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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV94-955-2FIR]

Vidalia Onions Grown in Georgia; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenses and established an assessment rate that will generate funds to pay those expenses. Authorization of this budget enables the Vidalia Onion Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: September 16, 1994, through September 15, 1995.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Aleck J. Jonas, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 813–299–4770.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 955 (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Vidalia onions are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions handled during the 1994–95 fiscal period, which began September 16, 1994, and ends September 15, 1995. This final rule will not preempt any State or local law, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 250 producers of Georgia Vidalia onions under this marketing order, and approximately 145 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Vidalia onion producers and handlers may be classified as small entities.

The budget of expenses for the 1994–95 fiscal period was prepared by the Vidalia Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of Vidalia onions. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Vidalia onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met July 14, 1994, and unanimously recommended a 1994–95 budget of $332,000, $69,050 more than the previous year. Budget items for 1994–95 which have increased compared to those budgeted for 1993–94 (in parentheses) are: Travel & auto expenses, $6,000 ($4,000), liability insurance and bonds, $1,000 ($500), professional fees, $2,500 ($2,000), office supplies, $3,000 ($1,300), telephone, $4,000 ($3,500), Committee member expense, $1,000 ($500), contract management, wages, and salaries, $60,000 ($59,600), miscellaneous general and administrative, $1,000 ($500), research, $80,000 ($78,500), marketing, $132,000 ($82,500), and $4,250 for FICA employer, $13,500 for employee benefits, and $8,000 for contract outside labor, for which no funding was recommended last year. Items which have decreased compared to those budgeted for 1993–94 (in parentheses) are: Equipment purchases, $3,000 ($4,500), office overhead, $3,000 ($12,900), and $150 in interest, and

$250 for petty cash, for which no funding was recommended this year.

The Committee also unanimously recommended an assessment rate of $0.10 per 50-pound bag or equivalent of Vidalia onions, the same as last year. This rate, when applied to anticipated shipments of 2,867,500 50-pound bags or equivalents of Vidalia onions, would yield $286,750. The Committee also anticipates shipments of 50,000 50-pound bags of previously unassessed Vidalia onions which have been in storage, which will yield an additional $5,000 in assessment income. This, along with $5,250 in interest income and $35,000 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the Committee's authorized reserve of $167,766 are within the maximum permitted by the order of three fiscal periods' expenses.

An interim final rule was published in the **Federal Register** on September 1, 1994 (59 FR 45188). That interim final rule added § 955.207 to authorize expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through October 3, 1994. No comments were received.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

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

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1994–95 fiscal period began on September 16, 1994. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period. In addition, handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

Accordingly, the interim final rule amending 7 CFR part 955 which was published at 59 FR 45188 on September 1, 1994, is adopted as a final rule without change.

Dated: October 28, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–27232; Filed 11–2–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 966

[Docket No. FV94–966–2IFR]

Tomatoes Grown in Florida; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 966 for the 1994–95 fiscal period. Authorization of this budget enables the Florida Tomato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective August 1, 1994, through July 31, 1995. Comments received by December 5, 1994, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Aleck J. Jonas, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 813–299–4770.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Florida tomatoes are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable tomatoes handled during the 1994–95 fiscal period, which began August 1, 1994, and ends July 31, 1995. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 250 producers of Florida tomatoes under this marketing order, and approximately 50 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Florida tomato producers and handlers may be classified as small entities.

The budget of expenses for the 1994–95 fiscal period was prepared by the Florida Tomato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers of Florida tomatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida tomatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met September 8, 1994, and unanimously recommended a 1994–95 budget of $2,215,000, $467,000 less than the previous year. Budget items for 1994–95 which have increased compared to those budgeted for 1993–94 (in parentheses) are: Office salaries, $297,300 ($276,000), depreciation, $18,200 ($16,200), communications, $12,000 ($10,000), employee's retirement program, $46,600 ($37,300), insurance and bonds, $7,000 ($5,000), office rent, $24,700 ($22,600), social security tax, $20,000 ($19,000), supplies and printing, $7,500 ($6,500), and audit, $2,500 ($2,300). Items which have decreased compared to those budgeted for 1993–94 (in parentheses) are: Research expense, $192,100 ($200,000), and education and promotion expense, $1,500,000 ($2,000,000). All other items are budgeted at last year's amounts.

The Committee also unanimously recommended an assessment rate of $0.04 per 25-pound container, the same as last year. This rate, when applied to anticipated shipments of 55,000,000 25-pound containers, will yield $2,200,000 in assessment income. This, along with $15,000 in interest and other income, will be adequate to cover budgeted expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period began on August 1, 1994, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable tomatoes handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and it is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 966.232 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 966.232 Expenses and assessment rate.

Expenses of $2,215,000 by the Florida Tomato Committee are authorized, and an assessment rate of $0.04 per 25-pound container of Florida tomatoes is established for the fiscal period ending July 31, 1995. Unexpended funds may be carried over as a reserve.

Dated: October 28, 1994.

Larry B. Lace,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–27233 Filed 11–2–94; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 92–067–2]

RIN 0579–AA50

Dry-Cured Pork Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending our regulations to allow certain dry-cured pork products processed in a specified manner to be imported into the United States from countries where foot-and-mouth disease, rinderpest, African swine fever, hog cholera, or swine vesicular disease exists. We are making this change because we have determined that certain dry-cured pork products, if processed in accordance with the regulatory requirements, can be imported into the United States without presenting a significant risk of introducing these specified diseases.

EFFECTIVE DATE: December 5, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. John H. Blackwell, Senior Staff Microbiologist, Import-Export Products Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 758, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (the regulations) regulate, among other things, the importation into the United States of pork and pork products in order to prevent the introduction into the United States of foot-and-mouth disease (FMD), rinderpest, African swine fever (ASF), hog cholera (HC), and swine vesicular disease (SVD).

On April 15, 1994, we published in the **Federal Register** (59 FR 17999–18003, Docket No. 92–067–1) a proposal to amend the regulations by allowing the importation into the United States of certain dry-cured pork products that have been processed in accordance with procedures used in Spain to manufacture products known as Serrano hams, Iberian hams, Iberian pork shoulders, and Iberian pork loins.

Comments on the Proposed Rule

We solicited comments concerning our proposal for a 60-day comment period ending June 14, 1994. We received four comments by that date. They were from the Department of Agriculture, Fisheries, and Nutrition of the Kingdom of Spain, a Spanish meat exporters association, and two organizations representing U.S. meat industries. We carefully considered all the comments we received. These comments are discussed below in detail.

In response to the comments, APHIS is making several changes to the proposed requirements.

Comment: The proposal would have amended various paragraphs of § 94.17 by adding the term "dry-cured" before "ham" or "hams." The term "dry cured" was incorrectly added in several places where the hams referred to would not yet have finished the curing process. The term "dry cured" should not be added before "ham" or "hams" in § 94.17, paragraphs (a) through (g).

Response: We agree, and are making the suggested change.

Comment: In the current regulations, § 94.17(a) requires that hams subject to the regulations must come from "a swine that was never out of the country in which the ham was processed." Because the proposal did not propose to amend this country of origin requirement, only hams, pork shoulders, and pork loins that originated in the country in which they were processed would be eligible to be imported under the proposed regulations. For example, products processed in accordance with the regulations in Spain could not be imported if they were derived from swine from other countries. However, the proposed processing would render the articles safe to import regardless of the country in which the swine originated. Paragraph (a) of § 94.17 should be amended to allow hams, pork shoulders, and pork loins derived from swine from any country to be eligible for importation, if the products are processed in accordance with the regulations.

Response: We agree that it is not necessary to limit the regulations to hams, pork shoulders, and pork loins that originate in the country where they are processed, as long as all the processing requirements are met. We are amending § 94.17(a) to eliminate the origin requirement for the articles. However, since processing facilities may frequently change suppliers, eliminating the origin requirement could result in the mixing at processing facilities of meat products originating from countries where SVD exists and meat products from countries free of SVD. Because of this, we are also amending proposed paragraphs (o)(2) (ii) and (iii) of § 94.17 to ensure that Serrano and Iberian hams processed under the regulations are processed for 560 days, the period necessary to destroy the SVD agent in Serrano and Iberian hams, if the hams are processed either in a country where SVD exists, or in a facility that may also process meat from countries where SVD exists (i.e., any facility other than one authorized by the veterinary services of the national government to process only meat from countries free of swine vesicular disease). This additional processing time only applies to Serrano and Iberian hams, not to Italian-type hams, Iberian pork shoulders, and Iberian pork loins, because the processing time already required for these latter products is sufficient to destroy the SVD agent.

Comment: The proposed requirements for importing hams, pork shoulders, and pork loins include a step where they are frozen to −40 °C and kept frozen at −18 °C for at least 30 days (§ 94.17, paragraphs (i)(2)(i), (i)(3)(i), (i)(4)(i), and (i)(5)(i)). In reviewing the research by the Foreign Animal Diseases Diagnostic Laboratory on which the proposal was based, it does not appear that this freezing step is necessary to eliminate disease risk. The freezing requirements should be removed, and the requirements describing how frozen hams, pork shoulders, and pork loins should be thawed should be reworded to make it clear that freezing is optional, not required.

Response: We agree, and are deleting the paragraphs cited above that contain the freezing requirement and are rephrasing the thawing requirements to indicate that they only apply if the hams, pork shoulders, or pork loins are received frozen. The freezing requirement was inadvertently included in the proposal because certain test hams were kept frozen at these temperatures, but the research did not indicate that freezing reduces disease risk for the products.

Comment: The relative humidity proposed for Serrano hams during the salt curing or pickling phase is 75 to 85 percent (proposed § 94.17(i)(2)(iii)); the range proposed for Iberian hams is 70 to 80 percent (proposed § 94.17(i)(3)(iii)); for Iberian pork shoulders, it is 75 to 95 percent (proposed § 94.17(i)(4)(iii)), and for Iberian pork loins, it is 75 to 85 percent (proposed § 94.17(i)(5)(iii)). The research [1] on which the proposal was based suggests that a range of 75 to 95 percent is appropriate for all four products.

Response: We agree. We are changing the processing requirements for all four products to require a range of 75 to 95 percent relative humidity during the salt curing or pickling stage. Because of the renumbering of paragraphs necessary due to our deletion of the freezing requirement (discussed above), the humidity requirements for the salt curing or pickling stage now appear in § 94.17(i)(2)(ii), (i)(3)(ii), (i)(4)(ii), and (i)(5)(ii). The humidity requirements for stages of processing other than the salt curing or pickling stage have not been changed from what was proposed.

Comment: In proposed § 94.17(j)(2), the requirement that each ham or pork shoulder bear a plastic tag stating the date the ham or pork shoulder entered the processing establishment is unnecessary. The same paragraph requires that the products bear an ink seal containing the date that salting began.

Response: We agree, and are deleting the requirement for the plastic tag. The ink seal records the date (day, month, and year) that salting begins, and this date is more useful for determining whether products have been properly cured than the less specific date requirement proposed for the plastic tag (the month and year that the ham or pork shoulder entered the processing establishment).

Comment: Proposed § 94.17(j)(3) would require that pork loins have packaging material that remains intact throughout processing and bears the identifying number of the processing establishment. This is not possible, since the packaging material must be removed when the pork loin is placed

[1] Copies of the research may be obtained from the office identified in the "For Further Information Contact:" section of this final rule.

in the pickle preparation. The processing establishment number should instead be recorded on the plastic tag also required by this paragraph, which can remain on the product throughout processing.

Response: We agree, and are making the requested change.

Comment: Proposed § 94.17(m) (3), (4), and (5) would require that Iberian hams, pork shoulders, and pork loins would have to come from a swine of the Iberico breed of black pigs. The word "black" should be deleted, as Iberico breeds include pigs of several skin colors, all of which are equally suitable for processing under the regulations. The color of the skin of the Iberico breed does not alter the way in which viruses present in the meat respond to processing.

Response: We agree, and are making the suggested change.

Comment: No assurance has been given that the proposed requirements for the controlled curing and long-term drying of these products will in fact be followed. A failure to follow the proposed procedures could significantly increase the risk of introducing foot-and-mouth disease, rinderpest, African swine fever, hog cholera, or swine vesicular disease into the United States.

Response: We believe that a number of controls exist to ensure that the regulatory requirements will be followed. The Spanish Ministry of Agriculture exercises supervision over all animal importation and meat processing in Spain, and will cooperate in enforcing the requirements. In addition, the U.S. Department of Agriculture's Animal and Plant Health Inspection Service and Food Safety and Inspection Service inspect establishments participating in this program and review their records. The official ink seals required on these products by the regulations provide a reliable check for some of the most important requirements—ensuring that the products come from an approved establishment and were processed for the required time period.

Comment: These products should not be imported until a procedure is available to test the products at the time of importation for freedom from the disease agents of concern.

Response: Such a test is not now available; currently, identifying the disease agents of concern requires extensive laboratory analysis. We do not expect early development of a practical test that could be used at the time of importation. We have instead developed procedures, based on research, that have proven effective in eliminating the disease agents, and have implemented regulatory controls to ensure that the procedures are followed. We do not believe that it is necessary to prohibit the proposed importations until a test is available.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule, with the changes discussed above.

Executive Order 12866 and Regulatory Flexibility Act

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

The Animal and Plant Health Inspection Service (APHIS) estimates that, under these regulations, between 5 and 15 metric tons of dry-cured hams, pork shoulders, and pork loins will be imported into the United States during the first year that importation is allowed. Products imported in accordance with the regulations will have an approximate retail value between $352,500 and $1,057,500. In Spain, these products sell for approximately $32 per pound. We anticipate the price per pound in the United States will be higher.

Over the next decade, we estimate annual imports will plateau as United States markets for the products are developed. These products are all high-value products, and not likely to be purchased for home consumption. Instead, we anticipate most of these products will be purchased for resale by delicatessens, restaurants, and caterers. Within the next 20 years, APHIS estimates that the retail value of imported dry-cured pork products described in this document will average between $33 and $66.1 million (50–100 metric tons) annually. This can be compared with the dry-cured pork products, all of which are hams, currently being imported into the United States. In 1990, approximately 429 metric tons of these hams were imported. These dry-cured hams retail in the United States for approximately $16 per pound.

Dry-cured pork products exactly like those allowed to be imported into the United States under the regulations are not produced in the United States. Certain dry-cured pork products produced in Virginia do resemble, in appearance, the products the final rule allows to be imported. However, the Virginia products have a significantly higher salt concentration and a significantly different taste.

Genuine Virginia dry-cured hams are produced by four producers in Smithfield, VA. Two of these producers are small entities. Wholesale production statistics and prices are not available due to propriety concerns. However, genuine Virginia dry-cured hams retail for approximately $4 per pound.

Based on these facts, we anticipate that competition between United States-produced dry-cured pork products and the proposed imported dry-cured pork products will be insignificant.

In 1990, the United States produced 9,652,933 metric tons of pork and pork products, valued at about $11.3 billion. Additionally, the United States imported about 232,253 metric tons of pork. Imports accounted for about 2 percent of the pork available in the domestic market during 1990. Figures for 1990 indicate that approximately 429 metric tons of dry-cured pork products were imported under the current regulations. This compares with 349,119 metric tons of all pork products imported during 1990, or 0.0012 percent. Potential imports of dry-cured pork products would therefore account for less than 1 percent of total annual pork imports.

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

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with it; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0015.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 94.17 is amended as follows:

a. The heading is revised to read as set forth below.

b. The introductory text is amended by adding "dry-cured" before "ham" and by adding ", pork shoulder, or pork loin" after "ham".

c. Paragraph (a) is revised to read as set forth below.

d. Paragraphs (b), (c), (d), (e), (f), (g), (k), (l), and (n) are amended by adding ", pork shoulder, or pork loin" after "ham" each time it appears.

e. Paragraphs (f) and (g) are amended by adding ", pork shoulders, or pork loins" after "hams" each time it appears.

f. Paragraphs (k), (l), and (n) are amended by adding "dry-cured" before "ham" each time it appears.

g. Paragraph (h) is revised to read as set forth below.

h. Paragraph (i) is redesignated as paragraph (i)(1); redesignated paragraph (i)(1) is amended by adding, at the beginning of the paragraph, before the word "The", the heading "Italian-type hams.", and at the end of the paragraph, by removing the clause "; and during all of the procedures described above the ham had no contact with any meat or animal product other than pork fat that was treated to at least 76 °C. (168.8 °F.) that may have been placed over the ham during curing;" and adding a period after the word "reached".

i. A new paragraph (i) introductory text and paragraphs (i)(2), (i)(3), (i)(4), and (i)(5) are added to read as set forth below.

j. Paragraph (j) is redesignated as paragraph (j)(1), and redesignated paragraph (j)(1) is amended by adding, at the beginning of the paragraph after the words "The ham", the phrase ", if it is Italian-type ham processed in accordance with paragraph (i)(1) of this section,".

k. New paragraphs (j)(2) and (j)(3) are added to read as set forth below.

l. Paragraph (m) is redesignated as paragraph (m)(1), and redesignated paragraph (m)(1) is amended by adding, at the beginning of the paragraph, after the words "The ham", the phrase ", if it is an Italian-type ham processed in accordance with paragraph (i)(1) of this section,".

m. A new paragraph (m) introductory text and paragraphs (m)(2), (m)(3), (m)(4), and (m)(5) are added to read as set forth below.

n. Paragraph (o) is revised to read as set forth below.

§ 94.17 Dry-cured pork products from countries where foot-and-mouth disease, rinderpest, African swine fever, hog cholera, or swine vesicular disease exists.

* * * * *

(a) Except for Italian-type hams, Serrano hams, Iberian hams, Iberian pork shoulders, and Iberian pork loins that have been processed in accordance with paragraph (i) of this subpart, the dry-cured ham, pork shoulder, or pork loin came from a swine that was never out of the country in which the dry-cured ham, pork shoulder, or pork loin was processed;

* * * * *

(h) Workers who handle fresh pork in the processing establishment where the dry-cured ham, pork shoulder, or pork loin was processed are required to shower and put on a full set of clean clothes, or to wait 24 hours after handling fresh pork, before handling hams, pork shoulders, or pork loins that have progressed in the aging/curing process as follows:

(1) In the case of Italian-type hams processed in accordance with paragraph (i)(1) of this section, those that have progressed beyond the final wash stage;

(2) In the case of Serrano hams or Iberian hams or pork shoulders processed in accordance with paragraphs (i)(2), (i)(3), or (i)(4) of this section, those that have progressed beyond salting; and

(3) In the case of Iberian pork loins processed in accordance with paragraph (i)(5) of this section, those that have progressed beyond being placed in a casing.

(i) The dry-cured ham, pork shoulder, or pork loin was processed in accordance with this paragraph. Except for pork fat treated to at least 76 °C (168.8 °F), which may have been placed over the meat during curing, the dry-cured pork product must have had no contact with any other meat or animal product during processing.

(1) * * *

(2) *Serrano hams.* Serrano hams were processed as follows (190-day minimum curing process):

(i) If the ham is received frozen, it was thawed in a chamber with relative humidity between 70 and 80 percent, with room temperature maintained at 12 °C to 13 °C (53.6 °F to 55.4 °F) for the first 24 hours, then at 13 °C to 14 °C (55.4 °F to 57.2 °F) until the internal temperature of the ham reached 3 °C to 4 °C (37.4 °F to 39.2 °F), at which point the blood vessels at the end of the femur were massaged to remove any remaining blood.

(ii) The ham was covered in salt and placed in a chamber maintained at a temperature from 0 °C to 4 °C (32 °F to 39.2 °F), with relative humidity between 75 and 95 percent, for a period no less than 0.65 days per kg and no more than 2 days per kg of the weight of the ham.

(iii) The ham was rinsed with water and/or brushed to remove any remaining surface salt.

(iv) The ham was placed in a chamber maintained at a temperature of 0 °C to 6 °C (32 °F to 42.8 °F), with a relative humidity of 70 to 95 percent, for no less than 40 and no more than 60 days;

(v) The ham was placed for curing in a chamber with a relative humidity of 60 to 80 percent and a temperature gradually raised in 3 phases, as follows:

(A) A temperature of 6 °C to 16 °C (42.8 °F to 60.8 °F), maintained for a minimum of 45 days;

(B) A temperature of 16 °C to 24 °C (60.8 °F to 75.2 °F), maintained for a minimum of 35 days;

(C) A temperature of 24 °C to 34 °C (75.2 °F to 93.2 °F), maintained for a minimum of 30 days;

(vi) Finally, with the relative humidity unchanged at 60 to 80 percent, the temperature was lowered to 12 °C to 20 °C (53.6 °F to 68 °F) and maintained at that level for a minimum of 35 days, until at least 190 days after the start of the curing process; *Except that:* In a country where swine vesicular disease exists, the ham must be maintained at that level an additional 370 days, until at least 560 days after the start of the curing process.

(3) *Iberian hams.* Iberian hams were processed as follows (365-day minimum curing process):

(i) If the ham is received frozen, it was thawed in a chamber with relative humidity between 70 and 80 percent, with room temperature maintained at 5.5 °C to 6.5 °C (41.9 °F to 43.7 °F) for the first 24 hours, then at 9.5 °C to 10.5 °C (49.1 °F to 50.9 °F) until the internal temperature of the ham reached 3 °C to 4 °C (37.4 °F to 39.2 °F), at which point the blood vessels at the end of the femur were massaged to remove any remaining blood.

(ii) The ham was covered in salt and placed in a chamber maintained at a

temperature from 0 °C to 4 °C (32 °F to 39.2 °F), with relative humidity between 75 and 95 percent, and kept in the chamber for a period no less than 0.65 days per kg and no more than 2 days per kg of the weight of the ham;

(iii) The ham was rinsed with water and/or brushed to remove any remaining surface salt.

(iv) The ham was placed in a chamber maintained at a temperature of 0 °C to 6 °C (32 °F to 42.8 °F), with relative humidity of 70 to 95 percent, for no less than 40 and no more than 60 days.

(v) The ham was placed for curing in a chamber with a temperature of 6 °C to 16 °C (42.8 °F to 60.8 °F) and relative humidity of 60 to 80 percent for a minimum of 90 days.

(vi) The temperature was raised to 16 °C to 26 °C (60.8 °F to 78.8 °F) and the relative humidity reduced to 55 to 85 percent, for a minimum of 90 days.

(vii) Finally, with the relative humidity raised to 60 to 90 percent, the temperature was lowered to 12 °C to 22 °C (53.6 °F to 71.6 °F) and maintained at that level for a minimum of 115 days, until at least 365 days after the start of the curing process; *Except that:* In a country where swine vesicular disease exists, the ham must be maintained at that level an additional 195 days, until at least 560 days after the start of the curing process.

(4) *Iberian pork shoulders.* Iberian pork shoulders were processed as follows (240-day minimum curing process):

(i) If the pork shoulder is received frozen, it was thawed at a room temperature of 12 °C to 13 °C (53.6 °F to 55.4 °F), with the relative humidity between 75 and 85 percent, for approximately 24 hours, until the internal temperature reached 3 °C to 4 °C (37.4 °F to 39.2 °F), at which point the blood vessels in the scapular region were massaged to remove any remaining blood.

(ii) The pork shoulder was covered in salt and placed in a chamber maintained at a temperature of 0 °C to 4 °C (32 °F to 39.2 °F) with the relative humidity between 75 and 95 percent, for a period of no less than 0.65 days per kg and no more than 2 days per kg of the weight of the pork shoulder.

(iii) The pork shoulder was rinsed with water and/or brushed to remove any remaining surface salt.

(iv) The pork shoulder was placed in a chamber maintained at a temperature of 0 °C to 6 °C (32 °F to 42.8 °F) and a relative humidity of 70 to 95 percent for not less than 40 days and not more than 60 days.

(v) The pork shoulder was placed for curing in a chamber at a temperature of 6 °C to 16 °C (42.8 °F to 60.8 °F) and a relative humidity of 60 to 80 percent for a minimum of 90 days.

(vi) The temperature was raised to 16 °C to 26 °C (60.8 °F to 78.8 °F) and the relative humidity was changed to 55 to 85 percent, and those levels were maintained for a minimum of 90 days.

(vii) Finally, the temperature was reduced to 12 °C to 22 °C (53.6 °F to 71.6 °F) and the relative humidity was raised to 60 to 90 percent for a minimum of 45 days, until at least 240 days after the start of the curing process.

(5) *Iberian pork loins.* Iberian pork loins were processed as follows (130-day minimum curing process):

(i) If the pork loin is received frozen, it was thawed at a room temperature maintained at 11 °C to 12 °C (51.8 °F to 53.6 °F), with the relative humidity between 70 and 80 per cent for the first 24 hours, then between 75 and 85 percent, until the loin's internal temperature reached 3 °C to 4 °C (37.4 °F to 39.2 °F), at which point the external fat, aponeurosis, and tendons were cleaned from the loin.

(ii) The pork loin was covered in a pickle preparation (25–30 grams of salt for each kilogram of pork loin) and placed in a chamber where it was maintained at a relative humidity of 75 to 95 percent and a temperature of 3 °C to 4 °C (37.4 °F to 39.2 °F) for 72 hours.

(iii) The pork loin was removed from the pickle preparation (25–30 grams of salt for each kilogram of pork loin), externally cleaned (brushed or rinsed), placed in an artificial casing, and fastened shut with a metal clip.

(iv) The pork loin was placed for curing in a chamber with a relative humidity of 60 to 90 percent and a temperature gradually raised in 3 phases, as follows:

(A) A temperature of 2 °C to 6 °C (35.6 °F to 42.8 °F), maintained for a minimum of 20 days;

(B) A temperature of 6 °C to 15 °C (42.8 °F to 59.0 °F), maintained for a minimum of 20 days;

(C) A temperature of 15 °C to 25 °C (59.0 °F to 77.0 °F), maintained for a minimum of 40 days;

(v) Finally, with the relative humidity unchanged at 60 to 80 percent and the temperature lowered to 0 °C to 5 °C (32.0 °F to 41.0 °F), the pork loin was vacuum-packed and maintained under those conditions for a minimum of 15 days, until at least 130 days after the start of the curing process.

(j)(1) * * *

(2) The dry-cured ham, if it is processed in accordance with paragraphs (i)(2) or (i)(3) of this section, or the dry-cured pork shoulder, if it is processed in accordance with paragraph (i)(4) of this section, bears an ink seal (with the identifying number of the slaughtering establishment) which was placed thereon at the slaughtering establishment under the direct supervision of a person authorized to supervise such activity by the veterinary services of the national government of the country of origin, and an ink seal (with the identifying number of the processing establishment and the date the salting began) which was placed thereon at the processing establishment, immediately prior to salting, under the supervision of a person authorized to supervise such activity by the veterinary services of the national government of the country of origin; or

(3) The dry-cured pork loin, if it is processed in accordance with paragraph (i)(5) of this section, is packaged with material that bears a seal of the government of the country of origin which was placed thereon at the slaughtering establishment under the direct supervision of a person authorized to supervise such activity by the veterinary services of the national government of the country of origin, and bears a tamper-proof plastic tag, securely attached to the pork loin itself, that states the identifying number of the slaughtering establishment and the date the pork loin was placed in the pickle preparation under the supervision of a person authorized to supervise such activity by the veterinary service of the national government of the country of origin.

* * * * *

(m) The dry-cured ham, pork shoulder, or pork loin was processed in accordance with one of the following criteria:

(1) * * *

(2) The Serrano ham, processed in accordance with paragraph (i)(2) of this section, and came from any breed of large, white swine, including but not limited to Landrace, Pietrain, Duroc, Jersey, Hampshire, and Yorkshire breeds, and crosses of such breeds;

(3) The Iberian ham, processed in accordance with paragraph (i)(3) of this section, and came from a swine of the Iberico breed of pigs;

(4) The Iberian pork shoulder, processed in accordance with paragraph (i)(4) of this section, and came from a swine of the Iberico breed of pigs;

(5) The Iberian pork loin, if processed in accordance with paragraph (i)(5) of this section, and came from a swine of the Iberico breed of pigs.

* * * * *

(o) The dry-cured ham, pork shoulder or pork loin is accompanied at the time of importation into the United States by

a certificate issued by a person authorized to issue such certificates by the veterinary services of the national government of the country of origin, stating:

(1) That all the provisions of this section have been complied with, including paragraphs (i) and (m) of this section;

(2) The paragraph of this section under which the dry-cured ham, pork shoulder, or pork loin was processed; and stating further that, if the product covered by the certificate:

(i) Is an Italian-type ham processed under paragraph (i)(1) of this section, it was processed for a minimum of 400 days;

(ii) Is a Serrano ham processed under paragraph (i)(2) of this section, it was:

(A) Processed for a minimum of 190 days in a country free of swine vesicular disease, in a facility authorized by the veterinary services of the national government of that country to process only meat from countries free of swine vesicular disease; or,

(B) Processed for a minimum of 560 days in any country, in a facility that may also process meat from countries where swine vesicular disease exists;

(iii) Is an Iberian ham processed under paragraph (i)(3) of this section, it was:

(A) Processed for a minimum of 365 days in a country free of swine vesicular disease, in a facility authorized by the veterinary services of the national government of that country to process only meat from countries free of swine vesicular disease; or,

(B) Processed for a minimum of 560 days in any country, in a facility that may also process meat from countries where swine vesicular disease exists;

(iv) Is a dry-cured pork shoulder, it was processed in accordance with paragraph (i)(4) of this section for a minimum of 240 days; or

(v) Is a dry-cured pork loin, it was processed in accordance with paragraph (i)(5) of this section for a minimum of 130 days.

Done in Washington, DC, this 27th day of October 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–27274; Filed 11–2–94; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Regulation K; Docket No. R–0793]

International Banking Operations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board or Federal Reserve) amends its Regulation K concerning the permissible activities of state-licensed branches and agencies of foreign banks. Section 202(a) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA or Act) provides that after December 19, 1992, a state-licensed branch or agency of a foreign bank may not engage in any activity that is not permissible for a federal branch of a foreign bank unless the Board has determined that the activity is consistent with sound banking practice, and in the case of an insured branch, the Federal Deposit Insurance Corporation (FDIC) has determined that the activity would pose no significant risk to the affected deposit insurance fund. This amendment to Regulation K sets forth the application procedures which state-licensed branches and agencies of foreign banks will be required to follow in order to request the Board's permission to engage in or continue to engage in an activity which is not permissible for a federal branch of a foreign bank and the requirements of divestiture and cessation plans. Insured branches are also required to seek the approval of the FDIC to engage in or to continue to engage in such an activity. The final rule also amends Regulation K to clarify that no application will be required in connection with the conversion by a foreign bank of its federally-licensed branch or agency into a state-licensed branch or agency.

EFFECTIVE DATE: This regulation is effective on January 1, 1995, except for § 211.21(e) which is effective December 5, 1994.

FOR FURTHER INFORMATION CONTACT: Kathleen M. O'Day, Associate General Counsel (202/452–3786), Ann E. Misback, Managing Senior Counsel (202/452–3788), John W. Rogers, Attorney (202/452–2798); Michael G. Martinson, Assistant Director (202/452–3640), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf [TDD], Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Section 202 of the Act amended section 7 of the International Banking Act (IBA) by adding several new subsections concerning the establishment and termination of foreign bank branches in the United States. New subsection 7(h) of the IBA provides that:

> (1) IN GENERAL.— After the end of the 1-year period beginning on the date of enactment of the [Act] a State branch or State agency may not engage in any type of activity that is not permissible for a Federal branch unless—
>
> (A) the [Federal Reserve] Board has determined that such activity is consistent with sound banking practice; and
>
> (B) in the case of an insured branch, the Federal Deposit Insurance Corporation has determined that the activity would pose no significant risk to the deposit insurance fund.

12 U.S.C. 3105(h)(1).

In order to implement this provision, the Board issued a proposed rule on January 6, 1993, with a request for public comment. (58 FR 513). In taking this action, the Board stated that it would consider revisions to the proposed rule as appropriate and on the basis of the comments received. The comment period ended on March 5, 1993. The Board indicated that it would accept and process applications under the statute during the pendency of the rulemaking. No applications have been received.

The proposed rule required a foreign bank operating a state-licensed branch or agency in the United States, which desires to engage in or continue to engage in an activity that is not permissible for a federal branch, pursuant to statute, regulation or order or interpretation issued by the Office of the Comptroller of the Currency (OCC), to file an application in letter form to the Board for permission to conduct or to continue to conduct such activity. The proposed regulation set forth the required contents of the application and a procedure for divestiture or cessation of impermissible activities not approved by the Board.

The Board specifically requested comment on several items, including the contents of the application, whether prior notice rather than an application might be appropriate for certain classes of activities, and whether the conduct of activities permitted by the OCC pursuant to informal rather than formal interpretation, opinion or advice should require the filing of an application.

In addition, the Board requested comment on another provision of Regulation K which requires that a

foreign bank wishing to convert from a federal branch or agency license to a state branch or agency license file for approval to do so with the Board.

The Board received four public comments on the regulation. Comments were submitted by a state banking supervisor, an association of state banking supervisors, a trade association and a law firm. The commenters generally were supportive of the approach taken in the proposed rule. The comments focused on whether an activity-based approach rather than a bank-based approach would be preferable, whether the conduct of activities permitted by the OCC pursuant to informal rather than formal interpretation, opinion or advice should require an application and whether an application would be required to conduct an activity that the OCC permitted but only subject to quantitative restrictions. The commenters uniformly stated that no application should be required to convert from a federal branch or agency license to a state branch or agency license.

On March 2, 1993, the FDIC issued its own proposed regulation implementing section 7(h) of the IBA. See 58 FR 11992. The Board has consulted with the FDIC concerning the response to its proposed rule. Both the Board and the FDIC have attempted to make their final rules as consistent with one another as possible and thereby to reduce the burden that might be imposed on applicants. A description of the final rule and an analysis of the relevant comments follows.

Determining if an Activity is Permissible for a Federal Branch

The commenters generally stated that no application should be required from a state-licensed branch or agency for the conduct of an activity that is permitted for a federal branch pursuant to interpretation, opinion or advice issued in writing by the OCC or its staff, as well as by statute, regulation official bulletin, circular or order. The commenters argued that a stricter requirement would result in a competitive disadvantage to state licensed offices and thereby would be inconsistent with the intent of the statute. The Board agrees with that argument. Accordingly, the conduct of activities permitted for a federal branch pursuant to interpretation, opinion or advice issued in writing by the OCC or its staff would not require an application, so long as such interpretation, opinion or advice is still considered valid, *i.e.*, it has not been overruled by the OCC or found invalid by a court of competent jurisdiction. In addition, because national banks and federal branches may rely on a written opinion of counsel that an activity is permissible under the National Bank Act or other applicable statutes, in the Board's view, it would be appropriate to permit state-licensed branches and agencies also to rely on such opinions, provided the opinion of counsel is based on a reasoned analysis of applicable statutes, regulations, official bulletins, circular, orders, or interpretations, opinions or advice of the OCC or its staff. The Board plans to consult with the OCC when questions arise as to the permissibility of any particular activity. Insured branches of foreign banks also should consult with the FDIC as to the permissibility of particular activities.

Bank Approach Versus Activity Approach

The Board's proposed rule took a bank-based approach to implementing the statute; that is, an application was required from each bank wishing to conduct or continue to conduct an activity not permissible for a national bank. The comments suggested that the Board instead take an activity based approach, at least with respect to activities which the commenters believed presented minimal risk. One commenter suggested that the Board entertain applications from industry trade groups with respect to the conduct of such activities.

The Board has determined that a combination of the two approaches is the appropriate way to proceed and has modified the proposed rule accordingly. As described in further detail below, the final rule provides that certain categories of activities are consistent with sound banking practice and that no application should be required to conduct such activities. The fact that the Board's prior consent is not required does not preclude the Board from taking any appropriate action within its authority with respect to such activities if the facts and circumstances warrant such action.

Application Not Required in Certain Instances

The first category of activities exempted from the application requirement are certain activities already determined by the FDIC not to pose a significant risk to the Bank Insurance Fund pursuant to § 362.4(c)(3) of the FDIC's regulations (12 CFR part 362). The Board has determined not to require an application under this part for the conduct of any such activity that the FDIC would permit an insured state bank to conduct directly, provided the activity is permissible for the branch or agency under applicable state law and any other applicable federal law or regulation. The Board believes the conduct of these activities, with proper controls, is consistent with safe and sound banking. As set forth in 12 CFR 362.4(c)(3)(i)–(ii)(A), the exempted activities include guarantee activities and activities found by the Board by regulation or order to be closely related to banking. In addition, the Board has determined to exempt from the application requirement any activity conducted as agent rather than as principal, provided that the activity is one that could be conducted by a state-chartered bank headquartered in the same state as the branch or agency is licensed. Of course, all activities of the branches and agencies remain subject to examination. If any particular activity is found to be improperly conducted, the Board retains enforcement authority to require conformance to safety and soundness requirements.

Finally, like the proposed rule, the final rule provides that an application under this section normally shall not be required where an activity is permissible to a federal branch but the OCC imposes a quantitative restriction on the conduct of such activity by the federal branch. The commenters were supportive of this exemption. The Board believes appropriate quantitative restrictions can be addressed on a case-by-case basis as part of the ongoing supervisory process.

Contents of Application

Section 211.29(b) of the proposed regulation provided that the application shall be in letter form and shall contain certain information, including among other things, a description of the activity in which the branch or agency desires to engage or in which it is already engaged, the foreign bank's financial condition, the assets and liabilities of the branch or agency, the projected effect of the proposed activity on the financial condition of the foreign bank and the branch or agency, and in the case of an application by a state-licensed insured branch, a statement of why the proposed activity will pose no significant risk to the deposit insurance fund.

The commenters suggested that applicants not be required to provide information already available to the Federal Reserve through its general examination and supervisory process. Accordingly, the Board has deleted from the final rule the requirement to provide certain financial information. The Board may request such information in individual cases if the information in its

possession is either out of date or otherwise deemed insufficient.

The Board and the FDIC have consulted concerning the type of information which each agency will need in order to make an informed judgment and have agreed on a common list of information in order that applicants will need to prepare only one application which, in the case of insured branches, may be submitted to both agencies. It is contemplated that the Board and the FDIC will review such applications simultaneously.

Standards To Be Examined

Section 211.29(d) of the final rule sets forth the standards that the Board will examine in order to determine whether a particular activity is consistent with sound banking practice. These factors are:

- What types of risks, if any, the activity poses to the U.S. operations of the foreign banking organization;
- If the activity poses any such risks, the magnitude of each risk; and
- If a risk is not *de minimis*, the actual or proposed procedures to control and minimize such risk.

Each of these factors shall be evaluated in light of the ability of the foreign bank to provide financial and managerial support to the branch or agency, the performance record of the foreign bank in general and the branch or agency in particular, and the volume of the proposed activity. The Board may also determine that a particular activity, after consideration of the above factors and subject to any conditions or limits imposed by the Board, may be conducted by any other state-licensed branch or agency without further application to the Board.

This section remains unchanged from the proposed rule.

Cessation or Divestiture

In the event that a state branch or agency is required to cease conducting an activity pursuant to the final regulation, § 211.29(f) sets forth the guidelines that must be followed to divest or cease the impermissible activity. Generally, this section provides that the state branch or agency shall submit a written plan of divestiture or cessation within 60 days of (1) being notified by the Board or the FDIC that an application to continue to conduct the activity has been denied, (2) the effective date of the regulation in the event that the foreign bank elects not to apply for permission to continue to conduct the activity, and (3) any change in statute, regulation, order or OCC interpretation that renders the activity impermissible. Divestiture or cessation shall be completed within one year, or sooner if the Board so directs. The Board requested comment on whether or not this period of time should be longer or shorter.

No comments were received on this portion of the proposed rule. Accordingly, no substantive changes were made.

Conversion From Federal to State License

As suggested by the commenters, the Board has determined not to require an application under the Foreign Bank Supervision Enhancement Act in connection with the conversion of: (1) a federally-licensed branch to a state licensed-branch; or (2) a federally licensed-agency to a state-licensed agency. Applications are not considered necessary in light of the fact that state-licensed branches and agencies must restrict their activities to those permissible for a federal branch or receive the Board's approval to engage in the activity. Section 24 of Regulation K will be amended accordingly.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that this final rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and record-keeping requirements.

For the reasons set forth in the preamble, the Board amends 12 CFR part 211 as set forth below:

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

1. The authority citation for Part 211 is revised to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1841 *et seq.*, 1843 *et seq.*, 3101 *et seq.*, 3901 *et seq.*

2. In § 211.21, paragraph (e) is revised to read as follows:

§ 211.21 Definitions.

* * * * *

(e) *Change the status* of an office means convert a representative office into a branch or agency, or an agency into a branch, but does not include renewal of the license of an existing office.

* * * * *

3. In § 211.29, the text is added to read as follows:

§ 211.29 Applications by state-licensed branches and agencies to conduct activities not permissible for federal branches.

(a) *Scope.* A state-licensed branch or agency shall file with the Board a prior written application for permission to engage in or continue to engage in any type of activity that:

(1) Is not permissible for a federal branch, pursuant to statute, regulation, official bulletin or circular, or order or interpretation issued in writing by the Office of the Comptroller of the Currency; or

(2) Is rendered impermissible due to a subsequent change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction.

(b) *Exceptions.* No application shall be required by a state-licensed branch or agency to conduct any activity that is otherwise permissible under applicable state and federal law or regulation and that:

(1) Has been determined by the FDIC pursuant to 12 CFR 362.4(c)(3)(i)–(c)(3)(ii)(A) not to present a significant risk to the affected deposit insurance fund;

(2) Is permissible for a federally-licensed branch but the OCC imposes a quantitative limitation on the conduct of such activity by the federal branch;

(3) Is conducted as agent rather than as principal, provided that the activity is one that could be conducted by a state-chartered bank headquartered in the same state in which the branch or agency is licensed; or

(4) Any other activity that the Board has determined may be conducted by any state-licensed branch or agency of a foreign bank without further application to the Board.

(c) *Contents of application.* An application submitted pursuant to paragraph (a) of this section shall be in letter form and shall contain the following information:

(1) A brief description of the activity, including the manner in which it will be conducted and an estimate of the expected dollar volume associated with the activity;

(2) An analysis of the impact of the proposed activity on the condition of the U.S. operations of the foreign bank in general and of the branch or agency in particular, including a copy, if available, of any feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity;

(3) A resolution by the applicant's board of directors or, if a resolution is not required pursuant to the applicant's organizational documents, evidence of

approval by senior management, authorizing the conduct of such activity and the filing of this application;

(4) If the activity is to be conducted by a state-licensed insured branch, a statement by the applicant of whether or not it is in compliance with 12 CFR 346.19 and 346.20, Pledge of Assets and Asset Maintenance, respectively;

(5) If the activity is to be conducted by a state-licensed insured branch, statements by the applicant:

(i) That it has complied with all requirements of the Federal Deposit Insurance Corporation concerning an application to conduct the activity and the status of the application, including a copy of the FDIC's disposition of such application, if available; and

(ii) Explaining why the activity will pose no significant risk to the deposit insurance fund; and

(6) Any other information that the Reserve Bank deems appropriate.

(d) *Factors considered in determination.* (1) The Board shall consider the following factors in determining whether a proposed activity is consistent with sound banking practice:

(i) The types of risks, if any, the activity poses to the U.S. operations of the foreign banking organization in general and the branch or agency in particular;

(ii) If the activity poses any such risks, the magnitude of each risk; and

(iii) If a risk is not de minimis, the actual or proposed procedures to control and minimize the risk.

(2) Each of the factors set forth in paragraph (d)(1) of this section, shall be evaluated in light of the financial condition of the foreign bank in general and the branch or agency in particular and the volume of the activity.

(e) *Application procedures.* Applications pursuant to this section shall be filed with the responsible Reserve Bank for the foreign bank. An application shall not be deemed complete until it contains all the information requested by the Reserve Bank and has been accepted. Approval of such an application may be conditioned on the applicant's agreement to conduct the activity subject to specific conditions or limitations.

(f) *Divestiture or cessation.* (1) In the event that an applicant's application for permission to continue to conduct an activity is not approved by the Board or, if applicable, the FDIC, the applicant shall submit a detailed written plan of divestiture or cessation of the activity to the responsible Reserve Bank within 60 days of the disapproval. The divestiture or cessation plan shall describe in detail the manner in which the applicant will divest itself of or cease the activity and shall include a projected timetable describing how long the divestiture or cessation is expected to take. Divestitures or cessation shall be complete within one year from the date of the disapproval, or within such shorter period of time as the Board shall direct.

(2) In the event that a foreign bank operating a state branch or agency chooses not to apply to the Board for permission to continue to conduct an activity that is not permissible for a federal branch or which is rendered impermissible due to a subsequent change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction, the foreign bank shall submit a written plan of divestiture or cessation, in conformance with paragraph (f)(1), of this section within 60 days of January 1, 1995 or of such change or decision.

By order of the Board of Governors of the Federal Reserve System, October 27, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–27121 Filed 11–2–94; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 27297; Amendment No. 71–25]

Amendment to the South Florida Low Offshore Airspace Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Technical amendment.

SUMMARY: This action amends the description of the South Florida Low airspace area to exclude the airspace within the Grand Bahama terminal control area (TCA) and the Nassau TCA. At the present time, the South Florida Low airspace area is correctly depicted on aeronautical charts as excluding the airspace of the underlying Grand Bahama and Nassau TCAs. However, the current airspace description of this airspace area is erroneous in that it inadvertently includes the Grand Bahamas and the Nassau TCAs as part of the South Florida Low airspace area. This action corrects this error.

EFFECTIVE DATE: November 3, 1994.

FOR FURTHER INFORMATION CONTACT: Reginald C. Matthews, ATP–230, Air Traffic Rules Branch, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The Offshore Airspace Reconfiguration Final Rule published March 2, 1993 (58 FR 12128), amended the Federal Aviation Regulations (FAR), in pertinent part, by designating additional control areas as offshore airspace areas or en route domestic airspace areas. The offshore areas were divided into high and low areas and an effort was made to establish a uniform floor of controlled airspace for certain air traffic operations. Through that rule, the South Florida control area was revised and redesignated as the South Florida Low offshore airspace area. The rule also extended the airspace of the South Florida Low airspace area from 2,700 feet mean sea level (MSL) up to, but not including, 18,000 feet MSL.

The lateral boundaries of the South Florida Low were further revised, by amendment (58 FR 33907; June 22, 1993), to extend from latitude 28°00'00" North to latitude 34°00'00" North. However, both amendments to the South Florida Low airspace area inadvertently included the underlying airspace within the Grand Bahama TCA and the Nassau TCA, both of which have airspace segments extending above 2,700 feet MSL. The South Florida Low is correctly depicted on aeronautical charts as excluding the airspace of the underlying TCAs. However, the airspace description does not reflect this exclusion as was intended.

The Amendment

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises the airspace description of the South Florida Low airspace area by excluding the Grand Bahama TCA and the Nassau TCA.

The FAA has determined that this regulation is not a "significant regulatory action" under Executive Order 12866; is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6007—Offshore Airspace Areas

* * * * *

South Florida Low, FL [Revised]

That airspace extending upward from 2,700 feet MSL bounded on the west by the Houston Oceanic CTA/FIR; bounded on the north from west to east by the Jacksonville Air Route Traffic Control Center boundary, a line 12 miles from and parallel to the U.S. shoreline and lat. 34°00′00″N., bounded on the east by the New York Oceanic CTA/FIR and the San Juan Oceanic CTA/FIR; bounded on the south from east to west by the Santo Domingo FIR, the Port-Au-Prince CTA/FIR and the Havana CTA/FIR; excluding the Grand Bahama TCA and the Nassau TCA.

* * * * *

Issued in Washington, DC, on October 28, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–27288 Filed 11–2–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 73

[Airspace Docket No. 94–ASW–12]

Change Time of Designation for Restricted Areas R–5103A, B, C, and D; McGregor, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the time of designation for Restricted Areas R–5103A, B, C, and D, McGregor, NM. The U.S. Army has determined that the present published time of designation for the restricted areas does not accurately reflect their actual times of use. This action lessens the burden on the public by amending the published time of designation to reflect limited weekend activity in these areas by the military.

EFFECTIVE DATE: 0901 UTC, February 2, 1995.

FOR FURTHER INFORMATION CONTACT: Steve Riley, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7130.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations amends the time of designation for Restricted Areas R–5103A, B, C, and D, McGregor, NM, from "0700–2000 local time; other times by NOTAM" to "0700–2000 local time Monday-Friday; other times by NOTAM." Following a review of its special use airspace the U.S. Army, Fort Bliss, TX, determined that it has a continuing requirement for the restricted areas; however, the current published time of designation does not accurately reflect the time the airspace is required for military use. This action amends the published time of the restricted areas but does not change the existing boundaries or the types of activities currently conducted within R–5103A, B, C, or D. Because this action is a minor technical amendment in which the public is not particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. § 73.51 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8B dated March 9, 1994.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action reduces the time of designation of the restricted areas. Accordingly, this action is not subject to environmental assessments and procedures as set forth in FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts."

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.51 [Amended]

2. Section 73.51 is amended as follows:

R–5103A McGregor, NM—[Amended]

By removing the current "Time of designation. 0700–2000 local time; other times by NOTAM." and substituting the following: "Time of designation. 0700–2000 local time, Monday-Friday, other times by NOTAM."

R–5103B McGregor, NM—[Amended]

By removing the current "Time of designation. 0700–2000 local time; other times by NOTAM." and substituting the following: "Time of designation. 0700–2000 local time, Monday-Friday, other times by NOTAM."

R–5103C McGregor, NM—[Amended]

By removing the current "Time of designation. 0700–2000 local time; other times by NOTAM." and substituting the following: "Time of designation. 0700–2000 local time, Monday-Friday, other times by NOTAM."

R–5103D McGregor, NM—[Amended]

By removing the current "Time of designation. 0700–2000 local time; other times by NOTAM." and substituting the following: "Time of designation. 0700–2000 local time, Monday-Friday, other times by NOTAM."

Issued in Washington, DC, on October 25, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. RM93–19–000]

Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act; Policy Statement

Issued: October 26, 1994.

AGENCY: Department of Energy, Federal Energy Regulatory Commission.

ACTION: Final rule; policy statement.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this policy statement to announce a general policy regarding the pricing of transmission services provided by public utilities and transmitting utilities under the Federal Power Act.

The new policy is designed to allow much greater transmission pricing flexibility than was allowed under previous Commission policies.

EFFECTIVE DATE: This policy statement is effective as of October 26, 1994.

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SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, at 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.E–1

Policy Statement

Issued: October 26, 1994.

The Federal Energy Regulatory Commission (Commission) announces a new policy regarding the pricing of transmission services provided by public utilities and transmitting utilities under the Federal Power Act (FPA).[1] The new policy is designed to allow much greater transmission pricing flexibility than was allowed under previous Commission policies.

Greater pricing flexibility is appropriate in light of the significant competitive changes occurring in wholesale generation markets, and in light of our expanded wheeling authority under the Energy Policy Act of 1992 (EPAct).[2] These recent events underscore the importance of ensuring that our transmission pricing policies promote economic efficiency, fairly compensate utilities for providing transmission services, reflect a reasonable allocation of transmission costs among transmission users, and maintain the reliability of the transmission grid. The Commission also recognizes that advances in computer modeling techniques have made possible certain transmission pricing methods that once would have been impractical.

Based on the record developed in this proceeding, the Commission concludes that there appears to be a variety of workable, non-traditional transmission pricing methods that offer potential improvements in fairness, practicality and economic efficiency. For instance, the Commission believes that distance-sensitive rates using contract path or flow-based methods will be acceptable if properly supported.

Accordingly, the Commission will permit more flexibility to utilities to file innovative pricing proposals that meet the traditional revenue requirement and will allow such proposals to become effective 60 days after filing,[3] as long as they satisfy certain pricing principles discussed below. We refer to this category of proposals as conforming proposals. We will also permit utilities to file pricing proposals that deviate from the traditional revenue requirement, as long as they meet certain requirements discussed below. We refer to these filings as non-conforming proposals. Non-conforming proposals will be permitted to go into effect only prospectively from the date the Commission determines that such a pricing proposal meets the statutory requirements of the FPA, *i.e.*, is just and reasonable and not unduly discriminatory or preferential.

In addition to the guidance in this Policy Statement regarding conforming and non-conforming transmission pricing proposals, there are two specific subject areas for which we have instituted separate proceedings, and which may require transmission pricing flexibility. *See* Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Notice of Proposed Rulemaking, IV FERC Stats. & Regs. ¶ 32,507, 59 FR 35274 (July 11, 1994); Alternative Power Pooling Institutions under the Federal Power Act, Notice of Inquiry, FERC Stats. & Regs. ¶ _____ (1994). In those proceedings, we are examining what type of pricing policy is appropriate. We intend to examine whether any special procedural mechanisms are necessary to coordinate our pricing policy and filings proposing alternative power pooling institutions.

I. Introduction

The Commission will consider a broad range of rate design methods, within a utility's embedded original cost revenue requirement, as discussed in Section IV. We will also consider proposals that deviate from a utility's embedded original cost revenue requirement (subject to certain filing procedures and evaluation criteria), as discussed in Section V. The U.S. Supreme Court has recognized the Commission's broad latitude to fix rates. There is no single valid theory of ratemaking. Under the statutory standard of "just and reasonable" it is the result reached, not the method employed, which is controlling. *Duquesne Light Co.* v. *Barasch*, 488 U.S. 299, 316 (1989) (*Duquesne*); *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944) (*Hope*). As the Court observed in *Duquesne*:

> The designation of a single theory of ratemaking as a constitutional requirement would unnecessarily foreclose alternatives which could benefit both consumers and investors.

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[1] 16 U.S.C. 824(e), 796(23).

[2] *See* 16 U.S.C. 824j, 824k.

[3] Whether to suspend such a filing and impose a refund condition will be decided on a case-by-case basis. *See* West Texas Utilities Company, 18 FERC ¶ 61,189 (1982).

488 U.S. at 316. Consistent with our broad ratemaking authority, in this Policy Statement we announce that we will consider various ratemaking methods to encourage proposals that will produce consumer benefits.

The Commission's traditional transmission pricing policy has permitted a public utility providing firm transmission service to charge rates designed to yield annual revenues equal to the rolled-in embedded cost[4] of the utility's integrated transmission grid on a postage stamp basis (*i.e.*, not distance sensitive), including the rolled-in costs of any new facilities or upgrades that become part of the integrated system. For non-firm transmission service, the Commission has permitted rates to reflect, in addition to the variable costs of providing the service, a charge up to a 100 percent contribution to the fixed costs of providing the service, with the proviso that pricing must reflect the characteristics of the service provided, *e.g.*, the degree of interruptibility. Traditionally, transmission rates have been based on a "contract path" model, *i.e.*, an assumed transmission path from point A to point B, that may or may not represent the actual flows of power on the grid.

In recent years, the Commission attempted to address the industry's changing needs by modifying its historical transmission pricing policy[5] to allow a type of incremental cost pricing.[6] In order to provide new or expanded transmission service, a utility may be required to add expensive transmission assets, which can result in an increase in rolled-in embedded cost rates. To address this possibility, the Commission has allowed a utility to charge transmission-only customers the higher of embedded costs (for the system as expanded) or incremental expansion costs, but not the sum of the two.[7] When the transmission grid is constrained and the utility chooses not to expand its system, the Commission has allowed a utility to charge the higher of embedded costs or legitimate and verifiable opportunity costs, but not the sum of the two. The opportunity costs, in turn, are capped by incremental expansion costs. This type of pricing has been referred to as "or" pricing or *Northeast Utilities* pricing.[8] While "or" pricing will continue to be allowed under the Commission's pricing policy, the Commission is prepared to move beyond "or" pricing to consider other pricing alternatives.

II. Request for Comments

On June 30, 1993, the Commission issued a notice of technical conference and request for comments concerning these policies and other transmission pricing issues. *Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act*, IV FERC Stats. & Regs., Notices ¶ 35,024 (1993) (Pricing Inquiry). The Commission received comments and reply comments from 165 entities, representing a broad cross-section of parties that participate in, or are affected by, the electric utility industry. The Commission also held technical conferences on April 8 and 15, 1994, that provided further opportunity for public comment and discussion. A summary of the comments received in this proceeding that included proposals for change is presented in Appendix A.[9]

Those commenting expressed a variety of opinions on many transmission pricing issues, including whether transmission rates should reflect distance sensitivity and whether and how to compensate for flows over parallel paths. The commenters were nearly unanimous in their call for the Commission to provide further guidance concerning acceptable pricing methods. Some commenters indicated that such guidance would assist the formation of regional transmission groups (RTGs) by indicating what pricing policies will be acceptable to the Commission.

While many of the comments expressed dissatisfaction with the Commission's current pricing policy, the comments indicated no consensus for any one alternative pricing method. However, the commenters expressed general agreement that some type of transmission pricing reform by the Commission is needed. There was a strong consensus that such reform should: (1) Allow greater pricing flexibility; (2) provide pricing that is "transparent"[10] and easy to administer; (3) promote economic efficiency, that is, allow transmission customers to make informed decisions as to the economic consequences of their choices, and encourage transmission owners to make efficient use of, and investment in, the transmission grid; (4) ensure equity and fairness; and (5) facilitate the development of RTGs.[11]

However, there was disagreement regarding the degree to which reform of transmission pricing should stress administrative simplicity versus accuracy. Some commenters advocated the continued use of traditional contract path and postage stamp rates, in part because these rates are simple to administer. Other commenters proposed methods, such as distance sensitive and flow-based rates, that may give better price signals but involve more complexity.

In response to the comments received, the Commission has decided to revise its policies to permit utilities much greater flexibility. We are prepared to accept a variety of pricing methods in addition to *Northeast Utilities* pricing. *Northeast Utilities* pricing will still be acceptable because it fully comports with the pricing principles we adopt today. However, based on the record developed herein, a variety of other pricing methods will also be acceptable.

The Commission concludes that greater pricing flexibility is now required for several reasons. First, exclusive use of methods that worked reasonably well in the past does not provide sufficient flexibility to accommodate the evolving needs of transmission owners and users in a more competitive era.[12] It is important

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[4] Embedded cost is generally viewed as including a fair rate of return on the original cost of facilities, less depreciation, plus operation and maintenance expenses, and taxes. Embedded costs are those costs reflected in the utility's books of account.

[5] *See* Northeast Utilities Service Company (Re: Public Service Company of New Hampshire), Opinion No. 364–A, 58 FERC ¶ 61,070, *reh'g denied*, Opinion No. 364–B, 59 FERC ¶ 61,042, *order granting motion to vacate and dismissing request for rehearing*, 59 FERC ¶ 61,089 (1992), *affirmed in part and remanded in part sub nom.* Northeast Utilities Service Company v. FERC, Nos. 92–1165, *et al.*, 993 F.2d 937 (1st Cir. 1993), *order on remand*, 66 FERC ¶ 61,332, *reh'g denied*, 68 FERC ¶ 61,041 (1994), *appeal pending* No. 94–1949 (1st Cir. Sept. 6, 1994); Pennsylvania Electric Company, 58 FERC ¶ 61,278, *reh'g denied and pricing policy clarified*, 60 FERC ¶ 61,034, *reh'g denied*, 60 FERC ¶ 61,244 (1992), *affirmed sub nom.* Pennsylvania Electric Co. v. FERC, 11 F.3d 207 (D.C. Cir. 1993) (*Penelec*).

[6] Incremental cost is the cost of increasing the level of service provided. In practice, it typically refers to the cost of additional facilities needed to provide the requested service.

[7] This current pricing policy is based on three goals that the Commission adopted in the *Northeast Utilities* case: (1) to hold native load customers harmless, (2) to provide the lowest reasonable cost-based price to third-party firm transmission customers, and (3) to prevent the collection of monopoly rents by transmission owners and promote efficient transmission decisions.

[8] *See supra* note 5.

[9] Appendix A will not appear in the Code of Federal Regulations.

[10] We interpret the commenters to mean that transmission pricing would be identified separately from generation pricing, that transmission pricing would identify all cost components of the transmission service (*e.g.*, identify ancillary service costs) and that pricing information would be readily available to all bulk power participants.

[11] Two RTG agreements recently filed with the Commission postpone dealing with the transmission pricing issue by simply providing that pricing shall be consistent with the Commission's transmission pricing policy. *See* Pacificorp *et al.* (on behalf of Western Regional Transmission Association), 69 FERC ¶_____ (1994); Southwest Regional Transmission Association, 69 FERC ¶_____) (1994).

[12] *See* American Electric Power Service Corporation, 67 FERC ¶ 61,168 at 61,490 (1994).

to gain practical experience with alternative transmission pricing approaches in order to assess how best to accommodate the current and future needs of the industry in providing efficient and reliable power supply as the industry becomes increasingly competitive. Second, our existing "or" pricing policy may not always encourage the most efficient investments in and use of the transmission grid. Third, regional differences (*e.g.*, power flow patterns and population densities) justify a more flexible policy that can account for such differences. Fourth, a more flexible pricing policy may be necessary to implement effectively our RTG policy, which encourages RTGs to deal with a broad range of issues, including pricing, and which suggests that the Commission, in appropriate circumstances, will defer to RTG decision-making.[13] The Commission is convinced that a more flexible pricing policy can help to achieve broader policy goals and be implemented in a manner that is just and reasonable and not unduly discriminatory or preferential.

In developing a more flexible transmission pricing policy, the Commission's basic premise is that comparable access to efficiently priced transmission services is critical to the continued development of a competitive wholesale power market. With this fundamental underpinning in mind, the Commission has developed several pricing principles that new pricing proposals should follow. Some of these principles reflect existing pricing requirements that any new proposal must continue to follow. Other principles, while important, may have to be balanced against one another.

Before discussing the pricing principles and specific new methodologies that may be acceptable, there are several points we would like to make. First, the Commission believes that improving price signals is an important goal, but recognizes that trade-offs between improved price signals and simplicity are inevitable. On one hand, transmission service is typically a small component of the total cost of electric service and, therefore, arguably does not merit overly complex pricing methods.[14] On the other hand, in many cases transmission capacity is a scarce and valuable resource, and its pricing can send signals that promote the efficient siting of generation facilities and efficient decisions as to the dispatch of generation. In addition, new technological advances, particularly in computer technology, have made certain innovative pricing methodologies workable in practice. We therefore must balance the sometimes competing goals of better price signals and simplicity when evaluating any new pricing methodologies.

Second, the Commission also recognizes that it must move beyond certain precedent in order to entertain alternative pricing proposals. For example, instead of requiring a single postage stamp rate for transmission over the integrated transmission system of a corporation, such as a holding company system with several affiliated operating companies,[15] we will now entertain proposals such as zonal rates[16] that take distance within the corporation into account, provided that such proposals are consistent with the pricing principles that we adopt today.[17] Having analyzed new methodologies presented in the record, we believe that some departures from our traditional integrated system pricing requirement will be supportable under the FPA if appropriately developed.

Third, as previously noted, several commenters urged the Commission to provide a framework for reforming pricing that would supplement the Commission's RTG Policy Statement. The Commission continues to believe that it would be appropriate for RTGs to address transmission pricing. We anticipate that the pricing flexibility provided herein, and our willingness to give appropriate deference to RTG decisions, will not only encourage the development of RTGs, but will also encourage RTGs to address transmission pricing, including regional issues affecting such pricing.

Finally, we do not want our policy to be so rigid that utilities will be prohibited from proposing pricing alternatives that may deviate from the traditional revenue requirement. Because transmission remains a natural monopoly, we believe it will be difficult for transmission owners to support such pricing under the FPA, particularly market-based transmission rates. However, we believe that it would be shortsighted to foreclose completely consideration of such non-conforming proposals. The electric utility industry of today is very different from the electric utility industry that existed only 20 years ago and even five years ago. Just as we today change our policies to reflect recent changes, we must remain flexible if we are to respond to future changes. Accordingly, we detail procedures and standards below that will be used in evaluating transmission pricing proposals that do not conform to the traditional revenue requirement.

We now turn to the requirements of the FPA and the pricing principles that we have developed consistent with those requirements.

III. Transmission Pricing Principles

Transmission pricing must adhere to the FPA requirement that transmission rates be just and reasonable and not unduly discriminatory or preferential. This requirement is found in sections 205, 206, and 212. In addition, section 212(a) requires that wholesale transmission rates for services ordered under section 211 must:

- Permit the recovery of all costs incurred in connection with the transmission services and necessary associated services, including, but not limited to, an appropriate share, if any, of legitimate, verifiable and economic costs, including taking into account any benefits to the transmission system of providing the transmission service, and the costs of any enlargement of transmission facilities;
- Promote the economically efficient transmission and generation of electricity; and
- To the extent practicable, ensure that costs incurred in providing the wholesale transmission services, and properly allocable to the provision of such services, are recovered from the applicant for the 211 order and not from a transmitting utility's existing

[13] Policy Statement Regarding Regional Transmission Groups, 58 FR 41626 (Aug. 5, 1993) III FERC Stats. & Regs. ¶30, 976 (July 30, 1993) (RTG Policy Statement).

[14] Historically, transmission plant has represented less than 12 percent of total electric plant in service for major investor-owned Electric Utilities and generally less than 6 percent of the cost of electricity to end users. (Derived from cost data in *1992 Energy Information Administration Financial Statistics of Major Investor-Owned Electric Utilities.*)

[15] *See, e.g.*, Southern Company Services, 55 FERC ¶61,173 (1991), *order on reh'g*, 58 FERC ¶61,093 (1991), *aff'd, Alabama Power Company* v. *FERC*, 993 F.2d 1557 (D.C. Cir. 1993).

[16] Under zonal rates, a utility's facilities are divided (disaggregated) into a number of zones. The total cost assigned to any request for transmission service would depend on the number of zones traversed and the rate for each zone.

[17] If a utility, or public utility holding company system, proposes to disaggregate its integrated transmission system into distinct components (or zones) for purposes of developing transmission rates for third parties, it must apply the same approach consistently and uniformly across the entire system for all uses of the system, including its own uses.

We caution that any such zonal approach or other disaggregated approach would also need to appropriately recognize all flows on the system. For example, if flows are used to allocate costs on some lines, flows should be used to allocate costs for all remaining lines in the same way; *e.g.*, it would not be acceptable to presume that each transmission customer proportionally uses and relies upon all remaining lines of the integrated system.

wholesale, retail, and transmission customers.

Consistent with these statutory requirements, which give the Commission discretion in setting rates within the zone of reasonableness, and in light of the comments received in response to the Pricing Inquiry, we have formulated five principles that will guide our approval of pricing for both firm and non-firm transmission services in the future. The Commission believes these principles comport with the statutory requirements of sections 205, 206 and 212 of the FPA, and, in the interest of developing a uniform transmission pricing policy, we will apply these same principles to the pricing of transmission service whether that service is provided under section 205, 206, or 211 of the FPA.

The first two principles reflect fundamental requirements previously established by the Commission. A conforming proposal is one that meets the first principle, *i.e.*, it proposes pricing that meets the traditional revenue requirement. A conforming proposal must also meet the second principle, *i.e.*, it must reflect comparability. As to the other three principles, however, these reflect goals that an applicant with a conforming proposal must try to meet, but that ultimately may need to be balanced against one another in the Commission's determination of whether the proposed rates are just and reasonable.

A non-conforming proposal is one that does not meet the first principle, *i.e.*, it does not propose pricing that meets the traditional revenue requirement. However, a non-conforming proposal must meet the second principle, *i.e.*, it must reflect comparability. If a non-conforming proposal does not clearly demonstrate that the comparability requirement is met, it will be rejected. As to the remaining three principles, these reflect goals that an applicant with a non-conforming proposal must try to meet, but that may need to be balanced against one another. In addition, as part of its balancing, the Commission will consider the extent to which the first principle is not met.[18]

We discuss these principles in detail below.

1. Transmission Pricing Must Meet the Traditional Revenue Requirement

For conforming proposals, transmission prices must be based on the costs of the transmission service provided. The process of determining transmission prices involves three distinct steps. First, a utility must determine its total company revenue requirement, the capital component of which traditionally has been measured by embedded (depreciated original) cost. Second, a utility must allocate among individual customers or classes of customers that portion of the total revenue requirement that is attributable to providing transmission services, in a manner which appropriately reflects the costs of providing transmission service to such customers or classes of customers. Finally, the utility must design rates to recover those allocated costs from each customer class.

Different customers may pay different rates if they use the system in different ways. In the aggregate, however, rates are designed so that a transmission owner meets, but does not exceed, its revenue requirement. That is, it should be able to collect revenues from all its customers equal to the sum of its prudently incurred embedded costs, including return on capital.

There are two reasons for requiring transmission pricing to meet the traditional revenue requirement. First, it appears that transmission will remain a natural monopoly for the foreseeable future. It is unlikely that market-based prices for monopoly services, especially for firm transmission service, could be justified under the FPA at the present time, under the current industry structure. However, it is clear that there is no single appropriate ratemaking method under the FPA. The end result is the appropriate yardstick against which to measure the legality of a rate order, not the ratemaking method. Thus, although no single ratemaking method is necessarily favored by the FPA, this pricing principle will ensure that transmission users pay a just and reasonable price for transmission services and that transmission owners, while being appropriately and adequately compensated,[19] will not be able to exercise their market power to collect exorbitant rates.

Second, we believe that pricing within an embedded cost revenue requirement provides adequate incentives for transmission owners to provide comparable transmission services, as long as the transmission owner has the opportunity for full cost recovery. When upgrades are required, the transmission owner may incur significant expenses related to planning and siting new facilities. For example, a utility may be required to pay for environmental mitigation associated with the construction of new transmission facilities. Such costs will be recoverable by the transmission owner if they are prudently incurred.

In addition, under the traditional revenue requirement principle, transmission owners clearly may, with appropriate support,[20] recover the legitimate and verifiable costs of services they provide that are ancillary to transmission services, such as load following, reactive power compensation, and backup power services. However, transmission customers should also be permitted to provide these services themselves or to obtain them from someone else if this is feasible.

Finally, as discussed in Section IV below, we intend to allow significant latitude and a wide variety of non-traditional rate design proposals, within a cost cap based on the total company revenue requirement.

2. Transmission Pricing Must Reflect Comparability

Any new transmission pricing proposal, conforming or non-conforming, must meet the Commission's recently announced comparability standard. In *American Electric Power Service Corporation (AEP)*, 67 FERC ¶ 61,168 (1994), the Commission articulated a new standard for judging whether access to transmission services is unduly discriminatory, or anticompetitive. The Commission noted that "[a]n open access tariff that is not unduly discriminatory or anticompetitive should offer third parties access on the same or comparable basis, and under the same or comparable terms and conditions, as the transmission provider's uses of its system."[21] This principle has been applied to all open access tariffs filed since *AEP*, as well as to transmission services provided by RTGs.[22]

There is a relationship between price and quality of service (*i.e.*, in general, higher quality service costs more). In Florida Municipal Power Agency v. Florida Power & Light Co., 67 FERC ¶ 61,167 at 61,482 (1994) (*FMPA*), the Commission stated, "[s]ince FMPA

[18] A pricing proposal that deviates from cost only slightly may be easier to justify than one that results in prices several times cost.

[19] *Duquesne*, 488 U.S. at 316; Bluefield Water Works & Improvement Co. v. Public Service Commission of the State of West Virginia, 262 U.S. 679 (1923); *Hope*, 320 U.S. at 602.

[20] *See* Northern States Power Company (Minnesota and Wisconsin) Opinion No. 383, 64 FERC ¶ 61,324 (1993), *reh'g pending* (reactive power).

[21] 67 FERC at 61,490.

[22] *See* PacifiCorp, *et al.* (on behalf of Western Regional Transmission Association), 69 FERC _____; Southwest Regional Transmission Association, 69 FERC at _____.

wants to be able to use the transmission system as freely as does Florida Power, it must pay a rate that reflects that equality." As a result of the relationship between quality of service and price discussed most recently in *FMPA*, and the growing importance of service comparability, we will require that pricing be comparable. Comparability of service applies to price as well as to terms and conditions. Comparability of transmission pricing involves a "golden rule of pricing"—a transmission owner should charge itself on the same or comparable basis that it charges others for the same service.[23]

This golden rule has several implications. First, for purposes of setting FERC-jurisdictional rates, costs must be allocated between jurisdictional and non-jurisdictional customers in a consistent way, to determine the cost responsibility of the two sets of customers.[24]

Second, when a utility uses its own transmission system to make off-system sales, it should "pay" for transmission service at the same price that third-party customers pay for the same service, and credit the transmission revenues to its native load customers. This treatment restricts the transmission owner's ability to gain an unfair advantage in the bulk power market by selling itself transmission service at a discount that would be subsidized by native load and transmission-only customers.[25]

Pricing comparability does not mean that the Commission is endorsing an end result in which there are no differences in prices paid by various customers. For example, the Commission is not suggesting that prices must be based on highly aggregated costs so that all customers face a uniform rate per kWh of service. Rather, we are receptive to pricing proposals that disaggregate costs in order to give better price signals to all users of the system—third parties and the transmission owner itself. Such disaggregation still permits different customers to pay different prices. Pricing comparability does not rule out such a result.

Finally, comparability of pricing includes certainty of pricing. A transmission customer should have pricing certainty comparable to that of the transmitting utility, *e.g.*, the same transmission pricing certainty for long-term power contracts as the transmitting utility has.

3. Transmission Pricing Should Promote Economic Efficiency

Section 212(a) of the FPA, as amended by EPAct, states that transmission pricing should promote economically efficient generation and transmission of electricity.[26] In our view, this means that transmission pricing should promote good decision-making and foster:

- Efficient expansion of transmission capacity;
- Efficient location of new generators and new load;
- Efficient use of existing transmission facilities, including the efficient allocation of constrained capacity through appropriate market clearing mechanisms; and
- Efficient dispatch of existing generating resources.

To the extent practicable, transmission rates should be designed to reflect marginal costs,[27] rather than embedded costs, in a manner consistent with the remaining principles. We favor marginal cost prices in order to promote efficient decision-making by both transmission owners and users.[28] In the short-run, marginal transmission costs are primarily line losses and, when lines are congested, opportunity costs. In the long-run, marginal transmission costs include all the costs of the transmission system and support services. The Commission recognizes the complexity of estimating marginal cost on the transmission grid and of implementing pricing that follows marginal transmission costs, but we encourage experimentation in this area.[29] On a case-by-case basis, we will balance the desirability of more economically efficient price signals against the additional complexity of implementing such pricing.

4. Transmission Pricing Should Promote Fairness

As a general matter, transmission pricing should be fair and equitable. This has two important implications. First, the EPAct requires that, to the extent practicable, existing wholesale, retail and transmission customers should not pay for the costs incurred in providing wholesale transmission services ordered under section 211. Similarly, we do not believe that third-party transmission customers should subsidize existing customers. We believe this principle should apply equally to transmission services under both section 211 and sections 205 and 206.

A second implication of the fairness principle is that economic harm that could be created during a period of transition from one pricing approach to another should be mitigated to the extent practicable. Solutions to any transition problems arising from pricing reform should balance fairness considerations associated with any reform against the potential efficiency improvements, and should mitigate the hardships arising from any reform. The major purpose of transmission pricing reform should be to provide more efficient price signals, particularly for new transmission uses, and not simply to reallocate sunk costs.

5. Transmission Pricing Should Be Practical

Transmission pricing should be practical and as easy to administer as appropriate given the other pricing principles. A user should be able to calculate how much it will be charged for transmission service. Some pricing proposals may be so complex that they are difficult to understand and analyze. Such complexity, while not fatal, should be balanced by efficiency gains or other advantages produced by such complexity.

IV. Guidance Regarding Pricing Proposals That Conform to the Traditional Revenue Requirement

In addition to the five general principles above, the Commission provides guidance on specific pricing proposals, including examples of acceptable pricing approaches and clarification of limitations on pricing flexibility.

It is important for those involved in transmission pricing discussions and negotiations to have a common understanding of the attributes of

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[23] There is a similar "golden rule or access"—provide the same or comparable services to others as you provide yourself.

[24] The Commission is not in any way suggesting any interference with state authority to determine the appropriate ratemaking methodology for bundled retail sales.

[25] In *PSI*, for example, the Commission required that PSI take transmission service under its own transmission tariff when making market-based power sales. The Commission adopted this approach to prevent PSI from using its transmission ownership to exercise an unfair competitive advantage in wholesale power markets. Public Service Company of Indiana, Inc., Opinion No. 349, 51 FERC ¶ 61,367 at 62,201 (1990), *order on rehearing*, PSI Energy, Inc., 52 FERC ¶ 61,260, *order granting clarification*, 53 FERC ¶ 61,131 (1990), *appeal dismissed sub nom.* Northern Indiana Public Service Co. v. FERC, 954 F.2d 736 (D.C. Cir. 1992).

[26] 16 U.S.C. 824k(a).

[27] Alfred Kahn, *infra* n.28, defines marginal cost as "[t]he cost of producing one more unit; it can equally be envisioned as the cost that would be saved by producing one less unit."

[28] *See* 1 Alfred E. Kahn, The Economics of Regulation 63–86.

[29] Such proposals should be fully supported, with as much detail as possible. *See* New England Power Company, Opinion No. 352, 52 FERC ¶ 61,090 (1990), *reh'g denied*, Opinion No. 352–A, 54 FERC ¶ 61,055 (1991), *aff'd sub nom.* Town of Norwood, Massachusetts v. FERC, 962 F.2d 20 (D.C. Cir. 1992).

various pricing proposals. For example, various parties advocate the use of "megawatt mile" pricing. Several distinct pricing proposals carry the same "megawatt mile" label. Therefore, those proposing transmission pricing reform must provide a clear explanation of their proposal.

As the industry considers possible pricing reform, the following three attributes of any transmission pricing method should be specified to provide a common framework for analysis:

- The method for measuring cost for purposes of rate design: embedded cost, incremental cost, the Commission's current "or" policy, long-run marginal cost, or short-run marginal cost;
- The method for treating power flows: contract path or flow-based approach; and,
- The method for grouping transmission facilities: corporate postage stamp versus more disaggregated approaches, such as zones, or line-by-line methods.[30]

We anticipate that a wide variety of pricing proposals may be reconciled with the traditional revenue requirement. In theory, acceptable cost-based pricing that satisfies our principles could be designed for many combinations of these possible attributes. For example, prices could reflect incremental cost (the first attribute), be based on flow (the second attribute), and be allocated on a line-by-line basis (the third attribute). A different approach is taken by changing any one of the attributes, *e.g.*, zones instead of lines. Therefore, many varieties of cost-based pricing are possible.

We fully intend to be flexible and to consider innovative, conforming pricing approaches that accommodate the changing needs of the competitive bulk power market. This applies to pricing for firm as well as non-firm transmission services. The pricing principles set out in the prior section are intended to guide RTGs and individual utilities in their consideration of new approaches. To provide further guidance, we discuss below examples of new cost-based pricing methods that we believe can be made consistent with our principles. These examples are intended to be illustrative. Other approaches also may be consistent with the principles. In all cases, we emphasize that pricing reform must have a purpose consistent with the principles. We want transmission pricing that supports good and consistent decisionmaking by transmission system users and owners.

A. Examples of Specific Pricing Methods That Conform to the Traditional Revenue Requirement

The following pricing approaches are examples of methods that the Commission would find acceptable, assuming an adequate showing by the utility. In this context, a conforming method is one that clearly meets the first two fundamental requirements and demonstrates that it is capable of satisfying the other three pricing principles (which ultimately may need to be balanced against one another in the Commission's determination of whether the proposed rates are just and reasonable). Of course, the rates resulting from its use must be shown to be just, reasonable and not unduly discriminatory or preferential.

(1) Examples of Acceptable Transmission Pricing by an Individual Utility

A variety of pricing proposals from an individual utility could be acceptable under the five pricing principles. The range of possible approaches includes various combinations of: (1) a traditional contract path approach or a flow-based approach; (2) costs aggregated at the utility level, at a zonal level, or at the line-by-line level; and (3) various cost concepts for rate design, such as embedded cost, "or" cost, incremental cost, or short-run marginal cost. Not all of these possible combinations, however, would necessarily satisfy our principles.

Examples of pricing reform that the Commission would approve if proposed by an individual utility and if they satisfy our principles include:

- Zonal "or" pricing based on power flows from zone to zone within a utility, or within the members of a holding company system. Zonal rates should be supported by showing the use made of separate zones by an individual transaction. Such rates should be supported by an explanation of the data base required and the computer modeling needed to implement it.
- Flow-based line-by-line rates, based on embedded costs "or" pricing. Such rates should be supported by an explanation of the data base required and the computer modeling needed to implement it.
- "Or" pricing, at the corporate level using the traditional contract path approach. This is the current Commission standard and remains an acceptable pricing policy that satisfies our pricing principles.

(2) Examples of Acceptable Transmission Pricing by an RTG

The Commission will provide substantial latitude for innovative, conforming pricing proposals by a regional transmission group that meets the requirements of our RTG Policy Statement.[31] We will give more latitude to RTGs than to individual utilities. This is for two reasons. First, an RTG represents the combined interests of both transmission owners and transmission users, as well as the appropriate participation of state authorities, so pricing proposals are likely to represent an appropriate balancing of those interests. Second, the more attractive proposals for treating regional loop flow problems work better if all the utilities in the region use the same method.

An RTG could propose any pricing reform that is open to an individual utility and also other reforms that address the loop flow issue. Many approaches to reforming transmission pricing that were suggested in the record of the Pricing Inquiry address the loop flow issue and appear to require a regional approach. From the comments, the Commission discerns two major alternatives to traditional contract path pricing that RTGs could choose for dealing with loop flow:

- "Enhanced" contract path pricing, which improves the contractual institutions underlying traditional contract path trading;[32] and
- Flow-based pricing, which refers to pricing designed to reflect the actual or projected power flows associated with a transaction.

Cost-based pricing could be designed to accommodate either of these alternatives. Examples of pricing reform based on a flow-based approach that the Commission would look approvingly on if proposed by an RTG and if consistent with our principles include:

- A MW-mile method, which could be implemented in one of several ways. For example, it could be based on "or" pricing and line-by-line power flows. Alternatively, a MW-mile approach could be based on embedded cost for the whole company, allocated as the ratio of transaction-specific megawatt-miles to total megawatt-miles.

[30] Under a line-by-line pricing method, the costs of each transmission line, or segment, are allocated to individual transmission transactions, based on the usage each transaction makes of each line or segment.

[31] Policy Statement Regarding Regional Transmission Groups, 58 FR 41626 (Aug. 5, 1993), III FERC Stats. & Regs. ¶30,976 (July 30, 1993); *See also* PacifiCorp, *et al.* (on behalf of Western Regional Transmission Association), 69 FERC at _____; Southwest Regional Transmission Association, 69 FERC at _____.

[32] "Enhanced contract path" refers to any approach intended to reconcile capacity rights between points of receipt and delivery and actual power flows on a network of lines.

• Postage-stamp "or" ratemaking at the utility level that is combined with power flow analysis to determine the compensation due to all transmission owners on the parallel paths. This would be a departure from the current contract path approach.

• Zonal "or" pricing based on power flow analysis to determine the use a transaction makes of the facilities in each zone.

• Short-run marginal cost pricing with transmission prices based on line-by-line losses and opportunity costs caused by power flow constraints.

RTGs may be able to design a pricing approach that combines elements of flow-based pricing with elements of contract path pricing. An example might be contract-path pricing for capacity rights to engage in long-term firm transactions combined with flow-based pricing for short-term, nonfirm transactions that are not covered by such rights. As can be seen from these examples, the Commission will provide RTGs substantial flexibility in choosing among a wide range of pricing approaches.

(3) Examples of Unacceptable Transmission Pricing

As discussed above, any pricing proposal, even a proposal that does not conform to the traditional revenue requirement, must meet the just and reasonable standard of the FPA. Below we list two types of pricing proposals which we find unacceptable.

• Postage-Stamp "And" Pricing: Some utilities have proposed so-called "and" pricing, which would add an embedded cost rate to an incremental cost rate for the same service over the same facilities. The proposals have been based on traditional postage stamp ratemaking for which costs are aggregated at the utility level. This type of pricing has been found by the Commission to be unjust and unreasonable.[33] We cannot see how such an approach is consistent with either our fairness principle or our efficiency principle.[34]

[33] *See* Penelec, *supra* n.5.

[34] The flexibility that we endorse in this Policy Statement regarding cost disaggregation, among other things, addresses the industry's underlying concerns regarding "or" pricing. That is, while we cannot justify pricing that purports to recover two measures of a single cost, allowing the entity to account for costs on a disaggregated basis would permit separate pricing for separate facilities or small groupings of facilities. Hence, we would entertain proposals for flow-based line-by-line "or" pricing. This would permit the use of embedded costs for some lines when this is the higher of embedded or incremental costs, and the use of incremental cost for other lines when this is the higher of embedded or incremental costs.

• Pricing by Individual Utilities to Account for Loop Flow: While individual utilities may propose new and innovative pricing methods that seek to apportion transmission costs on the basis of scheduled flows (*e.g.*, zonal or line-by-line methods), we also believe that it would be inappropriate for individual utilities to reform their own approach to transmission pricing in a way that is inconsistent with regional practices regarding unscheduled or inadvertent flows (loop flow).[35] We are concerned that individual public utilities may propose approaches to loop flow pricing that lead to a patchwork of mutually inconsistent loop flow pricing methods within a region. Accordingly, a utility's proposal to use flow-based pricing generically to recover the costs of unscheduled inter-utility power flows will be treated as a non-conforming proposal if it is inconsistent with regional loop flow practices, such as use of a contract path convention.[36]

V. Pricing Proposals That Do Not Conform to the Traditional Revenue Requirement

The Commission clearly prefers pricing proposals that are designed not to exceed the traditional revenue requirement. As noted, we believe that given the current industry structure it will be difficult to justify non-conforming proposals. In addition, we believe that the flexibility permitted under this revised transmission pricing policy should be adequate to satisfy the needs of today's electric utility industry, particularly given the current structure of the industry. Nevertheless, the electric utility industry is continuing to evolve[37] and we must ensure that our policies do not impede the continued development of competitive bulk power markets, or the development of new market structures and transmission arrangements. The Commission will consider pricing proposals necessary to accommodate such developments. Some of the proposals discussed in this proceeding may exceed the traditional embedded cost revenue requirement. Such proposals will be considered *provided* they meet certain filing procedures and evaluative criteria. We will provide two procedural avenues for considering non-conforming proposals. We will also provide guidance on the type of evidentiary showing necessary to support such proposals.

[35] Of course, such individual utility pricing may be appropriate if there are no objections to the loop flow solution from any affected neighboring utilities or transmission customers.

[36] However, a public utility may seek on a case-by-case basis relief from the Commission, including appropriate compensation, in situations in which it is experiencing severe unscheduled loop flows on its system because of specific power transactions by other neighboring utilities and it has been unable to resolve the problem through existing industry mechanisms. *See American Electric Power Service Corp., et al.*, 49 FERC ¶61,377 at 62,381 (1989).

[37] In recent months, the pace of change in the electric industry has increased dramatically. Certain state proceedings on industry restructuring, as well as proceedings before this Commission, have contributed to the development of innovative proposals by both industry participants and academicians. These evolutionary changes support the need for flexibility and the need to permit non-conforming pricing proposals.

A. Procedures for Proposals That Do Not Conform to the Traditional Revenue Requirement

Any public utility that seeks non-conforming pricing must have on file with the Commission an open access transmission tariff offering comparable services. Such comparability tariff must have been accepted for filing by the Commission before a non-conforming pricing proposal will be considered. Moreover, utilities proposing non-conforming transmission pricing must submit such pricing proposals either: (a) in conjunction with a section 205 conforming transmission pricing proposal (the non-conforming proposal would be reflected as alternative "pro forma" rate sheets to the conforming proposal); or (b) in a petition for declaratory order.

(1) Alternative "Pro Forma" Rate Sheets

Under this procedure, the Commission and interested parties would review the non-conforming proposal in conjunction with review of a companion conforming pricing proposal.[38] The conforming proposal would be subject to the notice and suspension procedures of section 205. The non-conforming proposal would not. The non-conforming proposal would be litigated at the same time as the conforming proposal, but could not take effect, if at all, until the end of the proceeding. If, at the end of the proceeding, the Commission determines that the alternative, non-conforming rate proposal is acceptable under the FPA, the Commission will allow the utility to make a compliance rate filing, and the rates will be put into effect prospectively.

This procedure will permit the Commission to determine the extent to which the proposal deviates from the traditional revenue requirement, which may be necessary in determining whether the other features of the proposal are sufficient to offset this. It

[38] *See* Pacific Gas Transmission, 66 FERC ¶61,384, *reh'g denied*, 67 FERC ¶61,247 (1994), *reh'g pending*.

will also permit an examination of how risk, and hence cost of capital, will vary under the conforming and non-conforming proposals. Another benefit of the alternative "pro forma" rate sheets procedure is that the utility would be able to implement the non-conforming pricing, assuming it was just and reasonable, immediately following the Commission's final order.

(2) Declaratory Order Petition

A utility that wishes to have the Commission consider a non-conforming pricing proposal separate from a rate proceeding may bring the matter to the Commission via a petition for declaratory order. Of course, if the Commission found that the utility's proposal met the statutory criteria, the utility would still need to file a rate reflecting the proposal pursuant to FPA section 205. Presumably the section 205 proceeding would be straightforward (*i.e.* akin to a compliance filing), however, since the Commission would have already addressed the merits of the proposal in the declaratory order.

B. Criteria for Evaluating Proposals That Do Not Conform to the Traditional Revenue Requirement

Utilities proposing non-conforming transmission pricing must fully support such proposals. The utility must supply a complete discussion of how the proposal is intended to take account of the pricing principles. The Commission will consider the relative weight of each pricing principle as applied to the facts of each case. We will hold the comparability principle inviolate, however. Absent such support, the Commission will summarily reject the non-conforming proposal even if the utility has agreed to the procedural requirements set forth above.

We will also summarily reject non-conforming proposals that do not submit information showing that the proposal can be expected to:

(a) Produce greater overall consumer benefits than a conforming proposal; and

(b) Promote competitive bulk power markets.[39]

At a minimum, utilities proposing non-conforming transmission pricing must make a showing of benefits to a broad cross-section of consumers which achieve the following:

(i) Greater access and customer choice;

(ii) Projected price decreases to customers of delivered power; and

(iii) Service flexibility and available products to meet customer needs.

As noted, utilities should also explain how the non-conforming proposal promotes competitive bulk power markets.

C. Guidance Regarding Proposals That Do Not Conform to the Traditional Revenue Requirement

We believe that a non-conforming proposal that results from a diverse group such as an RTG, with fair and nondiscriminatory governance and decisionmaking procedures, would more easily be found just and reasonable than a non-conforming proposal from an individual utility, for the same reason we would afford more deference to a conforming RTG transmission pricing proposal than an individual utility conforming proposal.

Although the Commission has been willing, under appropriate circumstances, to permit market-based pricing for sales of generation, the Commission intends to treat market-based transmission rate proposals as non-conforming. Such rates obviously are not cost-based and the Commission does not believe market-based transmission pricing is appropriate at this time. Although the transmission system has multiple owners, the basic provision of firm transmission service is not competitive in most, if not all, circumstances. Rather, each owner can exert considerable market power by controlling the access, pricing and expansion of its portion of the grid. In addition, regulatory approval for new transmission lines is increasingly difficult to obtain and franchised owners are typically the only entities that possess rights of eminent domain. In these circumstances, unlike for sales of generation, the Commission cannot rely on competitive market forces to discipline prices for firm transmission service. Accordingly, any transmission owner advocating a market-based transmission pricing method must demonstrate how it has alleviated these serious concerns.

Some cost-based pricing approaches adhere to a traditional embedded (depreciated original) cost revenue requirement more closely than others. Replacement cost methods and long-run marginal cost methods of pricing, for example, may result in revenue levels that would exceed the traditional revenue requirement. Pricing methods designed to allow a transmission owner to recover more than its traditional revenue requirement (depreciated original cost) are non-conforming and would need to satisfy the procedures and criteria for non-conforming proposals.

VI. Alternative Institutions and Associated Pricing

The Commission is aware that industry participants have begun to discuss alternative institutional arrangements, such as "pool companies" and "transmission companies." Some of these institutions apparently are intended to facilitate efficient wholesale power trading, and may require alternative approaches for the pricing of transmission services. We believe that these alternative institutions hold great potential. They may assist in the resolution of some difficult federal-state jurisdictional issues and in developing mechanisms for resolving or minimizing stranded cost issues. While we are encouraged that such ideas are under discussion, and are open to considering the particular pricing needs of alternative institutions, these concepts are currently in an early, formative stage. The concepts associated with these ideas have not been adequately explored in this pricing docket or in any other Commission forum. Therefore, concurrent with issuing this Policy Statement, we are opening a separate docket to initiate an inquiry regarding alternative power pooling institutions and their particular pricing needs.[40]

VII. Conclusion

The transition to a competitive wholesale bulk power market depends on the availability of comparable transmission services. Comparable transmission service, in turn, must have appropriate prices, terms and conditions. To that end, the Pricing Inquiry has provided the basis for a productive dialogue among the various entities affected by and participating in the transition to a post-EPAct competitive bulk power market, including transmission owners, transmission users, and Federal and state regulators.

It is critical that transmission services be priced in a manner that appropriately compensates transmission owners and creates adequate incentives for system expansion when such expansion is efficient. Of course, any transmission pricing proposal will have to be evaluated under the standards of the FPA. The Commission must ensure that

[39] The reason we are providing flexibility to consider non-conforming transmission pricing proposals is because we do not want to reject out of hand innovative proposals that could benefit ratepayers. However, we do not intend to waste resources considering proposals whose *sole* purpose is to provide more revenue to the transmitting utilities. We will summarily reject such proposals.

[40] *See* Alternative Power Pooling Institutions under the Federal Power Act, Notice of Inquiry, FERC Stats. and Regs. ¶_____.

any such proposal is just, reasonable, and not unduly discriminatory or preferential. A great many of the approaches discussed in this proceeding have the potential to provide better (*i.e.*, more efficient) price signals. But they also have the potential to complicate and prolong the process of determining appropriate rates for transmission services.

This Policy Statement provides a framework for understanding these competing interests, as well as a basis for continuing the transmission pricing dialogue. The Commission has consciously avoided endorsing any particular commenter's specific pricing methodology. Instead, the Policy Statement attempts to provide guidance while still encouraging industry efforts at innovation. Indeed, a great many of the proposals that were submitted during the Pricing Inquiry are highly theoretical and would need to be tested and evaluated in the context of individual cases.

The commenters in the Pricing Inquiry almost unanimously requested that the Commission allow flexibility. To that end, the Commission has attempted to provide pricing principles and general guidance that allow broad experimentation consistent with federal law and the physics of transmission. Certain experiments, particularly pricing methods that attempt to recognize loop flow, clearly require regional involvement and cooperation if they are to be effective. RTGs are encouraged to address such issues as pricing reform and loop flow.

The Commission encourages filing utilities and new groups that may form, such as RTGs and pool companies, to work closely with state regulatory authorities in developing transmission pricing policy. The Commission is committed to cooperating with all affected parties, especially state regulatory authorities, to ensure that any such pricing reform is implemented in an equitable manner and facilitates an orderly transition to a fully competitive bulk power market. Our pricing principles are expected to provide the foundation for the industry to continue its exploration of transmission pricing reform.

