursement System (RDS).

(a) *Termination by the Secretary.* The Secretary may terminate the agreement with an RDS institution by giving the institution—

(1) 30 days written notice; or

(2) Less than 30 days written notice if shorter notice is necessary to prevent the likelihood of a substantial loss of funds to the Federal government or to students.

(b) *Information required.* An RDS institution shall provide the following information to the Secretary if the Secretary terminates the agreement:

(1) The name and enrollment status of each eligible student who submitted a valid SAR to the institution before the termination date.

(2) The amount of funds the institution paid to Pell Grant recipients for the award year in which the agreement is terminated.

(3) The amount due to each student eligible to receive a Pell Grant through the end of the award year.

(4) An accounting of Pell Grant expenditures to the date of termination.

(c) *Termination by the institution.* An RDS institution may terminate the agreement by giving the Secretary written notice. The termination becomes effective on June 30 of that award year. The institution shall carry out the agreement for the remainder of that award year.

(d) *Termination because of a change in ownership which results in a change of control.* The RDS agreement automatically terminates when an RDS institution changes ownership which results in a change of control. The Secretary may enter into an RDS agreement with the new owner if the institution complies with requirements set forth in Subpart B of the Student Assistance General Provisions (34 CFR Part 668).

(e) If an RDS agreement is terminated the institution's eligibility to participate in the Pell Grant Program as discussed in § 690.7 is not terminated but the Secretary pays that institution's students only if the institution enters into an ADS agreement.

(20 U.S.C. 1070a)

§ 690.74 Provision of funds to institutions.

The Secretary provides funds to an RDS institution for each award year in advance or by way of reimbursement during the course of that year, based on the Secretary's determination of the institution's need for funds to pay Pell Grants or its need for reimbursement for Pell Grants already paid.

(20 U.S.C. 1070a)

§ 690.75 Determination of eligibility for payment.

(a) For each payment period, an institution may pay a Pell Grant to an eligible student only after it has been determined that the financial aid transcript requirements of 34 CFR Part 668 have been met, and the student—

(1) Has filed with the institution a signed Statement of Educational Purpose/Registration Compliance as required by 34 CFR Part 668;

(2) Is maintaining satisfactory progress in his or her course of study;

(3) Is not in default on any National Defense/Direct Student Loan made by that institution or on any Guaranteed Student Loan or PLUS Loan received to meet the cost of attendance at that institution;

(4) Is not, as a parent of another student, in default on a PLUS Loan

received to meet the cost of attendance at that institution;

(5) Does not owe a refund on a Pell Grant, a Supplemental Educational Opportunity Grant, or a State Student Incentive Grant received to meet the cost of attendance at that institution; and

(6) Has completed required clock hours for which he or she has been paid a Pell Grant.

(b) If an eligible student submits an SAR to the institution and becomes ineligible before receiving a payment, the institution may pay the student only the amount which it determines could have been used for educational purposes before the student became ineligible.

(c) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses that determination before the end of the payment period, the institution may pay a Pell Grant to the student for the entire payment period.

(d) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses that determination after the end of the payment period, the institution may neither pay the student a Pell Grant for that payment period nor make adjustments in subsequent Pell Grant payments to compensate for the loss of aid for that period.

(e) Conditions under which students who are overpaid grants may continue to receive Pell Grants are as follows:

(1) *Overpayment of a Pell Grant.* If an institution makes an overpayment of a Pell Grant to a student, it may continue to make Pell Grant payments to that student if—

(i) The student is otherwise eligible; and

(ii) The institution can eliminate the overpayment in the award year in which it occurred by adjusting subsequent Pell Grant payments for that award year.

(2) *Overpayment of a Pell Grant due to institutional error.* In addition to the exception provided in paragraph (e)(1) of this section, if the institution makes an overpayment of a Pell Grant to a student as a result of its own error, it may continue to make payments to that student if—

(i) The student is otherwise eligible; and

(ii) The student acknowledges in writing the amount of overpayment and agrees to repay it in a reasonable period of time.

(3) *Overpayment on a Supplemental Educational Opportunity Grant.* An institution may continue to make Pell Grant payments to a student who receives an overpayment on a Supplemental Grant if—

(i) The student is otherwise eligible; and

(ii) The institution can eliminate the overpayment by adjusting subsequent financial aid payments (other than Pell Grants) in the same award year in which the overpayment occurred.

(f) An institution, in determining whether a student is in default on a loan made under the Guaranteed Student Loan Program/PLUS Loan Program or a loan made to the student as a parent of another student under the PLUS Loan Program, may rely upon the student's written statement that he or she is not in default unless the institution has information to the contrary.

(g) Conditions under which students may receive Pell Grants for attendance at an institution when they are in default on loans made for attendance at that institution are as follows:

(1) *Guaranteed Student Loans and PLUS Program Loans.* An institution may pay a Pell Grant to a student who is in default on a Guaranteed Student Loan of a PLUS Loan if the Secretary (in the case of a federally guaranteed loan) or a guarantee agency (in the the case of a loan guaranteed by that guarantee agency) determines that the student has made satisfactory arrangements to repay the defaulted loan.

(2) *National Defense/Direct Student Loan.* An institution may pay a Pell Grant to a student who is in default on a National Defense-Direct Student Loan made at that institution, if the student has made arrangements, satisfactory to the institution, to repay the loan.

(3) *Loans discharged in bankruptcy.* The Secretary does not consider a loan made under the National Defense Student Loan, National Direct Student Loan, Guaranteed Student Loan, or PLUS Loan programs, which has been discharged in bankruptcy, to be in default for purposes of this section.

(20 U.S.C. 1070a)

§ 690.76 Frequency of payment.

(a) In each payment period, an institution may pay a student at such times and in such installments as it determines will best meet the student's needs.

(b) The institution may pay funds due a student for any completed period in one lump sum. The student's enrollment status must be determined according to work already completed.

(20 U.S.C. 1070a)

§ 690.77 Verification of information on the SAR—withholding of payments.

(a)(1) The Secretary may require that a student verify the information submitted on the application and included on the SAR by submitting appropriate documentation to the institution or to the Secretary.

(2) The Secretary may also require that the institution withhold payment of a student's grant until the institution or the Secretary determines that the student has supplied the correct information.

(b) If an institution believes that any information on the SAR used in calculating the student's expected family contribution is inaccurate, or if the application is chosen by the Secretary for verification, the institution shall request that the student verify the information on the SAR.

(c) Except as provided in paragraphs (d)(5) and (6) of this section, if a student is selected for verification under paragraph (a) or (b) of this section, the institution shall require a student to submit acceptable documentation that verifies or updates the following information reported on the student aid application:

(1) The adjusted gross income (AGI).

(2) The U.S. income tax paid.

(3) The number of family members in the household of the student and his or her spouse, and his or her parents if the student is a dependent student.

(4) The number of family members in postsecondary educational institutions as at least half-time students in the household of the student and his or her spouse, and the student's parents if the student is a dependent student.

(5) The factors relating to the student's independent student status.

(6) Any untaxed income and benefits, including—

(i) U.S. income tax deduction for a married couple if both work;

(ii) Social security benefits if required by a comment on the student's Student Aid Report (SAR);

(iii) Student veterans educational benefits; and

(iv) Other untaxed income and benefits included on the student aid application.

(d)(1) An institution shall require a student selected for verification to submit to it for adjusted gross income (AGI), U.S. income tax paid, and number in household—

(i)(A) A signed copy of the federal income tax return or comparable State income tax return of the applicant and, where relevant, the applicant's parents and spouse;

(B) The IRS listing of tax account information from the Internal Revenue Service of the applicant and, where relevant, the applicant's parents and spouse; or

(C) If no return was filed or will be filed, a signed statement certifying that no tax return was filed or will be filed by the applicant and, where relevant, the applicant's parents and spouse and providing—

(*1*) The sources of income earned for work stated on the application;

(*2*) The amount of income from each source; and

(*3*) A list of the household members in each relevant household; and

(ii) If there is a difference in the number of exemptions claimed on a Federal or comparable state income tax return and the number in the household on the student aid application, a signed statement which lists the names of the household members and explains any difference between the information included on the student aid application and the tax returns unless other information in the institution's records explains the difference.

(2) An institution shall require a student selected for verification to submit to it for the number of family members in the household in postsecondary educational institutions the following:

(i) If the institution determines that it has no reason to doubt the accuracy of the information provided, a signed statement from the applicant's parents in the case of a dependent student, or from the applicant in the case of an independent student, which lists—

(A) The names of the household members who are or will be attending postsecondary institutions as at least half-time students;

(B) Their ages; and

(C) The names and addresses of those institutions.

(ii) If the institution determines that it has any reason to doubt the accuracy of the information provided—

(A) The information called for in paragraph (d)(2)(i) of this section; and

(B) A statement from each institution required to be listed under paragraph (d)(2)(i)(c) of this section that the household member in question is or will be attending the institution on at least a half time basis, unless the institution the student is attending certifies that such a statement would not be available because the household member in question has not yet registered at the institution he or she is planning to attend.

(3)(i) Except as provided in paragraph (d)(3)(iii) of this section, an institution shall require an unmarried student selected for verification to submit to it—

(A) A signed copy of the Federal or comparable State income tax return of the student's parent(s) for the calendar year preceding the first calendar year of an award year, or if the parent(s) did not file and will not file a tax return for that year, a written statement to that effect signed by the parent(s); and

(B) A written statement signed by the student's parent(s) certifying that—

(*1*) The parent(s) will not and did not provide the student with financial assistance of more than $750 in the first calendar year of an award year or the preceding calendar year; and

(*2*) The student did not and will not live with the parent(s) for more than forty-two days in either of those years.

(ii) Except as provided in paragraph (d)(3)(iii) of this section, an institution shall require a married student selected for verification to submit to it a written statement signed by the student's parent(s) certifying that—

(A) The parent(s) do not and will not provide the student with financial assistance of more than $750 in the first calendar year of an award year; and

(B) The student did not and will not live with the parent(s) for more than forty-two days in that year.

(iii)(A) No documentation or statements are required of a student who is 23 or older as of January 1 of the award year for which aid is requested to verify his or his independent student status if the Secretary or the institution does not have conflicting documentation regarding any of the three factors used to determine independent student status.

(B) An institution shall consider the independent student status of a married student who is under 23 on January 1 of the award year for which aid is requested to be verified if—

(*1*) The institution determines that the student's parents are unable or unwilling to provide the required statements; and

(*2*) The Secretary or the institution does not have conflicting documentation regarding any of the factors used to determine independent student status.

(C) An institution shall consider the independent student status of an unmarried student who is under 23 on January 1 of the award year for which aid is requested to be verified if the institution determines that the applicant had sufficient income to support himself or herself including any dependents for the calendar year preceding the first calendar year of the award year. An institution must make this determination if—

(*1*) The institution determines that the student's parents are unable or unwilling to provide the required tax returns or statements; and

(*2*) The Secretary or the institution does not have conflicting documentation regarding any of the three factors used to determine independent student status.

(4) An institution shall require a student selected for verification to submit to it—

(i) for untaxed income and benefits set forth in paragraph (c)(6)(i) and (iv) of this section, a signed copy of the Federal or comparable State income tax return if collected under paragraph (d)(1) of this section, or the IRS listing of tax account information from the Internal Revenue Service if collected by the institution to verify adjusted gross income, and one of the following:

(A) If the institution determines that it has no reason to doubt the accuracy of the information provided, the worksheet for untaxed income and benefits from the student aid application, or a comparable listing of the untaxed income and benefits specified in paragraph (c)(6)(iv) of this section, accompanied by a signed statement certifying that the information on the worksheet or listing is correct.

(B) If the institution determines that it has any reason to doubt the accuracy of the information provided—

(*1*) The documentation requested in paragraph (d)(4)(i)(A) of this section; and

(*2*) A statement from the agency that supplied the benefits indicating the amount of those benefits, unless the institution certifies that such a statement is not available;

(ii) For social security benefits, a document from the Social Security Administration showing the amount of benefits received in the appropriate calendar year by the student's parents, the parent's children under 18 years of age, the student and the student's spouse if the student's Student Aid Report (SAR) requires that the student verify his or her Social Security benefits; and

(iii) For veterans educational benefits—

(A) A copy of the student's award letter from the Veterans Administration (VA); or

(B) A statement from the institution's veterans office on campus specifying the latest monthly amount being received by the student and the number of months for which these benefits will be received.

(5) For veterans educational benefits, the institution may verify the applicant's

benefits by using the VA rate table issued by the Veterans Administration instead of requiring the applicant to provide the documentation under paragraph (d)(4)(iii) of this section.