Finally, the Commission in this Policy Statement has proposed procedures under which non-conforming pricing proposals will be considered. We believe these procedures are flexible enough to permit utilities to propose non-conforming pricing innovations which they believe will benefit ratepayers and promote the development of a competitive bulk power market.

The Commission is making this Policy Statement effective immediately. It is based on the voluminous record developed to date in the Pricing Inquiry. We will accept motions for reconsideration submitted within 30 days in order to help us refine the principles established herein and to provide an opportunity to respond to any questions or clarify any ambiguity. We will apply the Policy Statement to transmission pricing proposals submitted in individual cases filed after the date of this Policy Statement.

List of Subjects in 18 CFR Part 2

Administrative practice and procedure, Electric power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission amends Part 2, Chapter I, Title 18 of the Code of Federal Regulations as set forth below.

PART 2—GENERAL POLICY AND INTERPRETATIONS

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

Authority: 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352.

2. Part 2 is amended by adding § 2.22, to read as follows:

§ 2.22 Pricing Policy for Transmission Services Provided Under the Federal Power Act.

(a) The Commission has adopted a Policy Statement on its pricing policy for transmission services provided under the Federal Power Act. That Policy Statement can be found at 69 FERC 61,086. The Policy Statement constitutes a complete description of the Commission's guidelines for assessing the pricing proposals. Paragraph (b) of this section is only a brief summary of the Policy Statement.

(b) The Commission endorses transmission pricing flexibility, consistent with the principles and procedures set forth in the Policy Statement. It will entertain transmission pricing proposals that do not conform to the traditional revenue requirement as well as proposals that conform to the traditional revenue requirement. The Commission will evaluate "conforming" transmission pricing proposals using the following five principles, described more fully in the Policy Statement.

(1) Transmission pricing must meet the traditional revenue requirement.

(2) Transmission pricing must reflect comparability.

(3) Transmission pricing should promote economic efficiency.

(4) Transmission pricing should promote fairness.

(5) Transmission pricing should be practical.

(c) Under these principles, the Commission will also evaluate "non-conforming" proposals which do not meet the traditional revenue requirement, and will require such proposals to conform to the comparability principle. Non-conforming proposals must include an open access comparability tariff and will not be allowed to go into effect prior to review and approval by the Commission under procedures described in the Policy Statement.

Note: This Appendix will not appear in the Code of Federal Regulations

Appendix A—Summary of Comments on the Inquiry Concerning the Commission's Pricing Policy for Transmission Services in Docket No. RM93–19–000

The request for comments for the inquiry concerning the Commission's pricing policy for transmission services in Docket No. RM93–19–000 was issued on June 30, 1993. The date for filing responses was extended to November 8, 1993 and reply comments to January 24, 1994. Technical conferences were held on April 8 and 15, 1994. The first day of the conference covered current policy issues. The second day was devoted to advanced pricing concepts and implementation issues.

Comments were received from 165 individual commenters. Five categories of commenters are investor-owned utilities (IOUs, 67 commenters), municipal and cooperative utilities (Muni/Coop, 39 commenters), non-utility generators and independent power producers (NUGs/IPPs, 15 commenters), Regulatory/Government entities (25 commenters), and Others (19 commenters). A list of the commenters is at the end of this appendix; it shows the categories under which their comments are summarized and the acronyms used in this appendix.

A summary of the comments is provided here. The summary is organized in the same manner as the two-day conference (current policy and advanced pricing concepts). The current policy issues are subdivided into eight comment areas and advanced pricing into four comment areas as follows:

Current Policy Issues

(1) General Criteria for Transmission Service Pricing
(2) "And" Versus "Or" Pricing and Related Incentives
(3) Incremental Pricing
(4) Network Service
(5) Ancillary Services
(6) Direction Aspects of Power Flows
(7) Non-Firm Transmission Pricing
(8) Regional Transmission Groups

Advanced Pricing Concepts/Implementation Issues

(1) Alternative Pricing Concepts
(2) Distance/Flow-Based Rates
(3) Contract Path versus Measured Power Flows
(4) Spot Market Pricing

The Commission also received comments on stranded costs in the course of this Inquiry, but these are not addressed in this Pricing Policy Statement because stranded cost is the subject of a proposed rule.[41]

Current Policy Issues

1. General Criteria for Transmission Service Pricing

The first comment area deals with the proposed criteria for assessing transmission pricing reform. Commenters generally find the criteria proposed in Staff's Discussion Paper[42] acceptable. However, certain criteria are more readily agreed upon than others. Most commenters uniformly agree that the proposed criteria should: (1) Be simple to carry out and to administer; (2) promote efficient use of and investment in the transmission grid; (3) provide appropriate price signals to transmission customers; and (4) ensure equity and fairness during and beyond the transition period.

Other proposed criteria by commenters include that transmission pricing policy should:

- Ensure system reliability;
- Be flexible (*i.e.*, no "one size fits all" pricing methodology) and specifically recognize regional differences;
- Encourage the formation of Regional Transmission Groups (RTGs) and give substantial deference to pricing methodologies developed by RTGs;
- Provide for coordination between state and Federal pricing policies and encourage collaborative policy development;
- Provide for grandfathering of existing contracts and arrangements when implementing any new policies;
- Promote competition in *generation;*
- Unbundle rates for transmission services;
- Ensure nondiscriminatory rates, terms, and conditions;
- Not allow native load customers to subsidize firm wheeling;
- Give deference to negotiated agreements (with some commenters adding, where equal bargaining power is involved);
- Ensure rate predictability and transparency of rate derivation; and,
- Allow customers an option to have stable prices over time (although this would not limit parties to fixed rate contracts).

One criterion emphasized by most commenters is that the Commission should exercise maximum flexibility in pricing transmission service. Specifically, many commenters stress that the Commission should not attempt to rigidly apply a single transmission pricing methodology in all cases, to all entities, or to all regions. A general concern raised is that the Commission must recognize the substantial differences present between customer groups, utilities, state and local regulatory bodies, and regional differences. Accordingly, the Commission must resist the temptation to apply one pricing methodology in all cases.

One common view expressed by many Muni/Coops commenters is that the industry must move from a structure where multiple transmission system pricing occurs to a structure where transmission is viewed on a regional basis in conjunction with the development of large, regional power markets. Many commenters advocate the regional transmission grid approach but differ in how the industry and the Commission should advance toward this goal. Some appear to take a more cautious approach. For example, some commenters note that the Commission can only obtain meaningful answers to the questions posed in its transmission pricing inquiry if it first determines the shape of the industry it envisions (such as the regional transmission grid approach or the traditional model based on individually owned and operated transmission systems). APPA[43] contends that before considering changes in traditional transmission pricing, the Commission should develop and articulate a clear statement of its "vision" for the electric industry and specify "where the industry is going, how it will get there, likely impediments, and what steps are necessary for that vision to be fulfilled." Many Muni/Coops commenters also argue that the Commission must first determine if the benefits of transmission pricing reform will outweigh the costs of such reform.

Several Regulatory/Government entities commenters recommend that the following general principles be included in addition to the Commission's proposed criteria:

- The Commission's pricing policies should reflect differences between the rights and responsibilities of native load customers (including retail and wholesale requirements customers) and other users of the transmission system; any transmission pricing policy must ensure that native load customers will be held harmless; and,
- The Commission should seek to promote voluntary resolution of case-specific pricing issues by giving appropriate deference to consensual agreements produced through arms-length negotiations involving all affected parties.

NARUC proposes a consultative process to develop complimentary policies that truly coordinate and render coherent regulation of transmission service. The general goals include coherence of public policy, economic efficiency and reliability in electricity markets, efficiency of processes and decision-making, dialogue between federal and state decision-makers and appropriate input from constituent groups and affected parties as necessary. The Pennsylvania Commission concludes that without careful consideration of the role of state agencies and their interest in economic and environmental impacts, bulk power wheeling as envisioned by the Commission is, and will remain, a theoretical, economic model.

2. "And" Versus "Or" Pricing and Related Incentives

The "and" versus "or" issue dominated the pricing comments. While arguments on all sides of the issue were expressed, the commenters generally opposed the Commission's current corporate "or" policy and alternatively advocated either some form of the "and" pricing method or corporate-average embedded cost-based rates. The positions of the commenters are described below:

The "And" Method: Most IOUs, most Regulatory/Government entities and some Other entities support the "and" methodology. These commenters state that the Commission's "or" pricing policy does not hold the native load customers harmless and violates FPA section 212(a) (because native load customers and shareholders subsidize third party wheeling customers). When additional facilities are needed to serve third party wheeling load, and incremental (or opportunity) costs are greater than average embedded cost, native load customers subsidize that service (because no cost recognition is given to the third party's use of the existing transmission system, without which the transmission service could not be provided). Additionally, if incremental expansion cost related to third party transmission requests are not allowed by state regulators in retail rates, the transmitting utility will not be made whole. Finally, the Commission's policy on opportunity cost which applies the "higher of" test over the entire transaction period instead of an hourly basis precludes opportunity cost recovery in most cases, sends the wrong hourly price signals to transmission customers, and is overly burdensome administratively.

The "Or" Method: Most NUGs/IPPs commenters agree that the Commission's current corporate "or" policy sends the correct price signal for third-party transmission (as long as opportunity costs are "legitimate and verifiable" and continue to be capped at incremental expansion costs). However several commenters oppose pricing based on opportunity costs (as monopoly rents for a constrained system).

The Average Embedded Cost Method: Most of the Muni/Coops, some NUGs/IPPs, and some Other entities generally support the return to traditional corporate-average embedded cost-based rates. The majority of the Muni/Coops commenters and some of the Other commenters oppose both the "or" and the "and" transmission pricing methods (as yielding excessive rates and impeding the competitive generation market that EPAct permits). Such commenters recommend the traditional policy of charging average embedded cost-based transmission rates. Many of these commenters argue that a transmission-dependent utility (TDU) cannot be considered a "marginal" customer, subject to incremental and opportunity cost pricing, because the transmission system was designed to accommodate the TDU's use and has been paid for proportionally by the TDU.

[41] Docket No. RM94–7–000, Notice of Proposed Rulemaking, June 29, 1994.

[42] Staff appendix to *Inquiry Concerning the Commission's Pricing Policy for Transmission Service Provided by Public Utilities Under the Federal Power Act,* FERC States. & Regs. ¶ 35,024 (1993).

[43] Commenters are referred to by acronym here; acronyms are defined in a list at the end of this appendix.

Furthermore, these commenters argue that applying incremental pricing to TDUs is anticompetitive and inconsistent with the EPAct because (1) it forces TDUs to favor power purchases from the host utility over those from a competing power supplier, and (2) TDUs compete with the host utility for requirements customers (who are charged an average embedded cost rate by the host utility).

Commenters views regarding the incentives and disincentives inherent in corporate "or" pricing primarily fall into three basic positions:

(1) Although groups disagreed among themselves on how to calculate various cost-based transmission rates, most Muni/Coops, most Regulatory/Government entities, most NUGs/IPPs, and some others do not believe in allowing any incentives, or premiums above cost-based rates, properly calculated. Most of these commenters agreed that, when a monopoly resource is involved, such incentives amount to allowing "monopoly rents." Transmission is and will remain a natural monopoly, therefore, no incentive is needed beyond recovery of the transmitting utility's prudently-incurred costs and a fair return on its invested capital. Premiums allow the transmission monopolist a competitive advantage in the generation market. Furthermore, there is no need for incentives with the passage of the transmission provisions of the Energy Policy Act; the legal requirement to provide transmission service is sufficient incentive.

(2) Most NUGs/IPPs believe the current incentives provided by the incremental pricing part of the "or" policy are appropriate. However, many of these commenters oppose pricing based on opportunity costs (as monopoly rents for a constrained system).

(3) Those advocating "and" pricing, such as most IOUs and some Others, believe that further incentives are needed. The current "or" policy does not sufficiently compensate utilities for all costs of providing service, thus effectively requiring native load customers to subsidize transmission customers. If utilities are forced to absorb potential cost underrecovery and the risk associated with the "or" pricing methodology, then the rate of return should be adjusted to reflect greater risks assumed by engaging in third party wheeling transactions.

3. Incremental Cost Pricing

Under the Commission's current corporate "or" policy, third-party transmission users may be required to pay the incremental cost of a grid expansion if the incremental cost of the expansion is greater than corporate-average embedded cost. Such incremental pricing can be structured in one of two ways—a *contract* approach in which each user pays the incremental cost of the upgrade it occasions, and an *average* incremental price based on the average cost of all upgrades to the transmission system for a group of users.

Most, though not all, commenters believe that contract pricing is the preferred pricing model. IOUs in particular favor contract pricing because it provides more certainty that a utility's revenue requirements are fully recovered. If incremental pricing increases the risk of less than full revenue recovery, either shareholders or residual customers will bear the extra risks. Most wholesale customers also appear to favor contract pricing, though some have concerns that contract pricing, with different prices for each user, may result in price discrimination. These commenters suggest that similarly situated customers should have the same price, but have different notions of what this would mean.

For many of the difficult practical issues associated with incremental pricing, there is no consistent position taken by all or even most members of any interest group that supports incremental cost pricing. For example, many commenters believe that average incremental cost pricing gives the wrong price signal to both the transmission owner and user. These commenters are concerned that the average incremental cost price does not signal the true cost of the transmission service. A few commenters argue that this will result in underbuilding of the transmission system. Others suggest that this may result in overbuilding, although IOUs in particular doubt this result, given the difficulties inherent in siting, certification and construction of new transmission facilities.

Additionally, commenters are split on the issue of administrative costs and other implementation problems that may result under each pricing model. Some commenters argue that contract pricing entails maintaining separate contracting provisions for each user, with attendant high costs. Other commenters suggest that average incremental cost pricing is more difficult, given the need to estimate incremental costs, and the problems associated with changing average incremental rates as a result of incremental cost changes. One commenter suggests that it is simply not possible to reconcile average incremental pricing with an embedded cost transmission revenue requirement.

Several commenters suggested that it would be appropriate to allow utilities some flexibility to adopt either incremental cost pricing approach. The challenge for the Commission would be to determine under what conditions such flexibility would be warranted, in order to protect both the third-party transmission users and the remaining wholesale and retail customers from being charged for inappropriate costs. Other commenters suggest that some experimentation may be in order. If the Commission chooses to allow such experimentation, it may learn a great deal about the magnitude of the practical problems, as well as potential solutions for those problems.

4. Network Service

The Staff Discussion Paper defined network service as allowing the user to vary its schedule and points of delivery and receipt without paying additional charges for each change. Commenters were asked to discuss the reasonableness of this definition and to provide recommendations on pricing network service. Most IOUs assert that utilities cannot provide third party transmission users with unlimited flexibility in choosing and switching points of receipt and delivery. Unless the transmission customer specifies the points of receipt and delivery, the nature of the generation, and the loads to be served, the transmitting utility will have no way to determine the impact of the proposed network arrangement on its system in terms of either reliability or cost. Unlimited flexibility could require transmission upgrades and make long term planning more difficult (with the potential for overbuilding). If network service is to include unlimited scheduling flexibility, it should be considered a premium service (priced higher than point-to-point service) since it requires higher transmission capacity margins to ensure reliability.

Most Muni/Coops, Regulatory/Government entities, NUGs/IPPs and some Other commenters agree with the Commission's definition of network service. Most Muni/Coops, NUGs/IPPs and some Other commenters insist that network service should be priced on an average embedded cost basis (with no non-cost-based network rate premiums or percentage adders). These commenters argue that such premiums would place network customers at a permanent competitive disadvantage in obtaining economical generation sources and in generation sales, compared to the transmitting utility. Many commenters agree that network access should not be totally flexible, nor be unduly rigid with reservation requirements and excessively advanced scheduling requirements; rather, they believe it should be subject to the same conditions faced by the transmitting utility, and provide access to transmission on an "as if owned" basis.

APPA asserts that it is not aware of any party that is seeking network access without regard to the control area utility's own transmission needs, or that is requesting network service with total flexibility, *i.e.*, no scheduling or backup requirements. APPA adds that it agrees with EEI on two points concerning utilities receiving network service: "they should state in *planning models* the sources of power that most probably will be used to serve loads, and they should schedule generation to serve load with the transmitting utility."

Regulatory/Government entities generally agree that accurate pricing of network service will depend on the nature of the network and any revenue pooling between transmission providers. Therefore, Regulatory/Government entities urge the Commission to be flexible and not mandate any particular method for pricing network service.

5. Ancillary Services

The Staff Discussion Paper gave examples of ancillary services and requested comments on other examples (including how such services should be priced). Most IOUs recommend that unless third party customers obtain ancillary services elsewhere, they should compensate the wheeling utility for the services provided to prevent the native load customers from subsidizing these services. IOUs note that as bulk power markets are becoming more competitive and

independent power producers are supplying ever increasing amounts of generation, these support type services that were once provided on a reciprocal basis among utilities are not being provided by many suppliers because they are either unwilling or unable to provide such service.

One of the main concerns of the Muni/Coops commenters is that costs associated with ancillary services should not already be included in the average cost-based transmission rate. Additionally, several commenters insist that transmission customers should be given the option to provide such services themselves, or obtain them from other utilities, and receive full credit. These commenters also express concern regarding discriminatory pricing. Such commenters urge that any charges for ancillary services assessed to a transmission customer should be the same as the costs faced by the transmitting utility for the same service.

NUGs/IPPs, Regulatory/Government entities and Others generally did not address this issue.

Other claimed ancillary services include: Backup and Standby Service; Loss Service; Redispatch Costs; Control Center Service; Emergency Services; fast starts, "BlackStart" capability (starting up a generating station with no external power supply), regulation, and stability.

Graves, *et al.* proposed that ancillary services could be provided by an independent entity, which they call a "Poolco" (*e.g.*, an existing power pool, an RTG, NERC subregion, or consortium of independent generators). Their version of a Poolco would not participate directly in real power MW brokerage or energy supply; rather, it would own and operate a relatively small collection of generation and flow control assets sufficient to assure the integrity of the system, relying on tieline flows, voltage measurements at a few key load centers, and forecast control-area load changes (over the next few hours).

6. Direction Aspects of Power Flows

The power flows caused by a transmission transaction may be either with, or counter to, the prevailing flows. The incremental effects of transmission transactions may also raise issues with respect to the use of multiple parallel paths and the incremental effects on transmission losses.

A. Directional Flows

Most commenters (most IOUs, some Muni/Coops, and some Regulatory/Government entities) suggest that charges should be applied for all power flows on a system (regardless of direction). Several commenters indicate that reverse flows exist only under some system conditions and that changes in transmission system configuration (due to line outages) and changes in generating unit dispatch, may eliminate any reverse flows. Such commenters also claim that all transmission elements support all power flows. Accordingly, reverse flows should only be credited if they provide a direct economic benefit to the utility.

Other commenters (some Muni/Coops, some Regulatory/Government entities, and most Others) argue that it is important for the Commission to adopt a transmission pricing method which recognizes flow direction and discounts transmission service which "unloads" the system and helps to relieve constrained transmission lines. These commenters suggest that this type of pricing signal encourages the most efficient use of the transmission system.

B. Loop Flows

Few comments on this issue were received from Muni/Coops, NUGs/IPPs, Regulatory/Government entities and Others. There did not appear to be any consensus among the IOUs on the best method to address loop flow problems.

Southern Companies indicates that loop flows were often short-lived and were viewed as part of the normal interconnected operations among utilities. It was once commonly viewed that loop flows on one utility's system would most likely be offset by loop flows on its neighboring systems. In instances where the flows were a problem, negotiated solutions were reached. LG&E notes that bulk power transactions were once predominantly multi-directional and covered shorter distances so that transactions evened out over time.

However, in today's marketplace transactions are more numerous, over longer distances, and unidirectional. As a result, loop flows do not even out over time. In the new competitive environment, Southern Companies, AEP and Northern States claim the situation has changed. In the emerging bulk power market, many more long term firm transactions in a single direction are contemplated which will more adversely impact flows over interconnected systems. These commenters state that it also may be more difficult in a competitive environment to negotiate solutions to parallel flow problems. Consumers believes that uncertainty about loop-flow compensation may be a significant potential barrier to the more rapid development of competition among new generators.

C. Losses

Many commenters (some IOUs, most Muni/Coops, some Others) argue that losses vary in proportion to the distance over which the energy is moved, and accordingly, contend that incremental losses send a more appropriate price signal to the customer (by more closely linking cost causation and cost recovery). Tabors claims that efficiency requires pricing losses at the margin, which can be accomplished using load flow calculations and Optimal Power Flow modeling techniques. On the other hand, many commenters recommend average system line losses. Several of these commenters insist that they should be charged for line losses on the same cost basis that the transmitting owners use for their own dispatch and charge their native load customers.

7. Non-Firm Transmission Pricing

A fundamental issue of non-firm transmission service pricing is whether or not a contribution to capital costs over and above the variable cost of transmission (losses and opportunity costs) should be made for non-firm service. One view is that users of non-firm service should not pay for capacity costs since capacity is not built for them and their service can always be interrupted. On the other end of the spectrum are those that advocate a contribution of up to 100 percent of fixed costs, since firm customers need to be compensated for the use of the transmission system that they support in its entirety.

Most IOUs indicate that non-firm users of the transmission system should contribute to the capital costs of the system. They believe the Commission should rely on its historical precedent, which allows a contribution of up to 100 percent of fixed costs for non-firm service with the revenues being credited to native load customers. Some believe the shareholders should receive some of the revenues from non-firm transactions. Other commenters suggest minimal regulation of non-firm transactions as long as the price does not exceed a cap equal to its fully allocated transmission costs.

Many of the Muni/Coops commenters state that there are no fixed costs associated with providing non-firm transmission services and note that groups in different parts of the country (*e.g.*, PJM, NEPOOL, MAPP and ERCOT) do not include contributions to fixed costs in non-firm transmission pricing. Many commenters believe that no demand charges for non-firm transmission are necessary and argue that such demand charges may have a negative impact on the efficiencies of the economy energy market for short term transactions. For example, Consumer Working Group recommends:

Limiting non-firm rates to real costs (*i.e.* losses) would eliminate the artificial dead zone created by the incentive transmission rates now allowed. By granting all market participants (and not just transmission owners) access at cost to non-firm transactions, all consumers would benefit from increased coordination. Such nondiscriminatory, cost-based pricing of non-firm transmission would serve the EPAct's purpose of stimulating competition in bulk power markets and would promote economically efficient generation of electricity as expressly mandated by Section 212(a). (Consumer Working Group Reply at 21)

8. Regional Transmission Groups

All segments of the industry supported the Commission's encouragement of the development of such groups. Many commenters believe that RTGs represent the best method available to deal with the difficult transmission pricing issues presented in Staff's Discussion Paper. Some commenters cautioned that to be successful, RTGs must be certified by the Commission to ensure proper representation of all groups within the electric utility industry. Many commenters anticipate RTGs will facilitate coordinated regional planning, regional measurement of power flows and regional methodologies to determine the price of any firm wheeling transaction within the region. The information available on a regional basis will allow planning to alleviate current and future transmission constraints within the region as well as send a clear price signal to third party customers requesting service.

RTG's will also provide information as to what transmission capacity is available and the need for any transmission enhancements within the region to accommodate the requested transaction.

Advanced Pricing Concepts/Implementation Issues

1. Alternative Pricing Concepts

Numerous commenters proposed alternative pricing methods, other than those pricing methods normally permitted by this Commission. The methodologies advanced by these commenters varied from conceptual ideas to detailed formulas. Certain concepts and methods were advocated by more than one and in some cases several commenters, including:

- Combinations of, or hybrids between, the "or" and the "and" policies, many of which advocated recovery of all incremental costs and *some* contribution (but not necessarily 100%) to average embedded system costs.
- Variations of recovering strictly incremental or marginal cost pricing; *i.e.*, rates based on long-run incremental cost pricing for long-term firm transmission service and short-run marginal costs for other transactions. Another commenter proposed short-run marginal costs for transactions not requiring upgrades.
- Numerous proposals for a single transmission owner and for regional pricing, planning and operating approaches; for example: (1) The forced divestiture of all utilities' transmission assets and formation of a single transmission owning national grid company or "gridco"; (2) joint ownership, operation and pricing of all transmission within an established region with all transmission users obtaining load ratio shares of the regional grid and paying on an average embedded load ratio basis; (3) a proposal simply to price transmission in a region as if there were a single transmission owner; and (4) many suggestions for the Commission to further examine the companies formed in Norway, Sweden, New Zealand, Victoria (Australia), India, Argentina, England and Wales.
- Establishing a secondary market in transmission rights—transmission purchasers having the capacity to contractually broker, resell, trade, partially assign, or assign firm purchase entitlements as they choose. Capacity trading will provide for the repackaging of capacity rights to fit market needs, thereby creating a market mechanism to "price" and "clear" transmission services as a commodity.
- Numerous proposals advocating that the Commission require the unbundling of rates for transmission and sales services. Unbundling would require transmission owners to include a separate (transparent) transmission charge in any use of the utility's transmission system for the delivery of power in the wholesale market, including that utility's own wholesale sales. Transmission terms and conditions should be the same for all wholesale transactions, regardless of whether the seller is the owner of the transmission facilities used for the transaction.

2. Distance/Flow-Based Rates

Alternatives to postage stamp rates would make rates sensitive to the transmission distance involved in providing the service. Alternatives suggested include various "MW-mile" approaches and other methods based on load flows (such load flow methods can also treat issues involving multiple parallel paths and transmission losses associated with particular transmission transactions). Commenters' support is split between distance-based pricing and postage stamp rates.

Regulatory/Government commenters express a clear preference for distance-sensitive rates (over postage stamp rates). Most Regulatory/Government entities, some IOUs, some NUGs/IPPs, and some Others argue that distance-based rates would compensate the transmitter for increased transmission costs as more of its system is used. This encourages more efficient use of the transmission system. Where more miles of the transmission system are utilized, distance-sensitive rates reflect the proper cost causation. Several commenters believe that simplified distance-sensitive pricing methods, such as some MW-mile methods, used in conjunction with approaches such as zonal pricing that reflects system constraints, would be appropriate. Numerous commenters advocating distance-based rates recommend zonal pricing as a compromise between the administrative simplicity of postage stamp rates and more appropriate price signals of certain distance-based rate methods.

Most Muni/Coops, some IOUs, and some NUGs/IPPs support postage stamp rates and criticize distance-sensitive pricing due to its dependence upon power flow studies involving a base and a change case. Many commenters note that power flows on a transmission system are in constant change, thereby creating a very large number of possible system parameters that could be included in load flow analyses and therefore requiring many simplifying assumptions. Consequently, any attempt to derive a normal base case power flow on which to model an incremental power flow would be flawed and unreliable, particularly for individual utilities located in heavily interconnected networks. Therefore, these commenters prefer the administrative convenience of postage stamp rates over the complexity and questionable accuracy of distance-sensitive rates based on power flow studies.

3. Contract Path Versus Measured Power Flows

The mismatch between the contract path for a transaction and the actual flows creates pricing and equity concerns. Utilities are split regionally on whether to adopt loop flow, or parallel path, pricing reform or retain contract path pricing. Most Western utilities favor retaining contract path pricing. Western utilities maintain that the topology of the WSCC makes it well suited to the use of phase shifters to control the loop flow problem. In addition, the development of Flexible AC Transmission technology may provide additional devices to augment existing control strategies.

Many utilities in the Midwest and the East favor adopting loop flow pricing because over time contract path pricing has left many systems uncompensated for parallel flows. These utilities argue that contract path pricing is outmoded because (1) transmission services have become long-term single direction transactions, (2) many new market entities do not own transmission so that reciprocity is not possible, and (3) negotiated solutions are less possible as competition expands.

Many utilities in favor of loop flow pricing are concerned that the associated transition costs are formidable. Parallel flows constantly change with changes in the dispatch of generation. In addition, some utilities urge the development of RTGs first before implementing loop flow pricing. In fact, there is general agreement that RTGs are an appropriate institution for addressing many of the industry's problems including pricing issues and the siting and construction of transmission facilities.

While there is widespread dissatisfaction with contract path pricing outside of the West, there is considerable uncertainty about how to address the parallel flow problem effectively. Many parties believe that contract path pricing and loop flow pricing can be combined to address the problem, while other parties believe that these two methods are incompatible. Still other parties offer an array of variations on the contract path pricing and loop flow pricing methods. For example, Hogan's "contract network" approach and PacifiCorp's proposal are variations on the contract path pricing method. The GAPP experiment, which the Interregional Transmission Coordination Forum stresses as the way to identify the pricing method to compensate for parallel flows, is a preliminary type of loop flow pricing. The Texas Planned Capacity Wheeling Service and Southern Company's Transmission Cost Actual Path Pricing are also examples of loop flow pricing. Finally, many parties argue that alternatives to contract path pricing should be pursued on a voluntary basis.

4. Spot Pricing for Non-firm Transmission

Few commenters express outright opposition to spot pricing, but most advocate a cautious approach to implementation. Those in the latter category comprise a diverse group of IOUs (including EEI), coops, state commissions and industrial groups. Many suggest that spot pricing schemes should continue to be studied, but not considered for implementation at this time. Some encourage the Commission to conduct experiments similar to the Southwest Bulk Power Experiment and the WSPP

Those opposed to spot pricing generally believe that the benefits are not worth the costs. Some argue that the successful implementation of spot pricing for transmission requires a competitive market in generation that does not now exist. However, some commenters that see promise in spot pricing argue that the necessary market institutions and technology exist today. They cite the operation of tight power pools, electronic bulletin boards, and the WSCC experiment as evidence of this fact.

Some commenters argue that the "up to" transmission rates that many utilities now

use for non-firm transmission service effectively approximate spot transmission pricing. However, others believe that rate design for spot transmission pricing raises a number of difficult issues, such as the use of one-part versus two-part rates, and the appropriate definition of the cost of transmission service.

Several commenters offer highly developed policy proposals or technical models for use in implementing spot pricing. In particular, Hogan and Putnam believe that all participants in the power market should have access to economic dispatch with marginal cost pricing. Hogan argues that transmission rights cannot be built on the traditional wheeling model that assumes that specific power moves to specific customers. He claims that only by stepping away from such misleading assumptions can the Commission design a set of pricing and access reforms that are consistent with the underlying economics and will support an efficient competitive electricity market.

List of Commenters in the Transmission Pricing Policy Inquiry

The following parities filed either initial or reply comments. Acronyms used in this appendix are defined here.

Investor-Owned Electric Utilities and Associations

1. Allegheny Power Service Corporation
2. American Electric Power System Companies (AEP)
3. Arizona Public Service Company
4. Association of Electric Companies of Texas
5. Atlantic City Electric Company
6. Bangor Hydro-Electric Company
7. Carolina Power and Light Company
8. Centerior Energy Corporation
9. Central and South West Services, Inc.
10. Central Illinois Public Service Company
11. Central Louisiana Electric Company
12. Commonwealth Edison Company
13. Consumers Power Company/CMS Energy (Consumers)
14. Dayton Power and Light Company
15. Detroit Edison Company
16. Dominion Resources, Inc.
17. Duke Power Company
18. Duquesne Light Company
19. Edison Electric Institute (EEI)
20. Entergy Services, Inc.
21. Florida Power Corporation
22. Florida Power Corporation, Wisconsin Electric Power Company, and Wisconsin Public Service Corporation
23. Houston Lighting & Power Company
24. Idaho Power Company
25. Indianapolis Power & Light Company
26. Iowa-Illinois Gas and Electric Company
27. LG&E Energy Corp.
28. Long Island Lighting Company
29. Louisville Gas and Electric Company
30. Midwest Power Systems, Inc.
31. Montana Power Company
32. New England Power Service
33. New York State Electric & Gas Corporation
34. Niagara Mohawk Power Corporation (Niagara Mohawk)
35. Northeast Utilities System Companies
36. Northern States Power Company (Northern States)
37. Ohio Edison Company
38. Otter Tail Power Company
39. PacifiCorp
40. Pacific Gas and Electric Company
41. Pennsylvania-New Jersey-Maryland Interconnection
42. Pennsylvania Power & Light Company
43. Philadelphia Electric Company
44. Portland General Electric Company
45. PSI Energy Inc. and Cincinnati Gas & Electric Company
46. Public Service Company of Colorado
47. Public Service Company of New Mexico
48. Public Service Electric and Gas Company
49. Puget Sound Power & Light Company
50. San Diego Gas & Electric Company
51. Sierra Pacific Power Company
52. South Carolina Electric & Gas Company
53. Southern California Edison Company
54. Southern California Gas Company
55. Southern Companies
56. Southwestern Public Service Company
57. Tampa Electric Company
58. Texas Utilities Electric Company
59. Tucson Electric Power Company
60. Union Electric Company
61. United Illuminating Company
62. Unitil Power Corporation
63. Utility Working Group
64. Washington Water Power Company
65. Western Resources, Inc. and Kansas Gas and Electric Company
66. Wisconsin Electric Power Company
67. Wisconsin Public Service Corporation

Municipals, Cooperatives and Government-Owned Electric Utilities and Related Associations

1. Alabama Electric Cooperative, Inc. and South Mississippi Electric Power Association
2. Allegheny Electric Cooperative, Inc.
3. American Public Power Association (APPA)
4. Arizona Power Authority
5. Associated Electric Cooperative, Inc.
6. Basin Electric Power Cooperative
7. Bonneville Power Administration
8. California Department of Water Resources
9. City of Anaheim, California
10. City of Vernon, California
11. Colorado Association of Municipal Utilities
12. Colorado Joint Transmission Principles Participants
13. Consumer Working Group
14. East Kentucky Power Cooperative, Inc., Saluda River Electric Cooperative, Inc., and Wolverine Power Supply Cooperative
15. East Texas Cooperatives
16. Florida Municipal Power Agency, Michigan Municipal Cooperative Group and Wolverine Power Supply Cooperative
17. Indiana Municipal Power Agency
18. Irrigation and Electrical Districts Association of Arizona
19. Large Public Power Council
20. Lincoln Electric System
21. Massachusetts Municipal Power Systems
22. Missouri Basin Municipal Power Agency
23. Municipal Electric Authority of Georgia
24. National Rural Electric Cooperative Association
25. Northern California Power Agency
26. Oglethorpe Power Corporation
27. Old Dominion Electric Cooperative, Inc.
28. Public Generating Pool
29. Sacramento Municipal Utility District
30. South Texas Electric Cooperative, Inc. and Medina Electric Cooperative, Inc.
31. Tennessee Valley Authority
32. Transmission Access Policy Study Group
33. Transmission Agency of Northern California
34. Transmission Dependent Systems
35. Turlock Irrigation District
36. Utah Associated Municipal Power Systems
37. Wabash Valley Power Association, Inc.
38. Wisconsin Public Power, Inc. SYSTEM
39. Wisconsin Wholesale Customers

Non-Traditional Utility Generators (NUGs, IPPs, EWGs and Qfs), Power Marketers Foreign Entities and Related Associations

1. American Wind Energy Association
2. British Columbia Power Exchange Corporation (POWEREX)
3. California Independent Energy Producers Association
4. Electric Generation Association
5. Enron Power Marketing, Inc.
6. Fuel Managers Association
7. Geothermal Resources Association
8. Hydro-Quebec
9. InterCoast Power Marketing Company
10. Kvaener Energy Development Inc. and Citizens Power & Light Co.
11. LG&E Power, Inc.
12. National Independent Energy Producers
13. National Power Plc
14. Ontario Hydro
15. Torco Energy Marketing, Inc.

State Regulatory Commissions and Other Government Agencies

1. Alabama Public Service Commission
2. California Energy Commission
3. California Public Utilities Commission
4. Florida Public Service Commission
5. Georgia Public Service Commission
6. Idaho Public Utilities Commission
7. Illinois Commerce Commission
8. Indiana Utility Regulatory Commission
9. Kansas Corporation Commission
10. Maine Public Utilities Commission and the Vermont Department of Public Service
11. Massachusetts Department of Public Utilities
12. Michigan Public Service Commission
13. National Association of Regulatory Utility Commissioners (NARUC)
14. Nevada Public Service Commission
15. New York State Department of Public Service
16. Ohio Public Utilities Commission the Ohio Sitting Board
17. Pennsylvania Public Utility Commission
18. Sharp, The Hon. Philip R., Chairman, Subcommittee on Energy and Power
19. Texas Public Utility Commission
20. United States Department of Energy
21. United States Department of Justice
22. Virginia State Corporation Commission
23. Wallop, The Hon. Malcolm, Senate Committee on Energy and Natural Resources
24. Washington State Energy Office
25. Wisconsin Public Service Commission

Others

1. American Forest and Paper Association (American Forest & Paper)
2. Burns, Robert E.
3. Committee on Regional Electric Power Cooperation
4. Direct Electric Inc. (Direct Electric)
5. Drazen-Brubaker & Associates, Inc.
6. Electricity Consumers Resource Council, the American Iron and Steel Institute and the Chemical Manufacturers Association
7. Electric Power Research Institute
8. Ernst & Young Utilities Consulting/ Frederick L. McCoy
9. Hogan, William W. (Hogan)
10. Incentives Research, Inc., and Massachusetts Institute of Technology (Graves, *et al.*)
11. Institute of Electrical and Electronic Engineers
12. Interregional Transmission Coordination Forum
13. Joint Consumer Advocates
14. Lively, Mark B.
15. New York Mercantile Exchange
16. Ohio Office of the Consumers' Counsel
17. Putnam, Hayes & Bartlett, Inc. (Putnam)
18. SASY Inc.
19. Tabors Caramanis & Associates (Tabors)

[FR Doc. 94–27091 Filed 11–2–94; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 40

[Public Notice 2110]

Refusal of Diversity Immigrants

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Final rule.

SUMMARY: On March 31, 1994, the Department published a final rule to implement the provisions of sections 201(a)(3), 201(e), 203(c) and 204(a)(1)(G) of the Immigration and Nationality Act, as amended, relating to Diversity Immigrants. There was an inadvertent omission in that publication. This final rule rectifies that omission by promulgating a new section 40.105.

EFFECTIVE DATE: December 5, 1994.

FOR FURTHER INFORMATION CONTACT: Cornelius D. Scully, III, Director, Office of Legislation, Regulations, and Advisory Assistance, Bureau of Consular Affairs, (202) 663–1184.

SUPPLEMENTARY INFORMATION: Public Notice 1925 at 58 FR 68791, December 29, 1993, proposed amendments to 22 CFR Parts 40 and 42 to implement section 201(a)(3), 201(e), 203(c), 203(e)(2), and 204(a)(1)(G) of the Immigration and Nationality Act, as amended, relating to Diversity Immigrants. Public Notice 1973 at 59 FR 15298, March 31, 1994, published the final rule. The Department has belatedly realized that one proposed amendment was not included in the final rule.

In the proposed amendments the Department included a proposal to establish a new § 40.104 incorporating into regulation the statory authority to refuse an application for a diversity immigrant visa under section 203(c) if the applicant does not meet either the education or work experience requirement. Section 203(c)(2) specifies that an alien is not eligible to receive a visa under section 203(c) unless he or she has either at least a high school education or its equivalent or, within the last five years, has had at least two years work experience in an occupation requiring at least two years of training or experience.

There is thus a clear statutory mandate to refuse an application for a diversity immigrant visa if the applicant does not meet that requirement, even though this is couched in terms of eligibility requirements that must be met, rather than in terms of a refusal ground. For this reason, the Department proposed to add a new section 40.104 for this purpose. None of the commenters on the proposed regulations commented on this proposed new section, presumably because it was correctly understood to be merely a technical refinement without substantive effect on the interpretation and application of the underlying statutory provisions.

For reasons not now clear, proposed section 40.104 was not included in the final rule. Since then the Department has recently promulgated a different new section 40.104 in connection with the implementation of section 506 of Public Law 103–317, an unrelated provision. As a result, the Department is now publishing the text of what was originally proposed to be section 40.104 as section 40.105.

List of Subjects in 22 CFR Part 40

Aliens, Documentation, Immigrants, Refusals, Visas.

Accordingly, 22 CFR Part 40 is amended as follows:

PART 40—[AMENDED]

1. The authority citation for part 40 continues to read:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec 109(b)(1), Sec. 131 of Public Law 101–649, 104 Stat. 4997.

2. Part 40 is amended by adding a new § 40.105 to subpart K to read as follows:

§ 40.105 Applicant for immigrant visa under INA 203(c).

An alien shall be ineligible to receive a visa under INA 203(c) if the alien does not have a high school education or its equivalent, as defined in 22 CFR 42.33(a)(2), or does not have, within the five years preceding the date of application for such visa, at least two years of work experience in an occupation which requires at least two years of training or experience.

Dated: October 25, 1994.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 94–27118 Filed 11–2–94; 8:45 am]

BILLING CODE 4710–06–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME13–1–6645; A–1–FRL–5076–6]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Enhanced Inspection and Maintenance in Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Sagadahoc, and York Counties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is conditionally approving a revision to the Maine Department of Environmental Protection (DEP) State Implementation Plan (SIP) for Inspection and Maintenance (I/M). This SIP revision was originally submitted to EPA for approval on November 1, 1993. This submittal was supplemented by a letter from the Commissioner of DEP dated May 26, 1994 describing additional changes Maine is making to the I/M program, and a commitment to provide additional material by July 22, 1994 and to address issues relating to the low mileage waiver by specified dates. On July 21, 1994, the State of Maine submitted a revised SIP submittal. The SIP revision includes Chapter 128 of an amended State rule entitled "Motor Vehicle Emission Inspection Program," and additional supporting material including authorizing legislation, administrative items, and a description of the program being implemented.

EPA is conditionally approving the SIP revision on I/M, under section 110(k)(4) of the CAA, based on commitments made by Maine in its May 26, 1994 letter and reiterated in the July 21, 1994 submittal. Maine's commitments pertain to the "low

mileage" waiver described in III.F below as well as the owner-performed repair issue described in III.J below. Section 110(k)(4) provides that, if a state fails to comply with its commitments by a date certain, but no later than one year after EPA approval, EPA's conditional approval will convert to a disapproval. The content of the May 26, 1994 letter, and the July 21, 1994 revised SIP submission are described in detail in this notice.

EFFECTIVE DATE: This final rule is effective on December 5, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection, by appointment, during normal business hours at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., (LE–131), Washington, DC; and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 565–3233.

SUPPLEMENTARY INFORMATION: On July 8, 1994 (59 FR 35072), EPA published a notice of proposed rulemaking (NPR) for the State of Maine. The NPR proposed conditional approval or, in the alternative, disapproval of Maine's enhanced inspection and maintenance program in Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Sagadahoc, and York Counties. This SIP revision was originally submitted to EPA for approval on November 1, 1993.

This submittal was supplemented by a letter from the Commissioner of DEP dated May 26, 1994 describing additional changes Maine is making to the I/M program, and a commitment to provide additional material by July 22, 1994 and to address issues relating to the low mileage waiver by specified dates. On July 21, 1994, the State of Maine submitted a revised SIP submittal.

Specific requirements of EPA's I/M regulations and the rationale for EPA's proposed action were explained in the NPR and will not be restated here. This rulemaking explains how the State fulfilled the requirements articulated in the May 26, 1994 letter from DEP as they were described in the NPR. While no public comments were received on this NPR, substantial public comments were received on a related NPR published on June 23, 1994 (59 FR 32390). In that package, EPA proposed approval of a voluntary I/M program in Kennebec, Knox, Lincoln and Sagadahoc counties, without evaluating whether or not it met any requirements of the federal I/M rule. One hundred seventy-four comment letters were received on that package. Comments centered on a potential emissions trade, which would have allowed nitrogen oxide emission reductions from the I/M program, not reqired by federal law, to be traded to promote industrial growth. Though it was reported by the local media as such, the NPR did not propose approval of an emissions trade. In addition, while many supported I/M, some of the commenters questioned the need for I/M in Maine. Each of the letters which had a return address was responded to in writing individually from Region 1's Air Director, with the exception of comments received from the Natural Resources Council of Maine and the American Lung Association of Maine. A summary of all these comments, and EPA's response is included in section IV of this document. Again, no comments were received on the July 8, 1994 NPR to which this final action specifically pertains.

The I/M SIP includes Chapter 128 of an amended State rule entitled "Motor Vehicle Emission Inspection Program," and additional supporting material including authorizing legislation, administrative items, and a description of the program being implemented. Maine submitted this SIP revision request to the EPA to satisfy the requirements of sections 182(b)(4) and 184(b)(1)(A) of the Clean Air Act, and the federal I/M rule codified at 40 CFR part 51, subpart S. This SIP revision will require vehicle owners to comply with the Maine I/M program in the seven moderate ozone nonattainment counties in Maine. This revision applies to the Maine counties of Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Sagadahoc, and York. At the time the NPR was prepared, the State was proposing revisions to its I/M regulations and was undergoing rulemaking action to address outstanding deficiencies in the rules submitted as part of the November 1, 1993 SIP revision. The July 21, 1994 submittal includes those revised adopted rules and a detailed narrative description of the program. EPA is taking final action to conditionally approve the program because the state has met the requirements of the I/M rule except for the items which provide the basis for the conditional approval.

The NPR stated that the only outstanding issue which could not be resolved in time for the July 21, 1994 submission (and which therefore formed the basis of the conditional approval) was the "low mileage" waiver (LMW). Conditional approval for the LMW issue is necessary because the number of vehicles to be granted low mileage exemptions is uncertain and EPA is concerned that the use of LMWs may result in the State's failing to meet the minimum enhanced I/M performance standard in actual practice. Coincident with EPA's processing of the NPR, however, Maine adopted a change to the regulation that is inconsistent with the federal I/M rule. Specifically, Maine allowed for owner-performed repairs for select emission control devices for 1980 and newer vehicles to count toward the minimum waiver expenditure provided by section 51.360 of the federal I/M rule. Section 51.360 does not allow the cost of parts for these newer vehicles to count toward the waiver limit. However, the state committed in its May 26, 1994 letter and reiterated in the July 21, 1994 submittal that it would issue waivers only when the requirements of EPA's waiver requirements are met. EPA construes this as a commitment to adopt the necessary corrective measures which in turn provides an additional basis for the conditional approval proposed in the July 8, 1994 NPR. EPA believes this deviation in the area of owner-performed repairs, referred to herein as the "OPR issue," provides an additional basis for the conditional approval proposed in the July 8, 1994 NPR. Such conditional approval is appropriate because of the State's commitment to meet all of EPA's waiver requirements in its May 26, 1994 letter and in the July 21, 1994 submittal.

By proposing conditional approval on this action, EPA is agreeing to defer final, full approval on the revised SIP until the State has conducted a study of the impact of the LMW on the I/M program's emission reductions. The May 26, 1994 letter and the July 21, 1994 submittal commit to completing this evaluation no later than January 31, 1995. It should be noted that the State's authorizing legislation currently sets a deadline of January 15, 1996 for completion of this evaluation, and the State's commitment to complete the report by January 31, 1995 represents a significantly expedited schedule. In the event that the above evaluation shows that the State's use of LMWs causes it to fall short of the enhanced I/M performance standard in actual practice, the State has further committed to securing the necessary legal and regulatory changes to eliminate LMWs in time to submit a corrected I/M SIP no later than September 1, 1995. To fulfill its commitment to meet all requirements of 40 CFR 51.360 Maine must also make

the necessary regulatory changes to address the OPR issue no later than September 1, 1995. Should the State fail to meet the above commitments, the conditional approval will convert to a disapproval.

I. Clean Air Act Requirements

Background

Maine is part of the Ozone Transport Region (OTR). Section 184(b)(1)(A) of the Clean Air Act (CAA) requires areas of the OTR defined in EPA's final I/M rule (57 FR 52950, November 5, 1992) to adopt and implement an inspection and maintenance program meeting EPA's enhanced I/M performance standard. In addition, the I/M rule requires that all moderate ozone nonattainment areas containing urbanized areas must implement a program meeting the basic I/M performance standard. Maine is affected by these provisions in some areas of the State. Specifically, under EPA's I/M rule, enhanced I/M programs are required in the Portland area, and the Maine portion of the Portsmouth, New Hampshire area. Basic I/M would be required in the Lewiston-Auburn area. This program is being submitted to fulfill Maine's obligations to implement basic and enhanced I/M. Enhanced I/M is a more stringent program and includes all of the required components of basic I/M.

EPA has reviewed the November 1, 1993, May 26, 1994 and July 21, 1994 State submittals against the requirements of the Act and EPA's final I/M rule. A summary of EPA's analysis is provided below.

II. I/M Regulation General SIP Submittal Requirements

On November 5, 1992 (57 FR 52950), EPA published a final regulation establishing the I/M requirements, pursuant to sections 182 and 187 of the Act. The I/M regulation was codified at 40 CFR part 51, subpart S, and requires States to submit, by November 15, 1993, an I/M SIP revision that includes all necessary legal authority and the items specified in 40 CFR 51.350 through 51.373.

III. State Submittal

On November 1, 1993, May 26, 1994, and July 21, 1994, the State of Maine submitted various elements which, taken together, constitute an I/M SIP revision for seven ozone nonattainment counties classified as moderate or above. A public hearing for the November 1, 1993 submittal was held on October 26, 1992. As stated in the May 26, 1994 letter from the DEP, a public hearing also was held on May 25, 1994. The amended rules submitted on July 21, 1994, were effective on June 28, 1994. EPA submitted comments during both of those hearings. In addition, EPA has worked closely with the DEP to ensure that the I/M program meets EPA requirements identified in the I/M rule.

The I/M SIP submittal provides for the implementation of enhanced I/M in the Maine counties of Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Sagadahoc, and York beginning on July 1, 1994. Maine will be implementing a biennial, test-only I/M program. With the changes the State made in its July 21, 1994 submittal, the program will meet the requirements of EPA's performance standard and other requirements contained in the federal I/M rule, in the above-listed counties. Testing will be overseen by the DEP and implemented by an I/M contractor. Other aspects of the Maine I/M program include: transient testing of 1968 and later light duty vehicles and trucks and heavy duty trucks (although only the testing of 1981 and newer vehicles is considered in evaluating whether the enhanced performance standard is met), evaporative emission testing for specified model year vehicles, a test fee to ensure adequate resources to implement the program, enforcement by registration suspension, a repair effectiveness program, requirements for testing convenience, quality assurance, data collection, minimum expenditures prior to time extensions and hardship waivers, reporting, test equipment and test procedure specifications, public information and consumer protection, inspector training and certification, penalties based on inspector incompetence, an on-road testing program, and emission recall enforcement. A section-by-section analysis of the federal I/M rule, Maine's demonstration of how the I/M program meets the federal SIP requirements, as well as the changes to the Maine I/M program as submitted on July 21, 1994, is provided below.

A. Applicability

The SIP describes in detail the areas subject to the enhanced I/M SIP revision and, consistent with 40 CFR 51.372, includes the legal authority necessary to establish program boundaries.

The Maine I/M regulations and authorizing legislation specify that the enhanced I/M program be implemented in the counties described above. The Maine I/M program is being implemented in areas beyond those required by the Clean Air Act and EPA's rule. Maine is implementing the enhanced I/M program throughout its moderate ozone nonattainment areas, in part, to meet requirements of Section 182(b)(1)(A) of the CAA that requires reasonable further progress (RFP). EPA intended to take separate rulemaking action on the portion of the Maine submittal expanding the geographical scope of the I/M program to counties not otherwise required to adopt I/M. Those counties include Kennebec, Knox, Lincoln, and Sagadahoc. Although these areas are not required to implement enhanced or basic I/M, the State of Maine had requested expedited approval for those areas in order to make the resultant emission reductions federally enforceable. Therefore, EPA moved forward to approve I/M in these areas as strengthening the SIP in Knox, Kennebec, Lincoln, and Sagadahoc Counties. EPA proposed separate action on that optional I/M program in the event that EPA took final action disapproving this SIP. However, by this action, Maine's I/M program is conditionally approved and the revised SIP requirements will apply to all I/M areas including the optional areas. Once Maine has fulfilled its commitments regarding the "low mileage" waiver and the owner-performed repair issues, EPA will withdraw the separate rulemaking action approving the optional I/M program since that action would be superseded by such final (unconditional) approval in the context of this rulemaking.

B. Enhanced I/M Performance Standard

Today's proposal discusses the I/M program designed, in part, to meet the enhanced I/M performance standard for ozone precursors causing air quality problems in Maine. Maine's program was designed to meet the performance standard for volatile organic compounds (VOC) and nitrogen oxides (NO_X). EPA's performance standard establishes an emission reduction target that must be met by a program in order for the SIP to be approvable. The program, as documented in the SIP, must meet the performance standard in actual operation, with provisions for appropriate adjustments if the standard is not met.

The State submitted a modeling demonstration using the EPA computer model, MOBILE5a, showing that the enhanced performance standard will be met in the area. The impact of the allowed program exemptions (for example, street rods and stock race cars) has been incorporated into the estimate of the program's effectiveness. In addition, in its May 26, 1994 and July 21, 1994 submittals, the DEP provided a commitment to maintain the level of compliance and waivers assumed in the

modeling. The DEP also provided additional detail on this modeling effort, including justification for the modeling inputs assumed in the revised submittal. The effect of the "low mileage" waiver (LMW) was not evaluated in this modeling effort. One reason this action is a conditional approval is to allow the State to demonstrate that the effect of the LMW is negligible, or to fulfill its commitment to make necessary legislative and regulatory changes if such LMW affects the ability of the State to meet the performance standard.

C. Network Type and Program Evaluation

Under the Act and EPA's I/M rule the SIP must include a description of the network to be employed, the required legal authority, and, in the case of areas making claims for case-by-case equivalency, the required demonstration. Also, for enhanced I/M areas, the SIP needs to include a description of the evaluation schedule and protocol, the sampling methodology, the data collection and analysis system, the resources and personnel for evaluation and related details of the evaluation program, as well as the legal authority establishing the evaluation program.

Maine has chosen to implement a test-only I/M network program design utilizing contractors to implement the inspection portion of the program. The State has chosen not to make a demonstration for case-by-case equivalency for a different network design, and has provided evidence that precludes conflicts of interest by the contractor, as described in the "test-only" requirements in the I/M rule. In its July 21, 1994 letter, the Maine DEP states, in its SIP revision narrative, that it will institute a continuous ongoing evaluation program consistent with the federal I/M rule. The results of the evaluation program will be reported to EPA on a biennial basis (40 CFR 51.353). In addition, Maine commits to developing and submitting the annual reports described by 40 CFR 51.366. Legal authority, already contained in Maine state law, authorizes the DEP to implement this contractor operated, test-only program and conduct the program evaluation, as necessary, to implement I/M consistent with federal requirements.

D. Adequate Tools and Resources

Under the Act and EPA's I/M rule, the SIP must include a description of the resources that will be used for program operation and must discuss how the performance standard will be met, including: (1) A detailed budget plan describing the source of funds for personnel, program administration, program enforcement, purchase of necessary equipment (such as vehicles for undercover audits), and for other requirements discussed throughout the I/M rule, for the period prior to the next biennial self-evaluation required by the federal I/M rule, and (2) a description of personnel resources, the number of personnel dedicated to overt and covert auditing, data analysis, program administration, enforcement, and other necessary functions, and the training attendant to each function.

The current Maine legislation was effective July 12, 1993. The legislation authorizes the DEP to collect a fee from the I/M contractors to cover the costs of administrating, overseeing, and enforcing the I/M program, and provides for allocation of certain highway funds for implementation. As Maine committed in the May 28, 1994 letter, the July 21, 1994 submittal includes additional detail on the funding and description of resources to be used for implementation of the enhanced I/M program. This narrative describes the budget, staffing support, and equipment needed to implement the program. The revised regulations provide between a $2.00 and $4.00 fee per inspection to be used to administer the program.

E. Test Frequency and Convenience

Under EPA's I/M rule, the SIP must include a detailed test schedule, including the test year selection scheme if testing is other than annual. The SIP must also include the legal authority necessary to implement and enforce the test frequency requirement and explain how the test frequency will be integrated with the enforcement process. In addition, in enhanced I/M programs, the SIP needs to demonstrate that the network of stations providing testing services is sufficient to ensure consumer convenience by providing short waiting times to get a test, and short driving distances to get to the test center.

The Maine SIP revision requires biennial inspections for all subject motor vehicles that are at least two years old. The inspections will be conducted on odd or even years corresponding to the model year of the vehicle and timed with the registration process. This is described in more detail in the July 21, 1994 submittal. The authority for enforcing the testing frequency is contained in the revised Maine I/M rule. Short waiting times and short driving distances relating to network design are addressed in the contract between the State and its contractor, and in the Maine rules. The contract requires an average waiting time of 15 minutes or less per test (except for 7 days per month) and inspection facility locations which ensure that 85% of the vehicle population is within a fifteen mile drive of each facility.

F. Vehicle Coverage

Under EPA's I/M rule, the SIP must include a detailed description of the number and types of vehicles to be covered by the program, and a plan for identifying subject vehicles, including vehicles that are routinely operated in the area but may not be registered in the area. Also, the SIP must include a description of any special exemptions which will be granted by the program, and an estimate of the percentage and number of vehicles granted such exemptions. Such exemptions need to be accounted for in the emission reduction analysis. In addition, the SIP needs to include the legal authority necessary to implement and enforce the vehicle coverage requirement.

Maine's I/M program covers all 1968 and newer model year gasoline powered light-duty vehicles and light-duty and heavy-duty trucks, registered, or required to be registered, within the nonattainment areas (only the testing of 1981 and newer vehicles is considered in evaluating whether the enhanced performance standard is met). Vehicles will be identified through the State Department of Transportation vehicle registration database. Special classes, which are exempt from the emission testing program, include vehicles weighing more than 10,000 pounds (GVWR), street rods, stock race cars, and motorcycles. Based on information provided by the State, Maine has shown that such exemptions will not prevent the program from achieving the performance standard. Additional detail supporting this conclusion was submitted by the State on July 21, 1994. Legal authority for the vehicle coverage requirement is contained in the Maine I/M rule and the July, 1993 authorizing legislation. The revised rules submitted by Maine on July 21, 1994 include a low-mileage waiver (LMW) which exempts vehicles driven less than 5000 miles per year. The authorizing legislation requires the LMW and also requires that the DEP prepare a report on its effect on Maine's ability to meet the performance standard. The May 26, 1994 letter and the July 21, 1994 submittal from the DEP commit to provide the legislature with this information by January 31, 1995, and to secure revised legislation if the data shows that Maine cannot achieve the performance standard required by EPA's I/M rule. If necessary, the DEP also

commits to revising its regulation by June 1, 1995, to hold a public hearing on necessary regulatory changes, and to submit to EPA a revised SIP submittal removing the LMW by September 1, 1995. At present, there is inadequate information for EPA to determine how this waiver will affect the performance standard. For this reason, EPA is conditionally approving the submission based on the above-referenced commitments by DEP. Failure to meet any of these dates will result in EPA disapproval of this action, unless the EPA Regional Administrator approves a later date in writing no later than the date of the applicable milestone. Under no circumstances will the September 1, 1995 date for final submittal be revised.

G. Test Procedures and Standards

Under EPA's I/M rule, the SIP must include a description of each test procedure used. The SIP also must include the rule, ordinance or law describing and establishing the test procedures.

The Maine I/M SIP revision obligates the State to perform transient exhaust emission testing using the IM240 driving cycle. In addition, the State of Maine has stated that it will follow procedures in accordance with EPA's guidance document entitled, "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications." The State will be requiring IM240 tests on 1968 and later model year vehicles in the area. This model year coverage complies with EPA's I/M regulation. In addition, the State of Maine will require evaporative emission testing of fuel system integrity and functionality for 1981 and newer vehicles. The test procedures are set forth with specificity in the I/M Request For Proposal (RFP) which the Maine I/M contractor is required to abide by. In approving this action, EPA expects Maine to amend these procedures to ensure that the latest EPA procedures will be used in the program, if the EPA guidance is revised in the future.

H. Test Equipment

Under EPA's I/M rule, the SIP must include written technical specifications for all test equipment used in the program and address each of the requirements set forth at 40 CFR 51.358. The specifications must describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

In its July 21, 1994 submission, Maine provided written equipment specifications as contained in EPA's IM240 Guidance and the appendices of EPA's I/M rule. The Maine SIP submissions and their appendices address the requirements in 40 CFR 51.358 and include descriptions of performance features and functional characteristics of the computerized test systems. The necessary test equipment, required features, and acceptance testing criteria are mandated by the RFP and contract.

I. Quality Control

Under EPA's I/M rule, the SIP must include a description of quality control and recordkeeping procedures. The SIP also must include the procedures manual, rule, and ordinance or law describing and establishing quality control procedures and requirements.

The Maine I/M SIP narrative, the RFP, and the contract included as part of the Maine July 21, 1994 submittal contain descriptions and requirements establishing the quality control procedures described in accordance with the federal I/M rule and are consistent with EPA guidance. These requirements will help ensure that equipment calibrations are properly performed and recorded and that the necessary compliance document security is maintained. The Maine SIP complies with all specifications for quality control set forth in § 51.359 and appendix A of the federal I/M rule, and EPA's technical guidance.

J. Waivers and Compliance Via Diagnostic Inspection

Under EPA's I/M rule the SIP must include a maximum waiver rate expressed as a percentage of initially failed vehicles. This waiver rate is used for estimating emission reduction benefits in the modeling analysis. Corrective action must be taken if the waiver rate exceeds that estimated in the SIP, or the state must revise the SIP and claim emission reductions accordingly. The SIP also must describe the waiver criteria and procedures, including cost limits, quality assurance methods and measures, and administration. Lastly, the SIP must include the necessary legal authority, ordinance(s), or rules to issue waivers, set and adjust cost limits as required, and carry out any other functions necessary to administer the waiver system, including enforcement of the waiver provisions.

Cost limits for the minimum expenditure waivers must be in accordance with the CAA and federal I/M rule. Expenditures for repairs of at least $450, adjusted annually for the consumer price index (CPI), must be spent in order to qualify for a waiver in the enhanced I/M program. Maine has demonstrated that it can meet the enhanced I/M performance standard testing only 1981 and newer vehicles. In addition, Maine is requiring I/M on vehicles as old as 1968 model year. These vehicles will not be included as part of the "enhanced I/M" program, despite being subject to the same type of exhaust emission testing because the state does not require such vehicles to meet the $450 waiver minimum. Nevertheless, the testing of these additional vehicles will achieve additional emission reductions which will be used, in part, as a means of achieving additional emission reductions required for Reasonable Further Progress, and anticipated by Maine to be necessary for attainment. Accordingly, these older vehicles will be subject to a lower waiver expenditure of $125, adjusted for CPI, prior to receiving a waiver.

The Maine program includes a waiver rate of 3% of initially failed vehicles, Model Year 1981 and newer. This waiver rate is used in the modeling demonstration. The DEP has committed in the July 21, 1994 submittal, that if the waiver rate is higher than estimated as determined by its program reports, the State will take corrective action to address the deficiency. Furthermore, the SIP describes the three types of waivers the State will allow including: a minimum expenditure, a time extension, and a one-time hardship waiver provisions. These issues are dealt with in a manner consistent with the federal I/M rule. The proper criteria, procedures, quality assurance and administration regarding the issuance of waivers, consistent with EPA's I/M rule, will be ensured by the DEP and its contractors and are detailed in the SIP narrative, submitted on July 21, 1994.

One portion of the revised Maine rule represents a deviation from the requirements of EPA's final rule (57 FR 52950). This provision allows for owner-performed repairs for select emission control devices (specifically, the catalytic converter, exhaust pipes and hardware, fuel filler cap, PCV valve, thermostatic air cleaner, and air pump) for 1980 and newer vehicles to count toward the minimum waiver expenditure set forth in section 51.360 of the federal I/M rule. However, as mentioned above, section 51.360 also requires that the State commit to maintaining a maximum level of waivers in this program. The State has committed to a 3 percent waiver limit, and to taking necessary steps to ensure that this rate is not exceeded. It is the level of waivers that greatly affects the level of emission reductions achieved

from the program. Maine's deviation in the area of owner-performed repairs is very narrow since the list of emission control devices for which costs can count toward the waiver is expressly limited. Based on these considerations and the State's commitment to ensuring an allowable maximum waiver rate, EPA believes that a specified and clearly limited deviation from the federal I/M rule in the area of owner-performed repairs will not significantly affect the level of reductions achieved from the I/M program.

The State committed in its May 26, 1994 letter, reiterated in the July 21, 1994 submittal, that Maine would issue waivers only when the requirements of EPA's waiver requirements were met. In its May 26, 1994 letter, the State committed to amend the SIP to not allow owner repair costs to count toward the $450 waiver amount for 1980 and later model year vehicles. The July 21, 1994 submittal stated that Maine would issue waivers "only when the requirements of 40 CFR 51.360 are met." EPA construes this as a commitment to adopt the necessary corrective measures, which in turn provides an additional basis for the conditional approval proposed in the July 8, 1994 NPR. EPA has commented previously on the waiver provisions, including the OPR issue and the NPR proposed a conditional approval so that public notice on these issues was sufficient. For these reasons, EPA is conditionally approving this SIP revision. Accordingly, this notice requires the DEP to revise its regulation by June 1, 1995, to hold a public hearing on necessary regulatory changes, and to submit to EPA a revised SIP submittal removing the OPR waiver allowance for 1980 and newer cars by September 1, 1995. Of course, the State's failure to meet any of these dates will result in EPA disapproval of this action, unless the EPA Regional Administrator approves a later date in writing no later than the date of the applicable milestone. The September 1, 1995 date for final submittal will not be revised under any circumstances.

K. Motorist Compliance Enforcement

Under EPA's I/M rule, the SIP must provide information concerning motorist enforcement, including: (1) A description of the existing compliance mechanism if it will continue to be used for this program, and the demonstration that it is as effective or more effective than registration-denial enforcement; (2) an identification of the agencies responsible for performing each of the applicable activities in this section; (3) a description of, and accounting for, all classes of exempt vehicles; and (4) a description of the plan for testing fleet vehicles, rental car fleets, leased vehicles, and any other special classes of subject vehicles, such as those operated (but not necessarily registered) in the program area. Also, the SIP must include a determination of the current compliance rate based on a study of the system including an estimate of compliance losses due to loopholes, counterfeiting, and unregistered vehicles. Estimates of the effect of closing such loopholes and otherwise improving the enforcement mechanism must be supported with detailed analyses. In addition, the SIP needs to include the legal authority to implement and enforce the program. Lastly, the SIP must include a commitment to an enforcement level and minimum compliance level used for modeling purposes and to be maintained, at a minimum, in practice.

The State of Maine has chosen to use a program of registration suspension whereby subsequent registration is denied to anyone who fails to meet emission testing requirements. The motorist compliance enforcement program will be implemented primarily by the Maine Bureau of Motor Vehicles (BMV). The enforcement strategy is described in Maine's July 21, 1994 submittal. The enforcement strategy is designed to ensure a 90 percent compliance rate for all vehicles within 4 months of the compliance deadline. As described in the July 21, 1994 submittal, this will be accomplished by a computer matching program that will identify registered vehicles tested prior to registration, as well as those receiving their emission inspection within a 60 day period after registering. Those not receiving the emissions test will be notified of such failure, and put on notice that their registration will be suspended if they do not comply. Those that still fail to comply will either receive a summons to appear in court, or be subject to confiscation of their license plate by BMV personnel who would physically remove the plate from the vehicle. In addition, the Maine legislation authorizing I/M provides that vehicles operating with a suspended registration must be fined at least $450 for 1981 model year or newer vehicles, or $125, for older than 1981 model year vehicles.

The only classes of vehicles exempt from the I/M program are described above under vehicle coverage. Fleet vehicles, rental car fleets, and leased vehicles will be required to meet the same program requirements as all other vehicles that receive annual registration. The compliance rate for the program was estimated at 96%. The legal authority to implement and enforce the program is included in the Maine law and in DEP and BMV rules as supplied on July 21, 1994.

L. Motorist Compliance Enforcement Program Oversight

Under EPA's I/M rule, the SIP must include a description of enforcement program oversight and information management activities.

The Maine I/M SIP revision provides for regular auditing of its enforcement program and adherence to effective management practices, including adjustments to improve the program when necessary. These program oversight and information management activities were described in the July 21, 1994 SIP narrative, and include: establishing procedures for personnel engaged in I/M document handling and processing, supporting a communications network for the State's oversight and management requirements, and establishing an I/M database to compare to the registration database for purposes of determining program effectiveness. In addition, the SIP describes the procedures to be followed in identifying noncomplying vehicles, timeframes for confiscation of suspended vehicle registration certificates and plates, timeframes for issuing summonses to appear in court, and the associated fines for failure to comply.

M. Quality Assurance

Under EPA's I/M rule, the SIP must include a description of the quality assurance program, and written procedure manuals covering both overt and covert performance audits, record audits, and equipment audits.

The July 21, 1994 submittal from Maine includes a description of the quality assurance program. According to that submittal, the program will include operation and progress reports and overt and covert audits of all emission inspectors and emission inspection facilities to be conducted by the DEP. Written procedures and techniques for overt and covert performance, record, and equipment audits will be prepared and provided to auditors and updated as needed. The July 21, 1994 submission also includes a commitment to conduct a minimum of two (2) covert audits per lane per year.

N. Enforcement Against Contractors, Stations and Inspectors

Under EPA's I/M rule, the SIP must include a penalty schedule and legal authority for establishing and imposing penalties, civil fines, station and

inspector license suspension, and revocations. In the case of state constitutional impediments precluding immediate authority to suspend licenses, the state Attorney General shall furnish an official opinion within the SIP explaining the constitutional impediment as well as relevant case law. The SIP also must describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including the agencies, courts, and jurisdictions involved, personnel to prosecute and adjudicate cases, and other aspects of the enforcement of the program requirements, the resources to be allocated to the enforcement function, and the source of those funds. In states that are without immediate suspension authority, the SIP must demonstrate that sufficient resources, personnel, and systems are in place to meet the three-day case management requirement for violations that directly affect emission reductions.

The Maine I/M SIP revision includes specific penalties in its enforcement against contractors, stations and inspectors in accordance with the federal I/M rule. Based on its SIP submittal dated July 21, 1994, the State's enforcement procedures can be pursued through contractual or regulatory action. The DEP has the authority to immediately suspend a station inspector for violations that directly affect emission reduction benefits. Authority for establishing and imposing penalties, civil fines, license suspension, and revocations are contained in the contract. The DEP is planning to assign employees to covert and overt auditing and commit additional resources required for enforcement oversight. These audits and oversight functions will be funded by the inspection fee.

O. Data Analysis and Reporting

Under EPA's I/M rule, the SIP must describe the types of data to be collected.

The Maine I/M SIP provides for collecting test data to link specific test results to specific vehicles, I/M program registrants, test sites, and inspectors. The SIP lists the specific types of test data and quality control data which will be collected. As outlined above and described in the May 26, 1994 and July 21, 1994 submittals, the data will be used to generate reports concerning test data, quality assurance, quality control, enforcement, as well as necessary changes and identified weaknesses in the program. The state has also committed to collecting all data necessary for the quality assurance and enforcement reports, as required by 51.366 of the federal I/M rule.

P. Inspector Training and Licensing or Certification

Under EPA's I/M rule, the SIP must include a description of the training program, the written and hands-on tests, and the licensing or certification process.

The May 26, 1994 and July 21, 1994 submittals from the DEP provide detail on the inspector training program. The Maine I/M SIP provides for implementation of training, licensing, and refresher programs for emission inspectors. The SIP describes the program and curriculum including written and hands-on testing at least once every two years. All inspectors will be required to be licensed to inspect vehicles in the Maine I/M program.

Q. Improving Repair Effectiveness

Under EPA's I/M rule, the SIP must include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements of this section for enhanced I/M programs, and a description of the repair technician training resources available in the community.

In the July 21, 1994 submittal, Maine provided additional detail and a description of the technical assistance, performance monitoring and repair technician training programs to be implemented. The SIP revision provides for regularly informing repair facilities about changes to the inspection program, training course schedules, common problems, and potential solutions for particular engine families, diagnostic tips, repairs, and other assistance issues. As described in the July 21, 1994 submittal, the DEP has also ensured that a repair technician hotline be available for repair technicians, and issued a contract to accomplish this. Performance monitoring statistics of repair facilities will be provided to motorists whose vehicles fail the I/M tests in enhanced I/M areas. The State has committed to ensure that adequate repair technician training exists by establishing training courses at technical schools in the area, and has secured necessary funding under the Intermodal Surface Transportation Efficiency Act. Further, the SIP includes a detailed public information and consumer protection plan consistent with the requirements of EPA's I/M Rule at § 51.368.

R. Compliance With Recall Notices

Under EPA's I/M rule, the SIP must describe, for enhanced I/M programs, the procedures used to incorporate the vehicle recall lists provided into the inspection or registration database, the quality control methods used to ensure that recall repairs are properly documented and tracked, and the method (inspection failure or registration denial) used to enforce the recall requirements.

The revised Maine I/M SIP ensures that vehicles subject to the enhanced I/M program that are included in either a voluntary emission recall or a remedial plan determination pursuant to the CAA have had the appropriate repairs made prior to the inspection. The contractor will identify vehicles that have not completed recall repairs through an electronic database, updated on a quarterly basis. Motorists with unresolved recall notices will be required to show proof of compliance or will be denied the opportunity for inspection. The revised rules of June 28, 1994 address this issue, and were submitted on July 21, 1994.

S. On-road Testing

Under the Act and EPA's I/M rule, the SIP must include a detailed description of the on-road testing program required in enhanced I/M areas, including the types of testing, test limits and criteria, the number of vehicles (the percentage of the fleet) to be tested, the number of employees to be dedicated to the on-road testing effort, the methods for collecting, analyzing, utilizing, and reporting the results of on-road testing and, the portion of the program budget to be dedicated to on-road testing. Also, the SIP must include the legal authority necessary to implement the on-road testing program, including the authority to enforce off-cycle inspection and repair requirements. In addition, emission reduction credit for on-road testing programs can only be granted for a program designed to obtain significant emission reductions over and above those predicted to be achieved by other aspects of the I/M program. The SIP needs to include technical support for the claimed additional emission reductions.

The I/M SIP submitted on July 21, 1994 includes a detailed description of its on-road testing program. The testing program will include 0.5% of the subject vehicles. Vehicles with emission readings measured by remote sensing devices exceeding limits defined in the revised rules will be required to obtain an out-of-cycle inspection at a vehicle emission inspection facility. This

program will be staffed by the DEP. Data collection and reporting will be done using the general record-keeping and reporting provisions of the I/M program. The legal authority for this program is contained in the Maine I/M rule and the authorizing legislation. The State did not include additional modeling credit for this portion of the program as part of the modeling used to demonstrate that EPA's performance standard was met.

T. Concluding Statement

A more detailed analysis of the State's submittal and how it meets the federal requirements is contained in the EPA's technical support document prepared for this action. The TSD is available from the EPA New England Regional office listed above. The criteria used to review the submitted SIP revision are based on the requirements set forth in Section 182 of the CAA and in the federal I/M regulations. Based on these requirements, EPA developed a detailed I/M approvability checklist to be used nationally to determine if I/M programs meet the requirements of the CAA and the federal I/M rule. The checklist states the federal requirements, referenced by section of the rule, whether or not the Maine program meets such requirements, and where in the Maine SIP submittal the requirements are met. This checklist, the CAA, and the federal I/M regulation formed the basis for EPA's technical review. EPA has reviewed the Maine I/M SIP revision submitted to the EPA using the criteria stated above. The Maine regulations and accompanying materials contained in the SIP submittals from the State represent an acceptable plan to comply with the I/M requirements and meet all the criteria required for EPA to conditionally approve the SIP.

Due to recent, well-publicized criticism of initial I/M testing in Maine, an agreement appears to have been reached between representatives of the Governor's Office, the Maine Legislature, the DEP, and Systems Control, Maine's I/M contractor. The agreement calls for a suspension of mandatory vehicle testing until March, 1995 so that improvements can be made to ensure a fair and equitable program. Since EPA's I/M rule permits the phase-in of emissions testing in areas implementing new test-only programs (See 40 CFR 51.373(c)(2)), the agreement in no way precludes EPA from conditionally approving the Maine I/M SIP as set forth in this notice.

IV. Response to Comments

While no public comments were received on this NPR, substantial public comments were received on a related NPR published on June 23, 1994 (59 FR 32390). That package proposed approval of an I/M program in Kennebec, Knox, Lincoln and Sagadahoc, with no judgement as to whether or not it met any requirements of the federal I/M rule. One hundred seventy-four comment letters were received on that package. Comments centered on a proposed trade which would have allowed nitrogen oxide emission reductions not required by federal law from the I/M program to be traded to promote industrial growth. Though it was reported by local media as such, EPA's notice did not propose to approve such a trade. In addition, while many commenters supported I/M, some questioned the need for I/M in Maine. The Maine Lung Association commented in support of expanding the program to the four optional counties. Each of the letters which had a return address were responded to in writing individually from Region 1's Air Director, with the exception of the Natural Resources Council of Maine and the American Lung Association of Maine. A summary of these comments, and EPA's response is included in this package. No comments were received on the July 8, 1994 NPR to which this final action specifically pertains.

The Natural Resources Council of Maine and the American Lung Association of Maine commented the EPA should wait to approve the use of NO_x credits for trading purposes until an attainment demonstration has been submitted by the state and approved by EPA. This would allow both parties to determine if any credits generated by expanding the program area were surplus and available for trading to meeting offset requirements. Surplus credits are credits beyond those mandated by CAA requirements and necessary for attainment or Reasonable Further Progress. EPA agrees with this comment and will continue to work with the state of Maine to ensure that any credits generated by the I/M program used to meet offset requirements are surplus credits.

Final Action

EPA is conditionally approving the Maine I/M program submitted by the State, on November 1, 1993, May 26, 1994, and July 21, 1994.

Pursuant to section 110(k)(4) of the CAA, EPA is conditionally approving Maine's submission based on the commitments of the DEP. Specifically, by January 31, 1995 the DEP will submit a report outlining the effect of the "low mileage" waiver to the legislature; by June 1, 1995, if necessary, will hold a public hearing on revised regulation changes; and by September 1, 1995, if necessary, will submit a revised SIP revision removing the "low mileage" waiver from the regulations. The state must also address the above described issues related to owner performed repairs according to the same schedule. Section 110(k)(4) provides that, if a state fails to comply with its commitment, such conditional approval will convert to a disapproval.

Failure to meet any of these dates will result in EPA disapproval of this action, unless the EPA Regional Administrator approves a later date, in writing, by no later than the date of the applicable milestone. Under no circumstances will the September 1, 1995 date for final submittal be revised.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 1 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables.

Conditional approvals of SIP submittal under sections 110 and 301 subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing or has committed to impose in the future. Therefore, because the federal SIP approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a flexibility analysis for a SIP approval would constitute federal inquiry into the economic reasonableness of the state actions. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 96 S. Ct. 2518 (1976); 42 U.S.C. 7410(a)(2).

If EPA issues a final disapproval or if this conditional approval is converted to a disapproval under section 110(k), based on the state's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new federal requirement. Therefore, EPA certifies that in the

event EPA disapproves the state submittal, such disapproval would not have a significant impact on a substantial number of small entities because it would not remove existing state requirements nor would it substitute a new federal requirement.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

The Administrator's decision to approve or disapprove the SIP revision is based on whether it meets the requirements of sections 110(a)(2) (A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Maine was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 15, 1994.

Carol M. Browner,

Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart U—Maine

2. Section 52.1019 is added to subpart U to read as follows:

§ 52.1019 Identification of plan—conditional approval.

(a) The following plan revisions were submitted on the dates specified.

(1) On November 1, 1993 the Maine Department of Environmental Protection submitted a revision to the State Implementation Plan (SIP) for an enhanced Inspection and Maintenance (I/M) program in Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Sagadahoc, and York counties. This submittal was supplemented by a letter dated May 26, 1994 describing additional changes Maine is making to the I/M program, and a commitment to provide additional material by July 22, 1994. On July 21, 1994, Maine submitted a revised submission. In these submissions, the State submitted adequate legal and regulatory authority to establish and implement an I/M program which meets the requirements of the Clean Air Act by September 1, 1995.

(i) Incorporation by reference.

(A) Letters from the Maine Department of Environmental Protection dated November 1, 1993, May 26, 1994 and July 21, 1994 submitting a revision to the Maine State Implementation Plan.

(B) The "Motor Vehicle Emission Inspection Program" regulation at Chapter 128 of the Department of Environmental Protection regulations effective June 28, 1994.

(C) Title 38, Chapter 28, Motor Vehicle Inspection Program, and Title 29, Section 102–C, Motor Vehicle Inspection Requirement for Vehicle Registration, which are state law citations authorizing the above regulation, both effective June 30, 1992 and revised effective October 13, 1993.

(ii) Additional materials.

Nonregulatory, administrative portions of the November 1, 1993, May 26, 1994, and July 21, 1994 submissions to the Maine State Implementation Plan.

(b) [Reserved].

[FR Doc. 94–27312 Filed 11–2–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[KY–069–6105a; FRL–5089–4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Commonwealth of Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 13, 1992, the Commonwealth of Kentucky through the Natural Resources and Environmental Protection Cabinet (Cabinet), submitted a maintenance plan and a request to redesignate the Lexington, Owensboro, Paducah, and Edmonson County areas from nonattainment to attainment for ozone (O_3). The marginal nonattainment areas include the following counties: Lexington (Fayette and Scott), Owensboro (Daviess and a portion of Hancock), Paducah (Livingston and a portion of Marshall), and Edmonson County. Under the Clean Air Act, designations can be changed if sufficient data are available to warrant such changes and the redesignation request satisfies the criteria set forth in the Clean Air Act. In this action, EPA is approving the redesignation to attainment of the Owensboro and Edmonson County areas and the associated maintenance plans because they meet the maintenance plan and redesignation requirements. EPA will act on the request to redesignate to attainment the Lexington and Paducah areas in a future document. In this action, EPA is also approving the 1990 base year inventory for the Owensboro and Edmonson County marginal O_3 nonattainment areas.

DATES: This final rule will be effective January 3, 1995 unless adverse or critical comments are received by December 5, 1994. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Scott Southwick, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, GA 30365.

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division for Air Quality, 803 Schenkel Lane, Frankfort, KY 40601.

FOR FURTHER INFORMATION CONTACT: Scott Southwick of the EPA Region IV Air Programs Branch at (404) 347–3555 extension 4207 and at the Region IV address.

SUPPLEMENTARY INFORMATION: On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 107(d)(1), in conjunction with the Governor of Kentucky, EPA designated the Owensboro and Edmonson County areas as nonattainment because the areas violated the O_3 standard during the period from 1987 through 1989 (See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR 81.318.)

The Owensboro and Edmonson County marginal O_3 nonattainment areas (nonattainment areas) more recently have ambient monitoring data

that show no violations of the O_3 National Ambient Air Quality Standards (NAAQS), during the period from 1989 through 1991. In addition, there have been no violations reported for the 1992, 1993, or 1994 O_3 seasons. Therefore, in an effort to comply with the amended CAA and to ensure continued attainment of the NAAQS, on November 13, 1992, the Cabinet submitted for parallel processing an O_3 maintenance SIP for the nonattainment areas and requested redesignation of the nonattainment areas to attainment with respect to the O_3 NAAQS and EPA found the request complete. On November 24, 1992, the Cabinet submitted the Marginal Ozone Nonattainment Areas Projection Inventory 1990–2004 as an amendment to the SIP. On January 15, 1993, the Cabinet submitted revisions addressing public comments on the request to redesignate the nonattainment areas to attainment. On July 16, 1993, February 28, 1994, and August 29, 1994, the Cabinet submitted revisions to the redesignation request, maintenance plan, and projection inventories.

On May 7, 1993, Region IV determined that the information received from the Cabinet constituted a complete redesignation request under the general completeness criteria of 40 CFR part 51, appendix V, sections 2.1 and 2.2. However, for purposes of determining what requirements are applicable for redesignation purposes, EPA believes it is necessary to identify when the Cabinet first submitted a redesignation request that meets the completeness criteria. EPA noted in a previous policy memorandum that parallel processing requests for submittals under the amended CAA, including redesignation submittals, would not be determined complete. See "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines," Memorandum from John Calcagni to Air Programs Division Directors, Regions I–X, dated October 28, 1992 (Memorandum). The rationale for this conclusion was that the parallel processing exception to the completeness criteria (40 CFR part 51, appendix V, section 2.3) was not intended to extend statutory due dates for mandatory submittals. (See Memorandum at 3–4). However, since requests for redesignation are not mandatory submittals under the CAA, EPA believed it appropriate to change its policy with respect to redesignation submittals to conform to the existing completeness criteria (58 FR 38108 (July 15, 1993)). Therefore, EPA believes, the parallel processing exception to the completeness criteria may be applied to redesignation request submittals, at least until such time as the EPA decides to revise that exception. The Cabinet submitted a redesignation request and a maintenance plan on November 13, 1992. When the maintenance plan became state effective on January 27, 1994, the Commonwealth of Kentucky no longer needed parallel processing for the redesignation request and maintenance plan.

The Kentucky redesignation request for the nonattainment areas meets the five requirements of section 107(d)(3)(E) for redesignation to attainment. The following is a brief description of how the Commonwealth of Kentucky has fulfilled each of these requirements. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request.

1. The Area Must Have Attained the O_3 NAAQS

The Cabinet's request is based on an analysis of quality assured ambient air quality monitoring data which is relevant to the maintenance plan and to the redesignation request. Ambient air quality monitoring data for calendar year 1989 through calendar year 1991 show an expected exceedance rate of less than 1.0 per year of the O_3 NAAQS in the marginal nonattainment areas. (See 40 CFR 50.9 and appendix H.) In addition, there were no violations reported for the 1992, 1993, and 1994 O_3 seasons. Because the nonattainment areas have complete quality-assured data showing no violations of the standard over the most recent consecutive three calendar year period, the areas have met the first statutory criterion of attainment of the O_3 NAAQS. The Commonwealth of Kentucky has committed to continue monitoring in the nonattainment areas in accordance with 40 CFR 58.

2. The Area Has Met All Applicable Requirements Under Section 110, and Part D of the Act

On January 25, 1980, August 7, 1981, November 24, 1981, November 30, 1981, and March 30, 1983, EPA fully approved Kentucky's SIP as meeting the requirements of section 110(a)(2) and part D of the 1977 CAA (45 FR 6092, 46 FR 40188, 46 FR 57486, 46 FR 58080, and 48 FR 13168). The approved control strategy did not result in attainment of NAAQS for O_3. Additionally, the amended CAA revised section 182(a)(2)(A), 110(a)(2) and, under part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the CAA, EPA reviewed the Kentucky SIP to ensure that it contains all measures due under the amended CAA prior to or at the time the Commonwealth of Kentucky submitted its redesignation request.

A. Section 110 Requirements

Although section 110 was amended by the CAA of 1990, the Kentucky SIP for the marginal nonattainment areas meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements. EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 110(a)(2).

B. Part D Requirements

Before the nonattainment areas may be redesignated to attainment, they must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of part D establishes additional requirements for O_3 nonattainment areas classified under table 1 of section 181(a). The Owensboro and Edmonson County nonattainment areas were classified as marginal (See 56 FR 56694, codified at 40 CFR 81.318). The Commonwealth of Kentucky submitted their request for redesignation of the marginal nonattainment areas prior to November 15, 1992. Therefore, in order to be redesignated to attainment, the Commonwealth of Kentucky must meet the applicable requirements of subpart 1 of part D, specifically sections 172(c) and 176, but is not required to meet the applicable requirements of subpart 2 of part D, which became due on or after November 15, 1992.

B1. Subpart 1 of Part D

Under section 172(b), the section 172(c) requirements are applicable as determined by the Administrator, but no later than three years after an area has been designated to nonattainment. EPA has not determined that these requirements were applicable to O_3 nonattainment areas on or before November 13, 1992, the date that the Commonwealth of Kentucky submitted a complete redesignation request for the marginal nonattainment areas. Therefore, the Commonwealth of

Kentucky was not required to meet these requirements for purposes of redesignation. The Owensboro and Edmonson County areas currently have a fully approvable New Source Review (NSR) program which was last revised on June 23, 1994 (59 FR 32343). Upon redesignation of these areas to attainment, the Prevention of Significant Deterioration (PSD) provisions contained in part C of title I are applicable. On January 25, 1978, September 1, 1989, November 6, 1989, November 13, 1989, November 28, 1989, February 7, 1990, and June 23, 1994, the EPA approved revisions to the Commonwealth of Kentucky's PSD program (43 FR 3360, 54 FR 36307, 54 FR 46613, 54 FR 47211, 54 FR 488887, 55 FR 4169 and 59 FR 32343).

Section 176(c) of the CAA requires states to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable state SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federal actions ("general conformity"). Section 176 further provides that the conformity revisions to be submitted by states must be consistent with Federal conformity regulations that the CAA required EPA to promulgate. Congress provided for the state revisions to be submitted by November 15, 1992, one year after the date for promulgation of final EPA conformity regulations which were due November 15, 1991. When that date passed without such promulgation, EPA's General Preamble for the Implementation of Title I informed states that its conformity regulations would establish a submittal date [see 57 FR 13498, 13557 (April 16, 1992)].

The EPA promulgated final transportation conformity regulations on November 24, 1993, (58 FR 62188) and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that states adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. Pursuant to section 51.396 of the transportation conformity rule and section 51.851 of the general conformity rule, the Commonwealth of Kentucky is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, Kentucky is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Because the deadline for these submittals has not yet come due, they are not applicable requirements under section 107(d)(3)(E)(v) and, thus, do not affect approval of this redesignation request.

On February 24, 1994, the Commonwealth of Kentucky revised their maintenance plan to commit to revise the SIP by November 25, 1994, to be consistent with the final Federal regulations on conformity. In addition, the Division for Air Quality and the Kentucky Transportation Cabinet are cooperating in adopting regulations consistent with the final conformity regulation.

B2. Subpart 2 of Part D

The CAA was amended on November 15, 1990, Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. EPA was required to classify O_3 nonattainment areas according to the severity of their problem. On November 6, 1991 (56 FR 56694), the Owensboro and Edmonson County metropolitan statistical areas (MSA) were designated as marginal O_3 nonattainment. Because these areas are marginal, the areas must meet section 182(a) of the CAA. EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 182. Below is a summary of how the area has met the requirements of these sections.

(1) Emissions Inventory

The CAA required an inventory of all actual emissions from all sources, as described in section 172(c)(3) by November 15, 1992. On November 13, 1992, the Cabinet submitted an emission inventory on the Owensboro and Edmonson County area.

(2) Reasonably Available Control Technology (RACT)

The CAA also amended section 182(a)(2)(A), in which Congress statutorily adopted the requirement that O_3 nonattainment areas fix their deficient Reasonably Available Control Technology (RACT) rules for O_3. Areas designated nonattainment before amendment of the CAA and which retained that designation and were classified as marginal or above as of enactment are required to meet the RACT Fix-ups requirement. The Owensboro and Edmonson County areas were not designated nonattainment prior to 1990 and were classified as marginal O_3 nonattainment pursuant to the 1990 CAA. Therefore, these areas are not subject to the RACT fix-up requirement. However, Kentucky chose to apply RACT on all major sources which commenced on or after the effective date of a particular RACT rule. Kentucky submitted VOC RACT SIP revisions through the Cabinet to EPA on February 12, 1992, October 20, 1992, February 17, 1993, and March 4, 1993. Action was taken December 12, 1993, on the SIP revision submitted on February 12, 1992. Action was taken June 23, 1994, on the SIP revisions submitted on October 20, 1992, February 17, 1993, and March 4, 1993.

(3) Emissions Statements

The CAA required that the SIP be revised by November 15, 1992, to require stationary sources of oxides of nitrogen (NO_X) and VOCs to provide the state with a statement showing actual emission each year. This request to redesignate was submitted prior to the November 15, 1992 emissions statement deadline. Therefore, the emissions statement program is not a requirement for the Owensboro and Edmonson County areas.

(4) New Source Review (NSR)

The CAA required all classified nonattainment areas to meet several requirements regarding NSR, including provisions to ensure that increased emissions of VOCs compounds will not result from any new or major source modifications and a general offset rule. A SIP revision incorporating these requirements was due November 15, 1992. This request to redesignate was submitted prior to the November 15, 1992 NSR deadline. Therefore, the NSR program is not a requirement for the Owensboro and Edmonson County areas.

3. The Area Has a Fully Approved SIP Under Section 110(k) of the CAA

Based on the approval of provisions under the pre-amended CAA and EPA's prior approval of SIP revisions under the amended CAA, EPA has determined that Kentucky has a fully approved O_3 SIP under section 110(k) for the marginal nonattainment areas, which also meets the applicable requirements of section 110 and part D as discussed above.

4. The Air Quality Improvement Must Be Permanent and Enforceable

Several control measures have come into place since the nonattainment areas violated the O_3 NAAQS. Of these control measures, the reduction of fuel volatility from 11.4 psi to 8.6 psi, as measured by the Reid Vapor Pressure (RVP), and fleet turnover produced the most significant decreases in VOC emissions. The table below summarizes total emissions for VOCs. The difference

between 1988 and 1990 are actual permanent and enforceable emission reductions which are responsible for the recent air quality improvement in the areas. The VOC emissions in the base year are not artificially low due to local economic downturn. The technical support documents (TSD) contain additional information on these reductions.

REDUCTIONS IN VOC EMISSIONS FROM 1988 TO 1990

MSA	VOCs (tpd)		
	1988	1990	1988–1990
Owensboro	35.01	31.26	3.75
Edmonson Co	3.05	1.88	1.17

5. The Area Must Have a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS or at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems.

In this notice, EPA is approving the Commonwealth of Kentucky's maintenance plan for the Owensboro and Edmonson County marginal nonattainment areas because EPA finds that the Commonwealth of Kentucky's submittal meets the requirements of section 175A.

A. Emissions Inventory—Base Year Inventory

On November 13, 1992, the Commonwealth of Kentucky submitted comprehensive inventories of VOC, NO_x, and CO emissions from the marginal nonattainment areas. The inventories included biogenic, area, stationary, and mobile sources using 1990 as the base year for calculations to demonstrate maintenance. The 1990 inventory is considered representative of attainment conditions because the O_3 NAAQS was not violated during 1990.

The Commonwealth of Kentucky submittal contains the detailed inventory data and summaries by county and source category. This comprehensive base year emissions inventory was submitted in the SIP Air Pollutant Inventory Management System (SAMS) format. Finally, this inventory was prepared in accordance with EPA guidance. A summary of the base year and projected maintenance year inventories for the Owensboro and Edmonson County areas are included in this notice for VOCs and NO_x. The CO and the biogenic VOC values are shown below and are a part of the 1990 base year emission inventory. This notice is approving the base year inventory. Refer to the TSD for more in-depth details regarding the base year inventory for the marginal nonattainment areas.