(6) If a student applies for a Pell Grant using estimated income information as specified in § 690.39 or § 690.48, that estimated information shall not be subject to verification.

(e)(1) If as a result of the verification process the SAR needs to be corrected, the student shall correct the SAR by—

(i) Putting accurate information on the SAR;

(ii) Getting the appropriate signatures on the SAR; and

(iii) Resubmitting the SAR to the Secretary.

(2) The student shall submit the corrected SAR to the institution and the institution must recalculate the student's award based on this verified SAR. Any overpayment must be repaid by the student.

(f)(1) If an institution has documentation which indicates the information on the SAR used to calculate the student's award for any award year is inaccurate, it may not pay a Pell Grant for any award year until the student corrects or verifies the data and repays any overpayment.

(2) If an institution believes, but cannot document, that discrepancies exist on the SAR, it may not withhold payment unless authorized by the Secretary.

(3) If the student has received funds based on information which may be incorrect and the institution has made a reasonable effort to resolve the alleged discrepancy, but cannot, the institution shall forward the student's name, social security number, and other revelant information to the Secretary.

(4) The Secretary does not process any other Pell Grant application for a student that has been requested to provide information until the student provides the documentation or the Secretary decides there is no longer a need for the documentation.

(g)(1) If the Secretary requests documentation, the student shall comply within a time period set by the Secretary through publication in the Federal Register.

(2) If the student provides the requested documentation, and if necessary, a reprocessed and verified SAR on time, he or she is eligible for a Pell Grant.

(h)(1) A student may submit a verified SAR to the institution after the appropriate deadline specified in § 690.61 but within an established additional time period set by the Secretary through publication in the Federal Register. If a verified SAR is submitted to the institution during the period permitted by the Secretary after the appropriate deadline specified in § 690.61, payment is based on—

(i) The original SAR, if the student aid index on the verified SAR is lower than the student aid index on the original SAR, or

(ii) The verified SAR, if the student aid index on the verified SAR is higher than the student aid index on the original SAR.

(2) If the student does not provide the requested documentation, and if necessary, a reprocessed verified SAR, within the period established in paragraph (f)(1) of this section—

(i) The student forfeits the Pell Grant for the award year; and

(ii) Any grant payments the student previously received for that award year must be returned to the Secretary.

(i) For situations, including but not limited to suspected fraud or abuse, the Secretary may determine not to process any Pell Grant application for a student until that student has verified the information about which there is a discrepancy or the Secretary decides there is no longer a need for verification.

(20 U.S.C. 1070a)

§ 690.78 Method of disbursement—by check or credit to a student's account.

(a) The institution may pay a student either directly by check or by crediting his or her account with the institution. The institution shall notify the student of the amount he or she can expect to receive, and how that amount will be paid.

(b)(1) The institution may not make a payment to a student for a payment period until the student is registered for classes for that period.

(2) The earliest an institution may directly pay a registered student is 10 days before the first day of classes of a payment period.

(3) The earliest an institution may credit a registered student's account is three weeks before the first day of classes of a payment period.

(c) The institution shall return to the Pell Grant account any funds paid to a student who, before the first day of classes—

(1) Officially or unofficially withdraws; or

(2) Is expelled.

(d)(1) If an institution intends to pay a student directly, it shall notify him or her before the payment is made when it will pay the Pell Grant award.

(2) If a student does not pick up the check on time, the institution shall still pay the student if he or she requests payment within 15 days after the last date that his or her enrollment ends in that award year.

(3) If the student has not picked up his or her payment at the end of the 15 day period, the institution may credit the student's account for any amount owed to the institution for the award year.

(4) A student forfeits the right to receive the payment if he or she does not pick up a payment by the end of the 15 day period.

(5) Notwithstanding paragraph (d)(4) of this section, the institution may, if it chooses, pay a student who did not pick up his or her payment, through the next payment period.

(20 U.S.C. 1070a)

§ 690.79 Recovery of overpayments.

(a)(1) The student is liable for any Pell Grant overpayment made to him or her.

(2) The institution is liable for any overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this Part. The institution shall restore those funds to its Pell Grant account even if it cannot collect the overpayment from the student.

(b) If an institution makes an overpayment for which it is not liable, it shall help the Secretary recover the overpayment by—

(1) Making a reasonable effort to contact the student and recover the overpayment; and, if unsuccessful,

(2) Providing the Secretary with the student's name, social security number, amount of overpayment, and other relevant information.

(c) If an institution refers a student who received an overpayment for which it is not liable to the Secretary for recovery, the student remains ineligible, for further Title IV student financial assistance for attendance at that institution until final resolution of the overpayment.

(20 U.S.C. 1070a)

§ 690.80 Recalculation of a Pell Grant award.

(a) *Change in expected family contribution.* (1) The institution shall recalculate a Pell Grant award for the entire award year if the student's expected family contribution changes at any time during the award year. The change may result from—

(i) The correction of a clerical or arithmetic error under § 690.14;

(ii) Extraordinary circumstances which affect the expected family contribution under § 690.39 or § 690.48; or

(iii) A correction based on information required in § 690.12 or § 690.77.

(2) Except as described in § 690.77(f)(1), the institution shall adjust the student's award when an overaward or underaward is caused by the change in the expected family contribution. That adjustment must be made—

(i) Within the same award year—if possible—to correct any overpayment or underpayment; or

(ii) During the next award year to correct any overpayment that could not be adjusted during the year in which the student was overpaid.

(b) *Change in enrollment status.* (1) If the student's enrollment status changes from one academic term to another term within the same award year, the institution shall recalculate the Pell Grant award for the new payment period taking into account any changes in the cost of attendance.

(2)(i) If the student's projected enrollment status changes during a payment period after the student has begun attendance in all of his or her classes for that payment period, the institution may (but is not required to) establish a policy under which the student's award for the payment period is recalculated. Any such recalculations must take into account any changes in the cost of attendance. If such a policy is established, it must apply to all students.

(ii) If a student's projected enrollment status changes during a payment period before the student begins attendance in all of his or her classes for that payment period, the institution shall recalculate the student's enrollment status to reflect only those classes for which the student actually began attendance.

(c) *Change in cost of attendance.* If the student's cost of attendance changes at any time during the award year and his or her enrollment status remains the same, the institution may (but is not required to) establish a policy under which the student's award for the payment period is recalculated. If such a policy is established, it must apply to all students.

(20 U.S.C. 1070a)

§ 690.81 Fiscal control and fund accounting procedures.

(a)(1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution shall account for the receipt and expenditure of Pell Grant funds in accordance with generally accepted accounting principles.

(b) A separate bank account for Pell Grant funds is not required. However, the institution shall notify any bank in which it deposits Pell Grant funds of all accounts in that bank in which it deposits Federal funds. This notice must be given by including in the name of each such account that Federal funds are deposited therein.

(c) Except for funds received for administrative expenses, funds received by an institution under this part may be used only to pay Pell Grants to students. The funds are held in trust by the institution for the intended student beneficiaries and may not be used or hypothecated for any other purpose.

(20 U.S.C. 1070a)

§ 690.82 Maintenance and retention of records.

(a) Each institution shall maintain adequate records (including those related to verification) which include the fiscal and accounting records that are required under § 690.81, records required for audits in 34 CFR 668.20, the Student Aid Report of each student applying for a Pell Grant, and records indicating—

(1) The eligibility of all enrolled students who have submitted valid SARs to the institution;

(2) The name and social security number of and the amount paid to each student;

(3) The amount and date of each payment;

(4) The amount and date of any overpayment that has been restored to the program account;

(5) Each student's cost of attendance;

(6) How each student's full or part-time enrollment status was determined; and

(7) Each student's enrollment period.

(b)(1) The institution shall make the records listed in paragraph (a) of this section available for inspection by the Secretary's authorized representative at any reasonable time in the institution's offices. It shall keep the records for each award year for five years after that award year has ended.

(2) For any disputed expenditures in any award year for which the institution cannot provide records, the Secretary determines the final authorized level of expenditures.

(c) The institution shall keep records involved in any claim or expenditure questioned by Federal audit until resolution of any audit questions.

(d) An institution may substitute microform copies in lieu of original records in meeting the requirements of this section.

(20 U.S.C. 1070a, 1232f)

(Approved by the Office of Management and Budget under OMB Control numbers 1840-0132)

§ 690.83 Submission of reports.

(a) An institution shall submit to the Secretary all SAR Payment Documents for a given award year by December 31 following the end of that award year.

(b) An institution shall submit in accordance with deadline dates established by the Secretary, through publication in the **Federal Register**, other reports and information the Secretary requires in connection with the funds advanced to it and shall comply with the procedures the Secretary finds necessary to ensure that the reports are correct.

(20 U.S.C. 1070a)

(Approved by the Office of Management and Budget under OMB Control numbers 1840-0132)

§ 690.84 Audit and examination.

(a) *Federal audits.* The institution shall give the Secretary, the Comptroller General of the United States, or their duly authorized representatives, access to the records specified in § 690.81 and § 690.82 and to any other pertinent books, documents, papers, and records.

(b) *Non-Federal audits.* (1) The institution shall have a financial and compliance audit of Pell Grant Program transactions. The audit must be conducted by an independent auditor in accordance with the general standards and the standards for financial and compliance audits in the U.S. General Accounting Office publication, *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.* Procedures for audits are contained in audit guides developed by, and available from the Office of the Inspector General of the Department. These audit guides do not impose any requirements beyond those imposed under applicable statutes and regulations and GAO's standards.

(2) The audit must be completed not less frequently than once every two years, and be submitted to the Secretary within 9 months of the end of the audit period. Each audit must cover the institution's activities for the entire period since the preceding audit.

(3) The institution must have an audit performed at least once very two years.

(c) *Submission and access.* The institution shall submit audit reports to the institution's local regional office of the Department of Education's Audit Agency. It shall give the Audit Agency and the Secretary access to records or

other documents necessary to the audit's review.

(20 U.S.C. 1070a)

Subpart H—Administration of Grant Payments—Alternate Disbursement System (ADS)

§ 690.91 Scope.

This subpart deals with program administration by an ADS institution of higher education. Under the ADS, the Secretary calculates and pays the Pell Grant awards to students.

(20 U.S.C. 1070a)

§ 690.92 Institutional participation agreement—Alternate Disbursement System (ADS).

(a) The Secretary may enter into an agreement with an institution of higher education under which the Secretary calculates and pays Pell Grant awards to students enrolled at that institution based upon the information provided to the Secretary by the institution and the student.

(b) The agreement is on a standard form provided by the Secretary and contains the necessary terms to carry out this subpart.

(20 U.S.C. 1070a)

§ 690.93 Disbursement system changes.

(a) *Change to Regular Disbursement System (RDS).* The Secretary may allow an ADS institution to change its method of participation in the Pell Grant Program to the Regular Disbursement System (RDS).

(2) In order to make the change, the institution shall—

(i) Notify the Secretary no later than January 31 of its desire to make the change for the succeeding award year;

(ii) Submit all required reports by April 30; and

(iii) Sign a new participation agreement.

(3) If the Secretary agrees to the change, the new participation agreement goes into effect on July 1 of the succeeding award year.

(b) *Voluntary change to the Alternate Disbursement System (ADS).* (1) The Secretary may allow an RDS institution to voluntarily change its method of participation in the Pell Grant Program to the ADS.

(2) In order to make the change, the institution shall—

(i) Notify the Secretary no later than January 31 of its desire to make the change for the succeeding award year,

(ii) Submit all required reports through the February 15 Progress Report for that award year by April 30; and

(iii) Sign a new participation agreement.

(3) If the Secretary agrees to the change, the new participation agreement goes into effect on July 1 of the succeeding award year.

(c) *Change to ADS after termination of RDS agreement.* If the institution's RDS agreement is terminated by the Secretary according to § 690.73(a), the Secretary may allow the institution to enter into an ADS agreement.

(20 U.S.C. 1070a)

§ 690.94 Termination of agreement alternate disbursement system.

(a) *Termination by the Secretary.* The Secretary may terminate the agreement with an institution according to the procedures established by Subpart G of the Student Assistance General Provisions (34 CFR Part 668).

(b) *Termination by the Institution.* The institution may terminate the agreement by giving the Secretary written notice. The termination becomes effective on June 30 of the award year in which the institution provides the written notice. The institution shall carry out the agreement for the remainder of the award year.

(c) *Termination because of change in the ownership that results in a change of control.* (1) The agreement terminates when an institution undergoes a change of ownership that results in a change of control.

(2) The Secretary may enter into an agreement with the new owner after the institution complies with the requirements of § 668.18 of the Student Assistance General Provisions regulations (34 CFR 668.18).

(d) *Limitation of agreement.* (1) Instead of terminating the agreement, the Secretary and the institution may jointly agree to limit the agreement.

(2) The Secretary may limit the agreement in accordance with Subpart G of the Student Assistance General Provisions, 34 CFR 668.71–668.88.

(20 U.S.C. 1070a)

§ 690.95 General procedures for receiving payment.

An eligible student attending an ADS institution shall apply for and receive a Pell Grant as follows:

(a)(1) The student shall submit a Student Aid Report (SAR) to the institution within the deadline date for submitting the SAR to the institution set forth in § 690.61(b) and the limitation set forth in § 690.61(c).

(b)(1) Upon receipt of an SAR, the institution shall give the student a Pell Grant request for Payment Form (ED Form 304) which the student uses to request a Pell Grant payment from the Secretary.

(2)(i) On the ED Form 304, the student shall provide his or her name, social security number and address. The address provided by the student must be his or her residence and not the address of the institution, unless the student resides at the school or is incarcerated; in which case the student may use the institution's address; and

(ii) The student shall sign the Statement of Educational Purpose/Registration Compliance (This statement is the same statement set forth in 34 CFR 668).

(3) On the ED Form 304, the institution shall provide information regarding a student's eligibility to receive a Pell Grant, as well as the student's enrollment status, cost of attendance and dates of attendance.

(4) With regard to the student's eligibility for a Pell Grant, the institution shall determine that the student—

(i) Has presented a valid SAR to the institution as required by § 690.61;

(ii) Has met the eligibility requirements set forth in § 690.4;

(iii) Is maintaining satisfactory academic progress in his or her course of study;

(iv) Is not in default on—

(A) A National Defense/Direct Student Loan made by the institution;

(B) A Guaranteed Student Loan or PLUS Program Loan received for attendance at that institution; or

(C) A PLUS Program Loan received by the student as a parent of another student for attendance at that institution; and

(v) Does not owe a refund on a Pell Grant, a Supplemental Grant, or a State Student Incentive Grant received for attendance at that institution. (In determining whether the student owes a refund on a grant, the institution is entitled to rely on information in its possession).

(5) If an institution determined that, at the beginning of a payment period, the student is not maintaining satisfactory academic progress, but reverses the determination before the end of the payment period, the institution may certify ED Form 304 for the entire payment period.

(6) If an institution determines that, at the beginning of a payment period, the student is not maintaining satisfactory academic progress, but reverses the determination after the end of the payment period, the institution may not certify ED Form 304 for that payment period. The Secretary does not make adjustments in subsequent Pell Grant payments to compensate for the loss of Pell Grant aid for that payment period.

(c) If the institution determines that the student has a valid SAR and is eligible for a Pell Grant it shall certify the accuracy of the information it provides on the ED Form 304 and return the SAR and the certified ED Form 304 to the student.

(d) The student shall submit both the valid SAR and the certified ED Form 304 to the Secretary before the deadline date established in § 690.61

(e) Upon receipt of the SAR and the certified ED Form 304 the Secretary calculates a student's award in accordance with Subpart F of this part.

(f)(1) In each payment period, the Secretary pays a student at such times and in such installments as the Secretary determines will best meet the student's needs.

(2) The Secretary makes only one payment to a student if a portion of an academic year occuring within one award period is less than three months.

(3) The Secretary may pay funds due a student for any completed period of enrollment in one lump sum. The student's enrollment status for that period is determined according to work already completed.

(g)(1) The Secretary also sends the student an ADS Student Report (ED Form 304–1). This form—

(i) Notifies the student of the amount of his or her Scheduled Pell Grant, the amount of expected disbursement, and the amount of the first payment; and

(ii) Is used to request subsequent payments from the Secretary during the award year.

(2) The institution shall provide the information requested on the ED Form 304–1 and shall certify that the information included on the ED Form 304–1 is accurate and that the student is eligible for payment.

(3) The student shall submit the certified ED Form 304–1 to the Secretary to receive an additional grant payment before the deadline date established in § 690.61

(20 U.S.C. 1070a)

§ 690.96 Verification of information on the SAR.

(a) An institution shall require a student to verify the information included on his or her SAR if—

(1) Directed to do so by the Secretary;

(2) The institution has documentation which indicates that the information on the SAR used to calculate the student's award is inaccurate; or

(3) The institution believes, but does not have documentation, that the information on the SAR used to calculate the student's award is inaccurate.

(b)(1) If the institution requests that the student verify the information on his or her SAR for the reasons stated in paragraph (a)(1) or (2) of this section, it may not certify the student's ED Form 304 until it is satisfied that the information on the SAR is correct.

(2) If the institution requests that the student verify the information of his or her SAR for the reason stated in paragraph (a)(3) of this section, it shall—

(i) Certify ED Form 304; and

(ii) Notify the Secretary.

(c) If a student is selected for verification under paragraph (a)(1) or (2) of this section the institution shall require a student to submit acceptable documentation in accordance with the procedures in § 690.77 (c) and (d).

(d)(1) If, as a result of the verification process, the SAR needs to be corrected, the student shall correct the SAR by—

(i) Putting accurate information on the SAR;

(ii) Getting the necessary signatures on the SAR; and

(iii) Resubmitting the SAR to the Secretary.

(2) The student shall resubmit the reprocessed SAR he or she receives to the institution.

(3) The institution shall certify ED Form 304 if it is satisfied that the information on the resubmitted SAR is accurate.

(e)(1) If a student submits the verified SAR to the institution before the appropriate deadline specified in § 690.61, the Secretary pays the student the amount of the payment based on the verified SAR.

(2) The student may submit the verified SAR to the institution after the appropriate deadline specified in § 690.61, but within an established additional time period set by the Secretary through publication in the **Federal Register.** If the verified SAR is submitted to the institution during the established period after the deadline, payment is based on—

(i) The original SAR, if the student aid index on the verified SAR is lower than the student aid index on the original SAR; or

(ii) The verified SAR, if the student aid index on the verified SAR is higher than the student aid index on the original SAR.

(3) If the student does not provide the requested documentation, and if necessary a reprocessed, verified SAR, within the established time period—

(i) The student forfeits the Pell Grant for the award year; and

(ii) Any grant payments the student previously received for that award year must be returned to the Secretary.

(f) For situations, including but not limited to suspected fraud or abuse, the Secretary may determine not to process any Pell Grant application for a student until that student has verified the information about which there is a discrepancy or the Secretary decides there is no further need for verification.

(20 U.S.C. 1070a)

§ 690.97 Withdrawals and refunds.

(a)(1) The institution shall notify the Secretary of the date that a student officially or unofficially withdraws or is expelled for a payment period for which the student was paid.

(2) If the institution also participates in any other title IV programs, the institution shall comply with § 668.21 of the Student Assistance General Provisions regulations and provide the Secretary with the information required by § 668.21(a)(3).

(3) For purposes of this section, the date of a student's unofficial withdrawal must be determined under § 668.21(c)(4).

(b) If the date provided by the institution under paragraph (a) of this section is before the mid-point of the payment period for which the student has been paid, the student shall refund a prorated portion of the payment as determined by the Secretary.

(20 U.S.C. 1070a)

§ 690.98 Recovery of overpayments.

(a) The student is liable for any overpayment made to him or her.

(b)(1) The institution is liable for any overpayment made to a student by the Secretary on the basis of inaccurate information provided by the institution.

(2) The institution shall repay to the Secretary the amount of the overpayment for which it is liable even if the overpayment cannot be collected from the student.

(c) If an overpayment is made for which the institution is not liable, the institution shall help the Secretary to recover the overpayment by providing the Secretary with the student's name, social security number, and most recent address, and other relevant information.

(20 U.S.C. 1070a)

§ 690.99 Recalculation of a Pell Grant award.

(a) If the student's expected family contribution changes, the Secretary recalculates his or her Pell Grant award.

(b) The Secretary adjusts the award and pays the student the amount he or she is entitled to for the award year if the expected family contribution is recalculated because of—

(1) A clerical or arithmetic error as described in § 690.13; or

(2) Extraordinary circumstances which effect the expected family contribution as described in §§ 690.39 and 690.48.

(c) If a student's expected family contribution is recalculated because of a correction of the information requested under § 690.96, the student's grant for the award year is adjusted by the Secretary as provided for in § 690.96. Where possible, the adjustment is made within the same award year.

(d) If the recalculation takes place in a subsequent award year, the student—

(1) Is eligible to receive payment unless prohibited under the provisions of § 690.96; and

(2) Shall return any overpayment.

(20 U.S.C. 1070a)

§ 690.100 Maintenance and retention of records.

(a) An institution shall establish and maintain the following:

(1) The Student Aid Report for each student.

(2) A copy of ED Form 304 and Form 304–1 that the institution certifies for each student.

(3) The name and social security number of each student.

(4) The student's cost of attendance.

(5) How the student's full or part-time enrollment status was determined.

(6) The student's enrollment period.

(7) Information collected in compliance with § 690.96.

(8) Information necessary to determine whether the student was eligible to receive a Pell Grant.

(b)(1) For each of its Pell Grant recipients an institution shall maintain records which are—

(i) Systematically organized;

(ii) Maintained for five years after the award year in which the recipient ceased enrollment; and

(iii) Readily available for review by the Secretary or a designated ED official at the geographical location where the student is to receive a degree or certificate of program or course completion.

(2) An institution may substitute micro-file copies for original records in meeting the requirements of this section.

(20 U.S.C. 1070a)

(Approved by the Office of Management and Budget under OMB control numbers 1840–0132, 1840–0063 and 1840–0008)

§ 690.101 Submission of reports.

An institution shall submit any reports and information the Secretary requires in connection with the participation of an institution in the Alternate Disbursement System.

(20 U.S.C. 1070a)

(Approved by the Office of Management and Budget OMB control number 1840–0025)

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Part V

Office of Management and Budget

Management of Federal Information Resources; Notice and Request for Public Comment

OFFICE OF MANAGEMENT AND BUDGET

Management of Federal Information Resources

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Draft OMB Circular No. A——: Request for Public Comment.

SUMMARY: This Circular is intended to provide a general policy framework for management of Federal information resources. The Circular implements provisions of the Paperwork Reduction Act of 1980 as well as other statutes, Executive Orders, and policies concerning general information policy, information technology, privacy, and maintenance of Federal records. The Office of Management and Budget published a notice concerning development of the Circular on September 12, 1983, and received comments and suggestions from the public. This Circular supersedes OMB Circular Nos. A–71, A–90, A–108, and A–121.

DATE: Comments from the public should be submitted no later than May 14, 1985.

ADDRESS: Comments should be addressed to: J. Timothy Sprehe, Office of Information and Regulatory Affairs, Room 3235 New Executive Office Building, Office of Management and Budget, Washington, D.C. 20503. Telephone: (202) 395–4814.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980 (hereinafter the Act), Pub. L. 96–511, 94 Stat. 2812, codified at Chapter 35 of Title 44 of the United States Codes, establishes a broad mandate for agencies to perform their information activities in an efficient, effective, and economical manner. Section 3504 of the Act provides authority to the Director, Office of Management and Budget (OMB), to develop and implement uniform and consistent information resources management policies; oversee the development and promote the use of information management principles, standards, and guidelines; evaluate agency information management practices in order to determine their adequacy and efficiency; and determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the Director.

This Circular implements OMB authority under the Act with respect to section 3504(b), general information policy, section 3504(e), records management, section 3504(f), privacy, and section 3504(g), Federal automatic data processing and telecommunications; the Privacy Act of 1974 (5 U.S.C. 552a); section 111 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759); the Budget and Accounting Act of 1921 (31 U.S.C. 1 *et seq.*); and Executive Order 12046 of March 27, 1978. The Circular complements 5 CFR Part 1320, Controlling Paperwork Burden on the Public, which implements other sections of the Paperwork Reduction Act dealing with controlling the reporting and recordkeeping burden placed on the public.

In addition, this Circular revises and consolidates policy and procedures in five existing OMB directives and rescinds these directives.

A–71—Responsibilities for the Administration and Management of Automatic Data Processing Activities

Transmittal Memorandum No. 1 to Circular No. A–71—Security of Federal Automated Information Systems

A–90—Cooperating with State and Local Governments to Coordinate and Improve Information Systems

A–108—Responsibilities for the Maintenance of Records about Individuals by Federal Agencies

A–121—Cost Accounting, Cost Recovery, and Interagency Sharing of Data Processing Facilities.