CO EMISSION INVENTORY SUMMARY FOR 1990

[Tons per day]

	Point	Area	Mobile	Non-Road	Total
Owensboro	39.69	2.49	39.60	21.05	99.83
Edmonson Co	0.0	0.68	4.48	2.37	7.53

BIOGENIC EMISSION INVENTORY SUMMARY FOR 1990

[Tons per day]

	Biogenic
Owensboro 1990 Emissions	52.6
Edmonson Co. 1990 Emissions	29.3

B. Demonstration of Maintenance—Projected Inventories

Below, totals for VOC and NO_x emissions were projected from the 1990 base year out to 2004. These projected inventories were prepared in accordance with EPA guidance. Refer to EPA's TSD for more in-depth details regarding the projected inventory for the nonattainment areas.

OWENSBORO VOC EMISSION INVENTORY SUMMARY

[Tons per day]

	1990	1993	1996	1999	2002	2004
Point	16.52	16.43	16.34	16.25	16.17	16.11
Area	5.37	5.33	5.30	5.27	5.23	5.21
Mobile	9.37	8.84	8.22	8.53	8.38	8.29
Total	31.26	30.61	30.36	30.06	29.78	29.60

OWENSBORO NO_X Emission Inventory Summary

[Tons per day]

	1990	1993	1996	1999	2002	2004
Point	82.05	81.82	81.58	81.34	81.11	80.96
Area	0.22	0.22	0.22	0.22	0.21	0.21
Mobile	8.27	7.50	7.08	6.88	6.66	6.62
Total	90.54	89.54	88.88	88.45	87.99	87.78

EDMONSON COUNTY VOC EMISSION INVENTORY SUMMARY

[Tons per day]

	1990	1993	1996	1999	2002	2004
Point	0.00	0.00	0.00	0.00	0.00	0.00
Area	0.74	0.76	0.77	0.79	0.80	0.82
Mobile	1.14	1.16	1.12	1.05	1.08	1.10
Total	1.88	1.92	1.89	1.84	1.88	1.92

EDMONSON NO_X Emission Inventory Summary

[Tons per day]

	1990	1993	1996	1999	2002	2004
Point	0.00	0.00	0.00	0.00	0.00	0.00
Area	0.04	0.04	0.04	0.04	0.04	0.04
Mobile	1.14	1.02	1.03	0.92	0.93	0.95
Total	1.18	1.06	1.07	0.96	0.98	0.99

As indicated in the following table, an emissions decrease in VOCs and NO_X in the Owensboro nonattainment area and an emissions decrease in NO_X in the Edmonson County nonattainment area are projected throughout the maintenance period. There is an increase in VOC emissions in the Edmonson County nonattainment area. However, the emissions increase of 0.04 tpd is not expected to affect maintenance of the O_3 NAAQS in this rural area. EPA believes that these emissions projections demonstrate that the nonattainment areas will continue to maintain the O_3 NAAQS.

VOC AND NO_X PROJECTED EMISSIONS CHANGES

	VOCs (percent)	NO_X (percent)
Owensboro	−5.31	−3.04
Edmonson Co	3.17	−15.76

C. Verification of Continued Attainment

Continued attainment of the O_3 NAAQS in the marginal nonattainment areas depend, in part, on the Commonwealth of Kentucky's efforts toward tracking indicators of continued attainment during the maintenance period. The Commonwealth of Kentucky's contingency plan is triggered by two indicators, the emissions inventory for interim years exceeding the baseline emission inventory by more than 10% or an air quality violation. As stated in the maintenance plan, the Cabinet will be developing these emissions inventories every three years beginning in 1996. These periodic inventories will help to verify continued attainment. Refer to the TSD for a more complete discussion of the indicators the Commonwealth is tracking and the contingency measures.

D. Contingency Plan

The level of VOC and NO_X emissions in the nonattainment areas will largely determine its ability to stay in compliance with the O_3 NAAQS in the future. Despite the Commonwealth's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, the Commonwealth of Kentucky has provided contingency measures with a schedule for implementation in the event of a future O_3 air quality problem. The plan contains a contingency to implement RACT on existing major sources in the area where the violation occurred within ninety (90) days. RACT was not required for these nonattainment areas because they were designated marginal nonattainment pursuant to the CAA. A complete description of this contingency measure and its trigger can be found in the TSD. EPA finds that the contingency measures provided in the Commonwealth of Kentucky's submittal meet the requirements of section 175A(d) of the CAA.

E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the Commonwealth of Kentucky has agreed to submit a revised maintenance SIP eight years after the marginal nonattainment areas redesignate to attainment. Such revised SIP will provide for maintenance for an additional ten years.

Final Action

In this final action, EPA is approving the nonattainment areas' O_3 maintenance plan because it meets the requirements of section 175A. The EPA is redesignating the Owensboro and Edmonson County nonattainment areas to attainment for O_3 because the Commonwealth of Kentucky has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. In addition EPA is approving the 1990 base year emission inventories for the Owensboro and Edmonson County nonattainment areas. Nothing in this action should be construed as permitting or allowing or

establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The O_3 SIP is designed to satisfy the requirements of part D of the CAA and to provide for attainment and maintenance of the O_3 NAAQS. This final redesignation should not be interpreted as authorizing the Commonwealth of Kentucky to delete, alter, or rescind any of the VOC or NO_x emission limitations and restrictions contained in the approved O_3 SIP. Changes to O_3 SIP VOC regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation (section 173(b) of the CAA) and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the CAA.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective January 3, 1995 unless, by December 5, 1994, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective January 3, 1995.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607 (b)(2).)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Tables 2 and 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for 2 years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

40 CFR Part 81

Air pollution control, Hydrocarbons, Carbon monoxide, Nitrogen oxides, National parks, Wilderness areas.

Dated: September 20, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart S—Kentucky

2. Section 52.920 is amended by adding paragraph (c)(70) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(70) The maintenance plan for the Owensboro and Edmonson County Areas which include Daviess, a portion of Hancock, and Edmonson Counties submitted by the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet on November 13, 1992, November 24, 1992, March 10, 1993, July 16, 1993, March 3, 1994, and August 29, 1994, as part of the Kentucky SIP. The 1990 Baseline Emission Inventory for the Owensboro and Edmonson County areas which include Daviess, a portion of Hancock, and Edmonson Counties.

(i) Incorporation by reference.

(A) Commonwealth of Kentucky Attainment Demonstration and Ten Year Maintenance Plan for All Areas Designated Marginal Nonattainment for Ozone. The effective date is December 28, 1992.

(B) Attachment A—Demonstration of Permanent and Enforceable Reductions and Calculations of Interim Year Emission Projections. The effective date is August 26, 1994.

(C) Attachment B—VOC Emissions Summary for Kentucky's Marginal Ozone Nonattainment Areas. The effective date is August 26, 1994.

(D) Attachment C—CO Emissions Summary for Kentucky's Marginal Ozone Nonattainment Areas. The effective date is August 26, 1994.

(E) Attachment D—NO_x Emissions Summary for Kentucky's Marginal Ozone Nonattainment Areas. The effective date is August 26, 1994.

(F) Table 6–12 Biogenic Emissions Hancock County, Kentucky. The effective date is December 28, 1992.

(G) Table 6–11 Biogenic Emissions Daviess County, Kentucky. The effective date is December 28, 1992.

(H) Table 6–1. Biogenic Emissions Edmonson County, Kentucky. The effective date is December 28, 1992.

(ii) Other material.

(A) February 28, 1994, letter from John E. Hornback, Director, Division for Air Quality to Mr. Doug Neeley, Chief, Air Programs Branch.

(B) October 4, 1994, letter from Phillip J. Shepherd, Secretary, Natural Resources and Environmental Protection Cabinet to John H. Hankinson, Regional Administrator, USEPA Region IV.

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.318 the Kentucky-Ozone table is amended by revising the entries for "Edmonson County", "Daviess County", and "Hancock County" to read as follows:

§ 81.318 Kentucky.

* * * * *

KENTUCKY—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * * *	*	*	*	
Edmonson County	1/3/95	Unclassifiable/Attainment		
* * * *	*	*	*	
Daviess County	1/3/95	Unclassifiable/Attainment		
* * * *	*	*	*	
Hancock County	1/3/95	Unclassifiable/Attainment		
* * * *	*	*	*	

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 94–27071 Filed 11–2–94; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[WV23–1–6421a, WV23–2–6422a, A–1–FRL–5099–9]

Approval and Promulgation of Air Quality Implementation Plans and Designation of Areas for Air Quality Planning Purposes; West Virginia; Rescission of Final Rule Pertaining to Redesignation of the Huntington West Virginia Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Removal of Direct final rule.

SUMMARY: On September 6, 1994, EPA published approval of a redesignation request and maintenance plan for the Huntington, West Virginia Ozone Nonattainment Area (59 FR 45980). This action approved a maintenance plan for the area to assist in maintaining the ozone standard and redesignated the Huntington, West Virginia area to attainment for ozone. The intended effect of the action was to provide for continued attainment of the ozone NAAQS by means of a maintenance plan and to reclassify the area to attainment. The effective data of this action was October 21, 1994.

EPA approved this direct final rulemaking without prior proposal because the Agency viewed it as a noncontroversial amendment and anticipated no adverse comments. The final rule was published in the **Federal Register** with a provision for a 30 day comment period (59 FR 45980). At the same time, EPA announced that this final rule would convert to a notice of proposed rule (NPR) (59 FR 46019) in the event that adverse comments were submitted to EPA within 30 days of publication of the rule in the **Federal Register**. The effective date of this action has passed.

Notice of intent to adversely comment was submitted to EPA within the prescribed comment period. Therefore, EPA is rescinding the September 6, 1994, final rulemaking action. All public comments received will be addressed in a subsequent rulemaking action based on the proposed rule entitled Approval and Promulgation of Air Quality Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Redesignation of the Huntington, West Virginia Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan.

EFFECTIVE DATE: November 3, 1994.

FOR FURTHER INFORMATION CONTACT: Ruth Knapp at (215) 597–8375 or Todd Ellsworth at (215) 597–2906.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone.

40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

Dated: October 14, 1994.

Stanley Laskowski,

Acting Regional Administrator, Region III.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart XX—West Virginia

§ 52.2520 [Amended]

2. Section 52.2520 is amended by removing paragraph (c)(30).

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart C—Section 107 Attainment Status Designations

4. In § 81.349 the ozone table is amended by revising the entries for "Cabell County" and "Wayne County" under Huntington-Ashland Area to read as follows:

§ 81.349 West Virginia.

* * * * *

WEST VIRGINIA—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * * *	*		*	*
Huntington-Ashland Area:				
Cabell County		Nonattainment		Moderate.
Wayne County		Nonattainment		Moderate.
* * * *	*		*	*

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 94–26968 Filed 11–2–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Amendment of Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) amends the final flood elevation determination published on April 14, 1994, and removes the final flood elevation determination published for the Town of Clarence, New York. A new final flood elevation determination for that community will be made at a later date.

EFFECTIVE DATE: November 3, 1994.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: FEMA published a notice of final flood elevation determination for the Town of Clarence, New York on April 14, 1994 at 59 FR 17718. An engineering review of that determination concluded that the final flood elevation determination should be, and is hereby, rescinded in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104. Following an engineering analysis and review, a new final flood elevation determination will be made for the Town of Clarence, and will be published in the **Federal Register.**

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended under New York by removing the entry for Town of Clarence, Erie County.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: October 25, 1994.

Frank H. Thomas,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–27158 Filed 11–2–94; 8:45 am]

BILLING CODE 6718–03–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 931078–4286; I.D. 100593C]

RIN 0648–AF42

Atlantic Swordfish Fishery

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement a voluntary pilot program that will allow limited retention of undersized swordfish, in excess of the trip allowance, for scientific purposes critical to proper stock assessment. Swordfish so collected must be donated through the Second Harvest National Foodbank Network to needy individuals. The intended effects are to obtain additional information regarding the harvest, mortality, and biological characteristics of swordfish less than the minimum size, while investigating the potential for avoiding waste of swordfish that would otherwise be discarded dead.

EFFECTIVE DATE: December 5, 1994.

ADDRESSES: Copies of documents supporting this action may be obtained from Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, NMFS, 1335 East-West Highway, Silver Spring, MD 20910. Comments on the information collection requirements should be sent to Richard

H. Schaefer and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: Desk Officer for NOAA).

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, Chief, Highly Migratory Species Division; telephone: (301) 713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the Fishery Management Plan (FMP) for Atlantic Swordfish and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) and the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). Regulations issued under the authority of the ATCA carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

Background

In June 1991, NMFS implemented swordfish regulations, consistent with the ICCAT recommendations, that included a minimum size limit of 41 lbs. (18.6 kg) dressed weight or 31 inches (78.7 cm) carcass length. The regulations include a trip allowance for undersized swordfish in an amount not exceeding 15 percent of the total number of swordfish landed. NMFS and the majority of the swordfish industry recognize the importance of minimizing the catch and mortality of undersized swordfish and remain committed to that objective.

Although large swordfish are the preferred target of U.S. swordfish vessels, harvest of some undersized swordfish is unavoidable in most cases. Under current regulations, undersized swordfish in excess of the trip allowance must be discarded, despite the fact that many of these fish are dead prior to being brought aboard the vessel. This results in waste of the resource. Further, if discards are not accurately reported, loss of information critical to proper stock assessment, in general, and to evaluation of the minimum size limit, in particular, also occurs.

NMFS, in cooperation with Blue Water Fishermen's Association, other members of the swordfish industry, National Fisheries Institute, and Second Harvest National Foodbank Network (Second Harvest), proposed implementing a pilot program to address these issues. Under the pilot program, voluntary participants selected by NMFS will be allowed to land, in excess of the 15 percent allowance, undersized swordfish that were dead prior to being brought aboard the vessel. Reporting and marking requirements will ensure the integrity of the program. Undersized fish retained in excess of the trip limit would be donated through Second Harvest to needy individuals.

At the November 1992 ICCAT meeting, the U.S. delegation discussed the proposed pilot program. It was agreed that the program was consistent with current ICCAT recommendations for swordfish and that it would be useful for evaluating the effectiveness of the minimum-size regulation. The United States will provide ICCAT with all data collected from the program.

Second Harvest is a tax-exempt organization that solicits surplus products and distributes them through a network of more than 45,000 qualified recipient organizations that provide food to millions of needy, ill, or infant Americans.

Further information is available from the **Federal Register** notice of the proposed rule on the Atlantic Swordfish Fishery (58 FR 68109, Dec. 23, 1993). This final rule makes some modifications to the proposed rule. The modifications are made after consideration of public comments, to make the responsibilities of program participants more clear and to ensure the enforceability of the regulations. These minor modifications are explained in the Description of the Program section of this preamble. NMFS realizes that there is a need to develop guidelines for donation programs for bycatch. A task force will be formed by NMFS to look into this issue. Information obtained from this pilot study, and task force meetings will begin the process of addressing NMFS standards for bycatch donation programs.

Program Objectives

1. Improve Scientific Information Regarding Catch, Mortality, Discard Rate, and Biological Characteristics of Undersized Swordfish

The program will provide an alternative source of data for estimating discards in excess of the trip allowance for undersized swordfish; discourage unreported discarding of dead undersized swordfish; and provide an opportunity to obtain additional information (e.g., age, size, sex) about undersized swordfish. This is important in maintaining catch per unit of effort indices for small swordfish, which are critical to ICCAT stock assessments.

2. Avoid Waste of a Valuable Resource

Dead fish that would have been discarded will be donated, through an organized, controlled program, to needy individuals.

3. Encourage Tagging and Release of All Live Undersized Swordfish by the Participants

The regulations require the owner or operator of a vessel to make a reasonable effort to tag and release live swordfish. In addition, the regulations encourage the participants to tag small bluefin tuna, bigeye tuna, yellowfin tuna, and sharks when possible.

4. Implement the Program in a Manner That Will Not Jeopardize or Undermine the Broader Management Objective of Minimizing the Mortality of Undersized Swordfish

The regulations implementing the program contain every practicable safeguard to ensure this.

Description of the Program

Non-profit

Although participants will incur costs associated with donated fish (harvesters—handling and processing, dealers—storage, Second Harvest—distribution), they will receive no direct economic benefit from landing and donating the undersized swordfish. Any purchase, sale, trade, or barter of undersized swordfish in excess of a vessel's trip allowance for undersized swordfish landed under the pilot program is prohibited.

Selection Process

NMFS will select participants (dealers and vessels) from among volunteers. Factors that will be considered in the selection process include: (1) History of voluntary participation in NMFS cooperative scientific programs, e.g., tag and release, sea sampling, collection of biological samples; (2) whether both vessel and dealer volunteers can be matched in an area throughout the year (including truck routes) to ensure distribution of donated fish; (3) representative coverage of the fishery to the extent possible; and (4) possible exclusion from the program of vessels and dealers with Magnuson Act, Lacey Act, or ATCA violations. Item (4) was expanded from the proposed rule, because NMFS does not want participants in the program who have serious violations, but NMFS wants to retain discretionary authority to include participants that have only minor violations.

Scope of the Program

The pilot program is divided into seven geographic regions: Gulf of Mexico, Florida East Coast, South Atlantic Bight, Mid-Atlantic Bight,

Northeast Coastal, Northeast Distant Waters, and Caribbean. Initial efforts will be directed at establishing the program in the Gulf of Mexico region and then along the Atlantic seaboard. NMFS will select only one or two vessels initially, with only six vessels selected in the first year. NMFS intends to have 100 percent observer coverage of these vessels. After the logistics are worked out and any unforeseen problems are resolved, additional vessels/regions will be gradually added during the second year until the pilot program is established in all seven regions. Ultimately, two to four vessels and cooperating dealers will be selected to participate in each region.

Responsibilities of Participating Fishermen

A selection letter from NMFS, identifying the vessel as a participant in the program, is required to be maintained aboard the vessel and made available for inspection. Non-participating vessels remain subject to the current limits on the retention of undersized swordfish. Participants will be required to accommodate on board observers.

Undersized swordfish that are dead when brought on board the vessel and that will be donated are required to be properly prepared and stored. All live undersized swordfish to the extent possible must be tagged, released, and reported to NMFS on logbook and tagging records. Participants are required to handle properly, record, and transfer to selected dealers all undersized swordfish in excess of the trip allowance, i.e., such swordfish or parts thereof may not be retained for the crew, purchased, sold, bartered, traded, or given to anyone other than a selected dealer for transfer to an authorized recipient (Second Harvest).

The vessel owner or operator is required to notify the NMFS Office of Enforcement, at the phone number listed in the selection letter, and the dealer, 24 hours in advance, or as otherwise specified by NMFS, of landing information, including date, approximate time, location, and estimated number of fish to be donated. Specific instructions will be provided by NMFS to address logistics and to facilitate shorter notification in areas where the fishing grounds, such as the Florida Straits, are close to the landing locations. The advance notification and landing requirements were modified from the proposed rule to allow better enforcement and tracking of the donated swordfish.

The vessel owner or operator, prior to offloading, must tag donated swordfish with individually numbered tags provided by NMFS. Dealers may specify more than one facility where they expect to off-load vessels in the program. All fish must be in whole or dressed form through off-loading, and all swordfish from a vessel's trip must be off-loaded at the same facility. A list of selected dealers will be provided by NMFS to participating vessels.

The individual carcass weights of all donated fish must be clearly indicated, using a NMFS-specified code, on the tally (weigh-out) sheets that must be submitted to NMFS, as specified in the current regulations.

Transfer of swordfish between vessels is prohibited, as currently specified in the regulations.

Responsibilities of Participating Dealers

A selection letter from NMFS, identifying the dealer as a participant in the program, must be maintained at the dealer's place of business and be made available for inspection.

Donated swordfish may be received only from vessels selected by NMFS. A list of selected vessels will be provided by NMFS to participating dealers.

Dealers are responsible for weighing all undersized swordfish to be donated and recording the individual carcass weights, using a NMFS-specified code, on the dealer reports currently required. Information regarding vessel and dealer identification and the date that fish were received must be included on those reports. Reports must be submitted twice monthly to NMFS, as currently required by the regulations.

Swordfish for donation must be separated from swordfish eligible for sale and maintained without removal of the donation tag.

The dealer is required to obtain a bill of lading from Second Harvest, its affiliate, or agent for all swordfish donated. A copy of the bill of lading and weigh-out sheet must be submitted to the vessel that landed the swordfish (along with normal dealer weigh-out/trip settlement sheets). The types of forms to be used are more specific than indicated in the proposed rule, but no additional forms have been required.

Responsibilities of Second Harvest

Donated swordfish or any part thereof cannot be purchased, sold, bartered, or traded.

Donated swordfish must be made available for use as soon as possible to ensure the greatest freshness and palatability.

Second Harvest, its affiliates or agents, assume responsibility for donated swordfish upon receipt from the dealer, including transportation, quality control of product, processing, and distribution to the needy.

Transportation is to be provided by Second Harvest to ensure timely collection and distribution of donated swordfish.

Upon pickup of swordfish, Second Harvest, its affiliate or agent must provide dealers with bills of lading that include, or have attached, the names and permit numbers of fishing vessels and dealers involved in donating the swordfish, date of pickup, and tag number with individual carcass weight of each swordfish received. Second Harvest, its affiliates, or agents must provide copies of bills of lading with attachments to Second Harvest headquarters, which will provide duplicate copies to NMFS.

Second Harvest's affiliates or agents are responsible for distributing donated swordfish to local charities, which will process and prepare the swordfish for consumption by needy individuals. During discussions with Second Harvest representatives on processing and preparation, the matter of liability was considered. No modification was necessary in this final rule because the Good Samaritan laws in each state adequately cover the issue.

Implementation

The pilot program could continue for 2 years, subject to review and evaluation. NMFS will monitor the program and prepare an annual report evaluating the results. Results from this study will be presented to ICCAT. If the program is achieving its purposes, and there is concurrence from ICCAT, the program could be continued beyond 2 years. If the program is not achieving its purpose or is no longer in conformance with the recommendations of ICCAT, NMFS will terminate the program.

Comments and Responses

Comment 1: This program would provide the industry and NMFS data on the real numbers of live and dead fish caught, which are needed to manage the fishery. At the same time, the program would feed the hungry children of our Nation while not changing the catch or the quota.

Response: NMFS agrees. Current estimates of the mortality for fish hooked on longline are from observation data that 70 percent of hooked fish are dead when brought alongside the vessel. This pilot program provides that all small swordfish brought alongside must either be tagged and released alive, landed dead as part of the 15 percent tolerance, or tagged dead for transfer to Second Harvest. This ensures that accurate information will be collected

on live and dead small swordfish, with accurate length frequency data on all swordfish less than the minimum size. In addition, this program will increase the number of tagged and released small fish that potentially can provide more information on the growth and movement of small swordfish.

Comment 2: This program would provide much-needed protein to the needy. Food banks are always short of nutritious, high-protein foods. While this small pilot program would only supply a small amount against a tremendous need, it would make a difference.

Response: If current estimates of catch, tolerance, number of discards, and average weights are correct, the pilot program in full operation could supply the Second Harvest network about 42,000 lbs. (19.05 metric tons) landed weight per year.

Comment 3: This is a good, small-scale program to be closely monitored by NMFS that would deal with the problem of dead bycatch. It would serve as an excellent pilot, because if it is abused NMFS has the authority to terminate the program.

Response: NMFS agrees.

Comment 4: This project would promote understanding of the benefits of fish to the needy, who currently underutilize fish as a protein source. At the same time, it would not change the number of swordfish caught or killed, only the number of dead swordfish thrown overboard.

Response: Second Harvest is working closely with NMFS on this program; every opportunity will be taken to promote the benefits of seafood consumption. Further, every effort has been made in the final rule to ensure that only those fish already dead will be retained for contribution to the Second Harvest.

Comment 5: Placing requirements on times and locations of landings will reduce the number of volunteers who are willing to participate in the pilot program.

Response: The landing requirements will be examined in the pilot program along with other aspects of the process. Provisions in the final rule allow the Assistant Administrator for Fisheries to modify landing requirements after consultation with the industry and law enforcement officials.

Comment 6: Observers must be placed on all participating vessels to ensure that the vessels' crews comply with the provisions of the pilot program.

Response: NMFS intends to have 100 percent observer coverage on the vessels the first year and then evaluate whether 100 percent coverage is necessary for the entire pilot study.

Comment 7: NMFS must ensure that this pilot program is not used as an excuse to violate tolerance laws.

Response: In the final rule, landing restrictions, record keeping requirements, selection of participants, and enforcement are all used to help ensure against abuse of the tolerance regulations. In addition, as previously stated, the participating vessels are required to notify NMFS Enforcement 24 hours prior to each landing of the expected time and location of arrival.

Comment 8: This program is not necessary for swordfish management.

Response: ICCAT has sanctioned this program as part of its overall international research program. Reliable data on small fish are necessary to manage Atlantic swordfish adequately. Knowledge of stock distribution will have wide implications for stock analysis and future management options. Increased tagging of live fish and their subsequent recovery, with all the analytical implications, will benefit the NMFS pelagic tagging program, management decisions (e.g., information for possible time/area closures), and the ICCAT statistical data base. This program also can help fulfill a social need, and provides a logical disposition of the specimens taken for scientific purposes.

Comment 9: Indirect economic benefit will accrue through tax advantages; NMFS must ensure against economic motive for killing small swordfish.

Response: Information from IRS indicates that this is not a problem because in general the fishermen will not get any additional tax benefit beyond that which already exists.

Comment 10: In order for this program to work, NMFS must provide enough enforcement to overcome the incentive to kill small juveniles. Small swordfish will be killed to "high-grade" the 15 percent tolerance on participating pilot program vessels.

Response: The final rule specifically forbids killing small juveniles, and requires that all participating vessels notify enforcement 24 hours prior to landing. All live fish less than the minimum size must be tagged and released alive by participating vessels. Some "high-grading" may occur, but it will be no more than current regulations allow, since all donated dead fish less than the minimum size must be tagged prior to landing and weigh-out. The regulations specifically prohibit the removal of a donation tag; vessel owners or operators must account for all tags.

Comment 11: This program would divert scarce resources from NMFS Highly Migratory Species (HMS) program's more urgent needs.

Response: Data collection and analysis of any kind require an investment of program resources. For the HMS Division, the requirements of collecting the data and giving the specimens to the needy take no more effort than collecting the data and disposing of the specimens after the data are collected.

Comment 12: NMFS must address Executive Order 12898 to insure that minorities will not be adversely affected by mercury contamination of swordfish.

Response: Mercury is cumulative with size and age in swordfish. The Food and Drug Administration has set 1.0 parts per million (ppm) as the action level for methyl mercury in fish products. Swordfish at the minimum size and lower test in the 0.2 ppm to 0.6 ppm range. Based on available data, swordfish consumed through charitable programs will not result in a contamination problem. Additionally, NMFS will test for methyl mercury levels in donated swordfish each semester throughout the first year.

Comment 13: This pilot program would take away any incentive for longline fishermen to reduce the incidence of juvenile swordfish being hooked and killed.

Response: The pilot program volunteers will encompass less than 3 percent of the longline fleet when fully in operation. Restrictions and requirements are included in the program to prevent any increase in juvenile swordfish mortality beyond what would have occurred without the program.

Changes From the Proposed Rule

Changes in this final rule from the proposed rule include some operational changes. The responsibility for tagging donated fish now rests with the owner or operator of the volunteer vessel, and all donated fish must be tagged prior to offloading. Volunteer vessel owners or operators must notify NMFS enforcement 24 hours prior to landing and offloading the donated fish. NMFS plans in the first year of operation to place observers on all participating vessels. The number of vessels selected in the first year is not expected to exceed six vessels. Volunteer vessels who have been issued a Notice of Violation and Assessment may be excluded from the program. All unused tags must be accounted for by the vessels owners or operators. In addition to operational changes some minor changes were made in wording of the text to make the meaning of certain passages more clear.

Classification

This final rule is published under the authority of the ATCA. The Assistant Administrator for Fisheries, NOAA (AA), has preliminarily determined that this final rule is consistent with the recommendations of ICCAT and is necessary for management of the Atlantic swordfish fishery.

This final rule has been determined to be not significant for purposes of E.O. 12866.

This final rule contains four new collection-of-information requirements subject to the Paperwork Reduction Act, specifically, application to participate in the donation program, 24-hour advance notice of landing donated swordfish, tagging and reporting of undersized fish for voluntary participants, and submission of bills of lading and landing receipts by Second Harvest headquarters to dealers and to NMFS. The public reporting burdens for these collections of information are estimated to average 10, 3, 2, and 15 minutes, respectively, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Requests to collect this information have been approved by OMB (OMB Control number 0648–0277). This final rule also involves three collections of information subject to the Paperwork Reduction Act that have previously been approved by OMB, specifically, fishing vessel reports (OMB Control Number 0648–0016), dealer reports (OMB Control Number 0648–0013), and tagging requirements (OMB Control Number 0648–0247). The public reporting burdens for these collections of information are estimated to average 6, 30, and 2 minutes, respectively, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding burden estimates or any other aspect of these collections of information, including suggestions for reducing the burdens, to NMFS or OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: October 27, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 630 is amended as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

2. In § 630.7, paragraph (q) is revised and paragraph (y) is added to read as follows:

§ 630.7 Prohibitions.

* * * * *

(q) Land a swordfish smaller than the minimum size specified in § 630.23(a), except for the trip allowance for undersized swordfish, as specified in § 630.23(b), and except as authorized in § 630.51.

* * * * *

(y) Purchase, sell, trade, or barter, or attempt to purchase, sell, trade, or barter, any swordfish or part thereof that is subject to the donation program in subpart D of this part, as specified at § 630.51(b)(9), § 630.51(c)(4), or § 630.51(d)(5).

3. A new subpart D is added to part 630 to read as follows:

Subpart D—Donation Program

630.50 Purpose.
630.51 Participation.
630.52 Termination.

Subpart D—Donation Program

§ 630.50 Purpose.

This subpart implements a program under which swordfish from the North Atlantic swordfish stock that are retained in excess of the trip allowance for undersized swordfish specified in § 630.23(b) must be retained for donation through the Second Harvest National Foodbank Network to the needy. This program is intended to obtain additional information regarding the harvest, mortality, and biological characteristics of swordfish less than the minimum size limit and to avoid waste of swordfish that would otherwise be discarded dead.

§ 630.51 Participation.

(a) *General.* Owners of vessels and dealers permitted under § 630.4 may volunteer to participate in the swordfish donation program by contacting the Chief, Highly Migratory Species Division, Office of Fisheries Conservation and Management, NMFS, 1335 East-West Highway, Silver Spring, MD 20910; telephone: (301) 713–2347, facsimile (301) 588–4967. The Chief, Highly Migratory Species Division, will select owners of vessels and dealers who may participate in the donation program and will keep selected vessel owners advised of the selected dealers.

(1) Factors that will be considered in the selection process include:

(i) History of voluntary participation in NMFS cooperative scientific programs;

(ii) Whether both vessel and dealer volunteers can be matched in an area throughout the year (including truck routes) to ensure distribution of donated fish;

(iii) Representative coverage of the fishery, to the extent possible; and

(iv) Compliance record of volunteers. Specifically, any person who has been issued a Notice of Violation and Assessment (NOVA) for violating any provision of the Magnuson Act (16 U.S.C. 1802 *et seq.*), the Lacey Act (16 U.S.C. 3371 *et seq.*), or the ATCA (16 U.S.C. 971 *et seq.*), or who is currently under investigation for such a violation, may be excluded from the program.

(2) Selected dealers will also be advised of the selected vessel owners and of authorized Second Harvest recipients of donated swordfish.

(3) Second Harvest is the Second Harvest National Foodbank Network, 116 South Michigan Avenue, Suite 4, Chicago, IL 60603–6001. Second Harvest affiliates are Certified Affiliate Food Banks throughout the United States that have a contract with Second Harvest and are officially part of their National Foodbank Network. Agents of Second Harvest are the individual charities that distribute or serve food to the needy from the Affiliate Food Banks, or a business designated by letter from Second Harvest to transport donated food between the foodbank and the charity.

(b) *Vessels.* The owner, or their operator, of a vessel that has been selected to participate in the donation program and so notified in writing by the Chief, Highly Migratory Species Division, may retain swordfish from the North Atlantic swordfish stock that are in excess of the trip allowance for undersized swordfish specified in § 630.23(b) under the following terms and conditions. No person may land a swordfish in excess of the trip allowance for undersized swordfish other than in accordance with these terms and conditions; any such landing constitutes a violation of the prohibition specified in § 630.7(q).

(1) The vessel's selection letter from the Chief, Highly Migratory Species Division, must be carried on board the fishing vessel and the operator must present it for inspection upon the request of an authorized officer.

(2) The vessel's owner or operator must release any swordfish that is less than the minimum allowable size specified in § 630.23(a) and that is alive

when brought aboard the vessel, in a manner that will ensure maximum probability of survival. If caught by hook, such fish must be released by cutting the line near the hook without removing the swordfish from the water. The owner or operator must make a reasonable effort to tag each swordfish released under this paragraph (b)(2). In addition, participants are encouraged to tag all released small bluefin tuna, big eye tuna, yellowfin tuna and sharks where possible. Tags will be provided by the Science and Research Director. A record of each tag and release must be maintained and submitted to the Science and Research Director on forms provided with the tags.

(3) The vessel's owner or operator must retain any swordfish that is dead when brought aboard the vessel.

(4) The vessel's owner or operator must tag any swordfish that is retained under the donation program of this subpart prior to its off-loading from a vessel at the facility of a selected dealer, using a non-reusable, individually numbered donation tag provided by the Chief, Highly Migratory Species Division. The donation tag is not to be removed by the vessel crew, dealer, or Second Harvest until the carcass is processed.

(5) All tags assigned to a vessel by NMFS Highly Migratory Species Division, used or unused, must be accounted for by the owner/operator at the request of any authorized officer.

(6) The vessel's owner or operator must off-load any swordfish that is retained under the donation program of this subpart only at a specified facility of a dealer who has been selected by the Chief, Highly Migratory Species Division, to participate in the donation program. Off-loading must begin between the hours of 8 a.m. and 6 p.m. local time. An owner or operator must notify the Chief, NMFS Office of Enforcement, by telephone at numbers given in the vessel owner's selection letter, and a selected dealer, at least 24 hours prior to off-loading swordfish under the donation program, unless stated otherwise in the vessel owner's selection letter.

(7) The Assistant Administrator, upon consulting with industry representatives and NMFS Office of Enforcement, may change the requirements for off-loading by notification in the **Federal Register**.

(8) All swordfish harvested during a trip by a vessel participating in this pilot program must be off-loaded at the same facility to a dealer participating in this donation program.

(9) No vessel owner or operator may sell, trade, or barter, or attempt to sell, trade, or barter, any swordfish or any part thereof that is retained under the donation program of this subpart.

(c) *Dealers.* A dealer who has been selected and so notified in writing by the Chief, Highly Migratory Species Division, to participate in the donation program may receive and retain swordfish from the North Atlantic swordfish stock that are in excess of a vessel's trip allowance for undersized swordfish specified in § 630.23(b) under the following terms and conditions. Possession of an undersized swordfish other than in accordance with these terms and conditions constitutes a violation of the prohibition specified in § 620.7(a) of this chapter.

(1) Dealers must have available on their premises, or facility, the dealer selection letter from the Chief, Highly Migratory Species Division, and must present it for inspection upon the request of an authorized officer.

(2) A dealer may receive swordfish in excess of a vessel's trip allowance for undersized swordfish only from a vessel that has been selected by the Chief, Highly Migratory Species Division, to participate in the donation program.

(3) A swordfish that is received under the donation program must be kept separate from other swordfish possessed by the dealer. The donation tag on such swordfish may not be removed.

(4) No dealer may sell, trade, or barter, or attempt to sell, trade, or barter, any swordfish, or any part thereof, that is retained under the donation program of this subpart.

(5) A dealer may transfer any swordfish that is received under the donation program only to Second Harvest, and such swordfish may be transported only by Second Harvest or their designated agent. The dealer must obtain the receipt specified in paragraph (d)(3) of this section from Second Harvest or their designated agent. A copy of the receipt must be furnished by the dealer to the harvesting vessel.

(6) The dealer must include individual swordfish tag numbers along with the associated individual carcass weights of swordfish received under the donation program in the twice-monthly reports required by § 630.5(b).

(d) *Second Harvest.* Second Harvest, or its affiliates or agents, may receive and distribute swordfish from the North Atlantic swordfish stock that are in excess of the trip allowance for undersized swordfish specified in § 630.23(b) under the following terms and conditions. Possession of a swordfish other than in accordance with these terms and conditions constitutes a violation of the prohibition specified in § 620.7(a) of this chapter.

(1) Second Harvest may receive swordfish that are in excess of the trip allowance for undersized swordfish only from a dealer who has been selected by the Chief, Highly Migratory Species Division, to participate in the donation program.

(2) Second Harvest may receive only undersized swordfish with donation tags attached.

(3) Upon receiving swordfish under the donation program, Second Harvest must provide a bill of lading receipt that shows, or has affixed, individual carcass weights and associated tag numbers of swordfish received, the names and permit number(s) of the vessel(s) that harvested the swordfish, the name and permit number of the dealer, and the date of receipt. Such receipt must be distributed as follows: Original and one copy (for the vessel owner or operator) to the dealer, one copy to the Chief, Highly Migratory Species Division, and one copy retained by Second Harvest to accompany the carcass shipment until it is processed.

(4) All tags received by Second Harvest affiliates or agents must be returned to Second Harvest and accounted for by Second Harvest at the request of any authorized officer, or Chief, Highly Migratory Species Division.

(5) Second Harvest, its affiliates or agents, may not sell, trade, or barter, or attempt to sell, trade, or barter, any swordfish or any part thereof that is retained under the donation program of this subpart.

(e) *Duration of selection.* A selection letter remains valid for the period specified therein, provided the permit issued to the participating vessel or dealer under § 630.4 remains valid, except that such selection letter may be revoked by the Chief, Highly Migratory Species Division—

(1) Upon the request of the participating vessel owner or dealer;

(2) Upon issuance of a Notice of Violation and Assessment against the participating vessel owner or dealer for a violation of the Magnuson Act (16 U.S.C. 1802 *et seq.*), the Lacey Act (16 U.S.C. 3371 *et seq.*), or the ATCA (16 U.S.C. 971 *et seq.*); or

(3) For actions not consistent with the requirements of the pilot program of this subpart.

(f) *Transfer.* A selection letter issued under this subpart is not transferable or assignable. Such letter is valid only for the vessel or dealer for which it was issued.

§ 630.52 Termination.

Upon a finding by the Assistant Administrator that the intended

purposes of the program are not being achieved, or that the program is no longer in conformance with the recommendations of the International Commission for the Conservation of Atlantic Tunas, the Assistant Administrator may terminate the program by notification in the **Federal Register**.

[FR Doc. 94–27188 Filed 11–2–94; 8:45 am]
BILLING CODE 3510–22–W

50 CFR Part 672

[Docket No. 931199–4042; I.D. 102894C]

Groundfish of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for groundfish by vessels using trawl gear in the Gulf of Alaska (GOA), except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA that remain open to directed fishing for pollock. This action is necessary because the 1994 Pacific halibut prohibited species catch (PSC) limit for trawl gear in the GOA has been caught.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 29, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The final 1994 initial specifications for the GOA (59 FR 7647, February 16, 1994) established the 1994 Pacific halibut PSC limit for vessels using trawl gear at 2,000 metric tons (mt).

The Director, Alaska Region, NMFS, has determined, in accordance with § 672.20(f)(3)(i), that vessels engaged in directed fishing for groundfish with trawl gear in the GOA have caught the 1994 Pacific halibut PSC limit. Therefore, NMFS is prohibiting directed fishing for groundfish by vessels using trawl gear in the GOA, except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA that remain open to directed fishing for pollock. This closure is effective from 12 noon, A.l.t., October 29, 1994, until 12 midnight, A.l.t., December 31, 1994.

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 28, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–27222; Filed 10–28–94; 4:14 pm]
BILLING CODE 3510–22–F

50 CFR Part 678

[Docket No. 920409–3047; I.D. 102594A]

Atlantic Shark Fisheries

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

ACTION: Closure.

SUMMARY: NMFS announces the closure of the Federal commercial fishery for large coastal sharks in the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. This action is necessary to prevent exceeding the semiannual quota for the period July 1 through December 31, 1994.

EFFECTIVE DATE: 11:30 p.m. local time November 4, 1994, through December 31, 1994.

FOR FURTHER INFORMATION CONTACT: C. Michael Bailey, 301–713–2347; Kevin B. Foster, 508–281–9260; or Michael Justen 813–893–3161.

SUPPLEMENTARY INFORMATION: The Atlantic shark fishery is managed by the Secretary of Commerce according to the Fishery Management Plan (FMP) for Atlantic Sharks under authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR part 678.

Section 678.23(b)(1)(i) of the regulations provides for two semiannual quotas of large coastal sharks to be harvested from Atlantic, Caribbean, and Gulf of Mexico waters by commercial fishermen. The second semiannual quota is available for harvest from July 1 through December 31, 1994.

The Assistant Administrator for Fisheries, NOAA (AA), is required under § 678.24 to monitor the catch and landing statistics and, on the basis of these statistics, to determine when the catch of Atlantic, Caribbean, and Gulf of Mexico sharks will equal any quota under § 678.23(b)(1). When shark harvests reach, or are projected to reach, a quota established under § 678.23(b)(1), the AA is further required under § 678.24 to close the fishery.

The AA has determined, based on the reported catch and other relevant factors, that the semiannual quota for the period July 1 through December 31, 1994, for large coastal sharks, in or from the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, will be attained by the closure date. After 11:30 p.m. on November 4, 1994, for vessels issued a permit under § 678.4, possession of large coastal sharks from the management unit is prohibited, unless the vessel is operating as a charter vessel or headboat, in which case the vessel limit per trip is four large coastal sharks. However, the sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter, of carcasses and/or fins of large coastal sharks harvested by a person aboard a vessel that has been issued a permit under § 678.4(a)(4), is prohibited, except for those sharks that were harvested, offloaded, and sold, traded, or bartered prior to the closure, and were held in storage by a dealer or processor.

Vessels that have been issued a Federal permit under § 678.4 are reminded that, as a condition of permit issuance, the vessel may not retain a large coastal shark during the closure, regardless of where harvested, except as provided by § 678.24(a)(2). Fishing for pelagic and small coastal sharks may continue. The recreational fishery is not affected by this closure.

Classification

This action is taken under 50 CFR part 678 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 28, 1994.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–27221; Filed 10–28–94; 4:14 pm]
BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 59, No. 212
Thursday, November 3, 1994

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

Federal Grain Inspection Service

7 CFR Part 68

Fees for Beltsville Commodity Testing Laboratory Services

AGENCY: Federal Grain Inspection Service, USDA.[1]

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS), under authority of the Agricultural Marketing Act (AMA) of 1946, is proposing to increase service fees charged by the FGIS Commodity Testing Laboratory at Beltsville, Maryland. FGIS is also proposing to establish a test and unit fee for vomitoxin testing at the Laboratory.

These revisions are necessary to cover, as nearly as practicable, the projected operating costs, including related supervisory and administrative costs, for commodity laboratory testing services.

DATES: Written comments must be submitted on or before December 5, 1994.

ADDRESSES: Written comments must be submitted to George Wollam, Federal Grain Inspection Service, USDA, Room 0624 South Building, P.O. Box 96454, Washington DC 20090–6454; or FAX (202) 720–4628.

All comments received will be made available for public inspection during regular business hours in room 0623 South Building, 1400 Independence Avenue SW., Washington, DC. (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: George Wollam, address as above, telephone (202) 720–0292.

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627) concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.5).

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be significant for the purposes of Executive Order 12866 and therefore has been reviewed by the Office of Management and Budget.

This proposed increase in the service fees is necessary to recover operating losses at the Beltsville Commodity Testing Laboratory. These fees were last increased on December 17, 1984 (57 FR 59887), and due to increases in operating costs, revenue is not covering operating costs. The overall cost of operating the laboratory increased between FY 92 and 93 by more than 8 percent. This cost increase occurred simultaneously with a more than 17 percent downturn in revenue due to fewer service requests. Revenue of $1,035,411 did not cover the operating cost of $1,192,669 for FY 93, resulting in a 1-year operating loss of $157,228. Given FY 93 volume, the proposed fee increase will generate revenue of $1,394,577 or an increase of $355,224.

Under these circumstances, the Administrator of the Federal Grain Inspection Service has determined that this proposed action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This proposed rule will not pre-empt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to provisions of this rule.

Regulatory Flexibility Act Certification

David R. Shipman, Acting Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official commodity laboratory testing services do not meet the requirements for small entities. In addition, FGIS is required by statute to recover the costs of providing official commodity laboratory testing services, as nearly as practicable.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the previously approved information collection and recordkeeping requirements concerning applications for inspection services, including official commodity laboratory testing services, have been approved by the Office of Management and Budget under control number 0580–0013.

Background

The fees for commodity laboratory testing services were last increased August 1, 1984, (49 FR 26547). Subsequent adjustments were made on April 17, 1991, (56 FR 15483), adding several new laboratory test services and consolidating others for clarity and efficiency. Currently, these fees appear in section 68.90, Table 4 of the regulations (7 CFR 68.90, Table 4).

FGIS is adding a vomitoxin laboratory testing service to the current list of fees, 7 CFR 68.90, Table 4. The new test is required to accommodate frequent grain and food industry requests for this service.

FGIS continually strives to contain operating costs through program efficiencies and streamlining. In fiscal year 1992, FGIS took specific action to reduce chemical disposal costs by implementing new technology. FGIS further enhanced laboratory procedures to improve overall efficiency. While these changes proved successful in reducing certain costs, the overall cost of operating the laboratory increased between FY 92 and 93 by more than 8 percentum. This cost increase occurred simultaneously with a more than 17 percentum downturn in revenue due to fewer service requests. Revenue of $1,035,441 did not cover the operating cost of $1,192,669 for fiscal year 1993, resulting in a 1-year operating loss of $157,228.

Given fiscal year 1993 volume, the proposed fee increase will generate revenue of $1,394,577 or an increase of $355,224.

Proposed Action

Section 203(h) of the AMA (7 U.S.C. 1622(h)) provides for the establishment and collection of fees that are reasonable, and as nearly as practicable,

to cover the costs of the services rendered.

These fees cover the FGIS administrative and supervisory costs for the performance of official services. FGIS costs include personnel compensation, personnel benefits, travel, rent, communications, utilities, contractual services, supplies, and equipment.

Section 68.90, Table 4 (as currently shown in section 68.90, Table 4 of the regulations) is revised to provide for the increase in laboratory commodity testing fees and the addition of the vomitoxin laboratory testing as outlined in the background.

The increased fees for laboratory tests are: Aflatoxin test (other than TLC or Minicolumn), Aflatoxin (TLC), Aflatoxin (Minicolumn), Appearance & Odor, Ash, Bacteria count, Baking test (cookies), Bostwick (uncooked/cook test/dispersibility), Brix, Calcium, Carotenoid Color, Cold test (oil), Cooking test (other than corn soy blend), Crude fat, Crude fiber, Dough handling (baking), E. coli, Falling number, Fat (acid hydrolysis), Fat-stability (A.O.M.), Flash point (point & closed cup), Free fatty acid, Hydrogen ion activity (pH), Iron enrichment, Linolenic acid (fatty acid profile), Lovibond color, Moisture, Moisture & volatile matter, Performance test (prepared bakery mix), Peroxide value, Pesticide residue (carbon tetrachloride, methyl bromide, ethylene dibromide), Phosphorus, Popcorn kernels (total defects), Popping ratio/value popcorn, Potassium bromate, Protein, Salmonella, Salt or sodium content, Sanitation (light filth), Sieve test, Smoke point, Solid fat index, Unsaponifiable matter, Urease activity, Visual exam (hops pellet), Visual exam (insoluble impurities, oils, and shortening), Visual exam (pasta), Visual exam (processed grain products), Vitamin enrichment, and Water activity.

List of Subjects in 7 CFR Part 68

Administrative practice and procedure, Agriculture commodities.

For the reasons set out in the preamble, 7 CFR Part 68 is proposed to be amended as follows:

PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CERTIFICATION OF CERTAIN AGRICULTURE COMMODITIES AND THEIR PRODUCTS.

1. The authority citation for part 68 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*)

§ 68.90 [Amended]

2. Section 68.90 is amended by revising the section heading, paragraph (a), Table 4, and paragraphs (b) and (c) to read as follows: *Fees for Official Laboratory Test Services Performed at the FGIS Commodity Testing Laboratory at Beltsville, Maryland. For Processed Agricultural Products.*

(a) In addition to the fees, if any, for sampling or other requested service, a fee will be assessed for each laboratory test (original, retest, or appeal) as follows:

TABLE 4.—LABORATORY FEES [1]

Laboratory tests	Fees
(1) Alpha monoglycerides	$18.00
(2) Aflatoxin test (other than TLC or Minicolumn method)	22.50
(3) Aflatoxin (TLC)	48.00
(4) Alfatoxin (Minicolumn method)	25.00
(5) Appearance & odor	3.00
(6) Ash	8.50
(7) Bacteria count	10.00
(8) Baking test (cookies)	28.00
(9) Bostwick (cooked)	12.60
(10) Bostwick (uncooked/cook test/dispersibility)	6.50
(11) Brix	8.00
(12) Calcium	12.50
(13) Carotenoid color	12.50
(14) Cold test (oil)	10.00
(15) Color test (syrups)	6.50
(16) Cooking test (other than corn soy blend)	7.00
(17) Crude fat	10.00
(18) Crude fiber	13.00
(19) Dough handling (baking)	8.50
(20) E. coli	19.00
(21) Falling number	12.00
(22) Fat (acid hydrolysis)	14.00
(23) Fat stability (A.O.M.)	27.00
(24) Flash point (open & close cup)	14.00
(25) Free fatty acid	12.00
(26) Hydrogen ion activity (ph)	9.50
(27) Iron enrichment	15.00
(28) Iodine number/value	9.50
(29) Linolenic acid (fatty acid profile)	50.00
(30) Lipid phosphorous	47.00
(31) Lovibond color	10.00
(32) Margarine (nonfat solids)	23.60
(33) Moisture	6.00
(34) Moisture average (crackers)	4.00
(35) Moisture & volatile matter	8.50
(36) Performance test (prepared bakery mix)	32.00
(37) Peroxide value	13.50
(38) Pesticide residue (carbon tetrachloride, methyl bromide & ethylene dibromide)	50.00
(39) Phosphorus	14.00
(40) Popcorn kernels (total defects)	19.00
(41) Popping ratio/value popcorn	19.00
(42) Potassium bromate	20.00
(43) Protein	7.50
(44) Rope spore count	31.50
(45) Salmonella	40.00
(46) Salt or sodium content	12.50
(47) Sanitation (filth light)	24.00
(48) Sieve test	5.00
(49) Smoke point	22.00
(50) Solid fat index	85.00
(51) Specific volume (bread)	21.80
(52) Staphylococcus aureus	24.50
(53) Texture	6.50
(54) Tilletia controversa kuhn (TCK)	25.20
(55) Unsaponifiable matter	25.00
(56) Urease activity	12.50
(57) Visual exam (hops pellet)	7.50
(58) Visual exam (insoluble impurities, oils & shortening)	5.00
(59) Visual exam (pasta)	10.50
(60) Visual exam (processed grain products)	12.00
(61) Visual exam (total foreign material other than cereal grains)	6.50
(62) Vitamin enrichment	7.00
(63) Vomitoxin (TLC)	40.00
(64) Vomitoxin (Qualitative)	30.00
(65) Vomitoxin (Quantitative)	40.00
(66) Water activity	20.00
(67) Wiley melting point	12.50
(68) Other laboratory tests	[2]

[1] When laboratory test service is provided for FGIS by a private laboratory, the applicant will be assessed a fee which, as nearly as practicable, covers the costs to FGIS for the service provided.

[2] Fees for other laboratory tests not referenced above will be based on the noncontract hourly rate listed in Table 1.

(b) If a requested test is to be reported on a specified moisture basis, a fee for moisture test will also be assessed.

(c) Laboratory tests referenced above will be charged at the applicable laboratory fee listed in Table 4 when performed at field locations other than at the applicant's facility.

Dated: October 25, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 94–27110 Filed 11–2–94; 8:45 am]

BILLING CODE 3410–EN–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

Request for Comments Regarding Potential Modifications of NRC's Therapy Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comments regarding potential modification of NRC's medical therapy regulations.

SUMMARY: A major revision of the regulations governing the medical use of byproduct material, and associated licensing and inspection guidance is

planned, to more easily accommodate changes in current technology and patterns of medical use. The staff discussed the need for additional regulations and guidance for brachytherapy (in particular, high-dose-rate brachytherapy) with NRC's Advisory Committee for the Medical Uses of Isotopes (ACMUI). The ACMUI advised the staff to solicit additional information from the regulated community to sufficiently identify and evaluate the problems and determine what additional regulations and guidance are necessary to further prevent errors. The NRC seeks input from the medical community with regard to the adequacy of existing standards and procedures for brachytherapy and radiopharmaceutical therapy and would like to discuss the future direction of guidelines and regulations. As one aspect of these objectives, NRC is publishing this list of issues and questions for comment and response by members of the medical community and any other interested parties.

DATES: Submit comments by March 3, 1995. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: Send written comments, responses, or suggestions to the Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Obtain individual copies of the list of issues and questions from Patricia K. Holahan, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–7847.

FOR FURTHER INFORMATION CONTACT: Patricia K. Holahan, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7847.

SUPPLEMENTARY INFORMATION: Because of several recent incidents, the NRC has increasingly focussed on the medical use of byproduct material for manual and remote afterloading brachytherapy and radiopharmaceutical therapy. The NRC has been notified of brachytherapy errors that have included computer errors (treatment planning and data entry), misplaced sources, dislodged sources, patient intervention, and human error. In particular, several incidents have been reported involving an error in fractionated doses for brachytherapy and radiopharmaceutical therapy. In addition, there has been an increased use of beta-emitting radiopharmaceuticals for therapeutic purposes in both nuclear medicine and radiation oncology.

This list of issues and questions is being provided to allow the medical community to voluntarily provide comments and responses regarding those areas of medical use of byproduct material that are currently being reviewed by NRC, to determine if additional or revised regulations are warranted. Any party interested in providing input regarding these issues may provide a written response to the address above.

1. What constitutes a significant error, for a given fraction (for fractionated doses), that would require you to make an adjustment in the prescribed treatment regimen or that might result in unexpected clinical consequences?

High-Dose-Rate Brachytherapy

____ 10 percent
____ 20 percent
____ 30 percent

All Other Brachytherapy

____ 10 percent
____ 20 percent
____ 30 percent

Radiopharmaceutical Therapy

____ 10 percent
____ 20 percent
____ 30 percent

2. Should the error tolerance for overdoses be different than that for underdoses? Please explain.

____ Yes ____ No

3. At your facility, how is the accuracy of your computer treatment planning system verified?

High-Dose-Rate Brachytherapy

4. NRC regulations require that the written directive for high-dose-rate remote afterloading (HDR) brachytherapy include the radioisotope, treatment site, and total dose. What additional information do you typically include in your written directives and why?

____ Dose per fraction
____ Number of fractions
____ Treatment volume
____ Other (please specify)

5. If more than one fraction is to be administered, should the written directive be prepared to include the specifics for the entire course of therapy or should a written directive be prepared for each individual fraction?

6. Should there be quality assurance checks and measurements for remote afterloading brachytherapy devices, in 10 CFR Part 35, as there are for teletherapy?

____ Yes ____ No

If no, why not?

7. Are there existing standards on calibration of brachytherapy sources?

____ Yes ____ No

If yes, or yes in part, what are these standards?

8. What types of tests/checks do you perform at source exchange?

9. a. Should there be training and experience criteria established for brachytherapy physicists involved with HDR treatment planning?

____ Yes ____ No

b. Should there be training and experience criteria established for brachytherapy physicians performing HDR treatments?

____ Yes ____ No

10. What procedures do you follow to ensure proper placement of brachytherapy implants (e.g., do you use X-ray films for verification)? What is the standard of care with respect to proper placement of brachytherapy implants?

Manual Brachytherapy

11. NRC regulations require that the written directive for all brachytherapy, other than high-dose-rate remote afterloading brachytherapy, include: (i) prior to implantation: the radioisotope, number of sources, and source strengths; and (ii) after implantation, but prior to completion of the procedure: the radioisotope, treatment site, and total source strength and exposure time (or equivalently, the total dose). What additional information do you typically include on the written directive and why?

Prior to implantation:

After implantation:

12. a. Do you order sources in writing?

____ Yes ____ No, ordered by _____

b. Who usually orders sources at your facility?

13. a. Do you verify the activity of sources:

____ Upon receipt
____ Prior to implantation
____ Not at all

b. If yes, how is the activity verified?

c. Who typically verifies the source activity at your facility?

14. a. What procedures do you follow to ensure proper placement of brachytherapy implants?

b. What actions do you take to prevent or minimize the likelihood of brachytherapy sources moving after implantation?

15. Are existing standards and procedures adequate to ensure that the

source is positioned and, consequently, the treatment is in accordance with the direction of the authorized user?

16. In your experience, what is the most effective means for accomplishing training of nurses as required in 10 CFR 35.410 and 35.25?

17. Do you believe that all nurses handling brachytherapy patients at your facility have received adequate training?

____ Yes ____ No

18. For permanent prostate implants, what do you consider to be an acceptable percentage of implanted seeds outside the target volume?

____ percent.

What is the current accepted standard of practice?

Radiopharmaceutical Therapy

19. NRC regulations require that the written directive, for radiopharmaceutical therapy, include the radiopharmaceutical, dosage, and route of administration. What additional information do you typically include in your written directives, and why?

20. If more than one fraction is to be administered, should the written directive be prepared to include the specifics for the entire course of therapy or should a written directive be prepared for each individual fraction?

21. Do you typically prepare separate written directives for fractionated radiopharmaceutical therapy?

____ Yes ____ No

22. Where would you seek guidance (if needed) on the radiation safety aspects of radiopharmaceutical therapy (use of unsealed sources)?

23. Do you have any additional comments or specific issues regarding NRC's regulation of therapeutic uses of byproduct material?

Dated at Rockville, Maryland, this 28th day of October, 1994.

For the Nuclear Regulatory Commission.

John E. Glenn,

Chief, Medical, Academic, and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–27250 Filed 11–2–94; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 35

[Docket No. 94–ANE–50; Notice No. 35–ANE–01]

Special Conditions; Hamilton Standard Model 247F Propeller

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Hamilton Standard Model 247F propeller with electronic propeller and pitch control system. The applicable regulations currently do not contain adequate or appropriate safety standards for constant speed propellers with electronic propeller and pitch control. This notice proposes the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 35 of the Federal Aviation Regulations (FAR).

DATES: Comments must be submitted on or before December 19, 1994.

ADDRESSES: Comments on this proposal may be submitted in triplicate to: Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–50, 12 New England Executive Park, Burlington, Massachusetts, 01803–5299. Comments must be marked: Docket No. 94–ANE–50. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Martin Buckman, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts, 01803–5229; telephone (617) 238–7112; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94–ANE–50." The postcard will be date stamped and returned to the commenter.

Availability of Notice of Special Condition

Any person may obtain a copy of this Notice of Special Condition by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–50, 12 New England Executive Park, Burlington, Massachusetts, 01803–5299.

Discussion

Background

On March 8, 1993, Hamilton Standard applied for an amendment to the type certificate of Model 247F propeller. This propeller uses a new electronic propeller and pitch control system in place of the primary governor control and synchrophaser unit.

The existing propeller pitch control is normally monitored by a governor which senses propeller speed and adjusts the pitch to absorb the engine power and thus keeps the propeller at the correct RPM. When the primary governor fails, the propeller pitch is controlled by an overspeed governor. This type of system is conventional and its airworthiness considerations are addressed by part 35 of the FAR's.

Hamilton Standard requests special conditions to install an electronic propeller and pitch control in place of the primary governor control and synchrophaser unit for the Model 247F propeller. This control is designed to operate with existing mechanical and hydraulic interface of the engine and propeller.

Electronic propeller and pitch controls introduce potential failures that

can result in unsafe conditions. These types of failures are not addressed by the requirements of part 35. These failures can lead to the following possible unsafe conditions:

(1) Loss of control of the propeller

(2) Instability of a critical function

(3) Unwanted change in propeller pitch causing improper thrust/overspeed

(4) Unwanted action of a critical control function resulting in propeller flat pitch or reverse.

Certification issues that must be addressed are possible loss of aircraft-supplied electrical power, aircraft supplied data, failure modes, environmental effects including lightning strikes and high intensity radiated fields (HIRF) and software design.

The FAA finds that under the provisions of § 21.16 of the FAR, additional safety standards must be applied to the Hamilton Standard electronic propeller control for Model 247F propellers to demonstrate that it is capable of acceptable operation.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, Hamilton Standard must show that the Model 247F propeller meets the requirements of the applicable regulations in effect on the date of the application. Those FAR's are § 21.21 and part 35, effective February 1, 1965, as amended.

The Administrator finds that the applicable airworthiness regulations in part 35, as amended, do not contain adequate or appropriate safety standards for the Model 247F propeller. Therefore, the Administrator proposes special conditions under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR's after public notice and opportunity for comment, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Novel or Unusual Design Features

Because of the unusual design features of the Hamilton Standard 247F propeller with electronic propeller and pitch control, the FAA proposes special conditions under § 21.16 of the FAR.

Conclusion

This action affects only the Hamilton Standard Model 247F propeller with a new system of electronic propeller and pitch control. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the propeller.

List of Subjects in 14 CFR Part 35

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421, 1423; 49 U.S.C. 106(g); and 14 CFR 11.49 and 21.16.

The Proposed Special Conditions

Accordingly, the FAA proposes the following special conditions as part of the type certification basis for the Hamilton Standard 247F Model propeller with electronic propeller and pitch control system.

Considering that electronic propeller and pitch controls introduce potential failures that can result in unsafe conditions, the following special conditions are proposed:

(a) Each propeller and pitch control system which relies on electrical and electronic means for normal operation must:

(1) Be designed and constructed so that any failure or malfunction of aircraft-supplied power or data will not result in an unacceptable change in propeller pitch setting or prevent continued safe operation of the propeller.

(2) Be designed and constructed so that no single failure or malfunction, or probable combination of failures of electrical or electronic components of the propeller control system, result in an unsafe condition.

(3) Be tested to its environmental limits including transients (variations) caused by lightning and high intensity radiated fields (HIRF) and demonstrate no adverse effects on the control system operation and performance or resultant damage. These tests shall include, but not be limited to, the following:

(i) Lightning strikes, such as multiple-stroke and multiple-burst

(ii) Pin-injected tests to appropriate wave forms and levels

(iii) HIRF susceptibility tests

(4) Be demonstrated by analysis/tests that associated software is designed and implemented to prevent errors that would result in an unacceptable change in propeller pitch or an unsafe condition.

(5) Be designed and constructed so that a failure or malfunction of electrical or electronic components in the propeller control system will not prevent safe operation of any remaining propeller that is installed on the aircraft.

Issued in Burlington, Massachusetts, on October 27, 1994.

Jay Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–27291 Filed 11–2–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 54, 312, 314, 320, 330, 601, 807, 812, 814, and 860

[Docket No. 93N–0445]

Financial Disclosure by Clinical Investigators; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the **Federal Register** of September 22, 1994 (59 FR 48708). The document proposed to require that the sponsor of any drug, biological product, or device submit certain information concerning the compensation to, and financial interests of, any clinical investigator conducting clinical studies to determine whether that product meets the marketing requirements specified by the agency. The document was published with an error. This document corrects that error.

DATES: Written comments on or before December 21, 1994. The agency is proposing that any final rule that may issue based on this proposed rule become effective 6 months after the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: John S. Ensign, Office of Health Affairs (HFY–22), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852, 301–443–1382.

In FR Doc. 94–23414, appearing on page 48708 in the **Federal Register** of Thursday, September 22, 1994, the following correction is made:

§ 54.4 [Corrected]

On page 48717, in § 54.4 *Disclosure requirements*, in the first column, in paragraph (a), in the last line, the phrase "(a)(2) of this section" is corrected to read "(a)(3) of this section."

Dated: October 28, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–27316; Filed 11–2–94; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 182

[Docket No. 80N–0361]

Thiodipropionic Acid and Dilauryl Thiodipropionate; Proposed Removal of GRAS Status; Withdrawal of Proposed Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing its proposal to remove thiodipropionic acid and dilauryl thiodipropionate from the list of direct human food ingredients that are generally recognized as safe (GRAS). FDA proposed to remove these substances because it had not, at that time, received any reports that these substances were in use as direct human food ingredients. The agency is withdrawing the proposal because of a report that these substances are being directly used in food.

FOR FURTHER INFORMATION CONTACT: F. Owen Fields, Center for Food Safety and Applied Nutrition (HFS–207), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9528.

SUPPLEMENTARY INFORMATION: Thiodipropionic acid and dilauryl thiodipropionate are listed in §§ 182.3109 and 182.3280 (21 CFR 182.3109 and 182.3280), as GRAS for direct food use as chemical preservatives at levels not exceeding 0.02 percent of the fat or oil content. Thiodipropionic acid and dilauryl thiodipropionate are listed in § 181.24 (21 CFR 181.24) as prior-sanctioned ingredients for use as antioxidants in food-packaging material, and are permitted for use as antioxidants in § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300). In addition, indirect use of thiodipropionic acid is listed in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010).

In the **Federal Register** of August 13, 1982 (47 FR 35240), FDA proposed to remove thiodipropionic acid and dilauryl thiodipropionate from the list of direct human food ingredients that are GRAS. FDA stated that it was proposing to take this action because FDA had not, at that time, received any reports that these substances were in use as direct human food ingredients.

FDA received three comments in response to its proposal. All three comments opposed the removal of these substances from the list of direct human food ingredients that are GRAS. One of the comments contained information on the direct use of these ingredients in food. In addition, two of the comments expressed concern that removing these compounds from the list of direct GRAS ingredients would cause confusion about the GRAS or prior-sanctioned status of these substances for indirect uses. Finally, two of the comments stated that the fact that the agency had not received any reports of these substances being used in food was not an adequate reason to remove them from the list of direct food ingredients that are GRAS.

FDA has considered all of these comments. In view of the comment that these substances are being directly used in food, we have concluded that the orginal basis for the agency's proposal to remove these substances from the GRAS list is not valid. FDA also wishes to clarify that its proposal to remove these substances from the list of direct human food ingredients that are GRAS would not have affected their allowed indirect uses under §§ 175.300, 178.2010, or 181.24, as suggested by two of the comments.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), the agency announces that it is withdrawing the proposal that it published in the **Federal Register** of August 13, 1982 (47 FR 35240), to remove thiodipropionic acid and dilauryl thiodipropionate from the list of direct human food ingredients that are GRAS.

Dated: October 24, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–27315; Filed 11–2–94; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–069–6105b; FRL–5089–5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Commonwealth of Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State implementation plan (SIP) revision submitted by the Commonwealth of Kentucky through the Natural Resources and Environmental Protection Cabinet approving the redesignation to attainment and maintenance plan of the Owensboro and Edmonson County areas because they meet the maintenance plan and redesignation requirements. EPA also proposes to approve the 1990 baseline emissions inventory of the two areas. In the final rules section of this **Federal Register**, the EPA is approving the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by December 5, 1994.

ADDRESSES: Written comments on this action should be addressed to Scott Southwick, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, GA 30365.

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division for Air Quality, 803 Schenkel Lane, Frankfort, KY 40601.

FOR FURTHER INFORMATION CONTACT: Scott Southwick of the EPA Region IV Air Programs Branch at (404) 347–3555 extension 4207 and at the above address.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: September 20, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 94–27072 Filed 11–2–94; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Brake Hoses and Motor Vehicle Brake Fluids; Termination of Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Termination of rulemaking.

SUMMARY: This document terminates a rulemaking proceeding that commenced in March 1985 when NHTSA granted a petition for rulemaking from the United States Army Tank-Automotive Command. The petition requested that NHTSA amend Standard No. 106, *Brake Hoses,* to require brake hose compatibility with a brake fluid with DOT 5 characteristics, and amend Standard No. 116, *Motor Vehicle Brake Fluids,* to require compatibility of DOT 3, DOT 4, and DOT 5 test fluids with elastomeric seals and cups in hydraulic brake system master and wheel cylinders. After receiving further information from the petitioner and after reviewing its own data base, NHTSA has concluded there is no safety need to amend the standards.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Tinto, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590. Mr. Tinto's telephone number is (202) 366–5229.

SUPPLEMENTARY INFORMATION:

Background and Grant of Petition

On March 20, 1985, NHTSA published a **Federal Register** document (50 *FR* 11213) granting a petition for rulemaking submitted by the United States Army Tank-Automotive Command (ATAC), to amend Federal Motor Vehicle Safety Standards Nos. 106, *Brake Hoses,* and 116, *Motor Vehicle Brake Fluids.* The petitioner requested NHTSA to expand the number and type of "referee materials" used to test samples of brake hose (Standard No. 106) and brake fluid (Standard No. 116) for compliance with the requirements of those standards.

Referee materials are used in the test procedures of Standards Nos. 106 and 116 to represent typical fluids and components that are present in real-world brake systems. The referee materials are combined with the test sample of brake hose or fluid to determine the compatibility of the referee material and the test sample. At the time the petition was filed, Standard No. 106 referenced a referee material called RM–1 SAE Compatibility Fluid to test hydraulic brake hose and hose assemblies.[1] Standard No. 116 also referenced RM–1 SAE Compatibility Fluid to test samples of DOT 3, DOT 4, and DOT 5 brake fluid. In addition, Standard No. 116 referenced another referee material, "SAE referee cups" made of styrene butadiene rubber (SBR), to test the compatibility of test samples of DOT 3, DOT 4, and DOT 5 brake fluid with the material. In all cases involving the use of referee materials, the referee materials are combined with the test sample of hose or fluid to see the effect of the combination. For example, in Standard No. 116's test evaluating the effect of brake fluid on cups (S5.1.12), the referee SBR cups are immersed in the test fluid, heated, then examined for disintegration, hardness changes and diametrical changes.

ATAC requested that Standard Nos. 106 and 116 be amended in two primary ways. First, the petitioner suggested that Standard No. 106 be amended to require brake hose compatibility with a fluid with DOT 5 (silicone) brake fluid characteristics. ATAC stated that the U.S. Army adopted DOT 5 silicone brake fluid as its standard operating fluid for its motor vehicles with hydraulic brake systems. After replacing the brake fluid with DOT 5 fluid in some of its vehicles, the Army had operational problems with aftermarket procured hydraulic brake system components. The Army believed it had traced the problem to excessive swelling of elastomeric seals and cups within the hydraulic brake system master cylinder. The swelling appeared to be caused by incompatibility problems between the DOT 5 brake fluid and brake system components made of rubber. Since Standard No. 106 does not test brake hose and hose assemblies with a referee material brake fluid representing DOT 5 (silicone) fluid, ATAC suggested amending Standard No. 106 to require brake hose compatibility with a silicone fluid.

Second, ATAC suggested that Standard No. 116 be amended to require that master and wheel cylinder cups made of ethylene propylene diene monomer rubber (EPDM) be compatible with a DOT 3, DOT 4 and DOT 5 brake fluid referee material, and to include specifications for these EPDM and other rubber components. The tests in Standard No. 116 that measure the effect of brake fluid with rubber are run with SAE referee material SBR cups only. ATAC believed that the aftermarket EPDM brake system components it encountered were incompatible with the DOT 5 brake fluid in its vehicles.

The agency believed that the issues raised by ATAC warranted further consideration. Thus, NHTSA granted ATAC's petition.

Rationale for Termination

Subsequent to its petition, ATAC provided further information to NHTSA indicating that its problem had been resolved. Tests conducted by the Army at Fort Belvoir, Virginia, implied that there was some confusion as to what actually caused the problem in the braking systems of the vehicles in question. Nevertheless, ATAC informed NHTSA that it solved its problem by using only military specification (MIL spec) brake components and brake fluid in ATAC vehicles. ATAC indicated that EPDM and SBR components that met the Army's MIL–C–14055, "Cup, Hydraulic Brake Actuating Cylinder, Synthetic Rubber" specification perform satisfactorily with silicone brake fluid. ATAC further indicated that if MIL spec MIL–C–14055 were used for parts procurement, it would avoid any problems of component deterioration in the future.

NHTSA supplemented this information with data for non-military motor vehicles. NHTSA believed that if brake fluid compatibility problems similar to those experienced by ATAC were occurring in non-military vehicles, the public would have reported some of these incidents to NHTSA's Auto Safety Hotline. The Hotline is a comprehensive database that encompasses over 250,000 consumer calls, dating back to 1981, relating to vehicle and component performance and complaints. Approximately 35,000 of these calls are about brake-related performance. NHTSA conducted a database search for all complaints relating to brake fluid in passenger cars, light trucks, buses and heavy trucks, and found no evidence of a safety problem. The agency found only 17 complaints that referred to "brake fluid" as the basis for the complaint.

[1] In 1986, Standards No. 106 and 116 were amended to replace RM–1 SAE compatibility fluid with RM–66–03 fluid. (See 51 *FR* 16694.) In October 1992, NHTSA published a notice of proposed rulemaking to update the referee fluid to RM–66–04, effective January 1, 1995, as RM–66–03 is no longer readily available. (See 57 *FR* 49162.)

The majority of the complaints referred to contamination problems (water, fuel, and other fluid intrusion into the brake fluid).

Moreover, approximately 8 of the 17 complaints concerned vehicles that had traveled fewer than 50,000 miles. Because of their relatively low mileage, NHTSA does not believe these vehicles had anything other than the original brake fluid in them. Given the preponderance of vehicles manufactured with DOT 3 fluid over vehicles manufactured with DOT 5 fluid, the agency believes the original brake fluid in the vehicles in question was DOT 3 fluid, not DOT 5 fluid. There was one complaint referring to a problem with "silicone" brake fluid and brake system components, involving an antique Jaguar car and a certain brand of silicone fluid. A single complaint in a database as encompassing as the Hotline complaint file does not indicate the possible existence of a significant safety problem.

In conclusion, there is no evidence of a safety problem regarding the compatibility of silicone fluid and brake system components. NHTSA believes that if there were a safety problem with brake fluid and component compatibility, evidence of the problem would have appeared in the ten years since ATAC's petition was received by NHTSA. No such evidence has manifested. Accordingly, the agency is terminating this rulemaking action.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on: October 27, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–27261 Filed 11–2–94; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AC93

Opening of Humboldt Bay National Wildlife Refuge to Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to open Humboldt Bay National Wildlife Refuge in California to sport fishing and proposes pertinent refuge-specific regulations for such activity. The Service has determined that such use will be compatible with the purposes for which the refuge was established. The Service has further determined that this action is in accordance with the provisions of all applicable laws, is consistent with principles of sound wildlife management, and is otherwise in the public interest by providing additional recreational opportunities of a renewable natural resource.

DATES: Comments may be submitted on or before December 5, 1994.

ADDRESSES: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 670 ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, Esq., at the address above; Telephone: 703–358–1744.

SUPPLEMENTARY INFORMATION: National wildlife refuges are generally closed to hunting and sport fishing until opened by rulemaking. The Secretary of the Interior (Secretary) may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the purpose(s) for which the refuge was established, and that funds are available for development, operation, and maintenance of a hunting or fishing program. The action must also be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound wildlife management, and must otherwise be in the public interest. This rulemaking proposes to open Humboldt Bay National Wildlife Refuge in Loleta, California, to sport fishing.

Request for Comments

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. A 30-day comment period is specified in order to facilitate public input. Accordingly, interested persons may submit written comments concerning this proposed rule to the person listed above under the heading **ADDRESSES**. All substantive comments will be reviewed and considered.

Statutory Authority

The National Wildlife Refuge System Administration Act of 1966, as amended (NWRSAA) (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (RRA) (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, Section 4(d)(1)(A) of the NWRSAA authorizes the Secretary to permit the use of any areas within the National Wildlife Refuge System (Refuge System) for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access, when he determines that such uses are compatible with the purposes for which each refuge was established. The Service administers the Refuge System on behalf of the Secretary. The RRA gives the Secretary additional authority to administer refuge areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the refuges were established. In addition, prior to opening refuges and allowing recreational uses not directly related to the purposes and functions for which an area was established, the Secretary is required to determine that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

Opening Package

In preparation for this opening, the refuge unit has included in its "openings package" for Regional review and approval from the Washington Office the following documents: a fishing plan; an environmental assessment; a compatibility determination; a Finding of No Significant Impact (FONSI); a Section 7 evaluation or statement, pursuant to the Endangered Species Act, that this opening will have no effect on a listed species or critical habitat; a letter of concurrence from the affected States; and refuge-specific regulations to administer the fishing program. From a review of the totality of these documents, the Secretary has determined that the opening of Humboldt Bay National Wildlife Refuge to sport fishing is compatible with the principles of sound wildlife management and will otherwise be in the public interest.

In accordance with the NWRSAA and the RRA, the Secretary has also determined that this opening for sport fishing is compatible and consistent with the primary purposes for which the refuge was established, and that funds are available to administer the programs. A brief description of the hunting program is as follows:

Humboldt Bay National Wildlife Refuge

Humboldt Bay National Wildlife Refuge was established by authority of the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1222), as amended, and the Migratory Bird Hunting and Conservation Stamp Act of March 16, 1934, as amended. The refuge is a part of the San Francisco Bay

National Wildlife Refuge Complex, but has a full-time project leader and staff. The purposes of the refuge are (1) for use as an inviolate sanctuary, or for any other management purpose, for migratory birds; (2) for suitable incidental fish and wildlife-oriented recreational development; (3) the protection of natural resources; and (4) conservation of endangered species or threatened species.

Humboldt Bay is situated 280 miles north of San Francisco and 85 miles south of the Oregon border. Humboldt Bay lies on a narrow coastal plain. It is a natural land-locked harbor ½ to 4 miles wide and 14 miles long, separated from the ocean by well-developed coastal dunes and a sand beach. Humboldt Bay is a vital link in the coastal section of the Pacific Flyway for migratory waterfowl, shorebirds, and other waterbirds.

Sport fishing in Humboldt Bay is a popular form of recreation. Well established fisheries for perch, smelt, salmon, rockfish, crabs and clams provide for local enthusiasts as well as tourists. Declines in salmon stocks on the north coast have resulted in sharply reduced seasons and shifts in fishing effort to other species. Fisheries gaining rapidly in popularity are dungeness crab (*Cancer magister*), leopard shark (*Triakis semifasciata*), California halibut (*Paralichthys californicus*), and various clams. Sport fishing within the bay accounts for more than 30,000 angler-days each year. Most of the fishing in South Humboldt Bay occurs on the South Jetty and at Buhne's Point.

Public sport fishing will be permitted on navigable waters of Humboldt Bay that fall within the existing refuge boundary. Most fishing in Humboldt Bay will occur from boats on the navigable waters. Fishing will also be permitted from the outer levee of Hookton Slough, west of the designated parking lot. The non-tidally influenced areas (levees and seasonal wetlands) will be closed to fishing to provide disturbance-free resting and foraging areas for migratory birds. Anglers will be monitored on an opportunistic basis to determine if any wildlife disturbance is occurring. Fishing will be permitted within the framework of applicable State and Federal regulations. The California Department of Fish and Game will be consulted if any changes are planned in the refuge fishing program.

Opening the refuge to sport fishing has been found to be compatible in a separate compatibility determination. This determination noted time and zone restrictions. A Section 7 evaluation pursuant to the Endangered Species Act was conducted, and it was determined that the proposed action would not adversely affect any Federally listed or proposed for listing threatened or endangered species or their critical habitats. Pursuant to the National Environmental Policy Act (NEPA), an environmental assessment was made and a Finding of No Significant Impact (FONSI) was made regarding the fishing program. Numerous contacts were made throughout the area of the refuge soliciting comments on the proposed fishing plan. The California Department of Fish and Game concurs and fully supports the regulated sport fishing program proposed at the refuge.

The Service has determined that there would be sufficient funds to administer the proposed hunt pursuant to the requirements of the Refuge Recreation Act. The cost of establishing and managing the fishing program will be minimal, and will consist primarily of posting and maintaining "Public Fishing Area" signs and including fishing information in the refuge brochure. There are necessary funds within the annual budget of the San Francisco Bay National Wildlife Refuge Complex for this work. There will be no facilities developed or managed specifically for the use of anglers.

Paperwork Reduction Act

The information collection requirements for part 32 are found in 50 CFR part 25 and have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, DC 20503.

Economic Effect

This rulemaking was not subject to Office of Management and Budget review under Executive Order 12866. In addition, a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) has revealed that the rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations or governmental jurisdictions. This proposed rule would have minimal effect on such entities.

Federalism

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

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), an environmental assessment has been prepared for this opening. Based upon the Environmental Assessments, the Service issued a Finding of No Significant Impact with respect to the opening. A Section 7 evaluation was prepared pursuant to the Endangered Species Act with a finding that this action would have no effect on any identified threatened or endangered species.

Primary Author: Duncan L. Brown, Esq., Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, Fishing, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, part 32 of chapter I of Title 50 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 32—[AMENDED]

1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 32.24 *California* is amended by adding text to paragraph D. of Humboldt Bay National Wildlife Refuge to read as follows:

§ 32.24 California.

* * * * *

Humboldt Bay National Wildlife Refuge

* * * * *

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing from the designated shoreline trail along Hookton Slough is permitted during daylight hours only.

2. Only the use of pole and line or rod and reel is permitted from the Hookton Slough Shoreline trail fishing area.

* * * * *

Dated: October 15, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–27284 Filed 11–2–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[I.D. 092694A]

RIN 0648–AF02

Groundfish of the Bering Sea and Aleutian Islands Area; Correction

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

ACTION: Proposed rule; correction.

SUMMARY: This document contains corrections to proposed regulations (I.D. 092694A), published Monday, October 17, 1994. The proposed rule would implement Amendment 21a to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands management area, and would prohibit the use of trawl gear in specified areas surrounding the Pribilof Islands.

FOR FURTHER INFORMATION CONTACT: William D. Chappell, 301–713–2341.

SUPPLEMENTARY INFORMATION: On October 17, 1994 (59 FR 52277), NMFS published a proposed rule to implement Amendment 21a to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands. The action proposes to prohibit the use of trawl gear in specified areas of the exclusive economic zone surrounding the Pribilof Islands. Comments on the proposed rule must be submitted by November 28, 1994. In the preamble to the proposed rule in the third column of page 52278, the geographic coordinates of the area around the Pribilof Islands are correctly described. However, in the regulatory language in the third column of page 52279, the last geographic position, which would add a straight line closing the circuit of the Pribilof Islands and complete a description of the closed area, was inadvertently omitted.

Correction of Publication

Accordingly, the publication on October 17, 1994 (59 FR 52277) of the proposed regulations (I.D. 092694A), which were the subject of FR Doc. 94–25616, is corrected as follows:

§ 675.22 [Corrected]

On page 52279, in the third column, § 675.22(i) is corrected by adding at the end of the latitude column, the coordinates "57°57.0′ N." and at the end of the longitude column the coordinates "168°30.0′ W."

Dated: October 28, 1994.

Charles Karnella,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries.

[FR Doc. 94–27223 Filed 11–2–94; 8:45 am]

BILLING CODE 3510–22–W

Notices

Federal Register
Vol. 59, No. 212
Thursday, November 3, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

October 28, 1994.

The Department of Agriculture 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) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Extension

- Agricultural Stabilization and Conservation Service

7 CFR 1423.1 Processed Commodities Standards
CCC–560, 55, 33, 33A, 34, 34–1, 29, 29–1, 29–2, 29–3, 56, 56–1, 56–2, KC–140, 269A
Recordkeeping; On occasion; Annually
Businesses or other for-profit; Small businesses or organizations; 13,955 responses; 16,784 hours
Barry Klein (202) 720–4647

- Agricultural Marketing Service

Marketing Agreement for Domestically Produced Peanuts—No. 146
FV–121, FV–122, FV–123, and FV–123A
Recordkeeping; On occasion; Weekly; Monthly; Annually
Farms; Businesses or other for-profit; Small businesses or organizations; 9,698 responses; 2,417 hours
James B. Wendland (202) 720–2170

Reinstatement

- Agricultural Stabilization and Conservation Service

7 CFR 780 Appeal Regulations
ASCS–19
On occasion
Farm; 50,000 responses; 100,000 hours
Carolyn Burchett (202) 720–5533

Larry K. Roberson,
Deputy Departmental Clearance Officer.
[FR Doc. 94–27231 Filed 11–2–94; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

Bear Valley Ski Area Expansion, Stanislaus National Forest, Alpine County, CA

AGENCY: Forest Service, USDA.
ACTION: Notice; intent to prepare environmental impact statement, delay in filing final environmental impact statement.

SUMMARY: The Notice of Intent to prepare an environmental impact statement for the expansion of the Mt. Reba Ski Area was published in the **Federal Register** on Friday, October 30, 1981, 46 FR 53734. A Revised Notice of Intent setting new dates for the release of the draft environmental impact statement (DEIS) and the final environmental impact statement (FEIS) was published in the **Federal Register** on Thursday, September 23, 1982, 47 FR 42011. Another Revised Notice of Intent setting new dates for the release of the draft environmental impact statement (DEIS) and the final environmental impact statement (FEIS) was published in the **Federal Register** on Friday, July 7, 1989, 54 FR 28704.

The scoping process included numerous public meetings and Forest Service interdisciplinary team analysis. The DEIS was released on December 20, 1990. Five alternatives were identified, including a No Action Alternative, a Full Development Alternative, and a Preferred Alternative which would authorize a 450 acre expansion. The primary issues addressed include transportation system, parking, and local community services effects. The decision to be made is to select an Alternative or modify an Alternative(s) in response to the ski area expansion proposal. The comment period for the DEIS ended March 4, 1991. In June of 1991, a change of ownership of the permitted facilities occurred and a new Special Use Permit was issued to the Bear Valley Ski Company.

Due to planning priorities on the Forest, and in order for the new Bear Valley Ski Company to have time to evaluate the expansion proposal, the expansion planning project was put aside until the fall of 1992. During the latter part of 1992 and early 1993, the planning process was once again put on hold when the Forest Service was developing a policy and program to address management of spotted owl habitat in California. In the summer of 1993, the Forest Service made a decision that any spotted owl potential habitat would be evaluated prior to final approval of actual habitat disturbing activity. This cleared the continuation of the planning process.

The estimated date for filing the FEIS is August, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia Clarey, Recreation Officer, Calaveras Ranger District, P.O. Box 500, Hathaway Pines, CA 95233. Phone (209) 795–1381.

Responsible Official: Jan Wold, Forest Supervisor, Stanislaus National Forest, 19777 Greenley Road, Sonora, CA 95370.

Dated: September 15, 1994.

Jan Wold,
Forest Supervisor.
[FR Doc. 94–27206 Filed 11–2–94; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Secrecy/License to Export.

Agency Approval Number: 0651–0034.

Type of Request: Reinstatement of a previously approved collection for which the approval has expired.

Burden: 1,020 hours.

Number of Respondents: 1,957.

Avg Hours Per Response: 0.5212 minutes.

Needs and Uses: In order to apply for a patent in a foreign country for a U.S. patented invention that affects our national interest, approval from appropriate U.S. officials must be obtained. Various means may be used to obtain this approval, such as recision of a secrecy order or a modification thereto. This collection also contains information relating to petitions to obtain a license to export such inventions.

Affected Public: Individuals or households, state or local governments, farms, businesses or other for–profit institutions, Federal agencies or employees, non–profit institutions, and small businesses or organizations.

Frequency: When petitioning for consideration.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: October 31, 1994.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–27308 Filed 11–2–94; 8:45 am]

BILLING CODE 3510–CW–F

Bureau of the Census

[Docket No. 941004–4304]

Annual Surveys in Manufacturing Area

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Determination.

SUMMARY: In conformity with Title 13, United States Code, Sections 131, 182, 224, and 225, I have determined that annual data to be derived from the surveys listed below are needed to aid the efficient performance of essential governmental functions and have significant application to the needs of the public and industry. The data derived from these surveys, most of which have been conducted for many years, are not publicly available from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: John Govoni, Manufacturing and Construction Division, Bureau of the Census, Washington, DC 20233, on (301) 763–5850.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code. These surveys will provide continuing and timely national statistical data on manufacturing for the period between economic censuses. The next economic censuses will be conducted for 1997. The data collected in these surveys will be within the general scope and nature of those inquiries covered in the economic censuses.

Annual Current Industrial Reports

Most of the following commodity or product surveys provide data on shipments or production; some provide data on stocks, unfilled orders, orders booked, consumption, and so forth. Reports will be required of all or a sample of establishments engaged in the production of the items covered by the following list of surveys.

These surveys have been approved by the Office of Management and Budget (OMB) under OMB control numbers 0607–0392, 0607–0395, 0607–0476, 0607–0560, 0607–0625, and 0607–0650 in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended.

MA22F—Yarn Production
MA22K—Knit Fabric Production
MA22Q—Carpets and Rugs
MA23D—Gloves and Mittens
MA24T—Lumber Production and Mill Stocks
MA28A—Inorganic Chemicals
MA28B—Inorganic Fertilizer Materials and Related Products
MA28C—Industrial Gases
MA28F—Paint and Allied Products
MA28G—Pharmaceutical Preparations, except Biologicals
MA31A—Footwear
MA32C—Refractories
MA32E—Consumer, Scientific, Technical, and Industrial Glassware
MA33A—Ferrous Castings
MA33B—Steel Mill Products
MA33E—Nonferrous Castings
MA33L—Insulated Wire and Cable
MA34K—Steel Shipping Drums and Pails
MA35A—Farm Machinery and Lawn and Garden Equipment
MA35D—Construction Machinery
MA35F—Mining Machinery and Mineral Processing Equipment
MA35J—Selected Industrial Air Pollution Control Equipment
MA35L—Internal Combustion Engines
MA35M—Air-conditioning and Refrigeration Equipment
MA35N—Fluid Power Products
MA35P—Pumps and Compressors
MA35Q—Antifriction Bearings
MA35R—Computers and Office and Accounting Machines
MA36A—Switchgear, Switchboard Apparatus, Relays, and Industrial Controls
MA36E—Electric Housewares and Fans
MA36F—Major Household Appliances
MA36H—Motors and Generators
MA36K—Wiring Devices and Supplies
MA36M—Consumer Electronics
MA36P—Communication Equipment
MA36Q—Semiconductors and Printed Circuit Boards
MA37D—Aerospace Orders
MA38B—Selected Instruments and Related Products
MA38R—Electromedical Equipment

The following list of surveys represents annual counterparts of monthly and quarterly surveys and will cover only those establishments that are not canvassed or do not report in the more frequent surveys. Accordingly, there will be no duplication in reporting. The content of these annual reports will be identical with that of the monthly and quarterly reports.

M20A—Flour Milling Products
MQ22D—Consumption on the Woolen System and Worsted Combing
MQ23A—Apparel (short form)
MQ23X—Sheets, Pillowcases, and Towels
MQ32A—Flat Glass
MQ32D—Clay Construction Products
M32G—Glass Containers
M33D—Aluminum Producers and Importers
M33J—Inventories of Steel Producing Mills
MQ34E—Plumbing Fixtures
MQ36B—Electric Lamps
MQ36C—Fluorescent Lamp Ballasts
M37G—New complete Aircraft and Aircraft Engines, except Military
M37L—Truck Trailers

Annual Survey of Manufacturers

The Annual Survey of Manufacturers collects industry statistics such as total value of shipments, employment,

payroll, workers hours, capital expenditures, cost of materials consumed, supplemental labor costs, and so forth. This survey, while conducted on a sample basis, covers all manufacturing industries, including data on plants under construction but not yet in operation.

This survey has been approved by the OMB under OMB control number 0607–0449 in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended.

Annual Survey of Plant Capacity Utilization

The Survey of Plant Capacity Utilization is designed to measure the use of industrial capacity. The survey collects information on actual output and estimates of potential output in terms of value of production. These data are the basis for calculating rates of utilization of full production capability and use of production capability under national emergency conditions.

This survey has been approved by the OMB under OMB control number 0607–0175 in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended.

Annual Survey of Research and Development

A survey of research and development (R&D) activities is conducted. The major data obtained in this survey include total R&D expenditures by source of funds, the number of scientists and engineers employed, the amounts spent for pollution abatement and energy R&D, and for comparative purposes, the total net sales and receipts and the total employment of the company.

This survey has been approved by the OMB under OMB control number 3145–0027 in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended.

Annual Survey of Pollution Abatement Costs and Expenditures

The Annual Survey of Pollution Abatement Costs and Expenditures is designed to collect from manufacturers the total expenditures by industry and geographic area to abate pollutant emissions. The survey covers current operating costs and capital expenditures to abate air and water pollution and solid waste. This survey also will obtain the costs recovered from abatement activities. A supplemental data collection covers capital expenditures to abate air and water pollution and solid waste in petroleum, electric utility, and mining industries.

This survey has been approved by the OMB under OMB control number 0607–0176 in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended.

Conclusion

I have, therefore, directed that these annual surveys be conducted for the purpose of collecting the data as described.

Dated: October 26, 1994.

Harry A. Scarr,

Acting Director, Bureau of the Census.

[FR Doc. 94–27276; Filed 11–2–94; 8:45 am]

BILLING CODE 3510–07–P

Minority Business Development Agency

Business Development Center Applications; Shreveport, LA

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications for its Shreveport, Louisiana Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Shreveport, Louisiana Area. The award number of the MBDC will be 06–10–95004–01.

DATES: The closing date for applications is December 5, 1994. Applications must be received in the Dallas Regional Office on or before December 5, 1994. A pre-application conference will be held on November 17, 1994, at 10:00 a.m., at the Dallas Regional Office, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, Dallas Regional Office, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242.

FOR FURTHER INFORMATION CONTACT: Demetrice Jenkins at (214) 767–8001.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from March 1, 1995 to March 31, 1996, is estimated at $198,971. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 15%, $29,846 in non-federal (cost-sharing) contributions for a total project cost of $198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this

project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs

Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements

A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace

Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying

Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications

Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities," Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-Made Equipment or Products

Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: October 28, 1994.

Mel A. Jackson,

Alternate Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 94–27243 Filed 11–2–94; 8:45 am]

BILLING CODE 3510–21–M

National Telecommunications and Information Administration

Universal Service and Open Access to Telecommunications and Information Networks; Electronic Virtual Public Conference; Meetings

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of Virtual Public Conference on "Universal Service and Open Access to Telecommunications and Information Networks."

SUMMARY: The National Telecommunications and Information Administration (NTIA) and the Universal Service Working Group of the Information Infrastructure Task Force (IITF) will host an electronic Virtual Conference during the week of November 14–18, 1994. The Virtual Conference will culminate a year-long effort by the Clinton Administration to gather information and opinions about the issues of universal service and open access with respect to telecommunications and information networks.

The Conference is part of the Administration's initiative to promote

the development of a National Information Infrastructure (NII) and Global Information Infrastructure (GII). The Administration's report entitled the National Information Infrastructure: Agenda for Action, released on September 15, 1993, describes the benefits of networking technology and the potential for using the NII to create an electronic commons. The report includes the Administration's goals of extending universal service to the information infrastructure and using the NII to conduct government business. In addition, the Administration will be issuing in December, the Global Information Infrastructure Agenda for Cooperation, which will address universal service issues in the global arena, among other issues.