Development of this Circular. On September 12, 1983, OMB published a Notice in the **Federal Register**, 48 FR 40964, announcing development of an OMB policy circular on Federal information management and soliciting public comment. The notice stated that OMB was engaged in rewriting the five policy directives above and also solicited public comment on 16 issues going beyond the five policy directives. In response to this notice, by January 1984 OMB received comments from 14 Federal agencies and 39 members of the public. These comments were summarized by OMB and the summary was widely distributed to interested parties. Comments on the notice have been considered in formulating this Circular.

OMB's review of the five existing policy directives led to the conclusion that much, but not all, of their content was procedural in nature, concerned chiefly with how policies were to be carried out. OMB determined that it was important clearly to distinguish the statement of policies from the procedures for implementing those policies. For this reason the main body of this Circular consists of basic considerations and assumptions, policies, and assignments of responsibility; the appendices to this Circular consist of procedures for implementing various policies. OMB developed the main body of this Circular relying upon comments on the **Federal Register** notice as well as other forms of Federal agency and public input, principally meetings with interested parties. For the procedural revisions, OMB relied on the assistance of interagency task groups.

The revised contents of Circular No. A–71, dealing with assignments of responsibilities, are in the main body of this Circular. The contents of Circular No. A–90 are rescinded entirely, with the exception of a policy statement at section 8(b)(17) of this Circular. Revisions of the procedural aspects of the other three policy directives—Transmittal Memorandum No. 1 to A–71, A–108, and A–121—are appendices to this Circular. The appendices will have the same prescriptive force as this Circular and will, when final, be issued as part of this Circular.

On September 17, 1984, the President signed National Security Decision Directive (NSDD) No. 145, National Policy on Telecommunications and Automated Information Systems Security. The NSDD requires that the Director, OMB, review for consistency with the NSDD, and amend as appropriate, OMB Circular No. A–71, Transmittal Memorandum No. 1. The draft Circular and Appendix III are intended to satisfy the NSDD requirement.

Analysis of Key Sections

7. Basic Considerations and Assumptions. Basic considerations and assumptions are statements that provide the underpinnings for the prescriptive policies in section 8. These are either derived from statutes or legislative history, or represent executive branch management philosophy as embodied in this Circular.

—Statements 7–a through 7–d provide the general context for management of Federal information resources.

—Statement 7–e states a general predisposition to use up-to-date information technology to manage Federal information resources.

—Statements 7–f and 7–g pertain to the Privacy Act and the Freedom of Information Act, respectively.

—Statement 7–h pertains to the National Science and Technology Policy, Organization and Priorities Act.

—Statement 7–i pertains to the Federal Records Act.

—Statement 7–j states a relationship between Federal information policy and international information policy.

8. Policies. This section is divided into two subsections that generally correspond to the twofold definition of information resources management in section 6-b, namely, information itself and the resources associated with information.

a. Information Management. The Paperwork Reduction Act acknowledges that information is a valuable resource and should be managed as such. Proceeding from this premise, this subsection states policies concerning the management of Federal information.

(1) and (2). Information Collection and Sharing. Because creation or collection of information requires allocation of scarce resources, agencies must economize on such activities. Agencies must justify the creation or collection of new information in the light of their statutory missions, and must plan from the outset for the steps in the information life cycle. Before creating or collecting new information, agencies should look first to other agencies and the private sector in order to satisfy their needs. These requirements complement the Paperwork Reduction Act and OMB's regulation *Controlling Paperwork Burdens on the Public* (5 CFR Part 1320), which requires agencies to demonstrate that collections of information have practical utility and are not duplicative of information already available to the agency from other sources.

(3) through (6). Privacy Act and Freedom of Information Act. These paragraphs contain policy statements pertaining to the Privacy Act and incorporating the policies of OMB Circular No. A–108, which is rescinded and superseded. Agencies are to ensure that they meet the requirements of the Privacy Act regarding collection of individually identifiable information. Such information is to be maintained and protected so as to preclude intrusion into the privacy of individuals. Individuals must be accorded access and amendment rights to records, as provided in the Privacy Act. Appendix I prescribes procedures for the maintenance of records about individuals in accordance with the Privacy Act.

In addition to Privacy Act considerations, statements (3) and (4) include provisions concerning proprietary information. Agencies are to minimize their collection of proprietary information, consistent with legal requirements and operational necessity and, when such information must be collected, agencies must provide for its protection.

(7). Training. Agency personnel must receive proper training to safeguard information resources. Training is particularly important in view of the changing nature of information resources management. The development of end user computing and office automation, for example, place the management of information and information technology in the hands of nearly all agency personnel rather than in the hands of a few employees at centralized facilities such as large computer centers. Policies and procedures for computer security, records management, protection of privacy, and other safeguards need to be incorporated into information resources management training programs.

(8) and (9). Information Dissemination. The mere fact that an agency has created or collected information is not itself a valid reason for creating a program to disseminate the information to the public. Agencies create and collect much information, often for purely internal governmental purposes, that is not intended for dissemination, for which there is no public demand, and the dissemination of which would serve no public purpose and would not be cost-justified; e.g., compilations of routine time and attendance records for Federal employees, or publication of the thousands of pages common carrier tariff filings by regulatory agencies. While such information may be subject to access upon request under provisions of agency statutes, the Freedom of Information Act, or the Privacy Act, the agency must demonstrate in each case the need actively to disseminate such information. Over time, changes in laws, economic conditions, or information technology can result in changes in public demand, public purpose, or dissemination costs; e.g., an agency's shift to electronic filing of reports might generate a public demand for electronic dissemination that could be satisfied at minimal cost to the government. The decision to disseminate information, however, entails potentially significant costs and must be addressed separately from the decision to create or collect information.

If agencies do contemplate disseminating particular information, they should plan for its dissemination before creating or collecting the information (see 8–a(1)). Planning for dissemination should recognize that, while government information provided to the public should be distributed in a useful form, dissemination activities consume significant economic resources and may not be essential to the government or the public. It is important, therefore, that agencies set strict conditions upon the dissemination function.

The first question an agency must ask itself is whether it should disseminate a given information product or service at all; or, if the agency is already disseminating the product or service, whether it should continue to do so. Before deciding to disseminate an information product or service, and periodically thereafter, an agency must be able to demonstrate that the dissemination of the product or service is either required by law, or is clearly permitted by law and is essential to accomplishing the agency's mission.

Given a statutory and mission-related basis, agencies must also ask themselves whether a proposed or existing information product or service substantially duplicates similar products or services that are already available, either from another agency or from the private sector. More than this, even if the product or service does not presently exist, an agency must ask whether it is reasonable to expect that another organization, public or private, would offer the product or service if the agency did not offer it. It so, then the agency should not disseminate the information product or service. Where possible, agencies should disseminate information products and services through existing programs, such as statutory authorized technical information clearinghouses and the Federal Depository Libraries, rather than creating new programs. (Note that "government publications," as defined at 44 U.S.C. 1902, must be made available through the Federal Depository Libraries.)

When agencies have justified and made the basic decision to disseminate information, they must also satisfy conditions regarding the manner of dissemination. First, agencies must act in the most cost effective manner, which includes maximum reliance on the private sector. This is merely an application of the policy stated in OMB Circular No. A–76, Performance of Commercial Activities, to agency information dissemination programs. It is "the general policy of the government to rely on commercial sources to supply the products and services the government needs," including products and services the government needs in order to disseminate information to the public. For example, before an agency establishes a service for electronic dissemination of government information via an online computer system, the agency should compare the

cost of contracting for operation of the service versus in-house performance and determine whether in-house performance is less costly.

Agencies also must take reasonable steps to ensure that members of the public whom the agency has an obligation to reach have a reasonable ability to acquire the information. If the information product or service is of broad public interest, agencies can economize on information dissemination programs and at the same time ensure that the interested public has reasonable opportunity to receive government information by using existing dissemination mechanisms, as noted above. In addition, agencies should take care that they do not permit contractors functioning as sole suppliers for the government to exercise monopolistic controls in ways that defeat the agencies' information dissemination obligations, for example by setting unreasonably high prices. In some cases agencies may need to formulate contractual terms with a sole supplier contractor so that the contractor functions as a mere intermediary for the agency in dealing with end users in the public.

The Federal Government is the sole possessor and supplier of certain types of information, which is frequently of substantial commercial value. Dissemination of such information, or its dissemination in a specific form or medium, may represent a government service from which recipients derive special benefits, in which case they may be subject to OMB Circular No. A–25, User Charges. For example, where the information is already substantially available in printed form, agencies should consider dissemination in electronic form to be service of special benefit, the costs of which should be recovered through user charges. At present, most agencies do not have coherent, agencywide policies and procedures for setting user charges for information products and services with a view to cost recovery. Agencies will not be required to recover costs for information products through user charges, where appropriate. Agencies must also establish procedures for periodically reviewing their information dissemination programs.

b. Information Systems and Information Technology Management. This subsection states policies concerning the planning, acquisition, operation, and management of Federal information systems and technology. The Federal information systems and technology budget, which was $14 billion in FY 1985, is projected to increase at a rate faster than that of the overall Federal budget. With outlays at these levels and agencies becoming increasingly dependent upon information technology to accomplish their missions, it is essential that planning processess be applied to the acquisition and application of information technology.

(1). Planning. The Paperwork Reduction Act mandates a stronger central role in information resources planning. Specifically, the Act requires that OMB: (1) Publish a five-year governmentwide automatic data processing and telecommunications plan; (2) review and coordinate agency proposals for the acquisition and use of information technology; and (3) promote the use of the technology to improve governmental efficiency and effectiveness. In order to meet these objectives, it is necessary to initiate a governmentwide process for developing and institutionalizing information technology planning that is based in agency programs and missions. The planning must also be tied to the budget so that budgetary decisions derive from plans, and conversely, so that budgetary constraints are reflected in the plans. The process must further ensure that sufficient information is available to the central agencies to enable them to monitor compliance with Federal policies and identify major issues, including cross-cutting issues where more active centralized planning and management may be appropriate. Hence, agencies must institute information planning processes tied to both the conduct of programs and the preparation of the agency's budget.

(2) and (3). Management Controls and Accountability. Basic management controls for agency information systems are fundamental to sound information resources management. These controls should ensure the documentation and periodic review of major information systems, as well as periodic cost-benefit evaluation of overall information resources management in light of agency missions. In order to provide greater incentive for management efficiencies, accountability for information systems should be vested in the officials responsible for operating the programs that the systems support.
Program managers depend upon information systems to carry out their programs, and yet frequently they do not have direct control over the technical and operational support for those systems. Program managers often depend upon agency computer centers or contracted service organizations, the heads of which may not be directly accountable to the program managers in a formal organizational sense. Program managers are nonetheless responsible for conducting their programs and, to the extent successful conduct of the programs entails support from information systems, program managers must be held accountable for acquiring that support. The responsibilities of program managers are therefore presumed to include securing information systems support as needed, and planning for contingencies. Technical support organizations have a concomitant responsibility to meet their commitments, contractual or otherwise, to their program clients, but the program official has the ultimate responsibility for delivering a program's product or service.

(4) and (5). Sharing Information Processing Capacity. Circular No. A–121, which is rescinded and superseded, required only that the holder of excess automatic data processing capacity share such capacity. Because the holder of excess capacity has little incentive to seek opportunities for sharing, however, the new policy requires both that the holder share capacity and that the agency seeking information processing capacity fulfill its needs from other agencies or the private sector, whenever possible, before acquiring the new capacity itself. Procedural aspects of these policy statements are found in Appendix II.

(6) and (7). Life Cycle Costing; and Avoiding Duplication. Agencies frequently develop information technology incrementally, through a series of interim upgrades, without regard for longer term considerations such as the information systems' life cycle. As part of their planning, agencies need to consider the full information system life cycle when determining the cost of information technology. Similarly, agency planning should ensure that information systems are not unnecessarily duplicative of systems available elsewhere in government or from the private sector.

(8). Software Management. The prevailing agency practice of developing customized computer software is a source of inefficiency, as the General Accounting Office and others have noted. This practice is excessively costly in terms of initial development, continued maintenance, and eventual conversion to new technology, because it requires the agency to bear the full cost of developing and maintaining the software its uses. Managers are therefore enjoined to acquire generic, off-the-shelf software available from the

private sector instead of developing their own.

(9). Interconnectivity. Agencies often acquire technology that is incapable of communicating with other systems with which the agencies need to communicate. Interconnectivity or compatibility among information systems has consequently emerged as a significant information resources management problem. Agencies must acquire or develop information systems in a manner that enhances necessary compatibility.

(10) through (13). Security. Security of information systems means both the protection of information while it is within the systems and also the assurance that the systems do exactly what they are supposed to do and nothing more. Information system security entails managment controls to ensure the integrity of operations including such matters as proper access to the information in the systems and proper handling of input and output. In this sense, security of information systems is first and foremost a management issue and only secondly a technical problem of computer security.

The recent introduction of smaller and more powerful computer systems and new communications technology and transmission media, together with the greater involvement of end users in managing information resources, have increased the potential vulnerability of Federal information systems and hence the level of management concern. Protecting personal, proprietary, and other sensitive data from unauthorized access or misuse; detecting and preventing computer related fraud and abuse; and assuring continuity of operations of major information systems in the event of emergency related disruptions are increasingly serious policy issues. Policy previously found in Transmittal Memorandum No. 1 to OMB Circular No. A–71 is here revised; procedural aspects of the policy are in Appendix III to the Circular.

The General Accounting Office reported in its review of the first-year implementation of the Federal Managers Financial Integrity Act (FIA) that internal controls in automatic data processing systems received inadequate coverage in FIA evaluations. GAO noted that some agencies were uncertain of the relationship between (a) OMB Circular A–71, Transmittal Memorandum No. 1, Security of Federal Automated Information Systems, and (b) OMB Circular No. A–123, Internal Control Systems. The relationship between security of automated information systems and agency internal control reports is now stated clearly in Appendix III.

(14). Standards. The National Bureau of Standards, Department of Commerce, develops and issues Federal Information Processing Standards, and the National Communications System develops and issues Federal Telecommunications Standards. Some standards are mandatory for Federal agencies, while others are voluntary. Agencies may waive the use of Federal standards under certain conditions and pursuant to certain procedures, which vary depending upon the individual standard. While governmentwide standards can result in management efficiencies, standards can also have the untoward effects of regulations, as noted in OMB Circular No. A–119. Agencies need to be mindful of the regulatory effects of standards, and should continuously assess their relative costs and benefits and their effects upon the agency's accomplishment of its mission.

(15) Avoiding Information Technology Monopolies. Many agencies operate one or more central information technology facilities to support agency programs. In these agencies, program managers are often required to use the central facilities. The manager of such a monopoly facility has a lesser incentive to control costs, since he or she has a captive clientele. The program manager has little leverage to ensure that information processing resources are efficiently allocated since he or she cannot seek, or can seek only with great difficulty, alternative sources of supply. To provide incentives conducive to more businesslike procedures in these facilities, agencies should avoid monopolistic information processing arrangements and should enter into them only if their cost effectiveness is clear and they are subject to periodic review. Appendix II specifies certain procedures with respect to this policy.

(16) Cost Recovery. This policy constitutes a revision to policy stated in OMB Circular No. A–121. Whereas Circular No. A–121 required only that costs for automatic data processing facilities be *allocated* to users, agencies must now *recover* the costs of information technology facilities from government users. Experience with Circular No. A–121 showed OMB that allocating costs had little effect on agencies' behavior; recovering costs means that actual transfers of funds will take place between suppliers and users of information technology facilities. Procedural aspects of the policy appear in Appendix II.

(17) Coordination with State and Local Government. This policy reaffirms policy previously found in Circular No. A–90, Transmittal Memorandum No. 1. The interagency group that worked on the revision of Circular No. A–90 recommended, and OMB agreed, that the Circular should be rescinded except for a single policy statement prohibiting Federal agencies from placing unnecessary restrictions on the information systems that State and local governments use to carry out federally financed program activities.

(18) Application of Up-to-date Information Technology. Recent availability of low cost, highly efficient and effective electronic information technology can greatly increase worker productivity and facilitate operation of Federal agency programs. The Circular states a predisposition, based in the Paperwork Reduction Act, in favor of applying such technology to the information life cycle within a responsible management context. Two broad areas of information technology merit further discussion: (1) Electronic information collection and dissemination, and (2) end user computing.

Electronic Collection and Dissemination of Information. Federal agencies are moving rapidly to provide for collection and dissemination of information through electronic media. In developing this Circular, OMB considered whether it was necessary to provide specific policies concerning electronic collection and dissemination of governmental information. OMB concluded that, except for the general predisposition in favor of applying new technological developments to information resources management, the policies that apply to information collection and dissemination in other media also apply to electronic collection and dissemination. It is important, however, that agencies recognize the necessity of systematically thinking through the application of policies stated elsewhere in this Circular to electronic collection and dissemination of information. For example, when developing electronic collection programs, agencies shall give particular attention to issues such as privacy, public access, and records management. When developing electronic dissemination programs, agencies should ensure that access is provided to each class of users upon reasonable terms, avoid problems arising from monopolistic control, ensure maximum reliance upon the private sector, and take necessary steps for cost accounting and cost recovery.

End User Computing. Federal agencies are also moving rapidly to

acquire end user computing capabilities. OMB endorses the managed innovation approach to end user computing presented in GSA's publication *Managing End User Computing in the Federal Government* (June 1983). Because end user computing places management of information in the hands of individual agency personnel rather than in a central automatic data processing organization, the Circular requires that agencies train end users in their responsibilities for safeguarding information; Appendix III deals in part with the security of end user computing.

9. Assignment of Responsibilities. This section assigns responsibilities for the management of Federal information resources addressed in this Circular. OMB Circular No. A–71 is rescinded and its contents are revised and incorporated into this section along with responsibilities assigned under the Paperwork Reduction Act; section III of the Federal Property and Administrative Services Act, as amended; and Executive Order 12046. Certain assignments of responsibility from OMB to other agencies, as noted below, are also included. Following are principal noteworthy aspects of this section.

Triennial Reviews. The Administrator of Information and Regulatory Affairs and the Deputy Administrator of the General Services Administration, in an exchange of correspondence dated June 13 and July 22, 1983, concurred that GSS has the necessary statutory authority to conduct reviews of Federal agency Information Resources Management (IRM) activities. The Paperwork Reduction Act provides that the Director of OMB, ". . . shall with the advice and assistance of GSA selectively review, at least once every three years, the IRM activities of each agency to ascertain their adequacy and efficiency." Separate reviews of agency IRM activities by OMB and GSA would be unnecessarily duplicative, which would not be consistent with the Act. Accordingly, the IRM reviews conducted by GSA will be designed to meet OMB's requirements under the Paperwork Reduction Act as well as GSA's own needs.

Senior Officials for Information Resources Management. In accordance with 44 U.S.C. Chapter 35, agencies are required to designate a senior official to carry out responsibilities under the Paperwork Reduction Act. The designation of the official is intended to assure clear accountability for setting policy for agency information resources management activities, provide for greater coordination among the agency's information activities, and ensure greater visibility of such activities within the agency. The responsibilities of the senior official for information resources management were identified in OMB Bulletin No. 81–21, which has expired. Those responsibilities are now established in this Circular.

International Information Policy. The Circular deals with the management of information resources held by the Federal government. While the creation, collection, processing, transmission, dissemination, use, storage, and disposition of information by the Federal government has international ramifications, Federal government information policy is not the same as "U.S. information policy," which refers to U.S. national interests in the information field vis-a-vis the policies and interests of other nations. The Circular formally acknowledges this distinction and assigns responsibilities for international information policy only insofar as it relates to Federal government information policy.

Timely Technology Procurement. Inherent in effective management of information technology is the ability of program managers to acquire technology in a timely manner. GSA is assigned the responsibility in section 9 to develop cirteria that will streamline procurement procedures and delegate procurement authority to agencies that comply with those procedures. All Federal agencies are directed in section 9 to develop internal policies and procedures that further provide for timely acquisition of information technology

Records Management. The Paperwork Reduction Act makes the management of Federal records an integral part of information resources management. While no new policies are embodied in this Circular, responsibilities have been assigned in order to ensure that agency records management programs are considered within the context of Federal information resources management.

10. *Oversight.* The broad scope of the Circular dictates a strategy of focusing oversight on a series of aspects of information resources management rather than on a single comprehensive reporting scheme. OMB intends to use existing mechanisms, such as the fiscal budget, information collection budget, and management reviews, to examine agency compliance with the Circular. For example, during 1984 the management reviews for the FY 1986 budget year concentrated on five cross-cutting information issues: overall information resources management strategy, telecommunications, software management, "electronic filing," and end user computing. OMB issued date call bulletins requesting information specific to these issues, targeted the issues for special attention during the management reviews, and requested individual agencies to submit management improvement plans on specific aspects of the issues. Pursuit of this kind of selective oversight strategy permits OMB and the agencies the flexibility to shift the focus of oversight as information issues and the technological environment changes.

Darrell A. Johnson,

Acting Deputy Associate Director for Administration.

CIRCULAR NO A- ——

To the heads of Executive Departments and Establishments

Subject: Management of Federal Information Resources

1. *Purpose*: This Circular establishes policy for the management of Federal information resources. Procedural guidelines for implementing specific aspects of these policies are included as appendices.

2. *Rescissions*: This Circular rescinds OMB Circulars No. A–71, A–90, A–108, and A–121, and all Transmittal Memoranda to those Circulars.

3. *Authorities*: This Circular is issued pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 35); the Privacy Act of 1974 (5 U.S.C. 552a), section 111 of the Federal Property and Administrative Services Act of 1949 as amended (40 U.S.C. 759), the Budget and Accounting Act of 1921 as amended (31 U.S.C. 11), and Executive Order 12046 of March 27, 1978.

4. *Applicability and Scope*:

a. The policies in this Circular apply to the information activities of all agencies of the executive branch of the Federal government.

b. Information classified for national security purposes should also be handled in accordance with the appropriate national security directives.

5. *Background*: The Paperwork Reduction Act (hereinafter the Act) establishes a broad mandate for agencies to perform their information management activities in an efficient, effective, and economical manner. To assist agencies in an integrated approach to information resources management, the Act requires that the Director of the Office of Management and Budget (OMB) develop and implement uniform and consistent information resources management policies; oversee the development and promote the use of information management principles, standards, and guidelines; evaluate agency information management practices in order to

determine their adequacy and efficiency; and determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the Director.

6. *Definitions:* As used in this circular—

a. The term "agency" means any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the government excluding the Executive Office of the President with the exception of the Office of Management and Budget and the Office of Administration, or any independent regulatory agency.

b. The term "information" means any communication or reception of knowledge such as facts, data, or opinions, including numerical, graphic, or narrative forms, whether oral or maintained in any medium, including computerized data bases, paper, microform, or magnetic tape.

c. The term "government information" means information created, collected, processed, transmitted, disseminated, used, stored, or disposed of by the Federal government.

d. The term "information system" means the organized collection, processing, and transmission of information in accordance with defined procedures, whether automated or manual.

e. The term "major information system" means an information system that requires special continuing management attention because of its importance to an agency mission; its high development, operating or maintenance costs; or it significant impact on the administration or agency programs, finances, property, or other resources.

f. The term "access to information" refers to the function of providing to members of the public, upon their request, the government information to which they are entitled under law.

g. The term "dissemination of information" refers to the function of distributing government information to the public whether through printed documents, or electronic or other media. "Dissemination of information" does not include intra-agency use of information, interagency sharing of information, or responding to requests for "access to information."

h. The term "information technology" means the hardware and software used in connection with government information, regardless of the technology involved, whether computers, telecommunications, micrographics, or others.

i. The term "information technology facility" means an organizationally defined set of personnel, hardware, software, and physical facilities, a primary function or which is the operation of information technology.

j. The term "information resources management" means the planning, budgeting, organizing, directing, training, and control associated with government information. The term encompasses both information itself and the related resources, such as personnel, equipment, funds, and technology.

Other definitions splecific to the subjects of the appendices appear in the appendices.

7. *Basic Considerations and Assumptions:*

a. The Federal government is the largest single producer, consumer, and disseminator of information in the United States. Because of the size of the government's information activities, the management of Federal information resources is an issue of continuing importance to the public and to the government itself.

b. Government information is a valuable resource. It is an essential tool for managing the government's operations, provides citizens with knowledge of their society, and is a commodity with economic value in the marketplace.

c. The value of government information to the government is solely a function of the degree to which the information contributes to achieving agencies' missions.

d. The public and private benefits derived from government information must exceed the public and private costs of the information.

e. The use of up-to-date information technology offers opportunities to improve the management of government programs, and access to, and dissemination of, government information.

f. The public's right to access to government information must be protected in the management of Federal agency records.

g. The individual's right to privacy must be protected in Federal Government information activities involving personal information.

h. The open and efficient exchange of government scientific and technical information, subject to applicable national security controls and proprietary rights others may have in such information, fosters excellence in scientific research and the effective use of Federal research and development funds.

i. The value of preserving government records is a function of the degree to which preservation protects the legal and financial rights of the government or its citizens, and provides an official record of Federal agency activities for agency management and historical purposes.

j. Federal Government information policies and activities can affect, and be affected by, the information policies and activities of other nations.