The Virtual Conference will be conducted entirely through electronic networks—using the Internet, dial-up bulletin board access, public information service providers, and commercial service providers. Although participants may use their own computers, NTIA and the Universal Service Working Group seek to facilitate nationwide access by encouraging public institutions to make their computer facilities available to the public during the week of the conference.

Information collected during this conference and previously through field hearings will assist the Administration's ongoing policy deliberations and may be used in future reports on universal service and open access.

How the Conference Will Be Conducted

During the week of November 14–18, 1994, NTIA will create a series of electronic discussion groups on specific topics. Each topic will have an Internet mailing list and USENET newsgroup devoted to discussion of the specific topics and hosted by an expert in the field. Any comments submitted as part of this electronic discussion will become part of a publicly available electronic archive. Topics to be discussed at the Virtual Conference are:

—*Redefining Universal Service and Open Access:* What is the minimum "basket" of telecommunications or information services or capabilities that all Americans should be able to obtain today? Which services or capabilities, if any, should be available to all Americans on an optional basis? What is the relationship between universal service and open access?

—*Affordability and Availability:* Who lacks telecommunications services and why? Should training in the use of more advanced network services be available to all who wish it? Who should pay for such training? How can rural concerns and inner city concerns best be accommodated under a new universal service concept? How can government balance the need for universal service with the benefits of a competitive environment for the telecommunications industry?

—*Intellectual Property:* Does the traditional legal framework for intellectual property work with digital technology? What are the respective roles of the government and the private sector in determining how authors and others who hold intellectual property rights are reimbursed? Does the current legal framework for intellectual property rights help or hinder accessibility to telecommunications and information networks?

—*Privacy:* What potential is there for telecommunications and information networks to compromise personal privacy? To what extent will perceptions of reduced privacy hinder widespread, seamless access to telecommunications and information networks?

—*Interoperability:* What is the relationship between interoperability and the concepts of universal service and open access? What are the respective roles of the marketplace and the government in determining standards and protocols for interoperability? What lessons can be learned from past efforts in standards setting, both domestically and internationally?

—*Universal Service and Open Access for Individuals with Disabilities:* What is the current state of access to telecommunications and information services for the disabled? How can such services help the disabled participate more fully in society? What design concepts for the disabled are transferable to all users to improve overall network functionality?

Participants in the Virtual Conference are encouraged to review the following two documents recently issued by NTIA and to comment on these documents electronically during the conference: (1) NII Field Hearings on Universal Service and Open Access: America Speaks Out, and (2) Notice of Inquiry (NOI) on Universal Service and Open Access Issues. Comments written on paper in response to this NOI are being received by NTIA and should be filed on or before December 14, 1994, to receive full consideration. Both documents already are available through NTIA's IITF Gopher Server at iitf.doc.gov, dial in to (202) 501–1920, and NTIA's Bulletin Board Service at (202) 482–1199, ntiabbs.ntia.doc.gov (telnet, gopher or world-wide web).

Call for "Public Access Points"

Libraries and universities, as well as state and local governments, are encouraged to make their facilities available to the public during the week of the Conference. Providing these public gateways will demonstrate the power of networking and facilitate access for those who might not otherwise be able to participate. In order to register as a site, please see the contact information below.

DATES: The Conference will start at 9:00 a.m. Eastern Standard Time (EST) on November 14 and conclude at 11:59 p.m. EST on November 18, 1994. During this time period, the conference will be open for comments 24 hours a day.

FOR FURTHER INFORMATION CONTACT: For technical assistance, please contact Charles Franz at (202) 482–1835 (cfranz@ntia.doc.gov). For general information, or to receive a "Public Access Point" registration form, please contact Roanne Robinson at (202) 482–1551 (rrobinson@ntia.doc.gov). Fax inquiries should be directed to (202) 482–1635.

Additional information about the Virtual Conference, including instructions on how to join a topic, may be found on the Conference Gopher: gopher-virtconf.ntia.doc.gov. This information can also be e-mailed directly to you; send a message to info@virtconf.ntia.doc.gov and you will receive an automatic reply.

Dated: October 31, 1994.

Larry Irving,

Assistant Secretary of Commerce for Communications and Information.

[FR Doc. 94–27309 Filed 11–2–94; 8:45 am]

BILLING CODE 3510–60–P

Minority Business Development Agency

Business Development Center Applications: Shreveport, LA

AGENCY: Minority Business Development Agency.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency (MBDA) is canceling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate the Shreveport, Louisiana MBDC. This solicitation was originally published in the **Federal Register**, Wednesday,

January 26, 1994, and later published Wednesday, March 30, 1994, 59 FR 14837.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: October 28, 1994.

Mel A. Jackson,

Alternate Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 94–27242 Filed 11–2–94; 8:45 am]

BILLING CODE 3510–21–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Arab Republic of Egypt

October 27, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 31, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 340/640 is being increased by application of swing and special shift, reducing the current limits for Categories 338/339 and Categories 225 and 314 in the Fabric Group to account for the increases. The adjusted level for Categories 340/640 also includes an increase for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 55046, published on October 25, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement and the Memorandum of Understanding dated April 29, 1994, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 19, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Arab Republic of Egypt and exported during the twelve-month period beginning on January 1, 1994 and extending through December 31, 1994.

Effective on October 31, 1994, you are directed to adjust the limits for the following categories, pursuant to the current bilateral agreement and the Memorandum of Understanding dated April 29, 1994 between the Governments of the United States and the Arab Republic of Egypt:

Category	Adjusted limit [1]
Levels not in a group	
338/339	1,808,550 dozen.
340/640	1,113,600 dozen.
Fabric Group	
218–220, 224–227, 313–317 and 326, as a group.	76,146,629 square meters.
Sublevels in the group	
225	17,189,075 square meters.
314	17,538,815 square meters.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–27246; Filed 11–2–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Malaysia

October 28, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 31, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6712. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 326 is being increased by application of swing, reducing the limit for Category 225 to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 65580, published on December 15, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 28, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 9, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber

apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on October 31, 1994, you are directed to amend the directive dated December 9, 1993, to adjust the limits for the following categories, as provided under the terms of the Memorandum of Understanding dated August 26, 1992 between the Governments of the United States and Malaysia:

Category	Adjusted twelve-month limit [1]
Sublevels in the Fabric Group	
225	25,607,093 square meters.
326	3,807,260 square meters.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–27245; Filed 11–2–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the United Arab Emirates

October 27, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 4, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted for swing. In addition, Category 369–S is being increased for carryforward. As a result, the limits for Categories 334/634, 335/635/835 and 363, which are currently filled, will re-open. The limits for Categories 369–S and 369–O will remain closed.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 2827, published on January 19, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 14, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the United Arab Emirates and exported during various periods, including March 1, 1993 through December 31, 1994 (Categories 226/313), October 28, 1993 through December 31, 1994 (Categories 326, 335/635/835 and 369–S) and January 1, 1994 through December 31, 1994.

Effective on November 4, 1994, you are directed to amend the directive dated January 14, 1994 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the United Arab Emirates:

Category	Adjusted level [1]
226/313	3,271,645 square meters.
326	1,979,177 square meters.
334/634	212,096 dozen.
335/635/835	171,529 dozen.
351/651	162,607 dozen.
352	135,213 dozen.
363	5,600,000 numbers.
369–S [2]	91,836 kilograms.
369–O [3]	560,640 kilograms.
647/648	304,005 dozen.
847	152,956 dozen.

[1] The limits have not been adjusted to account for any imports exported after February 28, 1993 (Categories 226/313), October 27, 1993 (Categories 326, 335/635/835, 369–S) and December 31, 1993.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–27244; Filed 11–2–94; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Proposed Collection of Information; Structured Group Interviews Regarding the Use of Baby Walkers and the Acceptability of Alternate Products

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval of a proposed collection of information in the form of a series of structured interviews of parents and adult caretakers of young children concerning use of baby walkers and the acceptability of alternative products. The requested expiration date is April 1, 1995.

A baby walker is a device that supports a child so that the child can use its feet to move about before or while learning to walk. Typically, a baby walker consists of a fabric seat which has leg openings and is mounted to a rigid plastic deck. The deck is attached to a base which usually is mounted on wheels to allow mobility.

Earlier this year, the Commission published an advance notice of proposed rulemaking to announce that the agency is considering whether mandatory design, performance, or labeling requirements may be needed to eliminate risks of death and injuries to young children associated with baby walkers. In 1993, an estimated 25,000

children were treated in emergency rooms for injuries associated with baby walkers. The majority of these injuries resulted from falls down stairs or steps.

To issue a mandatory safety rule for baby walkers, the Commission is required by law to make and support findings about the expected effects of the rule on the cost, utility, and availability of the products which would be subject to those requirements.

The Commission plans to interview six groups of approximately 12 persons each. The individuals in these groups will be parents or adult caretakers of young children. The participants will be asked to describe their perceptions of the benefits, if any, and disadvantages, if any, of conventional baby walkers. Participants will also be asked about the acceptability of various products which might be substituted for conventional baby walkers.

The Commission will use this information to assess the utility of baby walkers to consumers; to determine if mandatory performance, design, or labeling requirements would diminish the utility of baby walkers, and if so, to what extent; and to evaluate consumer acceptance of alternatives to baby walkers.

The Commission has requested clearance of this request for approval of a collection of information within 30 days in accordance with provisions of regulations implementing the Paperwork Reduction Act (5 CFR 1320.18).

Additional Details About the Request for Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Structured Group Interviews Regarding the Use of Baby Walkers and the Acceptability of Alternate Products.

Type of request: Approval of a new plan.

Frequency of collection: One time.

General description of respondents: Parents and adult caretakers of young children.

Total number of respondents: 69.

Number of responses per respondent: 1.

Hours per response: 2.

Total hours for all respondents: 138.

Comments: Comments about this request for approval of a collection of information should be addressed to Donald Arbuckle, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395–7340. Copies of the request for approval of a collection of information are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0416, extension 2245.

This is not a proposal to which 44 USC 3504(h) is applicable.

Dated: October 31, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94–27314 Filed 11–2–94; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Change of Address

AGENCY: Department of the Army, DOD.

ACTION: Public notice.

This is a notice to the general public of a change of address for the U.S. Army Freedom of Information/Privacy Act Office.

Old Address: U.S. Army Information Systems Command-Pentagon, (ASOK–OP–F), Crystal Square No. 2, Suite 201, 1725 Jefferson Davis Highway, Arlington, VA 22202.

New Address: U.S. Army Freedom of Information/Privacy Act Office, (SAIS–IDP–F/P), Suite 201, 1725 Jefferson Davis Highway, Arlington, VA 22202–4102. This change is effective immediately.

FOR FURTHER INFORMATION CONTACT: Rose Marie Christensen, (703) 607–3452, telfax: (703) 607–3450.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–27205 Filed 11–2–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Computer Matching Program; Notice

AGENCY: Department of Education.

ACTION: Notice—Computer matching between the Department of Education and the Department of Justice.

Section 5301(a)(1) of the Anti-Drug Abuse Act of 1988 (now designated as section 421(a)(1) of the Controlled Substances Act (20 U.S.C. 862(a)(1)) includes provisions regarding the judicial denial of federal benefits. Section 5301 authorizes federal and state judges to deny certain federal benefits (including student financial assistance under Title IV of the Higher Education Act of 1965, as amended) to individuals convicted of drug trafficking or possession.

In order to ensure that Title IV student financial assistance is not awarded to individuals subject to denial of benefits under court orders issued pursuant to section 5301, the Department of Justice and the Department of Education implemented a computer matching program. The current computer matching agreement expired on September 5, 1994. The Department of Education must continue to obtain from the Department of Justice identifying information regarding individuals who are the subject of section 5301 denial of benefits court orders. The purpose of this notice is to announce the continued operation of the computer matching program and to provide certain required information concerning the computer matching program.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a) as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (see 54 FR at 25818, June 19, 1989), and OMB Bulletin 89–22, the following information is provided:

1. Names of Participating Agencies

The Department of Education (ED) and the Department of Justice (DOJ).

2. Purpose of the Match

This matching program is designed to assist ED in enforcing the sanctions imposed under section 5301 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690).

3. Authority for Conducting the Matching Program

Under section 5301 of the Anti-Drug Abuse Act of 1988, as amended (21 U.S.C. 862), ED must deny federal benefits to any individual against whom a federal or state court order has imposed a penalty denying eligibility for those benefits. Student financial assistance under Title IV of the Higher Education Act of 1965, as amended (HEA) is a federal benefit under section 5301 and ED must, in order to meet its obligations under the HEA, have access to information about individuals who have been declared ineligible under section 5301.

The President's Denial of Federal Benefits

Implementation Procedures of August 30, 1989 direct DOJ to act as the clearinghouse for federal agencies. While DOJ provides information about

section 5301 individuals who are ineligible to the General Services Administration (GSA) for inclusion in GSA's List of Parties Excluded from Federal Procurement and Nonprocurement Programs, DOJ and ED have determined that matching against the DOJ data base would be more efficient and effective than access to the GSA List. The DOJ data base has specific information about the Title IV, HEA programs for which individuals are ineligible and has more complete identifying information about those individuals than does the GSA List. Both of these elements are essential for a successful match.

4. Categories of Records and Individuals Covered

A. Department of Education Records

Federal Student Aid Application File (18–40–0014): Composed of records of students applying for federal student financial assistance under Title IV of the HEA. The social security number and the first two letters of an applicant's last name will be used by ED for the match.

B. Department of Justice Records

Denial of Federal Benefits Clearinghouse System (DEBAR) (OJP–0013): Contains the names, social security numbers, dates of birth, and other identifying information regarding individuals convicted of federal or state offenses involving drug trafficking or possession of a controlled substance who have been denied federal benefits by federal or state courts. This system of records also contains information concerning the specific program(s) for which benefits have been denied. The Department of Justice will make available for the matching program the records of only those individuals who have been denied federal benefits under one or more of the Title IV, HEA programs.

5. Effective Dates of the Matching Program

The matching program will become effective 40 days after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months, if the conditions specified in 5 U.S.C. 522a(o)(2)(D) have been met.

6. Address for Receipt of Public Comments or Inquiries

Ms. Edith Bell, Program Specialist, Policy Development Division, U.S. Department of Education, 600 Independence Avenue SW, (Room 4318, ROB–3), Washington, DC 20202, Telephone: (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Dated: October 27, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–27228 Filed 11–2–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Finding of No Significant Impact for Operation of the Glass Melter Thermal Treatment Unit at the U.S. Department of Energy's Mound Plant, Miamisburg, OH

AGENCY: Department of Energy.

ACTION: Proposed Finding of No Significant Impact.

SUMMARY: The U.S. Department of Energy (DOE) has prepared an environmental assessment (DOE/EA–0821) for the proposed operation of the Glass Melter thermal treatment unit ("Glass Melter") at DOE's Mound Plant in Miamisburg, Ohio. The Glass Melter would thermally treat mixed waste (hazardous waste contaminated with radioactive constituents, largely tritium, plutonium-238, and/or thorium-230) that was generated at the Mound Plant and is now in storage by stabilizing the waste in glass blocks. Depending upon the radiation level of the waste, the Glass Melter may operate for as short a time as one year, but not longer than six years. DOE considered two onsite alternatives to the proposed action and seven offsite alternatives.

Based on the analysis presented in the environmental assessment, DOE believes that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* Therefore, DOE proposes to issue a finding of no significant impact. This proposed finding of no significant impact is being made available for public review. DOE will consider any comments received in making a final determination on whether to issue a finding of no significant impact or to prepare an environmental impact statement for the proposed operation of the Mound Plant glass melter thermal treatment unit.

DATES: Comments on the proposed finding of no significant impact should be postmarked by December 5, 1994 to assure consideration. Comments postmarked after that date will be considered to the extent practicable.

ADDRESSES: This proposed finding of no significant impact is being distributed to those persons and agencies known to be interested in or affected by the proposed action or alternatives. Comments or requests for copies of the environmental assessment should be addressed to: James Johnson, Miamisburg Area Office, U.S. Department of Energy, Mound Plant, Box 66, Miamisburg, OH 45342, (513) 847–5234 FAX: (513) 865–4489.

FOR FURTHER INFORMATION CONTACT: For further information on the Glass Melter project, contact James Johnson at the above address. For further information on the DOE National Environmental Policy Act process, contact: Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: The proposed action would bring the Mound Plant Glass Melter out of cold shutdown mode and use it for treating mixed waste that was generated at the Mound Plant and is now in storage. The Glass Melter, housed in an annex of the Liquid Waste Disposal Building, consists of a burn chamber of stainless steel (lined with refractory material) with an exhaust (offgas) system connected to a system of pipes and scrubbers ending in a stack. (Scrubbers are devices that remove small particles, gasses, and airborne radionuclides generated during thermal treatment.) Waste in sealed drums would be transported by truck from the Mound Hazardous Waste Storage Building or Radioactive Mixed-Waste Storage Building to the annex, staged on a concrete loading dock adjacent to the annex, and then moved individually to a fume hood in the annex where the contents would be transferred into a feed system for processing in the melter. The waste would be added to molten soda-lime silica glass in the burn chamber of the Glass Melter. Ash from the combustion process would fall to the glass surface, where it would be incorporated into the melt. When the molten glass would reach a prescribed chemical mix (or a prescribed level of

radioactivity), it would be discharged from the melter into 19 liter (five gallon) containers. The containers would then be transferred to a storage area in the building using mechanical aids (e.g., hoists and a roller conveyor system) to cool and to await transport by truck to existing onsite storage facilities.

The Glass Melter would have an estimated annual capacity of approximately 48,000 kg (106,000 lb) of wastes, based on an average throughput of 23 kg/hour (51 lb/hr) and a 2,080-hour work year. As originally proposed by the Department, and as analyzed in the environmental assessment, operating at this capacity would have enabled DOE to eliminate the existing backlog of approximately 43,000 kg (95,000 lb) of mixed waste in approximately six years, while processing hazardous and mixed wastes [approximately 39,000 kg (86,000 lb) annually of nonradioactive solvents and mixed wastes] as generated.

Since the environmental assessment was written, DOE has decided to close the Mound Plant. DOE proposes, therefore, to use the Glass Melter only for the mixed waste backlog. DOE has not yet fully characterized this waste for radioactive contamination levels. The radiation level of the waste feed would be limited by the need to comply with the Environmental Protection Agency's National Emissions Standards for Hazardous Air Pollutants and by internal Mound limitations. If, after characterization, the radiation level of the waste is determined to be low enough that the capacity of the Glass Melter would be the factor controlling the processing rate, then the schedule for treatment of the backlog waste could be as short as one year.

The environmental impacts of the proposed treatment of only the mixed waste backlog are adequately covered, and are bounded by, the analysis in this environmental assessment, because calculations of radiological exposures and impacts were based on assumptions of waste radioactivity content that would exceed the actual content under the current proposed action. (According to the environmental assessment, the mixed waste backlog is estimated to have a total activity of 211 curies of tritium and 0.42 curies of plutonium-238; the calculations for Glass Melter operations, however, are based on a total waste activity content of 240 curies/yr of tritium and 0.48 curies/yr of plutonium-238.) The discussion below, which is based on the environmental assessment, therefore, would apply equally to the new proposed action. If the Department later proposes to use the Glass Melter to treat other than mixed waste backlog, it will undertake appropriate further review under the National Environmental Policy Act.

Routine operation of the Glass Melter would generate treated offgas, scrubber sludge, scrubber liquid effluent, and several solid waste streams. The sludge generated by the scrubbing operations [approximately 770 kg (170 lb) per year] would be transferred by pipeline (1) back to a Glass Melter feed port for reprocessing, (2) to an existing cementation process for immobilization in concrete, or (3) to container storage for any subsequent additional treatment required under the Resource Conservation and Recovery Act (RCRA) land disposal restrictions. Filtered liquid scrubber effluent [approximately 36,000 kg (79,000 lb) per year], depending on its composition, would be (1) pumped to an existing wastewater treatment facility, (2) pumped to the cementation process for immobilization as concrete (if the waste processed involved significant tritium concentrations), or (3) packaged for any subsequent additional treatment required under RCRA land disposal restrictions. Most liquid effluent would be treated at Mound's existing radioactive wastewater treatment facility and released via an existing outfall permitted under the National Pollutant Discharge Elimination System.

The Glass Melter would generate, per year, approximately 3,200 kg (7,000 lb) of glass block (mixed waste); 8,900 kg (20,000 lb) of cementized scrubber effluent and sludge (also mixed waste); and 1,900 kg (4,200 lb) of maintenance wastes (filters, replacement parts, etc.). (The maintenance wastes will generally be considered mixed waste, although certain of the replacement parts may have only surface radioactive contamination or may not be hazardous waste.) The mixed wastes would be stored onsite until a mixed waste disposal facility is available.

The immediate result of Glass Melter treatment would be the conversion of waste that is primarily liquid and combustible to a stable, inorganic form that would present very little environmental concern in storage. Most of the waste would eventually require transport to a radioactive mixed waste land disposal facility. (Any waste that is not mixed waste would be disposed of with other, similar Mound wastes, e.g., hazardous waste is shipped offsite for disposal.)

Environmental Impacts: In a series of test burns conducted in January 1985, the Glass Melter demonstrated the capability to thermally treat hazardous wastes in compliance with regulatory requirements. In June 1987, the Glass Melter was further tested and demonstrated effective treatment of low-level radioactive waste while meeting applicable regulatory requirements. Proposed future treatment of wastes using the Glass Melter would also meet all applicable environmental requirements. The Glass Melter is considered a "thermal treatment unit," not an "incinerator" under the Environmental Protection Agency regulations (40 CFR 260.10). Under the regulations for miscellaneous treatment, storage, and disposal units (40 CFR Part 264, Subpart X), any permit for the glass melter may include appropriate conditions from the incinerator regulations (Subpart O). Thermal treatment is one of the limited options DOE currently has to meet the requirement for site treatment plans under the Federal Facility Compliance Act.

The Environmental Protection Agency issued a Draft Strategy for Combustion of Hazardous Waste in Incinerators and Boilers on May 18, 1993, initiating a reexamination of its existing regulations and policies on waste combustion. In the draft strategy the Environmental Protection Agency indicates that, "if conducted in compliance with regulatory standards and guidance, combustion can be a safe and effective means of disposing [of] hazardous wastes." To the extent that the Glass Melter would destroy hazardous wastes it would effectively "dispose" of that portion of the mixed waste backlog. Nevertheless, the thermal treatment of mixed wastes would necessitate the disposal of treatment residues as a mixed waste, which would be stored pending final disposal in an approved location.

Emissions of nonradiological pollutants to the air during routine operations of the Glass Melter would include arsenic, cadmium, chromium, lead, carbon monoxide, hydrogen chloride, nitrogen oxides, and particulates. Predicted concentrations of nonradiological pollutants would meet applicable National Ambient Air Quality Standards and the maximum acceptable ground-level concentrations established by the Ohio Environmental Protection Agency. During routine operations of the Glass Melter the effective dose equivalent of radiation to the maximally exposed individual at the Mound Plant boundary [approximately 470 meters (510 yd) north-northeast from the Glass Melter stack] would be 0.07 mrem/year (tritium, plutonium-238, and thorium-230) from inhalation and ingestion pathways. These emissions would not cause the Mound Plant to exceed the individual effective

dose equivalent limit of 10 mrem/year in the Environmental Protection Agency's National Emission Standards for Hazardous Air Pollutants. Based on the 1990 population distribution surrounding the Mound Plant, the collective effective dose equivalent to the total population residing within 80 km (50 mi) of the facility would be 2.6 person-rem/year. The environmental assessment shows that the health risk from such exposures would be very small.

Onsite personnel would not be exposed to unique hazards and would be adequately protected from potential exposure to radionuclides or other hazards by the existing health and safety programs. Existing facility design features would reduce direct worker contact with radioactive materials.

The formation of dioxins from Glass Melter operation would be virtually precluded due to specific technological design features of the equipment. For instance, the elevated operating temperatures of the Glass Melter would result in a high destruction and removal efficiency (99.9999% in test burns). In addition, the rapid cooling of the offgases below dioxin-forming temperatures, as recommended by the Environmental Protection Agency for municipal waste incinerators, would also be used to preclude dioxin formation.

The worst reasonably foreseeable accident involving the Glass Melter would be a fire on the loading dock that would result in the complete vaporization of the contents of ten mixed waste storage drums. The estimated frequency of such an accident is once every 100,000 years. The effective dose equivalent to the maximally exposed individual [approximately 200 m (220 yd) downwind] would be 0.2 mrem, well below Environmental Protection Agency standards. The environmental assessment shows that the health risk from such exposures would be very small. Predicted concentrations of nonradiological pollutants would meet the Ohio Environmental Protection Agency's maximum acceptable ground-level concentrations. Taking account of the low probability of such an event and the small magnitude of the consequences, the health risk posed by the accident is insignificant.

No endangered species, critical habitats, floodplains, wetlands, or historical or archaeological resources would be affected by the proposed action.

Alternatives Considered: In the environmental assessment, DOE considered two onsite alternatives to the proposed action and seven offsite alternatives in the context of the original proposed action (i.e., assuming the continuing operation of the Mound Plant). The discussion below, however, while being based on the environmental assessment, reflects the current proposed use of the Glass Melter following DOE's decision to close the Plant, which is to treat only mixed waste backlog.

- *No Action.* The present practices of waste storage and disposal would continue and the Glass Melter would not be used. Most of the mixed waste backlog is liquid, and much of it is combustible. Storage of the untreated waste, therefore, could adversely impact human health and the environment, especially in the case of a fire in the storage facility.
- *Administrative Action.* Another alternative would be to rely upon the established Mound Waste Minimization and Pollution Prevention program to identify, screen, and analyze options to reduce the generation of waste. Waste that is in storage would not be affected by this program. The need for treatment options would persist.
- *Offsite Treatment and Disposal.* These alternatives would involve the transportation of mixed wastes to designated sites. DOE considered seven options for offsite treatment. All of the offsite treatment alternatives (i.e., all offsite alternatives except the Nevada Test Site) would involve thermal treatment.

—*Quadrex HPS, Inc. (Gainesville, FL).* This commercial facility cannot accept certain of the Mound mixed wastes, so this alternative would not, by itself, address the need to treat such wastes.

—*Diversified Scientific Services, Inc. (Kingston, TN).* This commercial facility could accept most of the mixed waste from Mound. Treatment, however, may be restricted by air permit conditions limiting the type of waste used for fuel and by Environmental Protection Agency regulations for boilers and industrial furnaces (40 CFR 266.100–112 and Appendices I–IX).

—*Idaho National Engineering Laboratory (INEL).* INEL has a permitted incinerator facility, the Waste Experimental Reduction Facility (WERF), capable of burning radioactive material and hazardous waste. WERF is currently shut down, and its operation is contingent upon completion of National Environmental Policy Act review and DOE approval of a Safety Analysis Report. The current waste acceptance criteria for WERF limit the radioactive and chloride content of wastes and prohibit receipt of any free liquids. These criteria would prohibit the acceptance at WERF of almost all of the waste proposed for treatment in the Glass Melter. The criteria could not be changed without substantial upgrades to WERF.

—*Los Alamos National Laboratory.* The proposed Controlled Air Incinerator is currently being permitted and undergoing National Environmental Policy Act review for operation at production capacity. Current operational plans do not include acceptance of offsite wastes, and the draft RCRA permit proposes to prohibit treatment of offsite waste.

—*Savannah River Site.* DOE is currently constructing the Consolidated Incinerator Facility under a construction permit from the State of South Carolina that does not allow out-of-state waste to be treated in the facility. DOE is preparing an environmental impact statement on waste management at the Savannah River Site, which will include further analysis of operation of the Consolidated Incinerator Facility and other volume reduction alternatives. Trial burns and operation of the facility are being deferred until the completion of the environmental impact statement process.

—*Oak Ridge Gaseous Diffusion Plant.* The incinerator at the Oak Ridge Gaseous Diffusion Plant currently treats mixed waste. The primary sources of waste treated at this incinerator are the Paducah Gaseous Diffusion Plant, the Portsmouth Gaseous Diffusion Plant, and the Oak Ridge Reservation. A substantial backlog of waste exists that will take several years to treat. Thus, this alternative would not be available to Mound for several years and would not meet Mound's immediate needs.

—*Nevada Test Site.* Disposal of mixed waste at the Nevada Test site is considered a possible alternative to treatment in the Glass Melter. Land disposal restrictions under the Resource Conservation and Recovery Act would require, however, that any mixed waste be treated before disposal. The Nevada Test Site would only, therefore, be a reasonable alternative for Mound waste already treated at another facility. DOE has not yet decided to what extent the Nevada Test Site would be used for future disposal of offsite waste; such decisions will be made after completion of the Environmental Restoration and Waste Management Programmatic Environmental Impact

Statement and the Nevada Test Site Sitewide Environmental Impact Statement.

Proposed Determination

Based on the information and the analysis in the environmental assessment, DOE believes the proposed action (operation of the Glass Melter for treatment of backlog mixed waste only) does not constitute a major Federal action that would significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act. Therefore, DOE proposes to issue a finding of no significant impact and not require the preparation of an environmental impact statement. DOE will make a final determination after considering the comments received during a 30-day public comment period.

Issued at Washington DC, this 27th day of October 1994.

Peter Brush,

Principal Deputy Assistant Secretary, Environment, Safety and Health.

[FR Doc. 94–27307 Filed 11–2–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. QF83–333–002 and QF83–333–003]

Cal Ban Corp.; Notice of Amendment to Filing

October 28, 1994.

On October 26, 1994, Cal Ban Corp. tendered for filing a supplement to its filing in these dockets.

The supplement pertains to the technical aspects of the facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by November 18, 1994, and must be served on the Applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27254 Filed 11–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–389–001, et al.]

Tenaska Power Services Co., et al.; Electric Rate and Corporate Regulation Filings

October 27, 1994.

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

1. Tenaska Power Services Co.

[Docket No. ER94–389–001]

Take notice that on September 23, 1994, Tenaska Power Services Company (TPS) filed certain information as required by the Commission's May 26, 1994, letter order in Docket No. ER94–389–001. Copies of TPS's informational filing are on file with the Commission and are available for public inspection.

2. Eastern Power Distribution, Inc.

[Docket No. ER94–964–003]

Take notice that on October 11, 1994, Eastern Power Distribution, Inc. (EPD) filed certain information as required by the Commission's April 5, 1994, letter order in Docket No. ER94–964–002. Copies of EPD's informational filing are on file with the Commission and are available for public inspection.

3. Portland General Electric Co.

[Docket No. ER94–1420–000]

Take notice that on October 24, 1994, Portland General Electric Company (PGE) tendered for filing supplemental information relating to its July 1, 1994, filing in the above-captioned Docket of a service agreement under PGE–1 with City of Redding, California. The information consists of language for PGE FERC Electric Tariff, Original Volume No. 1 (PGE–1), as accepted by the Commission on October 14, 1994 in Docket Nos. ER93–462–000, ER93–703–000, and ER94–1295–000. Copies of the filing have been served on the parties listed in the Certificate of Service attached to the filing letter.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Arizona Public Service Co.

[Docket No. ER94–1681–000]

Take notice that on October 21, 1994, Arizona Public Service Company tendered for filing, at Staff's request, an amendment to its filing in this Docket.

A copy of this filing has been served on the Arizona Corporation Commission.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. PECO Energy Co.

[Docket No. ER95–26–000]

Take notice that on October 6, 1994, PECO Energy Company tendered for filing a Notice of Succession indicating that Philadelphia Electric Company had changed its name to PECO Energy Company.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Tucson Electric Power

[Docket No. ER95–36–000]

Take notice that on October 13, 1994, Tucson Electric Power Company (Tucson) tendered for filing a Notice of Cancellation of the 1992 short term power sale agreement between Tucson and Citizens Utilities Company.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Co.

[Docket No. ER95–52–000]

Take notice that on October 20, 1994, New England Power Company (NEP) tendered for filing a Notice of Termination for Rate Schedule No. 373 between NEP and Bangor Hydro Electric Company.

Comment date: November 10, 1994, 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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27256 Filed 11–2–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. CP94–267–000 and CP94–267–001]

NorAm Gas Transmission Co.; Availability of the Environmental Assessment for the Proposed Line F Replacement Project

October 28, 1994.

The staff of the Federal Energy Regulatory Commission (FERC of Commission) has prepared an environmental assessment (EA) on the natural gas facilities proposed by NorAm Gas Transmission Company (NGT) in the above-referenced dockets.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the proposed Line F Replacement Project including:

- Construction of about 90.9 miles of 20-inch-diameter pipeline to replace about 87 miles of 20-inch-diameter pipeline on Line F in Caddo, Bossier, Webster, Claiborne, Lincoln, Union, and Ouachita Parishes, Louisiana;
- Rerouting a portion of Line F included in the above 90.9 miles of replacement pipeline to connect Line F directly to the Ruston Compressor Station in Lincoln Parish, Louisiana;
- Reclassification of about 8.2 miles of Line F as a low-pressure gas supply line and operate it as part of Line F–1–F in Caddo Parish, Louisiana;
- Abandonment of Line 1–F in Lincoln Parish, Louisiana, a 0.8-mile-long, 20-inch-diameter storage line no longer needed after the reroute of Line F;
- Abandonment of Line FT–5 in Lincoln Parish, Louisiana, a 0.9-mile-long, 10-inch-diameter gas supply line, no longer needed after the reroute of Line F;
- Construction of 10 new metering and regulating facilities at various locations on Line F;
- Abandonment of 66 delivery taps on Lines F, 1–F, and FT–5 installed to deliver gas to rural customers served by Arkansas Louisiana Gas Company;
- Construction of about 2.2 miles of 20-inch-diameter pipeline (Line ACT–4) in Hot Spring County, Arkansas;
- Installation of one 2,200-horsepower compressor unit and the rearrangement and upgrading of existing facilities at the existing Ruston Compressor Station in Lincoln Parish, Louisiana;
- Abandonment of about 0.4 mile of Line S in Harrison County, Texas; and
- Uprating the maximum allowable operating pressure on NGT's Line S from 880 pounds per square inch gauge (psig) to 930 psi in Harrison County, Texas; Caddo, Bossier, and Webster Parishes, Louisiana; and Columbia County, Arkansas.

NGT indicates that the Line F Replacement Project would enhance the safety, reliability, and efficiency of its pipeline system.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 941 North Capitol Street, N.E., Room 3104, Washington, DC 20426, (202) 208–1371.

Copies of this EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

A limited number of copies of the EA are available from: Ms. Lauren O'Donnell, Environmental Project Manager, Environmental Review and Compliance Branch I, Office of Pipeline Regulation, Room 7312, PR–11.1, 825 North Capitol Street, N.E., Washington, DC 20426, (202) 208–0325.

Any person wishing to comment on the EA may do so. Written comments must reference Docket Nos. CP94–267–000 and –001 and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426.

Comments should be filed as soon as possible, but must be received no later than November 28, 1994 to ensure consideration before a Commission decision on this proposal. A copy of any comments should also be sent to Ms. Lauren O'Donnell, Environmental Project Manager, Room 7312 at the above address.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Additional information about this project is available from Ms. Lauren O'Donnell, Environmental Project Manager.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27220 Filed 11–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11367–001]

Peak Power Corp., Kvaerner Venture, Inc., and Las Vegas Energy Storage Limited Partnership; Notice of Intent To Prepare an Environmental Impact Statement (EIS) and Conduct Public Scoping Meetings and a Site Visit

October 28, 1994.

The Federal Energy Regulatory Commission (FERC) has received an application to construct and operate the proposed Sheep Mountain Pumped Storage Project, FERC Project No. 11367. The off-stream project would be located approximately 19 miles south of Las Vegas in Clark County, Nevada. This proposed project would involve federal lands managed by the Bureau of Land Management (BLM).

The FERC staff has determined that licensing this project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, the FERC staff intends to direct a third-party contractor in the preparation of an Environmental Impact Statement (EIS) on the hydroelectric project in accordance with the National Environmental Policy Act of 1969, as amended (Pub. L. 91–190. 42 U.S.C. 4321–4347, January 1, 1970, as amended by Pub. L. 94–52, July 3, 1975, Pub. L. 94–83, August 9, 1975, and Pub. L. 97–258, § 4(b), September 13, 1982). The EIS will objectively consider both site-specific and cumulative environmental impacts of the project and reasonable alternatives, and will include an economic, financial, and engineering analysis. BLM will be a cooperating agency on the EIS.

The Draft EIS (DEIS) will be circulated for review and comment by all interested parties, and FERC will hold a public meeting for the DEIS. FERC and BLM will consider and respond to comments received on the DEIS in the Final EIS. The FERC staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision. BLM will use the information in the EIS to make its decision on issuing a right-of-way grant for the project.

Scoping: Affected landowners, concerned citizens, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the environmental issues that should be analyzed in the EIS. Scoping will help ensure that all significant issues related to this proposal are addressed in the EIS, and also will identify significant or potentially significant impacts that may result from the proposed project.

The FERC will conduct two scoping meetings on November 15 and 16, 1994. A scoping meeting oriented towards the public will begin at 7:30 p.m. on November 15, 1994, at the Clark County Library located at 1401 E. Flamingo Road, Las Vegas, Nevada. A scoping meeting oriented towards the agencies will begin 1:30 p.m. on November 16, 1994, at the BLM offices located at 4765 Vegas Drive, Las Vegas, Nevada. (The public and the agencies may attend either or both meetings, however.)

Objectives: At the scoping meetings FERC staff will (1) identify preliminary environmental issues related to the proposed project; (2) identify preliminary resource issues that are not important and do not require detailed analysis; (3) identify reasonable alternatives to be addressed in the EIS; (4) solicit from the meeting participants all available information, especially quantified data, on the resource issues; and (5) encourage statements from experts and the public on issues that should be analyzed in the EIS, including points of view in opposition to, or in support of, the staffs' preliminary views.

Procedures: The meetings will be recorded by a court reporter and all statements (oral and written) thereby become a part of the official record of the Commission proceedings for the Blue Diamond South Project. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

To help focus discussions at the scoping meeting, FERC will mail a Scoping Document I, outlining subject areas to be addressed in the EIS, to agencies and interested individuals on the project mailing list. Copies of the scoping document will also be available at the scoping meetings.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record at the meetings. In addition, written scoping comments may be filed with Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 until December 12, 1994. All written correspondence should clearly show the following caption on the first page: Sheep Mountain Pumped Storage Project, FERC No. 11367–000.

Intervenors—those on the Commission's service list for this proceeding (parties)—are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list. Further, if a party or interceder files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Site Visit: A site visit to the Sheep Mountain Project is planned for November 15, 1994. Attendees will meet at the parking lot of the Gold Strike Casino, located in Jean, Nevada (east side of route 15) at 9 a.m. Those who wish to attend should contact Mike Strzelecki at (202) 219–2827.

For Further Information Contact: Mike Strzelecki, FERC–OHL, (202) 219–2827 or Roy Lee, BLM Las Vegas Resource Area, (702) 647–5040.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27215 Filed 11–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–32–000, et al.]

CNG Transmission Corporation, et al.; Natural Gas Certificate Filings

October 27, 1994.

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

1. CNG Transmission Corp.

[Docket No. CP95–32–000]

Take notice that on October 21, 1994, CNG Transmission Corporation (CNGT), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP95–32–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain pipelines, measurement and regulating stations, compressor stations, and rights-of-way as well as certain firm transportation points, all located within Boone, Kanawha and Raleigh Counties, West Virginia by sale to Cabot Oil and Gas Corporation (Cabot), all as more fully set forth in the application on file with the Commission and open to public inspection.

The facilities that CNGT proposes to abandon were transferred to CNGT from its predecessor, (now Hope Gas, Inc.) effective January 1, 1984. The transfer and classification of assets was approved by the Commission in Docket No. CP80–346–000 on December 20, 1983. Facilities constructed since 1984 have been added under CNGT's blanket certificate granted at 21 FERC 62,172 (1982) in Docket No. CP82–537–000.

The facilities are currently used to gather and transport gas for CNGT's system supply and to render interruptible transportation service for various shippers. In addition, CNGT provides firm transportation for Hope Gas, Inc. (Hope), an affiliate of CNGT. Hope makes sales to individual consumers along the facilities and has its own distribution facilities connected to the facilities. No interruption of Hope's consumer service will occur.

Cabot or a subsidiary will provide non-jurisdictional gathering service for the transportation provided by CNGT to producers on the pipelines to be sold to Cabot. Associated with this filing, Cabot or a Cabot subsidiary will file a Petition for Declaratory Order Disclaiming Jurisdiction relating to the facilities being abandoned and transferred to Cabot.

Comment date: November 14, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Williams Gas Processing—Kansas Hugoton Co.

[Docket No. CP95–12–000]

Take notice that on October 5, 1994, Williams Gas Processing—Kansas Hugoton Company (WGP–KHC), P. O. Box 3102, Tulsa, Oklahoma 74101, filed in Docket No. CP95–121–000 a petition for declaratory order requesting that the Commission declare that the facilities to be acquired from Williams Natural Gas Company (WNG) are gathering facilities exempt from the Commission's Regulations pursuant to Section 1(b) of the Natural Gas Act (NGA, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

WGP–KHC states that it would, pursuant to a Transfer and Assignment Agreement dated October 3, 1994, between WGP–KHC and WNG, acquire at net book value, all of WNG's Kansas Hugoton gathering facilities located in Finney, Grant, Hamilton, Haskell, Kearny, Seward, Stanton and Stevens Counties, Kansas.

WGP–KHC states that WNG would convey the Kansas Hugoton gathering system which consists of two operationally separate sub-systems, namely the A&B sub-system, located west of the Hugoton compressor station, and the C sub-system located east of the Hugoton compressor station. The Kansas Hugoton A&B sub-system

consists of the following facilities, all of which are currently classified as gathering:

(1) North Ulysses station—Located in the NE/4 of Section 16, Township 26 South, Range 38 West, Kearny County, Kansas. The station operates both single and two stage and consists of five 2,000 HP Cooper-Bessemer engine compressors for a total of 10,000 HP.

(2) North Ulysses "A" station—Located in the SE/4 of Section 4, Township 25 South, Range 37 West, Kearny County, Kansas. The station consists of one 1,100 HP White Superior engine compressor.

(3) North Ulysses "B" station—Located in the NW/4 of Section 25, Township 24 South, Range 37 West, Kearny County, Kansas. The station consists of one 1,320 HP Cooper-Bessemer engine compressor.

(4) North Ulysses "C" station—Located in the SW/4 of Section 17, Township 24 South, Range 36 West, Kearny County, Kansas. The station consists of one 1,320 HP Cooper-Bessemer engine compressor.

(5) West Ulysses station—Located in the SW/4 of Section 28, Township 28 South, Range 38 West, Grant County, Kansas. The station consists of three 2,000 HP Cooper-Bessemer compressors, one 1,800 HP Cooper-Bessemer compressor, three 1,350 Cooper-Bessemer compressors for a total of 11,850 HP.

(6) West Ulysses "A" station—Located in the NE/4 of Section 20, Township 28 South, Range 38 West, Grant County, Kansas. The station consists of one 660 HP White Superior compressor.

(7) West Ulysses "B" station—Located in the NE/4 of Section 8, Township 28 South, Range 38 West, Grant County, Kansas. The station consists of two 660 HP White Superior engine compressors, for a total of 1,320 HP.

(8) West Ulysses "C" station—Located in the SW/4 of Section 9, Township 27 South, Range 38 West, Grant County, Kansas. The station consists of two 660 HP compressors, for a total of 1,320 HP.

(9) South Ulysses station—Located in the SE/4 of Section 5, Township 30 South, Range 38 West, Grant County, Kansas. South Ulysses consists of two 2,000 HP Cooper-Bessemer engine compressors, for a total of 4,000 HP.

(10) South Ulysses "A" station—Located in the SE/4 of Section 5, Township 30 South, Range 38 West, Grant County, Kansas. The station consists of one 660 HP White Superior engine compressor.

(11) South Ulysses "B" station—Located in the NE/4 of Section 19, Township 30 South, Range 38 West, Grant County, Kansas. The station consists of one 660 HP White Superior engine compressor.

(12) South Ulysses "C" station—Located in the SW/4 of Section 30, Township 30 South, Range 38 West, Grant County, Kansas. The station consists of two 660 HP White Superior engine compressors, for a total of 1,320 HP.

(13) South Ulysses "D" station—Located in the SW/4 of Section 29, Township 30 South, Range 39 West, Stanton County, Kansas. The station consists of one 660 HP White Superior engine compressor.

(14) South Ulysses "E" station—Located in the NW/4 of Section 8, Township 32 South, Range 39 West, Morton County, Kansas. The station consists of two 660 HP White Superior engine compressors, for a total of 1,320 HP.

(15) Pipeline—Approximately 1,247.1 miles of 2" to 30" pipeline consisting of:

1.8 miles of 2"
2.9 miles of 3"
558.4 miles of 4"
3.1 miles of 5"
293.8 miles of 6"
0.3 miles of 7"
131.3 miles of 8"
71.5 miles of 10"
51.6 miles of 12"
0.7 miles of 14"
31.9 miles of 16"
12.8 miles of 20"
9.5 miles of 22"
2.3 miles of 24"
31.5 miles of 26"
0.2 miles of 28"
43.5 miles of 30"

The Kansas Hugoton C sub-system consists of the following facilities, all of which are currently classified as gathering:

(1) Sublette station—Located in the NE/4 of Section 2, Township 29 South, Range 33 West, Haskell County, Kansas. The station operates in two stages and consists of one 2,000 HP compressor, one 1,800 HP compressor, and one 1,350 HP compressor for a total of 5,150 HP.

(2) North Sublette station—Located in the NE/4 of Section 26, Township 25 South, Range 33 West, Finney County, Kansas. The station consists of two 660 HP White Superior engine compressors for a total of 1,320 HP.

(3) Pipeline—Approximately 457.6 miles of 2" to 22" pipeline consisting of:

0.2 miles of 2"
0.1 miles of 3"
202.0 miles of 4"
117.5 miles of 6"
8.6 miles of 7"
27.0 miles of 8"
9.2 miles of 10"
20.9 miles of 12"
48.9 miles of 16"
0.1 miles of 18"
17.4 miles of 20"
5.7 miles of 22"

Other facilities to be conveyed within the Kansas Hugoton system include two types of facilities that are not included in the A&B or C sub-systems. The first of these "other" facilities are minor line segments physically connected to gathering systems or pipelines owned by others. All of these line segments are currently classified as gathering and include:

9.8 miles of 4"
2.4 miles of 5"
2.3 miles of 6"

The second type of "other" facilities include one compressor station and approximately 10 miles of pipeline that currently are classified as transmission but which serve a gathering function and are proposed to be reclassified as gathering. These facilities are used to move gas for certain shippers, and consist of:

(1) United Station—Located in Section 3, Township 29 South, Range 35 West, Grant County, Kansas. United station consists of three 2,000 HP Cooper-Bessemer compressors, one 1,440 HP Cooper-Bessemer compressor, and one 3,500 HP Ingersoll-Rand gas turbine engine, for a total of 10,940 HP

(2) Pipeline—Approximately 10.3 miles of 20" and 26" pipeline consisting of:

2.3 miles of 20
8.0 miles of 26

WGP–KHC states that it intends to assume ownership and control of the subject facilities as a non-regulated, independent, and separately managed business and is seeking a Commission declaratory order to confirm that the subject facilities are wholly exempt from the Commission's jurisdiction under the NGA. Petitioner also states that the Amoco Production Company, the largest producer in the Kansas-Hugoton field will operate the Kansas Hugoton gathering system as an independent contractor, subject to a long-term operating agreement including, inter alia, an obligation to operate the facilities in an open access and non-discriminatory manner.

Comment date: November 21, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Ozark Gas Transmission System

[Docket No. CP95–30–000]

Take notice that on October 21, 1994, Ozark Gas Transmission System (Ozark), 1700 Pacific Avenue, Dallas, Texas 75201, filed in Docket No. CP95 30–000 an application pursuant to

Section 7(b) of the Natural Gas Act, for permission and approval to abandon one lateral compressor and related facilities, known as the Turkey Flat Compressor Station located in Haskell County, Oklahoma, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Ozark is proposing to abandon all of the facilities at the Turkey Flat Station, including the compressor unit, dehydration, measuring and regulating equipment, 10,364 feet of 6 inch line, and metering equipment at the Turkey Flat #1 well site. Ozark was authorized in Docket No. CP78–532,et al., inter alia, to construct and operate the Turkey Flat Compressor Station. Ozark asserts that gas supply produced from the well located behind this compressor is being delivered to another pipeline and therefore production will not be interrupted upon abandonment of the station. Ozark further states that it proposes to reclassify the facilities proposed to be abandoned herein, for future use.

Comment date: November 17, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27255; Filed 11–2–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–17–000, et al.]

Western Gas Interstate Co., et al.; Natural Gas Certificate Filings

October 26, 1994.

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

1. Western Gas Interstate Company

[Docket No. CP95–17–000]

Take notice that on October 21, 1994, Western Gas Interstate Company (Western), 504 Lavaca Street, Suite, 950, Austin, Texas 78701, filed in Docket No. CP95–17–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate 2.5 miles of a 4" lateral and a tap off its East Line for Seaboard Farms of Oklahoma (Seaboard) with an average annual consumption of 15,000 Mcf, at Guymon County, Oklahoma, under the blanket certificate issued in Docket No. CP82–441, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Western asserts that the proposed facilities will permit gas to be delivered to Seaboard's sow farrowing units in Guymon County Oklahoma. The total estimated construction cost of the facilities is approximately $115,630, including overhead and contingency. Western states that it will finance the costs associated with the construction through the use of funds contributed by Seaboard.

Comment date: December 12, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Colorado Interstate Gas Company

[Docket No. CP95–29–000]

Take notice that on October 20, 1994, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944 filed in Docket No. CP95–29–000, a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct the Burro Canyon facility to deliver gas to Primero Gas Gathering Company, (Primero), under the blanket certificate issued in Docket No. CP83–21–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG proposes to construct a new delivery facility to provide purge gas and start up gas for Primero's compression facility in Las Animas County, Colorado. CIG relates the new facility will consist of a two-inch meter run and appurtenant facilities and will be located in Section 27, Township 33 South, Range 65 West, Las Animas County, Colorado. CIG explains the cost will be about $3,000, which will be financed from funds on hand. CIG says Primero will require approximately 1,000 Mcf per day which CIG will transport on an interruptible basis.

Comment date: December 12, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP95–33–000]

Take notice that on October 24, 1994, Tennessee Gas Pipeline Company (Tennessee), P.O Box 2511, Houston, Texas 77252–2511, filed in Docket No. CP95–33–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission and approval to abandon two natural gas exchange services between Tennessee and Koch Gateway Pipeline Company (Koch), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that it proposes to abandon two exchange services initiated pursuant to agreements dated December 6, 1962, and January 9, 1970. Tennessee indicates that it provided its service under its Rate Schedules X–16 and X–27, respectively. Tennessee further states that the services were authorized in Docket Nos. CP63–181 and CP70–175, respectively. It is indicated that on April 30, 1993, Tennessee requested that Koch advise whether the services authorized in Docket Nos. CP63–181 and CP70–175 were still required and that, if no response was received by May

13, 1993, Tennessee would proceed with abandonment. It is further indicated that Tennessee has received no such response, and, therefore, requests abandonment. Tennessee also states that there has been no activity under either service agreement since 1986. No facilities are proposed to be abandoned.

Comment date: November 16, 1994, in accordance with Standard Paragraph F at the end of this notice.

4. Columbia Gas Transmission Corporation

[Docket No. CP95–34–000]

Take notice that on October 24, 1994, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP95–34–000 an application pursuant to Section 7(c) and 7(b) of the Natural Gas Act requesting authority to construct and operate certain replacement natural gas facilities and permission to abandon the facilities being replaced, all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia proposes to replace approximately 1.3 miles of deteriorating 18-inch pipeline located in Greene and Madison Counties, Ohio and designated as Columbia's Line A, with approximately 1.3 miles of 20-inch pipeline. Columbia states that the sections proposed here for replacement were constructed in 1944 and 1948, using coupled pipeline and are the last coupled sections of Line A between Howell and Mt. Sterling Stations to be replaced. Columbia reports that recent examinations of Line A have confirmed general corrosion to the extent that replacement is required in order to maintain service to Columbia's existing customers.

Columbia states that it has concluded that since 18-inch pipeline is a non-standard size and the cost difference in using 20-inch pipe in place of 18-inch pipe is minimal, it will use 20-inch pipe for all future age and condition replacements on this line. Columbia asserts that the change in pipeline size will create a *de minimus* increase of less than 300 Dth/d of added capacity. Columbia estimates the cost of the proposed construction to be $557,200.

Comment date: November 16, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27210; Filed 11–2–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. MG95–1–000]

Algonquin LNG, Inc.; Notice of Filing

October 28, 1994.

Take notice that on October 26, 1994, Algonquin LNG, Inc. (Algonquin LNG) submitted revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566 and 566–A.[2] Algonquin LNG states that it is revising its standards of conduct to incorporate the changes required by Order Nos. 566 and 566–A.

Algonquin LNG states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214 (1994)). All such motions to intervene or protest should be filed on or before November 28, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27218 Filed 11–2–94; 8:45 am]

BILLING CODE 6717–01–M

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[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, order on rehearing, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, order extending sunset date, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, order extending sunset date, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991); rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, order on remand and extending sunset date, III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, order on rehearing and extending sunset date, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, order denying rehearing and granting clarification, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, order extending sunset date, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, order on rehearing, 59 FR 52,896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994).

[Docket No. TQ94–6–23–001]

Eastern Shore Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

October 28, 1994.

Take notice that on October 25, 1994, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing certain revised tariff sheet included in Appendix A attached to the filing. Such sheets are proposed to be effective August 1, 1994, September 1, 1994, October 1, 1994 and November 1, 1994, respectively.

On July 1, 1994, Eastern Shore filed revised tariff sheets in Docket No. TQ94–6–23–000, et al. (its regularly scheduled quarterly PGA filing) proposed to be effective August 1, 1994. (Such revised tariff sheet were approved by FERC letter order dated July 27, 1994. Eastern Shore, however, inadvertently used as its starting point the cumulative transportation gas cost adjustment contained in Docket No. TF94–3–23–000, et. al. effective May 1, 1994, (an interim PGA filing) instead of the proper cumulative transportation gas costs adjustment as contained in Docket No. TQ94–5–23–000, et. al. (its regularly scheduled quarterly PGA filing) also effective May 1, 1994, in its July 1, 1994, filing.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All protests should be filed on or before November 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27211 Filed 11–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 4715–006–NY]

Felts Mills Energy Partners, L.P.; Public Meeting Scheduled for Licensing of Felts Mills Hydroelectric Project

October 28, 1994.

The Federal Energy Regulatory Commission's (FERC) Office of Hydropower Licensing will hold a Public Meeting to present findings and solicit comments on the Draft Environmental Impact Statement (DEIS) for the relicensing of the Felts Mills Hydroelectric project within the Black River Basin, New York.

The public meeting will be held November 16, 1994, in Watertown, New York at 7:00 p.m. in the Large Group Instruction Room of the Watertown High School, 1335 Washington Street, Watertown, New York.

Participants wishing to make oral comments at the meeting are asked to keep them brief.

Statements made at the public meeting will not constitute official DEIS comments pursuant to the National Environmental Policy Act. Official DEIS comments must be filed in writing with: Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Reference should be made to the Felts Mills Project No. 4715.

The comment period ends November 28, 1994.

Questions regarding the relicensing of the projects can be addressed to Tom Camp, Task Monitor, FERC, (202) 219–2832.

Lois D. Cashell,

Secretary.

[FR Doc. 94– 27217 Filed 11–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–18–000]

Florida Gas Transmission Co.; Notice of Transition Cost Recovery Report

October 28, 1994.

Take notice that on October 26, 1994, Florida Gas Transmission Company (FGT) tendered for filing a Transition Cost Recovery Report pursuant to Section 24 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1, approved by the Commission's September 17, 1993, order in Docket No. RS92–16, *et al.*

FGT states that the Transition Cost Recovery Report filed summarizes the activity which has occurred in its TCR Account and Order 636 Account through October 31, 1994, and includes $4,850,000 of recoverable transition costs not previously reported. Because the currently effective surcharge rates are at the maximum levels permitted by FGT's tariff, no tariff revisions are required as a result of this filing.

FGT states that copies of the report were mailed to all customers serviced under the rate schedules affected by the report and the interested state commissions.

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 4, 1994. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27213 Filed 11–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11092–002 California]

Sacramento Municipal Utility; District & El Dorado County; Water Agency; Notice of Surrender of Preliminary Permit

October 28, 1994.

Take notice that Sacramento Municipal Utility District & El Dorado County Water Agency, Permittees for the Upper American River Project No. 11092, have requested that their preliminary permit be terminated. The preliminary permit for Project No. 11092 was issued May 19, 1992, and would have expired April 30, 1995. The project would have been located in El Dorado National Forest, on the South Fork American River, Silver Fork American River, and Silver Creek, in El Dorado County, California.

The Permittees filed the request on October 11, 1994, and the preliminary permit for Project No. 11092 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following the day. New applications involving this project site, to the extent provided for under 18 CFR

Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27216 Filed 11–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–67–073; Phase II/PCBs]

Texas Eastern Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

October 28, 1994.

Take notice that on October 25, 1994, in compliance with the Stipulation and Agreement filed by Texas Eastern Transmission Corporation (Texas Eastern) in the above-captioned docket (Settlement),[1] and Section 26 of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1. Texas Eastern submitted for filing the tariff sheets listed in Appendix A to the letter as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2. Such tariff sheets reflect a decrease in the PCB component of Texas Eastern's currently effective rates.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions. Copies of this filing have also been mailed to all parties on the service list in Docket Nos. RP88–67, *et al.* (Phase II/PCBs).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27214 Filed 11–2–94; 8:45 am]

BILLING CODE 6717–01–M

[1] The Settlement was filed on December 17, 1991, and approved without modification by the Commission on March 18, 1992.

[Docket No. CP95–28–000]

Transcontinental Gas Pipe Line Corp.; Notice of Request Under Blanket Authorization

October 28, 1994.

Take notice that on October 20, 1994, Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP95–28–000 a request pursuant to §§ 157.205, 157.216 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216, 157.212) for authorization to abandon certain facilities and to construct and operate upgraded replacement facilities, under TGPL's blanket certificate issued in Docket No. CP82–426–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

TGPL proposed to expand its existing Gordonsville, Louisa County, Virginia Delivery Point (Gordonsville) by removing and retiring the existing meter station and constructing a new meter station and two twelve-inch taps at milepost 1523.38 on its "B" and "C" main lines. TGPL states that it currently delivers up to 2,000 Mcf of gas per day, on a firm basis, to Commonwealth Gas Services, Inc. (Commonwealth) at Gordonsville. TGPL asserts that the new facilities would enable it to deliver an additional 67,000 Mcf of gas per day, on an interruptible basis, to Commonwealth. TGPL mentions that Commonwealth would deliver up to 66,500 Mcf/day of this gas to a new cogeneration plant to be owned by Gordonsville Energy Limited Partnership and up to 500 Mcf/day to the City of Gordonsville. TGPL avers that it has sufficient system delivery flexibility to accomplish these additional deliveries at Gordonsville without detriment to its other customers and that it is not proposing to alter the total volumes of gas authorized for delivery to Commonwealth.

TGPL states that the estimated cost of the proposed facilities is $1,333,537 and the Commonwealth would reimburse TGPL for all costs associated with these facilities. TGPL also asserts that it would obtain all required environmental clearances prior to the commencement of any abandonment or construction work in the vicinity of Gordonsville.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27219 Filed 11–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–19–000]

Trunkline Gas Co.; Notice of Storage Report

October 28, 1994.

Take notice that on October 26, 1994, Trunkline Gas Company (Trunkline) tendered for filing with the Commission its report pursuant to the Commission's Order on Compliance with Restructuring Rule dated March 2, 1993, in Docket Nos. RS92–25, *et al.*, which required Trunkline to file a study within 60 days after the end of its first year of operations under restructured services that indicates the amount of storage capacity and deliverability that was used to accommodate imbalances on Trunkline's system.

Trunkline states that it has been operating under Order No. 636 since September 1, 1993, the day restructuring was approved to be effective by the Commission in Docket Nos. RS92–25, *et al.* Trunkline states that the last day of the first year of restructured operations was August 31, 1994.

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 §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 18, 1994. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27212 Filed 11–2–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $100,697.87, plus accrued interest, in refined petroleum product violation amounts obtained by the DOE pursuant to a June 21, 1982 Remedial Order issued to Beacon Bay Enterprises, Inc. (Beacon Bay), Case No. LEF–0074. The OHA has determined that the funds obtained from Beacon Bay, plus accrued interest, will be distributed to customers who purchased gasoline from Beacon Bay during the period August 1, 1979 through March 31, 1980.

DATES AND ADDRESSES: Applications for Refund must be filed in duplicate, addressed to "Beacon Bay Special Refund Proceeding," and sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W. Washington, D.C. 20585.

Applications should display a prominent reference to case number "LEF–0074" and be postmarked by May 1, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION:

In accordance with 10 C.F.R. 205.282 (b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute to eligible claimants $100,697.87, plus accrued interest, obtained by the DOE pursuant to a June 21, 1982 Remedial Order. In the Remedial Order, the DOE found that, during the period August 1, 1979 through March 31, 1980, Beacon Bay had sold motor gasoline at prices in excess of the maximum lawful selling price, in violation of Federal petroleum price regulations.

The OHA has determined to distribute the funds obtained from Beacon Bay in two stages. In the first stage, we will accept claims from identifiable purchasers of gasoline from Beacon Bay who may have been injured by overcharges. The specific requirements which an applicant must meet in order to receive a refund are set out in Section III of the Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of gasoline which they purchased from Beacon Bay.

If any funds remain after valid claims are paid in the first stage, they may be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07.

Applications for Refund must be postmarked by May 1, 1995. Instructions for the completion of refund applications are set forth in the Decision that immediately follows this notice. Applications should be sent to the address listed at the beginning of this notice.

Unless labelled as "confidential," all submissions must be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Dated: October 27, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Beacon Bay Enterprises, Inc.
Date of Filing: July 20, 1993.
Case Number: LEF–0074.

On July 20, 1993, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) to distribute the funds which Beacon Bay Enterprises, Inc. (Beacon Bay) remitted to the DOE pursuant to a June 21, 1982 Remedial Order. Beacon Bay has remitted $100,697.87 pursuant to the order, to which $3,919.39 in interest has accrued as of September 30, 1994. In accordance with the provisions of procedural regulations at 10 C.F.R. part 205, subpart V (subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of regulatory violations set forth in the Remedial Order. This Decision and Order sets forth the OHA's plan to distribute these funds.

I. Background

During the period relevant to this proceeding, Beacon Bay operated 11 retail service stations in Southern California. The ERA issued a Proposed Remedial Order (PRO) to Beacon Bay on July 29, 1980. The PRO alleged that, during the period August 1, 1979 through March 31, 1980, Beacon Bay sold motor gasoline at prices in excess of the maximum lawful selling price, in violation of Federal petroleum price regulations. The DOE amended the PRO and issued a Final Remedial Order on June 21, 1982, after considering Beacon Bay's objections to the PRO. Beacon Bay Enterprises, 9 DOE ¶ 83,039 (1982). On August 23, 1982, Beacon Bay appealed the DOE's Final Remedial Order to the Federal Energy Regulatory Commission (FERC). The FERC issued a Proposed Order on November 15, 1982, Beacon Bay Enterprises, 21 FERC ¶ 62,295 (1982), and an Order on January 25, 1983, Beacon Bay Enterprises, 22 FERC ¶ 61,059 (1983), both of which affirmed and adopted the DOE's Final Remedial Order. Beacon Bay has since remitted $100,697.87 to the DOE, in compliance with the Remedial Order (the Beacon Bay Remedial Order fund), which is now available for distribution through Subpart V.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan for the distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the subpart V process to distribute such funds. For a detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501 *et seq.*; Office of Enforcement, 9 DOE ¶ 82,508 (1981); Office of Enforcement, 8 DOE ¶ 82,597 (1981) (Vickers).

We have considered the ERA's Petition that we implement a Subpart V proceeding with respect to the Beacon Bay Remedial Order fund and have determined that such a proceeding is appropriate. This Decision and Order sets forth the OHA's plan to distribute this fund.

III. Refund Procedures

On August 19, 1994, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the Beacon Bay Remedial Order fund. That PD&O was published in the **Federal Register**, and a 30-day period was provided for the submission of comments regarding our proposed refund plan. See 59 FR 44720) (August 30, 1994). More than 30 days have elapsed and the OHA has received no comments concerning the proposed procedures for the distribution of the Beacon Bay Remedial Order fund. Consequently, the procedures will be adopted as proposed.

We will implement a two-stage refund procedure for distribution of the Beacon Bay Remedial Order Fund. In the first stage, purchasers of gasoline from Beacon Bay during the period covered by the Remedial

Order may submit Applications for Refund. From our experience with Subpart V proceedings, we expect that potential applicants generally with fall into the following categories: (i) End-users; (ii) regulated entities, such as cooperatives; and (iii) resellers and retailers.

A. First-Stage Refund Procedures

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of gasoline from Beacon Bay during the period covered by the Remedial Order—August 1979 through March 1980. If the gasoline was not purchased directly from Beacon Bay, the claimant must establish that the gasoline originated with Beacon Bay. Additionally, a reseller or retailer claimant, except one who chooses to utilize the injury presumptions set forth below, will be required to make a detailed showing that it was injured by Beacon Bay's overcharges. This showing will generally consist of two distinct elements. First, a reseller or retailer claimant will be required to show that it had "banks" of unrecouped increased product costs in excess of the refund claimed.[1] Second, because a showing of banked costs alone is not sufficient to establish injury, a claimant must also provide evidence that market conditions precluded it from increasing its prices to pass through the additional costs associated with the overcharges. See Vaqueros Energy Corp./Hutches Oil Co., Inc., 11 DOE ¶ 85,070 at 88,105 (1983). Such a showing could consist of a demonstration that a firm suffered a competitive disadvantage as a result of its purchases from Beacon Bay. See *National Helium Co./Atlantic Richfield Corp.*, 11 DOE ¶ 85,257 (1984), *aff'd sub nom. Atlantic Richfield Co. v DOE*, 618 F. Supp. 1199 (D. Del. 1985).

Our experience also indicated that the use of certain presumptions permits claimants to participate in the refund process without incurring inordinate expense and ensures that refund claims are evaluated in the most efficient manner possible. See, *e.g.*, *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986) (*Marathon*). Presumptions in refund cases are specifically authorized by the applicable subpart V regulations at 10 C.F.R. § 205.282 (e). Accordingly, we will adopt the presumptions set forth below.

1. *Calculation of Refunds.* First, we will adopt a presumption that the overcharges were dispersed equally in all of Beacon Bay's sales of gasoline during the period covered by the Remedial Order. In accordance with this presumption, refunds are made on a pro-rata or volumetric basis.[2] In the absence of better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Under the volumetric approach, a claimant's "allocable share" of the Remedial Order fund is equal to the number of gallons purchased from Beacon Bay during the period covered by the Remedial Order times the per gallon refund amount. In the present case, the per gallon refund amount is $0.0690. We derived this figure by dividing the amount of the Remedial Order fund, $100,697.87, by 1,460,321 gallons, the volume of gasoline which Beacon Bay sold from August 1, 1979 through March 31, 1980. A claimant that establishes its eligibility for a refund will receive all or a portion of its allocable share plus a pro-rata share of the accrued interest.[3]

In addition to the volumetric presumption, we will also adopt a number of presumptions regarding injury for claimants in each category listed below.

2. *End-Users.* In accordance with prior Subpart V proceedings, we will adopt the presumption that an end-user or ultimate consumer of gasoline purchased from Beacon Bay whose business is unrelated to the petroleum industry was injured by the overcharges resolved by the Remedial Order. See, *e.g.*, *Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,269 (1984) (*TOGCO*). Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the period covered by the Remedial Order, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of the refund proceeding. *Id.*

Accordingly, end-users of gasoline purchased from Beacon Bay need only document their purchase volumes from Beacon Bay during the period covered by the Remedial Order to make a sufficient showing that they were injured by the overcharges.

3. *Regulated Firms and Cooperatives.* In order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, i.e. a public utility, or an agricultural cooperative which is required by its charter to pass through cost savings to its member-purchasers, need only submit documentation of purchases used by itself or, in the case of a cooperative, sold to its members. However, a regulated firm or a cooperative will also be required to certify that it will notify the appropriate regulatory body or membership group of the receipt of the refund. See *Marathon*, 14 DOE at 88,514–15. This requirement is based upon the presumption that, with respect to a regulated firm, any overcharges would have been routinely passed through to its customers. Similarly, any refunds received should be passed through to its customers. With respect to a cooperative, in general, the cooperative agreement which controls its business operations would ensure that the overcharges, and similarly refunds, would be passed through to its member-customers. Accordingly, these firms will not be required to make a detailed demonstration of injury.[4]

4. *Resellers and Retailers.* a. *Small Claims Presumption.* We will adopt a "small claims" presumption that a firm which resold gasoline purchased from Beacon Bay and requests a small refund was injured by the overcharges. Under the small claims presumption, a reseller or retailer seeking a refund of $5,000 or less, exclusive of interest, will not be required to submit evidence of injury beyond documentation of the volume of gasoline it purchased from Beacon Bay during the period covered by the Remedial Order. See *TOGCO*, 12 DOE at 88,210. This presumption is based on the fact that there may be considerable expense involved in gathering the types of data necessary to support a detailed claim of injury; for small claimants the expense might possibly exceed the potential refund. Consequently, failure to allow simplified refund procedures for small claims could deprive injured parties of their opportunity to obtain a refund. Furthermore, the use of the small claims presumption is desirable in that it allows the OHA to process the large number of routine refund claims expected in an efficient manner.[5]

b. *Mid-Level Claim Presumption.* In addition, a reseller or retailer claimant whose allocable share of the refund pool exceeds $5,000, excluding interest, may elect to receive as its refund either $5,000 or 40 percent of its allocable share.[6] The use of this

[1] Claimants who have previously relied upon their banked costs in order to obtain refunds in other special refund proceedings should subtract those refunds from any cost banks submitted in this refund proceeding. See Husky Oil Co./Metro Oil Products, Inc., 16 DOE ¶ 85,090, at 88,179 (1987). Additionally, a claimant attempting to show injury may not receive a refund for any month in which it has a negative accumulated cost bank (for gasoline) or for any prior month. See Standard Oil Co., (Indiana)/Suburban Propane Gas Corp./Sturdy Oil Co., 15 DOE ¶ 85,187 (1986). If a claimant no longer has records showing its banked costs, the OHA may use its discretion to permit the claimant to approximate those cost banks. See, e.g., Gulf Oil Corp./Sturdy Oil Co., 15 DOE ¶ 85,187 (1986).

[2] If a claimant believes that it was injured by more than its volumetric share, it may elect to forego this presumption and file a refund application based upon a claim that it suffered a disproportionate share of Beacon Bay's overcharges. See, *e.g.*, *Mobil Oil Corp./Atchison, Topeka and Santa Fe Railroad Co.*, 15 DOE ¶ 85,788 (1990); *Mobil Oil Corp./Marine Corps Exchange Service*, 17 DOE ¶ 85,714 (1988). Such a claim will be granted if the claimant makes a persuasive showing that it was "overcharged" by a specific amount, and that it absorbed these overcharges. See *Panhandle Eastern Pipeline Co./Western Petroleum Co.*, 19 DOE ¶ 85,705 (1989). To the degree that a claimant makes this showing, it will receive an above-volumetric refund.

[3] As in previous cases, we will establish a minimum refund amount of $15. In this proceeding, any potential claimant purchasing less than 211 gallons of gasoline from Beacon Bay would have an allocable share of less than $15. We have found through our experience that the cost of processing claims in which refunds for amounts less than $15 are sought outweighs the benefits of restitution in those instances. See *Exxon Corp.*, 17 DOE ¶ 85,590 at 89,150 (1988) (*Exxon*).

[4] A cooperative's purchases of gasoline from Beacon Bay which were resold to non-members will be treated in a manner consistent with purchases made by other resellers. See *Total Petroleum, Inc./Farmers Petroleum Cooperative, Inc.*, 19 DOE ¶ 85.215 (1989).

[5] In order to qualify for a refund under the small claims presumption, a reseller or retailer must have purchased less than 72,471 gallons of gasoline from Beacon Bay during the settlement agreement period.

[6] Under the mid-level presumption, a claimant which purchased between 72,471 gallons and 181,177 gallons from Beacon Bay would be eligible to receive a principal refund, exclusive of interest, of $5,000. A claimant purchasing more than 181,177 gallons of petroleum products would be

Continued

presumption reflects our conviction that these larger, mid-level claimants were likely to have experienced some injury as a result of the overcharges. See *Marathon*, 14 DOE at 88,515. In some prior special refund proceedings, we have performed detailed analyses in order to determine product-specific levels of injury. See, *e.g.*, *Getty Oil Co.*, 15 DOE ¶ 85,064 (1986). However, in *Gulf Oil Corp.*, 16 DOE ¶ 85,381 at 88,737 (1987), we determined that based upon the available data, it was more accurate and efficient to adopt a single presumptive level of injury of 40 percent for all mid-level claimants, regardless of the refined product that they purchased, based upon the results of our analyses in prior proceedings. We believe that approach generally to be sound, and we will therefore adopt a 40 percent presumptive level of injury for all mid-level claimants in this proceeding. Consequently, an applicant in this group will only be required to provide documentation of its purchase volumes of gasoline from Beacon Bay during the Remedial Order period in order to be eligible to receive a refund of 40 percent of its total allocable share or $5,000, whichever is greater.[7]

c. *Spot Purchasers.* Finally, we will adopt a rebuttable presumption that a reseller or retailer that made only spot purchases from Beacon Bay did not suffer injury as a result of those purchases. As we have previously stated, spot purchasers generally had considerable discretion as to the timing and location of their purchases, and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full amount of the firm's selling price to their own customers. See, *e.g.*, *Vickers*, 8 DOE at 85,396–97. Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from Beacon Bay.[8]

B. Refund Application Requirements

To apply for a refund from the Beacon Bay Remedial Order fund, a claimant should submit an Application for Refund containing all of the following information:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is an individual, corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should receive any refund check.[9] If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify those names;

(2) The applicant's use of gasoline purchased from Beacon Bay: e.g., consumer (end-user), reseller, cooperative, or public utility;

(3) A monthly purchase schedule covering the period August 1, 1979 through March 31, 1980. The applicant should specify the source of its gallonage information. In calculating its purchase volumes, an applicant should use actual records from the refund period, if available. If these records are not available, the applicant may submit estimates of its gasoline purchases, but the estimation methodology must be reasonable and must be explained in detail;

(4) If the applicant was a direct purchaser from Beacon Bay, it should provide its customer number. If the applicant was an indirect purchaser from Beacon Bay (i.e., it purchased Beacon Bay gasoline through another supplier), it should submit the name, address, and telephone number of its immediate supplier and should specify why it believes that the gasoline was originally sold by Beacon Bay;

(5) If the applicant is a regulated utility or cooperative, certifications that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, or other regulatory agency, or membership body of the receipt of any refund, and a brief description of how the refund will be passed along;

(6) If the applicant is a retailer, reseller, or refiner whose allocable share exceeds $5,000 (i.e., whose purchases equal or exceed 72,471 gallons), it must indicate whether it elects to rely on the appropriate reseller injury presumption and receive the larger of $5,000 or 40% of its allocable share. If it does not elect to rely on the injury presumption, it must submit a detailed showing that it absorbed Beacon Bay's overcharges. See Section III.A.4 *supra*;

(7) A statement as to whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in the Beacon Bay refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(8) A statement as to whether the applicant is or was in any way affiliated with Beacon Bay. If the applicant was so affiliated, it should explain this affiliation, including the time period in which it was affiliated;[10]

(9) A statement as to whether the ownership of the applicant's firm changed during or since the Remedial Order period. If an ownership change occurred, the applicant should list the names, addresses, and telephone numbers of any prior or subsequent owners. The applicant should also provide copies of any relevant Purchase and Sales Agreements, if available. If such written documents are not available, the applicants should submit a description of the ownership change, including the year of the sale and the type of sale (e.g., sale of corporate stock, sale of company assets);

(10) A statement as to whether the applicant has ever been a party in a DOE enforcement action or a private Section 210 action. If so, an explanation of the case and copies of relevant documents should also be provided;

(11) The statement listed below signed by the individual applicant or a responsible official of the firm filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled "Beacon Bay Special Refund Proceeding, Case No. LEF–0074." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information

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eligible for a principal refund equal to 40 percent of its allocable share.

[7] A claimant that attempts to make a detailed showing of injury in order to obtain 100 percent of its allocable share but, instead, provides evidence that leads us to conclude that it passed through all of the overcharges, or that it was injured in an amount less than the presumptive level refund, may not necessarily receive a full presumption-based refund. Instead, such a claimant may receive a refund which reflects the level of injury established in its application.

[8] In prior proceedings, we have stated that refunds will be approved for spot purchasers who demonstrated that: (1) they made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases, and (2) they were forced by market conditions to resell the product at a loss that was not subsequently recouped through the draw down of banks. See, e.g., Texaco Inc., 20 DOE ¶ 85,147 at 88,321 (1990); Quaker State Oil Refining Corp./Certified Gasoline Co., 14 DOE ¶ 85,465 (1986).

[9] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 C.F.R. Part 205, Subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

[10] Affiliates of firms that have remitted overcharge funds to the DOE are generally not entitled to share in those funds. If an affiliate of Beacon Bay were granted a refund, Beacon Bay would be indirectly compensated from a Remedial Order fund remitted to settle its own violations. See *Propane Industrial, Inc.* v. *Department of Energy*, No. 8–23, slip op. at 3 (Temp. Emer. Ct. App. January 8, 1993). In addition, Beacon Bay presumably would not have sold petroleum products to an affiliate if such a sale would have placed the purchaser at a competitive disadvantage. See *Marathon Petroleum Co./Pilot Oil Corp.*, 16 DOE ¶ 85,611 (1987), amended claim denied, 17 DOE ¶ 85,291 (1988), reconsideration denied, 20 DOE ¶ 85,236 (1990).

deleted. All refund applications should be postmarked no later than May 1, 1995, and sent to: Beacon Bay Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., Washington, D.C. 20585.

In addition, we will adopt the following procedures relating to refund applications filed on behalf of applicants by "representatives," including refund filing services, consulting firms, accountants, and attorneys. See *Texaco Inc.*, 20 DOE ¶ 85,147 (1990). Each such filing service shall, contemporaneously with its first filing in the Beacon Bay proceeding, submit a statement indicating its qualifications for representing refund applicants and containing a detailed description of the solicitation practices and application procedures that it has used and plans to use.[11] This statement should contain the following information: [12]

(1) A description of the procedures used to solicit refund applications in the Beacon Bay proceeding and copies of any solicitation materials mailed to prospective Beacon Bay applicants;

(2) A description of how the filing service obtains authorization from its clients to act as their representative, including copies of any type of authorization form signed by refund applicants;

(3) A description of how the filing service obtains and verifies the information contained in refund applications;

(4) A description of the procedures used to forward refunds to its clients;

(5) A description of the procedures used to prevent and check for duplicate filings.

Upon receipt of this information, we may suggest alteration of a filing service's procedures if they do not conform to the procedural requirements of 10 CFR Part 205 and this proceeding.

Second, we will require strict compliance with the filing requirements as specified in 10 CFR 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant.

Third, in any case where an application has been signed and dated before the issuance of this Decision and Order, we will require a certification statement, signed and dated by the applicant after the date of the issuance of this Decision and Order. The certification should state that the applicant has not filed and will not file any other Application for Refund in the Beacon Bay proceeding and that, after having been provided a copy of this Decision and Order, it still authorizes that filing service to represent it.

Fourth, we will require from each representative a statement certifying that it maintains a separate escrow account at a bank or other financial institution for the deposit of all refunds received on behalf of applicants, and that its normal business practice is to deposit all Subpart V refund checks in that account within two business days of receipt and to disburse refunds to the applicants within 30 calendar days thereafter. Unless such certification is received by the OHA, all refund checks approved will be made payable solely to the applicant. Representatives who have not previously submitted an escrow certification form to the OHA may obtain a copy of the appropriate form by contacting: Marcia B. Carlson, HG–13, Chief, Docket & Publications Branch, Department of Energy, Washington, D.C. 20585.

Finally, the OHA reiterates its policy to scrutinize applications filed by filing services closely. Applications submitted by a filing service should contain all of the information in this Decision and Order.

C. Distribution of Funds Remaining After First Stage

Any funds that remain after all first stage claims have been decided shall be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. §§ 4501–07. The PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated those responsibilities to the OHA, and any funds in the Beacon Bay Remedial Order fund that the OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of the PODRA.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Departement of Energy by Beacon Bay Enterprises, Inc. pursuant to the Remedial Order issued on June 21, 1982, may now be filed.

(2) Applications for Refund must be postmarked no later than May 1, 1995.

Dated: October 27, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–27304 Filed 11–2–94; 8:45 am]

BILLING CODE 6450–01–P

[11] This statement should be submitted under separate cover and reference the Beacon Bay refund proceeding, Case No. LEF–0074.

[12] This information with regard to some filing services has already been requested and received by this Office. Therefore, any filing service that has had more than 10 Applications for Refund approved before the issuance of this Decision and Order need not submit this information if it has already done so in another proceeding. Instead, such a filing service need only include a copy of the previous submission(s) responsive to items (1)–(5) and provide an update if its response to any of these questions has changed since it first submitted its information. However, in light of the importance of this information, it is prudent for all filing services to review their practices and inform the OHA of any alterations or improvements that have been made.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of the total amount of $5,982.32 in crude oil overcharges obtained by the DOE under the terms of a Remedial Order that DOE issued to Doma Corporation (DOMA) and Don Martin (Martin), Case No. LEF–0049. OHA has determined that the funds obtained from DOMA and Martin, plus accrued interest, will be distributed in accordance with DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–2400.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the procedures that DOE has formulated to distribute to eligible claimants $5,982.32, plus accrued interest, obtained under the terms of a Remedial Order that DOE issued to Doma Corporation and Don Martin on July 25, 1985. The Remedial Order found that Doma Corporation and its President, Don Martin, both violated provisions of the Federal petroleum price and allocation regulations involving the sale of crude oil during the period of November 1973 through June 1977.

OHA will distribute the Remedial Order funds in accordance with DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases (the MSRP). 51 FR 27899 (August 4, 1986). Under the MSRP, crude oil overcharge monies are divided between the Federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states are distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers are based on the total volume of petroleum products purchased and the degree to which they can demonstrate injury.

Because the June 30, 1994 deadline for crude oil refund applications has passed, no new applications for purchasers of refined petroleum products will be accepted for these funds. Instead, the share allocated to these purchasers will be added to the general crude oil overcharge pool used for direct restitution.

Dated: October 27, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

October 27, 1994.

Name of Firm: Doma Corporation and Don Martin

Date of Filing: September 17, 1992

Case Number: LEF–0049

This Decision and Order considers a Petition for the Implementation of Special Refund Procedures (Petition) filed by the Economic Regulatory Administration (ERA) for crude oil overcharge funds. Under the procedural regulations of the Department of Energy (DOE), ERA may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. See Petition for Implementation of Special Refund Procedures, 10 CFR 205.281. These procedures are used to refund monies to those persons who were injured by actual or alleged violations of the DOE price regulations. We have considered ERA's September 17, 1992, request to implement Subpart V procedures with respect to the monies received from Doma Corporation (DOMA) and Don Martin (Martin) and have determined that such procedures are appropriate.

The Petition filed by ERA seeks to implement special refund procedures for monies that were remitted by DOMA and Martin pursuant to Final Remedial Order No. HRO–0209 (the Order) issued on July 25, 1985, by OHA. Under this Order, DOMA and Martin were found to have violated provisions of the Federal petroleum price and allocation regulations during the period November 1973 through June 1977 (the audit period). A total amount of $5,982.32 has been remitted to the DOE.[1] This Decision and Order sets forth OHA's plan to distribute these funds.

I. Background

DOMA was incorporated in the state of Texas on May 31, 1973, and was headed by Don Martin, President. Its crude oil trading activities, during the audit period, were based in Abilene, Texas and consisted primarily of purchasing and reselling crude oil (without substantially changing its form) to purchasers other than ultimate consumers. DOMA was, therefore, a reseller as that term is defined at 10 CFR 212.31.

On June 13, 1979, ERA issued a Notice of Probable Violation (NOPV) alleging that during the audit period DOMA committed violations of DOE regulations in its sales of crude oil. On February 7, 1984, ERA issued an Amended Proposed Remedial Order (APRO) Case No. 6A0X00111. The APRO alleged that both DOMA and Martin charged prices in excess of the maximum legal selling price; purchased uncertified barrels of bottoms oil and sold them as new or stripper oil; and miscertified various petroleum products as new or stripper crude oil in violation of the following statutory provisions: 10 CFR 205.202, 210.62(c), 212.10, .93, .131.

This Office issued the APRO as a Final Remedial Order to DOMA and Martin on July 25, 1985. See Final Remedial Order at 29. DOMA and Martin have remitted $5,982.32, plus interest, to the Office of Controller, of the Department of Energy. These funds are available for distribution through Subpart V and currently are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution.

II. Jurisdiction and Authority

The general guidelines that govern OHA's ability to formulate and implement a plan to distribute refunds are set forth at 10 CFR Part 205, Subpart V. These procedures apply in situations where DOE cannot readily identify the persons who were injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981) and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

III. The Crude Oil Refund Procedures

A. Crude Oil Refund Policy

The monies remitted by DOMA and Martin will be distributed in accordance with DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases (MSRP). *See* 51 FR 27899 (August 4, 1986). This policy has been utilized in all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986) (the August 1986 Order).

Under the MSRP, 40 percent of the crude oil overcharge funds will be refunded to the federal government, another 40 percent to the states, and up to 20 percent may initially be reserved for the payment of claims by injured parties. The MSRP also specified that any monies remaining after all valid claims by injured purchasers are paid will be disbursed to the federal government and the states in equal amounts. *See, In re: The Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan.), 6 Fed. Energy Guidelines ¶ 90,509 (1986) (the Stripper Well Settlement Agreement) for a more detailed discussion of the MSRP.

On April 10, 1987, the OHA issued a Notice analyzing the numerous comments received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987) (the April 10 Notice). This Notice provided guidance to claimants that anticipated filing refund applications for crude oil monies under the Subpart V regulations. In general, we stated that all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981, crude oil price control period; and (2) prove they were injured by the alleged crude oil overcharges. End-users of petroleum products whose businesses are unrelated to the petroleum industry would be presumed to have been injured by the alleged crude oil overcharges and would not be required to submit proof of injury. *See City of Columbus, Georgia*, 16 DOE ¶ 85,550 (1987).

B. The Proposed Decision and Order

On November 12, 1992, OHA issued a Proposed Decision and Order (PDO) establishing tentative procedures to distribute the crude oil violation amount that had been obtained from DOMA and Martin. The amount of money covered by the PDO is $5,982.32, plus accrued interest. OHA tentatively concluded that the funds should be distributed in accordance with the MSRP and the April Notice. Pursuant to the MSRP, OHA proposed to reserve 20 percent of these funds ($1,196) for direct refunds to applicants who claim that they were injured by the crude oil violations. We stated that the remaining 80 percent of the funds would be distributed to the states and the federal government for indirect restitution. After all valid claims have been paid, any remaining funds in the claim reserve would also be divided between the states and the federal government. The federal government's share ultimately would be deposited into the general fund of the Treasury.

The PDO proposes evaluating claims for the DOMA and Martin crude oil refund proceeding in exactly the same manner as OHA has evaluated claims submitted in other crude oil proceedings. Claimants generally will be required to document their purchase volumes of petroleum products and prove that they were injured as a result of the alleged violations. The PDO proposed that the refunds be calculated on the basis of a volumetric refund amount which has been calculated in accordance with the description in the April Notice. We further stated that the crude oil overcharges were presumed to have been absorbed, rather than passed on, by applicants who were (1) end-users of petroleum products, (2) unrelated to the petroleum industry, and (3) not subject to the regulations promulgated under the Emergency Petroleum Price and Allocation Act of 1973 (EPAA), 15 U.S.C. 751–760h. In order to receive a refund, end-user claimants need not submit any evidence of injury. *See Shell*, 17 DOE at 88,406.

We provided a period of 30 days from the date of the PDO's publication in the **Federal Register** in which the public could submit comments regarding the tentative refund procedures. More than 30 days have elapsed, and OHA has received no comments concerning the proposed procedures. Accordingly, the OHA will finalize the PDO as set forth below.

Under the terms of the MSRP, 80 percent of the crude oil violation amounts subject to this Decision or $4,785.86 in principal, plus accrued interest, should be disbursed in equal shares to the states and federal government for indirect restitution. Accordingly, we will direct the DOE's Office of the Controller to transfer one-half of that

[1] The alleged violations referred to in this Proposed Decision and Order involve the sales of both crude oil and refined petroleum products. However, in view of the size of the payment and the fact that most of the overcharges relate to crude oil, the OHA has determined that the interests of administrative efficiency would best be served by considering all monies received to be the result of crude oil violations.

amount, or $2,393.00, plus interest, into an interest bearing subaccount for the states, and one-half, or $2,393.00, plus interest, into an interest bearing subaccount for the federal government. In accordance with previous practice, when the amount available for distribution to the states reaches $10 million, we will direct the DOE's Office of the Controller to make the appropriate disbursement to the individual states. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds allocated to each state is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements that apply to any other crude oil funds received by the states in accordance with the Stripper Well Agreement.

We must also determine the appropriate method for disbursing the 20 percent of the fund available for direct restitution ($1,196). The application period for crude oil overcharge refunds ended on June 30, 1994. As we discussed in *King Petroleum, Inc.*, Case No. LEF–0125, August 8, 1994 (Proposed Decision and Order), we will not hold a separate refund proceeding for monies that become available for direct restitution after the June 30, 1994 closing date. 59 Fed. Reg. 41755 (August 15, 1994). Therefore, the funds in this case ($1,196) will be added to the general crude oil overcharge pool for direct restitution to those applicants who applied by the June 30, 1994 deadline.

It Is Therefore Ordered That:

(1) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer $5,982.32, plus accrued interest, from the DOMA and Martin escrow account Number 6A0X00111Z, as specified in Paragraphs (2), (3) and (4) of this Decision.

(2) The Director of Special Accounts and Payroll shall transfer $2,393, plus accrued interest, of the funds referenced in Paragraph (1) above, into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(3) The Director of Special Accounts and Payroll shall transfer $2,393, plus accrued interest, of the funds referenced in Paragraph (1) above, into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(4) The Director of Special Accounts and Payroll shall transfer $1,196, plus accrued interest, of the funds referenced in Paragraph (1) above, into the subaccount denominated "Crude Tracking-Claimants 4," Number 999DOE0010Z.

(5) This is a final Order of the Department of Energy.

Dated: October 27, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–27305 Filed 11–2–94; 8:45 am]

BILLING CODE 6450–01–P

Western Area Power Administration

Salt Lake City Area/Integrated Projects Notice of Rate Order No. WAPA–63

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Rate Order "Salt Lake City Area/Integrated Projects (Integrated Projects) Firm Electric Service Rate Adjustment.

SUMMARY: Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy (DOE) of Rate Order No. WAPA–63 and Rate Schedule SLIP–F5 placing firm power rates for capacity and energy from the Integrated Projects of the Western Area Power Administration (Western) into effect on an interim basis. The provisional rates will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places them into effect on a final basis or until they are replaced by other rates.

The provisional firm power rates to be effective from December 1, 1994, through November 30, 1999, consist of an energy charge of 8.90 mills per kilowatthour (mills/kWh) and a capacity charge of $3.83 per kilowatt month (kW-month), which result in a composite rate of 20.17 mills/kWh. This is a 7.9-percent increase over the current energy charge of 8.40 mills/kWh and the current capacity charge of $3.54/kW-month which results in a composite rate of 18.70 mills/kWh. A comparison of existing and provisional rates follows:

SALT LAKE CITY AREA/INTEGRATED PROJECTS COMPARISON OF EXISTING AND PROVISIONAL FIRM POWER RATES

	Existing rates (effective 10/92)	Provisional rates (effective 12/94)
Firm Power Service Rate Schedule.	SLIP–F4	SLIP–F5
Firm Capacity Charge ($/kW/month).	$3.54	$3.83
Firm Energy Charge (mills/kWh).	8.40	8.90
Composite Rate (mills/kWh).	[1]18.70	20.17

[1] The rates calculated at a 58.2-percent load factor can be expressed as a Combined Rate of 16.72 mills/kWh.

DATES: Rate Schedule SLIP–F5 will be placed into effect on an interim basis on the first day of the first full billing period beginning on/or after December 1, 1994, and will be in effect until FERC confirms, approves, and places the rate schedule in effect on a final basis through November 30, 1999, or until the rate schedule is superseded.

FOR FURTHER INFORMATION CONTACT:

Mr. Kenneth G. Maxey, Area Manager, Salt Lake City Area Office, Western Area Power Administration, 275 East 200 South, Suite 475, Salt Lake City, UT 84111, (801) 524–6372

Ms. Deborah M. Linke, Chief, Rates and Statistics Branch, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401–0098, (303) 275–1618

Mr. Joel Bladow, Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G–027, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0001, (202) 586–5581

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy (Secretary) delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

These power rates are established pursuant to section 302(a) of the DOE Organization Act, 42 U.S.C. 7152(a), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. 371 *et seq.*, as amended and supplemented by subsequent enactments; particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and other acts specifically applicable to the project system involved, were transferred to and vested in the Secretary.

The main issues raised at public meetings and in written comments included (1) cost projections used in the Power Repayment Study (PRS), (2) water depletion schedules assumed for future power projections, and (3) estimated future prices for purchased power. Western has considered all

comments in preparation of the provisional rates.

Rate Order No. WAPA–63, confirming, approving, and placing the proposed Integrated Projects rate adjustment into effect on an interim basis, is issued, and the new Rate Schedule SLIP–F5 will be promptly submitted to FERC for confirmation and approval on a final basis.

Issued in Washington, D.C. October 24, 1994.

William H. White,

Deputy Secretary.

Order Confirming, Approving, and Placing the Salt Lake City Area/ Integrated Projects Firm Power Service Rates Into Effect on an Interim Basis

In the Matter of Western Area Power Administration Rate Adjustment for Salt Lake City Area/Integrated Projects October 24, 1994.

[Rate Order No. WAPA–63]

These power rates are established pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. 371 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts specifically applicable to the project system involved, were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

$/kW/month: Monthly charge for capacity (i.e., $ per kilowatt (kW) per month).

AF: Acre-foot. The amount of water necessary to cover 1 acre of land to a depth of 1 foot.

Basin Fund: That account in the U.S. Department of the Treasury, established by the Colorado River Storage Project (CRSP) Act.

Billing Demand: The greater of (1) the highest 30-minute demand measured during the month up to, but not in excess of, the delivery obligation under the power sales contract or (2) the contract rate of delivery.