8. *Policies:*

a. *Information Management.* Agencies shall:

(1) Create or collect only that information necessary to achieve agency mission objectives and only after planning for its processing, transmission, dissemination, use, storage, and disposition;

(2) Seek to satisfy new information needs through interagency or intergovernmental sharing of information or through commercial sources before creating or collecting new information;

(3) Limit the collection of individually identifiable information and proprietary information to that which is legally authorized and necessary to achieve agency mission objectives;

(4) Maintain and protect individually identifiable information and proprietary information in a manner that precludes:

(a) Unwarranted intrusion upon personal privacy (see Appendix I); and

(b) Violation of obligations of confidentiality;

(5) Provide individuals with reasonable access to, and the ability to amend errors in, systems of records, consistent with the Privacy Act;

(6) Provide public access to government information, consistent with the Freedom of Information Act;

(7) Ensure that agency personnel are trained to safeguard information resources;

(8) Disseminate government information products and services only where:

(a) Dissemination is either required by law, or

(b) Dissemination is essential to the agency's accomplishing its mission, and the products or services do not duplicate similar products or services that are already provided by other government or private sector organizations, or that could reasonably be expected to be provided by them in the absence of agency dissemination;

(9) Disseminate government information products and services, when the above conditions are met:

(a) In a manner that reasonably ensures the information will reach the members of the public the agency is responsible for reaching;

(b) In the manner most cost effective for the government, including placing maximum feasible reliance on the private sector for the dissemination of the products or services;

(c) So as to recover costs of disseminating the products or services through user charges, where appropriate, in accordance with OMB Circular No. A-25; and

(d) Only after establishing procedures for periodically reviewing the continued need for and manner of dissemination of the products or services.

b. *Information Systems and Information Technology Management.* Agencies shall:

(1) Establish multiyear strategic planning processes for acquiring and operating information technology that meet program and mission needs, reflect budget contraints, and form the bases for their budget requests;

(2) Establish systems of management control that document the requirement that each major information system is intended to serve; and provide for periodic review of those requirements over the life of the system in order to determine whether the requirements continue to exist and the system continues to meet the purposes for which it was developed;

(3) Make the official whose program an information system supports responsible and accountable for the products of that system;

(4) Meet information processing needs through interagency sharing and from commercial sources before acquiring new information processing capacity;

(5) Share available information processing capacity with other agencies to the extent practicable and legally permissible;

(6) Acquire information technology in a competitive manner that minimizes total life cycle costs;

(7) Ensure that existing and planning major information systems do not unnecessarily duplicate information systems available from other agencies or from the private sector;

(8) Acquire off-the-shelf software from commercial sources, unless the cost effectiveness of developing custom software is clear and has been documented;

(9) Acquire or develop information systems in a manner that facilitates interconnectivity;

(10) Assure that information systems operate effectively and accurately;

(11) Establish a level of security for all agency information systems commensurate with the sensitivity of the information and the risk and magnitude of loss or harm that could result from improper operation of the information systems (See Appendix III);

(12) Assure that only authorized personnel have access to information systems;

(13) Plan to provide information systems with reasonable continuity of support should their normal operations be disrupted in an emergency;

(14) Use Federal Information Processing and Telecommunications Standards except where it can be demonstrated that the costs of using a standard exceed the benefits or the standard will impede the agency in accomplishing its mission;

(15) Not require program managers to use specific information technology facilities or services unless it is clear and is convincingly documented, subject to periodic review, that such use is the most cost effective method for meeting program requirements;

(16) Account for the full costs of operating information technology facilities and recover such costs from government users as provided in Appendix II;

(17) Not prescribe Federal Information system requirements that unduly restrict the prerogatives of heads of State and local government units;

(18) Seek opportunities to improve the operation of government programs or to realize savings for the government and the public through the application of up-to-date information technology to government information activities.

9. *Assignment of Responsibilities:*

a. *All Federal Agencies.* The head of each agency shall:

(1) Have primary responsibility for managing agency information resources;

(2) Ensure that the information policies, principles, standards, guidelines, rules, and regulations prescribed by OMB are implemented appropriately within the agency;

(3) Develop internal agency information policies and procedures and oversee, evaluate, and otherwise periodically review agency information resources management activities for conformity with the policies set forth in the Circular;

(4) Develop agency policies and procedures that provide for timely acquisition of required information technology;

(5) Maintain an inventory of the agencies' major information systems and information dissemination programs;

(6) Maintain a record of agency activities in accordance with the Federal Records Act of 1950, as amended.

(7) Identify to the Director, OMB, statutory, regulatory, and other impediments to efficient management of Federal information resources and recommend to the Director legislation, policies, procedures, and other guidance to improve such management;

(8) Assist OMB in the performance of its functions under the Paperwork Reduction Act, including making services, personnel, and facilities available to OMB for this purpose to the extent practicable;

(9) Appoint a senior official, who shall report directly to the agency head, to carry out the responsibilities of the agency under the Paperwork Reduction Act. The head of the agency shall keep the Director, OMB, advised as to the name, title, authority, responsibilities, and organizational resources of the senior official. For purposes of this paragraph military departments and the Office of the Secretary of Defense may each appoint one official.

b. *Department of State.* The Secretary of State shall:

(1) Advise the Director, OMB, on the development of United States positions and policies on international information policy issues affecting Federal government information activities and ensure that such positions and policies are consistent with Federal information policy;

(2) Ensure, in consultation with the Secretary of Commerce, that the United States is represented in the development of international information technology standards, and advise the Director, OMB, of such activities.

c. *Department of Commerce.* The Secretary of Commerce shall:

(1) Develop and issue Federal Information Processing Standards and guidelines necessary to ensure the efficient and effective acquisition, management, security, and use of information technology;

(2) Advise the Director, OMB, on the development of policies relating to the procurement and management of Federal telecommunications resources;

(3) Provide OMB and the agencies with scientific and technical advisory services relating to the development and use of information technology;

(4) Conduct studies and evaluations concerning telecommunications technology, and concerning the improvement, expansion, testing, operation, and use of Federal telecommunications systems and advise the Director, OMB, and appropriate agencies of the recommendations that result from such studies;

(5) Develop, in consultation with the Secretary of State and the Director, OMB, plans, policies, and programs relating to international

telecommunications issues affecting government information activities;

(6) Identify needs for standardization of telecommunications and information processing technology, and develop standards, in consultation with the Executive Agent, National Communications System and the Administrator of General Services, to ensure efficient application of such technology;

(7) Ensure that the Federal government is represented in the development of national and, in consultation with the Secretary of State, international information technology standards, and advise the Director, OMB, of such activities.

d. *General Services Administration (GSA).* The Administrator of General Services shall:

(1) Advise the Director, OMB, and agency heads on matters affecting the procurement of information technology;

(2) Coordinate and, when required, provide for the purchase, lease, and maintenance of information technology required by Federal agencies;

(3) Develop criteria for timely procurement of information technology and delegate procurement authority to agencies that comply with the criteria;

(4) Provide guidelines and regulations for Federal agencies on the acquisition, use, maintenance, and disposition of information technology;

(5) Develop policies and guidelines that facilitate the sharing of information technology among agencies as required by this Circular;

(6) Review agencies' information resources management activities to meet the objectives of the triennial reviews required by the Paperwork Reduction Act and report the results to the Director, OMB;

(7) Manage the Automatic Data Processing Fund and the Federal Telecommunications Fund in accordance with the Federal Property and Administrative Services Act, as amended;

(8) Establish procedures for approval, implementation, and dissemination of Federal telecommunications standards and guidelines and for implementation of Federal Information Processing Standards.

e. *National Communications System.* The Executive Agent, National Communications System, shall develop, in consultation with the Administrator of General Services, uniform Federal telecommunications standards and guidelines to ensure national security, emergency preparedness, and continuity of government.

f. *Office of Personnel Management.* The Director, Office of Personnel Management, shall:

(1) Develop and conduct training programs for Federal personnel on information resources management, including end user computing;

(2) Evaluate periodically future personnel management and staffing requirements for Federal information resources management;

(3) Establish personnel security policies and develop training programs for Federal personnel associated with the design, operation, or maintenance of information systems.

g. *National Archives and Records Administration.* The Archivist of the United States shall:

(1) Administer the Federal records management program in accordance with the National Archives and Records Act;

(2) Assist the Director, OMB, in developing standards and guidelines relating to the records management program.

h. *Office of Management and Budget.* The Director of the Office of Management and Budget will:

(1) Provide overall leadership and coordination of Federal information resources management within the Executive Branch;

(2) Serve as the President's principal adviser on procurement and management of Federal telecommunications systems, and develop and establish policies for procurement and management of such systems;

(3) Issue policies, procedures, and guidelines to assist agencies in achieving integrated, effective, and efficient information resources management;

(4) Initiate and review proposals for changes in legislation, regulations, and agency procedures to improve Federal information resources management;

(5) Review and approve or disapprove agency proposals for collection of information from the public, as defined in 5 CFR 1320.7;

(6) Develop and publish annually, in consultation with the Administrator of General Services, a five-year plan for meeting the information technology needs of the Federal government;

(7) Evaluate agencies' information resources management and identify cross-cutting information policy issues through the review of agency information programs, information collection budgets, information technology acquisition plans, fiscal budgets, and by other means;

(8) Provide policy oversight for the Federal records management function conducted by the National Archives and Records Administration and coordinate records management policies and programs with other information activities;

(9) Review, with the advice and assistance of the Administrator of General Services, selected agencies' information resources management activities to meet the objectives of the triennial reviews required by the Paperwork Reduction Act;

(10) Review agencies' policies, practices, and programs pertaining to the security, protection, sharing, and disclosure of information, in order to ensure compliance with the Privacy Act and related statutes;

(11) Resolve information technology procurement disputes between agencies and the General Services Administration pursuant to section 111 of the Federal Property and Administrative Services Act;

(12) Review proposed U.S. government position and policy statements on international issues affecting Federal government information activities and advise the Secretary of State as to their consistency with Federal information policy.

10. *Oversight.* The Director, OMB, will use information technology planning reviews, fiscal budget reviews, information collection budget reviews, management reviews, GSA reviews of agency information resources management activities, and such other measures as he deems necessary to evaluate the adequacy and efficiency of each agency's information resources management and compliance with this Circular.

Appendix I: Federal Agency Responsibilities for Maintaining Records about Individuals

Appendix II: Cost Accounting, Cost Recovery, and Interagency Sharing of Information Technology Facilities

Appendix III: Security of Federal Automated Information Systems

David A. Stockman,

Director.

Appendix I—Federal Agency Responsibilities for Maintaining Records about Individuals

1. *Purpose and Scope.* This appendix describes agency responsibilities for implementing the Privacy Act of 1974, 5 U.S.C. 552a as amended (hereinafter "the Act"). It applies to all agencies subject to the Act. The appendix constitutes a revision to procedures formerly contained in OMB Circular No. A–108, now rescinded.

2. *Definitions.*

a. The terms "agency," "individual," "maintain," "record," "system of records," and "routine use," as used in this appendix, are defined in the Act (5 U.S.C. 552a(a)).

b. The term "minor change to a system of records" means a change that does not significantly change the system; that is, does not affect the character or purpose of the system and does not affect the ability of an individual to gain access to his or her record or to any information pertaining to him or her which is contained in the system; e.g., changing the title of the system manager.

3. *Assignment of Responsibilities.*

a. *All Federal Agencies.* In addition to meeting the agency requirements contained in the Act, and the specific reporting requirements detailed in this appendix, the head of each agency shall ensure that the following reviews are conducted as often as specified below, and be prepared to report to the Director, OMB, the results of such reviews and the corrective action taken to resolve problems uncovered. The head of each agency shall:

(1) *Section (m) Contracts.* Review every five years a random sample of agency contracts that provide for the maintenance of a system of records on behalf of the agency to accomplish an agency function, in order to ensure that the wording of each contract makes the provisions of the Act apply. (5 U.S.C. 552a(m)(1))

(2) *Recordkeeping Practices.* Review annual agency recordkeeping and disposal policies and practices in order to assure compliance with the Act.

(3) *Routine Use Disclosures.* Review every three years the routine use disclosures associated with each system of records in order to ensure that the recipient's use of such records continues to be compatible with the purpose for which the disclosing agency originally collected the information.

(4) *Exemption of Systems of Records.* Review every three years each system of records for which an exemption from any provision of the Act has been asserted in order to determine whether such exemption is still needed.

(5) *Matching Programs.* Review annually each ongoing matching program in which the agency has participated during the year, either as a source or as a matching agency, in order to ensure that the requirements of the Act, the OMB Matching Guidelines, and the OMB Model Control System and Checklist have been met.