Capacity Component: Part of a firm power rate; shown in the power repayment study (PRS) as a dollar per kW per year charge. Billed on a dollar per kW per month basis. Applied each billing period to each kW which each contractor is entitled by contract.

Categorical Exclusion: Characterizes an action which does not individually or cumulatively have a significant effect on the human environment and which has been found to have no such effect in procedures adopted by a Federal agency and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.

CME: Capitalized movable equipment.

Collbran: Collbran Project.

CREDA: Colorado River Energy Distributors Association.

CROD: Contract rate of delivery. Capacity the supplier of electric service agrees to have available for delivery. It may or may not be accompanied by energy.

CRSM: Colorado River Simulation Model.

CRSP: Colorado River Storage Project.

CRSP Act: Act of April 11, 1956, ch. 203, 70 Stat. 105, as amended, 43 U.S.C. 620–620o.

CWIP: Construction work in progress.

Customer Brochure: A document prepared for public distribution explaining the background of the rate proposal.

Demand: The rate at which electric capacity is delivered to or by a system over any designated period of time.

DOE: U.S. Department of Energy.

DOE Order RA 6120.2: An order dealing with power marketing administration financial reporting.

EA: Environmental assessment.

EIS: Environmental impact statement.

Energy Component: Part of a firm power rate; expressed in mills per kilowatthour (kWh). Applied to each kWh made available to each customer.

Exception Criteria: An agreement between Reclamation and Western setting forth conditions for operating the Glen Canyon Dam outside of test flows and subsequent interim operating criteria, including system regulation, emergency situations, and for the specific purpose of avoiding high-cost replacement power purchases.

FERC: Federal Energy Regulatory Commission.

FPOD: Federal point of delivery.

FY: Fiscal year.

Glen Canyon Dam: The dam on the Colorado River which forms Lake Powell.

Glen Canyon Dam EIS: Glen Canyon Dam Environmental Impact Statement.

GCPA: Grand Canyon Protection Act of 1992.

IDC: Interest during construction.

Integrated Projects: The Salt Lake City Area/Integrated Projects, which encompass the combined sales and resources of the CRSP, Collbran, and Rio Grande Projects.

Interior: U.S. Department of the Interior.

kW: Kilowatt; 1,000 watts.

kWh: Kilowatthour; the common unit of electric energy, equal to one kW taken for a period of 1 hour.

Load: The amount of capacity or energy delivered or required at any specified point or points on a system. Load originates primarily with a customer's energy-consuming equipment.

M&I: Municipal and industrial.

Mill: Unit of monetary value equal to .001 of a U.S. dollar; i.e., 1/10th of a cent. Used to express wholesale energy and composite electric rates.

Mills/kWh: Mills per kilowatthour.

MW: Megawatt; 1,000 kW; 1,000,000 watts.

NEPA: National Environmental Policy Act of 1969.

OMB: Office of Management and Budget.

O&M: Operation and maintenance.

Pinch-Point: The FY in which the level of the rate is set as dictated by a revenue requirement in some future year to meet relatively large annual costs or to repay investments which come due.

PMA: Power marketing administration.

PRS: Power repayment study.

Reclamation: Bureau of Reclamation, U.S. Department of the Interior.

Regional Office: Bureau of Reclamation's Regional Office.

RGP: Rio Grande Project.

SLCA: Salt Lake City Area.

SLCAO: Salt Lake City Area Office.

Upper Basin States: Colorado, New Mexico, Utah, and Wyoming.

UCRC: Upper Colorado River Commission.

Watt: The electrical unit of power or rate of doing work. It is analogous to

horsepower or foot-pounds per minute of mechanical power. One horsepower is equivalent to approximately 746 watts.

Western: Western Area Power Administration, U.S. Department of Energy.

WSCC: Western Systems Coordinating Council.

Effective Date

The new rates will become effective on an interim basis on the first day of the first full billing period beginning on or after December 1, 1994, and will be in effect pending FERC's approval of them or substitute rates on a final basis through November 30, 1999, or until superseded.

Public Notice and Comment

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR Part 903, have been followed by Western in the development of this firm power rate. The provisional firm power rate represents an increase of more than 1 percent in total Integrated Projects revenues; therefore, it is a major rate adjustment as defined at 10 CFR §§ 903.2(e) and 903.2(f)(1). The distinction between a minor and a major rate adjustment is used only to determine the public procedures for the rate adjustment.

The following summarizes the steps Western took to ensure involvement of interested parties in the rate process:

1. A preliminary **Federal Register** notice (FRN), published July 1, 1993 (58 FR 35449), invited interested parties to participate in the determination of whether an Integrated Projects' firm power rate increase was necessary. Western also invited participation in deciding the issues that should be addressed in the process.

2. Several informal meetings were held between the publication of the July 1, 1993, FRN and the beginning of the public rate adjustment process. These meetings, involving personnel from Western, Reclamation, and representatives from organizations of interested parties, produced many issue papers that identified and discussed the items which should be considered in a firm power rate adjustment. Agreement as to how to approach many of the issues was reached during this time, considerably reducing the number of unresolved issues and easing the later formal public process.

3. On December 27, 1993, letters were mailed from Western's Loveland, Phoenix, and Salt Lake City Area Offices to all Integrated Projects customers and other interested parties announcing an informal public meeting to be held on January 31, 1994.

4. At the informal meeting held on January 31, 1994, Western and Reclamation representatives explained the need for a rate increase and answered questions.

5. An FRN was published on April 21, 1994 (59 FR 19008), officially announcing the proposed firm-power rate adjustment, initiating the public consultation and comment period, announcing the public information and public comment forums, and presenting procedures for public participation.

6. On April 22, 1994, a rate announcement package was mailed from Western's Salt Lake City Area Office to all Integrated Projects customers and other interested parties announcing the publication of the FRN of April 21, 1994, and the beginning of the formal public process to adjust firm power rates. The package contained (1) a letter announcing the upcoming public information and comment forums, (2) a copy of the April 21 FRN, and (3) a copy of the April 1994 Integrated Projects Firm Power Rate Adjustment brochure. Rate announcement packages were mailed to customers served by Western's Loveland and Phoenix Area Offices on April 25, 1994.

7. At the public information forum held on May 24, 1994, Western and Reclamation representatives explained the need for the rate increase in greater detail and answered questions.

8. The comment forum was held on June 30, 1994, to give the public an opportunity to comment for the record. Four persons representing customers and customer groups made oral comments.

9. Nine comment letters were received during the 97-day consultation and comment period. The consultation and comment period was originally scheduled to end on July 20, 1994. A letter was sent to all interested parties from the SLCAO on July 19, 1994, stating that Western would continue to accept written comments through July 27, 1994. Letters were mailed from the Loveland and Phoenix Area Offices on July 20, 1994. All comments submitted by the end of the comment period have been considered in the preparation of this rate order.

Project History

The Integrated Projects consist of the CRSP and the Rio Grande and Collbran Projects. The projects were integrated for marketing and ratemaking purposes on October 1, 1987. The goals of integration were to increase marketable resources, simplify contract and rate development and project administration, assure repayment of Collbran and Rio Grande Projects' costs, and create a common rate. The projects maintain their individual identities for financial accounting and repayment purposes, but their revenue requirements are integrated into one PRS for ratemaking.

Power Repayment Studies

PRSs are prepared each FY to determine if power revenues will be sufficient to pay, within the prescribed time periods, all costs assigned to power. Repayment criteria are based on law, policies, authorizing legislation, and DOE Order RA 6120.2.

Existing and Provisional Rates

A comparison of the existing and provisional rates follows:

SALT LAKE CITY AREA INTEGRATED PROJECTS COMPARISON OF EXISTING AND PROVISIONAL FIRM POWER RATES

	Existing rates (effective 10/92)	Provisional rates (effective 12/94)
Firm power service rate schedule.	SLIP–F4	SLIP–F5
Firm capacity charge ($/kW/month).	$3.54	$3.83
Firm energy charge (mills/kWh).	8.40	8.90
Composite rate (mills/kWh).	18.70[1]	20.17

[1] The rates calculated at a 58.2-percent load factor can be expressed as a combined rate of 16.72 mills/kWh.

Certification of Rate

Western's Administrator has certified that the Integrated Projects firm power rate placed into effect on an interim basis herein is the lowest possible consistent with sound business principles. The rate has been developed in accordance with agency administrative policies and applicable laws.

Discussion

Many factors influenced this rate adjustment. The items having an impact upon the proposed Integrated Projects firm power rates are summarized in the table below. Because rates must earn sufficient revenues to pay for estimated future costs, the table compares the change in the average annual projections used in the FY 1991 Rate Order PRS (which set the rate effective

October 1, 1992) and the ratesetting PRS prepared for this rate adjustment.

MAJOR FACTORS AFFECTING THE INTEGRATED PROJECTS' FIRM POWER RATE

Event	Change in average annual revenue requirement ($000,000)	Estimated rate effect (mills/kWh)
Increase in Colorado River Storage Project (CRSP) Transmission and Other Miscellaneous Revenues: primarily, compensation for new Phase-Shifter services (for Western System Coordinating Council loop-flow mitigation)	$-2.6	-0.33
Increase in CRSP Operation & Maintenance (O&M) Expense: $2.8 million per year due to inclusion of CME interest (inadvertently omitted from current rate); Remainder due to shifting of field crews from construction to maintenance work	8.2	1.05
Increase in Small Project O&M Expense: Rio Grande Project is one of Western's oldest projects, and O&M increases with age; Collbran has many small irrigation dams needing repair	1.1	0.14
Increase in Purchased Power and Transmission Expense: The environmentally-related flow restrictions already in place at CRSP powerplants require Western to purchase additional power to meet contractual delivery obligations	1.6	0.20
$51.2 million in historical environmental expenses made nonreimbursable by Grand Canyon Protection Act (plus $9.1 million associated with deferred interest expense); Applied to outstanding deficits	-0.5	-0.06
Passage of Grand Canyon Protection Act made certain future environmental costs nonreimbursable	-1.0	-0.13
Increase in Interest on Project Investment: The increase in power investment and unpaid deficits since the October 1992 rate adjustment resulted in an increase in annual interest due	2.1	0.27
Increase in Project Additions and Replacements: As noted on page 13 of Rate Brochure, $80.5 million was omitted from CWIP in the October 1992 rate adjustment	1.2	0.15
Increase in aid to CRSP irrigation and participating projects: Investment is very similar to October 1992 rate adjustment; however, there are 63 total years to pay for the investment, rather than the 65 years used previously since both studies have the pinch-point year of 2057. The change in the divisor results in the annual increase	1.4	0.18
Totals	$11.5	1.47

The existing and proposed revenue requirements for the Integrated Projects are as follows:

INTEGRATED PROJECTS AVERAGE ANNUAL FIRM-POWER REVENUE REQUIREMENTS

	Estimated average annual FY 1995–99 firm power revenue ($000)	
	SLIP–F4	SLIP–F5
Firm power revenue	[1] $109,265	[2] $122,413

[1] From FY 1991 Rate Order PRS.
[2] From Ratesetting PRS.

The rate increase is necessary to satisfy the cost-recovery criteria set forth in DOE Order No. RA 6120.2. This rate schedule, which will be effective on an interim basis beginning December 1, 1994, replaces Rate Schedule SLIP/F4 which FERC approved through September 30, 1996 at 62 FERC ¶61,159 (February 18, 1993).

Statement of Revenue and Related Expenses

The following table provides a summary of revenue and expense data through the 5-year proposed rate approval period.

SALT LAKE CITY AREA/INTEGRATED PROJECTS COMPARISON OF 5-YEAR RATE PERIOD REVENUES AND EXPENSES ($1,000)

Revenues	Ratesetting PRS 1995–1999	FY 1991 rate order PRS 1995–1999	Difference
Revenue Distribution:			
O&M	$237,483	$218,540	$18,943
Environmental	19,295	37,223	-17,928
Net purchased power [2]	972	-1,953	2,925
Transmission	35,785	31,695	4,090
Interest	229,029	188,103	40,926
Miscellaneous expenses [3]	45,976	20,430	25,546
Investment repayment	102,255	99,189	3,066

SALT LAKE CITY AREA/INTEGRATED PROJECTS COMPARISON OF 5-YEAR RATE PERIOD REVENUES AND EXPENSES ($1,000)—Continued

Revenues	Ratesetting PRS 1995–1999	FY 1991 rate order PRS 1995–1999	Difference
Total[4]	[1]670,795	[5]593,227	[6]77,568

[1] To be comparable with the FY 1991 Rate order PRS, the ratesetting PRS' "Other Miscellaneous Revenues" (from sales of surplus off-peak energy) were deducted from the total revenues and were combined with total purchased power expense.
[2] Net Purchased Power Expenses (Ibid.). Negative net purchase power expense figures imply surplus sales in excess of total purchase power expenses. Likewise, positive net purchase power expense figures imply total purchase power expenses in excess of total power sales.
[3] Interest on undepreciated CME, annual liability for the Civil Service Retirement System, and annual gross power-related requirements for the Collbran, Provo River, Rio Grande, and Seedskadee Projects.
[4] Includes repayment of capitalized deficits.
[5] Does not equal Total Revenues due to rounding.
[6] Ibid.

Basis for Rate Development

The provisional Integrated Projects rate was designed to continue to maintain an approximate 50/50 split between revenue earned from demand charges and that earned from energy charges. The cost to individual customers will vary because of differences in the amounts of capacity and energy they purchase from the Integrated Projects.

The provisional rate contains a $3.83/kW/month firm-capacity charge and an 8.90 mills/kWh firm-energy charge in FY 1995. The necessary composite rate is 20.17 mills/kWh, which is an increase of 7.9 percent above the existing rate. The rate terminates on November 30, 1999.

Comments

During the 97-day comment period, Western received nine letters commenting on the rate adjustment. One letter was received after the close of the comment period. Additionally, four persons commented during the June 30, 1994, public comment forum. All comments received by the end of the comment period were reviewed and considered in the preparation of this rate order. Written comments were received before the comment deadline from the following sources:

Bountiful City Light and Power (Utah)
Bridger Valley Electric Association (Wyoming)
Colorado River Energy Distributors Association (Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming)
Energy Strategies, Inc. (Utah)
Garkane Power Association, Inc. (Arizona and Utah)
Intermountain Consumer Power Association (Nevada and Utah)
Irrigation and Electrical Districts Association of Arizona (Arizona)
Upper Colorado River Commission (Colorado, New Mexico, Utah, and Wyoming)
Utah Municipal Power Agency (Utah)

Representatives of the following organizations made oral comments:

Colorado River Energy Distributors Association (Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming)
Intermountain Consumer Power Association (Nevada and Utah)
Irrigation and Electrical Districts Association of Arizona (Arizona)
Platte River Power Authority (Colorado)

Most of the comments received at the public meetings and in correspondence dealt with cost, purchased power, and water depletion projections.

The comments and responses, paraphrased for brevity when it does not affect the meaning of the statement(s), are discussed below. Direct quotes from comment letters are used for clarification where necessary.

The issues discussed are: (1) Depletion-related issues, (2) purchased power expense, (3) future flow restrictions at Glen Canyon Dam, (4) O&M-related issues, (5) construction-related projections, (6) environmentally-related expenses, (7) miscellaneous comments, and (8) issue paper resolution.

1. Depletion-Related Issues

Extensive comments were made regarding the deferred recognition of water depletions for water projects in the Colorado River Basin after FY 2010. Western's responses are listed sequentially:

a. Comment: Western is being guided solely by RA 6120.2 in the rate-setting process without paying sufficient attention to the CRSP Act of 1956 and other relevant legislation. The rate does not accurately reflect the intent of the CRSP Act, which is to produce rates that result in full repayment of the power system costs.

Response: Western disagrees. Western complies with requirements of the CRSP Act of 1956, other relevant legislation, and DOE Order RA 6120.2 in assuring repayment of all CRSP costs assigned to power. Legislation takes precedence when there is conflict with DOE Order RA 6120.2.

Treatment of depletions in the same manner has been approved by FERC twice prior to the present rate adjustment. Two of FERC's criteria for rate approval are whether the proposed rate will repay all obligations assigned to power in full and on time consistent with requirements of the CRSP Act and whether the methodology which achieves this result is in compliance with DOE Order RA 6120.2. The requested FY 1995 rate adjustment meets these criteria and satisfies all repayment requirements.

b. Comment: If power rates are set without providing for future depletions, it will affect Upper Basin development under the (Colorado River and Upper Colorado River Basin) compacts. Every time someone wants to build a project or open a business that will deplete water, the power rates will have to go up if those increased depletions have not already been factored into the rates.

Can full repayment be truly represented by rates derived assuming water is available for release through powerplants when that water will not be available because of depletions by the Upper Division States above the powerplants?

Response: Total depletions forecasted by the Basin States for the use of Colorado River water have been included in the proposed rate. The water has been allocated by compacts for use by the Upper Basin States. Furthermore, Western is obligated to assure that funds are available on schedule to meet repayment requirements regardless of depletion schedules.

In its proposed treatment (deferral) of uncertain depletions, Western assumes that greater amounts of Colorado River water will be available for release through CRSP powerplants than would be suggested by current rapid-growth forecasts of water development projects and their associated depletions.

Western's experience has been that out-year depletion estimates are subject to frequent revision. It is reasonable, therefore, to give more weight to near-term projections. Western prepares an annual PRS for every project to assure that repayment is proceeding satisfactorily. Thus, there will be many future opportunities to revise the Integrated Projects rate appropriately as the near-term projections are changed and more accurate long-term estimates are made available.

Western has determined that depletions affect the firm power rate, at most, by 0.32 mills/kWh (composite). The impact is small enough so that power rates could (and would) be adjusted to assure full repayment, if more rapid depletions take place in the Upper Basin States. It is not likely that this small impact on power rates would constrain water depletions.

c. Comment: By its own terms the 1983 Agreement between Reclamation and Western does not apply to State and private projects or developments and that the agreement reveals the parties' intent to use full depletion levels in setting rates under the terms of the Agreement.

Response: Western disagrees that the intent of the 1983 Agreement was for Western to use "full" (or ultimate) depletion levels in setting rates. Rather, a provision of the agreement that addresses depletions only requires that water depletion schedules used for power repayment studies ". . . be consistent with construction schedules for participating projects."

Western agrees that provisions of the 1983 Agreement between Western and Reclamation did not explicitly address State and private projects or developments. In defining a "reasonable expectation standard," the 1983 Agreement establishes necessary steps by Reclamation to demonstrate the potential for construction of future Federal participating projects before the costs of these projects would be included in the ratesetting years. This reasonable expectation standard has been applied to the future development of all water development projects for ratesetting purposes by Western in setting the lowest possible rates consistent with sound business principles.

Therefore, Western has included total depletions forecasted by the Upper Basin States for the use of Colorado River water for all projects, with deferral of less-certain water developments (depletions) beyond the ratesetting period in the proposed rate. Future rate adjustments will allow for movement of depletions into the rate- setting years.

d. Comment: Western arbitrarily suppressed depletions from 2010 through 2090 only justified by the fact that such a method of suppression (capping) was utilized in the 1990 study and did so without adequate consultation with Reclamation.

Response: The decision by Western to defer uncertain depletions beyond the ratesetting period is not arbitrary. In the 1990 rate process, Western gave considerable attention to the reasonableness of the then-proposed depletion deferral and to the associated rate effect when applied. Further, Western has given renewed and heightened attention to the treatment of depletions in the proposed rate through preparation of numerous issue papers, informal discussions with both customer and water user representatives, and in Western's April 1994 rate brochure.

Figure 1, on page 12–5 of the rate brochure, shows that Western presently assumes full development (full depletions) of all Upper Basin water projects by FY 2090.

Projects with uncertain schedules have been placed in the PRS so that they do not impact the rate at this time, in accordance with Western's practice to set the lowest possible rate consistent with sound business principles.

Western also disagrees with the claim that inadequate consultation occurred with Reclamation in the past on this deferral treatment. Reclamation, along with other interested parties, has either participated in or has attended many of the public forums scheduled in the development of all Integrated Projects rate proposals. In these public forums, Western has detailed the components of the rate adjustment, including the treatment of depletions. Reclamation and interested parties have been and will continue to be afforded ample notice and opportunity to comment on future rate proposals.

e. Comment: Five comments said: DOE RA 6120.2 seems to require the use of operation studies based on historical streamflows including hydrologic data current to within 5 years.

Response: Western believes that it is in compliance with DOE RA 6120.2. This requirement is valid for most projects. However, exceptions, as discussed in DOE RA 6120.2, Section 10.e.(4), are provided for those projects which are anticipated to have extensive water development in the future. CRSP operation studies are based on historic streamflows, which are then reduced by projected water depletions supplied by the Upper Basin States and modified by Reclamation.

f. Comment: Western suggests that its departure from the 1990 depletion schedule represents better data than utilized by Reclamation in its energy and capacity studies.

Response: Both Reclamation and UCRC staff have told Western informally that the depletion schedule used in this process is a more accurate reflection of the current situation than the earlier "Energy and Capacity Studies" which was available when the ratesetting PRS was prepared.

g. Comment: The 1990 cap at 2010 resulted in an approximate 11-percent reduction of Basin States' depletions and an artificially low power rate. The proposed super-imposition of a 1990 mentality beginning in 2010 to a substantially revised 1992 unofficial depletion schedule results in excess of 20-percent reduction of depletions and does not even fully recognize the future depletions of projects currently under construction.

Response: Western agrees that the deferral of some estimated deple- tion effects until 2060 suggests a significant (20-percent) reduction from the 1992 depletion schedule contained in the CRSM demand data. Western believes there should be greater certainty of development regarding this 20-percent prior to including the associated reduction in hydrogeneration in the PRS in a way that affects the firm power rates. Also, Western agrees that its deferral postpones future depletions of projects currently under construction, based on the principles of the 1983 agreement. Again, because the timing of the development of the associated consumptive use is uncertain, Western chooses to not include future depletions within the ratesetting years. As more current information is supplied by the UCRC to Reclamation, Western will apply the "reasonable expectation" standard to these updated depletions.

h. Comment: Western did not use the depletion schedule dated July 1994 which was received in draft form in April 1994.

Response: Western was provided a draft work-in-progress depletion schedule by UCRC representatives in April 1994. This latest unofficial schedule demonstrated a reduced and delayed schedule for development of Upper Basin projects. However, the schedule had yet to be approved by the Basin States and, once received by Reclamation, would still have required considerable work by Reclamation staff to modify depletion (demand) data used by the CRSM. In addition, subsequent analysis by Western's power resources and rates staff would have taken considerable time and effort before new

information could be verified and supported for inclusion in any revised PRS for this proposed rate process. For example, the final PRS used for the April 1994 rate brochure was created in March of 1994. Its power projections were the end result of several months of work by Western and Reclamation resources staff. An official depletion schedule ready for use in July of 1994 would have delayed the public process for the current rate adjustment by several additional months.

Western is responsible for seeing that the Integrated Projects earn sufficient revenues to pay all of their obligations on time. Such a lengthy delay in implementing the rate adjustment would have resulted in increased interest cost to customers, lost revenues, and, as a result, higher firm power rates.

Western has assured UCRC that when official depletion information is available, has been incorporated into Reclamation's CRSM data files, and there is a common understanding of the reasonable certainty of future water projects, the associated generation effects will be weighed and a decision made by Western regarding their inclusion in any future PRS.

i. Comment: The attorney for a customer stated:

. . . the treatment of depletions in this rate case has nothing to do with the water rights of the Upper Basin States. Nor does it have anything to do with how those rights will be exercised in the future. Western has no power over the water rights of the Upper Basin States. Conversely, the power users should not be punished because of delays in Upper Basin water use development and fears of Upper Basin water users that such development may ultimately not occur.

Response: Western agrees with this comment.

2. Purchased Power Expense

Four large customer organizations all commented extensively on purchased power expense:

a. Comment: A customer organization stated:

The assumed lower prices for surplus energy sales are, in fact, at odds with recent experience for the SLCA/IP.

It is clear that experience does not support Western's pricing assumptions, which were based on combining various pricing and cost data in an inconsistent and somewhat arbitrary fashion. (The commentor) recommends that Western modify its pricing assumptions by setting prices for surplus sales at the same levels as those used for purchases.

Response: Western agrees, in part, with comments that assumed nonfirm surplus sales pricing in the estimation of future-year net purchased power expenses does not reflect an extension of historic pricing trends. This fact is supported in documentation prepared by Western on the methodology and assumptions developed in previous rate proceedings and consistently applied again in this proposed rate adjustment. The imposed restrictions at Glen Canyon Dam have caused Western to sell off-peak surplus energy. The impact of these sales is based upon the market conditions. Western has explained that the basis for assumptions of future surplus sales pricing is based upon consideration of the potential market conditions. Western assumes that there will be a need to dispose of limited onpeak surpluses in southern markets, which will mean competing against low-cost sales from the Navajo Generating Station. Western will also try to sell significant surpluses in northern markets, competing against low-cost sales from regional northern utilities. Certain general conclusions may be drawn: (1) average nonfirm surplus energy prices, both offpeak and onpeak, will be less than historic conditions, this also implies that period pricing (onpeak or offpeak) will be less than recent experience, (2) historic pricing differentials, onpeak versus offpeak, winter versus summer season, will continue, and (3) Western's hourly modeling of constrained operations at Glen Canyon is reasonable.

Though the method developed is believed to be a reasonable tool for forecasting future surplus sales pricing, Western acknowledges that some merit exists in comments that suggest a closer link to recent historic trends is reasonable. Western will continue to refine the methods for forecasting future market conditions, both purchases and surplus sales, and will continue to give greater weight to recent historic pricing trends in future pricing projections.

Western disagrees with the comment which suggests that surplus sales and purchase pricing should be identical, without consideration of the nature of the constraint condition at Glen Canyon. The methods developed by Western for assessment of conditions with and without interim release constraints at Glen Canyon currently predict (a) that higher, but acceptable, average purchase prices will result in the near future from deliveries under several long-term purchase agreements and (b) lower average surplus sale prices will occur due to significant "forced sales" during offpeak and shoulder onpeak hours. However, should additional operation experience suggest modification to this base assumption, Western will consider future improvements in the methods used.

b. Comment: Western applied the hourly modeling of net purchased power expense to only 3 years. The other years between and beyond the 3 years modeled were estimated based on a regression analysis of the 3 years' results . . . regression analysis using three data points to interpolate and extrapolate results may be unreliable and is certainly less than ideal. (The commentor) recommends that the hourly model be used to calculate annual net expense at least through the year 2002, when the recovery of the hydrosystem and increases in firm load . . . have stabilized.

Response: Western disagrees with the suggestion that additional years of hourly modeling in its current form would significantly improve the reliability of forecasted net purchase power expenses.

The methodology developed by Western to forecast the net purchase power expense considers several significant variables such as hourly firm load and available hourly hydrogeneration in determination of hourly deficits or surpluses. The method then considers seasonal variation in purchase and surplus sales pricing structures in estimation of the net purchase power expense. Given the simplifying assumptions made in the methods, Western recognizes a significant correlation between deficit (or surplus) hydrogeneration and the associated net purchase power expense.

In balancing the limited time required to complete the analysis and the precision required for the net expense estimate, Western determined that modeling all hours within each month for 3 years (i.e., 36 months) would be adequate and that hourly modeling for additional years would not significantly improve the reliability of the forecasted net purchase power expense.

Western continues to support the general application of these methods to express the causal relationship between deficit (or surplus) hydrogeneration and annual net purchase power expenses. However, Western acknowledges that some future modifications may be beneficial, such as (1) additional refinements of the model, (2) validation of key assumptions, and (3) application of refined methods and assumptions to additional future periods (i.e., months, years) to increase the sample size. Such changes will be considered in future net purchase power expense forecasts.

c. Comment: A large customer organization says that it has been unable to understand or replicate Western's results.

Response: Western has made a conscientious effort to provide all of the information needed to develop the purchased power expense analysis in a timely manner. Western's staff has provided explanations to customers and their consultants and are available and willing to provide additional clarification as needed.

3. Future Flow Restrictions at Glen Canyon Dam

a. Comment: A large customer organization expressed concern that Western has overstated revenues of $3 to $8 million per year from short-term capacity sales through 2004.

Response: It is improbable that flows restricted for environmental reasons will ever again provide enough firm power from the Glen Canyon Unit to reach levels used in past power projections. Western does not know which of many possible flow regimes will finally be imposed at the Glen Canyon Unit. The treatment of short-term sales has been consistent with the firm power assumptions. Therefore, it is impossible to modify power projections for the proposed rate adjustment to recognize the reduced power output. The only course of action Western is able to follow is to stay with historic power projection figures, using the methodology already used in previous processes, until the Glen Canyon regime is finally determined.

Western will evaluate the firm power rate then in place when the new flow regimes from the Glen Canyon Dam are decided. If it is needed, a firm power rate adjustment will be proposed then.

b. Comment: An organization of several customers stated: While it is understood that a degree of uncertainty surrounds the exact level of flows at Glen Canyon, Western should conduct a sensitivity analysis predicated on the alternative flow assumptions identified in the Operation of Glen Canyon Dam Environmental Impact Statement. Such sensitivity analysis (sic) would give customers a range of possible replacement power costs.

Response: Western has done extensive analyses of the power and rate impact of every flow regime identified for study in the GCD–EIS. Detailed descriptions of the studies and their results are reported in the draft GCD–EIS, and will be contained in the final GCD–EIS when it is published.

In the meantime, Western is specifically required, by law and by regulation, to use known or statistically probable estimates of future activity in creating rates. The level of uncertainty still existing with the GCD–EIS prevents the use of any of its data at this time. As is noted above, when a decision about environmentally related flows through Glen Canyon Dam is made, a revised PRS will be prepared, and a new rate will be proposed, if needed.

4. O&M-Related Issues

a. Western O&M: CREDA signed an agreement with Western and Reclamation dated September 24, 1992, which states:

Western shall utilize the Work Program Information made available to its Customers by Western and Reclamation (including adjustments thereof which may result from reviews, from internal corrections or the dispute resolution process provided for in these Joint Procedures but excluding the costs of future transmission system additions in a Planning Year or Out Year which are conceptual in nature), to prepare the power repayment studies upon which it relies to promulgate any interim or final rates proposed or adopted for SLCAIP firm power or transmission services.

Several customers and their member organizations are concerned about the implementation of the 1992 Agreement.

(1) Comment: (One commentor) continues to be concerned with Western's inconsistent use of budgeted information in the preparation of the PRS . . . (the commentor) has been some-what frustrated in its attempts in this rate adjustment process to reconcile certain information used in the 1994 Rate Brochure PRS with the information previously provided in the Work Program review process.

Response: The FY 1995 Work Program is merely a copy of the proposed FY 1994 Congressional Budget Submission. It was used as the starting point in planning expenditures for the FY 1995 congressional budget.

CREDA's September 1992 agreement with Western and Reclamation allows power customers to have meaningful input to the new congressional budget. However, this work program document is prepared too early in the planning process for either customers or Western to say that no further changes will be made. Western feels that the timing and use of documents stated in the agreement should be revisited. Western is willing to continue to work with the customers in improving the budget and work plan review process in the future.

To illustrate the process, the transformation of the FY 1995 Work Program into the final FY 1995 Budget is outlined below:

(a) (The commentor) reviewed the FY 1995 Work Program and had opportunity to make suggested changes.

(b) The revised FY 1995 Work Program became the FY 1995 Internal Review Budget. At this point, more changes were made. Those changes then were reviewed by Western. Further changes, usually a lowering of spending projections, are common in this stage of budget preparation.

(c) The FY 1995 Internal Review Budget was then sent to Washington to be approved by DOE. There are usually reductions in spending estimates at this stage, as well, dictated by DOE's spending priorities. The DOE-approved budget was called the FY 1995 OMB Budget Request and was sent to that agency for review and approval. Any changes were then incorporated into a document called the FY 1995 Congressional Budget Submission.

(d) Finally, the FY 1995 Congressional Budget Submission went before Congress, where any final changes desired by the legislative branch of Government were made. Only after it was approved by Congress after public debate was the final FY 1995 Budget determined.

The FY 1994 Congressional Budget Submission was officially sent to Congress in January 1993. When the April 1994 rate brochure PRSs were being prepared, the data in the FY 1994 Congressional Budget Submission/1995 Work Program was already more than 2 years old (having begun as the FY 1994 Work Program in early 1992). Because of this timing, most of the information was outdated.

Western had completed turning the FY 1995 Work Program into the FY 1995 Congressional Budget Submission by that time. As is usually the case, some of the planned expenditures had been deleted in the process. Further, because of extra impetus to keep costs down, a Western-wide decision was made in which O&M costs would be allowed to rise only 2-percent per year between FYs 1994 and 1996.

In keeping with Western's policy to set rates at the lowest possible level consistent with sound business principles, Western used data from the lower-cost (and more current) FY 1995 Congressional Budget Submission rather than that in the customer-reviewed FY 1995 Work Program in the Rate Brochure PRS.

When Reclamation, Western, and CREDA entered into the September 1992 agreement, the parties did not anticipate that expenditure plans would change significantly between the Work Program review and the congressional budget submission. Events have proved otherwise.

COMPARISON OF FY 1995 WORK PLAN WITH FY 1995 CONGRESSIONAL BUDGET SUBMISSION O&M EXPENSES $000

	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	Totals
1995 Work Plan:						
Reclamation	$17,898	$18,408	$17,403	$17,884	$16,739	$88,332
Western	30,894	30,379	30,743	31,481	33,905	157,402
Total	48,792	48,787	48,146	49,365	50,644	245,734
1995 Budget:						
Reclamation	$15,856	$15,925	$16,041	$16,262	$16,631	$80,715
Western	29,307	27,635	27,971	28,724	28,984	142,621
Total	45,163	43,560	44,012	44,986	45,615	223,336
Decreased Cost to Customers	−3,629	−5,227	−4,134	−4,379	−5,029	−22,398

(2) Comment: Two comments expressed concern that: Western's projected O&M expenses for 1994 are more than 25-percent higher than actual O&M expenses in 1993 and more than 20-percent higher than the 1994 O&M expenses included in the 1995 Work Program documents.

Response: Western has been unable to duplicate the analysis in this comment. Some of the figures in the commentor's table are incorrect. This gives the impression of a problem where Western believes none exists. Most significantly, Western's actual FY 1993 CRSP O&M expense of $17.964 million shown in the commentor's tables is incorrect. The proper amount, from the Results of Operations (financial statements) as shown below, is $21.418 million. This should be the basis for the commentor's percentage calculations.

Below is a table comparing the table submitted by the commentors, the FY 1995 Work Program, and the amounts used in the PRS.

WESTERN'S CRSP O&M ($000)

	1993	1994	1995	1996	1997	1998
Commentor's Table [1]	17,964	18,628	20,888	21,070	21,437	21,923
Annual Change (%)	0	4	12	1	2	2
FY 1995 Work Program [2]	26,449	24,555	23,898	24,202	24,882	27,245
Annual Change (%)	0	−7	−3	1	3	10
Rate Brochure PRS [3]	21,418	22,530	20,888	21,070	21,437	21,993
Annual Change (%)	0	5	−7	1	2	3

[1] From comment letter dated July 27, 1994; source of data identified as FY 1995 Work Program.
[2] From FY 1995 Work Program (i.e., FY Congressional Budget submission), according to CRSP records.
[3] Using the FY 1995 Congressional Budget submission.

The average annual growth rate in the rate brochure PRS from 1993 through 1996 is a negative 0.33 percent. This is considerably below the 2-percent maximum annual growth rate which is Western's goal.

5. Reclamation O&M

a. Comment: Reclamation explained the increase in Regional Office expense in 1995 O&M expenses over the level shown in the 1995 Work Program (which was $564,000) as the inclusion of the Dolores Project O&M expense. The O&M expenses for the Dolores Project are shown in the 1995 Work Program as $301,000 for 1995, leaving $263,000 of the increase in this account category unexplained.

Response: The statement that the Regional Office expense in 1995 included the Dolores Project is incorrect. The Regional Office expense category applies only to the initial CRSP units (i.e., Aspinall, Flaming Gorge, Glen Canyon, and Navajo), and not to the Dolores Project. Dolores Project costs are shown in their own, separate PF–3 budget document.

Regional Office expenses shown in the initial units (CRSP) work plan differ from those included in the PRS because Western inadvertently used an unofficial version of Reclamation's PF–3. This document did not differ from the official budget in total costs for the CRSP initial units. An adjustment within the program was made, which increased the Regional Office expense by $564,000. This was made to balance to the FY 1995 Budget Submission funding amount.

b. Comment. The O&M figures (for the Rio Grande Project) in the PRS appear to double count capitalized moveable equipment (CME) expenses for the years 1995, 1997, and 1998 . . . .

Response: Western agrees with the comment and has rerun the RGP study to eliminate this error.

c. Comment: For 1994, the difference in expenses between the Work Program and the PRS appears to be comprised of the $35,000 for CME less a $20,500 expense reduction, which is unexplained.

Response: Western's numbers were correct and have been used in the PRS. The commentor's table shows a difference of $28,885. There are four reasons for the difference: (1) O&M expenditures planned for FY 1993 on the Elephant Butte Dam of $67,548 (portion assigned to power = $67,548 X 20.8% = $14,050) were not spent in FY 1993, but were obligated and actually spent in 1994; (2) expenditures planned on the Elephant Butte Powerplant ($30,854, of which 100-percent is repayable by power revenues) were not spent in FY 1993, but were obligated and actually spent in FY 1994; (3) the $35,000 referred to as CME for FY 1994 is not CME, but miscellaneous tools which is charged off to O&M and is properly includable in the total O&M for the year; and (4) item number (2) was further complicated by the fact that both the Work Program and the FY 1995 Budget Congressional Submission are based on an incorrect version of the summarized report. A line item (which

should be included in the Other Expense line) which appears on the detailed report was coded incorrectly so that it does not appear on the summarized reports, but is included in the totals of both reports. Thus, the totals are $40,000 higher in the Work Program than the total of the numbers shown and $23,921 higher than the total of the numbers shown in the FY 1995 Congressional Budget Submission. The $40,000 budgeted Other Expense item was later reduced to $23,921, which matches the $1,141,775 figure shown in the FY 1995 Congressional Budget Submission. Following is a table which recaps the above information starting with the figures shown in the commentor's table:

ELEPHANT BUTTE POWERPLANT

	1995 Work Program	1995 congressional budget submission
Salaries	$532,000	$532,000
Office General Expense	262,000	262,000
CPA	173,000	173,000
Other Expense[1]	120,000	150,854[2]
Subtotal[3]	1,087,000	1,117,854
Missing Line Item[4] (other expenses)	40,000	23,921
Total[5]	1,127,000	1,141,775

[1] Other expenses should have been higher by $40,000 in both the FY 1995 Work Program and the FY 1995 Congressional Budget Submission.
[2] When summed, includes $30,850 carryover from FY 1993.
[3] Actual summation of figure shown.
[4] This amount should have been included in the "other expense" line of both the FY 1995 work program and the FY 1995 Budget Justifications.
[5] As displayed in the FY 1995 Work Program and the FY 1995 Congressional Budget Submission.

Subtotal—Elephant Butte Powerplant O&M	$1,141,775
Less amount shown on commentor's table	1,127,000
Subtotal	14,775
Add allocated carry-over amount from item (1) above	14,050
Total difference shown on commentor's table	28,825

6. CRSP-Wide O&M

a. Comment. A customer organization stated:

The average annual increase in projected O&M expenses which results in a $8.2 million annual revenue requirement is troublesome. How this figure was obtained in the modeling effort undertaken at Western is not explained in detail in the brochure. If the projected figure is based upon an extrapolation of historical data adjusted for inflation, the cost figure may not reflect all of the possible areas of cost reduction available to both Western and the Bureau of Reclamation.

Response. Only two projections used in the Integrated Projects and/or CRSP PRS are based on computer modeling: the water available for power production and the ultimate power-related revenue requirements for the participating projects. Estimates for future O&M expenses are taken directly from official budgets; the budgets include modest approximations of labor cost increases. All equipment spending in the 5-year budget window is made up of actual projections received from workers in the field, reporting which equipment is likely to need replacement and when. Miscellaneous revenue and expense projections are based on historical averages and known future commitments.

b. Comment. A customer organization said:

The Energy Policy Act of 1992 (EPACT) has served as the catalyst for increasing competition in wholesale generation. They would anticipate that Western begin to streamline its operations in order that it position itself competitively in the new electricity market.

Response. Western's management is presently looking for ways to improve customer service while cutting costs through Western's Strategic Planning initiative. Some of the decisions made to date include:

(1) Delayering. This is a reduction in the number of supervisory employees, to reduce red tape and inertia while increasing customer service. The emphasis will be on empowering the employees. The initiative is already under way.

(2) Western will limit increases in annual operating expenses to less than 2-percent per project per year through FY 1996. Thereafter, increases in annual operating expenses will not exceed the annual rate of inflation.

(3) As the marketing agent for Federal power, Western will participate in the decision making process with other resource agencies whose operating decisions significantly affect Federal power rate and repayment obligations whenever possible.

(4) Proposals for construction of new facilities will be assessed using integrated resource planning principles and must meet at least one of three criteria before construction may begin:

(a) Increased revenues from new facilities must exceed their annual cost over the cost-evaluation period.

(b) Customers must benefit sufficiently to support new facilities in spite of a possible rate increase.

(c) The new facilities will be funded by non-Western sources.

7. Construction-Related Projections

A customer organization has a series of questions about construction-related cost projections.

a. Comment: Some of the commentators said: . . . they have been unable to find support in the 1995 Work Program for a majority of the significant (>$100,000) additions and replacements included in the 1994 rate brochure and rate brochure PRS . . . .

Response: For a detailed outline of the budget process, Western refers the reader to earlier replies to questions about O&M. To reiterate, the FY 1995 Work Program had, in many instances, higher cost projections than the FY 1995 Congressional Budget Submission. Western has used the lower figures in the ratesetting PRS.

In the case of CRSP construction, this change dramatically reduced the cost projections. Table VI on pages 12 and 13 of the April 1994 Rate Brochure shows a $276 million decrease in budgeted power-related construction costs through FY 1998 between the FY 1995 Work Program (referred to in the brochure as the FY 1994 Congressional Budget Submission) and the FY 1995 Congressional Budget Submission. Western has used the lower figure where it is considered reliable.

b. Comment: (The commentor) has been unable to find support for the investments included in the Collbran/Rate Brochure PRS.

Response: It is not possible to find the correlation between the investments in a budget document or work program and those in a PRS without some intermediate steps.

The annual figures in the 1995 Work Program are only planned cash expenditures. Investments are large items, often taking more than 1 year to complete. The total spent on any one investment, then, is the sum of the annual expenditures shown in the work programs, plus any applicable IDC.

Western is required to record an investment in a PRS in the year that it becomes operational. This permits the establishment of the proper repayment period and begins the annual payment of interest on investment (due until the investment's cost is completely repaid). Future investments appear in a PRS in the year they are planned to be in-service, if that is within the 5-year

budget window. Future investments (excluding future replacements) planned for completion at some time after the 5-year window are normally excluded from a PRS, unless legislation directs otherwise (as is the case with the CRSP's participating projects). Annual cash outlays for an investment that takes more than 1 year to complete have no counterpart in a PRS. Indeed, there may be several years of investment costs shown in work programs and budgets which do not appear in PRSs. However, the total sum, plus IDC, will appear in the PRS in the year when the item is anticipated to be operational.

It is not unusual for the first future year in a budget document to show projections higher than those shown in the previous budget document for that same year. It is common to have obligated amounts at the end of the year just closed that do not get paid in that year. They are then carried over and added to the next year. Also, CWIP that has been completed, but that did not get moved to plant-in-service in the financial records, is carried over to the next year (with the assumption that it will be moved to plant-in-service at that time). This also adds to the total amount shown in the subsequent year.

c. Comment: (The commentor's) Table 7 below uses information provided in response to WAPA/CREDA–76 to illustrate the differences between the 1995 Work Program and the PRS.

(The commentor) believes that some or all of the decrease may result from elimination or reduction of dam repair work described in Reclamation's response to (the commentor's) comments on the 1995 Work Program review. The increases (i.e., increases over and above the amounts shown in the 1995 Work Program) are unexplained, however, by changes presented in the 1995 Work Program. Therefore, (the commentor) recommends use of the investments shown in line 31 of table 7 in the Collbran/Rate PRS.

Response: Table 7 in the commentor's July 27 comment letter displays Collbran investment as shown in the FY 1995 Work Program. Western agrees with the commentor's figures for FY 1994 through FY 1998, except that carry-over from FY 1993 must also be added to FY 1994's total number. Western's brochure study also contained some figures from the FY 1995 Congressional Budget Submission. There have since been changes to that budget that have reduced some of those costs by approximately $450,000. Western has rerun the Collbran ratesetting PRS using these changes.

The following table illustrates how incremental investment in budget figures is transformed into a PRS entry. Figures from Reclamation's FY 1995 Work Program are used. The Collbran Project was used for this example because it contains no IDC or multipurpose investment, thereby simplifying the illustration.

COLLBRAN PROJECT EXTRAORDINARY MAINTENANCE ($000)

Dam Repair Description	Thru FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	Total
Per FY 1995 Work Plan:							
Big Meadows Dam	200	.....	.....	.....	.....	.....	200
Cottonwood Dam #2	72	440	370	.....	.....	.....	882
Atkinson Dam	.....	.....	.....	400	161	152	713
Big Creek Dam	69	440	.....	.....	.....	.....	509
Lambert Dam	.....	.....	.....	.....	500	715	1,215
Total	341	880	370	400	661	867	3,519
Per PRS/Financial Statement Entries							
Big Meadows Dam	.....	200	.....	.....	.....	.....	200
Cottonwood Dam #2	.....	.....	882	.....	.....	.....	882
Atkinson Dam	.....	.....	.....	.....	.....	713	713
Big Creek Dam	.....	509	.....	.....	.....	.....	509
Lambert Dam	.....	.....	.....	.....	.....	1,215	1,215
Total	0	709	882	0	0	1,928	3,519

d. Comment: All years in the (Rio Grande) PRS except 1994 match the values from the 1995 Work Program. In 1994, the difference is $619,806. (The values shown in line 14 of Table 9 should be used in the PRS.)

Response: The commentor is correct. An additional $619,806 has been added to the work program amount shown in FY 1994. Not all of the work in the Work Program for FY 1993 was completed or posted in that year. The amounts not completed, including those obligated but not spent in 1993, were carried over into FY 1994. This was the case with the $619,806 noted by the commentor. This is necessitated because of Western and Reclamation's accounting procedures (as explained in the previous section on the Collbran Project), which require the total investment (including IDC) to be moved to the plant-in-service account in the year it becomes operational, rather than recording incremental amounts of annual spending.

Western has used the figures recommended by the commentor. The figures are the basis for the projected investment through the cost evaluation period (FY 1994–98). However, these amounts do not appear in the PRS in those years. As previously explained (see the example of the Collbran Project above), these amounts (plus IDC, where applicable) are shown in the PRS in the year the particular investment is scheduled to go into service.

e. Comment: Commentor stated that:

The intent of the work program review was to provide a less formal process through which customers could receive information and provide input regarding Western's and Reclamation's programs, allowing for this same information to then be used in determining the adequacy of rates. In departing in the rate process from data developed in the FY 1995 Work Program, the principal benefit of the process is effectively undone. Moreover, the departures were not trivial. For Western's O&M expenses, the 1994 figure used in the Rate Brochure PRS exceeds that contained in the FY 1995 Work Program by almost $4 million, or 20 percent.

In new construction projects, the commentor identified over $45 million

in additional investment included in the PRS that was not identified or had been excluded in the work program review.

Response: Western has given a detailed explanation of the changes in the 1994 O&M figures between the FY 1995 Work Program and the 1993 ratesetting PRS earlier in this Rate Order. Construction cost modifications are also listed in detail.

Western disagrees with the thrust of the commentor's statement. As Western follows its policy to develop the lowest rate to consumers consistent with sound business principles, all power customers, including the commentor's members benefit.

For example, the FY 1995 Work Program includes over $527 million in construction costs for the SLCAO alone. Deducting what would normally be excluded from the PRS because it is not planned for completion by FY 1998 leaves $284 million. This figure ($284 million) is still more than double what Western finally included in the Rate Brochure PRS as new investment $131 million. The difference between these two figures (the $284 million in the FY 1995 Work Program and the $131 million in the Rate Brochure PRS) equals approximately 0.75 mills/kWh in the composite rate. In other words, following the commentor's instructions would have resulted in a ¾ mills/kWh higher firm power rate than Western is proposing. Finally, Western will continue to work with its customers to identify and correct problems with the work program review process.

8. Environmentally Related Expenses

a. Comment: The sum of environmental costs in the 1994 Rate Brochure is more than $0.5 million greater in 1993 and 1994 than contained in the FY 1995 Work Program. Western's response to CREDA's information request (WAPA/CREDA 67) indicated that the additional costs in 1994 were explained by about $6.0 million in "unliquidated obligation" in 1993. While actual costs were indeed lower than planned in 1993, the reduction does not explain the still greater increase indicated in the 1994 rate brochures. Environmental study costs should be limited to the amounts (with some allowance for carryover from prior years) developed in the work program process.

Response: To compare environmental costs spent and budgeted for FYs 1993 and 1994 in the 1995 budget and work plan, the unliquidated obligations must be taken into consideration, as shown below:

ENVIRONMENTAL EXPENSES ($000)

	FY 1993	FY 1994	Total	New Total
1994 Rate Brochure Appendix	$11,885	$20,935	$32,820	$32,820
Adjustment	0	490	490	33,310
FY 93 Unliquidated Obligations	−2,391	0	−2,391	30,919
FY 94 Unliquidated Obligations	6,005	−6,005	0	30,919
Total Obligations	15,499	15,420	30,919	30,919
FY 1995 Work Program	16,788	15,463	32,251	32,251
FY 93 Unliquidated Obligations	−2,391	0	−2,391	29,860
Total Obligations	14,397	15,463	29,860	29,860
Difference	1,102	−43	1,059	1,059

b. Comment: A customer organization says:

It is clear that environmental expenses associated with Glen Canyon Dam have gotten out of hand, are not under control, and are not being subjected to any sort of cost-control analysis or audit. They urge Western to do what it can to urge the Bureau of Reclamation to limit environmental study expenditures to those that are calculated to produce necessary, credible information.

Response: As a part of Western's Strategic Planning initiative: Western will, as the marketing agent for Federal power, participate in the decision making process whenever possible with other resource agencies whose operating decisions significantly affect Federal power rate and repayment obligations. Western will do so to sustain the marketability of the Federal hydroelectric resource.

9. Miscellaneous Comments

Long-term Capacity Sales:

(1) *Comment:* (The commentor) notes that there is a discrepancy between the projection of capacity sales shown in Western's "1993 Power Projections" and the values in the PRS. Upon inspection of the two set of values, it appears that the values used in the PRS may have been misentered 1 year below the proper year. This causes the amount of capacity sales to be slightly understated in several years.

Response: Western agrees. Western has checked these data and has found a disconnect between the kW of capacity sales estimate found in the work papers and that in the PRS. It appears that the data from FYs 1993 through 2003 in the work papers were put into the PRS in FYs 1994 through 2004. The error has been corrected.

(2) Comment: Western calculates the PRS for Integrated Projects such that replacements are repaid up to the rate-setting year. In part, this is due to the assignment of a lower repayment priority (to irrigation) in the PRS. Assigning the lower priority (to irrigation) causes a less than optimal rate calculation, since the rate could be lowered by allowing for some replacements to remain unpaid beginning 9–10 years prior to the ratesetting year.

Response: Western recognizes that some replacements have been paid earlier in the PRS than required. Western conducted a test to determine if forcing payments to irrigation obligations would postpone early payment of replacements, thus lowering the rate. Forcing payments reduces the composite rate 0.13 mills/kWh. This change has been made in the ratesetting PRS.

10. Untimely Responses to Data Requests

a. Comment: Three commentors stated that their consultant did not receive all the information needed to reconcile certain key portions of the proposed rate and did not have adequate time to verify all the data underlying the rate adjustment.

Response: The consultant submitted five official data requests. Responses were as follows:

Data request received by western's SLCAO	Items of data requested	Information mailed by western's SLCAO
May 13, 1994	18	May 20, 1994.
June 3, 1994	9	June 23, 1994.
June 24, 1994	9	June 30, 1994.
July 1, 1994	38	July 19, 1994.
July 8, 1994	8	July 14, 1994.
Total	82	

Customers originally had 97 days to submit comments and request information; 56 of those days were after the public information forum. The largest and most detailed request for data was received by Western on July 1, 1994, which was 19 days before the original close of the comment period. The final response to this request was faxed to the consulting firm, on July 19, 1994, 1 day before the original end of the comment period. Western then extended the date it would accept comments to July 27, 1994, to provide commentors extra time to prepare a reply. Western believes that ample time has been allowed for public comment and that information was furnished to requestors in a timely manner. However, Western also recognizes that there could be confusion and misunderstanding regarding the information needed by the commentators and that some of the information received may not be what was needed. Western will continue to work with customers and interested parties to find a more efficient and acceptable process to respond to data requests and meet the commentors' needs.

b. Comment: A customer organization said:

Given the backdrop of structural changes in the industry and increasing environmental concerns over hydro power generation, it would seem that Western should develop a pricing policy based upon a firm understanding of price sensitivity. The lack of any such analysis is a major omission.

Response: One of Western's primary concerns is the impact the prices for its products have on possible sales. Based on knowledge of the electrical power market, Western's proposed combined rates for firm power are below other sources of firm electrical power available to Integrated Projects customers. For this reason, Western has not undertaken a specific study to analyze price effects on the electrical power purchased by Western's Integrated Projects customers.

There may be reductions of Integrated Projects energy usage in the short-term by Western's customers as a result of the proposed increase in the energy rate. Some of Western's Integrated Projects customers with their own electrical power generating resources may be faced with variable costs that allow them to produce energy more cheaply than purchasing from Western at the proposed new rate. Information on the cost of generation is considered sensitive and is not available to Western. However, published sources of information which relate to coal prices and other components of the variable costs of power generation indicate that the proposed energy rate is less than Western's estimate of their cost of generating thermal energy. Western has received no comments to indicate otherwise.

c. Comment: To help customers respond more completely to Western's proposals, a customer organization suggests that, in the future, when Western entertains the thought of extending the time for commenting as done here, tie the extension to a period of time following completion of responses to requests for information.

Response: Western believes that the existing customer review process and the public rate process sufficiently provide for both flexibility for input and measurability of the progress toward the completion of a rate.

d. Comment: Several customers concur with changing the expression of the firm power rate from a 'combined rate' to a 'composite rate'.

Response: Western agrees with the customer comment and believes that the composite rate will make the price of Integrated Projects power more easily comparable with that from other sources.

e. Issue: A customer states that they believe it is very unfair to continue to increase the burden on the ratepayers to fund (environmental) studies which will result in further increases in costs and/or reductions in the amount of power available.

Response: As noted earlier, Western is working with Reclamation to more closely monitor these costs.

11. Issue Papers Resolution: Several issues which Western believes would have caused considerable protracted comment were discussed in detail during the pre-rate-adjustment process of informal meetings between various stakeholders and the exchange of issue papers. The stakeholders liked the process. The issues which were resolved in this process are summarized below:

a. Identifying historic expenses related to the CRSP's Glen Canyon Unit that became nonreimbursable with the passage of the Grand Canyon Protection Act of 1992 (GCPA).

b. Agreement about which future Glen Canyon Dam environmental costs have the potential to become nonreimbursable.

c. General understanding of the functioning of the budget neutrality stipulations in the GCPA, stating that environmentally related expenses will be nonreimbursable for FY 1993 through FY 1997 only to the extent that offsetting revenues are received by the Treasury from other GCPA provisions.

d. The timing of the reallocation of the construction costs of the Glen Canyon Unit.

e. Identification of those costs of the Central Utah (participating) Project which are properly excluded from influencing the Integrated Projects firm power rate.

f. Implementation of a procedure to assure that the Basin Fund has sufficient cash on hand to pay all operating costs for the CRSP.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR Parts 1500–1508); and DOE NEPA Regulations (10 CFR Part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental

assessment or an environmental impact statement.

Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by OMB is required.

Availability of Information

Information regarding this rate adjustment, including PRSs, comments, letters, memoranda, and other supporting material made or kept by Western for the purpose of developing the power rates, is available for public review in the following locations.

Salt Lake City Area Office, Western Area Power Administration, Office of the Assistant Area Manager for Power Marketing, 257 East 200 South, Suite 475, Salt Lake City, UT 84111

Western Area Power Administration, Division of Marketing and Rates, 1627 Cole Boulevard, Golden, CO 80401

Western Area Power Administration, Office of the Assistant Administrator for Washington Liaison, Room 8G–027, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585

Submission to Federal Energy Regulatory Commission

The rate herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I confirm and approve on an interim basis, effective December 1, 1994, Rate Schedule SLIP–F5. The rate schedule shall remain in effect on an interim basis, pending FERC confirmation and approval of it or a substitute rate on a final basis, through November 30, 1999.

Issued in Washington, D.C., October 24, 1994.

William H. White,

Deputy Secretary.

Salt Lake City Area Integrated Projects; Arizona, Colorado, Nevada, New Mexico, Utah, Wyoming; Schedule of Rates for Firm Power Service

Effective

Beginning December 1, 1994, through November 30, 1999, or until superseded by another rate schedule, whichever occurs earlier.

Available

In the area served by the Salt Lake City Area Integrated Projects.

Applicable

To the wholesale power customers for firm power service supplied through one meter at one point of delivery, or as otherwise established by contract.

Character

Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate

Demand Charge: $3.83 per kilowatt of billing demand.

Energy Charge: 8.90 mills per kilowatthour of use.

Billing Demand

The billing demand will be the greater of:

1. The highest 30-minute integrated demand measured during the month up to, but not more than, the delivery obligation under the power sales contract, or
2. The contract rate of delivery.

Adjustment for Transformer Losses

If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

Adjustment for Power Factor

The customer will be required to maintain a power factor at all points of measurement between 95-percent lagging and 95-percent leading.

Adjustment for Purchased Resources

Purpose of Adjustment

To ensure that Western Area Power Administration (Western) has sufficient revenues to support resource purchases made necessary because of restricted generation from Glen Canyon Dam as the result of restrictions on water releases from the dam.

Applicability

To those contractors who are not receiving service under an Interim Purchase Amendment to the firm power sales contract.

Adjustment

If Western finds it necessary to purchase resources to replace generation lost at Glen Canyon Dam because of the above-listed restrictions, Western will, beginning on the first month that such purchases are made, include in the contractor's monthly power bill an estimate of that contractor's proportionate share of net capacity purchase costs. The cost of purchasing these resources will be offset by the revenue that Western receives for the sale of energy, if any, associated with the purchased resources.

In its October bill each year, Western will reconcile the previous fiscal year's actual purchased power expenses and the monthly estimated costs paid by the contractor. If the contractor has paid more than its proportionate share of actual purchased power expenses, the excess amount will be shown as a credit to the contractor's October power bill. If the contractor has paid less than its proportionate share of actual power purchase expenses, Western will add such amount to the contractor's October power bill.

Notification

If Western finds it necessary to implement this adjustment, it will give a one-time notification to the contractor and the Federal Energy Regulatory Commission at least 10 days before initially adding purchased power cost to the contractor's monthly bill.

[FR Doc. 94–27306 Filed 11–2–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5101–6]

Acid Rain Program: Notice of Written Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of written exemptions.

SUMMARY: The U.S. Environmental Protection Agency is issuing, as a direct final action, written exemptions from the Acid Rain Program permitting and monitoring requirements to 55 utility units at 32 plants in accordance with the Acid Rain Program regulations (40 CFR part 72). Because the Agency does not anticipate receiving adverse comments, the exemptions are being issued as a direct final action.

DATES: Each of the exemptions issued in this direct final action will be final on December 13, 1994 unless significant, adverse comments are received by December 5, 1994. If significant, adverse comments are timely received on any exemption in this direct final action,

that exemption will be withdrawn through a notice in the **Federal Register**.

ADDRESSES: *Administrative Records.* The administrative record for the exemptions, except information protected as confidential, may be viewed during normal operating hours at the following locations:

For plants in Iowa: EPA Region 7, 726 Minnesota Ave., Kansas City, KS 66101; and at the Iowa Department of Natural Resources (attn: Wayne Wicksell) Henry A. Wallace Building, 900 E. Grand, Des Moines, IA 50319, (515) 281–9012.

For plants in Kansas: EPA Region 7 (address above) and at the Kansas Department of Health and Environment (attn: Harish Agarwal) Forbes Field Building 283, Topeka, KS 66620, (913) 296–1572.

For plants in Missouri: EPA Region 7 (address above) and at the Missouri Department of Natural Resources (attn: Paul Brooks), Jefferson State Office Building, P.O. Box 176, Jefferson City, MO 65102, (314) 751–4817.

For plants in Nebraska: EPA Region 7 (address above) and at the Nebraska Department of Environmental Quality (attn: Todd Ellis) State House Station, P.O. Box 94877, Lincoln, NE 68509–4877, (402) 471–4561.

For plants in Michigan and Wisconsin: EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604.

Comments. Send comments to the following addresses:

For plants in Iowa, Kansas, Missouri, and Nebraska, William A. Spratlin, Director, Air and Toxics Division, EPA Region 7, (address above).

For plants in Michigan and Wisconsin: David Kee, Director, Air and Radiation Division, EPA Region 5, (address above).

Submit comments in duplicate and identify the exemption to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of the unit covered by the exemption.

FOR FURTHER INFORMATION CONTACT: For plants in Iowa, Kansas, Missouri, and Nebraska, Jon Knodel, (913) 551–7599, EPA Region 7; for plants in Michigan and Wisconsin, Beth Valenziano, (312) 886–2703, EPA Region 5.

SUPPLEMENTARY INFORMATION: All public comment received on any exemption in this direct final action on which significant, adverse comments are timely received will be addressed in a subsequent issuance or denial of exemption based on the relevant draft exemption in the notice of draft written exemptions that is published elsewhere in today's **Federal Register** and that is identical to this direct final action.

Under the Acid Rain Program regulations (40 CFR 72.7), utilities may petition EPA for an exemption from permitting and monitoring requirements for any new utility unit that serves one or more generators with total nameplate capacity of 25 MW or less and burns only fuels with a sulfur content of 0.05 percent or less by weight. On the earlier of the date a unit exempted under 40 CFR 72.7 burns any fuel with a sulfur content in excess of 0.05 percent by weight or 24 months prior to the date the exempted unit first serves one or more generators with total nameplate capacity in excess of 25 MW, the unit shall no longer be exempted under 40 CFR 72.7 and shall be subject to all permitting and monitoring requirements of the Acid Rain Program.

EPA is issuing written exemptions effective from January 1, 1995 through December 31, 1999, to the following new units:

Algona Municipal Utilities units 1 and 2 in Iowa, owned and operated by the Algona Municipal Utilities. The Designated Representative for Algona is Nick R. Scholer.

Bellevue Municipal Utilities unit 2 in Iowa, owned and operated by the City of Bellevue. The Designated Representative for Bellevue Municipal Utilities is Gary A. Swanson.

Hopkinton Municipal Utilities unit 2 in Iowa, owned and operated by the City of Hopkinton. The Designated Representative for Hopkinton is Norman W. Parsons.

Graettinger Municipal Light Plant unit 2 in Iowa, owned and operated by the City of Graettinger. The Designated Representative for Graettinger Municipal Light Plant is Gary A. Swanson.

Grand Junction Municipal Light & Power unit 2 in Iowa, owned and operated by the City of Grand Junction. The Designated Representative for Grand Junction Municipal Light & Power is Gary A. Swanson.

Lamoni Municipal Utilities unit 6 in Iowa, owned and operated by Lamoni Municipal Utilities. The Designated Representative for Lamoni Municipal Utilities is Robert A. Moore.

Primghar Municipal Light Plant unit 5 in Iowa, owned and operated by the City of Primghar. The Designated Representative for Primghar is Robert L. Mulder.

Story City Municipal Electric Utility unit 5 in Iowa, owned and operated by the City of Story City. The Designated Representative for Story City is Bruce Twedt.

Vinton Municipal Power Plant unit 1 in Iowa, owned and operated by the City of Vinton. The Designated Representative for Vinton Municipal is Maynard P. Stief.

Waverly Light & Power North Plant unit 10 in Iowa, owned and operated by Waverly Light & Power. The Designated Representative for the North Plant is Glenn S. Cannon.

Wilton Municipal Light & Power System, units 2, 3, and 4 in Iowa, owned and operated by Wilton Municipal Light & Power System. The Designated Representative for Wilton Municipal Light & Power System is Collin K. Proctor.

Chanute 3 units 12 and 13 in Kansas, owned and operated by the City of Chanute. The Designated Representative for Chanute 3 is Robert Walker.

The City of Girard Power Station units 2101–1119, 2012–1147, VO3572, and VO3393 in Kansas, owned and operated by the City of Girard. The Designated Representative for Girard is William W. Crawford.

Holton Municipal Power Plant unit 11 in Kansas, owned and operated by the City of Holton. The Designated Representative for Holton is Bradley J. Mears.

Horton Power Plant units 1 and 2 in Kansas, owned and operated by the City of Horton. The Designated Representative for Horton is Theodore M. Hauser.

Kingman Power Station unit 9 in Kansas, owned and operated by the City of Kingman. The Designated Representative for Kingman is Ira M. Hart, III.

The City of Mulvane units 7 and 8 in Kansas, owned and operated by the City of Mulvane. The Designated Representative for Mulvane is Gary Rambo.

Osborne Municipal Light Plant units 4–CAT and 5–CAT in Kansas, owned and operated by the city of Osborne. The Designated Representative for Osborne is Norman B. Christie.

Russell Municipal Power and Light units 11 and 12 in Kansas, owned and operated by the City of Russell. The Designated Representative for Russell is Earl Homewood.

Sabetha Municipal Power Plant unit 11 in Kansas, owned and operated by the City of Sabetha. The Designated Representative for Sabetha is Ted L. Hayden.

Campbell Municipal Utilities unit 7 in Missouri, owned and operated by the City of Campbell. The Designated Representative for Campbell is Wendell Thompson.

Marshall Municipal Utilities unit 11 in Missouri, owned and operated by the

Marshall Municipal Utilities. The Designated Representative for Marshall is Kyle Gibbs.

Palmyra Municipal 2 units 9 and 10 in Missouri, owned and operated by the Palmyra Board of Public Works. The Designated Representative for Palmyra Municipal 2 is James Church.

The City of Shelbina units G3, G4, and G5 in Missouri, owned and operated by the City of Shelbina. The Designated Representative for Shelbina is Dennie Fowler.

The Unionville Power & Light unit 9 in Missouri, owned and operated by the City of Unionville. The Designated Representative for Unionville Power & Light is Dennie Sheehan.

Vandalia Power Plant units 2 and 3 in Missouri, owned and operated by the City of Vandalia. The Alternate Designated Representative for Vandalia is Aaron Rentfro.

Auburn Municipal Power Plant unit 4 in Nebraska, owned and operated by the Auburn Board of Public Works. The Designated Representative for Auburn is James P. Dietz.

Laurel Power Plant unit 7 in Nebraska, owned and operated by the City of Laurel. The Designated Representative for the Laurel Power Plant is Jim Recob.

Additionally under the Acid Rain Program regulations (40 CFR 72.8), utilities may petition EPA for an exemption from permitting requirements for units that are retired prior to the issuance of a Phase II Acid Rain permit. Units that are retired prior to the deadline for continuous emissions monitoring system (CEMS) certification may also petition for an exemption from monitoring requirements.

While the exempt retired units have been allocated allowances under 40 CFR part 73, units exempted under 40 CFR 72.8 must not emit any sulfur dioxide or nitrogen oxides on or after the date the units are exempted, and the units must not resume operation unless the designated representative submits an application for an Acid Rain permit and installs and certifies its monitors by the applicable deadlines.

EPA proposes to issue written exemptions, effective from January 1, 1995 through December 31, 1999, unless otherwise noted below, to the following retired units:

B C Cobb units 1, 2, and 3 in Michigan, owned and operated by Consumers Power Company. The Designated Representative for B C Cobb is Robert J. Nicholson.

Bluffs unit 4 in Nebraska at the Scottsbluff Generating Station owned and operated by the Nebraska Public Power District. The Designated Representative for Bluffs is Clinton Johannes.

Kramer units 1, 2, 3, and 4 in Nebraska at the Harold Kramer Generating Station, owned and operated by the Nebraska Public Power District. The Designated Representative for Kramer is Clinton Johannes.

North Oak Creek units 1, 2, 3, and 4 in Wisconsin, owned and operated by Wisconsin Electric Power Company. The exemption from Phase I permitting requirements is effective from January 1, 1995 through December 31, 1999. The exemption from monitoring requirements is effective from November 15, 1993 through December 31, 1999. The Designated Representative for North Oak Creek is Paul D. Schumacher.

Dated: October 31, 1994.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 94–27297 Filed 11–2–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5101–7]

Acid Rain Program: Notice of Draft Written Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft written exemptions.

SUMMARY: The U.S. Environmental Protection Agency is issuing draft written exemptions from Acid Rain permitting and monitoring requirements to 55 utility units at 32 plants in accordance with the Acid Rain Program regulations (40 CFR part 72). Because the Agency does not anticipate receiving adverse comments, the exemptions are also being issued as a direct final action in the notice of written exemptions published elsewhere in today's **Federal Register**.

DATES: Comments on the exemptions proposed by this action must be received on or before December 5, 1994.

ADDRESSES: *Comments.* Send comments to the following addresses:

For plants in Iowa, Kansas, Missouri, and Nebraska, William A. Spratlin, Director, Air and Toxics Division, EPA Region 7, 726 Minnesota Ave., Kansas City, KS 66101.

For plants in Michigan and Wisconsin: David Kee, Director, Air and Radiation Division, EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604.

Submit comments in duplicate and identify the exemption to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of the unit covered by the exemption.

FOR FURTHER INFORMATION CONTACT: For plants in Iowa, Kansas, Missouri, and Nebraska, Jon Knodel, (913) 551–7599, EPA Region 7; for plants in Michigan and Wisconsin, Beth Valenziano, (312) 886–2703, EPA Region 5.

SUPPLEMENTARY INFORMATION: If no significant, adverse comments are timely received, no further activity is contemplated in relation to these draft written exemptions and the exemptions issued as a direct final action in the notice of written exemptions published elsewhere in today's **Federal Register** will automatically become final on the date specified in that notice. If significant, adverse comments are timely received on any exemption, that exemption in the notice of written exemptions will be withdrawn and all public comment received on that exemption will be addressed in a subsequent issuance or denial of exemption based on the relevant exemption in this notice of draft written exemptions. Because the Agency will not institute a second comment period on this notice of draft written exemptions, any parties interested in commenting should do so during this comment period.

For further information and a detailed description of the exemptions, see the information provided in the notice of written exemptions elsewhere in today's **Federal Register.**

Dated: October 31, 1994.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 94–27298 Filed 11–2–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5101–5]

Acid Rain Program; Notice of Final Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final permits and permit modifications.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is approving 5-year Phase I Acid Rain permits or permit modifications including sulfur dioxide (SO_2) and/or nitrogen oxides (NO_x) compliance plans in accordance with the Acid Rain Program regulations (40 CFR parts 72 and 76), for the

following five utility plants: La Cygne in Kansas; E W Brown in Kentucky; Iatan and Montrose in Missouri; and South Oak Creek in Wisconsin.

FOR FURTHER INFORMATION CONTACT: Contact the following persons for more information about a permit listed in this notice: for plants in Kansas and Missouri, Jon Knodel, (913) 551–7622, EPA Region 7, 726 Minnesota Avenue, Kansas City, Kansas 66101; for plants in Kentucky, Brian Beals (404) 347–5014, EPA Region 4, 345 Courtland Street NE, Atlanta, GA 30365; and for plants in Wisconsin, Beth Valenziano, (312) 886–2703, EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604.

Dated: October 31, 1994.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 94–27299; Filed 11–2–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5101–9]

Common Sense Initiative Council Federal Advisory Committee; Establishment

AGENCY: Environmental Protection Agency.

ACTION: Establishment of advisory committee.

SUMMARY: As required by Section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, EPA is giving notice of the establishment of an advisory committee to develop recommendations for improvements in the regulatory and statutory environmental protection framework that EPA administers. This advisory committee will be known as the "Common Sense Initiative Council" (CSI Council). EPA has determined that the establishment of this advisory committee is in the public interest and will assist the Agency in performing its duties under its various statutes. Copies of the Committee's charter will be filed with the appropriate committees of Congress and the Library of Congress in accordance with section 9(c) of FACA.

The membership of the CSI Council has not yet been appointed by the Administrator. Consistent with the objectives of the Initiative and the requirements of FACA, the membership of both the CSI Council and its sector subcommittees will be balanced among the Agency's various outside stakeholder interests. The first meeting of the CSI Council will be announced separately in a **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Anyone wanting information about substantive matters that will be considered by the CSIC, or information about the procedural aspects of CSIC operation, should contact: Steve Harper, Office of Air and Radiation, at 202–260–8953, or Vivian Daub, Office of Water, at 202–260–6790.

Background

The Administrator announced the creation of the Common Sense Initiative (CSI) in November 1993. The Initiative reflects the Administration's commitment to setting strong environmental standards while encouraging common sense, innovation, and flexibility in how the standards are met. The goal is cleaner and cheaper environmental protection for entire industries. The Administrator's objective in establishing the CSI is to bring together federal, state, and local government representatives, environmental and environmental justice leaders, industry representatives, and other stakeholders to examine the full range of environmental requirements affecting industry.

The six industries the Agency has chosen to begin the pilot phase of this initiative are auto assembly, computers and electronics, iron and steel, metal finishing, petroleum refining, and printing. EPA will be convening multi-stakeholder teams for each of these industries. These teams will look for opportunities to change complicated and inconsistent environmental requirements into comprehensive strategies for environmental protection. Reflecting the importance of this effort, each of these teams will be chaired by an EPA Assistant Administrator and/or a Regional Administrator. The anticipated tangible results of this project will include recommendations for administrative, regulatory, and statutory changes that will permit us to achieve the cleaner, cheaper, smarter results we seek.

The creation of the CSI Council will provide the necessary federal advisory committee framework for the Common Sense Initiative. The Council will be constituted largely from the membership of the six industry-specific teams, which in turn will be constituted as subcommittees of the Council. The Council and its sector subcommittees will each have approximately 25 members, all appointed by the Administrator. EPA will ensure that there is balanced membership among affected stakeholder groups.

Dated: October 28, 1994.

Stephen Harper,

Office of Air and Radiation.

[FR Doc. 94–27311 Filed 11–2–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5101–2]

Public Meeting of the Common Sense Initiative Printing Sector

AGENCY: Environmental Protection Agency.

ACTION: Public meeting.

SUMMARY: The Environmental Protection Agency is announcing an organizational meeting of the Common Sense Initiative Printing Sector. The meeting is open to the public with advance registration. There will be opportunities for the public to speak at the meeting and caucus as a group. Information concerning registration is provided below.

PURPOSE: During this meeting, the group will: discuss organizational protocols for the functioning of the sector group; have opportunities to caucus; identify and prioritize issues and potential tasks and projects for study concerning printing; begin identifying what information and other stakeholders may be needed to study and address issues; and begin scoping data needs.

DATES: The meeting will be held on November 9 and 10, 1994, from 8:00 am to 5:00 pm Eastern Time.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202, (703) 486–1111.

FOR FURTHER INFORMATION CONTACT: Persons wanting to register or needing further information concerning this meeting, such as an agenda, should contact Ginger Gotliffe, U.S. Environmental Protection Agency, 401 M St., S.W., Washington D.C. 20460, (202) 564–7072 by November 7, 1994.

Dated: October 28, 1994.

Eric Schaeffer,

Deputy Director, Office of Compliance.

[FR Doc. 94–27295 Filed 11–2–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 27, 1994.

The Federal Communications Commission has submitted the

following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 418–0214. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10214 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0349
Title: Section 76.73 and 76.75 Cable TV EEO policy and programs
Action: Extension of a currently approved collection
Respondents: Businesses or other for-profit (including small businesses)
Frequency of Response: On occasion
Estimated Annual Burden: 5,550 responses; 25.05 hours burden per response; 139,038 hours total annual burden
Needs and Uses: Section 76.73 and 76.75 require each cable employment unit to establish maintain and carry out a program to assure equal employment opportunity in every aspect of a cable entity's policy and practice. The data is used by the cable entities in preparation of the Cable Television Annual Employment Report (FCC Form 395–A). FCC staff also uses the data in field investigations involving equal employment opportunity. If this program was not maintained their could be no assurance that efforts are being made to afford equal opportunity in employment.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 94–27265 Filed 11–2–94; 8:45 am]
BILLING CODE 6712–01–F

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 27, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 418–0214. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10214 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0050
Title: Application for Ship Radio Inspection or Survey
Form Number: FCC Form 801
Action: Revision of a currently approved collection
Respondents: Businesses or other for-profit (including small businesses)
Frequency of Response: Annually and once every five years
Estimated Annual Burden: 4,000 responses; .25 hours average burden per response; 1,000 hours total annual burden
Needs and Uses: The FCC rules require the periodic inspection of the radio installations aboard United States vessels that are required to carry radio installations for safety purposes. The FCC Form 801 is used to apply for these required inspections. It is also used to advise the FCC local office staff to plan necessary travel and allocate resources to accomplish the task. The information is provided by ship radio station licensees to request an inspection of the radio installation aboard their vessels by FCC field office personnel. The information enables FCC personnel to identify the particular vessel to be inspected, determine the vessel's location, the date and time it will be available for inspection, and the particular regulatory requirements applicable to that particular vessel. If the information were not collected, FCC personnel would be unable to perform the required inspection due to lack of information about the vessel including ports of call, sailing schedule, and ports where the inspection could be performed. The form is being revised to provide for new payment options available to applicants (payments by credit card, electronic funds transfer, and by Western Union) and to make the form compatible with the new FCC Form 159, Fee Remittance Advice. We are also removing four questions requesting information which is no longer needed in advance of the inspection. The instructions for completing the form have been revised to conform to the revised format mandated by the new FCC Form 159.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 94–27266 Filed 11–2–94; 8:45 am]
BILLING CODE 6712–01–F

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 31, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 418–0214. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0508.
Title: Rewrite and Update of Part 22 of the Public Mobile Service Rules (CC Docket No. 92–115).
Action: Revision of a currently approved information collection.
Respondents: Businesses of other for-profit (including small businesses).
Frequency of Response: Recordkeeping, quarterly, semi-annually and annual reporting requirements.
Estimated Annual Burden: 20,860 responses, 600 hours average burden per response, 212,766 hours total per response; 800 recordkeepers, 56.06 hours average burden per recordkeeper, 44,850 hours total burden per recordkeeper; 257,616.
Hours Total Annual Burden:
Needs and Uses: The Federal Communications Commission has completely revised its Rules governing Part 22, Public Mobile Services. These changes are needed to improve the organization and clarity of the Commission's Rules by eliminating outdated provisions and unnecessary information collection requirements, streamlining and expediting licensing and processing procedures, and affording licensees greater flexibility in providing service to the public. The intent of these revisions is to stimulate economic growth and expand access to mobile radio networks and services. The Commission published a summary of these actions in a *Report and Order*, CC

Docket Nos. 92–115, 94–46, and 93–116, adopted August 2, 1994, and released September 9, 1994.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–27428 Filed 11–2–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Fleet Financial Group, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) 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 acquire or control voting securities or assets of a company engaged 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 each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than November 17, 1994.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Fleet Financial Group, Inc., Providence, Rhode Island; to acquire at least 50 percent, and up to 100 percent, of the voting shares of The Providence Group Investment Advisory Company, Providence, Rhode Island, and thereby engage in investment advisory activities, pursuant to § 225.25(b)(4) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Barnett Banks, Inc., Jacksonville, Florida; to acquire EquiCredit Corporation, Jacksonville, Florida, and thereby engage in the origination of consumer finance home equity loans secured by first or second mortgages, and unsecured consumer finance loans; the servicing of consumer finance home equity loans secured by first or second mortgages, and unsecured consumer finance loans; the securitization of consumer finance home equity loans via sale to the secondary market; acting as principal, agent, or broker for insurance that is directly related to an extension of credit, and is limited to ensuring the repayment of an outstanding balance due (up to certain limits) on the extension of credit in the event of the death, disability, or involuntary unemployment of the debtor; pursuant to §§ 225.25(b)(1)(i) and (b)(8)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 28, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–27247; Filed 11–2–94; 8:45 am]

BILLING CODE 6210–01–F

Walter Nehrkorn; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice 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 to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than November 17, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Walter Nehrkorn, Savanna, Illinois; to acquire 100 percent of the voting shares of Savanna Bancorp, Inc., Savanna, Illinois, and thereby indirectly acquire Savanna State Bank, Savanna, Illinois.

Board of Governors of the Federal Reserve System, October 28, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–27248; Filed 11–2–94; 8:45 am]

BILLING CODE 6210–01–F

Tilden Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The 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 to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than November 28, 1994.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Tilden Bancshares, Inc., Tilden, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Tilden State Bank, Tilden, Nebraska.

Board of Governors of the Federal Reserve System, October 28, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–27249; Filed 11–2–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94N–0392]

Fujisawa USA, Inc; Withdrawal of Approval of a New Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new drug application (NDA) held by Fujisawa USA, Inc., Parkway North Center, Three Parkway North, Deerfield, IL 60015–2548 (Fujisawa). FDA is withdrawing approval of this application because of questions raised about the reliability of the data and information submitted to FDA in support of the application. Marketing of the drug has been discontinued, and Fujisawa has voluntarily requested withdrawal of approval of the application and has waived its opportunity for a hearing.

EFFECTIVE DATE: November 3, 1994.

FOR FURTHER INFORMATION CONTACT: Tamar S. Nordenberg, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION: Recently, FDA became aware of discrepancies in the data used to support approval of the following NDA held by Fujisawa:

NDA 18–440, M.V.C. 9+3.

Fujisawa has identified discrepancies in data submitted to obtain approval of the application listed above, which have raised questions about the reliability of the data. In a letter dated February 22, 1994, Lyphomed requested withdrawal of this NDA.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the NDA listed above, and all amendments and supplements thereto, is hereby withdrawn, effective November 3, 1994. Distribution of drug products in interstate commerce without an approved application is unlawful.

Dated: October 24, 1994.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 94–27196; Filed 11–2–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0396]

Drug Export; Vitinoin (Tretinoin) Gel 0.025% and Vitinoin (Tretinoin) Cream 0.025%, 0.05%, 0.1%

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Penederm, Inc., has filed an addendum application requesting approval for the export of the human drug Vitinoin (tretinoin) Gel 0.025% and Vitinoin (tretinoin) Cream 0.025%, 0.05%, 0.1% to Canada. The FDA had received a previous application on March 7, 1994, from Penederm, Inc., which was published in the **Federal Register** of May 13, 1994, requesting approval for the export of the human drug Acticin (tretinoin) Gel 0.025% to Canada. This notice announces a product name change, the addition of the cream formulations and a change in the manufacturing site.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Division of Drug Labeling Compliance (HFD–313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Penederm, Inc., 320 Lakeside Dr., suite A, Foster City, CA 94404, has filed an addendum application requesting approval for the export of the human drug Vitinoin (tretinoin) Gel 0.025% and Vitinoin (tretinoin) Cream 0.025%, 0.05%, 0.1%. This product is indicated for topical application in the treatment of acne vulgaris, primarily where comedones, papules and pustules predominate. The addendum application was received and filed in the Center for Drug Evaluation and Research on September 9, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by November 14, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: October 21, 1994.

Raymond E. Hamilton,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 94–27317; Filed 11–2–94; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of November 1994.

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: November 30, 1994; 9:00 am–5:00 pm; December 1, 1994; 9:00 am–11:45 am.

Place: Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

Purpose: The Commission: (1) Advises the Secretary on the implementation of the Program, (2) on its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table, (3) advises the Secretary in implementing the Secretary's responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions, (4) surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b), and advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines, and (5) recommends to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the National Vaccine Injury Compensation Program.

Agenda: The full Commission will meet commencing at 9:00 a.m. on Wednesday, November 30 until 5:00 p.m., and from 9:00 a.m. to 11:45 p.m. on Thursday, December 1. Agenda items will include, but not be limited to: a review of the proposed changes to the Vaccine Injury Table based on the Institute of Medicine's report entitled "Adverse Events Associated with Childhood Vaccines: Evidence Bearing on Causality" (the Section 313 report); a report from the Task Force on Safer Childhood Vaccines, including an update on the acellular pertussis vaccine; a vaccine safety update from the Centers for Disease Control and Prevention; a report on the National Vaccine Program; and routine Program reports.

Public comment will be permitted before noon and at the end of the full Commission meeting on November 30; and before the Commission adjourns on the second day on December 1. Oral presentations will be limited to 5 minutes per public speaker.

Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to Mr. Bryan Johnson, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–35, 5600 Fishers Lane, Rockville, MD 20852; Telephone (301) 443–1533.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in Conference Rooms G & H before 10:00 a.m. on November 30 and December 1. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Mr. Bryan Johnson, Division of Vaccine Injury Compensation, Bureau of Health Professions, Room 8A–35, 5600 Fishers Lane, Rockville, Maryland 20852; Telephone (301) 443–1533.

Agenda Items are subject to change as priorities dictate.

Dated: October 28, 1994.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 94–27195 Filed 11–2–94; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Consensus Development Conference on Effect of Indirect Markers of Infectious Diseases on Blood Transfusion Safety

Notice is hereby given of the NIH Consensus Development Conference on "Effect of Indirect Markers of Infectious Diseases on Blood Transfusion Safety," which will be held January 9–11, 1995, in the Masur Auditorium of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The conference begins at 8:30 a.m. on January 9 and 10 and at 9 a.m. on January 11.

In the approximately 50 years since the U.S. has had an organized national blood collection and distribution system, an increasing number of tests have been mandated, recommended by regulatory authorities, or adopted voluntarily to minimize the transmission of infectious diseases and make blood transfusion as safe as possible.

In the last 10 years alone, blood collection agencies have implemented five new tests on all donated blood—Human Immunodeficiency Virus (HIV) antibodies (later expanded from HIV–1 to HIV–1 and –2); hepatitis B core antibody (HBcAb); serum alanine aminotransferare (ALT); antibodies to Human T-cell Lymphotrophic Virus (HTLV) 1 and 2; and, most recently, antibodies to Hepatitis C Virus (HCV). And there are pressures to add tests for emerging diseases—most recently, for example, Chagas' Disease.

Most of the newer tests have been improved since they were introduced, adding to transfusion safety and reducing false positive tests and the unnecessary loss of donors. However, several of the tests that are now performed are not specific for the diseases they are targeting. Some (ALT, HBcAb) were introduced as surrogates for diseases now subject to more specific testing. Another (Serological Test for Syphilis–STS) was introduced to protect against one disease, but is being retained as much as a sign of lifestyle as for evidence of disease.

The contribution some of these tests make to transfusion safety is uncertain. This issue is important if they do not, in fact, improve safety. It has become increasingly difficult to locate donors to replace those lost to false positive tests, which results in more frequent and severe blood shortages. And the cost of the tests themselves needlessly makes blood processing and blood transfusions more expensive.

The purpose of this consensus conference is to evaluate the continued use of the syphilis, hepatitis B core antibody, and alanine aminotransferase (ALT) tests, as well as to examine the process for adding new infectious disease screening tests to improve transfusion safety. This conference will bring together specialists from the fields of hematology, cardiology, transfusion medicine, infectious disease, and nursing as well as representatives from the public.

After 1½ days of presentations and audience discussion, an independent, non-Federal consensus panel will weigh the scientific evidence and write a draft statement that it will present to the audience on the third day. The consensus statement will address the following key questions:

- What are the indications for the introduction of an infectious disease screening test to improve transfusion safety and what should be the requirements of such a test?
- To what extent do the following contribute to transfusion safety: tests for syphilis and for hepatitis B core antibody; should they continue to be used as now or should their use be modified?
- To what extent does the alanine aminotransferase (ALT) test contribute to transfusion safety; should it continue to be used as now or should its use be modified?
- What are the appropriate ways to manage potential threats to transfusion safety from emerging infectious diseases such as, for example, Chagas' disease?
- What are the highest priorities for research to improve transfusion safety by reducing the transmission of infectious disease?

The primary sponsors for this conference are the National Heart, Lung, and Blood Institute and the NIH Office

of Medical Applications of Research. The conference is cosponsored by the Transfusion Medicine Branch of the NIH Clinical Center. This is the 99th Consensus Development Conference held by NIH since the establishment of the Consensus Development Program in 1977.

Advance information on the conference program and conference registration materials may be obtained from: Debra Steward, Technical Resources International, Inc., 3202 Tower Oaks Blvd., Suite 200, Rockville, Maryland 20852, (301) 770–3153.

The consensus statement will be submitted for publication in professional journals and other publications. In addition, the consensus statement will be available beginning January 11, 1995, from the NIH Consensus Program Information Service, P.O. Box 2577, Kensington, Maryland 20891, phone 1–800–NIH–OMAR (1–800–644–6627).

Dated: October 26, 1994.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 94–27241 Filed 11–2–94; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the National Cancer Institute for November and December 1994.

These meetings will be open to the public to discuss administrative details or other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodation, should contact the contact person listed for that particular meeting.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, site visit report and recommendations, and site visit review. These applications, site visit report and recommendations, and site visit review, and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and the laboratories, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, the Committee Management Officer, National Cancer Institute, Executive Plaza North, Room 630E, 6130 Executive Blvd. MSC 7405, Bethesda, Maryland 20892–7405, (301–496–5708) will provide summaries of the meetings and rosters of committee members upon request. Other information pertaining to the meetings may be obtained from the contact person indicated for each meeting.

Committee Name: Board of Scientific Counselors, Division of Cancer Biology, Diagnosis, and Centers.

Contact Person: Dr. Ihor J. Masynk, Room 3A11, Building 31A, Telephone: (301) 496–3251.

Date of Meeting: November 14, 1994.

Place of Meeting: Conference Room 6, NIH Campus—Building 31C, 9000 Rockville Pike, Bethesda, MD 20892.

Open: November 14, 1994 8:30 am to adjournment.

Agenda: Program review and concept review of proposed research projects.

Committee Name: Subcommittee B, Cancer Research Manpower and Education Review Committee.

Contact Person: Dr. Neil West, Room 611D, Executive Plaza North, Telephone: (301) 402–2785.

Date of Meeting: November 16, 1994.

Place of Meeting: Galt House Hotel, 141 N. 4th Street, Louisville, KY.

Closed: November 16, 1994 8 am to adjournment.

Agenda: Review, discussion and evaluation of individual grant applications.

Committee Name: President's Cancer Panel.

Contact Person: Dr. Maureen Wilson, Building 31, Room 4B43, 9000 Rockville Pike, Telephone: (301) 496–1148.

Date of Meeting: November 30, 1994.

Place of Meeting: San Francisco Hilton and Towers, 333 O'Farrell Street, San Francisco, CA 94102.

Open: November 30, 1994 8 am to adjournment.

Agenda: Cancer and the Cultures of America.

Committee Name: Cancer Centers and Research Programs Review Committee.

Contact Person: Dr. David E. Maslow, Room 643A, Executive Plaza North, Telephone: (301) 496–2330.

Date of Meeting: December 1–2, 1994.

Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro, Bethesda, MD 20814.

Closed: December 1, 1994 11 am to recess; December 2, 1994 8 am to adjournment.

Agenda: Review, discussion and evaluation of individual grant applications.

Committee Name: Acrylonitrile Study Advisory Panel.

Contact Person: Dr. David McB. Howell, Building 31A, Room 11A06, Telephone: (301) 496–6927.

Date of Meeting: December 1, 1994.

Place of Meeting: Conference Room G, 6130 Executive Blvd., Rockville, MD 20852.

Open: December 1, 1994 10:30 a.m. to adjournment.

Agenda: Review and discussion of the study's progress.

Committee Name: Frederick Cancer Research and Development Center Advisory Committee.

Contact Person: Dr. Cedric W. Long, Frederick Cancer Research and Development Center, Telephone: (301) 843–1108.

Date of Meeting: December 8–9, 1994.

Place of Meeting: Building 549, Executive Board Room 10, NCI Frederick Cancer Research and Development Center, Frederick, MD 21702.

Open: December 8, 1994 8:30 a.m. to 11 a.m.

Agenda: Discuss administrative matters such as future meetings, budget, and informational items related to the operation of the NCI Frederick Cancer Research and Development Center.

Closed: December 8, 1994 11 a.m. to recess; December 9, 1994 8:30 a.m. to adjournment.

Agenda: Discussion of site visit report and response for the Mammalian Genetics Laboratory under contract with Advanced BioScience Laboratories—Basic Research Program and site visit review of the Laboratory of Molecular Virology and Carcinogenesis.

This notice is being published less than 15 days prior to the meetings due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: October 28, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–27236 Filed 11–2–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Notice of Meeting of the Board of Scientific Counselors, NICHD

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Child Health and Human Development, December 2, 1994, in Building 31, Room 2A52. This meeting will be open to the public from 9:00 a.m. to 12 noon on December 2 for the review of the Intramural Research Program and scientific presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on December 2 from 1:00 p.m. to adjournment for the review, discussion, and evaluation of individual programs

and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Committee Management Officer, NICHD, 6100 Executive Boulevard, Room 5E03, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Board members, and substantive program information upon request. Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Plummer in advance of the meeting.

Dated: October 28, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–27235 Filed 11–2–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting of Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Heart, Lung, and Blood Institute on December 8–9, 1994, National Institutes of Health, 9000 Rockville Pike, Building 10, Room 7N234, Bethesda, Maryland 20892.

This meeting will be open to the public from 9 a.m. to 5 p.m. on December 8 and from 9 a.m. to 1 p.m. on December 9 for discussion of the general trends in research relating to cardiovascular, pulmonary and certain hematologic diseases. Attendance by the public will be limited to space available.

In accordance with the provision set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public from 1 p.m. to adjournment on December 9, 1994 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–4236, will provide a summary of the meeting and a roster of the Board members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Substantive program information may be obtained from Dr. Edward D. Korn, Executive Secretary and Director, Division of Intramural Research, NHLBI, NIH, Building 10, Room 7N214, phone (301) 496–2116.

Dated: October 28, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–27240 Filed 11–2–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: November 30, 1994.

Time: 12 noon to 3 p.m.

Place: 6120 Executive Boulevard, Room 400C, Rockville, MD 20852.

Contact Person: Marilyn Semmes, Ph.D., Acting Chief, Scientific Review Branch, NIH, NIDCD, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301/496–8683.

Purpose/Agenda: To review and evaluate a grant application.

The meeting, which will be conducted as a telephone conference call, will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: October 28, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–27237 Filed 11–2–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panels (SEPs) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: November 9, 1994.

Time: 1 p.m.

Place: NIH, Westwood Building, Room 439A—Telephone Conference.

Contact Person: Dr. Gordon Johnson, Scientific Review Administrator, 5333 Westbard Ave., Room 439A, Bethesda, MD 20892, (301) 594–7216.

Name of SEP: Behavioral and Neurosciences.

Date: November 17, 1994.

Time: 2 p.m.

Place: NIH, Westwood Building, Room 303—Telephone Conference.

Contact Person: Dr. Teresa Levitin, Scientific Review Administrator, 5333 Westbard Ave., Room 303, Bethesda, MD 20892, (301) 594–7141.

Name of SEP: Biological and Physiological Sciences.

Date: November 22, 1994.

Time: 1 p.m.

Place: NIH, Westwood Building, Room 209—Telephone Conference.

Contact Person: Dr. Michael Lang, Scientific Review Administrator, 5333 Westbard Ave., Room 209, Bethesda, MD 20892, (301) 594–7332.

Name of SEP: Behavioral and Neurosciences.

Date: December 1, 1994.

Time: 1 p.m.

Place: NIH, Westwood Building, Room 232—Telephone Conference.

Contact Person: Dr. Kenneth Newrock, Scientific Review Administrator, 5333 Westbard Ave., Room 232—Bethesda, MD 20892, (301) 594–7123.

Purpose/Agenda: To review Small Business Innovation Research Program grant applications.

Name of SEP: Multidisciplinary Sciences.

Date: December 6, 1994.

Time: 3 p.m.

Place: NIH, Westwood Building, Room 2A11—Telephone Conference.

Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 5333 Westbard Ave., Room 2A11, Bethesda, MD 20892, (301) 594–7276.

The meetings will be closed in accordance with the provisions set forth in sec. 552(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the difficulty

of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 28, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–27238 Filed 11–2–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panels (SEPs) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: November 9–11, 1994.

Time: 8 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Daniel McDonald, Scientific Review Admin., 5333 Westbard Ave., Room 220, Bethesda, MD 20892, (301) 594–7301.

Name of SEP: Microbiological and Immunological Sciences.

Date: November 10, 1994.

Time: 1 p.m.

Place: NIH, Westwood Building, Room A1—Telephone Conference.

Contact Person: Dr. Gilbert Meier, Scientific Review Administrator, 5333 Westbard Ave., Room A1, Bethesda, MD 20892, (301) 594–7118.

Name of SEP: Behavioral and Neurosciences.

Date: November 25, 1994.

Time: 1 p.m.

Place: NIH, Westwood Building, Room 325C—Telephone Conference.

Contact Person: Dr. Leonard Jakubczak, Scientific Review Admin., 5333 Westbard Ave., Room 325C, Bethesda, MD 20892, (301) 594–7198.

Name of SEP: Behavioral and Neurosciences

Date: November 30, 1994.

Time: 2 p.m.

Place: NIH, Westwood Building, Room 325C—Telephone Conference.

Contact Person: Dr. Leonard Jakubczak, Scientific Review Admin., 5333 Westbard Ave., Room 325, Bethesda, MD 20892, (301) 594–7198.

Name of SEP: Chemistry and Related Sciences.

Date: November 29, 1994.

Time: 10 a.m.

Place: NIH, Westwood Building, Room 435—Telephone Conference.

Contact Person: Dr. Marcelina Powers, Scientific Review Administrator, 5333 Westbard Ave., Room 435, Bethesda, MD 20892, (301) 594–7120.

Name of SEP: Biological and Physiological Sciences.

Date: November 30, 1994.

Time: 1:30 p.m.

Place: NIH, Westwood Building, Room 353—Telephone Conference.

Contact Person: Dr. Anne Clark, Scientific Review Administrator, 5333 Westbard Ave., Room 353, Bethesda, MD 20892, (301) 594–7115.

Name of SEP: Behavioral and Neurosciences.

Date: December 1, 1994.

Time: 2 p.m.

Place: NIH, Westwood Building, Room 325C—Telephone Conference.

Contact Person: Dr. Leonard Jakubczak, Scientific Review Admin., 5333 Westbard Ave., Room 325C, Bethesda, MD 20892, (301) 594–7198.

Name of SEP: Microbiological and Immunological Sciences.

Date: December 9, 1994.

Time: 9 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Gilbert Meier, Scientific Review Admin., 5333 Westbard Ave., Room A1, Bethesda, MD 20892, (301) 594–7118.

Name of SEP: Microbiological and Immunological Sciences.

Date: December 12, 1994.

Time: 1 p.m.

Place: NIH, Westwood Building, Room 238—Telephone Conference.

Contact Person: Dr. Martin Slater, Scientific Review Administrator, 5333 Westbard Ave., Room 238, Bethesda, MD 20892, (301) 594–7176.

Name of SEP: Microbiological and Immunological Sciences.

Date: December 13, 1994.

Time: 12 Noon.

Place: NIH, Westwood Building, Room 238—Telephone Conference.

Contact Person: Dr. Martin Slater, Scientific Review Administrator, 5333 Westbard Ave., Room 238, Bethesda, MD 20892, (301) 594–7176.

The meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 28, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–27239 Filed 11–2–94; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance

testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACCU-LAB, Inc., 405 Alderson St., Schofield, WI 54476, 800-627-8200 (formerly: Alpha Medical Laboratory, Inc., Employee Health Assurance Group, ExpressLab, Inc.).

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Rd., Suite 21, Nashville, TN 37211, 615-331-5300.

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800-541-4931/205-263-5745.

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817-282-2257.

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703-802-6900.

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119-5412, 702-733-7866.

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801-583-2787.

Baptist Medical Center—Toxicology Laboratory, 9601 I-630, Exit 7, Little Rock, AR 72205-7299, 501-227-2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Bayshore Clinical Laboratory, 4555 W. Schroeder Dr., Brown Deer, WI 53223, 414-355-4444/800-877-7016.

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305-325-5810.

Center for Laboratory Services, a Division of LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913-888-3927.

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310-215-6020.

Clinical Reference Lab, 11850 West 85th St., Lenexa, KS 66214, 800-445-6917.

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800-876-3652/417-836-3093.

Damon/MetPath, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214-929-0535, (formerly: Damon Clinical Laboratories).

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38-H, Great Lakes, IL 60088-5223, 708-688-2045/708-688-4171.

Dept. of the Navy, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert St., Norfolk, VA 23511-2597, 804-444-8089 ext. 317.

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912-244-4468.

Drug Labs of Texas, 15201 I-10 East, Suite 125, Channelview, TX 77530, 713-457-3784.

DrugProof, Division of Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800-898-0180 / 206-386-2672, (formerly: Laboratory of Pathology of Seattle, Inc.).

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215-674-9310.

Eagle Forensic Laboratory, Inc., 950 N. Federal Highway, Suite 308, Pompano Beach, FL 33062, 305-946-4324.

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601-236-2609, (moved 6/16/93).

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608-267-6267.

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800-725-3784/915-563-3300, (formerly: Harrison & Associates Forensic Laboratories).

HealthCare/MetPath, 24451 Telegraph Rd., Southfield, MI 48034, Inside MI: 800-328-4142 / Outside MI: 800-225-9414, (formerly: HealthCare/Preferred Laboratories).

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513-569-2051.

Laboratory Specialists, Inc., 113 Jarrell Dr., Belle Chasse, LA 70037, 504-392-7961.

Marshfield Laboratories, 1000 North Oak Ave., Marshfield, WI 54449, 715-389-3734/800-222-5835.

Med-Chek/Damon, 4900 Perry Hwy., Pittsburgh, PA 15229, 412-931-7200, (formerly: Med-Chek Laboratories, Inc.).

MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38175, 901-795-1515.

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699-0008, 419-381-5213.

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800-832-3244/612-636-7466.

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317-929-3587.

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800-752-1835/309-671-5199.

MetPath, Inc., 1355 Mittel Blvd., Wood Dale, IL 60191, 708-595-3888.

MetPath, Inc., One Malcolm Ave., Teterboro, NJ 07608, 201-393-5000.

Metropolitan Reference Laboratories, Inc., 2320 Schuetz Rd., St. Louis, MO 63146, 800-288-7293.

National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410-536-1485, (formerly: Maryland Medical Laboratory, Inc.).

National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800-749-3784, (formerly: Med Arts Lab).

National Health Laboratories Incorporated, 2540 Empire Dr., Winston-Salem, NC 27103-6710, Outside NC: 919-760-4620/800-334-8627/Inside NC: 800-642-0894.

National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A-15, Nashville, TN 37217, 615-360-3992/800-800-4522.

National Health Laboratories Incorporated, 13900 Park Center Rd., Herndon, VA 22071, 703-742-3100.

National Psychopharmacology Laboratory, Inc., 9320 Park W. Blvd., Knoxville, TN 37923, 800-251-9492.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805-322-4250.

Nichols Institute Substance Abuse Testing (NISAT), 7470-A Mission Valley Rd., San Diego, CA 92108-4406, 800-446-4728/619-686-3200 (formerly: Nichols Institute).

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800-322-3361.

Occupational Toxicology Laboratories, Inc., 2002 20th St., Suite 204A, Kenner, LA 70062, 504-465-0751.

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440-0972, 503-687-2134.

Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509-926-2400.

PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908-769-8500/800-237-7352.

PharmChem Laboratories, Inc., 1505-A O'Brien Dr., Menlo Park, CA 94025, 415-328-6200/800-446-5177.

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817-595-0294 (formerly: Harris Medical Laboratory).

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913-338-4070/800-821-3627 (formerly: Physicians Reference Laboratory Toxicology Laboratory).

Poisonlab, Inc., 7272 Clairemont Mesa Rd., San Diego, CA 92111, 619-279-2600/800-882-7272.

Puckett Laboratory, 4200 Mamie St., Hattiesburgh, MS 39402, 601-264-3856/800-844-8378.

Regional Toxicology Services, 15305 N.E. 40th St., Redmond, WA 98052, 206-882-3400.

Roche Biomedical Laboratories, Inc., 1120 Stateline Rd., Southaven, MS 38671, 601-342-1286.

Roche Biomedical Laboratories, Inc., 69 First Ave., Raritan, NJ 08869, 800-437-4986.

Roche CompuChem Laboratories, Inc., A Member of the Roche Group, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919-549-8263/800-833-3984 (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory).

Roche CompuChem Laboratories, Inc., Special Division, A Member of the Roche Group, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919-549-8263 (Formerly: CompuChem Laboratories, Inc.—Special Division).

Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130.
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788.
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–848–8800.
Sierra Nevada Laboratories, Inc., 888 Willow St., Reno, NV 89502, 800–648–5472.
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91045, 818–376–2520.
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 32748, 904–787–9006 (formerly: Doctors & Physicians Laboratory).
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 404–934–9205 (formerly: SmithKline Bio-Science Laboratories).
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 708–885–2010 (formerly: International Toxicology Laboratories).
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–523–5447 (formerly: SmithKline Bio-Science Laboratories).
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (formerly: SmithKline Bio-Science Laboratories).
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176.
Southwest Laboratories, 2727 W. Baseline Rd., Suite 6, Tempe, AZ 85283, 602–438–8507.
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73102, 405–272–7052.
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273.
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.
TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.).
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–343–8191 (formerly: MetWest-BPL Toxicology Laboratory).

The following laboratory withdrew from the Program on October 22, 1994:

Bioran Medical Laboratory, 415 Massachusetts Ave., Cambridge, MA 02139, 617–547–8900.

The following laboratory withdrew from the Program on October 31, 1994:

St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628.

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94–27080 Filed 11–2–94; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–94–3487; FR–3630–N–03]

Notice of Funding Availability for FY 1994 Congregate Housing Service Program: Re-Opening of Application Deadline for Certain Applicants

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD; Office of the Administrator, Farmers Home Administration (FmHA).

ACTION: Notice of re-opening of application deadline for certain applicants.

SUMMARY: HUD is re-opening the application deadline for Congregate Housing Services Program applicants that were adversely affected in their application preparation because of flooding in the State of Georgia due to Tropical Storm Alberto.

DATES: For qualified applicants, the application deadline is re-opened. The new deadline date is November 17, 1994.

FOR FURTHER INFORMATION CONTACT: Jerold S. Nachison, Chief, Services Branch, Office of Elderly and Assisted Housing, 451 Seventh Street S.W., Room 6122, Washington, DC 20410; (202) 708–3291.

SUPPLEMENTARY INFORMATION: On April 29, 1994 (59 FR 22236), HUD published a Notice of Funding Availability (NOFA) (April 29, 1994 NOFA) announcing the availability of FY 1994 funds for Congregate Housing Services Programs, and an application deadline date of July 13, 1994.

This notice announces the re-opening of the application deadline set forth in the April 29, 1994 NOFA for eligible applicants that were adversely affected in the preparation or submission of applications because of flooding in the State of Georgia due to Tropical Storm Alberto. Eligible applicants are those whose projects are located in the jurisdiction of the Atlanta, Georgia Field Office and who were adversely affected by the flooding. Eligible applicants must certify in writing that they were adversely affected in the preparation or submission of applications due to the flooding. For those applicants that qualify under this criteria, and that otherwise meet all other criteria contained in the April 29, 1994 NOFA, the application deadline is re-opened for a period of fourteen (14) days from the date of publication of this notice.

Accordingly, for all eligible applications, as described in this notice, applications are due at 3:00 p.m., local time on November 17, 1994. The applications must be sent to: Director of Housing, Atlanta State Office, Richard B. Russell Federal Building, 75 Spring Street, SW, Atlanta, GA 30303–3388. All guidance and criteria contained in the April 29, 1994 NOFA applies to applications submitted under this re-opened application deadline.

Dated: October 31, 1994.

Nicolas P. Retsinas,

Assistant Secretary For Housing—Federal Housing Commissioner.

[FR Doc. 94–27293 Filed 11–2–94; 8:45 am]

BILLING CODE 4210–27–M

Office of Administration

[Docket No. N–94–3832]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the

information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 28, 1994.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Proposed Requirements for Disclosure of Lead-Based Paint Hazards in Residential Housing.

Office: Lead-Based Paint Abatement and Poisoning Prevention.

Description of the Need for the Information and its Proposed Use: HUD is requesting approval of recordkeeping requirements to ensure compliance for persons selling, leasing, or acting as agents in transactions to sell or lease target housing. This rulemaking is being issued under the authority of the Residential Lead-Based Paint Hazard Reduction Act of 1992. The records will acknowledge that the seller, leaser, and agents complied with the HUD/EPA requirements.

Form Number: None.

Respondents: Individuals or Households, Businesses or Other For-Profit, Federal Agencies or Employees, and Small Businesses or Organizations.

Frequency of Submission: Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recordkeeping	15,441,000		1		.26		3,957,210

Total Estimated Burden Hours: 3,957,210.

Status: New.

Contact: Conrad C. Arnolts, HUD, (202) 755–1810; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: October 28, 1994.

Proposal: Outline Specifications.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: This form is prepared by architects employed by Public Housing Authorities (PHAs) or by Turnkey Developers' specifications to establish quality and the kind of materials and equipment to be incorporated into housing developments. The information is used by the PHA and HUD to determine that specified items comply with HUD standards and codes that are appropriate for the project.

Form Number: HUD–5087.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: On Occasion and Recordkeeping.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
HUD–5087	240		3.4		3		2,448
Recordkeeping	816		1		.25		204

Total Estimated Burden Hours: 2,652.

Status: Reinstatement, no changes.

Contact: William Thorson, HUD, (202) 708–4703; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: October 28, 1994.

[FR Doc. 94–27258 Filed 11–2–94; 8:45 am]

BILLING CODE 4210–01–M

Office of the Secretary

[Docket No. N–94–3831; FR–3794–N–01]

Privacy Act of 1974; Proposed Amendment to a Systems of Records

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Notification of a proposed amendment to an existing system of records.

SUMMARY: The Department of Housing and Urban Development (HUD) proposes to amend its system of records entitled "Single Family Computerized Homes Underwriting Management System (CHUMS), HUD/H–5" in its inventory of systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. Notice of this system was last published at 55 FR 17676, April 26, 1990.

EFFECTIVE DATE: This action will be effective without further notice on December 5, 1994, unless comments are received that would result in a contrary determination.

ADDRESSES: Interested persons are invited to submit comments regarding the proposed amendment to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. An original and four copies of comments should be submitted. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jeanette Smith, Departmental Privacy Act Officer, at (202) 708–2374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: HUD/H–5 contains a variety of records relating to HUD's single-family underwriting process. This system aids the Department in the processing of mortgagee applications for property appraisal and commitment for HUD/FHA mortgage insurance, and in the subsequent administration of HUD/FHA mortgage insurance programs. Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) as amended, notice is given that HUD proposes to add a new routine use category to reflect the fact that the records will be utilized in a computer matching program. This new routine use identifies the categories of users (i.e.,

the Department of Agriculture, Education, Veteran Affairs, the Small Business Administration, and other agencies) to whom records may be disclosed pursuant to authorized and approved computer matching programs undertaken for debt collection purposes.

The amended portion of the system notice is set forth below. Previously, the system and a prefatory statement containing the general routine uses applicable to all HUD systems of records was published in the "Federal Register Privacy Act Issuances, 1991 Compilation, Volume I."

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be afforded a 30-day period in which to comment on the new record system.

The system report, as required by 5 U.S.C. 552a(r), has been submitted to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate and the Office of Management and Budget (OMB), pursuant to paragraph 4c of Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records about Individuals" dated June 25, 1993 (58 FR 36075, July 2, 1993).

Authority: 5 U.S.C. 552a, 88 Stat. 1896; sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Issued at Washington, D.C., September 26, 1994.

Marilynn A. Davis,

Assistant Secretary for Administration.

HUD/H–5

SYSTEM NAME: Single Family Computerized Homes Underwriting Management System (CHUMS)

Routine uses of records maintained in the system, including categories of users and the purposes for such uses.

See routine uses paragraph in prefatory statement. Other routine uses include:

a. To other agencies; such as, Departments of Agriculture, Education and Veterans Affairs, and the Small Business Administration—for use of HUD's Credit Alert Interactive Voice Response System (CAIVRS) to prescreen applicants for loans or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Government.

[FR Doc. 94–27257 Filed 11–2–94; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–040–1610–00; AZA 28793]

Intent To Prepare an Environmental Impact Statement Analyzing the Impacts of the Proposed Exchange of Approximately 14,000 Acres of Public Land Near Safford, AZ, for Other Private Lands of Similar Value in Southeastern Arizona

AGENCY: Bureau of Land Management, Safford District, AZ.

ACTION: Notice of intent to prepare an environmental impact statement for the exchange of public lands near Safford, Arizona.

SUMMARY: This notice advises the public that the Bureau of Land Management intends to prepare an environmental impact statement to analyze the impacts of exchanging approximately 14,000 acres of public land near Safford, Arizona for private lands of similar value in southeastern Arizona.

1. Identification of the geographic area involved: The proposed land exchange involves approximately 14,000 acres of public lands currently managed by the Safford District, Bureau of Land Management that are located near Safford, Arizona.

2. The no action alternative and alternatives that consider various combinations of selected and offered lands will be analyzed.

3. General types of issues anticipated: The proposed land exchange involves issues related to the natural resource values and uses of the public lands in question. These issues are expected to involve impacts on water resources, native vegetation, riparian areas, wildlife, recreation, Wild and Scenic Rivers, socioeconomics, public access, grazing allotments, county tax base, minerals, and cultural resources.

4. Disciplines to be represented and used to prepare the environmental impact statement: Hydrology, botany, wildlife, recreation, realty, range, economics, geology, and archaeology.

DATES: The kind and extent of public participation: Public open houses/scoping meetings will be held at the following locations and times:

December 6, 1994, 4–8 p.m., Safford District BLM Office, 711 14th Avenue, Safford, Arizona 85546, (602) 428–4040

December 7, 1994, 5–9 p.m., Greenlee County Offices, 4th Street & Leonard Avenue, 2nd Floor Conference Room, Clifton, Arizona 85533, (602) 865–2072

December 13, 1994, 4–8 p.m., BLM Arizona State Office, 3707 North 7th Street, Phoenix, Arizona 85014, (602) 650–0200

December 15, 1994, 4–8 p.m., Udall Center, Room 2 and 3, 7200 East Tanque Verde Road, Tucson, Arizona 85715, (602) 791–4931

Public input may be submitted during the public meeting or in writing to the address given in the below section. Public comments will be accepted until January 17, 1995.

ADDRESSES: Written comments concerning the environmental impact statement should be submitted to Margaret Jensen, Gila Resource Area Manager, Bureau of Land Management, Safford District Office, 711 14th Avenue, Safford, Arizona 85546.

FOR FURTHER INFORMATION CONTACT: Mike McQueen, Planning and Environmental Coordinator, 711 14th Avenue, Safford, Arizona 85546. Phone (602) 428–4040.

Dated: October 25, 1994.

Vernon L. Saline,

Acting District Manager.

[FR Doc. 94–27204 Filed 11–2–94; 8:45 am]

BILLING CODE 4310–32–M

[AZ–040–1610–00; AZA 28789]

Notice of Intent To Prepare an Environmental Impact Statement Analyzing the Impacts of the Proposed Exchange of Approximately 3,800 Acres of Public Land Near Morenci, AZ, for Other Private Lands of Similar Value in Southeastern Arizona

AGENCY: Bureau of Land Management, Safford District, AZ.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for the Exchange of Public Lands near Morenci, Arizona.

SUMMARY: This notice advises the public that the Bureau of Land Management intends to prepare an environmental impact statement to analyze the impacts of exchanging approximately 3,800 acres of public land near Morenci, Arizona for private lands of similar value in southeastern Arizona.

1. Identification of the geographic area involved: The proposed land exchange involves approximately 3,800 acres of public lands currently managed by the Safford District, Bureau of Land Management that are located near Morenci, Arizona.

2. The no action alternative and alternatives that consider various combinations of selected and offered lands will be analyzed.

3. General types of issues anticipated: The proposed land exchange involves issues related to the natural resource values and uses of the public lands in question. These issues are expected to involve impacts on water resources, native vegetation, riparian areas, wildlife, recreation, Wild and Scenic Rivers, socioeconomics, public access, grazing allotments, county tax base, minerals, and cultural resources.

4. Disciplines to be represented and used to prepare the environmental impact statement: Hydrology, botany, wildlife, recreation, realty, range, economics, geology, and archaeology.

DATES: The kind and extent of public participation: Public open houses/scoping meetings will be held at the following locations and times:

December 6, 1994 4–8 p.m., Safford District BLM Office, 711 14th Avenue, Safford, Arizona 85546, (602) 428–4040

December 7, 1994 5–9 p.m., Greenlee County Offices, 4th Street and Leonard Avenue, 2nd Floor Conference Room, Clifton, Arizona 85533, (602) 865–2072

December 13, 1994 4–8 p.m., BLM Arizona State Office, 3707 North 7th Street, Phoenix, Arizona 85014, (602) 650–0200

December 15, 1994 4–8 p.m., Udall Center, Room 2 and 3, 7200 East Tanque Verde Road, Tucson, Arizona 85715, (602) 791–4931

Public input may be submitted during the public meeting or in writing to the address in the section below. Public comments will be accepted until January 17, 1995.

ADDRESSES: Written comments concerning the environmental impact statement should be submitted to Margaret Jensen, Gila Resource Area Manager, Bureau of Land Management, Safford District Office, 711 14th Avenue, Safford, Arizona 85546.

FOR FURTHER INFORMATION CONTACT: Mike McQueen, Planning and Environmental Coordinator, 711 14th Avenue, Safford, Arizona 85546. Phone (602) 428–4040.

Dated: October 25, 1994.

Vernon L. Saline,

Acting District Manager.

[FR Doc. 94–27198 Filed 11–2–94; 8:45 am]

BILLING CODE 4310–32–M

[CO–017–1610–00; DES 94–43]

Availability of the Draft White River Resource Management Plan and Environmental Impact Statement

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Availability of the Draft White River Resource Management Plan and Environmental Impact Statement.

SUMMARY: In compliance with CFR 40 1503.1, the Bureau of Land Management is inviting comments on a draft resource management plan (RMP) and environmental impact statement (EIS) for the White River Resource Area. The White River Resource Area is located in northwest Colorado. It encompasses 2,675,300 acres of federal, state, and private lands. The draft RMP and EIS incorporates decisions made in earlier land use plans and also proposes management to resolve issues not addressed in the earlier plans.

DATES: Comments on the draft RMP and EIS will be accepted during a 90-day comment period. All comments must be received by February 10, 1995. Public hearings will be held in Meeker, Denver, Grand Junction, and Rangely, Colorado, on January 9, 10, 11, and 12, 1995, respectively.

ADDRESSES: Address for written comments: Bureau of Land Management, White River Resource Area, P.O. Box 928, Meeker, CO 81641; Fax 303–878–5717. Addresses for public hearings: BLM, White River Resource Area Office, 73544 Highway 64, Meeker, Colorado (January 9); Best Western Denver West, 11595 West Sixth Avenue, Denver, Colorado (January 10); BLM, Grand Junction District Office, 2815 H Road, Grand Junction, Colorado (January 11); and Chevron O&M Building, 100 Chevron Road, Rangely, Colorado (January 12).

FOR FURTHER INFORMATION CONTACT: Joann Graham, Project Manager, Bureau of Land Management, White River Resource Area, Meeker, CO 81641; Telephone 303–878–3601; Fax 303–878–5717.

SUPPLEMENTARY INFORMATION: All hearings will begin at 7:30 p.m. An informal open house will be held prior to each hearing. Open houses will run from 6:30 p.m. to 7:15 p.m. BLM specialists will be present at open houses to answer questions. Please include your name and complete mailing address on all written and oral comments submitted.

Dated: October 20, 1994.

Robert W. Schneider,

Acting District Manager.

[FR Doc. 94–27199 Filed 11–2–94; 8:45 am]

BILLING CODE 4310–JB

National Park Service

National Capital Region, Public Affairs; Notice of Public Meeting

The National Park Service is seeking public comments and suggestions on the planning of the 1994 Christmas Pageant of Peace, which opens December 7 on the Ellipse, south of the White House.

A public meeting will be held at the Park Service's National Capital Region Building in East Potomac Park at 1100 Ohio Drive SW., Room 234, at 10:30 a.m., November 22, 1994.

Persons who would like to comment at the meeting should notify the National Park Service by November 18, by calling the Office of Public Affairs between 9 a.m. and 4 p.m., weekdays at (202) 619–7225. Persons who cannot attend the meeting may send written comments to Regional Director, National Capital Region, 1100 Ohio Drive SW., Washington, D.C. 20242. Written comments will be accepted until November 25, 1994.

Dated: October 13, 1994.

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 94–27310 Filed 11–2–94; 8:45 am]

BILLING CODE 4310–70–M

Fish and Wildlife Service

Sport Fishing and Boating Partnership Council Meeting

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Alp. I), this notice announces a workshop which is designed to resolve growing conflicts over protected species restoration. This meeting is sponsored by the Sport Fishing and Boating Partnership Council. The meeting is open to the public, pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b). Interested persons may make oral statements to the Council or may file written statements for consideration. Summary minutes of the workshop will be maintained by the Coordinator for the Sport Fishing and Boating Partnership Council at 4401 North Fairfax Drive, Arlington, VA 22203, and will be available for public inspection during regular business hours (7:30–4:00) Monday through Friday within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

DATES: The Sport Fishing and Boating Partnership Council's meeting will be held on November 29, 1994, beginning at 8:30 a.m.

PLACE: The meeting will be held in the Potowmack Landing Restaurant at the Washington Sailing Marina, Number 1 Marina Drive, Alexandria, Virginia 22314.

AGENDA: The Council will receive reports from the Initiatives, Boating, Ethics, and Education Committees. The Council will present recommendations from the Recreational Fisheries Stewardship Initiative to the Director of the Fish and Wildlife Service and the Secretary.

CONTACT PERSON FOR MORE INFORMATION: For further information individuals may contact Chris Dlugokenski at 703 358–2156.

Dated: October 26, 1994.

Bruce Blanchard,

Deputy Director.

[FR Doc. 94–27203 Filed 11–2–94; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32592]

Edward M. Berntsen; Continuance in Control Exemption; Tacoma Eastern Railway Co.

Edward M. Berntsen (petitioner) has filed a notice of exemption to continue in control of Tacoma Eastern Railway Co. (TE), upon TE becoming a class III rail carrier.

TE, a noncarrier, has concurrently filed a notice of exemption in Finance Docket No. 32591, *Eastern Railway Co.—Lease and Operation Exemption—City of Tacoma, Washington*, to lease and operate approximately 124.9 miles of rail lines owned by the City of Tacoma (City) or leased by the City from Weyerhaeuser Co., in Pierce, Thurston and Lewis Counties, WA. That transaction was expected to be consummated on or after October 11, 1994.

Petitioner also controls a nonconnecting class III rail carrier, Lewis & Clark Railway Company (LC).[1] It appears that LC leases and operates a 29.5-mile line owned by Chelatchie Prairie Railroad, Inc., between Rye and Chelatchie, in Clark County, WA.[2]

Petitioners state that: (1) the properties operated by TE and LC do not connect with each other; (2) the continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Fritz R. Kahn, P.C., Suite 750 West, 1100 New York Avenue NW., Washington, DC 20005–3934

Decided: October 25, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–27264 Filed 11–2–94; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32600]

Burlington Northern Railroad Co.; Trackage Rights Exemption; Southern Electric Railroad Co.

Southern Electric Railroad Company (SERCO) has agreed to grant approximately 3,600 feet of overhead trackage rights to Burlington Northern Railroad Company (BN) over SERCO's rail line,[1] located in Jefferson County, AL. The trackage rights extend from BN's main line at milepost 715.1 to milepost 0.77 near Alabama Power Company's (APC) Plant Miller at West Jefferson, AL. The purpose of the grant of trackage rights is to permit BN to provide transportation service to APC's Plant Miller.[2] The trackage rights were to become effective on or after October 21, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Janice G. Barber, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102–5384.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: October 26, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–27262 Filed 11–2–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32591]

Tacoma Eastern Railway Co.; Lease and Operation Exemption; City of Tacoma, WA

Tacoma Eastern Railway Co. (TE), a noncarrier, has filed a notice of exemption to lease and operate certain rail lines owned by the City of Tacoma (City) or leased by the City from Weyerhaeuser Co., in Pierce, Thurston and Lewis Counties, WA, as follows: (1) From milepost 2192.01 (−1.89) at Tacoma Jct. to milepost 2193.9 (0.0) at Tacoma; (2) from milepost 0.0 at Tacoma to milepost 64.5 at Morton; (3) from milepost 0.0 at Frederickson to milepost 36.8 at Maytown; (4) from milepost 0.0 at Maytown to milepost 18.2 at Chehalis; and (5) from milepost 0.0 at Park Junction to milepost 3.5 at National, totalling approximately 124.9 miles. The transaction was expected to be consummated on or after October 11, 1994.

This proceeding is related to *Edward M. Berntsen—Continuance in Control Exemption—Tacoma Eastern Railway Co.*, Finance Docket No. 32592, wherein Edward M. Berntsen seeks to continue in control of TE and the Lewis & Clark Railway Company (LC), upon TE becoming a class III rail carrier.[1]

Any comments must be filed with the Commission and served on: Fritz R. Kahn, P.C., Suite 750 West, 1100 New York Avenue, NW., Washington, DC 20005–3934.

This notice is filed under 49 CFR 1150.31. If the notice contains false or

[1] Edward M. Berntsen is President of both TE and LC.

[2] *See, Lewis & Clark Railway Company—Exemption Operation—Chelatchie Prairie Railroad, Inc.*, Finance Docket No. 31042 (ICC served May 22, 1987).

[1] Construction of the involved line was authorized in Finance Docket No. 31972, *Southern Electric Railroad Company—Construction Exemption—Jefferson County, AL* (ICC served Mar. 17, 1992).

[2] BN will operate its own trains with its own crews over the SERCO line.

[1] Edward M. Berntsen is President of both TE and LC.

misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: October 25, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–27263; Filed 11–2–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32578]

RailTex, Inc.; Continuance in Control Exemption; New England Central Railroad, Inc.

RailTex, Inc. (RailTex), a noncarrier, has filed a verified notice under 49 CFR 1180.2(d)(2) to continue to control New England Central Railroad, Inc. (NECR), upon the latter's becoming a class II carrier.

NECR has concurrently filed a verified notice of exemption in *New England Central Railroad, Inc.—Acquisition Exemption—Lines between East Alburgh, VT and New London, CT*, Finance Docket No. 32432, for NECR's acquisition and operation of 325 miles of rail line owned by Central Vermont Railway, Inc., a wholly-owned subsidiary of Grand Trunk Corporation, between milepost 15.6 in East Alburgh, VT, and milepost 0.24 in New London, CT. Consummation of the continuance in control transaction is intended to occur upon commencement of operations by NECR, on or after the effective date of the exemption, in Finance Docket No. 32432.[1]

RailTex currently controls 13 class III railroads: Chesapeake & Albemarle Railroad Company, Inc.; Indiana Southern Railroad, Inc.; North Carolina & Virginia Railroad Company, Inc.; Mid-Michigan Railroad, Inc.; Missouri & Northern Arkansas Railroad Company, Inc.; Austin & Northwestern Railroad Company, Inc.; South Carolina Central Railroad Company, Inc.; Dallas, Garland & Northeastern Railroad, Inc.; San Diego & Imperial Valley Railroad Company, Inc.; New Orleans Lower Coast Railroad Company, Inc.; Michigan Shore Railroad Company, Inc.; Salt Lake City Southern Railroad Company, Inc.; and Grand Rapids Eastern Railroad, Inc. RailTex also controls two Canadian rail carriers.

The continuance in control transaction is exempt from the prior approval requirements of 49 U.S.C. 11343 under 49 CFR 1180.2(d)(2) because: (1) NECR does not connect with any other railroads in the corporate family; (2) the continuance in control is not a part of a series of anticipated transactions that would connect NECR with any other railroad in its corporate family; and (3) the transaction does not involve a class I carrier.

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the exemption's effectiveness. Pleadings must be filed with the Commission and served on: Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

Decided: October 27, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–27294; Filed 11–2–94; 8:45 am]

BILLING CODE 7035–01–P

[1] The exemption in Finance Docket No. 32432 was scheduled to take effect on October 28, 1994, but was stayed by decision of the Commission served on October 27, 1994.

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Michigan Materials and Processing Institute

Notice is hereby given that, on August 22, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Michigan Materials and Processing Institute ("MMPI") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The following companies were recently accepted as Members in MMPI: Akemi, Inc., Eaton Rapids, MI; Haworth Corporation, Holland, MI. The following University was recently accepted as a Member in MMPI: University of Michigan-Dearborn, Dearborn, MI.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MMPI intends to file additional written notification disclosing all changes in membership.

On August 7, 1990, MMPI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 6, 1990, 55 FR 36710. The last notification was filed with the Department on May 3, 1994. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 25, 1994, 59 FR 27033.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–27202 Filed 11–2–94; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Owen M. Babbe, Jr., Revocation of Registration

On March 3, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Owen M. Babbe, Jr., D.D.S. of Coeur D'Arlene, Idaho, proposing to revoke his DEA Certificate of Registration AB7962891, and to deny any pending applications for registration as a practitioner. 21 U.S.C. 823(f) (1992). The Basis for the Order to Show Cause was that Dr. Babbe lacked authority to handle controlled substances in the State of Idaho, 21 U.S.C. 824(a)(3), and that his continued registration is inconsistent with the public interest, as the term is used in 21 U.S.C. 823(f) and 824(a)(4).

The Order to Show Cause was sent to Dr. Babbe's registered location in Coeur D'Arlene, Idaho by registered mail on March 3, 1994, but was returned to DEA unclaimed. Based on information obtained from the Washington State Department of Licensing, on April 26, 1994, the Order to Show Cause was sent registered mail to the address provided on Dr. Babbe's driver's license. On May 2, 1994, a signed receipt was returned to DEA indicating a delivery date of April 28, 1994. Thereafter, on June 10, 1994, the Order to Show Cause, in its original envelope, was returned marked unclaimed. More than thirty days have passed since the Order to Show Cause was delivered at Dr. Babbe's last known address. The DEA has received no response from Dr. Babbe or anyone purporting to represent him.

Therefore, pursuant to 21 CFR 1301.54(d), the Deputy Administrator finds that Dr. Babbe has waived his opportunity for a hearing on the issues raised by the Order to Show Cause. The Deputy Administrator has carefully considered the investigative file in this matter and enters his final order based on the provisions of 21 CFR 1301.54(e) and 1301.57.

The Deputy Administrator finds that on October 10, 1991, the Idaho State Board of Pharmacy suspended Dr. Babbe's controlled substance registration. On June 24, 1992, the Idaho State Board of Dentistry (Dentistry Board) revoked Dr. Babbe's license to practice dentistry for a period of five (5) years. The Dentistry Board concluded that on four occasions Dr. Babbe's treatment acts and dental practices constituted gross malpractice and on four other occasions his actions constituted malpractice.

The Deputy Administrator has consistently held that DEA cannot maintain the registration of a practitioner who is without State authority to handle controlled substances. *Nathaniel S. Lehrman, M.D.*, 59 FR 44780 (1994) and *Franz A. Arakaky, M.D.*, 59 FR 42074 (1994); *see also Elliott Monroe, M.D.*, 57 FR 23246 (1992) and *Bobby Watts, M.D.*, 53 FR 11920 (1987). Dr. Babbe is not authorized to administer, dispense, prescribe, or otherwise handle controlled substances in the State of Idaho wherein he is registered with the DEA. In light of this, the Deputy Administrator concludes that it is not necessary to address whether Dr. Babbe's continued registration is otherwise consistent with the public interest.

Based on the foregoing, the Deputy Administrator of the Drug Enforcement Administration concludes that Dr. Babbe's DEA registration must be revoked. 21 U.S.C. 824(a)(3). Accordingly, the Deputy Administrator pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104 (59 FR 23637), hereby orders that DEA Certificate of Registration, AB7962891, previously issued to Owen M. Babbe, Jr., D.D.S., be, and it hereby is, revoked, and that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective on November 3, 1994.

Dated: October 28, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–27208 Filed 11–2–94; 8:45 am]

BILLING CODE 4410–09–M

Office of Community-Oriented Policing Services

FY 1995 Community Policing Discretionary Grants

AGENCY: Office of Community-Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Department of Justice, Office of Community-Oriented Policing Services ("COPS") announces the availability of grants for the hiring of law enforcement officers under COPS Accelerated Hiring, Education and Deployment ("COPS AHEAD") and the COPS Funding Accelerated for Smaller Towns Application ("COPS FAST Application"). Eligible applicants under COPS AHEAD are those state, local and other public law enforcement agencies, Indian tribal governments, other public and private entities, and multi-jurisdictional or regional consortia that employ sworn law enforcement officers and that serve a population of 50,000 or more individuals. Eligible agencies under the COPS FAST Application are those agencies serving populations of fewer than 50,000 persons.

DATES: Letters of intent to participate in COPS AHEAD must be sent to the COPS Office postmarked no later than November 10, 1994. COPS FAST Applications will be available by November 1, 1994 and completed applications must be received by the COPS Office no later than December 31, 1994.

ADDRESSES: Letters of intent to participate in COPS AHEAD and completed applications should be addressed to Director, COPS Program, P.O. Box 14440, Washington, DC 20044. Letters of intent may be sent by telecopier to (202) 514–9272.

FOR FURTHER INFORMATION CONTACT: The Department of Justice Crime Bill Response Center, (202) 307–1480 or 1–800–421–6770, or David Hayeslip or Craig Uchida, Office of Community-Oriented Policing Services, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 514–2058.

SUPPLEMENTARY INFORMATION:

Overview

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants for the hiring or rehiring of law enforcement officers to participate in community policing. COPS AHEAD and the COPS FAST Application are approaches developed by the Department of Justice to speed the deployment of new officers devoted to community policing on the streets and rural routes of this nation.

COPS AHEAD for Populations of 50,000 and Over

The COPS AHEAD program permits eligible agencies serving a population of 50,000 or more individuals to select and train up to a maximum of 3 percent of their actual level of sworn officers as of October 1, 1994, prior to submission and approval of a COPS grant application. Funding will begin once the new officers have been sown and a satisfactory grant application has been submitted and approved. Grants will be made for up to 75 percent of the total salary and benefits of each officer over three years, up to a maximum of $75,000 per officer, with the remainder to be paid by state or local funds. If funding requests exceed the funds available under COPS AHEAD, the maximum amount or starting date of grants may be adjusted to accommodate demand.

A law enforcement agency interested in participating in COPS AHEAD must send a letter of intent to the address identified above postmarked no later than November 10, 1994. The COPS Office expects to confirm the eligibility of applicants and proposed funding levels no later than November 21, 1994. Officers proposed to be funded under COPS AHEAD must be hired no later than the agency's first class starting in 1995.

At the time that proposed funding levels are confirmed, a formal grant application will be sent which will request information concerning the agency's strategic community policing plan for the use of the officers that have been approved to be hired, budget plans and projections, and other information to enable the COPS Office to confirm compliance with grant conditions.

An application or grant award under COPS AHEAD will not affect the consideration of an agency's application for a grant under any other COPS program. An agency that receives funding under COPS Phase I is eligible to receive additional funding under COPS AHEAD if the combined hiring under both programs does not exceed 3 percent of the actual October 1, 1994 force level.

COPS FAST Application for Populations Under 50,000

The COPS FAST Application dramatically simplifies the process of applying for a federal grant. The FAST Application is a one-page, fill-in-the-blank form that requests basic identifying information about the

agency, the number of police officers currently on the force and the number of new officers requested, basic financial information and an agreement to abide by standard legal requirements. Applications will be available by November 1, 1994, and will be mailed to all eligible agencies. Completed applications will be due to the COPS Office by December 31, 1994. The COPS Office will advise applicants of an authorized hiring level by February 1, 1995. Before funding may begin, jurisdictions designated for funding will be required to submit necessary budget information and a brief description of community policing plans. Technical assistance with the development of policing plans will be provided to jurisdictions in need of such assistance. Funding will begin once the new officers have been sworn. Grants will be made for up to 75 percent of the total salary and benefits of each officer over three years, subject to a maximum of $75,000 per officer.

Through the COPS FAST Application, the COPS program will provide up to $165 million in grants this fiscal year to state, local and other public law enforcement agencies. If requests exceed the funds available, the amount or starting date of grants may be adjusted to accommodate demand. An award under COPS FAST will not affect the consideration of an agency's application for a grant under any other COPS program. An agency that receives funding under COPS Phase I is eligible to receive additional funding under COPS FAST.

General Comments

COPS grant funds may not be used to replace funds that eligible agencies otherwise would have devoted to future office hiring. In other words, any hiring under COPS AHEAD or the COPS FAST Application must be addition to, and not in lieu of, officers that otherwise would have been hired. In hiring new officers, agencies may not reduce the scope of their customer screening and training procedures, and must include community policing principles and methods in their training curricula. In addition, to the extent practicable, COPS grant funds should be used to increase the representation of women and racial and ethnic minorities within the ranks of sworn officers.

In light of the expedited nature of these approaches, the time frames responses from interested agencies are relatively short. A complete description of program requirements will be contained in the application kits. Additional COPS grant programs will be announced in the near future.

Dated: October 21, 1994.

John R. Schmidt,

Associate Attorney General.

[FR Doc. 94–27201 Filed 11–2–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Title III—Job Development Broker Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant application (SGA).

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces a demonstration program to identify job development brokers that will link specific job opportunities with the development of appropriate curricula and support mechanisms for eligible dislocated workers to be funded with Secretary's National Reserve funds appropriated through Title III of the Job Training Partnership Act (JTPA).

This notice describes the process that eligible entities must use to apply for demonstration funds, the subject area for which applications will be accepted for funding, how grantees are to be selected, and the responsibilities of grantees. Up to $2 million will be made available for funding the approximately three to five demonstration projects covered by this solicitation.

Everything needed to apply is contained in this announcement.

DATES: Applications for grant awards will be accepted commencing November 6, 1994. The closing date for receipt of applications will be December 16, 1994, at 2 p.m. (Eastern Time) at the address below.

ADDRESSES: Applications shall be mailed to U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, Attention: Ms. Brenda Banks, Reference: SGA/DAA 94–23, Constitution Avenue, NW., Room S–4203, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Banks, Division of Acquisition and Assistance, Telephone: (202) 219–7300 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: This announcement consists of five parts. Part I describes the authorities and purpose of the demonstration program, and identifies demonstration policy and topics. Part II describes the application process and provides detailed guidelines for use in applying for demonstration grants. There is no separate application package. Part III includes the statement of work for the demonstration projects. Part IV identifies and defines the selection criteria which will be used in reviewing and evaluating applications. Part V describes the reporting requirements.

Part I. Background

A. Authorities

Section 324 of the Job Training Partnership Act authorizes the use of funds reserved under Part B of Title III for demonstration programs. The Secretary shall conduct or provide for an evaluation of the success of each demonstration program.

B. Purpose of the Demonstration

Job Development Broker Demonstration Projects funded through this solicitation are to provide reemployment and retraining services—as described in sections 314(c) and 314(d) JTPA—to eligible dislocated workers. The goals of this retraining program are to:

—Expand the retraining resources available to dislocated workers being served under Title III of the Job Training Partnership Act; and

—Support the development of a job development marketplace where brokers with retraining and employment opportunities can compete to provide assistance to dislocated workers on the basis of performance and customer satisfaction.

The purpose of this demonstration is to identify brokers that will link specific job opportunities with the development of appropriate curricula and support mechanisms so that eligible dislocated workers who successfully complete the program will get those jobs, at a cost that will be competitive with other program options available for the dislocated worker substate grantees and their customers.

C. Demonstration Policy

1. Awards

DOL will select approximately three to five applicants, making awards up to $2.0 million in total, to conduct demonstrations for job development brokers. It is anticipated that individual grant awards will be approximately $300,000 to $500,000 each; however, in no case will an award exceed $750,000.

2. Evaluation

Under a separate announcement, DOL will select and fund an evaluation contractor to: (1) Provide technical assistance to selected grantees in establishing appropriate data collection methods and processes; and (2) conduct an independent evaluation of the outcomes, impacts and benefits of the demonstration projects. Grantees will be expected to make available participant records and access to personnel, as specified by the evaluation contractor.

In addition, DOL will establish, for each demonstration project site, an oversight group made up of federal, State and substate staff.

3. Eligible Participants

Workers eligible for assistance under these demonstration grants are those eligible dislocated workers who are participants in Title III funded programs operated by State and substate grantees.

4. Allowable activities

Grant funds awarded under this demonstration may be used to provide the services described in JTPA Section 314(c) and Section 314(d). The establishment of linkages with employers, development of appropriate training curricula, and negotiation of agreements with the Title III State and substate grantees will be critical parts of this demonstration, but they must be combined with delivery of services and placement of participants in unsubsidized employment.

5. Grant Period

Projects must be completed not later than June 30, 1996. Applications must clearly describe project activities to be undertaken during the proposed grant period. Funding of project activity subsequent to the approved period of performance will be the responsibility of the applicant. Additional grant funds will not be available under this demonstration.

6. Cost Limitations

Demonstration grants are not subject to the cost limitations for formula-funded Title III grants at Section 315 of the JTPA. However, any offeror proposing administrative costs higher than 15 percent of the budget and supportive services higher than 25 percent of the funds requested in the application shall provide a narrative justification.

D. Demonstration Topic

DOL is soliciting applications for demonstration projects to test the ability of brokers to market services that link specific job opportunities with appropriate training and support mechanisms so that eligible dislocated workers who successfully complete the program will get those jobs, at a cost which will be competitive with other program options available for Title III substate grantees and their participants.

Part II. Application Process

A. Eligible Applicants

Eligible applicants under this demonstration include (1) employers and associations of employers, (2) unions and organizations representing workers, and (3) education and training institutions. Consideration will be given to awarding at least one grant in each of the three categories of eligible applicants. While matching funds will not be required, applicants will have to demonstrate the ability to market their services to dislocated worker program grantees that have training resources, including Title III formula-allotted funds to States and substate grantees, or Title III National Reserve Account funds.

B. Submission of Proposals

An original and three (3) copies of the proposal shall be submitted. The proposal shall consist of two (2) separate and distinct parts—Part I, the Financial Proposal, and Part II, the Technical Proposal.

1. Financial Proposal

The Financial Proposal shall contain the SF–424, "Application for Federal Assistance" (three ink signed originals) Appendix No., and SF 424–A, "Budget Information" (Appendix No. 2). The Federal Domestic Assistance Catalog number is 17.246. The budget shall include on separate pages: a cost analysis of the budget, identifying in detail the amount of each budget line item attributable to each of the Title III cost categories at Section 314 of JTPA for funds requested through this grant; an identification of the amount of each budget line item which will be covered by other funds, and the sources of those funds (including other Title III funds, employer funds, in-kind resources secured and unsecured loans, grants, and other forms of assistance, public and private); and an analysis of the cost effectiveness in terms of unit costs for the delivery of services to individual dislocated workers in comparison with similar services available to dislocated workers through Title III, and in terms of the scope of the effort with regard to the projected number of placements available and the number of different dislocated worker program operators (States and substate grantees) which will be involved.

Federal funds cannot be used to support training which an employer is in a position to, and would otherwise, provide.

Federal funds may not be used for acquisition of production equipment. The only type of equipment that may be acquired with Federal funds is equipment necessary for the operation of the grant. Grant funds may cover only those costs which are appropriate and reasonable. In the instance of a purchase, the cost of the equipment is to be prorated over the projected life of the equipment to determine the cost to the grant. Awardee must receive prior approval from the Department of Labor/Employment and Training Administration's Property Officer for the purchase and/or lease of any property and/or equipment with a per unit acquisition cost of $5,000 or more, and a useful life of more than one year as defined in OMB Circulars A–102 and A–110. This includes the purchase of ADP equipment. The request must be directed through your Grant Officer's Technical Representative (GOTR) and must include a detailed description and cost of the items to be acquired.

Applicants may budget limited amounts of grant funds to work with technical expert(s) to provide advice and develop more complete project plans.

2. Technical Proposal

The technical proposal shall demonstrate the offeror's capabilities in accordance with the Statement of Work/Project Summary as described in Part III of this announcement. NO COST DATA OR REFERENCE TO PRICE SHALL BE INCLUDED IN THE TECHNICAL PROPOSAL.

3. Page Count Limit

Applications are to be limited to 30 single-side pages, single-spaced. The technical proposal should include a 2 to 3 page executive summary.

C. Hand-Delivered Proposals

Proposals should be mailed at least five (5) days prior to the closing date. However, if proposals are hand-delivered, they shall be received at the designated place by 2 p.m., Eastern Time by December 16, 1994. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified time and closing date. Telegraphed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

D. Late Proposals

Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it—

(1) Was sent by the U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of the application (e.g., an offer submitted in response to a solicitation requiring receipt of applications by the 15th of the month must have been mailed by the 10th); or

(2) Was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late proposal sent either by the U.S. Postal Service registered or certified mail is the U.S. postmark both on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees to the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late proposal sent by "Express Mail Next Day Service—Post Office to Addressee" is the date entered by the post office receiving clerk on the "Express Mail Next Day Service—Post Office to Addressee" label and the postmark on both the envelope and wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

E. Withdrawal of Proposals

Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Proposals may be withdrawn in person or by an applicant or an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal before an award.

F. Period of Performance

The period of performance will be from the date of grant execution through not later than June 30, 1996.

G. Funding

DOL has set aside up to $2.0 million to be awarded, based on receipt of meritorious proposals consistent with the criteria identified in this announcement. It is expected that grant awards will be approximately $300,000 to $500,000 each. However, in no case shall an award exceed $750,000.

Part III. Statement of Work

Each application must include in the appropriate section(s): (1) Information that indicates adherence to the provisions described in Part I of this announcement; (2) information that responds to the requirements in this part; and (3) other information the offeror believes will address the selection criteria identified in Part IV. Each application should follow the format outlined here:

A. Target Group

A description of the qualifications or criteria for participation in the demonstration project, and the process to be used to identify and select participants to be served through this demonstration project from among the total number of eligible individuals served by the Title III program in the area covered by the demonstration application.

B. Components of the Job Development Broker Demonstration Program

An identification of the major elements of the job development broker demonstration project and a description of how the project works in terms of enrolling eligible workers and placing them in agreed upon unsubsidized employment. Specifically, applicants must demonstrate:

The availability of specific jobs or occupations for which training will be provided and the relevance of the training to the jobs into which participants will be placed;

A commitment from the employers to hire dislocated workers who successfully complete the training into those jobs; and

Agreements with dislocated workers programs under Title III of the Job Training Partnership Act that will identify eligible dislocated workers and refer them to the broker for service.

C. Administration and Management

Identify the management structure for the project and demonstrate the means to ensure accountability for performance. Provide a description of the process and procedures to be used to obtain feedback from participants and other appropriate parties on the responsiveness and effectiveness of the services provided. The description should include an identification of the types of information to be obtained, the method(s) and frequency of data collection, and how the information will be used in implementing and managing the project. It is expected that grantees may employ focus groups and surveys, in addition to other methods, to collect feedback information.

D. Use of Existing Services and Resources

An identification of the specific sources and amounts of other funds which will be used, in addition to funds provided through this grant, to implement the project.

The application must include information on any other JTPA funds and non-JTPA resources committed to this project, including employer funds, secured and unsecured loans, grants, and other forms of assistance, public and private. The application shall also describe the relationship of this project to the ongoing assistance to dislocated workers through the formula-funded JTPA Title III program(s) in the service area.

E. Coordination and Linkages

A description of the consultation with relevant parties in developing the project design and of the role of these parties in implementing the project, especially with regard to employer involvement in the development of appropriate training. Suggested consultation shall include: State JTPA Dislocated Worker Unit, Substate Title III grantee(s) and administrative entity(ies), as well as organized labor, employers, and organizations providing education, training and supportive services.

F. Participant Services

A description of the services to be available and/or provided to participants. The services supported with funds under this grant must be allowable under Section 314 of the Act. This description should include a participant service flowchart indicating the sequence in the participant service process and the criteria/decision points which are used to determine the appropriateness of specific services for individual participants, and the support

provided to ensure that each participant will receive the appropriate assistance from the point of enrollment until 90 days after placement.

G. Outcomes

A description of the project outcomes and of the specific measures, and planned achievement levels, that will be used to determine the success of the project. These outcomes and measures should include, but are not limited to:

- The number of participants projected: to be enrolled in services, to successfully complete services through the project, and to be placed into new jobs;
- Measurable effects of the services provided to project participants as indicated by gains in individuals' skills, competencies, or other outcomes;
- Average wages of participants prior to and at completion of project;
- Customer satisfaction with the project services, and of critical points in the service delivery process; and
- Other additional measurable, performance-based outcomes that are relevant to the project and which may be readily assessed during the period of performance of the project, such as cost effectiveness of service and comparison with other available service strategies, and acceptance and agreements with Title III grantees. [Note: An explanation of how such additional measures are relevant to the purpose of the demonstration program shall be included in the application.]

The proposal shall also describe how outcomes achieved by individuals in the retraining program will be compared to outcomes achieved by individuals not receiving such assistance at the same Title III grantee.

H. Replicability

Provide a description of the applicant's plans for continuing the project or how it might be replicated.

I. Definitions

Unless otherwise indicated in this announcement, definitions of terms used herein shall be those definitions found in the Job Training Partnership Act, as amended, particularly at Section 4 and Section 301.

Part IV. Evaluation Criteria

Prospective offerors are advised that the selection of grantee(s) for award is to be made after careful evaluation of proposals by a panel of specialists selected by DOL. Panelists will evaluate the proposals for acceptability with emphasis on the various factors enumerated below. The panel results are advisory in nature and not binding on the Grant Officer.

Evaluations will be made on the basis of both what the proposed offeror intends to do during the grant period, and on the usefulness of the demonstration after the end of the grant period.

A. Technical Evaluation (Possible Total: 75 Points)

Services and Target Group. The demonstrated relationship between the services to be provided and the jobs into which participants are to be placed, and the degree to which the services appear to meet the needs of the target population. The scope of the project in terms of the number of jobs available, the number of participants to be enrolled, and the number and geographic dispersion of Title III grantees to be served. The geographical area served by the project (substate area, multiple substate areas, regionwide, industrywide, or national). The mechanism that will ensure appropriate training and support for each participant from enrollment to 90 days following placement. (20 points)

Job Development Broker Project Design. The completeness of the description of the retraining, including the jobs for which the training is being provided, a demonstration of employer involvement in the design, and the commitment by employers to hire participants who successfully complete the program. The extent to which the project is cost competitive with other service strategies available to Title III grantees and their participants. The agreements with Title III grantees for referral of qualified participants, and the procedures to establish additional agreements with other Title III grantees. The program specifications and planned outcomes that will be used to monitor and measure performance. (30 points)

Coordination and Linkages; Utilization of Resources. The extent to which the proposal defines the roles and responsibilities of the applicant and its partners including representatives of the employer(s), the workers and the unions, the Title III grantees, the training providers and others. The number and scope of commitments with employers, and Title III grantees. The extent to which the project will be integrated with other resources and will leverage other resources to increase marketability. (15 points)

Management and Continuity. The extent to which the management structure monitors performance and customer satisfaction and includes procedures for continuous quality improvement, and which reports that performance to the substate grantees for use in informing the customer about available service options. The viability of the project, if successful, to be continued and expanded, including a description of efforts to negotiate agreements with additional Title III grantees for referral of participants. (10 points)

B. Cost Evaluation (25 Points)

The cost effectiveness of the project as indicated by the relationship of proposed costs to number of participants to be served, the range of services to be provided and the planned outcomes, as compared to other service strategies available for the Title III grantees. The extent to which the budget is justified, and which it supports the planned outcomes.

Applicants are advised that discussions may be necessary in order to clarify any inconsistencies in their applications. Applications may be rejected where the information required is not provided in sufficient detail to permit adequate assessment of the proposal. The final decision on the award will be based on what is most advantageous to the Federal Government as determined by the ETA Grant Officer.

Part V. Reporting Requirements

1. Dislocated Worker Special Project Reports as required.
2. Standard Form 269, Financial Status Report Form.
3. Quarterly Progress Reports.
4. Final Project Report.

Signed at Washington, DC, this 28th day of October 1994.

Janice E. Perry,

Grant Officer.

BILLING CODE 4510-30-M

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 1 7 . 2 4 6

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

(INSTRUCTIONS ON BACK OF FORM)

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. **Personnel:** Show salaries to be paid for project personnel.

2. **Fringe Benefits:** Indicate the rate and amount of fringe benefits.

3. **Travel:** Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.

4. **Equipment:** Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.

5. **Supplies:** Include the cost of consumable supplies and materials to be used during the project period.

6. **Contractual:** Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.

7. **Other:** Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. **Total, Direct Costs:** Add lines 1 through 7.

9. **Indirect Costs:** Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.

10. **Training /Stipend Cost:** (If allowable)

11. **Total Federal funds Requested:** Show total of lines 8 through 10.

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 94-27275 Filed 11-2-94; 8:45 am]
BILLING CODE 4510-30-C

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Announcement of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Office of Public Partnership Advisory Panel (Local Arts Agencies Section) to the National Council on the Arts will be held on November 30, 1994 to December 2, 1994. The panel will meet from 9:00 a.m. to 6:00 p.m. on November 30–December 1 and from 9:00 a.m. to 4:00 p.m. on December 2 in Room M–09, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. In addition to the open application review held on November 29–December 2 an overview policy discussion will be held from 2:00 p.m. to 4:00 p.m. on December 2.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: October 25, 1994.

Yvonne M. Sabine,

Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–27207 Filed 11–2–94; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–0005 (which should be mentioned in all correspondence concerning this draft guide), is a second proposed revision 2 to Regulatory Guide 10.5, "Applications for Licenses of Broad Scope." This guide is being revised to provide guidance on the type and extent of information needed by the NRC staff to evaluate applications for a specific license of broad scope for byproduct material.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. It has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the draft guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments will be most helpful if received by January 25, 1995.

Although a time limit is given for comments on this draft, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Distribution and Mail Services Section. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 13th day of October, 1994.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 94–27004 Filed 11–2–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–424, 50–425]

Georgia Power Company; (Vogtle Electric Generating Plant, Units 1 and 2)

Exemption

I

Georgia Power Company (GPC or the licensee) is the holder of Facility Operating License Nos. NPF–68 and NPF–81, which authorize operation of the Vogtle Electric Generating Plant, Units 1 and 2 (the facilities) at steady-state reactor power level not in excess of 3411 megawatts thermal, each. The license providers, among other things, that it is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. Each unit at the facility consists of a pressurized water reactor located at the licensee's site in Burke County, Georgia.

II

Section 50.54(q) of Title 10 of the Code of Federal Regulations requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards of 10 CFR 50.47(b) and the requirements of Appendix E to 10 CFR 50. Section IV.F.2 of Appendix E requires that each licensee annually exercise its emergency plan. Section IV.F.3 of Appendix E requires that each licensee shall exercise with offsite authorities such that the State and local government emergency plans are exercised biennially.

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a) are (1) authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances. Special circumstances exist when application of the regulation in the particular circumstance would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule (10 CFR 50.12(a)(2)(ii)). Special circumstances also exist when the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation (10 CFR

50.12(a)(2)(v)). The underlying purpose of 10 CFR 50, Appendix E, Sections IV.F.2 and IV.F.3, is to demonstrate that the emergency plans are adequate and capable of being implemented, and that the state of emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

III

By letter dated July 21, 1994, the licensee requested an exemption from the requirements of 10 CFR 50.47 and Appendix E to conduct an annual exercise of the Vogtle Emergency Plan in 1994. The licensee had planned to conduct a full-participation exercise involving both the states of Georgia and South Carolina and local response organizations on July 27, 1994. The licensee requested that an exemption be granted because the state of Georgia requested to delay the 1994 annual exercise from July 27, 1994, to January 11, 1995. The request to move the exercise date was originated by the Georgia Emergency Management Agency (GEMA) because they would be unable to participate on July 27, 1994, as GEMA personnel were required to respond to a federally-declared flood disaster in South Georgia. This proposed delay will prevent Vogtle from meeting the annual requirement to exercise the Vogtle emergency plan as specified in Appendix E to 10 CFR 50, and therefore, GPC requested a schedular exemption.

The previous emergency preparedness exercise at Vogtle was successfully conducted on August 4, 1993, and no violations, deviations or exercise weaknesses were identified. Offsite participation was limited to receiving Emergency Notification Messages. A joint plume and ingestion exposure pathway exercise involving the States of Georgia and South Carolina and the four local governmental agencies was conducted on May 19, 1992.

The licensee had scheduled, planned and coordinated the 1994 exercise with participating Federal, State, and local agencies for mid-July. The scope and objectives, and the final scenario documentation for the July 1994 exercise were submitted to the NRC on April 14, 1994, and May 17, 1994, respectively, which is within the time frames established for their submittal in support of a July 1994 exercise. Thereby, the licensee demonstrated good faith effort in attempting to comply with the regulation.

The schedule for future exercises will not be affected by this exemption. GPC has stated it will conduct the previously scheduled 1995 exercise the week of July 19, 1995, as planned. The licensee states that concurrence for the proposed date of January 11, 1995, has been received from FEMA, NRC Region II, and the affected State and local agencies. FEMA confirmed its support for the revised exercise date on September 1, 1994.

The most recent NRC Systematic Assessment of Licensee Performance (SALP) report for Vogtle, issued on August 12, 1994, for the period January 3, 1993, through July 2, 1994, indicates that the performance of the emergency preparedness program was strong; weaknesses observed during the previous assessment period (relating to state and local staff notification and protective action recommendations) were effectively addressed and observed to be corrected during the 1993 annual exercise; performance during the conversion to new emergency action levels was effective and well controlled; training of shift supervisors and off-site personnel was excellent; attention to emergency response facility and equipment material condition continued to be effective; and overall, excellent emergency preparedness program performance was demonstrated by proper classification and reporting of three events.

IV

Based upon a review of the licensee's request for an exemption from the requirement to conduct an exercise of the Vogtle emergency plan in1994, the NRC staff finds that the underlying purpose of the regulation will not be adversely affected by the rescheduling of the July 27, 1994 exercise to January 11, 1995. The effective response capability demonstrated by the licensee during the 1993 emergency preparedness exercise, the activities in preparation for the 1994 exercise, including a table top exercise with the states and counties and the readiness of the licensee's emergency preparedness program as reflected in its SALP rating and the most recent inspection report, provide assurance that the resources and personnel necessary for proper emergency response are in place to respond to a nuclear emergency at the Vogtle site. Thus, an exercise in 1994 is not necessary to achieve the underlying purpose of the rule and the requested exemption from the requirement in 10 CFR Part 50, Appendix E, Section IV.F, to defer the performance of an exercise of the Vogtle emergency plan until January 11, 1995, will not adversely affect the overall state of emergency preparedness at the Vogtle site.

For these reasons, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption requested by the licensee's letter of July 21, 1994, as discussed above, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and that special circumstances are present as set forth in 10 CFR 50.12(a)(2)(ii) and (v).

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will have no significant impact on the environment (59 FR 52841 dated October 20, 1994).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 26th day of October, 1994.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–27251 Filed 11–2–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34906; File No. SR–NYSE–94–30]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Its Allocation Policy and Procedures

October 27, 1994.

I. Introduction

On August 12, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change requesting permanent approval of revisions to its Allocation Policy and Procedures that were implemented on a one year pilot basis.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 34644 (September 7, 1994), 59 FR 47192 (September 14, 1994). No comments were received on the proposal.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 33121 (October 29, 1993) (approving such changes on a one-year pilot basis to expire October 28, 1994) ("Pilot Release").

II. Description of the Proposal

The NYSE Allocation Policy and Procedures ("Policy") governs the allocation of equity securities to NYSE specialist units.[4] The intent of the Policy is to ensure that each equity security listed on the Exchange is allocated in the fairest manner possible to the best specialist unit for that security. In its continuing efforts to enhance allocation decisions, the Exchange conducts periodic reviews of the allocation process.[5] In October of 1993 the NYSE amended its Policy on a one-year pilot basis to revise, among other things, the allocation criteria, the composition of the Allocation Committee ("Committee")[6] and Allocation Panel ("Panel"),[7] and the Committee's disclosure policy.

The Exchange fully implemented the changes to the Policy, detailed in the Pilot Release, in February of 1994. The Exchange states that it has reviewed the changes to the Policy as they have impacted on the allocation process and it believes that there has been a beneficial effect in terms of the way in which stocks are allocated. The Exchange further maintains that it continues to subject this vital function to rigorous scrutiny, looking to refine the process, as is evidenced by the filing of further changes to the Policy cited earlier.

[4] The NYSE Allocation Policy applies to the allocation of equity securities under the following circumstances: (1) when an equity security is to be initially listed on the NYSE; (2) when an equity security is to be reallocated as a result of disciplinary or other proceedings under NYSE Rules 103A, 475 and 476; or (3) when a specialist unit voluntarily surrenders its registration in a security as a result of possible disciplinary or performance improvement action. *See* NYSE Allocation Policy and Procedures.

[5] Subsequent to the implementation of the pilot program pursuant to the Pilot Release, the Exchange conducted another comprehensive review of the allocation process and further revised the Policy (see SR–NYSE–94–18). These revisions include, among other things, the composition of the Allocation Committee and the Allocation Panel, the quorum requirement for the Committee, and allocation of merging companies.

[6] Under the Policy, the NYSE Allocation Committee has sole responsibility for the allocation of securities to specialist units pursuant to Board-delegated authority, and is overseen by the Quality of Markets Committee of the Board of Directors ("Board"). The Allocation Committee renders decisions based on the allocation criteria specified in the Allocation Policy.

[7] The composition of the Panel reflects the Committee structure and includes floor brokers, allied members, and floor broker Governors. The Panel comprises the pool of individuals from which the Committee is formed. The Panel members are selected through an annual appointment process that utilizes input from the membership. Panel members are appointed to serve a one-year term; Governors, however, remain on the Panel for as long as they are Governors.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b)(5) of the Act.[8] Section 6(b)(5) requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. Further, the Commission finds that the proposal is consistent with Section 11(b) of the Act[9] and Rule 11b–1 thereunder,[10] which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets. For the reasons set forth below, the Commission believes that the amended Policy should enhance the Exchange's allocation process, encourage improved specialist performance and, thereby, protect investors and the public interest.

Specialists play a crucial role in providing stability, liquidity and continuity to the trading of securities. Among the obligations imposed upon specialists by the Exchange, and by the Act and the rules thereunder, is the maintenance of fair and orderly markets in their designated securities.[11] To ensure that specialists fulfill these obligations, it is important that the Exchange develop and maintain stock allocation procedures and policies that provide specialists with an incentive to strive for optimal performance. The Commission fully supports and encourages the NYSE's continuing effort to develop meaningful and effective allocation policies that encourage improved specialist performance and market quality.

The Commission believes that the proposed revisions to the NYSE's Policy should refine the Exchange's allocation process and, thereby, encourage improved specialist performance. As discussed in more detail in the Pilot Release, the NYSE's Policy emphasizes that the most significant allocation criterion is specialist performance. In the Commission's view, performance-based stock allocations not only help to ensure that stocks are allocated to specialists who will make the best markets, but will provide an incentive for specialists to improve their performance or maintain superior performance.

The Commission believes that the use of Specialist Performance Evaluation Questionnaire ("SPEQ")[12] ratings, objective performance measures, and the Committee's professional judgment under the revised Policy should enable the Committee to review specialist performance in a more precise and comprehensive fashion. Specifically, the Commission believes that it is appropriate to limit the weight that the SPEQ may be given in allocation decisions to one-third and to increase the emphasis given to objective measures of performance. Although the SPEQ remains a useful tool to measure performance, the Commission has long believed that objective indications of performance should play an important role in allocation decisions. In particular, the Commission believes that objective performance measures can identify poor market making performance that otherwise may not be reflected in a unit's SPEQ survey results.[13]

The Commission believes that the NYSE's proposal to require that SPEQ performance data be presented to the Committee in four tiers, with units listed alphabetically in each comparable group, is a reasonable means of ranking units for comparison. In this regard, the Commission recognizes that a unit might not have SPEQ scores which, from a statistical perspective, are significantly different from the next higher or lower unit. The presentation of the SPEQ results in four tiers that differ significantly should provide the Committee with appropriate groupings of specialist units for its use in allocation decisions. This should help the Committee in its evaluation of applicants for a new listing.

The Commission believes that the Exchange's proposal to amend its Policy to state that in the case of spin-offs, listings of related companies and relistings of securities, the NYSE will honor a listing company's request that it not be allocated automatically to its

[8] 15 U.S.C. 78f(b)(5) (1988).

[9] 15 U.S.C. 78k(b) (1988).

[10] 17 CFR 240.11b–1 (1994).

[11] *See e.g.*, Rule 11b–1, 17 CFR 240.11b–1 (1994); NYSE Rule 104.

[12] The SPEQ is a quarterly survey on specialist performance completed by eligible floor brokers (*i.e.*, any floor broker with at least one year of experience). The SPEQ consists of 21 questions and requires floor brokers to rate, and provide written comments on, the performance of specialist units with whom they deal frequently.

[13] The Commission believes that it is appropriate to delete the objective performance measure pertaining to the Opening Automated Report Service ("OARS") contained in the Policy. Because this performance measure was deleted from NYSE Rule 103A in 1990, deleting the reference to the OARS would update and remove an obsolete performance measure from the Policy.

former specialist unit or the specialist in the parent or related company, should provide an opportunity for the listed company to provide input into the allocation of an affiliated listing. However, a listing company's preference should not be allowed to take significance over or negate specialist performance. A listing company's preference is a minor, supplemental factor and only should be used to distinguish between the best qualified units based on performance related criteria.[14] In this regard, the listing company's request would serve only to open the allocation to all units.

The Commission believes that the Exchange's proposal to delete the reference to specific aspects of trading foreign issues on the Exchange floor should provide the NYSE with additional flexibility in allocating foreign issues. Again, the foreign listing considerations in the Policy are supplemental in that specialist performance remains the key factor in allocation decisions.

The Commission believes that the NYSE's proposal to eliminate specialist representation on the Committee will solve the appearance of a conflict of interest on the Committee and, thereby, enhance confidence in the allocation process. The Commission concurs with the NYSE's conclusion that floor brokers and allied members are in a better position to judge the relative strengths and weaknesses of specialist units. The Commission also agrees that an effort should be made to appoint individuals that have not yet served on the Committee before reappointing past Committee members. This should ensure that a broader segment of the trading floor community will have an opportunity to serve on the Committee. In this regard, the Commission also agrees with the NYSE in that the Panel should consist of a core group of experienced, senior professionals and supports its proposal to select a significant number of floor members on the Panel from among the Exchange's senior floor officials, floor governors and former allocation committee chairmen. Accordingly, the Commission believes that the revised mix of both Committee and Panel members is appropriate and consistent with the Act.

The Commission believes that the NYSE's proposal to require that the list of Committee members be kept confidential and prohibit members and investment bankers from initiating contact with Committee members regarding pending allocations should minimize potential conflicts in allocation decisions. Under the revised Policy, Committee members still would be permitted to initiate contact with any specialist if they believe it would be beneficial when making an allocation decision. The Commission believes that this revision to the Policy should help to ensure that specialist performance, rather than subjective recommendation, is the most significant criterion in allocation decisions.

The Commission believes that the NYSE's proposal to amend the Policy to discontinue the practice of distributing a summary of reasons for each allocation decision to Exchange floor members provides for more efficient resource allocation and reduces unnecessary paperwork. At the same time, the Commission emphasizes, however, that the Exchange will make such information available to those who are interested by continuing to publish[15] allocation decisions for its membership and listing companies.

The Commission believes that the Exchange's proposal to permit all current Committee members, including outgoing members, to vote for an incoming Committee Chairman is reasonable in that outgoing Committee members have gained valuable experience with candidates with whom they have been serving. Therefore, the Commission believes that outgoing members' input should broaden the scope of the election of the NYSE's Committee Chairman, and help to ensure the selection of the best qualified Chairman of the Committee.[16]

The Commission believes that the proposed amendments to the allocation application procedure to require information about a specialist unit's contacts with listed companies and NYSE member organizations should help to facilitate compliance with NYSE Rule 106. NYSE Rule 106(c) requires each specialist to report to the Exchange semi-annually, a record of their contacts with senior officials of their listed companies, their off-floor contacts with representatives of each of the 15 largest Exchange member organizations, their off-floor contacts with each other member organization that is a significant customer of the specialist unit, and their off-floor contacts with any other member organization that requests such contact. Because the revised application would specify the Exchange's current specialist contact requirement, the proposal should assist specialists in their responsibilities under the rules of the Exchange.

Finally, the Commission believes that it is appropriate for the NYSE to implement the revised Policy on a permanent basis. The Commission believes that the pilot period has provided the Exchange and the Commission with an opportunity to study the effects of the revised Policy on the NYSE's allocation process. During the pilot period, the Exchange has monitored carefully the effects of the revised Policy and has reported its findings to the Commission. The Commission has reviewed and analyzed the reports submitted by the Exchange and on that basis, and for the reasons discussed above, believes that the revised Policy is consistent with the Act and furthers the objectives of the Exchange to develop an efficient and reliable allocation procedure.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSE–94–30) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27229 Filed 11–2–94; 8:45 am]

BILLING CODE 8010–01–M

[14] *See* Securities Exchange Act Release No. 27803 (March 14, 1990), 55 FR 10740 (March 22, 1990) (order approving File No. SR–NYSE–88–32).

[15] The term "publish" in this context refers to: (1) a posting on a bulletin board on the floor of the Exchange giving notice to all floor members of each allocation; and (2) a notification to the issuer whose security was allocated.

[16] The Commission believes that the NYSE's proposal to standardize the agenda used to educate Committee Chairmen and members should encourage Committee Chairmen and members to maintain quality performance in their allocation responsibilities.

[17] U.S.C. 78s(b)(2) (1988).

[18] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–34909; File No. SR–PHLX–94–35]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Storage of Option Customer Account Information for Supervisory Purposes

October 27, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] on July 5, 1994, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend paragraph (d), "Maintenance of Customer Account Records," of PHLX Rule 1025, "Supervision of Accounts," to allow member organizations to

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

maintain customer information and account statements off-site, rather than at the principal supervisory office, as long as the records are readily accessible and promptly retrievable.[3]

The proposal was published for comment in the **Federal Register** in Securities Exchange Act Release No. 34561 (September 12, 1994), 59 FR 47660 (September 16, 1994).[4] No comments were received on the proposal.

Currently, PHLX Rule 1025(d) requires member organizations to maintain at the branch office servicing the customer's account and at the principal supervisory office background and financial information of customers who have been approved for options transactions. In addition, Commentary .03 to PHLX Rule 1025 requires member organizations to maintain, at the principal supervisory office with jurisdiction over the office servicing the customer's account, information to permit review of each customer's options account to determine the compatibility of options transactions with investment objectives, the size and frequency of options transactions, commission activity in the account, profit or loss in the account, undue concentration in any options class or classes, and compliance with the provisions of Regulation T of the Federal Reserve Board. The PHLX proposes to amend PHLX Rule 1025(d) and Commentary .03 to allow member organizations to maintain the required customer information and account statements off-site, rather than at the principal supervisory office, as long as the records are readily accessible and promptly retrievable. However, branch offices must continue to maintain customer account information on site.

The PHLX states that the increasing use of computers, fax machines, optical disk and other technology, coupled with the expense of storing records on-site, have resulted in more member organizations storing records away from their principal supervisory offices.[5] In view of technological advances, the Exchange believes that it is appropriate to permit the off-site storage of customer records previously required to be maintained at a principal supervisory office. The Exchange also believes that offsite storage should not compromise the supervisory obligations of member/participant organizations because, under the proposal, the customer information necessary to fulfill those responsibilities must be easily accessible and promptly retrievable.

Accordingly, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and, in particular with Section 6(b)(5), in that it is designed to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest.

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) in that it is designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, and to protect investors and the public interest.[6]

Specifically, by allowing off-site storage of customer account information maintained at supervisory offices, the commission believes that the proposal should provide the PHLX's members with a cost-effective means to utilize computers, facsimile machines, optical disks, and other technology to store the required customer account information off-site while ensuring that member firms will continue to have easy access to all of the customer account information necessary to discharge their supervisory responsibilities. In this regard, the proposal provides that options customer account information stored off-site must be "readily accessible and promptly retrievable,"[7] thereby preserving the Exchange's ability to access and investigate customer account records. Thus, the Commission believes that the proposal strikes a reasonable balance between the PHLX's interest in allowing member organizations to reduce the cost of storing customer account information and ensuring that the information continues to be available for supervisory purposes.

In addition, the Commission believes that it is reasonable for the PHLX to allow off-site storage of customer account information maintained at supervisory offices, but not of account information stored at branch offices, because branch offices are responsible for the day-to-day administration of customer accounts and require immediate access to account information. For example by continuing to require branch offices to store customer account information on-site, the proposal facilitates broker compliance with the suitability requirements applicable to options customers.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–PHLX–94–35) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27230 Filed 11–2–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20666; 812–9294]

Select Strategies Trust, et al.; Notice of Application

October 28, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Select Strategies Trust, Series 1 and subsequent series and any successor unit investment trust (the "Trust" and, each series, separately, the "Series"), NYLIFE Distributors, Inc. (the "Distributor"), NYLIFE Depository Corporation (the "Sponsor"), MacKay-Shields Financial Corporation (the "Adviser") and any open-end management investment company (or portfolio thereof), that may now or in the future be advised by the Adviser, whose shares are distributed by the Distributor, or that holds itself out to investors as part of a "group of investment companies" (the "Funds"), as that term is defined in rule 11a–3 under the Act.

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[3] On October 27, 1994, the PHLX submitted a letter indicating that "readily accessible and promptly retrievable" generally means that the records will be available on the business day following the request. *See* Letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, PHLX, to Michael Walinskas, Branch Chief, Options Branch, Division of Market Regulation, Commission, dated October 26, 1994 ("October 26 Letter").

[4] On August 26, 1994, the PHLX submitted Amendment No. 1 to the proposal to clarify that the purpose of the proposal is to allow members to maintain required customer information and account statements off-site, rather than at the member's principal supervisory office, as long as the records are readily accessible and promptly retrievable.

[5] In June 1993, the Division of Market Regulation ("Division") issued a no-action letter permitting broker-dealers to maintain certain records required by Rules 17a–3 and 17a–4 under the Act on optical disk technology, under certain conditions. *See* Letter from Michael A. Macchiaroli, Associate Director, Division, Commission, to Michael D. Udoff, Chairman, Ad Hoc Record Retention Committee, Securities Industry Association, dated June 18, 1993.

[6] 15 U.S.C. 78f(b)(5) (1988).

[7] *See* October 26 Letter, *supra* note 3.

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30–3(a)(12) (1993).

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act to grant an exemption from sections 14(a) and 19(b) of the Act and rule 19b–1 thereunder; under sections 11 (a) and (c) of the Act to permit certain offers of exchange; and under section 17(d) of the Act and rule 17d–1 thereunder to permit certain affiliated transactions.

SUMMARY OF APPLICATION: Applicants request an order: (a) permitting the respective Series to invest in shares of an open-end investment company and U.S. Treasury zero coupon obligations; (b) exempting the Sponsor from having to take for its own account or place with others $100,000 worth of units in the Trust; (c) permitting the Trust to distribute capital gains resulting from redemptions of Fund shares within a reasonable time after receipt; (d) permitting certain offers of exchange involving the Trust; and (e) permitting certain affiliated transactions involving the Trust.

FILING DATES: The application was filed on October 19, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 22, 1994, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: 51 Madison Avenue, New York, New York 10291.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Law Clerk, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a unit investment trust, organized in series form and registered under the Act. Units of each Series will be registered under the Securities Act of 1933 ("Securities Act") and will be offered to the public. Each Series will be organized pursuant to a trust indenture that will incorporate a master trust agreement relating to the entire Trust (the agreement and indenture are collectively referred to as the "Trust Agreement"). The Trust Agreement will name a qualified bank as trustee (the "Trustee").

2. Each unit of a Series will represent an undivided interest in an unmanaged portfolio consisting of (i) U.S. Treasury bonds or notes paying no current interest (zero coupon obligations) and (ii) shares of a Fund. Each Series will acquire an amount of zero coupon obligations that, upon termination of the Series, will be sufficient to pay each initial investor purchasing units of the Trust Series on the first date such units are offered for sale, the total amount that the investor originally invested in the Series, plus sales charges incurred. The remainder of the Series' proceeds will be invested in shares of a single Fund.

3. The Sponsor will deposit in each Series zero coupon obligations at a price determined by an independent evaluator and shares of a Fund at their net asset value. With the deposit of the zero coupon obligations and Fund shares in a Series, the Sponsor will have established a proportionate relationship between the principal amount of zero coupon obligations and Fund shares so that the initial investors will receive at least their original purchase price, including sales charges, upon termination of the Series. Simultaneously with such deposit, the Trustee will deliver to the Sponsor registered certificates for units in each Series which will represent the entire ownership of the Series. The units of a Series will be offered for sale to the public by the Sponsor through the final prospectus after the registration statement of Form S–6 under the Securities Act has been declared effective and clearance with the applicable state authorities has been obtained.

4. The units will be offered initially at a price based on the net asset value of the shares of a Fund selected for deposit in that Series, the offering side value of the zero coupon obligations deposited in the Series, plus a sales charge. An independent evaluator will charge each Series an evaluation fee for the cost of determining the value of zero coupon obligations that are deposited in the Series. No such fee will be charged on Fund shares deposited in the Series because the value of those securities is readily available. Upon redemption, each Series will redeem units in that Series at prices based on the aggregate bid side value of the zero coupon obligations plus the net asset value of the Fund's shares.

5. Although it will not be obligated to do so, the Sponsor will contract with a registered broker-dealer (the "Market Maker"), initially expected to be an organization unaffiliated with the Sponsor, to maintain a secondary market for the units. The Market Maker will repurchase the units at a price based on the aggregate bid side value of the zero coupon obligations plus the net asset value of the Fund's shares (excluding sales loads on Fund shares) and will reoffer the units at this price plus a sales charge. The extent to which the Market Maker maintains a secondary market for the units will reduce the number of units presented to the Series for redemption and thus obviate the need for the Series to sell zero coupon obligations or Fund shares to meet redemption requests. In the event that the Sponsor does not enter into or maintain a contract with the Market Maker, or the Market Maker does not maintain a secondary market in the units, the Sponsor will instruct the Trustee to sell Fund shares or zero coupon obligations, the latter only if after the sale the original proportional relationship between zero coupon obligations and unit value is maintained.

6. The Sponsor will be permitted under the Trust Agreement to deposit additional securities, which may result in a potential corresponding increase in the number of units outstanding. Such units may be continuously offered for sale to the public by means of a prospectus. The Sponsor anticipates that any additional securities deposited in the Series subsequent to the initial date of deposit in connection with the sale of these additional units will maintain the proportionate relationship between the principal amounts of zero coupon obligations and Fund shares in the Series.

7. Each Fund will be an open-end management investment company that is registered under the Act. Each Fund will be advised by the Adviser, have its shares distributed by the Distributor, or otherwise be a fund within the same group of investment companies, within the meaning of rule 11a–3 under the Act. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940. The Distributor is a broker-dealer registered under the Securities Exchange Act of 1934.

8. Some of the Funds may impose front-end sales loads ("FESL"), contingent deferred sales charges ("CDSC") in accordance with an

exemptive order (the "CDSC Order"),[1] or rule 12b–1 fees. Any FESL or CDSC will be waived by the Fund on purchases by a Series and any rule 12b–1 fees will either be waived or rebated immediately to the Trustee of a Series by the Fund. In the event that a rule 12b–1 fee is rebated in this manner, the Series will use the rebated fee to pay for that Series' expenses and distribute to unit holders any remainder. If rule 12b–1 fees are not charged by the Fund, the Series will pay for its expenses from any income received from distributions paid on Fund shares and, if necessary, will sell Fund shares to pay for expenses. Zero coupon obligations held by a Series will not be sold to pay for Series or Trust expenses.

9. Each Series will terminate after a stated period of years, initially expected to be approximately 10 to 15 years. At the termination of a Series, unitholders will have a choice of receiving (1) their pro rata share of the underlying Fund shares in kind and the cash proceeds from the zero coupon obligations, (2) their pro rata share of cash upon the liquidation of the Fund shares and zero coupon obligations or (3) their pro rata share of the underlying Fund shares in kind and investing the amount of cash proceeds from the zero coupon obligations in additional Fund shares without paying a FESL or CDSC, if any. After termination of a Series, unitholders electing the first or last option will become shareholders of the particular Fund and will be subject to their pro rata share of any rule 12b–1 fees charged by the Fund, as are all other shareholders of the Fund.

Applicants' Legal Conclusions

1. Section 14(a) of the Act requires that investment companies have $100,000 of net worth prior to making a public offering. As the Sponsor intends to sell all of the Trust Series' units to the public, thereby withdrawing certificates representing the entire beneficial ownership of the Trust, applicants request exemptive relief from the net worth requirement of section 14(a). Applicants will comply in all respects with rule 14a–3, which provides an exemption from section 14(a), except that the Trust will not restrict its portfolio investments to "eligible trust securities."

2. Section 19(b) and rule 19b–1 thereunder make it unlawful for a registered investment company to distribute long-term capital gains more often than once every twelve months. Applicants request an exemption from section 19(b) and rule 19b–1 to the extent necessary to permit any capital gains resulting from the redemption of Fund shares to be distributed to unitholders along with the Trust's regular quarterly distributions. In all other respects, applicants intend to comply with rule 19b–1 under the Act.

3. Section 11(a) makes it unlawful for any registered open-end investment company or principal underwriter for such company to make or cause to be made certain offers of exchange on any basis other than the relative net asset values of the securities to be exchanged, unless the terms of the exchange offer have first been approved by the SEC. Section 11(c) provides that section 11(a) will be applicable to any type of exchange offer involving securities of a registered unit investment trust, irrespective of the basis of exchange. Upon termination of the Trust, unitholders will have the option, which could be viewed as an exchange offer, to receive their pro rata share of the underlying Fund shares in kind and invest the amount of cash proceeds from the zero coupon obligations in additional Fund shares without the imposition of a FESL or CDSC (although rule 12b–1 fees will be imposed on the Fund shares ultimately held by the unitholder) (the "Exchange Option"). The "exchange" of Series' unit proceeds for Fund shares will be at relative net asset value since the Fund will waive any FESL or CDSC that it might otherwise impose if a unitholder selects the Exchange Option. As such, aside from a rule 12b–1 fee, if any, that would be imposed on unitholders once they became shareholders of a Fund that imposed such a fee, there will be no economic incentive for a broker to encourage a unitholder to select the Exchange Option at the termination of the Series. Applicants believe that the terms of the Exchange Option are fair and reasonable to the unitholders and consistent with the policy and purpose of section 11.

4. Section 17(d) and rule 17d–1 under the Act make it unlawful for any affiliated person or principal underwriter for a registered investment company, and any affiliated person of such persons, acting as principal, to effect any transaction in which such registered company is a joint or a joint and several participant with such person, unless the SEC has granted an order approving of the transaction. Applicants believe that the conditions imposed in any order granted will ensure that the proposed arrangement is consistent with the provisions, policies and purposes of the Act, and that neither the Trust nor the Fund will participate in the arrangement on a different or less disadvantageous basis than other participants.

5. Applicants do not request relief under section 12(d)(1) of the Act. Section 12(d)(1) limits purchases by registered investment companies of securities issued by other investment companies. Section 12(d)(1) (E) provides, however, that section 12(d)(1) shall not apply to securities purchased by a registered unit investment trust if the securities are the only "investment securities" held by the trust. Applicants believe that the U.S. Treasury zero coupon obligations are not "investment securities" for purposes of section 12(d)(1) (E)[2] and that the Fund shares are the only "investment securities" which the Trust will hold. Accordingly, they do not believe relief from section 12(d)(1) is necessary.

Applicants' Conditions

Applicants agree to the following as conditions to the granting of the requested order:

1. The Trustee will not redeem Fund shares except to the extent necessary to meet redemptions of units by unitholders, or to pay Trust expenses should distributions and rebated rule 12b–1 fees received on Fund shares prove insufficient to cover such expenses.

2. Any rule 12b–1 fees received by the Sponsor or the Distributor in connection with the distribution of Fund shares to the Trust will be immediately rebated to the Trustee.

3. All Trust Series investing in shares of the same Fund will be structured so that their maturity dates will be at least thirty days apart from one another.

4. Applicants will comply in all respects with the requirements of rule 14a–3, except that the Trust will not restrict its portfolio investments to "eligible trust securities."

5. Shares of a Fund which are held by a Series of the Trust will be voted by the Trustee of the Trust, and the Trustees will vote all shares of a Fund held in a Trust in the same proportion as all other shares of that Fund not held by the Trust are voted.

6. No sales charge or redemption fee will be imposed on shares of a Fund which are held by any Series of the Trust or on any shares acquired by unitholders through reinvestment of dividends or distributions or through reinvestment at termination.

7. The prospectus of each Trust Series and any sales literature or advertising

[1] Investment Company Act Release Nos. 20284 (May 9, 1994) (notice) and 20336 (June 6, 1994) (order).

[2] Equity Securities Trust, (pub. avail. Jan. 19, 1994).

that mentions the existence of a reinvestment option will disclose that shareholders who elect to invest in Fund shares will incur a rule 12b–1 fee if the Fund imposes a rule 12b–1 fee.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27270 Filed 11–2–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 05/75–0220]

Piper Jaffray Healthcare Capital, L.P. (SBIC); Notice of Issuance of a Small Business Investment Company License

On September 2, 1994, a notice was published in the **Federal Register** (59 FR 45745) stating that an application had been filed by Piper Jaffray Healthcare Capital, L.P. (SBIC) of Minneapolis, Minnesota, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business on September 16, 1994 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. 05/75–0220 on September 26, 1994, to Piper Jaffray Healthcare Capital L.P., (SBIC) to operate as a small business investment company.

The Licensee will be owned by Piper Jaffray Healthcare Fund, L.P. (99.0%) and Piper Ventures Management IV, L.P. (1.0%). Investors holding more than 10.0% of Piper Jaffray Healthcare Fund, L.P. include Piper Jaffray Companies, Inc. through its Piper Jaffray Investors Fund VIII, and St. Jude Medical, Inc. a publicly-traded medical devices firm based in St. Paul, Minnesota. The Licensee will begin operations with $7.5 million of private capital.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 27, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–27271 Filed 11–2–94; 8:45 am]

BILLING CODE 8025–01–M

Senior Executive Service Performance Review Board List of Members

AGENCY: Small Business Administration.

ACTION: Listing of Personnel Serving as Members of this Agency's Senior Executive Service Performance Review Boards.

SUMMARY: Section 4314(c)(4) of Title 5, U.S.C. requires Federal agencies to publish notification of the appointment of individuals who serve as members of that Agency's Performance Review Boards (PRB). The following is a listing of those individuals currently serving as members of this Agency's PRB:

1. Lawrence E. Barrett, Assistant Administrator for Information Resources Management
2. John R. Cox, Associate Administrator for Financial Assistance
3. Calvin Jenkins, Assistant Administrator for Administration (Substitute member, if required)
4. Janis F. Kearney, Assistant Administrator for Public Communications
5. Bernard Kulik, Associate Administrator for Disaster Assistance (Substitute member, if required)
6. Francisco A. Marrero, District Director, Newark
7. George H. Robinson, Assistant Administrator for Equal Employment Opportunity and Civil Rights Compliance
8. Aubrey Rogers, District Director, New York (Substitute member, if required)
9. Carolyn J. Smith, Assistant Administrator for Personnel
10. John L. Smith, District Director, Chicago
11. John T. Spotila, General Counsel
12. Mary K. Swedin, Assistant Administrator for Congressional and Legislative Affairs
13. Janice E. Wolfe, Associate Deputy Administrator for Economic Development

The following is a listing of those individuals currently serving as members of this Office of Inspector General PRB:

1. Michael Zimmerman, Deputy Inspector General, Department of Commerce
2. Craig Beauchamp, Assistant Inspector General for Investigations, Department of Agriculture
3. Carolyn J. Smith, Assistant Administrator for Personnel

Dated: October 27, 1994.

Cassandra Pulley,

Administrator (Acting).

[FR Doc. 94–27270 Filed 11–2–94; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 99000096]

Shenandoah Venture Capital Limited Partnership; Notice of Filing of an Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1944)) by Shenandoah Venture Capital Limited Partnership, 208 Capitol Street, Suite 300, Charleston, West Virginia 25301, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended (15 U.S.C. et seq.), and the Rules and Regulations promulgated thereunder. Shenandoah Venture Capital Limited Partnership is a West Virginia limited partnership.

DM Associates, Inc. II is the general partner of the Applicant. Thomas Loehr owns 100 percent of the general partner. The officers and directors of DM Associates, Inc. II are:

Name	Title
Thomas E. Loehr, 1 Chatwood Road, Charleston, WV.	Director and President.
Anthony W. Mazelon, 344 Roxalana Hills Drive, Dunbar, WV.	Director and Secretary.
Richard A. Rubin, 5 Wild Acre Road, Charleston, WV.	Director.
Arno J.S. Paas, 4 Winding Wood Road, Charleston, WV.	Director.
Frederick L. Russell, Jr., Edgewood Farm Rt. 714, Middleburg, VA.	Director.