(6) *Privacy Act Training.* Review annually agency training practices in order to ensure that all agency personnel are familiar with the requirements of the Act, with the agency's implementing regulation, and with any special requirements that their specific jobs entail.

(7) *Violations.* Review annually the actions of agency personnel that have resulted either in the agency being found civilly liable under section (g) of the Act, or an employee being found criminally liable under the provisions of section (i) of the Act, in order to determine the extent of the problem and to find the most effective way to prevent recurrences of the problem.

b. *Department of Commerce.* The Secretary of Commerce shall, consistent with guidelines issued by the Director, OMB, develop and issue standards and guidelines for assuring the security of automated information systems.

c. *General Services Administration.* The Administrator of General Services shall, consistent with guidelines issued by the Director, OMB, issue instructions on what agencies must do in order to comply with the requirements of section (m) of the Act when contracting for the operation of a system of records to accomplish an agency purpose.

d. *Office of Personnel Management.* The Director of the Office of Personnel Management shall, consistent with guidelines issued by the Director, OMB:

(1) Develop and maintain governmentwide standards and procedures for civilian personnel information processing and recordkeeping directives to assure conformance with the Act.

(2) Develop and conduct training programs for agency personnel, including both the conduct of courses in various substantive areas (e.g., legal, administrative, information technology) and the development of materials that agencies can use in their own courses. The assignment of this responsibility to OPM does not affect the responsibility of individual agency heads for developing and conducting training programs tailored to the specific needs of their own personnel.

e. *National Archives and Records Administration.* The Archivist of the United States shall, consistent with guidelines issues by the Director, OMB:

(1) Issue instructions on the format of the agency notices and rules required to be published under the Act.

(2) Compile and publish annually the rules promulgated under 5 U.S.C. 552a(f) and agency notices published under 5 U.S.C. 552a(e)(4) in a form available to the public.

(3) Issue procedures governing the transfer of records to Federal Records Centers for storage, processing, and servicing pursuant to 44 U.S.C. 3103. For purposes of the Act, such records are considered to be maintained by the agency that deposited them. The Archivist may disclose deposited records only according to the access rules established by the agency that deposited them.

(4) Provide annually to the Director, OMB, a listing of Privacy Act publication activities, for the previous calendar year, of each agency subject to the Act. This listing shall include the number of new systems of records published, the number of amended systems, the number of exemptions, and the number of uses.

f. *Office of Management and Budget.* The Director of the Office of Management and Budget will:

(1) Issue guidelines and directives to the agencies to implement the Act.

(2) Assist the agencies, at their request, in implementing their Privacy Act programs.

(3) Review the new and altered system reports agencies submit pursuant to section (o) of the Act.

(4) Compile the annual report of the President to the Congress in accordance with section (p) of the Act.

4. *Reporting Requirements.*

a. *Privacy Act Annual Reports.* Agencies shall submit a Privacy Act Annual Report to the Director, OMB, covering their Privacy Act activities for the calendar year. The format and timing of the report will be established by the Director, OMB. (5 U.S.C. 552a (p)).

b. *New and Altered System Reports.* The Act requires agencies to publish notices in the **Federal Register** describing new or altered systems or records, and to submit reports on these systems to the Director, OMB, and to the Congress.

(1) *Altered System of Records.* Minor changes to systems of records need not be reported. The following changes are those for which a report is required:

(a) An increase or change in the number of types of individuals on whom records are maintained. For example, a decision to expand a system that originally covered only residents of public housing in major cities to cover such residents nationwide would require a report. Increases attributable to normal growth should not be reported.

(b) A change that expands the types or categories of information maintained. For example, a personnel file that has been expanded to include medical records would require a report.

(c) A change that alters the purpose for which the information is used.

(d) A change to equipment configuration (either hardware or software) that creates substantially

greater access to the records in the systems. For example, locating interactive terminals at regional offices for accessing a system formerly accessible only at the headquarters would require a report.

(e) The addition of an exemption (pursuant to sections (j) or (k) of the Act). Note that, in submitting a rulemaking for an exemption as part of a report of a new or altered system, agencies will meet the reporting requirements of Executive Order 12291 and need not make a separate submission under that order.

When an agency makes a change to an information technology installation, telecommunication network, or any other general changes in information collection, processing, dissemination, or storage that affect multiple systems of records, it may submit a single consolidated new or altered system report, with changes to existing notices and supporting documentation included in the submission.

(2) *Contents of the Report.* The report for a new or altered system has three elements: a transmittal letter, a narrative statement, and supporting documentation that includes a copy of the proposed **Federal Register** notice. There is no prescribed format for either the letter or the narrative statement. The notice must appear in the format prescribed by the Office of the Federal Register's *Document Drafting Handbook.*

(a) *Transmittal Letter.* The transmittal letter should be signed by the senior agency official responsible for implementation of the Act within the agency and should contain the name and telephone number of the individual who can best answer questions about the system. The letter should contain the agency's assurance that the proposed system does not duplicate any existing agency systems. It should also state that a copy of the report has been distributed to the Speaker of the House and the President of the Senate as the Act requires. The letter may also include requests for waiver of the reporting time period.

(b) *Narrative Statement.* the narrative statement should be brief. It should make reference, as appropriate, to information in the supporting documentation rather than restating such information. The statement should:

(*1*) Identify the authority under which the system is maintained. The agency should avoid citing housekeeping statutes, but rather cite the underlying programmatic authority for collecting, maintaining, and using the information. When the system is being operated to support an agency housekeeping program, e.g., a carpool locator, the agency may, however, cite a general housekeeping statute that authorizes the agency head to keep such records as are necessary.

(*2*) Provide the agency's evaluation of the probable or potential effects of the proposal on the privacy of individuals.

(*3*) Describe the relationship of the proposal, if any, to the other branches of the Federal Government and to State and local governments.

(*4*) Provide a brief description of the steps taken by the agency to minimize the risk of unauthorized access to the system of records. A more detailed assessment of the risks and specific administrative, technical, procedural, and physical safeguards established shall be made available to OMB upon request.

(*5*) Explain how each proposed routing use satisfies the compatability requirement of subsection (a)(7) of the Act.

(c) *Supporting Documentation.* Attach the following to all new or altered system reports:

(*1*) An advance copy of the new or altered system notice (consistent with the provisions of 5 U.S.C. 552a(e)(4)) that the agency proposes to publish for the new or altered system. For proposed altered systems the documentation should be in the same form as the agency proposes to publish in the public notice.

(*2*) An advance copy of any new rules or changes to published rules (consistent with the provision of 5 USC 552a(f), (j), and (k)) that the agency proposes to issue for the new or altered system. If no changes to existing rules are required, the report shall so state. Proposed changes to existing rules shall be provided in the same form as the agency proposes to publish for formal rulemaking.

(*3*) OMB control numbers, expiration dates, and titles of any OMB approved information collection requirements contained in the system of records. If the request for OMB clearance of an information collection is pending, the agency may simply state the title of the collection and the date it was submitted for OMB clearance.

(3) *Timing and Distribution for Submitting New and Altered System Reports.* Submit reports on new and altered systems of records not later than 60 days prior to establishment of a new system or the implementation of an altered system (5 U.S.C. 552a(o)). Submit three copies of each report to:

President of the Senate, Washington, D.C. 20510

Speaker of the House of Representatives, Washington, D.C. 20515

Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503

Agencies may assume that OMB concurs in their proposal if OMB has not commented within 60 days from the date the transmittal letter was signed. Agencies may publish system and routine use notices as well as exemption rules in the **Federal Register** at the same time that they send the new or altered system report to OMB and the Congress. The 60 day period for OMB and Congressional review and the 30 day notice and comment period for routine uses and exemptions will then run concurrently.

(4) *Waivers of Report Time Period.* The Director, OMB, may grant a waiver of the 60 day period if the agency asks for the waiver and can demonstrate compelling reasons. Agencies may assume that OMB concurs in their request if OMB has not commented within 30 days of the date the transmittal letter was signed. When a waiver is granted, the agency is not thereby relieved of any other responsibility or liability under the Act. Note that OMB cannot waive time periods specifically established by the Act. Agencies will still have to meet the statutory notice and comment periods required for establishing a routine use or claiming an exemption.

Appendix II—Cost Accounting, Cost Recovery, and Interagency Sharing of Information Technology Facilities

1. *Purpose.*

This appendix establishes procedures for cost accounting, cost recovery, and interagency sharing of Federal information technology facilities. The appendix revises procedures formerly contained in OMB Circular No. A–121, now rescinded.

2. *Applicability.*

This appendix applies to all information technology facilities that are operated by, or on behalf of, a Federal agency; provide service to more than one user; operate one or more general management computers; and have obligations in excess of $100,000 per year.

3. *Definitions.*

a. The term "information technology facility" means an organizationally defined set of personnel, hardware, software, and physical facilities, a primary function of which is the operation of information technology. An information technology facility includes:

(1) The personnel who operate computers or telecommunications systems; develop or maintain software; provide user liaison and training; schedule computers, prepare and control input data; control, reproduce, and distribute output data; maintain tape and disk libraries; provide security, maintenance, and custodial services; and directly manage or provide direct administrative support to personnel engaged in these activities.

(2) The owned or leased computer and telecommunications hardware, including central processing units; associated peripheral equipment such as disk drives, tape drives, drum storage, printers, card readers, and consoles; data entry equipment; data reproduction, decollation, booking, and binding equipment; telecommunications equipment used for the transfer of data between remote sites and the facility including telecommunications control units, terminals, modems, and dedicated telephone lines.

(3) The software, including operating system software, utilities, sorts, language processors, access methods, data base processors, and other similar multi-user software required by the facility for support of the facility and/or for general use by users of the facility. All software acquired or maintained by users of the facility is excluded.

(4) The physical facilities, including computer rooms; tape and disk libraries; stockrooms and warehouse space; office space; physical fixtures.

b. The term "full costs" means all significant expenses incurred in the operation of an information technology facility. The following cost elements are included:

(1) Personnel, including salaries, overtime, and fringe benefits of civilian and military personnel; training; and travel.

(2) Equipment, including depreciation for owned, capitalized equipment; rental costs; lease costs; and direct expenses for noncapitalized equipment.

(3) Software, including depreciation for capitalized costs of developing, converting, or acquiring software; rental costs for software; and direct expenses for noncapitalized acquisition of software.

(4) Supplies, including office supplies; data processing materials; and miscellaneous expenses.

(5) Contracted services, including technical and consulting services; equipment maintenance; data entry support; operations support; facilities management; maintenance of software; and telecommunications network services.

(6) Space occupancy, including rental and lease of buildings, general office furniture, and equipment; building maintenance; heating, air conditioning and other utilities; telephone services; and building security and custodial services.

(7) Intra-agency services, including the costs of normal agency support services, that are paid by the installation.

(8) Interagency services, including the costs of services provided by other agencies and departments, that are paid by the installation.

c. The term "user" means an organizational or programmatic entity that receives service from an information technology facility. A user may be either internal or external to the agency organization responsible for the facility.

d. The term "general management computer" means a digital computer that is used for any purpose other than as a part of a process control system, space system, mobile system, or a system meeting one of the exclusions identified in the Department of Defense Authorization Act of 1982.

4. *Cost Accounting, Cost Recovery, and Interagency Sharing for Information Technology Facilities.*

a. *Interagency Sharing.* Agencies shall:

(1) Share their information technology facilities with users from other agencies to the maximum extent feasible.

(2) Document sharing arrangements, where the total annual reimbursement exceeds $500,000, with individual written agreements that identify:

(a) Services available for sharing;

(b) Service priority procedures and terms (e.g., quality performance standards) to be provided to each user;

(c) Prices to be charged for providing services;

(d) Reimbursement arrangements for services provided;

(e) Arrangements for terminating the sharing agreement;

(3) Provide standard terms and conditions to users obtaining similar services insofar as possible.

(4) Use such sharing arrangements, when fully documented and part of a formal sharing program, in justifications to OMB for resource requests and allocations only where exceptional circumstances preclude the user agency from using alternative sources.

b. *Cost Accounting.* Agencies shall:

(1) Assure that agency cost accounting procedures are consistent with the Federal Government Accounting Pamphlet No. 4, "Guidelines for Accounting for Automatic Data Processing" (U.S. General Accounting Office, 1978), for the operation of information technology facilities where estimated full costs exceed $3 million per year

(2) Make annual estimates, using cost finding techniques, of the full costs of operating facilities where estimated costs are less than $3 million per year.

c. *User Cost Distribution System.* Agencies shall implement a user cost system to distribute the full cost of providing services. The user cost system will:

(1) Be consistent with guidance provided in the Federal Government Accounting Pamphlet No. 4 and in the Federal Information Processing Standards Publication No. 96, "Guidelines for Developing and Implementing a Charging System for Data Processing Services" (National Bureau of Standards, Department of Commerce, 1982).