The following limited partner owns or controls 10 percent or more of the proposed SBIC's Regulatory Capital:

Name	Ownership percentage
Hope Gas, Inc., Bank One Center West, Third and Main Streets, Clarksburg, WV 26301	99

Shenandoah Venture Capital Limited Partnership will be managed by Fourth Venture Investment Group, Inc. The officers, directors, and shareholders of Fourth Venture Investment Group, Inc. are:

Name	Title	Ownership percentage
Thomas E. Loehr.	President and Director.	100
Anthony W. Mazelon.	Secretary and Director.	0
Frederick L. Russell, Jr.	Director	0
Richard A. Rubin.	Director	0
Arno J.S. Paas .	Director	0

The applicant will have capitalization of $2,500,000, and will be a source of debt and equity capital for qualified small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Charleston, West Virginia.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: October 27, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94-27273 Filed 11-2-94; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/79-0399]

Walden-SBIC, L.P.; Notice of Issuance of a Small Business Investment Company License

On August 12, 1994, a notice was published in the **Federal Register** (59 FR 41549) stating that an application had been filed by Walden-SBIC, L.P. of San Francisco, California, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business September 12, 1994 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. 09/79-0399 on September 19, 1994, to Walden-SBIC, L.P. to operate as a small business investment company.

The Licensee will be owned by Walden Capital Partners II, L.P. (99.0%) and the Walden partners (1.0%). Walden Capital Partners II, L.P. is a venture fund consisting of some 75 different individuals and entities. The Licensee will begin operations with $10.0 million of private capital.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 27, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94-27272 Filed 11-2-94; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) PFC at Jackson Hole Airport, Jackson, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Jackson Hole Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before December 5, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA a the following address: Alan E. Wiechmann, Manager; Denver Airports District Office, DEN-ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, CO 80216-6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. George Larson, Airport Manager, Jackson Hole Airport, Jackson, Wyoming, at the following address: P.O. Box 159, Jackson, Wyoming 83001.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Jackson Hole Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Phillip Braden, (303) 286-5530; Denver Airports District Office, DEN-ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, Colorado 80216-6026. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Jackson Hole Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 25, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by Jackson Hole Airport was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 4, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: April 1, 1995

Proposed charge expiration date: October 31, 2000

Total estimated PFC revenues: $2,100,000

Brief description of proposed project: Terminal building expansion; Acquisition of safety equipment; Terminal baggage improvements; Runway safety project.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM-600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055-4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Jackson Hole Airport.

Issued in Renton, Washington, on October 25, 1994.

David A. Field,

Acting Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 94–27287 Filed 11–2–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Sarasota Bradenton International Airport, Sarasota, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Sarasota Bradenton International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 5, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–5397.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Richard M. Vacar, Executive Director of the Sarasota Manatee Airport Authority at the following address: Sarasota Manatee Airport Authority, 6000 Airport Circle, Sarasota, Florida 34243.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Sarasota Manatee Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Pegy Jones, Airport Plans & Programs Manager, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–5397, (407) 648–6583. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Sarasota Bradenton International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation regulations (14 CFR Part 158).

On October 27, 1994, the FAA determined that the application to use the revenue from a PFC submitted by the Sarasota Manatee Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 31, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Actual charge effective date: September 1, 1992
Estimated charge expiration date: September 1, 2005
Total approved PFC revenue: $38,715,000
Total estimated PFC revenue to be used on projects in this applcation: $5,395,493

Brief Description of Proposed Project(s)

Project 101 Federal Aviation Regulation (FAR) Part 150 Program Funding
Project 105 Environmental Assessment Runway Extension
Project 106 Acquire Runway Protection Zone Land
Project 113 Rehabilitate Taxiway F
Project 114 Rehabilitate Taxiway A

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/ Commerical Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Sarasota Manatee Airport Authority.

Issued in Orlando, Florida, on October 27, 1994.

Charles E. Blair,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 94–27290 Filed 11–2–94; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

Petition for Modification of a Previously Approved Antitheft Device; Volkswagen

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant of petition for modification of a previously approved antitheft device.

SUMMARY: In 1988, this agency granted Volkswagen of America, Inc.'s (Volkswagen) petition for exemption from the parts marking requirements of the vehicle theft prevention standard for the Audi 100 and Audi 200 lines. The lines have been redesignated for model year 1995 as, respectively, the Audi A6 and Audi S6. This notice grants Volkswagen's petition for a modification of the exemption originally granted in 1988, and modified in 1992. The agency grants this petition because it has determined, based on substantial evidence, that the modified antitheft device described in Volkswagen's petition to be placed on the car lines as standard equipment, is likely to be as effective in reducing and deterring motor vehicle theft as compliance with parts marking requirements.

DATES: The exemption granted by this notice is effective at the beginning of model year 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590. Ms. Gray's telephone number is (202) 366–1740.

SUPPLEMENTARY INFORMATION: In February 1988, NHTSA published in the **Federal Register** a notice granting the petition from Volkswagen of America, Inc. (Volkswagen) for an exemption from the parts marking requirements of the vehicle theft prevention standard for two model year (MY) 1989 Volkswagen car lines, the Audi 100 and Audi 200. (See 53 FR 4095, February 11, 1988). The agency determined that the antitheft device which Volkswagen intended to install on the two car lines as standard equipment was likely to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts marking requirements of the theft prevention standard.

Subsequently, on April 29, 1992, NHTSA published a notice granting Volkswagen's petition for a modification of the 1988 exemption so that company could begin installing a new version of its antitheft device (See 57 FR 18203). The new device was placed as standard equipment on the MY 1992 Audi 100 and S4 (formerly the 200) lines. Volkswagen stated that the MY 1992 antitheft device included a modified central locking system, and included, on the higher priced models in the 100 line, a remote control signaling unit.

In a letter dated May 11, 1994, Volkswagen informed NHTSA of contemplated changes to the antitheft device to be placed as standard equipment on the MY 1995 Audi A6

and S6 car lines, and requested that the modified antitheft device be permitted. In a letter dated July 14, 1994, Volkswagen submitted a letter showing "good cause" why NHTSA should make the grant of the petition for modification applicable to MY 1995. In a letter dated August 3, 1994, Volkswagen provided supplemental information addressing section 543.6(a)(4), reasons for the petitioner's belief that the antitheft device will be effective in reducing motor vehicle theft, and section 543.6(a)(5), reasons for the petitioner's belief that NHTSA should determine that the antitheft device is likely to be as effective as parts marking. Together, Volkswagen's submissions of May 11, July 14, and August 3 constitute a complete submission, as required by 49 CFR 543.9(c)(2), in that the petition meets the general content requirements of section 543.5 paragraphs (b) (1) through (3) and (7); and the specific content requirements under section 543.6.

In a letter dated May 23, 1994 to Volkswagen, the agency granted the petitioner's request for confidential treatment of bracketed information in its May 11, 1994 letter. On September 6, 1994, Volkswagen informed NHTSA in writing that the names of the A6 and S6 car lines and the model year of their introduction, had been publicly released, and therefore, Volkswagen no longer requested confidential treatment for this information.

Volkswagen's petition contains a detailed description of the identity, design, and location of the components of the antitheft device, including the electrical schematics of the device. There are locks on the trunk, the driver's door, and the front passenger door. Volkswagen stated that the antitheft device planned for MY 1995 is activated by removing the key from the ignition and locking the driver's door or trunk. When the operator removes the ignition key, exits from the vehicle and locks the driver's door with the key, the central locking system is activated. Activation of the central locking system renders the starter motor nonfunctional and arms an audible alarm. The alarm is triggered by sensors in the light contact switches for the doors and engine compartment, by a sensor located in the trunk key cylinder, and by disconnection of the ground wire between the radio housing and the antitheft alarm unit.

The theft deterrent system of the antitheft device planned for MY 1995 has an engine starter interrupt function. While the system is armed, any breach of it will automatically interrupt the starter relay. Once the alarm has been triggered, the engine cannot be started until the alarm has been deactivated with the key in one of the front doors or the trunk lock.

Volkswagen states that the antitheft device planned for the MY 1995 car lines differs somewhat from the device on the MY 1992 lines. Volkswagen states that the differences in the planned MY 1995 device are a revision in the central locking system, the addition of an LED activation indicator, and changes in the audible and visible warning devices.

With the MY 1992 antitheft device, once the central locking system and alarm are activated, the operator could choose to open only a specific door lock or the trunk lock by turning the key and quickly releasing it. Holding the key for more than 0.5 seconds in the open position deactivates the alarm, and opens both door locks and the trunk lock. Additionally, when the key is inserted and turned counterclockwise to open the trunk lock, the central locking system also opens both door locks and deactivates the alarm system. Turning the key in either front door lock or in the trunk lock rearms the device and locks both doors and the trunk. Tampering with the device will cause both the horn and lights to activate for up to 4 minutes.

For MY 1995, Volkswagen plans to modify the antitheft device so that when the key is inserted into a front door lock or trunk lock, the key will only open the lock being turned. However, an operator can open all the door locks and the trunk lock simultaneously if, within 5 seconds of the first turn of the key, the operator turns the key a second time to the open position. Tampering with the MY 1995 system would cause the horn to sound for 30 seconds, instead of sounding for up to 4 minutes, as the MY 1992 system does. In addition, the device planned for MY 1995 will utilize the hazard warning flashers, which operate up to 5 minutes. For MY 1995, an LED activation indicator light will be added on the front dashboard. A flashing light shows that the antitheft device is activated.

For the planned MY 1995 device, Volkswagen provided a drawing indicating that all the switches and wiring activating the device are protected. The door, trunk, and engine hood contact switches are all hidden within the vehicle. Additionally, the control unit for the antitheft device is located in the passenger-side dashboard, with the battery being protected under the hood. If an unauthorized attempt should be made to open the hood, an audible signal and flashing of the hazard warning lamps will be triggered via the contact switch for the engine compartment light when it is opened. The alarm system horn is located in the trunk compartment and can only be reached after the trunk lock is opened.

Volkswagen addressed the reliability and durability of its antitheft device by providing a list of Volkswagen's internal performance and durability tests that were conducted on the device. Among these tests were tests for: Material requirements; operating voltages; temperature stability; mechanical properties; electrical requirements; electromagnetic compatibility; environmental compatibility; and service life. With its petition, Volkswagen included a certification that the antitheft device was tested according to Volkswagen's standard, including those tests relating to electrical and mechanical durability, and passed all the performance requirements of the tests.

As further evidence of the antitheft device's reliability and durability, Volkswagen stated that the functions of the antitheft device are to be handled by a specially developed microchip manufactured with the latest complementary metal oxide semiconductor (C–MOS) technology. Volkswagen asserts that among the advantages of this method are that it reduces the number of discrete components by about 60 percent compared with conventional antitheft devices; it has better reliability, as there are fewer solder joints; it has a high degree of parameter stability; and by the use of a chip, the suggestion of contact bounce and interference on input signals from the protected areas can be digitalized. Volkswagen further states that in addition to a high degree of protection (the unit will withstand −150 V to +100 V pulses without damage), this achieves a high degree of resistance to interference.

Volkswagen stated that the antitheft device planned for the MY 1995 A6 and S6 car lines is, except for the changes noted earlier, almost identical to the devices on the Audi 100, S4, 500 and Quattro car lines that have been granted exemptions from parts marking requirements of the theft prevention standard.

The agency has reviewed the theft experience of the Audi 100 and 200 car lines equipped with the antitheft device as standard equipment, for 1989, 1990, and 1991. The data from the FBI's National Crime Information Center, NHTSA's official source of theft data, show that for 1990/91 the most recent year for which theft data is available, the Audi 100/200 had a theft rate of 1.3564 (per thousand vehicles

produced), a rate that is below the 1990/91 median theft rate of 3.5826. For 1990/91, out of 235 vehicle lines, the Audi 100/200 line was ranked 204, far lower than the median rank of 116.

In discussing why it believes the antitheft device will be effective in reducing and deterring motor vehicle theft, Volkswagen compared its MY 1995 antitheft device to similar devices for which NHTSA has previously granted exemptions from parts marking. Volkswagen stated that the theft rates of these comparable lines decreased when the antitheft device was made standard equipment, and have remained, for the most part, below 1983/84 median theft rate of 3.2712 (per thousand vehicles produced). (See 50 FR 46666, November 12, 1985). Volkswagen stated its belief that its device proposed for MY 1995 is equivalent to all of these comparable devices previously granted an exemption by the agency. The agency believes that the MY 1995 Volkswagen antitheft device is comparable to the devices on the car lines cited below.

Based on data from the FBI's National Crime Information Center, Volkswagen showed that the theft rate of the Toyota Cressida went from 4.7 (all figures provided are for thefts per thousand vehicles produced) in 1985 to 4.26 in 1986; the theft rate of the Toyota Supra went from 10.39 in 1985 to 2.79 in 1986; the theft rate of the Nissan Maxima went from 4.18 in 1984 to 1.99 in 1985; the theft rate of the Nissan 300ZX went from 8.74 in 1983/84 to 5.14 in 1989; and the theft rate of the Mazda RX–7 went from 12.11 in 1984 to a theft rate of 6.09 in 1989.

For these reasons, Volkswagen believes that the antitheft system planned for installation on its MY 1995 A6 and S6 lines is likely to be as effective in reducing thefts as compliance with the parts marking requirements of part 541.

NHTSA believes that there is substantial evidence indicating that the modified antitheft system planned to be installed as standard equipment on the MY 1995 Audi A6 and S6 car lines will likely be as effective in reducing and deterring motor vehicle theft as compliance with the requirements of the theft prevention standard (49 CFR part 541). This determination is based on the information that Volkswagen submitted with its petition and on other available information. The agency believes that the modified device will continue to provide the types of performance listed in section 543.6(a)(3): promoting activation; attracting attention to unauthorized entries; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 CFR section 543.6(a)(4), the agency also finds that Volkswagen has provided adequate reasons for its belief that the modified antitheft device will reduce and deter theft. This conclusion is based on the information Volkswagen provided on its device. This information included a description of reliability and functional tests conducted by Volkswagen for the antitheft device and its components.

In 49 CFR 543.9, paragraph (h)(2)(ii) permits the agency to establish an effective date for the modification of the exemption earlier than "the model year following the model year in which NHTSA issued the modification decision" upon a showing of good cause by the manufacturer that an earlier effective date for modifying its exemption is consistent with the public interest and purposes of 49 U.S.C. section 33106. In its petition, Volkswagen stated that making the modification of its antitheft system effective beginning with MY 1995 is in the public interest since it would permit expeditious manufacture and sale of vehicles with the modified antitheft system as standard equipment. Volkswagen cited the 1990/91 theft data published by NHTSA in the Federal Register (59 *FR* 12400, March 16, 1994) shows that the Audi 100/200 car lines had a theft rate of 1.3564 (per thousand vehicles stolen), substantially below the 1990/91 theft rate of 3.5826. Volkswagen stated its belief that the antitheft device proposed for the MY 1995 Audi A6 and S6 car lines, with essentially the same device, will continue to have a theft rate well below the median. NHTSA has reviewed this showing of "good cause" and finds that making the modification of Volkswagen's petition effective beginning with the 1995 model year is consistent with the public interest and 49 U.S.C. section 33106.

For the foregoing reasons, the agency hereby exempts the Volkswagen Audi A6 and S6 car lines that are the subject of this notice, in whole, from the requirements of 49 CFR part 541.

If, in the future, Volkswagen decides not to use the exemption for the car line that is the subject of this notice, it should formally notify the agency. If such a decision is made, the car line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

The agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts marking programs continue to make it difficult to compare the effectiveness of an antitheft device with the effectiveness of compliance with the theft prevention standard. The statute clearly invites such a comparison, which the agency has made on the basis of the limited data available. With implementation of the requirements of the "Anti Car Theft Act of 1992," NHTSA anticipates more probative data upon which comparisons may be made.

NHTSA notes also that if Volkswagen wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, section 543.9(c)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

However, the agency wishes to minimize the administrative burden which section 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on October 27, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–27260 Filed 11–2–94; 8:45 am]

BILLING CODE 4910–59–P

Research and Special Programs Administration

Pipeline Safety Advisory Bulletin ADB–94–05; Pipelines Affected by Flooding

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Advisory to each owner or operator of a hazardous liquid or natural gas transmission pipeline operating in areas that may be subject to severe flooding.

SUMMARY: This advisory is for all operators of pipelines which may be affected by flooding. It provides observations from RSPA, Texas Railroad Commission (TRC), and other federal and state agencies as a result of the recent floods near Houston. This advisory also includes actions that operators should consider taking to assure the integrity of pipelines in case of flooding.

Background

As the result of unprecedented flooding of rivers and streams in the Houston area, seven natural gas and hazardous liquid pipelines failed in or near the San Jacinto River over the three day period October 19–21, 1994. These failures included: an Exxon 8-inch diameter LPG line; an Exxon 8-inch diameter fuel line; an Exxon 20-inch diameter hazardous liquid line; a Colonial 40-inch diameter products (gasoline) line; a Colonial 36-inch diameter products (heating oil) line; a Texaco 20-inch diameter crude oil line; and a Valero 12-inch diameter natural gas line. While no determination of cause of failure has been made for any of these lines, RSPA and the TRC believe that the extreme flooding by the San Jacinto River was probably a substantial contributing factor in each of the failures.

The damage to pipelines caused by the flood may have resulted either from the extreme force of the flowing water, as the San Jacinto carved new temporary channels, or from pipelines being struck by heavy debris that was reported as having flowed down river at the height of the flooding. Because RSPA and the TRC cannot at this time determine the exact effects of the flooding, operators should consider the potential effects of flooding as posing a possible threat to the integrity of their lines.

Advisory

As the result of seven natural gas and hazardous liquid pipeline flood-related failures in or near the San Jacinto River in Texas on October 19–21, 1994, operators should consider the actions recommended in this Advisory Bulletin for application to pipelines located in any area of the United States subject to widespread flooding.

RSPA pipeline safety regulations in 49 CFR 192.613 for natural gas pipelines, and 49 CFR 195.401 for hazardous liquid pipelines, require an operator to maintain continuing surveillance of its facilities and to correct damage to its pipeline that could affect the safe operation of the pipeline (such as damage that may result from extreme flood conditions). If the operator of a natural gas pipeline determines that the pipeline is in unsatisfactory condition and no immediate hazard exists, the operator must recondition or phase out the segment involved, or reduce the maximum allowable operating pressure. For hazardous liquid pipelines, if the condition presents an immediate hazard to persons or property, the operator may not operate the affected part of the system until the unsafe condition is corrected. In summary, if the operator has reason to believe that flooding has adversely affected, or will adversely affect, its pipeline, the operator must take corrective or preventative action.

In addition, operators must consider the application of RSPA's reporting requirements in 49 CFR Part 191, and subpart B of 49 CFR Part 195, as well as applicable state requirements, that require operators to submit telephonic and written reports when natural gas or hazardous liquids are released causing damages meeting the reporting thresholds. Finally, RSPA regulations also require operators to submit reports of safety-related conditions involving potentially unsafe conditions on natural gas and hazardous liquid pipelines (49 CFR 191.23 and 191.25, and 49 CFR 195.55 and 195.56).

Operators need to direct their resources in a manner that will enable them to determine the potential effects of the flooding on their systems, and take the following actions as appropriate:

- Deploy personnel so that they will be in position to take emergency actions, such as shut down, isolation, or containment.
- Extend regulator vents and relief stacks above the level of anticipated flooding, as appropriate.
- Evaluate the accessibility of pipeline facilities that may be in jeopardy, such as valve settings, needed to isolate water crossings or other sections of a pipeline.
- Perform frequent patrols, including overflights as appropriate, to evaluate right-of-way conditions at water crossings during flooding and after waters subside. Determine if flooding has exposed or undermined pipelines as a result of new river channels cut by the flooding or by erosion or scouring.
- Coordinate with emergency and spill responders on pipeline location and condition, and provide maps and other relevant information to them.
- Coordinate with other pipeline operators in the flood area and establish emergency response centers to act as liaison for pipeline problems and solutions.
- Determine if facilities which are normally above ground (e.g., valves, regulators, relief sets, etc.) have become submerged and are in danger of being struck by vessels or debris; if possible, such facilities may be marked with an appropriate buoy with Coast Guard approval.
- Perform surveys to determine the depth of cover over pipelines and the condition of any exposed pipelines, such as those crossing scour holes. Where appropriate, surveys of underwater pipe should include the use of visual inspection by divers or instrumented detection. Information gathered by these surveys should be shared with landowners. Agricultural agencies may help to inform farmers of the potential hazard from reduced cover over pipelines.
- Assure that line markers are still in place or are replaced in a timely manner, and notify contractors, highway departments, and others involved in post-flood restoration activities of the presence of pipelines and the risks posed by reduced cover.

If a pipeline operator has suffered damage to its line, or has shut in the line, or has operated at a reduced pressure as a precautionary measure during the flood, the operator should advise the State Pipeline Safety Office (for intrastate lines), or RSPA's Regional Pipeline Safety Office (interstate lines) prior to returning the line to service, on increasing the operating pressure, or otherwise changing the operating status of the line. The State Safety Division or the RSPA Regional Pipeline Safety Office, as appropriate, will advise on a case-by-case basis whether, and under what conditions, a line can safely be returned to full service.

Issued in Washington, D.C. on October 28, 1994.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 94–27227; Filed 11–2–94; 8:45 am]

BILLING CODE 4910–60–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Meeting of the Investment and Services Policy Advisory Committee

AGENCY: Office of the United States Trade Representatives.

ACTION: Notice of meeting on November 17, 1994 of the Investment and Services Policy Advisory Committee.

SUMMARY: The Investment and Services Policy Advisory Committee will hold a meeting on November 17, 1994 from 10:00 a.m. through 2:00 p.m. The

meeting will be closed to the public from 10:00 a.m. to noon because there will be a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this part of the meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions. The meeting will be open to the public and press from noon to 2:00 p.m. when trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

DATES: The meeting is scheduled for November 17, 1994, unless otherwise notified.

ADDRESSES: The meeting will be held at the Carlton Hotel, located at 923 16th Street NW., Washington, DC 20006, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Michaelle Burstin, Director of Public Liaison, Office of the United States Trade Representative, (202) 395–6120.

Michael Kantor,

United States Trade Representative.

[FR Doc. 94–27303 Filed 11–2–94; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Internal Computer Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Computer Matching Program.

Notice is hereby given that the Department of Veterans Affairs (VA) proposes to conduct an internal computer matching program. The Veterans Benefits Administration (VBA) and the Office of the Assistant Secretary for Finance and Information Resources Management (FINANCE) are the components responsible for managing the systems of records that will be subject to the matching program. The purpose of the program is to identify and locate VA employees who owe delinquent debts to the Federal Government as a result of their participation in benefit programs administered by VA. Once identified and located, the debtors may become subject to involuntary offset of their pay under the provisions of the Debt Collection Act of 1982.

The legal authority for undertaking this matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government, 31 U.S.C. 3711 (Collection and Compromise) and 5 U.S.C. 5514 (Installment Deduction for Indebtedness). These statutes authorize Federal agencies to offset a Federal employee's salary as a means of satisfying delinquent debts owed the United States. VBA and FINANCE have concluded an agreement to conduct the matching program pursuant to provisions of the Privacy Act of 1972, as amended (5 U.S.C. 552a(o)).

VBA is the recipient component and will perform the computer match. FINANCE will provide VBA with an abstract file from the Personnel Accounting Integrated Data system (PAID). The records entered on this abstract are limited to those employees who are identified as veterans by an indicator in the original PAID record. Each PAID abstract record includes the employee's full name, social security number and duty station identifier. The records in the PAID abstract are, then, matched to the Veterans and Beneficiaries Identification and Records Location Subsystem (BIRLS) file by comparing social security numbers in both PAID and BIRLS records. In those instances where a PAID abstract record and a BIRLS record have identical social security numbers, the BIRLS file number is entered on the abstract file. In many instances, the file number will be the same as the employee's social security number. After the abstract file is updated with file numbers from BIRLS, the file is compared to the Centralized Accounts Receivable System (CARS) file. In each instance where a file number from the PAID/BIRLS match is identical to the file number in a CARS record, the CARS record will be updated with the employee's duty station identifier.

If the abstract tape was not updated with the employee's file number, the employee's social security number in the PAID abstract will be compared to the CARS file number. If those numbers are an identical match, the employee's CARS record will be updated with his or her duty station identifier from the PAID abstract.

Records to be Matched: The systems of records maintained by the respective components from which records will be disclosed for the purpose of this computer match are as follows: FINANCE: Personnel Accounting Integrated Data (PAID) Master Records in the Personnel and Accounting Pay System-VA, 27VA047, which appears at page 942 of the document entitled Privacy Act Issuances, 1991 Compilation, Volume II. This system contains records of approximately 220,000 active VA employees. VBA: (a) "Compensation, Pension, Education and Rehabilitation Records-VA" (58VA21/22) appearing at page 967 of the document entitled Privacy Act Issuances, 1991 Comp., Volume II. (b) "Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records-VA" (55VA26), appearing at page 962 of the document entitled Privacy Act Issuances, 1991 Comp., Volume II. (c) Veterans and Beneficiaries Identification and Records Location Subsystem-VA (BIRLS), 38VA23, which appears at page 952 of the document entitled Privacy Act Issuances, 1991 Compilation, Volume II. Exchange of data pursuant to this matching program is consistent with 5 U.S.C. 552a(b)(1) and 38 U.S.C. 5701(b)(6). The debtor records actually used to perform the match are maintained in the Centralized Accounts Receivable System (CARS). CARS records, which number about 414,000, are a subset of those found in Privacy Act system of records 58VA21/22. In some instances, data in an individual's record in the Privacy Act system of records 58VA21/22 include certain data extracted from the same individual's record maintained under 55VA26. This would occur, for instance, where an individual has a delinquent debt as the result of his or her participation in the VA loan guaranty program.

The matching program is expected to begin on or about December 5, 1994, and continue in effect for 18 months. Matching activity will begin no sooner than 30 days after publication of this notice or 40 days after a report of this is matching program has been provided to Congress and the Office of Management and Budget (OMB), whichever is later. The agreement governing the matching program and, thus, the matching program, may be extended an additional 12 months with the approval of VA's Data Integrity Board. Such extension must occur within three months prior to expiration of the 18-month period set forth above and under the terms set forth in 5 U.S.C. 552a(o)(2)(D).

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding the proposal to conduct the matching

program to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Service Unit at the above address, between 8:30 a.m. and 4:30 p.m., Monday through Friday, except holidays, until December 5, 1994.

FOR FURTHER INFORMATION CONTACT: Mark Gottsacker, Debt Management Center (389/00A), U.S. Department of Veterans Affairs, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111, (612) 725–1844.

SUPPLEMENTARY INFORMATION: This information is required by the Privacy Act of 1974, as amended (5 U.S.C. 552a(e)(12)). A copy of this notice has been provided to both Houses of Congress and OMB.

Approved: October 26, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 94–27267 Filed 11–2–94; 8:45 am]

BILLING CODE 8320–01–M

Privacy Act of 1974; New System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice of new system of records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 522a(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is adding a new system of records entitled "Accounts Receivable Records—VA" (88VA20A6).

DATES: Interested persons are invited to submit written comments, suggestions or objections regarding the proposed system of records. All relevant materials received before December 5, 1994, will be considered. All written comments received will be available for public inspection in Room 119 of the address given below, only, between 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until December 13, 1994. If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the **Federal Register** by VA, the new system of records, and the routine use statements included therein, are effective December 5, 1994.

ADDRESSES: Written comments concerning the proposed routine uses may be mailed to the Secretary, Department of Veterans Affairs (271A), 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Daniel D. Osendorf, Director, Debt Management Center (389/00), U.S. Department of Veterans Affairs, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111, (612) 725–1844.

SUPPLEMENTARY INFORMATION: The Veterans Benefits Administration is responsible for collecting debts resulting from individuals' participation in certain programs administered by VA. These programs include—but are not limited to—compensation, pension, educational allowance, guaranteed and direct home loans as well as education loans. VA established the Centralized Accounts Receivable System (CARS) in 1975 as a pilot project for automation of debt collection and indebtedness record retrieval. At the time, and for a number of years after, collection activity was shared among the Centralized Accounts Receivable Division (CARD)—a division of the VA Regional Office and Insurance Center in St. Paul, Minnesota—and the 58 individual VA regional offices. Generally, collection techniques were limited to written requests for payment and referral for litigation to the United States Attorneys. CARD collected only certain categories of debts while the regional offices had responsibility for the remaining categories. Methods of locating delinquent debtors were relatively expensive and labor-intensive.

Since the inception of the CARS pilot project, additional means of automated collection and locating debtors have either been authorized or made available by new technologies. Chief among the vehicles broadening the scope of debt collection authority was the Debt Collection Act of 1982 (Pub. L. 97–365). The Act authorized disclosure of personal information to consumer reporting agencies, made possible disclosure of taxpayer mailing addresses to creditor agencies and authorized disclosure of debtor information for purposes of administrative and Federal salary offset. Since the enactment of Pub. L. 97–365, new technologies have enabled creditor agencies to pursue authorized collection activities with increased efficiency and innovative methods. These methods, in many cases, involve some form of computer matching. Among the new technologies is the Credit Alert Interactive Voice Response System (CAIVRS). This is an automated telephone system enabling participating Government agencies to verify information provided by new loan applicants. Information for CAIVRS is retrieved from an automated data base.

In 1990 and 1991, VBA debt collection activities for major benefit programs were, for the most part, consolidated under one automated system—CARS—and one organization—Debt Management Center (DMC). The Director, DMC, reports directly to the VBA Chief of Staff. CARS is, now, the system of record for indebtedness accounts resulting from participation in all major VBA programs, except the All-Volunteer Force Educational Assistance Program (38 U.S.C. ch. 30 and 10 U.S.C. ch. 106). While that program's indebtedness records are maintained on a personal computer system, certain ch. 30/106 debt-related computer matching services are performed by DMC through CARS.

With the new means of collection and locating debtors developed over the years, computer matching with other Government agencies has become a significant part of the routine activity conducted by DMC. Computer matching using CARS data is performed in accordance with the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), as amended. Disclosures are made as routine uses under Privacy Act systems of records 58VA21/22, "Compensation, Pension, Education and Rehabilitation Records-VA", and 55VA26, "Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records, and Vendee Loan Applicant Records-VA". Typically, the responsibility for revising or introducing new routine uses associated with debt collection falls upon program staff who are not directly responsible for debt collection operations.

This new system of records is being established to reflect the centralized environment VBA continues to build for collection activity as well as to provide the public with one reference for routine use disclosures related to debt collection. The debt collection program adheres to VA security and reporting requirements under title 38, Code of Federal Regulations and other Federal regulations, as well as the Privacy Act of 1974, as amended (5 U.S.C. 552a), and the appropriate provisions of the Internal Revenue Code, title 26, United States Code.

Approved: October 27, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

88VA20A6

SYSTEM NAME:

Accounts Receivable Records-VA.

SYSTEM LOCATION:

Automated indebtedness records for compensation, pension, educational assistance, survivors' and dependents' educational assistance and home loan debts are maintained at the VA's Austin Automation/Systems Development Center in Texas. Extracts of those automated records are maintained in the Benefits Delivery Network for accounting and adjudication purposes. The Benefits Delivery Network is administered by the Benefit Delivery Center, Hines, Illinois. Certain paper records, microfilm and microfiche are maintained at the VA Debt Management Center (DMC), Ft. Snelling, Minnesota. Education loan automated, paper, microfilm and microfiche records are maintained at DMC. Automated and paper indebtedness records related to the All-Volunteer Force Educational Assistance Program are also maintained at DMC. Paper records related to accounts receivable may be maintained in individual file folders located at the VA regional office having jurisdiction over the domicile of the claimant or the geographic area in which a property securing a VA guaranteed, insured or direct loan is located. Generally, such papers maintained at regional offices are not used directly in the debt collection process unless they are forwarded by conventional mail, electronic mail or facsimile to DMC. Records provided to the Department of Housing and Urban Development (HUD) for inclusion in the Credit Alert Interactive Voice Response System (CAIVRS) are located at the HUD Data Processing Center in Lanham, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons indebted to the United States Government as a result of their participation in benefit programs administered by VA under title 38, United States Code, chapters 11, 13, 15, 21, 30, 31, 34, 35, 36 and 37, including persons indebted to the United States Government by virtue of their ownership of property encumbered by a VA-guaranteed, insured, direct or vendee loan. Persons indebted to the United States Government as a result of their participation in a benefit program administered by VA under 10 U.S.C. ch. 106. Persons who received benefits or services under 38 U.S.C. or 10 U.S.C. ch. 106, but who did not meet the requirements for receipt of such benefits or services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information varies depending on the benefit or home loan program from which the debt arose. Identifying information, including VA claim number, Social Security number, name and address and, when appropriate, loan reference number obtained from the "Compensation, Pension, Education and Rehabilitation Records-VA" (58VA21/22) and "Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records, and Vendee Loan Applicant Records-VA" (55VA26) systems of records. Initial indebtedness amount, type of benefit from which the debt arose, identifying number of the VA regional office with jurisdiction over the underlying benefit claim or property subject to default or foreclosure, name of co-obligor and property address of the defaulted home loan from 58VA21/22 and 55VA26. History of debt collection activity on the individual, including correspondence, telephone calls, referrals to other Government agencies, VA district counsel, private collection and credit reporting agencies. Payments received, refunds made, interest amount, current balance of debt and indication of status of current VA benefit payments. Federal employment status obtained by computer matching with Government agencies and the United States Postal Service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, sections 501(a), 5314 and 5315. Federal Claims Collection Act of 1966 (Pub. L. 89–508), 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711, Collection and Compromise, 31 U.S.C. 3716, Administrative Offset; Debt Collection Act of 1982 (Pub. L. 97–365), 5 U.S.C. 5514, Installment Deduction for Indebtedness.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

For purposes of the following routine uses:

(a) The term, *veteran,* includes present, former or retired members of the United States Armed Forces, the reserve forces or national guard; and,

(b) The term, *debtor,* means any person falling within the categories of individuals covered by this system, as set forth above. A *debtor* may be a veteran, as defined above, a veteran's dependent entitled to VA benefits in his or her own right or a person who is neither a veteran nor a veteran's dependent for benefit purposes.

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of and at the written request of that individual.

2. Any information in this system may be disclosed to a Federal agency, upon its official request, to the extent that it is relevant and necessary to that agency's decision regarding: The hiring, retention or transfer or an employee; the issuance of a security clearance: the letting of a contract or the issuance or continuance of a license, grant or other benefit given by that agency. However, in accordance with an agreement with the U.S. Postal Service, disclosures to the U.S. Postal Service for decisions concerning the employment of veterans will only be made with the veteran's prior written consent.

3. Any information in this system may be disclosed, by computer matching or otherwise, in connection with any proceeding for the collection of an amount owed the United States by virtue of a person's participation in any benefit program administered by VA when in the judgment of the Secretary, or official generally delegated such authority under standard agency delegation of authority rules (38 CFR 2.6), such disclosure is deemed necessary and proper in accordance with 38 U.S.C. 5701(b)(6).

4. The name and address of a veteran or the dependent of a veteran and other information as is reasonably necessary to identify such veteran or dependent may be disclosed to a consumer reporting agency for the purpose of locating the veteran or dependent indebted to the United States under a VA benefit program or to obtain a consumer report in order to assess the ability of a veteran or dependent to repay an indebtedness, provided the disclosure is consistent with 38 U.S.C. 5701(g)(2).

5. The name and address of a veteran or dependent, other information as is reasonably necessary to identify such persons, including personal information obtained from other Federal agencies through computer matching programs, and any information concerning the person's indebtedness to the United States by virtue of the person's participation in a VA benefit program may be disclosed to a consumer reporting agency for purposes of making such information available for inclusion in consumer reports regarding that person and for purposes of locating that person, provided that the provisions of 38 U.S.C. 5701(g)(4) have been met.

6. Any information is this system, including available identifying information regarding a person, such as the person's name, address, Social

Security number, VA insurance number, VA claim number, VA loan number, date of birth and employment information, may be disclosed, except to consumer reporting agencies, to a third party in order to obtain current name, address and credit report in connection with any proceeding for the collection of an amount owed the United States by virtue of the person's participation in a VA benefit program. Such disclosure may be made in the course of computer matching having the purpose of obtaining the information indicated above. Third parties may include other Federal agencies, State probate courts, State drivers' license bureaus, State automobile title and license bureaus and private commercial concerns in the business of providing the information sought.

7. Identifying information, including the debtor's name, Social Security number and VA claim number, along with the amount of indebtedness, may be disclosed to any Federal agency, including the U.S. Postal Service, in the course of conducting computer matching to identify and locate delinquent debtors employed by or receiving retirement benefits from those agencies. Such debtors may be subject to offset of their pay or retirement benefits under the provisions of 5 U.S.C. 5514.

8. Any information in this system, including the nature and amount of a financial obligation as well as the history of debt collection activity against a debtor, may be disclosed to the Federal agency administering salary or retirement benefits to the debtor to assist that agency in initiating offset of salary or retirement benefits to collect delinquent debts owed the United States under VA benefit programs.

9. The name(s) and address(es) of a veteran or beneficiary may be disclosed to another Federal agency or to a contractor of that agency, at the written request of the head of that agency or designee of the head of that agency for the purpose of conducting Government research or oversight necessary to accomplish a statutory purpose of that agency.

10. Any information in the system, including the amount of debt, may be disclosed at the request of a debtor to accredited service organizations, VA-approved claims agents and attorneys acting under a declaration of representation so that these individuals can aid persons indebted to VA in the preparation, presentation and prosecution of debt-related matters under the laws administered by VA. The name and address of a debtor will not, however, be disclosed to these individuals under this routine use if the debtor has not requested the assistance of an accredited service organization, claims agent or any attorney.

11. Any information in this system such as the amount of indebtedness and collection history may be disclosed in the course of presenting evidence to a court, magistrate or administrative authority in matters of guardianship, inquests and commitments, to private attorneys representing debtors rated incompetent in conjunction with issuance of Certificates of Incompetence and to probation and parole officers in connection with court-required duties.

12. Any information in this system, including the amount of indebtedness and history of collection activity, may be disclosed to a VA- or court-appointed fiduciary or a guardian ad litem in relation to his or her representation of a debtor only to the extent necessary to fulfill the duties of the fiduciary or guardian ad litem.

13. Any relevant information in this system may be disclosed to the Department of Justice and United States Attorneys in the defense or prosecution of litigation involving or pertaining to the United States. Any relevant information in this system may also be disclosed to other Federal agencies upon their request in connection with review of administrative tort claims and potential tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672, the Military Claims Act, 10 U.S.C. 2733 and other similar claims statutes.

14. Any information concerning a person's indebtedness to the United States by virtue of that person's participation in a benefit program administered by VA, including personal information obtained from other Federal agencies through computer matching programs, may be disclosed to any third party, except consumer reporting agencies, in connection with any proceeding for the collection of any amount owed to the United States. Purposes of these disclosures may be to (a) assist VA in collection of title 38 and 10 U.S.C. ch. 106 program debts and/or costs of services, and (b) initiate legal actions for prosecuting individuals who willfully or fraudulently obtain title 38 or 10 U.S.C. ch. 106 benefits without entitlement.

15. The debtor's name, address, Social Security number and the amount (excluding interest) of any indebtedness waived, compromised or written off may be disclosed to the Treasury Department, Internal Revenue Service, as a report of income under 26 U.S.C. 61(a)(12).

16. The name of a debtor, any other information reasonably necessary to identify such individual and any other information concerning the individual's indebtedness under a VA program, may be disclosed to the Treasury Department, Internal Revenue Service, for the collection of that indebtedness by offset of Federal income tax refunds pursuant to 31 U.S.C. 3720A.

17. Debtors' social security numbers, VA claim numbers, loan account numbers and other information as is reasonably necessary to identify individual VA indebtedness accounts may be disclosed to the Department of Housing and Urban Development for inclusion in the Credit Alert Interactive Voice Response System (CAIVRS). Information in CAIVRS may be disclosed to all participating agencies and lenders who participate in the agencies' programs to enable them to verify information provided by new loan applicants and evaluate the creditworthiness of applicants. Records are disclosed to participating agencies and private-sector lenders by an ongoing computer matching program.

18. Name, Social Security numbers and any other information reasonably necessary to ensure accurate identification may be disclosed to the Department of the Treasury, Internal Revenue Service, to obtain the mailing address of taxpayers who are debtors under this system of records. Disclosure is made by computer matching and pursuant to 26 U.S.C. 6103(m)(2).

19. Any information in a record under this system of records may be disclosed to the United States General Accounting Office (GAO) to enable GAO to pursue collection activities authorized to that office or any other activities within their statutory authority.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this record system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security number), the amount, status and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report. 38 U.S.C. 5701(g) governs the release of names and addresses of any person who is a present or former member of the Armed Forces, or who is a dependent of such a person, to consumer reporting agencies under certain circumstances.

Routine uses, above, provide for disclosure under those circumstances.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tape and disk, microfilm, microfiche, optical disk and paper documents. DMC does not routinely maintain paper records of individual debtors in file folders with the exception of correspondence, and replies thereto, from Congress, the White House, members of the Cabinet and other similar sources. The finance division of VARO St. Louis maintains certain debtor correspondence in folders by terminal digit. Paper records related to accounts receivable may be maintained in individual file folders located at VA regional offices. Generally, such papers maintained outside of DMC are not used directly in the debt collection process unless they are first forwarded to DMC. Information stored on magnetic media for most benefit debts may be accessed through a data telecommunications terminal system designated as CAROLS (Centralized Accounts Receivable On-Line System). Most CAROLS terminals are located in DMC; however, VA regional offices generally each have one terminal for inquiry purposes. Information stored on magnetic media and related to the All-Volunteer Force Educational Assistance or education loan debt collection programs may be accessed through personal computers. Records provided to the Department of Housing and Urban Development for inclusion in the Credit Alert Interactive Voice Response System (CAIVRS) are maintained on magnetic media at the HUD Data Processing Center in Lanham, Maryland. Identifying information, the amount of the debt and benefit source of the debt may be stored on magnetic media in records that serve as the database for the VA Benefits Delivery Network (BDN). The BDN is operated for the adjudication of claims and the entry of certain fiscal transactions. The identifying information, the amount of the debt and benefit source of the debt are transmitted to the Centralized Accounts Receivable System (CARS) or a personal computer local area network system before collection activity commences. When a debtor is awarded gratuitous benefits under VA programs, the BDN may operate to offset all or part of retroactive funds awarded, if any, to reduce the balance of the indebtedness.

RETRIEVABILITY:

Paper documents, microfilm and microfiche are indexed by VA file number or date of receipt. Automated records are indexed by VA claim number, Social Security account number, name and loan account number in appropriate circumstances. Records in CAIVRS may only be retrieved by Social Security number.

SAFEGUARDS:

1. Physical Security: (a) Access to working spaces and document storage areas in DMC is restricted by cipher locks and to VA employees on a need-to-know basis. Generally, document storage areas in VA offices other than DMC are restricted by VA employees on a need-to-know basis. VA offices are generally protected from outside access by the Federal Protective Service or other security personnel. Strict control measures are enforced to ensure that access to and disclosure from documents, microfilm and microfiche are limited to a need-to-know basis. (b) Access to CAROLS data telecommunications terminals is by authorization controlled by the site security officer. The security officer is assigned responsibility for privacy-security measures, especially for review of violation logs, information logs and control of password distribution. (c) Access to data processing centers is generally restricted to center employees, custodial personnel Federal Protective Service and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other personnel gaining access to computer rooms are escorted.

2. CAROLS and Personnel Computer Local Area Network (LAN) Security: (a) Usage of CAROLS and LAN terminal equipment is protected by password access. Electronic keyboard locks are activated on security errors. (b) At the data processing centers, identification of magnetic media containing data is rigidly enforced using labeling techniques. Automated storage media which are not in use are stored in tape libraries which are secured in locked rooms. Access to programs is controlled at three levels: programming, auditing and operations.

3. CAIVRS Security: Access to the HUD data processing center from which CAIVRS is operated is generally restricted to center employees and authorized contact employees. Access to computer rooms is restricted to authorized operational personnel through locking devices. All other persons gaining access to computer rooms are escorted. Records in CAIVRS use Social Security numbers as identifiers. Access to information files is restricted to authorized employees of participating agencies and authorized employees of lenders who participate in the agencies' programs. Access is controlled by agency distribution of passwords. Information in the system may be accessed by use of a touch-tone telephone by authorized agency and lender employees on a need-to-know basis.

RETENTION AND DISPOSAL:

Microfilm and microfiche are retained in metal cabinets in DMC for 25 years. CARS records are retained until termination of debt collection (payment in full, write off, compromise or waiver). All other automated storage media retained and disposed of in accordance with disposition authorization approved by the Archivist of the Untied States. DMC generally forwards all substantive paper documents to VA regional offices for storage in claims files or loan files. Those documents are retained and disposed of in accordance with the appropriate system of records. Information provided to HUD for CAIVRS is stored on magnetic tape. The tapes are returned to VA for updating each month. HUD does not keep separate copies of the tapes.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Debt Management Center (389/00), U.S. Department of Veterans Affairs, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, MN 55111.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request to the system manager indicated above.

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of VA records may write, call or visit the nearest VA regional office. Address locations are listed in VA Appendix 1.

CONTESTING RECORD PROCEDURES:

See record access procedures, above.

RECORD SOURCE CATEGORIES:

The records in this system are derived from two other systems of records as set forth in "Categories of records in the system", above, persons indebted to the United States by virtue of their participation in programs administered by VA, dependents of those persons, fiduciaries for those persons (VA or court appointed), other Federal agencies, States and local agencies,

private collection agencies, consumer reporting agencies, State, local and county courts and clerks, other third parties and other VA records.

[FR Doc. 94–27268 Filed 11–2–94; 8:45 am]
BILLING CODE 8320–01

Sunshine Act Meetings

Federal Register
Vol. 59, No. 212
Thursday, November 3, 1994

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).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, November 8, 1994 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, November 10, 1994 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Regulations:
MCFL Rulemaking: Summary of Comments and Draft Final Rules (continued).
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,
Administrative Assistant
[FR Doc. 94–27414 Filed 11–1–94; 2:49 pm]
BILLING CODE 6715–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 53868, October 26, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, October 31, 1994.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Federal Reserve Bank and Branch director appointments.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: October 31, 1994.

Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 94–27386 Filed 11–1–94; 8:45 am]
BILLING CODE 6210–01–P

LEGAL SERVICES CORPORATION

Board of Directors Meeting; Changes

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 53702.

PREVIOUSLY ANNOUNCED TIME AND DATE: A meeting of the Legal Services Corporation Board of Directors will be held on November 5, 1994. The meeting will commence at 9 a.m.

PREVIOUSLY ANNOUNCED LOCATION OF MEETING: The Hilton Back Bay Hotel, 40 Dalton Street, The Washington Room, Boston, MA 02115, (617) 236–1100.

CHANGES IN THE MEETING:

MATTERS TO BE CONSIDERED: Agenda item 9(a) has been amended to read as follows:

a. Consider and Act on Committee Recommendation to Publish 45 C.F.R. 1607 as a Final Rule in the **Federal Register**.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: October 31, 1994.

Patricia D. Batie,
Corporate Secretary.
[FR Doc. 94–27355 Filed 10–31–94; 8:45 am]
BILLING CODE 7050–01–M

federal register

Thursday
November 3, 1994

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171 et al.
Cargo Tanks; Miscellaneous Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173, 178, and 180

[Docket No. HM–183C; Amdt. Nos. 171–129, 173–240, 178–105, 180–7]

RIN 2137–AC37

Cargo Tanks; Miscellaneous Requirements

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is amending certain requirements for the manufacture, qualification and maintenance of cargo tank motor vehicles. These regulatory actions are based on petitions for rulemaking, exemptions, National Transportation Safety Board recommendations, and RSPA initiative. The intended effect of these actions is to relax certain regulatory requirements and to reduce unnecessary economic burdens on industry where there will be no adverse effect on safety.

DATES: *Effective date:* January 5, 1995.

Compliance date: Compliance with the regulations, as amended herein, is authorized immediately.

Incorporation by reference: The incorporation by reference of certain publications listed in this final rule is approved by the Director of the Office of the Federal Register as of January 5, 1995.

FOR FURTHER INFORMATION CONTACT: Ronald Kirkpatrick, telephone (202) 366–4545, Office of Hazardous Materials Technology, or Jennifer Karim, (202) 366–4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On March 3, 1993, RSPA published in the **Federal Register** a notice of proposed rulemaking (NPRM) [Docket No. HM–183C; Notice No. 93–7; 58 FR 12316] proposing to amend certain requirements for the manufacture, qualification and maintenance of cargo tank motor vehicles. Most issues raised in the NPRM relate to requirements that were adopted in final rules published under Docket No. HM–183/HM–183A (June 12, 1989, 54 FR 24982; May 22, 1990, 55 FR 21035; September 7, 1990, 55 FR 37028; June 17, 1991, 56 FR 27872). The final rules established three new cargo tank specifications designated as DOT 406, DOT 407 and DOT 412, and revised the structural design requirements for MC 331 and MC 338 cargo tanks. Voluntary compliance for manufacture of cargo tanks to these new or revised specifications was authorized beginning on October 1, 1990.

As manufacturers began modifying their manufacturing operations to construct cargo tanks to the new requirements, they encountered certain technical problems which caused them to question changes they had endorsed several years ago. They raised issues relating to structural integrity, accident damage protection, use of dual function pressure relief devices, and certification by the American Society of Mechanical Engineers (ASME). Also RSPA received several petitions for rulemaking addressing certain issues not previously raised. In the NPRM, RSPA pointed out these concerns and other issues based on petitions for rulemaking, exemptions, and National Transportation Safety Board (NTSB) recommendations. The NPRM also announced a public meeting that was held in Chicago on March 24 and 25, 1993, to address issues raised in the NPRM.

On March 8, 1993, RSPA published a final rule [Docket HM–183, 58 FR 12904] granting an extension until April 21, 1994, for the continued construction of cargo tank motor vehicles to the MC 306, MC 307, MC 312, MC 331, and MC 338 specifications. This action was granted to allow additional time for RSPA and industry to address certain technical issues concerning the manufacture of cargo tank motor vehicles to the DOT 406, DOT 407 and DOT 412 specifications, and to resolve certain concerns about the structural design requirements in the MC 331 and MC 338 specifications.

At the March 24–25 public meeting, several significantly different views of design engineers and cargo tank manufacturers were identified. Additionally, preliminary results were presented of an advanced structural evaluation (using finite element analysis) of the MC 331 cargo tank which raised questions in regard to stress levels in areas of concentrated loadings.

On January 12, 1994, RSPA published a final rule [Docket HM–183, 58 FR 1784] granting another extension until August 31, 1995, for continued construction of cargo tank motor vehicles to the MC specifications. The final rule also announced a public meeting in Washington, D.C. on February 7–8, 1994.

At the February public meeting, RSPA obtained clarification of certain comments received in response to the NPRM and also obtained additional supporting data on certain alternate proposals offered by industry. In addition, RSPA sought information to resolve the remaining issues on structural integrity, accident damage protection, use of dual function pressure relief devices, and ASME certification of low pressure cargo tank motor vehicle manufacturers.

II. Summary of Comments

RSPA received over 50 written comments in response to the proposals contained in the NPRM from trade associations, cargo tank manufacturers and repairers, manufacturers of cargo tank parts and equipment, and Federal, State and local agencies. RSPA has considered all comments, public meeting transcripts and petitions in the development of this final rule.

In the NPRM, RSPA informed industry that the following items would be open for discussion at the March public meeting:

1. Application of the ASME Code to DOT 400-series specification cargo tank motor vehicles.

a. The feasibility of citing all sections of the ASME Code that must be met in construction of DOT specification cargo tank motor vehicles as opposed to citing only those sections that do not apply.

b. The development of a consensus standard containing procedures for quality control, welding and design as an alternative to the procedures contained in the ASME Code.

2. The progress of the industry on development and testing of dual function vents, reclosing pressure relief devices capable of reseating with the loss of less than one gallon of lading, and self-closing systems for vacuum-loaded hazardous waste tanks.

3. The regulatory proposals contained in the NPRM.

Most commenters supported application of the ASME Code. One commenter stated that his company, which had initially opposed becoming ASME certified, has benefited from the expertise of the National Board inspector.

The ASME Code is an internationally recognized consensus standard for the design and construction of pressure vessels. It is also the only proven quality control standard for pressure vessels and cargo tanks.

The Cargo Tank Manufacturing Association (CTMA) submitted a draft quality control manual for review. CTMA recommended that RSPA recognize the manual, which includes

quality control procedures, as an alternative to requiring manufacturers to have an ASME "U" stamp or National Board "R" stamp. The use of the alternative standard recommended by CTMA is not equivalent in scope and detail to the ASME Code and is not included in this final rule.

It has also been brought to RSPA's attention that some "U" stamp and "R" stamp holders may believe they are not required to apply all provisions of the ASME or National Board quality control program for work on non-ASME DOT specification cargo tanks. When the regulations requiring cargo tank manufacturers and repair facilities to hold "U" and "R" stamps were promulgated, RSPA stated in the preamble discussions of the final rules and at public meetings that major provisions of the ASME or National Board quality control programs would apply to all work on DOT specification cargo tanks. Such provisions include welder qualifications, welding techniques, and quality control procedures. For instance, refer to the preamble discussions in the following final rules: "B. Cargo Tank: Manufacturer Qualification, Registration, Quality Control, and Certification," (June 12, 1989, 54 FR 24984); "Section 180.413 (Repair, Modification, Stretching, and Rebarrelling)," (September 7, 1990, 55 FR 37044).

One commenter stated that specifying all applicable sections of the ASME Code, rather than providing exceptions to sections that are not applicable, would provide greater assurance to engineers and designers that they have not overlooked an obscure section of the ASME Code. The commenter did not provide RSPA with any suggested wording for implementation of the recommendation.

The National Propane Gas Association (NPGA) submitted a report on the structural integrity of the MC 331 specification cargo tank. NPGA recommended uniformity in design loading requirements for all DOT specification cargo tanks. RSPA will consider the design loading requirements for MC 331 and MC 338 specification cargo tanks in a future rulemaking. The report is available for review in the public docket.

III. Section-by-Section Review

This review by section discusses only significant comments received to the proposals in the NPRM, changes made based on alternative proposals offered by commenters, and clarifications to certain provisions based on RSPA's initiatives. For those provisions that are adopted as proposed, readers are referred to the preamble discussion in the NPRM.

Section 171.7

The Truck Trailer Manufacturers Association (TTMA) submitted a petition for rulemaking (P–1236) requesting RSPA to incorporate by reference the latest editions of the ASME Code from the 1986 Edition and Addenda through 1985 to the 1992 edition and Addenda through 1993, and to update the National Board inspection Code from the 1983 Edition to the 1992 Edition. RSPA has reviewed these updated standards and agrees the latest editions should be referenced. The table in paragraph (a)(3) has been revised accordingly.

Section 173.33

Consistent with changes made in § 180.405(h) in this final rule, a new sentence is added to paragraph (d) stating that the venting requirements of the original DOT cargo tank specification must be met whenever a pressure relief valve is modified to a more recent specification. See preamble discussion for § 180.405(h). Similarly, in view of changes made in §§ 178.337–11 and 178.338–11 in this final rule, a new paragraph (h) is added to inform shippers that certain MC 331 and MC 338 cargo tanks manufactured after August 31, 1995, must have remotely controlled, internal, self-closing stop valves. See preamble discussion for § 178.337–11.

Section 173.225

Commenters supported the proposal to revise paragraph (e)(2) to authorize the use of MC 307 and DOT 407 cargo tank motor vehicles for certain organic peroxides. However, one commenter opposed allowing the use of MC 307 cargo tanks for all organic peroxides. This commenter misunderstood the proposal. Note 14 to the § 173.225(b) Table authorizes bulk packagings for only a few organic peroxides. Therefore, paragraph (e)(2) is adopted as proposed in the NPRM.

Section 173.315

For cargo tank motor vehicles in chlorine service, changes in requirements for hose, piping or tubing to be carried on the vehicle and in requirements for testing angle valves, as proposed in the NPRM, are adopted as paragraphs (o)(1) and (o)(2) respectively.

Section 178.337–1

Paragraphs (a)(3) and (e)(1) are revised to correct certain section references and paragraph (e)(2) is revised to authorize the use of ceramic fiber/fiberglass insulation for cargo tanks in chlorine service as proposed in the NPRM.

Section 178.337–9

As proposed in the NPRM, the restriction is removed against mounting or carrying on a cargo tank motor vehicle any hose, piping or tubing used in loading or unloading; paragraphs (b)(7) (ii) and (iii) are redesignated as (b)(7) (i) and (ii) respectively.

Section 178.337–11

In response to NTSB recommendation H–90–91 dealing with release of sulfur dioxide from an MC 331 cargo tank during unloading, RSPA proposed revision of requirements for remotely controlled self-closing stop valves on liquid or vapor discharge lines on newly constructed MC 331 cargo tank motor vehicles. Currently found at paragraph (a)(2), this requirement applies only to equipment intended for transportation of a flammable liquid, a flammable compressed gas, hydrogen chloride (refrigerated liquid) or anhydrous ammonia. RSPA proposed to broaden the requirement to include all compressed gases. This revision also was proposed for MC 338 cargo tanks.

Both the NTSB and the Compressed Gas Association (CGA) commented on RSPA's proposal to require remotely controlled internal self-closing stop valves. While supportive of RSPA's proposal, NTSB stated:

> Although the Safety Board is aware that MC 331 cargo tanks are predominantly used for the transportation of flammable and nonflammable compressed gases, the hazardous materials regulations (49 CFR Parts 171 through 180) do authorize these tanks to be used for the transportation of other classes of hazardous materials such as flammable liquids and poisons. The Safety Board believes that remote controls for internal shut-off valves should be required for any hazardous material that is authorized to be transported in an MC 331 cargo tank. Further the Safety Board believes that all MC 331 and MC 338 cargo tanks currently in hazardous materials service, and not just newly constructed tanks, should also be equipped with remote controls for the internal shut-off valves. The Safety Board has consistently urged the DOT to eliminate "grandfathering" clauses that permit hazardous materials to be transported indefinitely in containers or vehicles that fail to meet current minimum safety standards. The Safety Board believes that RSPA should require all MC 331 and MC 338 highway cargo tanks in hazardous materials service to be equipped with remote controls for internal shut-off valves by a specific date.

On the other hand, the CGA believes that remotely controlled shut-off valves should not be required for nonflammable ladings. CGA stated that

"operating experience for the nonflammable compressed gases does not warrant the addition of this restriction which would add cost without providing additional safety benefit."

After consideration of both comments, RSPA has revised the wording in §§ 178.337–11 and 178.338–11 to require the use of remotely controlled internal self-closing stop valves on any cargo tank motor vehicle certified after August 31, 1995, that is intended for the transportation of hazardous materials other than argon, carbon dioxide, helium, krypton, neon, nitrogen, and xenon. RSPA has excepted these particular gases because they pose a lesser degree of risk to public health, safety, and the environment in the event of their release during transportation. Many of the nonflammable refrigerant gases presently transported in cargo tanks are ozone depleters; some other nonflammable gases are toxic or noxious. RSPA will address the retrofit of existing cargo tanks with remotely controlled internal self-closing stop valves in a separate rulemaking action.

Section 178.338–9

As proposed in the NPRM and adopted in this final rule, paragraph (c)(2) is amended by removing the definition of "same design" and by adding a reference to the definition of "same design" contained in § 178.320. By referencing the definition in § 178.320, minor design variations are allowed for MC 338 cargo tanks.

Section 178.338–11

NTSB and CGA submitted comments to this section which were similar to their comments to proposed § 178.337–11. As stated in the preamble discussion to § 178.337–11 above, RSPA has revised the wording in §§ 178.337–11 and 178.338–11 to require the use of remotely controlled internal self-closing stop valves on any MC 338 cargo tank motor vehicle certified after August 31, 1995, that is intended for the transportation of hazardous materials other than argon, carbon dioxide, helium, krypton, neon, nitrogen, and xenon.

Section 178.345–1

In paragraph (c), definitions for "normal operating loading" and "extreme dynamic loading" are added. These terms are used in revised § 178.345–3 in this final rule.

Paragraph (i)(2) requires that the void space within the connecting structure of a cargo tank motor vehicle composed of multiple cargo tanks must be vented to the atmosphere by a drain of at least 1 inch in diameter. In the NPRM, RSPA proposed to remove the drain hole size restriction. RSPA also solicited information on suitable dimensional controls for these drains, how often these areas need to be inspected, the conditions revealed during such inspections, and the availability of equipment for inspecting these areas.

Commenters expressed diverse views on the need to inspect these areas. The California Highway Patrol (CHP) strongly supported the need for periodic inspection of the connecting structures on cargo tanks used to transport all hazardous materials. CHP related information about three separate catastrophic failures of molten sulfur trailers that occurred due to fatigue cracking in the void space. All three cargo tank motor vehicles had been insulated, thus preventing any external visual inspection for shell cracks. CHP believes that if an internal visual inspection of the void space had been performed, evidence of cracking may have been detected prior to the catastrophic failures. CHP noted that equipment, such as fiber optics, borescopes and video cameras, is readily available for inspecting closed areas and is being used for pipeline, aircraft, oil well, and boiler inspections. Also, numerous contractors offering inspection and non-destructive testing services are available throughout the U.S.

NTSB also concurred that regular and effective inspections of void spaces are essential. NTSB, however, expressed concern that HM–183C did not address the configuration of other appurtenances that could conceal corrosion that might lead to a failure of the tank wall. The NTSB recommendation H–83–30 called for periodic external visual inspection of surfaces obscured by appurtenances, structural members, etc.

Several commenters who opposed inspecting these areas stated that double bulkheads and void spaces on MC 306 or DOT 406 cargo tanks in non-corrosive service do not experience the same degree of deterioration as MC 312 or DOT 412 cargo tanks in corrosive service. They stated that cargo tanks in non-corrosive service should not be subject to the same inspections. One commenter submitted to RSPA samples taken from bulkheads adjacent to void spaces of two scrapped MC 306 carbon steel cargo tanks used in gasoline service for 14 and 15 years. The commenter stated that neither tank showed evidence of corrosion at this location; the samples confirm this statement.

TTMA stated there is little possibility of corrosion occurring in the void space of any tank, except on carbon steel cargo tanks in corrosive service. TTMA recommended that the connecting structure on self-supporting cargo tanks be thickness tested every two years for signs of corrosion. Several other commenters supported TTMA's comments. One commenter also suggested that the wording be revised to eliminate reference to the inspection opening but continue to provide for a drain. The commenter stated that the minimum acceptable size of any drain opening should be 0.5 inches diameter, which is large enough to insert a borescope or equivalent device.

RSPA agrees with commenters that there has been no evidence of corrosion occurring in the void space of any tank, except a carbon steel cargo tank in corrosive service. Corrosion in connecting spaces has serious structural implications for self-supporting cargo tanks. The failure reported in the NTSB investigative report, containing recommendation H–83–30, involved a carbon steel MC 312 cargo tank semi-trailer carrying hydrochloric acid; the failure occurred due to severe corrosion in the tank shell under a circumferential reinforcing ring. Therefore, paragraph (i)(2) is revised to require that the connecting structure in a carbon steel, self-supporting multi-tank cargo tank motor vehicle must have a single drain of at least 1.0 inch diameter, or two or more drains of at least 0.5 inches diameter, 6 inches apart, one of which is located on the bottom centerline. In addition, § 180.407(i) is revised to require thickness testing of these areas as suggested by TTMA.

RSPA believes that NTSB recommendation H–83–30, which calls for periodic external visual inspection of cargo tank surfaces obscured by appurtenances and structural attachments, is adequately addressed in current § 180.407(d). Paragraph (d) requires that a periodic external visual inspection must be conducted of all major appurtenances and structural attachments on a cargo tank to detect signs of corrosion or damage.

Section 178.345–3

Commenters expressed concern over the lack of flexibility in calculating compressive stresses for non-ASME DOT 400-series cargo tanks. They recommended that RSPA provide alternatives to ASME Code Section VIII, Division 1 UG–23(b) for calculating the maximum allowable compressive buckling stress in tank walls for low pressure cargo tanks. The static design and construction of all DOT 400-series

cargo tanks must be in accordance with Section VIII of the ASME Code. Any DOT 400-series cargo tank which is required to be certified to the ASME Code also must be designed in accordance with the Code's requirements for dynamic loading, including UG–23(b). This applies to DOT 407 cargo tanks with a MAWP greater than 35 psig and each tank designed to be loaded by vacuum, and to DOT 412 cargo tanks having a MAWP greater than 15 psig.

TTMA stated manufacturers believe the requirements in § 178.345–3(b) should be modified to allow several methods of analysis as appropriate for the cargo tank under consideration. Using the methods outlined in the ASME Code produces lower allowable compressive stress values, resulting in substantially thicker sheets for the DOT 400-series tanks as compared with the MC 300-series cargo tanks.

One commenter stated that while the UG–23(b) calculations may be appropriate for DOT 407 cargo tank with MAWP ratings between 25 and 35 psig, this formula will rarely yield reasonable results for DOT 406 or DOT 412 cargo tanks having a MAWP of 15 psig or less. Commenters recommended two alternatives to the ASME UG–23(b) design calculations, both of which are formulas from engineering texts. One is from the "Alcoa Structural Handbook," 1960, page 156 and Table 23; the other is from "Formulas for Stress and Strain," Fifth Edition, by Roark and Young, pages 554 and 555 and Table 35. The "Alcoa Structural Handbook" formula is as follows:

$$S_c = \frac{S_{bA}}{1.5} = \frac{\left(\frac{\pi}{4}\right)^2 E}{1.5\left(\frac{R_i}{t_s}\right)\left(1+\frac{\left(\frac{R_i}{t_s}\right)^{1/2}}{35}\right)^2}$$

where:

R_i/t_s is greater than 200

E = modulus of elasticity of material at design temperature

R_i = inside radius of the shell (largest radius of non-circular cross-section)

t_s = minimum thickness of shell less corrosion allowance

S_{bA} = critical compressive buckling stress per the Alcoa formula

S_c = allowable compressive stress due to static bending loads

The Roark and Young formula is as follows:

$$S_c = \frac{S_{bY}}{1.5} = \frac{Et_s}{(1.5)2(3)^{1/2}\left[1-v^2\right]^{1/2}R_i}$$

where:

R_i/t_s is greater than 10

S_{bY} = critical compressive buckling stress per Roark and Young

v = Poisson's ratio

Other symbols are the same as in the Alcoa formula, above.

Based on the merit of these comments, RSPA is revising paragraph (b) to allow alternative methods for determining compressive buckling stress for DOT 400-series cargo tanks which are not required to be certified in accordance with the ASME Code. This allows manufacturers more freedom in the design of DOT 400-series cargo tank motor vehicles, particularly the DOT 406 cargo tank.

RSPA solicited information on the structural integrity of cargo tanks and, in particular, the loading combinations that may be encountered during operation of cargo tank motor vehicles as prescribed in paragraph (c). Information was received from several commenters which indicated that the loadings from normal operating conditions are different from loadings experienced in extreme dynamic events. The normal operating loadings are more frequent in occurrence, but much lower than the extreme dynamic loadings.

The requirement contained in current paragraph (c) only specifies extreme dynamic loadings. A cargo tank designer must determine which loadings, if any, should be considered as acting simultaneously. TTMA stated it is unlikely that extreme dynamic loadings will occur and highly unlikely that such loadings will occur at the same time. TTMA reported that if the extreme dynamic loadings are considered by the cargo tank designer as acting simultaneously, the resulting weight of a DOT 406 cargo tank would increase significantly. TTMA went on to state that such an increase in tank weight would have an adverse effect on public safety because it would cause a decrease in the number of gallons delivered each trip, increasing the number of trips and miles driven, thus increasing the probability of more accidents, personal injuries and fatalities.

During discussions on structural integrity issues at the February 1994 public meeting, the potential for changes in loading due to liquid movement was addressed. Commenters generally agreed that while significant lading movement can occur during partially loaded conditions and that such movement cannot be disregarded by cargo tank designers and vehicle operators, the variables involved are more than can be comprehensively dealt with at this time. The general agreement was that the highest stress conditions on most cargo tank configurations occur when the cargo tanks are full. Discussions on how to combine the loadings in calculating the structural integrity requirements have been going on for a number of years. RSPA agrees with commenters that the loadings currently in the HMR are based on extreme conditions that would be realized only on a rare occasion, if ever. Thus, based on recent information presented at the public meetings and written comments received in response to the NPRM, RSPA concludes that, for the design and construction of cargo tanks, it is best to consider separately the effects of normal operating loadings, which are known to act in combination, and the effects of extreme dynamic loadings, which are not expected to act in combination with each other. Therefore, in this final rule, RSPA is revising paragraph (c) to provide structural design requirements that will be more reflective of conditions encountered by cargo tank motor vehicles. These revisions will require cargo tank designers to consider normal operating loadings to be acting simultaneously, except that longitudinal acceleration and deceleration cannot occur at the same time. Also, extreme dynamic loadings must be considered in separate calculations; these loadings may be considered to be acting independently.

Paragraph (d) prescribes design calculations that should be considered to account for stresses due to impact in an accident. For consistency, the accident damage requirements contained in current paragraph (d) are moved to § 178.345–8(e) where other accident damage protection requirements appear. Also, consistent with other changes made to this section, paragraphs (a) (1) and (3) are amended by removing the reference to paragraph (d) of this section.

Paragraph (e) is editorially revised, for clarity and consistency, by changing the word "wall" to read "shell and heads", and paragraphs (e) through (g) are redesignated as paragraphs (d) through (f).

Section 178.345–5

Commenters supported the proposed change in paragraph (b) that all fittings and devices mounted on a manhole cover must withstand the same static internal fluid pressure as that required for the manhole. However, commenters requested a revision to clarify that fitting and device manufacturers are

responsible for testing and certifying the structural integrity of their products. RSPA agrees with the commenters that the fitting and device manufacturers should be responsible for ensuring the integrity of their components. Therefore, the proposed provision is revised for clarity and added as new paragraph (f).

Another commenter suggested that paragraph (e) be revised to require that each manhole cover must be marked with the date of certification. RSPA will consider this comment in a future rulemaking action.

Section 178.345–6

A minor editorial change is adopted as proposed in the NPRM.

Section 178.345–8

Commenters recommended several changes to the accident damage protection requirements. They requested that all accident damage protection devices be designed so that calculated stress under the conditions prescribed not exceed the ultimate strength of the material of construction. They pointed out certain inconsistencies in the design criteria specified in this section. For example, in paragraph (d), the design stress for accidents involving longitudinal deceleration is based on "the lesser of the yield strength or 75 percent of the ultimate strength"; the general requirement for accident damage protection in paragraph (a)(3), is based on "75 percent of the ultimate strength"; while bottom damage and rollover damage protection, in paragraphs (b) and (c), both are based on the "ultimate strength." RSPA agrees there is merit in using the same criteria whenever possible. Therefore, in this final rule, the design of all accident damage protection devices is based on the ultimate strength of the material of construction.

The primary purpose of accident damage protection is to prevent the release of hazardous lading from a cargo tank in the event of an accident. For example, during an accident involving the maximum level of longitudinal deceleration expected, if the front head of a cargo tank experiences stress levels above the yield point of the material of construction, the head will bulge or distort. However, if that deformed head continues to contain the lading, the intent of this requirement has been met. In a practical sense, good engineering practice provides for factors of safety when analytical methods are not well established and when safety considerations call for reducing the probability of failures.

When an accident imposes loads on the cargo tank wall, the material of the wall, however, must be stronger than the accident damage protection device. For example, in a rollover accident, the portion of the cargo tank wall to which a rollover protection device is attached should not fail before the rollover protection device fails. The design stresses in the protection device itself can be based on the ultimate strength of the material, but the loads transmitted to the cargo tank wall must be based on a more conservative value. This can be achieved by use of factors of safety.

Accordingly, paragraph (a)(3) is revised to base design stresses on the ultimate strength of the material with a 1.3 safety factor (i.e., the reciprocal of 0.75 times ultimate, rounded).

Commenters have stated that most impacts on bottom damage protection devices in accidents occur directly from the side of the vehicle. TTMA has stated that any piping at the bottom of a tank is protected fore and aft by the running gear of the cargo tank motor vehicle or its towing vehicle. Contending that reduced forces of impact can be expected from front and rear, TTMA petitioned for a reduction from 155,000 pounds to 27,000 pounds fore and aft along the longitudinal axis of the vehicle. RSPA believes, however, that the possibility of impacts from the front is very real for trailers; for example, during turning maneuvers, or in the event that the towing vehicle rides over an obstacle such as a guard rail. On the other hand, impacts from the rear are less likely on trailers because of the rear suspension. Therefore, RSPA has revised paragraph (b)(1) to recognize that suspension components and structural mounting members can provide all, or part, of bottom damage protection. Additionally, in paragraph (b) introductory text, a second sentence is added to clarify that a single protection device may be used to protect outlets, projections and piping grouped or clustered together.

Commenters stated that in the general rollover damage protection requirements, in paragraph (c), the wording "enclosed inside" could be misunderstood to require that closures and fittings must be protected from rollover damage on all sides—front, sides, rear and top. They also suggested that the protection devices be located no more than 48 inches from the closure or fitting. RSPA never intended to require that the component being protected be fully enclosed by the protective device. Also, RSPA does not agree with adding a dimensional location requirement. Rather than dimensional controls, one of RSPA's overall objectives is to provide performance requirements when appropriate. Therefore, paragraph (c) is revised to clarify the ambiguous wording.

Commenters requested that in paragraph (c)(1), the tangential design load for rollover protection be reduced from 2 "g" to 0.5 "g" or 1 "g." A commenter stated that "neither industry nor government have any data to support what this rollover protection device strength should be", contending that MC 306 accident damage protection has performed well, even considering findings of the NTSB study of overturn accidents. A commenter provided analytical data that indicated the internal bulkheads would be overstressed under 2 "g" tangential loads using the current MC 306 design.

A February 4, 1992 NTSB investigation report on rollover accidents involving MC 306 and MC 312 cargo tanks recommended several actions by both RSPA and the Federal Highway Administration (FHWA). The NTSB report supported the earlier RSPA decision to increase the rollover design load in the horizontal plane from one-half the weight of the loaded cargo tank motor vehicle prescribed in the MC 306, MC 307 and MC 312 specifications, to twice the weight of the loaded cargo tank motor vehicle prescribed in the DOT 406, DOT 407 and DOT 412 specifications. NTSB also noted that at this time, test results are not available to support this four-fold increase, but limited testing performed under RSPA and FHWA sponsorship for studies of release from dome covers indicate forces can easily exceed 2 "g". Additionally, NTSB questioned whether the load specified for the DOT 406, DOT 407 and DOT 412 specifications are adequate in a typical rollover accident.

RSPA agrees with comments that in some rollover accidents, cargo tank rotation is limited to 120 degrees or less, so that these horizontal forces do not come into play unless a roadside obstacle is struck. In such incidents, the side of the cargo tank absorbs most of the energy of the rollover. However, in other rollover incidents, cargo tank motor vehicles have rotated 180 degrees or more and rollover protection devices have failed.

RSPA performed simple calculations to estimate the forces that would be expected to bring a sliding overturned cargo tank motor vehicle to a halt, at a variety of speeds and stopping distances. From the calculations performed regarding stopping distances, RSPA concludes that the design loads should not be decreased. FHWA will initiate a study aimed at developing a more refined understanding of the forces involved in cargo tank rollover accidents.

For these reasons, RSPA rejects requests to lower the tangential design load. In many cases, manufacturers will find it necessary to develop new designs for overturn protection devices, perhaps with associated short-term increased cost, but with enhanced safety benefits. Several manufacturers already have developed satisfactory protection devices which meet these design criteria. In addition, RSPA has made several minor editorial revisions in paragraph (c)(1) to improve clarity.

Paragraph (d)(3) prescribes that each cargo tank rear-end protection device and its attachment to the vehicle must be designed to satisfy the conditions specified in paragraph (d)(1) when subject to an impact of the cargo tank at rated payload, at a deceleration of 2 "g". Such an impact must be considered as being uniformly applied in a horizontal plane at an angle of 30 degrees or less to the longitudinal axis of the vehicle. Commenters requested elimination of the 30 degree angle for this impact load. They stated that most rear-end collisions of trucks and trailers involve other vehicles and are "in line", i.e., the longitudinal centerlines of the two vehicles are parallel at impact. TTMA pointed out that the National Highway Traffic Safety Administration (NHTSA) published a notice of proposed rulemaking [Docket No. 1–11, Notice 9; January 3, 1992], containing a proposal for rear impact guards and protection. The NHTSA proposal specified an impact only in the direction of the longitudinal centerline of the struck vehicle; it did not address angular impact. NHTSA's rear impact requirements are intended for the design of underride guards that will minimize impacts in occurrences where automobiles underride (i.e., slide under) the rear-end of large trucks and trailers. These requirements are intended to protect passenger occupants while RSPA's requirement for cargo tank rear-end protection is intended to prevent impacts to lading retention components that could result in the loss of hazardous material lading. Upon further review, RSPA agrees that requiring rear-end protection devices to withstand impacts at an angle of 30 degrees to the longitudinal axis of the vehicle is excessive. Therefore, paragraph (d)(3) is revised to reduce the angle of impact to 10 degrees.

A requirement contained in current paragraph (d) of § 178.345–3 specifying design stress for accidents involving longitudinal deceleration is revised and moved to new paragraph 178.345–8(e) in this final rule. The specified design stress is based on the ultimate strength of the material with a factor of safety of 1.3 (i.e., the reciprocal of 0.75 times ultimate, rounded). The use of 2 "g" as a reasonable maximum level for longitudinal deceleration in accident situations generally has been accepted by industry but commenters have stated that the reliability of strain gauge testing and finite element analysis is questionable when structures are loaded above the yield point. For this reason, cargo tank manufacturers who choose to design at this level may use performance testing to prove that tank heads and shell can withstand this 2 "g" loading condition. Alternate analytical methods or combinations of test and analysis may be used if they are accurate and verifiable.

Section 178.345–10

This section specifies requirements for the pressure relief and vacuum systems on DOT 400-series cargo tank motor vehicles. It also specifies lading retention requirements for the pressure relief system in the event of an overturn. Numerous commenters suggested alternative provisions for pressure relief systems on DOT 400-series cargo tanks. Pressure relief valve manufacturers stated that they have found it very difficult to attain "no loss of lading" with valve designs capable of withstanding the characteristic dynamic pressure surge required by the regulation, especially at low design pressures.

For these reasons, commenters requested that RSPA allow the loss of one liter of lading. If adopted, a properly functioning pressure relief valve could be expected to release no more than one liter of hazardous material in an overturn accident. This amount of liquid would be so widely dispersed by the motion of the vehicle as to cause minimal danger of fire or environmental damage.

Cargo tank shipments of poisonous-by-inhalation (PIH) materials in Hazard Zones A and B are subject to special provisions which result in high working pressures, thicker tank walls and thermal insulation. Insulation moderates thermal gain, thus increasing the pressure differential between valve pressure settings and dynamic pressure; also, it cushions the impact of accidents. The net effect of these features makes it unlikely that even small releases of PIH lading will occur.

RSPA believes allowing a minute release of other types of ladings in overturn accidents has greater safety benefits when compared with possible loss of an entire cargo tank load. Therefore, paragraph (b)(3)(ii) is revised to specify that after August 31, 1995, DOT 400-series cargo tanks must be equipped with a pressure relief valve that will release no more than one liter of lading in an emergency situation before reclosing to a leak-tight position. In addition, editorial changes are made in paragraph (b)(3)(i) for clarity.

Section 178.345–13

A paragraph heading, "*Leakage test.*" is added to paragraph (c) as proposed in the NPRM.

Section 178.345–14

This section specifies cargo tank marking requirements. The California Highway Patrol recommended several substantial changes throughout this section that were not proposed in the NPRM. While RSPA believes some of these changes may have merit, they will have to be considered in a future rulemaking.

Proposed paragraph (d) is revised to clarify that each cargo tank on a multi-tank cargo tank motor vehicle must have a separate nameplate, unless each cargo tank is made by the same manufacturer with the same materials, manufactured thickness, and minimum thickness.

Section 178.345–15

RSPA proposed to add a new paragraph (e) to allow affixing a metal certification plate to cargo tanks which do not meet all of the applicable specification requirements. This would be indicated by not stamping a compliance date on the plate. A commenter pointed out that the proposed wording does not specifically require the Registered Inspector to stamp the date of compliance on the specification plate when the cargo tank is brought into full conformance with the specification. RSPA agrees with the commenter and has clarified the requirement.

Another commenter requested a revision to clarify that, for ASME tanks, the cargo tank motor vehicle manufacturer must furnish a manufacturer's data report to the cargo tank owner as required by the ASME Code, in addition to other required documents. The ASME Code requires a cargo tank manufacturer to prepare a manufacturer's data report for each tank. RSPA agrees with the commenter and has added a provision in paragraph (b)(2) specifying that the manufacturer must supply the cargo tank owner with a copy of the manufacturer's data report, at the time of delivery.

Section 178.346–1

RSPA proposed to add a new paragraph (d)(9) specifying provisions for the use of a single full fillet lap weld joint without plug welds for

longitudinal seams on the top 25 percent of the cargo tank. For the most part, commenters agreed in principal with the proposal; however, they recommended that the use of single fillet weld lap joint not be limited to the top one-fourth of the cargo tank.

Several manufacturers stated that they have used single full fillet lap welded joints for longitudinal seams on both the top and bottom areas of thousands of low-pressure cargo tank motor vehicles. They stated their service experience with these joints over many years of operations has been very good.

Advantages cited by the manufacturers for using this type of weld include the ability to achieve excellent fit between the shell and head flanges, and reduction in the amount of time personnel must work in confined spaces. However, because the ASME Code does not recognize this joint configuration, it may not be used on ASME certified vessels.

Industry submitted reports of tensile tests of the typically used single full fillet lap joints to RSPA. Test results indicate that failure occurs at stress levels of about 70 to 75 percent of the ultimate strength of adjacent material. One commenter opposed the use of such joints but provided no supporting test data.

RSPA believes the satisfactory performance of these joints over the years serves as a persuasive argument for their continued use on DOT 406 cargo tank motor vehicles. However, because a major reason for establishing the DOT 400-series specifications is enhanced quality assurance, the joints may be used only when subject to certain conditions. Therefore, new paragraph (d)(9) specifies the conditions for use of these joints in longitudinal seams, requirements for periodic compliance testing, and design requirements for determining weld joint efficiency. In addition, a new paragraph (d)(10) is added to clarify that requirements of paragraph UW–9(d), of Section VIII, Division 1, ASME Code do not apply.

Section 178.346–2

Minor editorial changes are made to paragraph (a).

Section 178.346–10

Valve manufacturers stated that, during prototype testing, they have encountered substantial problems in obtaining adequate flow under emergency conditions with pressure relief valves designed for the comparatively low MAWP levels typical of DOT 406 cargo tank motor vehicles. These problems have been resolved for current valves; however, the valve manufacturers continue to believe the emergency flow capacities, which are permitted to release up to one gallon of lading under the dynamic pressure surges characteristic of rollover accidents, are still marginal in some cases. Because of the problems encountered by valve manufacturers, RSPA will allow an additional year for product development and manufacturing start-up. This extension is added in a new paragraph (b)(3).

RSPA proposed to revise paragraph (c)(1) to permit DOT 406 cargo tanks to have the same set pressure and test pressure as allowed in § 178.345–10(d)(1), and as prescribed for DOT 407 and 412 cargo tanks except that the reclosing pressure would remain at no less than MAWP. Commenters stated that while the proposed language would be helpful in increasing the venting capacity to a limited extent and providing a similar difference between opening and closing pressures over a range of MAWP values, it would not eliminate the need for supplementary venting capacity. Commenters requested that the flow rate be determined at a higher pressure, specifically at 125 percent of the tank test pressure. This would provide more pressure differential across the valve seat and provide higher venting capacities. As discussed in the preamble for 178.346–10(b) above, pressure relief valve manufacturers reported that they have found it difficult to obtain adequate emergency flow capacities in valves designed for DOT 406 cargo tank motor vehicles.

Based on comments received, RSPA believes the problem can be relieved by implementing two measures. The first measure is to increase the tolerance on the valve set pressure to allow the valve to begin opening at a lower set pressure and to be fully open at a higher pressure. The second measure is to increase the venting capacity rating pressure to 125 percent of the tank test pressure, and not greater than 3 psi above the tank's MAWP. Because the pressure relief valves are required to be removed from the cargo tank during periodic pressure testing, the tank itself will not be exposed to pressures above its normal test pressure [see § 180.407(g)(1)(i)]. This increase in the venting capacity rating pressure will still provide a satisfactory margin of safety with respect to tank bursting pressure, even in the event of exposure to fire. The combined effect of these changes can be expected to significantly raise the pressure differential across the valve seat, thus increasing flow. Accordingly, both paragraphs (c)(1) and paragraph (d)(1) have been revised to include these two measures.

Section 178.346–13

In the NPRM, RSPA proposed to increase the emergency flow capacity of DOT 406 pressure relief valves by raising the test pressure of the cargo tank. This was intended to alleviate problems reported by valve manufacturers by increasing the differential pressure across the valve seat, thus increasing flow. However, commenters requested that RSPA not make this change because of the increased danger of deformation of heads at pressure levels above 5.0 psig, especially for internal heads in which the pressure is applied to the convex side. One commenter stated that pressures above 5.0 psig would require increased head thickness or bracing, thus increasing the weight of the tank resulting in lower payload and higher manufacturing cost.

As an alternative means of increasing emergency flow, commenters suggested that the set pressure and the flow rating pressure of the pressure relief valve itself be changed while retaining the existing tank test pressure. RSPA agrees with this alternative. Therefore, RSPA has revised paragraphs 178.346–10(c)(1) and (d)(1) instead of revising the tank test pressure requirements.

Shortly before publication of the NPRM, TTMA petitioned RSPA to use the Environmental Protection Agency (EPA) test for vapor-tightness for all DOT 406 cargo tanks. TTMA requested that Method 27 be authorized for all DOT 406 cargo tanks, regardless of whether they are: (a) used in gasoline delivery, (b) fitted with vapor collection equipment, or (c) subject to this test under EPA rules. Method 27, is found in appendix A. to 40 CFR Part 60. Section 1.1 of Method 27 is applicable for the determination of vapor tightness of a gasoline delivery tank which is equipped with vapor collection equipment. Requirements for applying the initial pressure-vacuum and test criteria are contained in 40 CFR Part 60, Subpart XX—Standards of Performance for Bulk Gasoline Terminals. In § 60.501, the definition of vapor tight gasoline tank truck reads:

> Vapor-tight gasoline tank truck means a gasoline tank truck which has demonstrated within the 12 preceding months that its product delivery tank will sustain a pressure change of not more than 750 pascals (75 mm of water) within 5 minutes after it is pressurized to 4,500 pascals (450 mm of water). This capability is to be demonstrated using the pressure test procedure specified in Reference Method 27.

It should be noted that 750 pascals = 0.109 psi = 3.0 inches of water and 4,500 pascals = 0.653 psi = 18.1 inches of water. Similar provisions for benzene are prescribed in 40 CFR Part 60, Subpart BB—National Emission Standard for Benzene Emissions from Benzene Transfer Operations, at § 60.601.

RSPA authorized this alternative leakage test in the June 12, 1989 final rule published under HM–183 to relieve burdens of duplicate test requirements for cargo tanks intended for use in locations where, based on established standards of air quality, EPA has decided that release of gasoline vapors constitutes a hazard to the environment. TTMA stated that a cargo tank motor vehicle manufacturer may not know the local air pollution requirements to which the motor vehicle may be subject. RSPA recognizes TTMA's concerns and is permitting this alternative test when a cargo tank is equipped with vapor recovery equipment without qualification regarding the materials transported. RSPA also has revised paragraph (c) and § 180.407(h)(2) to reference appropriate acceptance criteria in EPA's regulation contained in 40 CFR 60.

Section 180.403

Commenters supported the proposal to add a definition for the term "replacement of a barrel." TTMA recommended that, in the definition of "replacement of a barrel" the wording "unused tank" should be clarified to mean a "new tank." RSPA agrees and the word "new" is added parenthetically after the word "unused."

Commenters also supported the proposal to revise the definition of rebarrelling. However, for the reasons contained in the preamble discussion for § 180.413 the proposed revision is not being adopted in this final rule. A commenter recommended that the definition of "repair" be modified to include the replacement of components such as valves, vents and fittings. RSPA believes this suggested change would be confusing because a "repair" is specifically defined to mean "any welding done to the cargo tank wall to return it to the original specification or a later equivalent specification." Replacement of valves, vents and fittings is considered maintenance. Therefore, the current definition is retained.

Section 180.405

Minor editorial changes are made in subparagraphs (f)(1)(iii) and (f)(4) as proposed in the NPRM.

In paragraph (g)(2), RSPA proposed to clarify that fittings and devices mounted on a manhole cover are part of the manhole assembly and must meet all performance standards required for the manhole cover. A commenter stated that the current requirement is adequate and recommended that RSPA not adopt the proposed change. The commenter stated that any concern or problem is due to a lack in verifying the continued proper securement of these fittings and devices to the manhole cover. The commenter said that the annual leakage test and inspection requirements in § 180.407 should be sufficient to assure that these in-service fittings and devices remain securely mounted and properly sealed on in-service manholes. RSPA agrees with the commenter and the proposed changes are not adopted in this final rule.

Another commenter recommended that paragraph (g)(2)(i) be revised to add "month and year" to the certification marking on manhole assemblies. Although RSPA believes that such a requirement may have merit, an opportunity should be provided for public comment; therefore, it will be considered in a future rulemaking action.

Paragraph (h) specifies that replacement for any reclosing pressure relief valve must be capable of re-seating to a leak-tight condition after a pressure surge. Section 180.405(c) authorizes modifying the reclosing pressure relief valves of an MC 306 cargo tank by installing the dual function pressure relief valves which are required for DOT 406 cargo tank motor vehicles. Commenters pointed out that this replacement could result in an MC 306 cargo tank having lower emergency venting capacity than its specification requires; because it is difficult to produce a valve that achieves the comparatively high flow rates of the MC 306 units, withstands the pressure surges specified in the DOT 406 specification, and recloses with minimal loss of lading. A reduced flow capacity is less likely to be encountered in fitting an MC 307 with a DOT 407 valve replacement, and in fitting an MC 312 with a DOT 412 valve replacement, because of the larger pressure differentials which are commonly used in these cargo tanks. Regardless of the equipment installed, the venting requirements specified in the particular cargo tank specification must be met whenever a pressure relief valve is replaced. For this reason, in this final rule, RSPA is authorizing replacement of defective MC 306 pressure relief valves with new or refurbished MC 306 pressure relief valves until August 31, 1998. After this date, any valve replacements must be the surge resistant pressure relief valves required for DOT 400-series cargo tanks. This allows three years for implementation of this safety approvement.

Section 180.407

In the table in paragraph (c), chlorine cargo tanks must be leakage tested annually. These cargo tanks are also required to be pressure tested every two years. Based on a comment, RSPA has extended the frequency for conducting the leakage test to two years to coincide with the pressure test. Certain minor editorial changes are made in paragraph (d)(1)(i) for clarity. Paragraph (e)(1) is revised to clarify that when a particular tank design such as a cargo tank with a lining, coating or internal baffles, precludes an internal visual inspection, the tank must be hydrostatically or pneumatically tested. Paragraph (e)(4), which is duplicative with the requirements in paragraph (f)(3), is removed as proposed in the NPRM.

RSPA proposed to revise paragraph (g)(1)(iv), covering the pressure test of specification cargo tanks for consistency with the proposed changes to § 178.346–10; however, commenters who initially sought this change recommended that the proposal be withdrawn and the current provisions retained. Therefore, no change is made in this final rule.

Paragraph (h)(2) is revised to permit the use of the EPA Method 27 vapor tightness test on any cargo tank fitted with a vapor recovery system and used in gasoline or benzene service, as discussed earlier under the preamble discussion to § 178.346–13(c)(2). A commenter suggested that paragraph (h)(2) require the use of oil or soap to detect leaks in cargo tank seams, piping, valves and accessories when performing the Method 27 test. RSPA believes that oil or soap can be very useful in locating leaks, but that it would be an unnecessary burden if required for all Method 27 tests. Accordingly, RSPA has not adopted the suggested change.

Paragraph (i) prescribes that the heads and shell of all unlined cargo tanks used for the transportation of materials corrosive to the tank must be thickness tested. Consistent with changes made to § 178.345–1(1)(2) in this final rule, a new paragraph (i)(4)(x) is added to specify that thickness testing must be performed on connecting structures of a carbon steel, self-supporting multi-tank cargo tank motor vehicle.

Requirements for continuing qualification and maintenance of cargo tank motor vehicles include periodic measurement of the thickness of heads and shells. This has focused attention

on interpretation of specification requirements for minimum thickness, especially of specification MC 306, MC 307, MC 312 cargo tanks and their predecessors.

In the specifications for MC 306, MC 307 and MC 312 cargo tanks constructed of steel, minimum thickness requirements for heads and shells were expressed in terms of U. S. Standard Gauges for sheet material or, for some MC 312 units where plate material was specified, in terms of fractions of an inch. These data were found at Table I and Table II in specifications for each of the respective types. Although not explicitly stated in the regulatory text, the tabulated values were the minimum nominal sheet and plate sizes permitted for these cargo tanks. For aluminum, values in Table I and Table II were the minimum nominal thickness expressed in decimals. The tolerances on mill thickness and the minimum thickness after forming were not covered. Although major steel purchase orders and steel mill production controls for sheet stock and thin plate are based on specific thicknesses and tolerances rather than on standard gauges, manufacturing tolerances have been established by the American Society for Testing and Materials (ASTM) for standard gauges and plate. For example, ASTM A480/A480M provides general specifications for stainless steels and heat-resisting steel plate, sheet and strip; Tables A1.2 and A1.17 in this specification are of special interest to manufacturers of DOT specification cargo tanks. For MC 307 and MC 312 cargo tanks which were required to be designed and constructed in accordance with the ASME Code, minimum mill undertolerances are set forth in Section VIII, Division 1 at UG–16(c). The ASME values are more restrictive than those of ASTM A480/A480M.

In January 1991, the National Tank Truck Carriers, Inc. (NTTC) published a revision to their "Cargo Tank Maintenance Manual" which included a table of minimum thicknesses for U.S. steel gauges ranging from 3 through 30. The accompanying narrative stated that the basic information was "provided by DOT." A table, contained in § 173.24(c)(2) of the 1990 edition of the HMR was cited for gauges 12 through 30 with extrapolation being used to complete the other gauges. The values presented in that table were intended for relatively severe cold-working operations such as those experienced in forming the top and bottom chimes of steel drums, not for cargo tank construction. However, since adopting 49 CFR 180 Subpart E—Qualification and Maintenance of Cargo Tanks, the values published in the NTTC manual have been used for thickness testing as required by § 180.407(i). In the NPRM, RSPA proposed to add a new paragraph (i)(5) containing a minimum thickness table for steel and aluminum for the sizes of sheet and plate which have been authorized for MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, and MC 312 heads and shells. The way in which minimum thickness has been set forth over the years has varied. For example, steel thicknesses generally have been expressed in terms of U.S. Standard Gauge (USSG), but, in the case of the MC 303 specification, both USSG values and decimal values were used. Thickness values for aluminum more often have been expressed in decimals. However, in the case of the MC 302 specification, both USSG values and decimal values were tabulated; and in the case of the MC 304 specification, the values for aluminum were required to be calculated by multiplying the USSG values listed for mild steel by a factor of 1.44.