(2) Price each service provided by the facility to the users of that service on an equitable cost sharing basis commensurate with the amount of resources required to provide that service and the priority of service provided. The cost of individual transactions may be estimated provided that they are periodically reconciled to assure that the full costs of operations are equitably allocated among all users. Fixed price arrangements for services during a specified period of time are permissable provided that such prices are periodically adjusted to assure an equitable allocation of costs.

(3) Directly distribute to the recipient of the services the full costs of dedicated services, including application systems developed and maintained; software unique to a single application; and remote terminals and modems.

d. *Cost Recovery.* Agencies shall:

(1) Submit periodic statements to all users of agency information technology facilities specifying the costs of services provided;

(2) Recover full costs from Federal users of the facility; and

(3) Recover costs from nonfederal users of the facilities consistent with OMB Circular No. A-25.

e. *Accounting for Reimbursements Received.* Agencies shall:

(1) Reduce agency budget and appropriation requests by the amount of planned reimbursements from shared information technology facilities;

(2) Prepare, at the close of each fiscal year a report that documents in the agency's official records the full cost of operating information technology facilities that recover more than $500,000 per year from sharing reimbursements. The report should document past year

costs and provide estimates for the current and budget years;

(3) Deposit to the U.S. Treasury as miscellaneous receipts the excess of reimbursements over full costs in any fiscal year; and

(4) Use, at agency discretion, the portion of reimbursements arising from equipment and software depreciation for the replacement and augmentation of information technology capital assets, provided such usage is specifically approved as part of the budget and appropriation.

5. *Selection of Information Technology Facilities to Support New Applications. In selecting information technology facilities to support new applications, agencies shall establish a management control procedure for determining which facility will be used to support each significant application. This procedure shall ensure that:*

(a) All alternative facilities are considered, including other Federal agency and nonfederal facilities and services;

(b) Agency rules do not require that priority be given to the use of in-house facilities;

(c) The user of the application has primary responsibility for selecting the facility; and

(d) Each selection decision is documented in the agency's official records.

6. *Assignment of Responsibilities.*

a. *All Federal Agencies.* The head of each agency shall:

(1) Establish policies and procedures and assign responsibilities to implement the requirements of this appendix; and

(2) Ensure that contracts awarded for the operation of compliance with the requirements of this appendix.

b. *General Services Administration.* The Administratior of General Services shall:

(1) Ensure that information technology facilities designated as Federal Data Processing Centers comply with the procedures established by this appendix;

(2) Ensure that provisions consistent with this appendix are included in contracts for the operation of information technology facilities when acquiring services of behalf of an agency;

7. *Implementation Requirements.*

Agencies shall implement the provisions of this appendix within 180 days of the publication of this Circular.

Appendix III—Security of Federal Automated Information Systems

1. *Purpose.* This appendix establishes a minimum set of controls to be included in Federal automated information systems security programs; assigns responsibilities for the security of agency automated information systems; and clarifies the relationship between such agency security programs and internal control systems established in accordance with OMB Circular No. A–123, Internal Control Systems. The appendix revises procedures formerly contained in Transmittal Memorandum No. 1 to OMB Circular No. A–71, now rescinded, and incorporates provisions from applicable national security directives.

2. *Definitions.*

a. The term "automated information system" means an information system (defined in section 6d of the Circular) that is automated.

b. The term "information technology installation" means one or more computer or office automation systems including related telecommunications, peripheral and storage units, central processing units, and operating and support system software. Information technology installations may range from information technology facilities such as large centralized computer centers to individual stand-alone microprocessors such as personal computers.

c. The term "sensitive data" means data that require protection due to the risk or magnitude or loss or harm that could result from inadvertent or deliberate disclosure, alteration, or destruction of the data. The term includes records about individuals requiring protection under the Privacy Act, proprietary data, and data not releasable under the Freedom of Information Act, as well as agency data that affect the agency's mission.

d. The term "sensitive application" means an application of information technology that requires protection because it processes sensitive data, or because of the risk and magnitude of loss or harm that could result from improper operation or deliberate manipulation of the application.

e. The term " security specifications" means a detailed description of the safeguards required to protect a sensitive application.

3. *Automated Information Systems Security Programs.* Agencies shall assure an adequate level of security for all agency automated information systems, whether maintained in-house or commercially. Specifically, agencies shall:

—Assure that automated information systems operate effectively and accurately;

—Assure that there are appropriate technical, personnel, administrative, environmental, and telecommunications safeguards in automated informations systems; and

—Assure the continuity of operation of automated information systems that support critical agency functions.

Agencies shall implement an automated information systems security program, including the preparation of policies, standards, and procedures. This program will be consistent with governmentwide policies, procedures, and standards issued by the Office of Management and Budget, the Department of Commerce, the Department of Defense, the General Services Administration, and the Office of Personnel Management. Agency programs shall, at a minimum, include three primary elements: applications security, personnel security, and information technology installation security.

a. *Applications Security.*

(1) *Management Control Process and Sensitivity Evaluation.* Agencies shall establish a management control process to assure that appropriate administrative, physical, and technical safeguards are incorporated into all new applications, and into significant modifications to existing applications. Management officials who are the primary users of applications should evaluate the sensitivity of new or existing applications being substantially modified. For those applications considered sensitive, the management control process shall, at a minimum, include security specifications and design reviews and systems tests.

(a) *Security Specifications.* Agencies shall define and approve security requirements and specifications prior to acquiring or starting formal development of the applications. The results of risk analyses performed at the information technology installation where the applications will be processed should be taken into account when defining and approving security specifications for the applications. Other vulnerabilities of the applications, such as in telecommunications links, shall also be considered in defining security requirements. The views and recommendations of the information technology user organization, the information technology installation, and the individual responsible for security at the installation shall be considered prior to the approval of security specifications for the applications.

(b) *Design Reviews and System Tests.* Agencies shall conduct and approve design reviews and system tests, prior to placing the application into operation, to assure the proposed design meets the approved security specifications. The

objective of the system tests should be to verify that required administrative, technical, and physical safeguards are operationally adequate. The results of the design reviews and system tests shall be fully documented and maintained in the official agency records.

(c) *Certification.* Upon completion of the system tests, an agency official shall certify that the system meets all applicable Federal policies, regulations, and standards, and that the results of the tests demonstrate that the installed security safeguards are adequate for the application.

(2) *Periodic Review and Recertification.* Agencies shall conduct periodic audits or reviews of sensitive applications and recertify the adequacy of security safeguards. Audits or reviews shall evaluate the adequacy of implemented safeguards, assure they are functioning properly, identify vulnerabilities that could heighten threats to sensitive data or valuable resources, and assist with the implementation of new safeguards where required. They are intended to provide a basis for recertification of the security of the application. Recertification shall be fully documented and maintained in the official agency records. Audits or reviews and recertifications shall be performed at least every three years. They should be considered as part of agency vulnerability assessments and internal control reviews conducted in accordance with OMB Circular No. A–123. Security or other control weaknesses identified shall be included in the annual internal control assurance letter and report required by Circular No. A–123.

(3) *Contingency Plans.* Agencies shall establish policies and assign responsibilities to assure that appropriate contingency plans are developed and maintained by end users of information technology applications. The intent of such plans is to assure that end users can continue to perform essential functions in the event their information technology support is interrupted. Such plans should be consistent with disaster recovery and continuity of operations plans maintained by the installation where the application is processed.

b. *Personnel Security.* Agencies shall establish and manage personnel security policies and procedures for screening all individuals participating in the design, development, operation, or maintenance of Federal automated information systems. The level of screening required by these policies should vary from minimal checks to full background investigations, depending upon the sensitivity of the information to be handled and the risk and magnitude of loss or harm that could be caused by the individual. These policies shall be established for both Federal and contractor personnel. Personnel security policies for Federal employees shall be consistent with policies issued by the Office of Personnel Management.

c. *Information Technology Installation Security.* Agencies shall assure that an appropriate level of security is maintained at all information technology installation operated by or on behalf of the Federal government (e.g., government-owned, contractor-operated installations).

(1) *Assigning Responsibility.* Agencies shall assign responsibility for the security of each installation to a management official knowledgeable in information technology and security matters.

(2) *Periodic Risk Analysis.* Agencies shall establish a program for the conduct of periodic risk analyses at each installation to ensure that appropriate, cost effective safeguards are incorporated into existing and new installations. The objective of a risk analysis is to provide a measure of the relative vulnerabilities and threats to an installation so that security resources can be effectively distributed to minimize potential loss. Risk analyses may vary from an informal review of a microcomputer installation to a formal, fully quantified risk analysis of a large scale computer system. The results of these analyses should be documented and taken into consideration by management officials when certifying sensitive applications systems processed at the installation. Such analyses should also be consulted during the evaluation of general controls over the management of information technology installations conducted in accordance with OMB Circular No. A–123. A risk analysis shall be performed:

(a) Prior to the approval of design specifications for new installations;

(b) Whenever a significant change occurs to the installations (e.g., adding a local area network; changing from batch to online processing; adding dial-up capability). Agency criteria for defining significant change shall be commensurate with the sensitivity of the data processed by the facility.

(c) At periodic intervals established by the agency commensurate with the sensitivity of the data processed, but not to exceed every five years if no risk analysis has been performed during that period.

(3) *Disaster and Continuity Plan.* Agencies shall maintain disaster recovery and continuity of operations plans for all information technology installations. The objective of these plans should be to provide reasonable continuity of data processing support should events occur that prevent normal operations at the installation. For large installations, the plans should be fully documented and operationally tested periodically, at a frequency commensurate with the risk and magnitude of loss or harm that could result from disruption of information technology support.

(4) *Acquisition Specifications.* Agencies shall establish policies and responsibilities to assure that appropriate technical, administrative, physical, and personnel security requirements are included in specifications for the acquisition or operation of information technology installations, equipment, software, and related services, whether procured by the agency or by GSA. These security requirements shall be reviewed and approved by the management official responsible for security at the installation making the acquisition.

d. *Trainging Programs for Automated Information Systems Security.* Agencies shall establish a security awareness and training program to assure that agency and contractor personnel involved in the management, operation, programming, maintenance, or use of information technology are aware of their security responsibilities and know how to fulfill them. Users of information technology systems should be apprised of the vulnerabilities of such systems and trained in techniques to enhance security.

4. *Assignment of Responsibilities.*

a. *Department of Commerce.* The Secretary of Commerce shall:

(1) Develop and issue standards and guidelines for assuring the security of Federal automated information systems; and

(2) Provide technical assistance to Federal agencies in implementing those standards and guidelines.

b. *Department of Defense.* The Secretary of Defense shall:

(1) Act, in accordance with applicable national security directives, as executive agent of the government for the security of automated information systems that process information the loss of which could adversely affect the national security interest; and

(2) Provide technical material and assistance to Federal agencies concerning security of Federal automated information systems, including acquisition and use of encryption devices approved by the

National Security Agency for telecommunications security.

c. *General Services Administration.* The Administrator of General Services shall:

(1) Issue policies and regulations for the physical and environmental security of computer rooms in Federal buildings consistent with standards issued by the Department of Commerce and the Department of Defense.

(2) Assure that agency procurement requests for computers, software, telecommunications services, and related services include security requirements. Delegations of procurement authority to agencies by GSA under mandatory programs, dollar threshold delegations, certification programs, or other so-called blanket delegations shall include requirements for agency specification of security requirements.

(3) Assure that information technology equipment, software, computer room construction, guard or custodial services, telecommunications services, and any other related services procured by GSA meet the security requirements established and specified by the user agency and are consistent with other applicable policies and standards issued by OMB, the Department of Commerce, the Department of Defense, and the Office of Personnel Management.

d. *Office of Personnel Mangement.* The Director, Office of Personnel Management, shall establish personnel security policies for Federal personnel associated with the design, programming, operation, maintenance, or use of Federal automated information systems. Requirements for personnel checks imposed by these policies should vary commensurate with the risk and magnitude of loss or harm that could be caused by the individual. The checks may range from merely normal reemployment screening procedures to full background investigations.

5. *Reports.* In their annual internal control report to the President and the Congress, required under OMB Circular No. A–123, agencies shall:

a. Describe any material weaknesses identified during audits or reviews of sensitive applications or when conducting risk analyses of installations; and

b. Provide assurance that there is adequate security of agency automated information systems.

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