TTMA suggested several changes to the table for clarity. TTMA also recommended that the table be divided into two separate tables: one for steel and one for aluminum. RSPA agrees with TTMA's recommendation. Therefore, in this final rule, current paragraphs (i)(5) through (1)(7) are redesignated as paragraphs (i)(6) through (i)(8), and a new paragraph (i)(5) containing two minimum thickness tables has been added. The tables include all thicknesses found in the eleven specifications cited above, plus USSG number 7 which has been used by a number of manufacturers. For steel, nominal thicknesses range from USSG number 19 to 3/8" plate; for aluminum, nominal thicknesses range from 0.078" to 0.540".

Section 180.413

RSPA proposed to revise requirements on the repair, modification, stretching or rebarrelling of cargo tanks. A commenter requested a revision to the record requirements contained in proposed paragraph (b) to require that the National Board "R–1" report be completed for all repairs on ASME Code stamped cargo tanks. The commenter stated that completing the document will ensure that the repair and method of repair conforms to the National Board Inspection Code and is approved by an Authorized Inspector. RSPA believes this revision is unnecessary because § 180.413 requires that any repair or modification involving welding on the tank head must be certified by a Registered Inspector, and that any repair or modification to an ASME Code "U" stamped cargo tank must be in accordance with the National Board Inspection Code. The National Board requires the use of the "R–1" forms for repairs and modifications. Therefore, this commenter's recommendation is not adopted in this final rule.

RSPA proposed to require that any repair, modification, stretching or rebarrelling of an ASME Code-stamped cargo tank must be performed by a repair facility holding a National Board "R" stamp. The National Board allows a facility other than a National Board "R" stamp holder to make repairs and modifications to ASME Code cargo tanks when authorized within a governmental jurisdiction. Jurisdictional authorization is only recognized within state boundaries where the repair facility is located. Therefore, because most cargo tank motor vehicles are operated in interstate commerce, RSPA has adopted the proposal requiring repairs on DOT specification cargo tanks certified to the ASME Code to be performed only by a facility holding a valid "R" stamp.

Based on a letter from TTMA stating that the regulations provide no distinction between a "100 percent rebarrel" and the manufacture of a new cargo tank, RSPA proposed to clarify the rebarrelling requirements and to differentiate between "rebarrelling a cargo tank" and "manufacturing a cargo tank". It was never RSPA's intent to imply that a repair facility holding only a National Board "R" stamp would be allowed to manufacture a new cargo tank or to perform a "100 percent rebarrel" of a cargo tank. Such work can be performed only by a manufacturer who is registered with DOT and holds an ASME "U" stamp. RSPA proposed adding a provision disallowing a repair facility from replacing an entire cargo tank by performing a "100 percent rebarrel."

However, based on comments received in the proposed clarification, the reference to a "100 percent rebarrelled cargo tank" has also caused confusion. Therefore, the proposed change is not adopted in this final rule, but RSPA will seek to clarify this provision in a future rulemaking.

CGA urged RSPA to add a new paragraph (e)(3)(v) specifying that modifications of MC 338 cargo tanks must conform to the specification in effect at the time of manufacture or at the time of modification. CGA pointed out that many cryogenic cargo tanks were operating under DOT exemption prior to adoption of the MC 338 cargo tank specification. Some of these units

do not conform to the design criteria in §§ 178.338–3 and 178.338–10. CGA stated that engineering and manufacturing costs to upgrade these cargo tanks to this new design criteria would be too restrictive. Yet, CGA also stated that "to encourage continuous modification and improvement, modifications to MC 338 cargo tanks must be performed in accordance with the specifications in effect at the time of manufacture or at the time of modification."

Proposed § 180.413 provides for a cargo tank to be modified in accordance with a current specification in effect at the time the work is done. For example, a feature on an MC 305 cargo tank may be modified in accordance with the MC 306 specification until August 31, 1995, and after that date in accordance with the DOT 406 specification; an MC 330 cargo tank may be modified in accordance with the MC 331 specification. Similarly, a cargo tank authorized under an exemption issued before October 1, 1984 for transportation of a cryogenic liquid must be marked as a "DOT MC 338" cargo tank in accordance with § 180.405(d). The only cryogenic cargo tank specification is the MC 338. Thus, no feature of an MC 338 cryogenic cargo tank can be modified in accordance with any other specification. However, an MC 338 cryogenic cargo tank may be repaired in accordance with either its original design specified in the exemption under which it was manufactured or the MC 338 specification requirements in effect at the time of the repair. Therefore, CGA's suggested change is not adopted in this final rule.

CGA recommended a revision to paragraph (e)(6) to clarify that a cargo tank manufacturer who welds attachments and appurtenances which have no affect on the structural integrity or lading retention capability of a tank is not required to have a National Board "R" or ASME "U" stamp. CGA also suggested a revision to paragraph (e)(7) to clarify that mounting specifications should be governed by welding to the cargo tank "shell and head" rather than the cargo tank "wall". RSPA agrees and paragraphs (e)(6) and (e)(7) are revised for clarity.

IV. Docket HM–183D

On September 3, 1993, RSPA published an interim final rule that amended requirements concerning the registration of Registered Inspectors and Design Certifying Engineers for certification of cargo tank motor vehicles. RSPA extended the closing of the registration period from December 31, 1991 to December 31, 1995. This action was in response to a petition for rulemaking, P–1167, filed by NTTC. RSPA stated in the rule that although an opportunity for public comment had not been provided, RSPA was seeking public comment to the action. RSPA further stated that any comments received would be addressed along with comments received to the NPRM under Docket HM–183C. The effective date of this rule was September 3, 1993. The comment period closed on October 13, 1993; RSPA received no comments in regard to this action. Therefore, that extension remains in effect.

V. Rulemaking Analyses and Notices

1. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The rule is not considered significant under the Regulatory policies and Procedures of the Department of Transportation (44 FR 11034). A regulatory evaluation is available for review in the docket.

2. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not "substantively the same" as the Federal requirements. 49 U.S.C. 5125(b)(1). These covered subjects are:

(A) the designation, description, and classification of hazardous material;

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements respecting the number, contents, and placement of those documents;

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container which is represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses the design, manufacturing, repairing, and other requirements for packages represented as qualified for use in the transportation of hazardous material. Therefore, this final rule preempts State, local, or Indian tribe requirements that are not "substantively the same" as Federal requirements on these subjects. Section 5125(b)(2) of Title 49 U.S.C. provides that when DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and no later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption of this final rule will be 90 days after publication in the **Federal Register**.

Because RSPA lacks discretion in this area, preparation of a federalism assessment is not warranted.

3. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. There are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations.

4. Paperwork Reduction Act

This amendment imposes no changes to the information collection and recordkeeping requirements contained in the June 12, 1989 final rule, which were approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and assigned control number 2137–0014.

5. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Motor vehicles safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, title 49, chapter I of the Code of Federal Regulations, is amended as set forth below:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.7, in paragraph (a)(3) table, the first entry for the ASME Code and the entry for the National Board Inspection Code are revised to read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * * * *	
American Society of Mechanical Engineers:	
ASME Code, Sections II (Parts A and B), V, VIII (Division 1), and IX of 1992 Edition of American Society of Mechanical Engineers Boiler and Pressure Vessel Code and Addenda through December 31, 1993.	173.32; 173.306; 173.315; 173.318; 173.420; 178.245; 178.255; 178.270; 178.271; 178.272; 178.337; 178.338; 178.345; 178.346; 178.347; 178.348; 179.400; 180.407; 180.417
National Board of Boiler and Pressure Vessel Inspectors:	
* * * * * * *	
National Board Inspection Code, A Manual for Boiler and Pressure Vessel Inspectors, NB–23, 1992 Edition	180.413
* * * * * * *	

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PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 49 CFR 1.53.

4. In § 173.33, a new paragraph (h) is added to read as follows:

§ 173.33 Hazardous materials in cargo tank motor vehicles.

* * * * *

(h) Each liquid or vapor discharge opening in an MC 330 or MC 331 cargo tank and each liquid filling and liquid discharge line in an MC 338 cargo tank must be provided with a remotely controlled internal self-closing stop valve, except when an MC 330 or MC 331 cargo tank is marked and used exclusively to transport carbon dioxide, or except when an MC 338 is used to transport argon, carbon dioxide, helium, krypton, neon, nitrogen, and xenon. However, if the cargo tank motor vehicle was certified before January 1, 1995, this requirement is applicable only when an MC 330 or MC 331 cargo tank is used to transport a flammable liquid, flammable gas, hydrogen chloride (refrigerated liquid), or anhydrous ammonia; or when an MC 338 cargo tank is used to transport flammable ladings.

§ 173.33 [Amended]

5. In addition, in § 173.33, in paragraph (d)(3), a second sentence is added at the end of the text preceding the table to read "The venting capacity requirements of the original DOT cargo tank specification must be met whenever a pressure relief valve is modified.".

§ 173.225 [Amended]

6. In § 173.225, in paragraph (e)(2), the phrase "MC 310, MC 311, MC 312 and DOT 412" is revised to read "MC 307, MC 310, MC 311, MC 312, DOT 407, and DOT 412".

7. In § 173.315, paragraph (o)(1) and the first sentence in paragraph (o)(2) are revised to read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tanks.

* * * * *

(o) * * *

(1) Any hose, piping, or tubing used for loading or unloading that is mounted or carried on the motor vehicle may not be attached to any valve and must be capped at all ends to prevent the entry of moisture, except at the time of loading or unloading. Except at the time of loading and unloading, the pipe connection of each angle valve must be closed with a screw plug which is chained or otherwise fastened to prevent misplacement.

(2) Each chlorine cargo tank angle valve must be tested to be leak free at not less than 225 psig using dry air or inert gas before installation and thereafter every 2 years when performing the required periodic retest in § 180.407(c) of this subchapter. * * *

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

8. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 49 CFR 1.53.

9. In § 178.337–1, paragraph (e)(2) is amended by revising the last sentence to read as follows:

§ 178.337–1 General requirements.

* * * * *

(e) * * *

(2) * * * Insulating material used on tanks for chlorine must be corkboard or polyurethane foam, with a minimum thickness of 4 inches, or 2 inches minimum thickness of ceramic fiber/fiberglass of 4 pounds per cubic foot minimum density covered by 2 inches minimum thickness of fiber.

* * * * *

§ 178.337–1 [Amended]

10. In addition, in § 178.337–1, the following changes are made:

a. In paragraph (a)(3), the reference "173.33(i)" is revised to read "178.337–1(e)(2)" and the reference "173.315(a) Table Note 11" is revised to read "173.315(a) Table".

b. In paragraph (e)(1), the reference "173.315(a) Table, Note 11" is revised to read "173.315(a) Table".

§ 178.337–9 [Amended]

11. In § 178.337–9, paragraph (b)(7)(i) is removed, and paragraphs (b)(7)(ii) and (b)(7)(iii) are redesignated as paragraphs (b)(7)(i) and (b)(7)(ii), respectively.

12. In § 178.337–11, paragraph (a)(2) introductory text is revised to read as follows:

§ 178.337–11 Emergency discharge control.

(a) * * *

(2) Except for a cargo tank marked "For carbon dioxide only", each liquid or vapor discharge opening in a cargo tank must be equipped with a remotely controlled internal self-closing stop valve. This requirement does not apply to a cargo tank motor vehicle certified before January 1, 1995, unless intended for use to transport a flammable liquid, flammable gas, hydrogen chloride, refrigerated liquid, or anhydrous ammonia. For cargo tanks intended for use in chlorine service, see paragraph (a)(4) of this section.

* * * * *

13. In § 178.338–9, paragraph (c)(2) is revised to read as follows:

§ 178.338–9 Holding time.

* * * * *

(c) * * *

(2) *Same design.* The term "same design" as used in this section means cargo tanks made to the same design type. See § 178.320(a)(3) for definition of "design type".

* * * * *

14. In § 178.338–11, in the introductory text in paragraph (c), the first sentence is removed and two new sentences are added to read as follows:

§ 178.338–11 Discharge control devices.

* * * * *

(c) Except for a cargo tank used to transport the following refrigerated liquids: argon, carbon dioxide, helium, krypton, neon, nitrogen, and xenon; each liquid filling and liquid discharge line must be provided with a remotely controlled internal self-closing stop valve. This requirement does not apply to a cargo tank motor vehicle certified before January 1, 1995, unless intended for use to transport flammable ladings. * * *

* * * * *

15. In § 178.345–1, in paragraph (c), definitions for "Extreme dynamic loading" and "Normal operating loading" are added, in appropriate alphabetical order and paragraph (i)(2) is revised to read as follows:

§ 178.345–1 General requirements.

* * * * *

(c) * * *

* * * * *

Extreme dynamic loading means the maximum single-acting loading a cargo tank may experience during its expected life, excluding accident loadings.

* * * * *

Normal operating loading means the loading a cargo tank may be expected to experience routinely in operation.

* * * * *

(i) * * *

(2) The strength of the connecting structure joining multiple cargo tanks in a cargo tank motor vehicle must meet the structural design requirements in § 178.345–3. Any void within the connecting structure must be vented to the atmosphere and have a drain located on the bottom centerline. Each drain must be accessible and must be kept open at all times. The drain in any void within the connecting structure of a carbon steel, self-supporting cargo tank may be either a single drain of at least 1.0 inch diameter, or two or more drains of at least 0.5 inch diameter, 6.0 inches apart, one of which is located on the bottom centerline.

* * * * *

16. In § 178.345–3, paragraphs (b) and (c) are revised to read as follows:

§ 178.345–3 Structural integrity.

* * * * *

(b) *ASME Code design and construction.* The static design and construction of each cargo tank must be in accordance with Section VIII, Division 1 of the ASME Code. The tank design must include calculation of stresses generated by the MAWP, the weight of the lading, the weight of structures supported by the cargo tank wall and the effect of temperature gradients resulting from lading and ambient temperature extremes. When dissimilar materials are used, their thermal coefficients must be used in the calculation of thermal stresses.

(1) Stress concentrations in tension, bending and torsion which occur at pads, cradles, or other supports must be considered in accordance with Appendix G of Section VIII, Division 1 of the ASME Code.

(2) Longitudinal compressive buckling stress for ASME certified vessels must be calculated using paragraph UG–23(b), Section VIII, Division 1 of the ASME Code. For cargo tanks not required to be certified in accordance with the ASME Code, compressive buckling stress may be calculated using alternative analysis methods which are accurate and verifiable. When alternative methods are used calculations must include both the static loads described in this paragraph and the dynamic loads described in paragraph (c) of this section.

(c) *Shell design.* Shell stresses resulting from static or dynamic loadings, or combinations thereof, are not uniform throughout the cargo tank motor vehicle. The vertical, longitudinal, and lateral normal operating loadings can occur simultaneously and must be combined. The vertical, longitudinal and lateral extreme dynamic loadings occur separately and need not be combined.

(1) *Normal operating loadings.* The following procedure addresses stress in the tank shell resulting from normal operating loadings. The effective stress (the maximum principal stress at any point) must be determined by the following formula:

$$S = 0.5(S_y + S_x) \pm [0.25(S_y - S_x)^2 + S_S^2]^{0.5}$$

Where:

(i) S = effective stress at any given point under the combination of static and normal operating loadings that can occur at the same time, in psi.

(ii) S_y = circumferential stress generated by the MAWP and external pressure, when applicable, plus static head, in psi.

(iii) S_x = The following net longitudinal stress generated by the following static and normal operating loading conditions, in psi:

(A) The longitudinal stresses resulting from the MAWP and external pressure, when applicable, plus static head, in combination with the bending stress generated by the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall;

(B) The tensile or compressive stress resulting from normal operating longitudinal acceleration or deceleration. In each case, the forces applied must be 0.35 times the vertical reaction at the suspension assembly, applied at the road surface, and as transmitted to the cargo tank wall through the suspension assembly of a trailer during deceleration; or the horizontal pivot of the tractor or converter dolly fifth wheel, or the drawbar hinge on the fixed dolly during acceleration; or anchoring and support members of a truck during acceleration and deceleration, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances

supported by the cargo tank wall. The following loadings must be included:

(*1*) The axial load generated by a decelerative force;

(*2*) The bending moment generated by a decelerative force;

(*3*) The axial load generated by an accelerative force; and

(*4*) The bending moment generated by an accelerative force; and

(C) The tensile or compressive stress generated by the bending moment resulting from normal operating vertical accelerative force equal to 0.35 times the vertical reaction at the suspension assembly of a trailer; or the horizontal pivot of the upper coupler (fifth wheel) or turntable; or anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall.

(iv) S_S = The following shear stresses generated by the following static and normal operating loading conditions, in psi:

(A) The static shear stress resulting from the vertical reaction at the suspension assembly of a trailer, and the horizontal pivot of the upper coupler (fifth wheel) or turntable; or anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall;

(B) The vertical shear stress generated by a normal operating accelerative force equal to 0.35 times the vertical reaction at the suspension assembly of a trailer; or the horizontal pivot of the upper coupler (fifth wheel) or turntable; or anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall;

(C) The lateral shear stress generated by a normal operating lateral accelerative force equal to 0.2 times the vertical reaction at each suspension assembly of a trailer, applied at the road surface, and as transmitted to the cargo tank wall through the suspension assembly of a trailer, and the horizontal pivot of the upper coupler (fifth wheel) or turntable; or anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall; and

(D) The torsional shear stress generated by the same lateral forces as described in paragraph (c)(1)(iv)(C) of this section.

(2) *Extreme dynamic loadings.* The following procedure addresses stress in the tank shell resulting from extreme dynamic loadings. The effective stress (the maximum principal stress at any point) must be determined by the following formula:

$$S = 0.5(S_y + S_x) \pm [0.25(S_y - S_x)^2 + S_S^2]^{0.5}$$

Where:

(i) S = effective stress at any given point under a combination of static and extreme dynamic loadings that can occur at the same time, in psi.

(ii) S_y = circumferential stress generated by MAWP and external pressure, when applicable, plus static head, in psi.

(iii) S_x = the following net longitudinal stress generated by the following static and extreme dynamic loading conditions, in psi:

(A) The longitudinal stresses resulting from the MAWP and external pressure, when applicable, plus static head, in combination with the bending stress generated by the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the tank wall;

(B) The tensile or compressive stress resulting from extreme longitudinal acceleration or deceleration. In each case the forces applied must be 0.7 times the vertical reaction at the suspension assembly, applied at the road surface, and as transmitted to the cargo tank wall through the suspension assembly of a trailer during deceleration; or the horizontal pivot of the tractor or converter dolly fifth wheel, or the drawbar hinge on the fixed dolly during acceleration; or the anchoring and support members of a truck during acceleration and deceleration, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall. The following loadings must be included:

(*1*) The axial load generated by a decelerative force;

(*2*) The bending moment generated by a decelerative force;

(*3*) The axial load generated by an accelerative force; and

(*4*) The bending moment generated by an accelerative force; and

(C) The tensile or compressive stress generated by the bending moment resulting from an extreme vertical accelerative force equal to 0.7 times the vertical reaction at the suspension assembly of a trailer, and the horizontal pivot of the upper coupler (fifth wheel) or turntable; or the anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall.

(iv) S_S = The following shear stresses generated by static and extreme dynamic loading conditions, in psi:

(A) The static shear stress resulting from the vertical reaction at the suspension assembly of a trailer, and the horizontal pivot of the upper coupler (fifth wheel) or turntable; or anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall;

(B) The vertical shear stress generated by an extreme vertical accelerative force equal to 0.7 times the vertical reaction at the suspension assembly of a trailer, and the horizontal pivot of the upper coupler (fifth wheel) or turntable; or anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall;

(C) The lateral shear stress generated by an extreme lateral accelerative force equal to 0.4 times the vertical reaction at the suspension assembly of a trailer, applied at the road surface, and as transmitted to the cargo tank wall through the suspension assembly of a trailer, and the horizontal pivot of the upper coupler (fifth wheel) or turntable; or anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall; and

(D) The torsional shear stress generated by the same lateral forces as described in paragraph (c)(2)(iv)(C) of this section.

* * * * *

§ 178.345–3 [Amended]

17. In addition, in § 178.345–3, the following changes are made:

a. In paragraph (a)(1), the phrase at the beginning of the sentence "Except as provided in paragraph (d) of this section, the" is removed and replaced with the word "The".

b. In paragraph (a)(3), the wording "paragraphs (b), (c), and (d) of this section" is revised to read "paragraphs (b) and (c) of this section" each place it appears.

c. Paragraph (d) is removed.

d. Paragraphs (e) through (g) are redesignated as paragraphs (d) through (f), and in redesignated paragraph (d) the wording "cargo tank wall" is revised to read "cargo tank shell and heads".

18. In § 178.345–5, a new paragraph (f) is added to read as follows:

§ 178.345–5 Manhole assemblies.

* * * * *

(f) All fittings and devices mounted on a manhole cover, coming in contact with the lading, must withstand the same static internal fluid pressure and contain the same permanent compliance markings as that required for the manhole cover. The fitting or device manufacturer shall verify compliance using the same test procedure and frequency of testing as specified in § 178.345–5(b).

§ 178.345–6 [Amended]

19. In § 178.345–6, in paragraphs (a) and (b), the second sentence of each paragraph is revised to read "The design calculations of the support elements must include the stresses indicated in § 178.345–3(b) and as generated by the loads described in § 178.345–3(c).".

20. In § 178.345–8, paragraphs (a)(3), (b) introductory text, (b)(1), (c) introductory text, (c)(1), and (d)(3) are revised; and a new paragraph (e) is added to read as follows:

§ 178.345–8 Accident damage protection.

(a) * * *

(3) Accident damage protection devices attached to the wall of a cargo tank must be able to withstand or deflect away from the cargo tank the loads specified in this section. They must be designed, constructed and installed so as to maximize the distribution of loads to the tank wall and to minimize the possibility of adversely affecting the lading retention integrity of the cargo tank. Accident induced stresses resulting from the appropriate accident damage protection device requirements in combination with the stresses from the tank operating at the MAWP may not result in a tank wall stress greater than the ultimate strength of the material of construction using a safety factor of 1.3. Deformation of the protection device is acceptable provided the devices being protected are not damaged when loads specified in this section are applied.

* * * * *

(b) Each outlet, projection or piping located in the lower ⅓ of the tank circumference (or cross section perimeter for non-circular tanks) that could be damaged in an accident that may result in the loss of lading must be protected by a bottom damage protection device, except as provided by paragraph (a)(1) of this section and § 173.33(e) of this subchapter. Outlets, projections and piping may be grouped or clustered together and protected by a single protection device.

(1) Any bottom damage protection device must be able to withstand a force of 155,000 pounds (based on the ultimate strength of the material) from the front, side, or rear, uniformly distributed over each surface of the device, over an area not to exceed 6 square feet, and a width not to exceed 6 feet. Suspension components and structural mounting members may be used to provide all, or part, of this protection. The device must extend no less than 6 inches beyond any component that may contain lading in transit.

* * * * *

(c) Each closure for openings, including but not limited to the manhole, filling or inspection openings, and each valve, fitting, pressure relief device, vapor recovery stop valve or lading retaining fitting located in the upper ⅔ of a cargo tank circumference (or cross section perimeter for non-circular tanks) must be protected by being located within or between adjacent rollover damage protection devices, or by being 125 percent of the strength that would be provided by the otherwise required damage protection device.

(1) A rollover damage protection device on a cargo tank motor vehicle must be designed and installed to withstand loads equal to twice the weight of the loaded cargo tank motor vehicle applied as follows: normal to the tank shell (perpendicular to the tank surface); and tangential (perpendicular to the normal load) from any direction. The stresses shall not exceed the ultimate strength of the material of construction. These design loads may be considered to be uniformly distributed and independently applied. If more than one rollover protection device is used, each device must be capable of carrying its proportionate share of the required loads and in each case at least one-fourth the total tangential load. The design must be proven capable of carrying the required loads by calculations, tests or a combination of tests and calculations.

* * * * *

(d) * * *

(3) The structure of the rear-end protection device and its attachment to the vehicle must be designed to satisfy the conditions specified in paragraph (d)(1) of this section when subjected to an impact of the cargo tank motor vehicle at rated payload, at a deceleration of 2 "g". Such impact must be considered as being uniformly applied in the horizontal plane at an angle of 10 degrees or less to the longitudinal axis of the vehicle.

(e) *Longitudinal deceleration protection.* In order to account for stresses due to longitudinal impact in an accident, the tank shell and heads must be able to withstand the load resulting from the design pressure in combination with the dynamic pressure resulting from a longitudinal deceleration of 2 "g". For this loading condition, the allowable stress value used may not exceed the ultimate strength of the material of construction using a safety factor of 1.3. Performance testing, analytical methods, or a combination thereof, may be used to prove this capability provided the methods are accurate and verifiable. For cargo tanks with internal baffles, the decelerative force may be reduced by 0.25 "g" for each baffle assembly, but in no case may the total reduction in decelerative force exceed 1.0 "g".

21. In 178.345–10, paragraphs (b)(3)(i) and (ii) are revised to read as follows:

§ 178.345–10 Pressure relief.

* * * * *

(b) * * *

(3) * * *

(i) Each pressure relief device must be able to withstand dynamic pressure surge reaching 30 psig above the design set pressure and sustained above the set pressure for at least 60 milliseconds with a total volume of liquid released not exceeding one gallon before the relief device recloses to a leak-tight condition. This requirement must be met regardless of vehicle orientation. This capability must be demonstrated by testing. An acceptable test procedure is outlined in TTMA RP No. 81—"Performance of Spring Loaded Pressure Relief Valves on MC 306, MC 307, and MC 312 Tanks," May 24, 1989 edition.

(ii) After August 31, 1995, each pressure relief device must be able to withstand a dynamic pressure surge reaching 30 psig above the design set pressure and sustained above the design set pressure for at least 60 milliseconds with a total volume of liquid released not exceeding one liter before the relief valve recloses to a leak-tight condition. This requirement must be met regardless of vehicle orientation. This

capability must be demonstrated by testing. TTMA RP No. 81, cited in paragraph (b)(3)(i) of this section, is an acceptable test procedure.

* * * * *

§ 178.345–13 [Amended]

22. In § 178.345–13, a heading is added to paragraph (c) to read "*Leakage test.*".

§ 178.345–14 [Amended]

23. In § 178.345–14, in paragraph (d), the following changes are made:

a. The paragraph heading "*Multi-cargo tank cargo tank motor vehicle*" is revised to read "*Multi-tank cargo tank motor vehicle*".

b. At the end of the second sentence, the phrase "unless all of the cargo tanks are identical" is revised to read "unless all cargo tanks are made by the same manufacturer with the same materials, manufactured thickness, minimum thickness and to the same specification".

24. In § 178.345–15, a sentence is added in the beginning of paragraph (b)(2) and a new paragraph (e) is added to read as follows:

§ 178.345–15 Certification.

* * * * *

(b) * * *

(2) For each ASME tank, a tank manufacturer's data report as required by the ASME Code. * * *

* * * * *

(e) *Specification shortages.* If a cargo tank is manufactured which does not meet all applicable specification requirements, thereby requiring subsequent manufacturing involving the installation of additional components, parts, appurtenances or accessories, the cargo tank manufacturer may affix the name plate and specification plate, as required by § 178.345–14 (b) and (c), without the original date of certification stamped on the specification plate. The manufacturer shall state the specification requirements not complied with on the manufacturer's Certificate of Compliance. When the cargo tank is brought into full compliance with the applicable specification, the Registered Inspector shall stamp the date of compliance on the specification plate. The Registered Inspector shall issue a Certificate of Compliance stating details of the particular operations performed on the cargo tank, and the date and person (manufacturer, carrier, or repair organization) accomplishing the compliance.

25. In § 178.346–1, new paragraphs (d)(9) and (10) are added to read as follows:

§ 178.346–1 General requirements.

* * * * *

(d) * * *

(9) Single full fillet lap joints without plug welds may be used for arc or gas welded longitudinal seams without radiographic examination under the following conditions:

(i) For a truck-mounted cargo tank, no more than two such joints may be used on the top half of the tank and no more than two joints may be used on the bottom half. They may not be located farther from the top and bottom centerline than 16 percent of the shell's circumference.

(ii) For a self-supporting cargo tank, no more than two such joints may be used on the top of the tank. They may not be located farther from the top centerline than 12.5 percent of the shell's circumference.

(iii) *Compliance test.* Two test specimens of the material to be used in the manufacture of a cargo tank must be tested to failure in tension. The test specimens must be of the same thicknesses and joint configuration as the cargo tank, and joined by the same welding procedures. The test specimens may represent all the tanks that are made of the same materials and welding procedures, have the same joint configuration, and are made in the same facility within 6 months after the tests are completed. Before welding, the fit-up of the joints on the test specimens must represent production conditions that would result in the least joint strength. Evidence of joint fit-up and test results must be retained at the manufacturers' facility.

(iv) *Weld joint efficiency.* The lower value of stress at failure attained in the two tensile test specimens shall be used to compute the efficiency of the joint as follows: Determine the failure ratio by dividing the stress at failure by the mechanical properties of the adjacent metal; this value, when multiplied by 0.75, is the design weld joint efficiency.

(10) The requirements of paragraph UW–9(d), of Section VIII, Division 1, ASME Code do not apply.

§ 178.346–2 [Amended]

26. In § 178.346–2, the paragraph (a) designation is removed; the phrase "DOT 406 cargo tanks" is revised to read "DOT 406 cargo tank motor vehicles"; and in Table II, the heading "Rated capacity (gallons)" in the first column is revised to read "Cargo tank motor vehicle rated capacity (gallons)".

27. In § 178.346–10, the word "and" at the end of paragraph (b)(1) is removed, the period at the end of paragraph (b)(2) is removed and "; and" is added in its place, a new paragraph (b)(3) is added and paragraphs (c)(1) and (d)(1) are revised to read as follows:

§ 178.346–10 Pressure relief.

* * * * *

(b) * * *

(3) Notwithstanding the requirements in § 178.345–10(b), after August 31, 1996, each pressure relief valve must be able to withstand a dynamic pressure surge reaching 30 psig above the design set pressure and sustained above the set pressure for at least 60 milliseconds with a total volume of liquid released not exceeding one liter before the relief valve recloses to a leak-tight condition. This requirement must be met regardless of vehicle orientation. This capability must be demonstrated by testing. TTMA RP No. 81, cited at § 178.345–10(b)(3)(i), is an acceptable test procedure.

(c) * * *

(1) Notwithstanding the requirements in § 178.345–10(d), the set pressure of each primary relief valve must be not less than 110 percent of the MAWP or 3.3 psig, whichever is greater, and not more than 138 percent of the MAWP. The valve must close at not less than the MAWP and remain closed at lower pressures.

* * * * *

(d) * * *

(1) Notwithstanding the requirements in § 178.345–10 (e) and (g), the primary pressure relief valve must have a venting capacity of at least 6,000 SCFH, rated at not greater than 125 percent of the tank test pressure and not greater than 3 psig above the MAWP. The venting capacity required in § 178.345–10(e) may be rated at these same pressures.

* * * * *

28. In § 178.346–13, paragraph (c) is revised to read as follows:

§ 178.346–13 Pressure and leakage tests.

* * * * *

(c) *Leakage test.* Cargo tanks equipped with vapor collection equipment may be leakage tested in accordance with the Environmental Protection Agency's "Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test," as set forth in 40 CFR Part 60, Appendix A. Acceptance criteria are found at 40 CFR 60.501 and 60.601.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

29. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 49 CFR 1.53.

30. In § 180.403, a new definition "Replacement of a barrel" is added, in the appropriate alphabetical order, to read as follows:

§ 180.403 Definitions.

* * * * *

Replacement of a barrel means to replace the existing tank on a motor vehicle chassis with an unused (new) tank. For the definition of *tank*, see § 178.345–1(c), § 178.337–1, or § 178.338–1 of this subchapter, as applicable.

* * * * *

31. In § 180.405, paragraph (h) is revised to read as follows:

§ 180.405 Qualification of cargo tanks.

* * * * *

(h) *Pressure relief system.* Properly functioning reclosing pressure relief valves and frangible or fusible vents need not be replaced. However, replacement of reclosing pressure relief valves on MC-specification cargo tanks is authorized subject to the following requirements:

(1) Until August 31, 1998, the owner of a cargo tank may replace a reclosing pressure relief device with a device which is in compliance with the requirements for pressure relief devices in effect at the time the cargo tank specification became superseded. If the pressure relief device is installed as an integral part of a manhole cover assembly, the manhole cover must comply with the requirements of paragraph (g) of this section.

(2) After August 31, 1998, replacement for any reclosing pressure relief valve must be capable of reseating to a leak-tight condition after a pressure surge, and the volume of lading released may not exceed one liter. Specific performance requirements for these pressure relief valves are set forth in § 178.345–10(b)(3) of this subchapter.

(3) As provided in paragraph (c)(2) of this section, the owner of a cargo tank may elect to modify reclosing pressure relief devices to more recent cargo tank specifications. However, replacement devices constructed to the requirements of § 178.345–10 of this subchapter must provide the minimum venting capacity required by the original specification to which the cargo tank was designed and constructed.

* * * * *

§ 180.405 [Amended]

32. In addition, in § 180.405 the following changes are made:

a. In paragraph (f)(1)(iii), the phrase "prescribed in § 178.345–3 of the specification" is revised to read "prescribed in § 178.345–3 of this subchapter or the specification".

b. In paragraph (f)(4) introductory text, the phrase "and an outlet is equipped" is revised to read "and except that an outlet is equipped".

33. In § 180.407, in the table in paragraph (c), immediately under the subheading "Leakage Test" in the first column, the following entry is added and the wording "All cargo tanks except MC 338" is revised to read "All other cargo tanks except MC 338"; paragraph (e)(1) is revised; paragraph (h)(2) is revised; paragraphs (i)(5) through (i)(7) are redesignated as paragraphs (i)(6) through (i)(8), respectively; the word "and" is removed at the end of paragraph (i)(4)(viii); the period at the end of paragraph (i)(4)(ix) is removed and "; and" is added in its place; and new paragraphs (i)(4)(x) and (i)(5) are added, to read as follows:

§ 180.407 Requirements for test and inspection of specification cargo tanks.

* * * * *

(c) * * *

COMPLIANCE DATES—INSPECTIONS AND RETESTS UNDER § 180.407(c)

Test or inspection (cargo tank specification, configuration, and service)	Date by which first test must be completed (see note 1)	Interval period after first test
[Add]		
* * * * *	*	*
Leakage Test:		
MC 330 and MC 331 cargo tanks in chlorine service	Sept. 1, 1991	2 years
* * * * *	*	*

Note 1: If a cargo tank is subject to an applicable inspection or test requirement under the regulations in effect on December 30, 1990, and the due date (as specified by a requirement in effect on December 30, 1990) for completing the required inspection or test occurs before the compliance date listed in Table I, the earlier date applies.

* * * * *

(e) * * * (1) When the cargo tank is not equipped with a manhole or inspection opening, or the cargo tank design precludes an internal inspection, the tank shall be hydrostatically or pneumatically tested in accordance with 180.407(c) and (g).

* * * * *

(h) * * *

(2) Cargo tanks equipped with vapor collection equipment may be leakage tested in accordance with the Environmental Protection Agency's "Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test," as set forth in 40 CFR Part 60, Appendix A. Acceptance criteria are found at 40 CFR 60.501 and 60.601.

* * * * *

(i) * * *

(4) * * *

(x) Connecting structures joining multiple cargo tanks of carbon steel in a self-supporting cargo tank motor vehicle.

(5) Minimum thicknesses for MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, and MC 312 cargo tanks are shown in the tables below. The columns headed "Specified Manufactured Thickness" tabulate the minimum values required for new construction, generally found in Tables I and II of each specification. "In-Service Minimum Thicknesses" are based on 90 percent of the manufactured thickness as specified in the DOT specification, rounded to three places.

TABLE I.—MINIMUM THICKNESS FOR MC 300, MC 303, MC 304, MC 306, MC 307, MC 310, MC 311 AND MC 312 SPECIFICATION CARGO TANKS CONSTRUCTED OF STEEL AND STEEL ALLOYS

Specified manufactured thickness (US gauge or inches)	Nominal decimal equivalent for reference (inches)	In-service minimum thickness (inches)
19	0.0418	0.038
18	0.0478	0.043
17	0.0538	0.048
16	0.0598	0.054
15	0.0673	0.061
14	0.0747	0.067
13	0.0897	0.081
12	0.1046	0.094
11	0.1196	0.108
10	0.1345	0.121
9	0.1495	0.135
8	0.1644	0.148
7	0.1793	0.161
3/16	0.1875	0.169
1/4	0.2500	0.225
5/16	0.3125	0.281
3/8	0.3750	0.338

TABLE II.—MINIMUM THICKNESS FOR MC 301, MC 302, MC 304, MC 305, MC 306, MC 307, MC 311 AND MC 312 SPECIFICATION CARGO TANKS CONSTRUCTED OF ALUMINUM AND ALUMINUM ALLOYS

Specified manufactured thickness (inches)	In-service minimum thickness (inches)
0.078	0.070
0.087	0.078
0.096	0.086
0.109	0.098
0.130	0.117
0.141	0.127
0.151	0.136
0.172	0.155
0.173	0.156
0.194	0.175
0.216	0.194
0.237	0.213
0.270	0.243
0.360	0.324
0.450	0.405
0.540	0.486

* * * * *

§ 180.407 [Amended]

34. In addition, in § 180.407, the following changes are made:

a. In paragraph (d)(1)(ii), the wording "and the cargo tank is not equipped" is revised to read "or the cargo tank is not equipped".

b. In paragraph (e)(2)(ii), the wording "as specified § 180.407(f)." is revised to read "as specified in § 180.407(f).".

c. Paragraph (e)(4) is removed, and paragraph (e)(5) is redesignated as paragraph (e)(4).

d. In paragraph (g)(1)(iv), the word "minimum" is removed.

35. Section 180.413 is revised to read as follows:

§ 180.413 Repair, modification, stretching, or rebarrelling of cargo tanks.

(a) *General.* For purposes of this section, "stretching" is not considered a "modification" and "rebarrelling" is not considered a "repair." Any repair, modification, stretching, or rebarrelling of a cargo tank must be performed in conformance with the requirements of this section.

(b) *Repair*—(1) *Non-ASME Code stamped cargo tanks.* Any work involving repair on an MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, or MC 312 cargo tank that is not ASME Code stamped must be performed by:

(i) A cargo tank manufacturer holding a valid ASME Certificate of Authorization for the use of the ASME "U" stamp and registered with DOT; or

(ii) A repair facility holding a valid National Board Certificate of Authorization for the use of the National Board "R" stamp and registered with DOT.

(2) *ASME Code stamped cargo tanks.* Any work involving repair on any ASME Code stamped cargo tank must be performed by a repair facility holding a valid National Board Certificate of Authorization for the use of the National Board "R" stamp and registered in accordance with subpart F of part 107 of subchapter B of this chapter.

(3) The following provisions apply to cargo tank repairs:

(i) DOT 406, DOT 407, and DOT 412 cargo tanks must be repaired in accordance with the specification requirements in effect either at the time of manufacture or at the time of repair;

(ii) MC 300, MC 301, MC 302, MC 303, MC 305, and MC 306 cargo tanks must be repaired in accordance with either the original specification or with the DOT 406 specification in effect at the time of repair;

(iii) MC 304 and MC 307 cargo tanks must be repaired in accordance with either the original specification or with the DOT 407 specification in effect at the time of repair;

(iv) MC 310, MC 311, and MC 312 cargo tanks must be repaired in accordance with either the original specification or with the DOT 412 specification in effect at the time of the repair;

(v) MC 338 cargo tanks must be repaired in accordance with the specification requirements in effect either at the time of manufacture or at the time of repair; and

(vi) MC 330 and MC 331 cargo tanks must be repaired in accordance with the repair procedures described in CGA Technical Bulletin TB–2 and the National Board Inspection Code—Provisions for Repair of Pressure Vessels. Each cargo tank having cracks or other defects requiring welded repairs must meet all of the requirements of § 178.337–16 of this subchapter (in effect at the time of the repair), except that postweld heat treatment after minor weld repairs is not required. When any repair is made of defects revealed by the wet fluorescent magnetic particle inspection, including those by grinding, the affected area of the cargo tank must again be examined by the wet fluorescent magnetic particle method after hydrostatic testing to assure that all defects have been removed.

(4) Prior to any repair work, the cargo tank must be emptied of any hazardous material lading. Cargo tanks containing flammable or toxic lading must be purged.

(5) Any repair of a cargo tank involving welding on the shell or head must be certified by a Registered Inspector. Any repair of an ASME Code "U" stamped cargo tank must be in accordance with the National Board Inspection Code.

(6) The suitability of any repair affecting the structural integrity of the cargo tank must be determined by testing as prescribed in § 180.407.

(c) *Maintenance or replacement of piping, valves, hoses or fittings.* In the event of repair, maintenance or replacement, any piping, valve, or fitting must be properly installed in accordance with the provisions of the applicable specification before the cargo tank is returned to hazardous materials service. After maintenance or replacement which does not involve welding on the cargo tank wall, the repaired piping, valves or fittings, the replaced segment of the piping must be leak tested. After repair or replacement of piping, valves or fittings which involves welding on the cargo tank wall, the entire cargo tank, including the repaired or replaced piping, valve or fitting, must be pressure tested in accordance with the applicable specification. Hoses permanently attached to the cargo tank must be tested either before or after installation.

(d) *Modification, stretching, or rebarrelling.* Modification, stretching or rebarrelling of a cargo tank must conform to the following provisions:

(1) *Non-ASME Code stamped cargo tanks.* If the modification, stretching, or rebarrelling will result in a design type change, then it must be approved by a Design Certifying Engineer. Any work involving modification, stretching, or rebarrelling on an MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, or MC 312 cargo tank that is not ASME stamped must be performed by:

(i) A cargo tank manufacturer holding a valid ASME Certificate of Authorization for the use of the ASME "U" stamp and registered with DOT; or

(ii) A repair facility holding a valid National Board Certificate of Authorization for the use of the National Board "R" stamp and registered with DOT.

(2) *ASME Code stamped cargo tanks.* The modification, stretching, or rebarrelling on any ASME Code stamped cargo tank must be performed by a repair facility holding a valid National Board Certificate of Authorization for the use of the National Board "R" stamp and registered in accordance with subpart F of part 107 of subchapter B of this chapter. If the modification, stretching, or rebarrelling will result in a design type change, then it must be approved by a Design Certifying Engineer.

(3) All new material and equipment, and equipment affected by the modification, stretching or rebarrelling must conform with requirements of the specification in effect at the time of such work. In addition, the modification, stretching or rebarrelling must be performed such that the cargo tank, as modified, stretched or rebarrelled, meets the applicable structural integrity requirements (§ 178.337–3, § 178.338–3, or § 178.345–3 of this subchapter) of the specification in effect at the time of such work. The work must conform to the requirements of the applicable specification as follows:

(i) For specification MC 300, MC 301, MC 302, MC 303, MC 305 and MC 306 cargo tanks, the provisions of either specification MC 306 or DOT 406 until August 31, 1995 and, thereafter to specification DOT 406 only;

(ii) For specification MC 304 and MC 307 cargo tanks, the provisions of either specification MC 307 or DOT 407 until August 31, 1995 and, thereafter to specification DOT 407 only;

(iii) For specification MC 310, MC 311, and MC 312 cargo tanks, the provisions of either specification MC 312 or DOT 412 until August 31, 1995 and, thereafter to specification DOT 412 only; and

(iv) For specification MC 330 cargo tanks, the provisions of specification MC 331.

(4) The person performing the modification, stretching, or rebarrelling must:

(i) Have knowledge of the original design concept, particularly with respect to structural design analysis, material and welding procedures;

(ii) Assure compliance with the rebuilt cargo tank's structural integrity, venting, and accident damage protection requirements;

(iii) Assure compliance with all applicable Federal Motor Carrier Safety Regulations for any newly installed safety equipment;

(iv) Perform all retest procedures on each cargo tank in accordance with the applicable specification and § 180.407;

(v) Change the existing specification plate to reflect the cargo tank as modified, stretched or rebarrelled. This must include the name of the person doing the work, his DOT registration number, date, retest information, etc. A supplemental specification plate may be installed immediately adjacent to the existing plate(s), or the existing specification plate may be removed and replaced with a new plate; and

(vi) On a variable specification cargo tank, install a supplemental or new variable specification plate, and replace the specification listed on the original specification plate with the words "see variable specification plate".

(5) The design of the modified, stretched, or rebarrelled cargo tank must be approved by a Design Certifying Engineer registered in accordance with subpart F of part 107 of subchapter B of this chapter. The Design Certifying Engineer must certify that the modified, stretched, or rebarrelled cargo tank meets the structural integrity requirements of the applicable specification. The person performing the modifying, stretching or rebarrelling and a Registered Inspector must certify that the cargo tank is in compliance with this section and the applicable specification by issuing a supplemental manufacturer's certificate. The registration number of the Registered Inspector and the person performing the modification, stretching, or rebarrelling must be entered on the certificate. When a cargo tank is rebarrelled, it must be designed, constructed and certified in accordance with a cargo tank specification currently authorized for construction in Part 178 of this subchapter.

(6) If the mounting of the cargo tank on the cargo tank motor vehicle involves welding on the cargo tank head or shell, then the mounting must be performed as follows:

(i) *Non-ASME Code stamped cargo tanks.* For a non-ASME Code stamped cargo tank—

(A) By a cargo tank manufacturer holding an ASME "U" stamp, registered with DOT, and under the direction of a Design Certifying Engineer; or

(B) By a repair facility holding an ASME "U" stamp or a National Board "R" stamp, registered with DOT, and under the direction of a Design Certifying Engineer.

(ii) *ASME Code stamped cargo tank.* For an ASME Code stamped cargo tank, by a repair facility holding a National Board "R" stamp, registered in accordance with subpart F of part 107 of subchapter B of this chapter, and approved by a Design Certifying Engineer.

(7) If the mounting of a cargo tank on a cargo tank motor vehicle does not involve welding on the cargo tank head or shell, or a change or modification of the methods of attachment, then the mounting shall be in accordance with the original specification or with the specification in effect at the time of the mounting. If the mounting involves any change or modification of the methods of attachment, then the mounting must be approved by a Design Certifying Engineer.

(8) Prior to any modification, stretching, or rebarrelling a cargo tank must be emptied of any hazardous material lading. Cargo tanks containing flammable or toxic lading must be purged.

(9) Any modification, stretching, or rebarrelling on the cargo tank involving welding on the shell or head must be certified by a Registered Inspector. Any repair of an ASME Code "U" stamped cargo tank must be in accordance with the National Board Inspection Code.

(10) The suitability of modification, stretching, or rebarrelling affecting the structural integrity of the cargo tank must be determined by testing as prescribed for new manufacture in the applicable specification.

(e) *Records.* Each owner of a cargo tank must retain at its principal place of business all records of repair, modification, stretching, or rebarrelling made to each tank during the time the tank is in service and for one year thereafter. Copies of these records must be retained by a motor carrier, who is not the owner of the cargo tank, at its principal place of business during the period the tank is in the carrier's service. The seller of a cargo tank shall provide the purchaser a copy of the cargo tank Certificate of Compliance, and all repair, inspection and test

reports upon sale as an MC or DOT cargo tank.

Issued in Washington, DC on October 21, 1994, under authority delegated in 49 CFR Part 1.

D.K. Sharma,

Administrator, Research and Special Programs Administration.

[FR Doc. 94–26625 Filed 10–28–94; 1:21 pm]

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federal register

Thursday
November 3, 1994

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 32
Refuge-Specific Hunting and Fishing Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AC59

Refuge-Specific Hunting and Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) amends certain regulations that pertain to migratory game bird hunting, upland game hunting, big game hunting and sport fishing on individual national wildlife refuges. Refuge hunting and fishing programs are reviewed annually to determine whether the individual refuge regulations governing these programs should be modified, deleted or have additions made to them. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitat may warrant modifications to ensure the continued compatibility of hunting and fishing with the purposes for which the individual refuges were established. Modifications are designed, to the extent practical, to make refuge hunting and fishing programs consistent with State regulations.

EFFECTIVE DATE: The effective date of this rule is December 5, 1994.

ADDRESSES: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street NW., MS 670 ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, Esq. at the above address; Telephone (703) 358–1744.

SUPPLEMENTARY INFORMATION: 50 CFR part 32 contains provisions governing hunting and fishing on national wildlife refuges. Hunting and fishing are regulated on refuges to (1) ensure compatibility with refuge purposes, (2) properly manage the wildlife resource, (3) protect other refuge values, and (4) ensure refuge user safety. On many refuges, the Service policy of adopting State hunting regulations is adequate in meeting these objectives. On other refuges, it is necessary to supplement State regulations with more restrictive Federal regulations to ensure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities." Refuge-specific hunting and fishing regulations may be issued only after a wildlife refuge is opened to migratory game bird hunting, upland game hunting, big game hunting or sport fishing through publication in the **Federal Register**. These regulations may list the wildlife species that may be hunted or are subject to sport fishing, seasons, bag limits, methods of hunting or fishing, descriptions of open areas, and other provisions as appropriate.

Previously issued refuge-specific regulations for hunting and fishing are contained in 50 CFR part 32. Many of the amendments to these sections are being promulgated to standardize and clarify the existing language of these regulations.

Request for Comments

A proposed rule was published in the July 20, 1994, issue of the **Federal Register** (59 FR 37134) and comments from the public were solicited. The only comments received were from the Region 3 Office (Service) to point the omission of "Kirtland's Warbler Wildlife Management Area" under the State of Michigan. This unit had been opened to hunting on July 27, 1987, but was inadvertently dropped from the listing of open areas. The administrative change has been made to correct this omission.

Statutory Authority

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, Section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior to permit the use of any area within the Refuge System for any purpose, including but not limited to, hunting, fishing and public recreation, accommodations and access, when he determines that such uses are compatible with the major purpose(s) for which the area was established.

The Refuge Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established. The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act. Hunting and sport fishing plans are developed for each refuge prior to opening it to hunting or fishing. In many cases, refuge-specific hunting and fishing regulations are included in the hunting and sport fishing plans to ensure the compatibility of the hunting and sport fishing programs with the purposes for which the refuge was established. Initial compliance with the NWRSAA and Refuge Recreation Act is ensured when hunting and sport fishing plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. Continued compliance is ensured by annual review of hunting and sport fishing programs and regulations.

Paperwork Reduction Act

The information collection requirements for part 32 are found in 50 CFR part 25 and have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 1849 C Street NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, DC 20503.

Economic Effect

This rulemaking was not subject to the Office of Management and Budget review under Executive Order 12866. In addition, a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) has been done to determine whether the rulemaking would have a significant effect on a substantial number of small entities, which include businesses, organizations or governmental jurisdictions. This rule would have minimal effect on such entities.

Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in

accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) is ensured when hunting and sport fishing plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. The amendment of refuge-specific hunting and fishing regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular national wildlife refuge. The B.(5) Service exclusion is employed here as these amendments are considered "[m]inor changes in the amounts or types of public use on FWS or State-managed lands, in accordance with regulations, management plans, and procedures." These refuge-specific hunting and fishing revisions to existing regulations simply qualify or otherwise define an existing hunting or fishing activity for purposes of resource management. The changes made in this rulemaking would not substantially alter the existing uses of the refuges involved. Information regarding hunting and fishing permits and the conditions that apply to individual refuge hunts, sport fishing activities and maps of the respective areas are retained at refuge headquarters and can be obtained from the regional offices of the U.S. Fish and Wildlife Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725–3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico and the Virgin Islands.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; Telephone (404) 679–7152.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035; Telephone (413) 253–8550.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–8145.

Region 7—Alaska.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3545.

Duncan L. Brown, Esq., Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, Fishing, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, Part 32 of Chapter I of Title 50 of the *Code of Federal Regulations* is amended as follows:

PART 32—[AMENDED]

1. The authority citation for Part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 32.7 is amended by adding the alphabetical listings of "Kirtland's Warbler Wildlife Management Area" under the State of Michigan, "Fergus Falls Wetland Management District" and "Morris Wetland Management District" under the State of Minnesota, "North Platte National Wildlife Refuge" under the State of Nebraska, and "Lake Ilo National Wildlife Refuge" under the State of North Dakota.

3. Section 32.20 *Alabama* is amended by revising paragraphs B., D.2., D.3., D.4., D.5., and adding new paragraphs D.6., D.7. and D.8. of Choctaw National Wildlife Refuge; and by revising paragraphs A. and B. of Eufaula National Wildlife Refuge to read as follows:

§ 32.20 Alabama.

* * * * *

Choctaw National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

D. Sport Fishing. * * *

* * * * *

2. Fishing is permitted year-round unless otherwise marked by signs as closed to public entry or fishing.

3. Only fish, according to State regulations, may be taken or possessed. Bowfishing is not permitted.

4. Taking, possessing, or attempting to take frogs and turtles is prohibited.

5. The use of trotlines, snag lines, soap lines, set lines, drops, gigs and jugs is not permitted.

6. Entry and use of airboats, hovercraft, and personalized watercraft such as jet skis, watercycles or waterbikes are prohibited.

7. All gill nets must be actively attended at all times.

8. A refuge permit is required for commercial fishing of all nets, traps, baskets, boxes and seine used in refuge waters. Information on harvest data is required.

Eufaula National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks and mourning doves is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of rabbit is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

4. Section 32.22 *Arizona* is amended by adding paragraph B.3. to Bill Williams River National Wildlife Refuge; by revising paragraph B. of Buenos Aires National Wildlife Refuge; by adding paragraph B.4. to Cibola National Wildlife Refuge; by revising paragraphs B.2. and C. of Havasu National Wildlife Refuge; by revising introductory language of paragraph B., and by revising paragraphs B.3. and B.5. of Imperial National Wildlife Refuge; and by revising paragraph B. of Kofa National Wildlife Refuge to read as follows:

§ 32.22 Arizona.

* * * * *

Bill Williams River National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

3. Hunting of cottontail rabbits is permitted from September 1 to the close of the State quail season.

* * * * *

Buenos Aires National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of cottontail rabbit, coyote, and skunks is permitted on designated areas of the refuge.

* * * * *

Cibola National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

4. Hunting of cottontail rabbits is permitted from September 1 to the end of the State quail season.

* * * * *

Havasu National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. Hunting of cottontail rabbits is permitted from September 1 to the close of the State quail season, except in Pintail Slough where rabbit hunting is permitted only during September.

* * * * *

C. Big Game Hunting. Hunting of desert bighorn sheep is permitted on designated areas of the refuge with a valid State permit.

* * * * *

Imperial National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of quail, cottontail rabbit, coyote, and fox is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

3. Cottontail rabbit hunting is permitted September 1 to the close of the State quail season.

* * * * *

5. Coyote and fox hunting is permitted only during the State quail season, except that it is not permitted during the State general deer season.

* * * * *

Kofa National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of quail, cottontail rabbit, coyote, and fox is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of coyote, fox, and cottontail rabbit is permitted during the State quail season only, except as provided below.

2. Hunting of coyote and fox is not permitted during the deer season except that deer hunters with valid Unit 45A, 45B, and 45C deer permits may take these predators until a deer is taken.

3. Allowed method of take of cottontail rabbits is shotgun only.

* * * * *

5. Section 32.23 *Arkansas* is amended by revising paragraph C. of Big Lake National Wildlife Refuge; by revising paragraphs A., B. and C. of Felsenthal National Wildlife Refuge; by revising paragraphs B. and C. of Holla Bend National Wildlife Refuge; and by revising paragraphs A., B., and C. of Overflow National Wildlife Refuge to read as follows:

§ 32.23 Arkansas.

* * * * *

Big Lake National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Felsenthal National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, coots and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit, beaver, raccoon, opossum and nutria is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Holla Bend National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of raccoon, opossum, squirrel, rabbit, beaver and coyote is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Overflow National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, coots and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit, beaver, raccoon, opossum and nutria is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

6. Section 32.24 *California* is amended by adding paragraphs A.3. and B.3. to Colusa National Wildlife Refuge; by revising paragraphs A.2. and A.4., and adding new paragraph B.4. to Delevan National Wildlife Refuge; by revising paragraph A. of Kesterson National Wildlife Refuge; by revising paragraphs A.2. and A.7. of Lower Klamath National Wildlife Refuge; by adding new paragraphs A.6 and B.4. to Sacramento National Wildlife Refuge; by removing paragraph A.6. and revising paragraph D.1. of San Francisco Bay National Wildlife Refuge; by removing paragraph A.5. from San Pablo Bay National Wildlife Refuge; by adding paragraphs A.3. and B.3. to Sutter National Wildlife Refuge; by revising paragraphs A.2. and A.3. of Tule Lake National Wildlife Refuge to read as follows:

§ 32.24 California.

* * * * *

Colusa National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. Access to the hunt area is by foot traffic only. Bicycles and other conveyances are not permitted.

B. Upland Game Hunting. * * *

* * * * *

3. Hunters may not possess more than 25 shells while in the field.

* * * * *

Delevan National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Snipe hunting is only permitted in the free roam areas.

* * * * *

4. Access to the hunt area is by foot traffic only. Bicycles and other conveyances are not permitted.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

4. Hunters may not possess more than 25 shells while in the field.

* * * * *

Kesterson National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and moorhens is permitted on designated areas of the refuge subject to the following conditions:

1. Only shotguns legal for refuge hunts are permitted, and shotguns must be unloaded while en route to, or from, parking areas or blinds.

2. Vehicles may stop only at designated parking areas; the dropping off of passengers or equipment, or stopping between designated parking areas is prohibited.

3. Hunters may not possess more than 25 shells while in the field.

4. Within the spaced blind area, hunters are restricted to their originally assigned, spaced blind, except while traveling to or from the parking area, placing decoys, or when shooting to retrieve crippled birds.

5. The Freitas Unit is open to waterfowl, coot, and moorhen hunting only.

6. On the Freitas Unit, only portable or temporary blinds are permitted; construction of permanent blinds is prohibited, and portable blinds must be removed from the refuge following each day's hunt.

* * * * *

Lower Klamath National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Shooting hours end at 1:00 p.m. daily on all California portions of the refuge, except that up to three one-day special youth or disabled hunter hunts per season may be designated by the refuge manager after 1:00 p.m.

* * * * *

7. Only nonmotorized boats and boats with electric motors are permitted in Units 4b and 4c.

* * * * *

Sacramento National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

6. Access to the hunt area is by foot traffic only. Bicycle and other conveyances are not permitted.

B. Upland Game Hunting. * * *

* * * * *

4. Hunters may not possess more than 25 shells while in the field.

* * * * *

San Francisco Bay National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing from designated shoreline trail fishing areas and from the Dumbarton Pier is permitted during the hours posted at the pier and refuge headquarters.

* * * * *

Sutter National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. Access to the hunt area is by foot traffic only. Bicycles and other conveyances are not permitted.

B. Upland Game Hunting. * * *

* * * * *

3. Hunters may not possess more than 25 shells while in the field.

* * * * *

Tule Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Hunting is permitted until 1:00 p.m. each day, except that up to three one-day special youth or disabled hunter hunts per season may be designated by the refuge manager after 1:00 p.m.

3. In the designated spaced blind areas, possession of any loaded firearms more than 200 feet from the established blind stakes is not permitted. Hunters select blind sites by lottery at the beginning of each hunt day. Hunters may shoot only from within their assigned blind sites.

* * * * *

7. Section 32.28 *Florida* is amended by revising paragraph A. of Arthur R. Marshall Loxahatchee National Wildlife Refuge; by revising paragraphs A., B. and C. of Chassahowitzka National Wildlife Refuge; and by revising paragraph C. of Lake Woodruff National Wildlife Refuge to read as follows:

§ 32.28 Florida.

* * * * *

Arthur R. Marshall Loxahatchee National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Chassahowitzka National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit and armadillo is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Lake Woodruff National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

8. Section 32.29 *Georgia* is amended by revising paragraph D.1. of Blackbeard Island National Wildlife Refuge to read as follows:

§ 32.29 Georgia.

* * * * *

Blackbeard Island National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Freshwater fishing is permitted from September 1 through February 28 from sunrise to sunset, except during managed deer hunts. *

* * * *

9. Section 32.32 *Illinois* is amended by revising paragraph D.1. of Chautauqua National Wildlife Refuge; by adding a new sentence to the end of paragraph D.1. and revising paragraph D.3, and removing paragraphs D.4. and D.5. and redesignating paragraphs D.6. and D.7. as paragraphs D.4. and D.5, respectively, of Crab Orchard National Wildlife Refuge; by revising paragraph A., the introductory language of paragraph B., and paragraphs B.1. and C. of Cypress Creek National Wildlife Refuge; and by revising paragraph C.2. and adding new paragraph C.3. to Mark Twain National Wildlife Refuge to read as follows:

§ 32.32 Illinois.

* * * * *

Chautauqua National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Sport fishing is allowed on all refuge waters during daylight hours from January 15 through October 15. Sport fishing is not allowed in the Waterfowl Hunting Area during waterfowl hunting season.

* * * * *

Crab Orchard National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. * * * It is unlawful to use jug or trot-lines with any flotation device that has previously contained any petroleum based materials or toxic substances.

* * * * *

3. It is unlawful to jug or trot-line fish in Devils Kitchen or Little Grassy Lakes.

Cypress Creek National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

1. Dove hunting on sunflower fields south of Hogue Woods is allowed by permit only.

2. Duck hunting is not permitted on the Brushy Bottoms moist soil unit which is south of Century School, nor on the Frank Bellrose Waterfowl Reserve.

3. Goose hunting is only allowed in the Frank Bellrose Waterfowl Reserve following the closure of the regular duck hunting season. Special goose hunting conditions for this unit are posted and made available by refuge staff.

4. Boats, decoys and blinds must be removed from the refuge at the conclusion of each day's hunt.

B. Upland Game Hunting. Hunting of bob-white quail, rabbit, squirrel, raccoon, opossum, coyote, red fox and grey fox is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters must report daily harvests if hunter check-in/check-out post is provided.

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Hunters must report harvest at State deer check station and indicate approximate location of deer killed by shotgun on map provided.

* * * * *

Mark Twain National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

2. Hunting of white-tailed deer on the Delair Division is allowed by permit only. Hunters must check in and out of the refuge each day. Stands must be removed each day; the construction or use of permanent blinds, platforms, or ladders is not permitted.

Hunting is permitted from one half hour before sunrise to 3 o'clock p.m.

3. Hunting of white-tailed deer on the Clarence Cannon unit is allowed by permit only.

* * * * *

10. Section 32.33 *Indiana* amended by revising paragraph D.3. of Muscatatuck National Wildlife Refuge to read as follows:

§ 32.33 Indiana.

* * * * *

Muscatatuck National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

* * * * *

3. Ice fishing is permitted only when indicated by refuge signs.

* * * * *

11. Section 32.34 *Iowa* is amended by revising paragraph A. of De Soto National Wildlife Refuge; and by revising paragraph D.1 of Union Slough National Wildlife Refuge to read as follows:

§ 32.34 Iowa.

* * * * *

De Soto National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted only as posted.

* * * * *

Union Slough National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted from March 1 through November 15.

* * * * *

12. Section 32.37 *Louisiana* is amended by revising paragraphs D.1., D.2., D.3., D.4., D.5., and D.6 of Bayou Sauvage National Wildlife Refuge; by revising paragraph B. of Catahoula National Wildlife Refuge; by revising paragraph C.1. of D'Arbonne National Wildlife Refuge; by revising paragraphs D.1. and D.2. of Delta National Wildlife Refuge; and by revising paragraph C.1. of Upper Ouachita National Wildlife Refuge to read as follows:

§ 32.37 Louisiana.

* * * * *

Bayou Sauvage National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted during daylight hours only.

2. Sport fishing and shellfishing are permitted year round on all refuge lands south of the Intracoastal Waterway; from the banks of U.S. Highway 11; and within the banks of the borrow canal and borrow pits between U.S. Highway 11 and Interstate 10.

3. Only sport fishing with hand-held rod and reel or hand-held rod and line is permitted. Gait shrimp may be taken with cast nets 8 feet in diameter or less. Crawfish and crabs can be taken (up to 100 pounds per person) with wire nets up to 20 inches in diameter. All fishing, crabbing and crawfishing equipment must be attended at all times.

4. The use of trotlines, limblines, slat traps, gar sets, nets or alligator lines is prohibited on the refuge.

5. Only outboard motors 25 horsepower or less are permitted in waterways inside the hurricane protection levee.

6. Airboats, aircraft, motorized pirogues and go-devils are prohibited in refuge waters.

* * * * *

Catahoula National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of raccoon, squirrel and rabbit is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

D'Arbonne National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

1. Either-sex deer hunting with firearms is permitted for two consecutive days beginning with the second either-sex season in Union Parish and two consecutive days beginning with the third either-sex season.

* * * * *

Delta National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Recreational fishing and crabbing are permitted only from sunrise to sunset.

2. The use of trotlines, limblines, slat traps, gar sets, nets or alligator lines is prohibited.

* * * * *

Upper Ouachita National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

1. Either-sex deer hunting with firearms is permitted for two consecutive days beginning with the second either-sex season in Union Parish and two consecutive days beginning with the third either-sex season.

* * * * *

13. Section 32.40 *Massachusetts* is amended by revising paragraph C. of Parker River National Wildlife Refuge to read as follows:

§ 32.40 Massachusetts.

* * * * *

Parker River National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions: Hunting will be conducted in compliance with a refuge issued permit and State hunting regulations, as applicable.

* * * * *

14. Section 32.41 *Michigan* is amended by adding the alphabetical listing of Kirtland's Warbler Wildlife Management Area to read as follows:

§ 32.41 Michigan.

* * * * *

Kirtland's Warbler Wildlife Management Area

A. Hunting of Migratory Game Birds. Hunting is pursuant to State regulation.

B. Upland Game Hunting. Hunting is pursuant to State regulation.

C. Big Game Hunting. Hunting is pursuant to State regulation.

D. Sport Fishing. [reserved.]

* * * * *

15. Section 32.42 *Minnesota* is amended by adding the alphabetical listing of Fergus Falls Wetland Management District; by revising paragraph B. of Minnesota Valley National Wildlife Refuge; and by adding the alphabetical listing of the Morris Wetland Management District to read as follows:

§ 32.42 Minnesota.

* * * * *

Fergus Falls Wetland Management District

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted throughout the district except that no hunting is permitted on the Townsend, Headquarters, or Mavis Waterfowl Production Areas in Otter Tail County.

B. Upland Game Hunting. Upland game hunting is permitted throughout the district except that no hunting is permitted on the Townsend, Headquarters, or Mavis Waterfowl Production Areas in Otter Tail County.

C. Big Game Hunting. Big game hunting is permitted throughout the district except that no hunting is permitted on the Townsend, headquarters, or Mavis Waterfowl Production Areas in Otter Tail County.

D. Sport Fishing. Sport fishing is permitted throughout the district except that no fishing is permitted on the Townsend, Headquarters, or Mavis Waterfowl Production Areas in Otter Tail County.

Minnesota Valley National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of pheasant, grey and fox squirrel, cottontail rabbit, and turkey is permitted on designated areas of the refuge subject to the following conditions:

1. Permits may be required.

2. Only shotguns and bows and arrows are permitted.

* * * * *

Morris Wetland Management District

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted throughout the district except that no hunting is permitted on designated portions of the Edwards-Long Lake Waterfowl Production Area in Stevens County.

B. Upland Game Hunting. Upland game hunting is permitted throughout the district except that no hunting is permitted on designated portions of the Edwards-Long Lake Waterfowl Production Area in Stevens County.

C. Big Game Hunting. Big game hunting is permitted throughout the district except that no hunting is permitted on designated portions of the Edwards-Long Lake Waterfowl Production Area in Stevens County.

D. Sport Fishing. Sport fishing is permitted throughout the district except that no fishing is permitted on designated portions of the Edwards-Long Lake Waterfowl Production Area in Stevens County.

* * * * *

16. Section 32.43 *Mississippi* is amended by revising paragraphs A., B., C., D.4., D.5., D.6., and adding paragraph D.7 to Noxubee National Wildlife Refuge to read as follows:

§ 32.43 Mississippi.

* * * * *

Noxubee National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of waterfowl, coots, and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required except for woodcock.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit, beaver, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

1. Only shotguns with shot size no larger than #4 and rifles larger than .22 standard caliber are permitted.

2. Only non-toxic shot is permitted in greentree reservoirs.

3. Squirrel and rabbit dogs are permitted after the last day of the refuge deer hunt.

C. Big Game Hunting. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required except for turkey.

D. Sport Fishing. * * *

* * * * *

4. All trotline material must be cotton twine. Each trotline must have floats attached at each end with the name and address of the owner. One trotline per person and no more than two trotlines per boat. Trotlines must be tended every 24 hours and removed when not in use.

5. Jug fishing is permitted. Each jug must have the name and address of the owner attached and jugs must be removed after 48 hours.

6. The length limit for largemouth bass taken from Bluff and Loakfoma lakes is 14 inches. Largemouth bass less than 14 inches must be immediately released unharmed.

7. Boats are restricted to a no-wake, idle speed only on all refuge waters. Boats are not permitted in spillways.

* * * * *

17. Section 32.46 *Nebraska* is amended by adding the alphabetical listing of North Platte National Wildlife Refuge to read as follows:

§ 32.46 Nebraska.

* * * * *

North Platte National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved.]

B. Upland Game Hunting. [Reserved.]

C. Big Game Hunting. [Reserved.]

D. Sport Fishing. Designated areas of the refuge are open to sport fishing in accordance with State fishing regulations.

* * * * *

18. Section 32.49 *New Jersey* is amended by adding paragraph C.5. to Supawna Meadows National Wildlife Refuge to read as follows:

§ 32.49 New Jersey.

* * * * *

Sapawna Meadows National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

5. Single projectile ammunition may only be used when hunting from a stand elevated at least six feet above ground level and only in shotguns equipped with adjustable sights or a scope.

* * * * *

19. Section 32.52 *North Carolina* is amended by revising the introductory language of paragraph A. and adding new paragraph A.4. to Cedar Island National Wildlife Refuge; by revising paragraph D.3. of Mattamuskeet National Wildlife Refuge; and by revising the introductory language of paragraph A. and adding new paragraph A.4. to Swanquarter National Wildlife Refuge to read as follows:

§ 32.52 North Carolina.

* * * * *

Cedar Island National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

4. Ducks and coots may be taken only during the State waterfowl seasons occurring during November, December and January.

* * * * *

Mattamuskeet National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

* * * * *

3. Herring (alewife) dipping is permitted from March 1 to May 15 only from ½ hour before sunrise to ½ hour after sunset or as posted.

* * * * *

Swanquarter National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

4. Ducks and coots may be taken only during the State waterfowl seasons occurring during November, December and January.

* * * * *

20. Section 32.53 *North Dakota* is amended by adding the alphabetical listing of Lake Ilo National Wildlife Refuge to read as follows:

§ 32.53 North Dakota.

* * * * *

Lake Ilo National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved.]

B. Upland Game Hunting. [Reserved.]

C. Big Game Hunting. [Reserved.]

D. Sport Fishing. Designated areas of the refuge are open to sport fishing in accordance with State regulations.

* * * * *

21. Section 32.55 *Oklahoma* is amended by revising paragraph D.2. of Tishomingo National Wildlife Refuge and by revising paragraph C. of Wichita Mountains National Wildlife Refuge to read as follows:

§ 32.55 Oklahoma.

* * * * *

Tishomingo National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

* * * * *

2. The use of trotlines and other set tackle is permitted only in the Cumberland Pool and between the natural banks of the Washita River, except that the set tackle used in the Cumberland Pool must be attached to anchored floats and may not be attached to sticks, poles, trees, or other fixed objects.

* * * * *

Wichita Mountains National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of elk and white-tailed deer is permitted on designated areas subject to the following condition: Permits and payment of a fee is required.

* * * * *

22. Section 32.56 *Oregon* is amended by revising paragraph D.1. of Upper Klamath National Wildlife Refuge to read as follows:

§ 32.56 Oregon.

* * * * *

Upper Klamath National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted in Pelican Bay, Recreation Creek, Crystal Creek, Odessa Creek, Pelican Cut and that portion of Upper Klamath Lake located on the east side of the refuge.

* * * * *

23. Section 32.57 *Pennsylvania* is amended by adding paragraph B.4. to Erie National Wildlife Refuge to read as follows:

§ 32.57 Pennsylvania.

* * * * *

Erie National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

4. Pheasant hunting is not permitted on the Sugar Lake Division.

* * * * *

24. Section 32.60 *South Carolina* is amended by revising paragraphs B. and C. of Cape Romain National Wildlife Refuge; and by revising paragraphs A. and D.2. of Santee National Wildlife Refuge to read as follows:

§ 32.60 South Carolina.

* * * * *

Cape Romain National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of squirrel and raccoon is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Santee National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of mourning doves, ducks, and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

D. Sport Fishing. * * *

* * * * *

2. Fishing is permitted in Cantey Bay, Black Bottom, Savannah Branch and refuge ponds and impoundments from March 1 through October 31.

* * * * *

25. Section 32.62 *Tennessee* is amended by revising paragraph D. of Lower Hatchee National Wildlife Refuge to read as follows:

§ 32.62 Tennessee.

* * * * *

Lower Hatchee National Wildlife Refuge

* * * * *

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

26. Section 32.63 *Texas* is amended by revising paragraph C.9. of Aransas National Wildlife Refuge to read as follows:

§ 32.63 Texas.

* * * * *

Aransas National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

9. Firearm hunters must wear a total of 400 square-inches of hunter orange including 144 square-inches visible in front and 144 square-inches visible in rear. Some hunter orange must appear on head gear.

* * * * *

27. Section 32.67 *Washington* is amended by removing paragraph A.1., redesignating paragraphs A.2. and A.3. as A.1. and A.2., respectively, by revising redesignated paragraph A.1., revising introductory language of paragraph B., revising paragraphs B.1. and D.2., removing paragraph D.3. and redesignating paragraph D.4. as paragraph D.3. to Columbia National Wildlife Refuge; by revising paragraph D. of Julia Butler Hansen Refuge for the Columbian White-tailed Deer; by revising paragraphs C. and D. of Little Pend Oreille National Wildlife Refuge; and by revising paragraph A.1. of Toppenish National Wildlife Refuge to read as follows:

§ 32.67 Washington.

* * * * *

Columbia National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. In Marsh Unit 1, hunting is permitted only on Wednesdays, Saturdays and Sundays.

* * * * *

B. Upland Game Hunting. Hunting of pheasant, quail, and partridge is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of upland game birds is permitted only during State seasons that run concurrently with the State waterfowl season.

* * * * *

D. Sport Fishing. * * *

* * * * *

2. Motorized boats and nonmotorized boats are permitted on all other refuge waters open to fishing.

* * * * *

Julia Butler Hansen Refuge for the Columbian White-tailed Deer

* * * * *

D. Sport Fishing. Fishing is permitted on designated areas of the refuge.

Little Pend Oreille National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of big game is permitted on designated areas of the refuge.

D. Sport Fishing. Sport fishing is permitted on designated areas of the refuge.

* * * * *

Toppenish National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. In the designated blind areas, hunting is permitted only within 50 feet of designated blind sites except when shooting to retrieve crippled birds.

* * * * *

28. Section 32.70 *Wyoming* is amended by revising paragraph B. of Seedskadee National Wildlife Refuge to read as follows:

§ 32.70 Wyoming.

* * * * *

Seedskadee National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Designated areas of the refuge are open to upland game hunting.

* * * * *

29. Section 32.71 *Pacific Islands Territory* is amended by revising the introductory language of paragraph D., revising paragraph D.2., and adding new paragraphs D.4., D.5. and D.6. to Johnston Atoll National Wildlife Refuge to read as follows:

§ 32.71 Pacific Islands Territory.

* * * * *

Johnston Atoll National Wildlife Refuge

* * * * *

D. Sport Fishing. Fishing, lobstering, and shell collecting are permitted on designated areas of the refuge subject to the following conditions:

* * * * *

2. The use of traps or nets, except throw nets, is prohibited.

* * * * *

4. The collecting or taking of all forms of live or dead coral is prohibited.

5. The export of coral by any means will be prohibited after September 11, 1994.

6. It is prohibited to export any fish or invertebrates except for the following: members of the tuna fish family known as *Scombridae*, dolphin fish family known as *Coryphaenidae*, and sailfish family known as *Istiophoridae*.

Dated: October 15, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. 94-27292 Filed 11-2-94; 8:45 am]

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Thursday
November 3, 1994

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 32

List of Open Areas for Hunting in North Dakota; Addition of Rock Lake National Wildlife Refuge; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AC60

Addition of Rock Lake National Wildlife Refuge to the List of Open Areas for Hunting in North Dakota

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) adds Rock Lake National Wildlife Refuge to the list of areas open for big game hunting in North Dakota along with pertinent refuge-specific regulations for such activity. The Service has determined that such use will be compatible with the purposes for which the refuge was established. The Service has further determined that this action is in accordance with the provisions of all applicable laws, is consistent with principles of sound wildlife management, and is otherwise in the public interest by providing additional recreational opportunities of a renewable natural resource.

EFFECTIVE DATE: The effective date of this rule is December 5, 1994.

ADDRESSES: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 670 ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, Esq., at the address above; Telephone: 703–358–1744.

SUPPLEMENTARY INFORMATION: National wildlife refuges are generally closed to hunting and sport fishing until opened by rulemaking. The Secretary of the Interior (Secretary) may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the purpose(s) for which the refuge was established, and that funds are available for development, operation, and maintenance of a hunting or fishing program. The action must also be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound wildlife management, and must otherwise be in the public interest. This rulemaking opens Rock Lake National Wildlife Refuge to deer hunting. The hunt will be in accordance with State regulations pertaining to archery and firearms deer hunting, and as illustrated in the North Dakota Hunting Guide (1993).

A proposed rule was published in the **Federal Register** on July 15, 1994 (59 FR 36348) and public comments were solicited. No comments were received.

Statutory Authority

The National Wildlife Refuge System Administration Act of 1966, as amended (NWRSAA) (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (RRA) (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, Section 4(d)(1)(A) of the NWRSAA authorizes the Secretary to permit the use of any areas within the National Wildlife Refuge System (Refuge System) for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access, when he determines that such uses are compatible with the purposes for which each refuge was established. The Service administers the Refuge System on behalf of the Secretary. The RRA gives the Secretary additional authority to administer refuge areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the refuges were established. In addition, prior to opening refuges to hunting or fishing under this Act, the Secretary is required to determine that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

Opening Package

In preparation for this opening, the refuge unit has included in its "openings package" for Regional review and approval from the Washington Office the following documents: a hunting/fishing plan; an environmental assessment; a Finding of No Significant Impact (FONSI); a Section 7 evaluation or statement, pursuant to the Endangered Species Act, that these openings are not likely to adversely affect a listed species or critical habitat; and a letter of concurrence from the affected States. From a review of the totality of these documents, the Secretary has determined that the opening of the Rock Lake National Wildlife Refuge to deer hunting is compatible with the principles of sound wildlife management and will otherwise be in the public interest.

In accordance with the NWRSAA and the RRA, the Secretary has also determined that this opening for deer hunting is compatible and consistent with the primary purposes for which the refuge was established, and that funds are available to administer the programs. A brief description of the hunting program is as follows:

Rock Lake National Wildlife Refuge

Rock Lake National Wildlife Refuge (NWR) is a 5,587 acre easement refuge located in Towner County, North Dakota. The refuge was established in 1939 by an Executive Order as a refuge and breeding ground for migratory birds and other wildlife. The refuge is administered by the Service's Devils Lake Wetland Management District, located in Devils Lake, North Dakota. Rock Lake NWR occupies lands that were formed by glacial activity several million years ago. The glacial drift moraine running through North Dakota is characterized by rolling grasslands interspersed with small closed basins. Devils Lake is typical of this area. Principal wildlife found on Rock Lake NWR includes geese, ducks, various non-game bird species, white-tailed deer, muskrat, mink and fox. Bald eagles, whooping cranes, and peregrine falcons use the area on an occasional basis.

Since hunting has been prohibited on Rock Lake NWR, deer from the surrounding area are drawn to the refuge during the State firearms deer season. Unfortunately, following the close of the deer season they do not return to the areas from which they came until the following spring. Heightened winter deer concentrations are destructive to refuge habitat and lead to serious depredation problems on neighboring private lands, particularly during severe winters. This refuge is the only large closed-to-hunting area for many miles.

The primary objective of this hunt is to reduce the degradation of habitat used by nesting waterfowl and other wildlife, migratory wildlife, rare and endangered wildlife, and native (resident) wildlife. The hunt will also reduce depredation problems on privately owned land, redistribute deer, improve the health of the herd, reduce the risk of deer/vehicle collisions, and provide recreational opportunities. A designated area of the refuge will be opened to deer hunting only during the State firearms deer season and archery hunting will be open from the opening of the firearms season until the close of the State archery season. All state regulations pertaining to archery and firearms deer hunting will apply. Deer hunting will be monitored by refuge officers and State game wardens. Hunter numbers, number of deer taken, and refuge deer populations will be monitored. The refuge will be open to all holders of a North Dakota 2E deer hunting permit and all those with a valid North Dakota deer archery permit. The Service projects that 100–150 deer

hunting visits will occur each year. If excessive harvest or winter mortality problems are evident, alternative management would be proposed.

Opening the refuge to the hunting of deer has been found to be compatible in a separate compatibility determination. This determination noted also that most migratory birds will have migrated south prior to the opening of the State deer hunting season. A Section 7 evaluation pursuant to the Endangered Species Act was conducted and it was determined that the hunt is not likely to adversely affect any Federally listed or proposed for listing threatened or endangered species or their critical habitats. Pursuant to the National Environmental Policy Act (NEPA), an environmental assessment was made and a Finding of No Significant Impact (FONSI) was made regarding the hunt. All neighbors and farm operators in the local area were contacted about the hunt and they concurred with the proposed hunt. The environmental assessment was prepared by the Devils Lake Wetland Management district and Wetland Habitat Office, Bismarck, North Dakota, and with the assistance of the North Dakota Game and Fish Department. As the deer hunt will be monitored cooperatively by refuge personnel and State game wardens, no special funding will be required to monitor and control the hunt. Refuge monitoring would be a collateral duty of certain refuge personnel. No special refuge permits will be required. Therefore, the Service has determined that there would be sufficient funds to administer the proposed hunt pursuant to the requirements of the Refuge Recreation Act.

Paperwork Reduction Act

The information collection requirements for part 32 are found in 50 CFR part 25 and have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1018–0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, DC 20503.

Economic Effect

This rulemaking was not subject to Office of Management and Budget review under Executive Order 12866. In addition, a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) has revealed that the rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations or governmental jurisdictions. This rule would have minimal effect on such entities.

Federalism

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

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), an environmental assessment has been prepared for this opening. Based upon the Environmental Assessments, the Service issued a Finding of No Significant Impact with respect to the opening. A Section 7 evaluation was prepared pursuant to the Endangered Species Act with a finding that no adverse impact would occur to any identified threatened or endangered species.

Primary Author

Duncan L. Brown, Esq., Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, Fishing, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, part 32 of chapter I of Title 50 of the *Code of Federal Regulations* is amended as set forth below:

PART 32—[AMENDED]

1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

§ 32.7 [Amended]

2. Section 32.7 *List of refuge units open to hunting and/or fishing* is amended by adding the alphabetical listing of "Rock Lake National Wildlife Refuge" under the state of North Dakota.

3. Section 32.53 *North Dakota* is amended by adding the alphabetical listing of Rock Lake National Wildlife Refuge to read as follows:

§ 32.53 North Dakota.

* * * * *

Rock Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved.]

B. Upland Game Hunting. [Reserved.]

C. Big Game Hunting. The refuge is open to the hunting of deer only during the State firearms deer season. Archery hunting is open from the opening of the firearms season until the close of the State archery season. All State regulations pertaining to archery and firearms deer hunting apply.

D. Sport Fishing. [Reserved.]

* * * * *

Dated: October 15, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–27285 Filed 11–2–94; 8:45 am]

BILLING CODE 4310–55–P

federal register

Thursday
November 3, 1994

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 32
List of Open Areas for Hunting and Pertinent Refuge-Specific Regulations; Addition of Two National Wildlife Refuges; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AC58

Addition of Two National Wildlife Refuges to the List of Open Areas for Hunting and Pertinent Refuge-Specific Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) adds two national wildlife refuges (NWR(s)) to the list of areas open for migratory game bird hunting, upland game hunting, and/or big game hunting and pertinent refuge-specific regulations for those activities. The Service has determined that such uses will be compatible with and, in some cases, enhance the purposes for which each refuge was established. The Service has further determined that this action is in accordance with the provisions of all applicable laws, is consistent with principles of sound wildlife management, and is otherwise in the public interest by providing additional recreational opportunities of a renewable natural resource.

EFFECTIVE DATE: The effective date of this Final Rule is December 5, 1994.

ADDRESSES: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 670 ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, Esq., at the address above; Telephone: 703–358–1744.

SUPPLEMENTARY INFORMATION: National wildlife refuges are generally closed to hunting and sport fishing until opened by rulemaking. The Secretary of the Interior (Secretary) may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the purpose(s) for which the refuge was established, and that funds are available for development, operation, and maintenance of a hunting or fishing program. The action must also be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound wildlife management, and must otherwise be in the public interest. This rulemaking opens two refuges to hunting. The hunting programs included in this openings document have refuge-specific hunting regulations which are included in this rulemaking.

A proposed rule was published in the **Federal Register** on July 15, 1994 (59 FR 36342) and comments from the public were solicited. No comments were received. However, the proposed rule indicated that big game hunting at Columbia National Wildlife Refuge and sport fishing at Delevan National Wildlife Refuge may be closed. After consulting further with the Regional Office, a decision has been made to not close these refuges to those activities.

Statutory Authority

The National Wildlife Refuge System Administration Act of 1966, as amended (NWRSAA) (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (RRA) (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, Section 4(d)(1)(A) of the NWRSAA authorizes the Secretary to permit the use of any areas within the National Wildlife Refuge System (Refuge System) for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access, when he determines that such uses are compatible with the purposes for which each refuge was established. The Service administers the Refuge System on behalf of the Secretary. The RRA gives the Secretary additional authority to administer refuge areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the refuges were established. In addition, prior to opening refuges to hunting or fishing under this Act, the Secretary is required to determine that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

Openings Packages

In preparation for these openings, the refuge units have included in their "openings packages" for Regional review and approval from the Washington Office the following documents: a hunting/fishing plan; an environmental assessment; a Finding of No Significant Impact (FONSI), or an Environmental Impact Statement and Record of Decision; a Section 7 evaluation or statement, pursuant to the Endangered Species Act, that these openings are not likely to adversely affect a listed species or critical habitat; a letter of concurrence from the affected States; and refuge-specific regulations, as provided herein. From a review of the totality of these documents, and for each refuge unit specifically, the Secretary determines that the opening of the areas to hunting are compatible with the principles of sound wildlife management and will otherwise be in the public interest.

In accordance with the NWRSAA and the RRA, the Secretary has also determined that these openings for hunting are compatible and consistent with the primary purposes for which each of the refuges listed below was established, and that funds are available to administer the programs. The hunting programs will be generally within State and Federal (migratory game bird) regulatory frameworks. A brief description of the hunting programs follows:

1. Rydell National Wildlife Refuge

The Service will open Rydell National Wildlife Refuge to the hunting of white-tailed deer. Rydell was established in 1992 to preserve and enhance important wildlife habitat in western Minnesota and provide a regional wildlife and fish management education center. The 2,120-acre refuge is located in Grove Park and Woodside Townships in Polk County, just south of U.S. Highway 2 between the communities of Mentor and Erskine, Minnesota. The refuge is situated in the Prairie Pothole Region of western Minnesota between the flat Red River Valley flood plain on the west and the rolling hardwood forest and lake region on the east. The refuge is administered as a unit of the Detroit Lakes Wetland Management District (DLWMD). The DLWMD, which has its headquarters near Detroit Lakes, Minnesota, also currently administers 155 Waterfowl Production Areas, 322 perpetual wetland easements and 14 Farmers' Home Administration (FmHA) Conservation Easements in the five northwestern Minnesota counties of Becker, Clay, Mahnomen, Norman and Polk. Diverse habitat on the refuge attracts an impressive variety and abundance of wildlife. Besides a large white-tailed deer population, refuge habitat is used by both dabbler and diver waterfowl species, moose, mink, ruffed grouse, cormorants, herons, rabbits, raccoon, otter, beaver, muskrat, various hawk and owl species, and more than 100 neotropical, water and other migratory bird species.

Opening the refuge to the hunting of white-tailed deer has been found to be compatible in a separate compatibility determination. This finding was based on findings that (1) hunting is widely recognized by wildlife managers as an integral part of a comprehensive wildlife conservation management plan; (2) the deer population of the refuge and surrounding area has become so large that habitat damage and excessive crop depredation is occurring; (3) reducing the deer population would improve the

health and condition of the deer herd, eliminate the damaging effects of over-population on refuge habitat and reduce the depredation damage caused by deer on crops that surround the refuge; and (4) deer hunting would provide wildlife-oriented recreational opportunities in an area of Minnesota where hunting and fishing are important recreational activities.

Historically, this area of Minnesota has attracted large numbers of deer, especially in winter, because both prairie and woodland habitat were available. Over the past 25 years, the previous owner actively encouraged deer to use the area by planting many acres of lure crops, limiting hunting pressure and providing a high degree of protection for the deer herd. Because of this, the deer population has increased and been concentrated in the relatively small refuge area. Today, the refuge and surrounding area host a white-tailed deer population of about 300 during the spring and fall and up to 500 in the winter. Preliminary surveys indicate that winter densities range from 18 to 20 deer per square mile of the total land area of the refuge and 100 deer per square mile of forested habitat in the 27 square-mile area that includes and surrounds the refuge. A large proportion of these deer use the three square-mile area of the refuge extensively throughout the year. The refuge winter deer population is estimated at 60 to 70 deer per square mile of the total land area of the refuge and more than 200 per square mile of forested habitat. Over-population by deer is evident by the presence of browse lines in the refuge woodlands. The goal of the hunt is to lower the deer population to within the statewide density range (1–15 per square mile of the total land area and 5–80 per square mile of forested habitat). Field studies will be conducted to monitor habitat conditions and population dynamics to determine what the appropriate deer population should be for the refuge and surrounding area.

The Special Permit Area (SPA) will be hunted during the State's 4A and 4B firearms seasons. The SPA covers approximately 2,000 acres, excluding refuge facilities and occupied building sites. About 1,200 acres of the SPA are deemed huntable during a normal hunting season. Initially, until the herd is reduced and under control, only antlerless deer would be taken. As many as 60 permits will be issued for the two-day 4A season and up to 80 permits would be issued for the four-day 4B season. The maximum hunter density would be one hunter per 15 acres. Hunter and Service personnel safety will determine the actual number of permits that are issued each season.

A Section 7 evaluation pursuant to the Endangered Species Act was conducted for the hunt. The refuge is in the breeding range of bald eagles. Eagles also use the refuge regularly for feeding; however, they will have migrated south by the time the firearms deer season opened in November. The refuge is in the peripheral range of the gray wolf; however, no wolves have ever been seen on the refuge. The tight controls of the hunt will make the chance illegal take of a gray wolf unlikely. While western prairie fringed orchids have been found in Polk County, no populations have been identified on the refuge. Even if such a population were discovered, they would be dormant during the hunting season. The proposed action is not likely to adversely affect any Federally listed or proposed for listing threatened or endangered species or their critical habitats.

Pursuant to the National Environmental Policy Act (NEPA), an environmental assessment was conducted and a Finding of No Significant Impact (FONSI) was made regarding the proposed hunt. Detroit Lakes Wetland Management District and refuge staff, along with input from local Minnesota Department of Natural Resources representatives, were primarily responsible for the development of the alternatives reviewed in making the FONSI conclusion. Refuge objectives and Service concerns guided the process. Public needs and expectations were also taken into consideration during the development of the alternatives.

The annual cost of this hunting program will be approximately $3,000. Within the annual DLWMD budget of $676,000, the necessary funds will be available for the development, operation and maintenance of this program pursuant to the Refuge Recreation Act.

2. Ohio River Islands National Wildlife Refuge

The Service will open Ohio River Islands National Wildlife Refuge to the hunting of migratory game birds, upland game hunting, and big game hunting. Established in 1990, the refuge became the first national wildlife refuge in West Virginia. The refuge consists of 9 islands in the Ohio River. The acquisition boundary stretches 362 river miles from Shippingport, Pennsylvania to Manchester, Ohio and includes four states (Pennsylvania, Ohio, West Virginia and Kentucky). The refuge was established under the authority of the Fish and Wildlife Act of 1956. The refuge's primary purpose is for the development, advancement, management, conservation, and protection of fish and wildlife resources. This purpose was further defined by the objectives stated in the refuge's management plan to include (1) the management and protection of wildlife habitat, (2) the management and protection of wildlife populations, and (3) to allow appropriate public uses including, but not limited to, hunting, fishing, trapping, wildlife observation and environmental education.

Twenty species of waterfowl have been recorded using the islands and associated riverine habitats of the Ohio River. The majority of these waterfowl are migratory, using the river and island habitats as feeding and resting areas. More than 5,800 individual waterfowl were observed using the islands during the 165 island visits from February 1992 to September 1993. The take of migratory game birds will include waterfowl, coots, gallinules, rails, snipe, woodcock and mourning dove. Seasons on the refuge will coincide with the appropriate State seasons. The take of all other migratory birds will be prohibited. The migratory game bird hunting program will currently encompass 7 islands and 429 acres. Aside from woodcock hunting, all migratory game bird hunting will, in reality, occur only on the shoreline perimeter of the islands, which constitutes approximately 80 acres (15% of the current refuge acreage).

Cottontail rabbits and fox squirrels are present on the Ohio River islands, with current numbers variable depending on specific islands and their habitats. Much of the island habitats have succeeded beyond the early to late oldfield habitats preferred by cottontail rabbits, and food available for fox squirrels is limited mostly to soft mast. However, it is felt that these species are present in huntable populations. The refuge season for these species will coincide with the appropriate State seasons. Method of take will be restricted to shotgun only for safety reasons. The take of all other upland game, including turkey, grouse, pheasant, and quail, will be prohibited.

White-tailed deer are found in varying numbers on the Ohio River Islands. The size and habitat conditions on each island are different and deer utilization reflects this. Deer move freely from the mainland to the islands, depending on surrounding public use pressures, season, etc., tying island deer densities to surrounding deer populations. Deer hunting on the refuge will follow applicable State regulation. Method of take will be restricted to archery only for safety reasons and season lengths

will correspond to State archery deer seasons.

A separate compatibility determination was made for the hunt program, and the program was found to be compatible. The hunt program must be monitored and adjusted as necessary to reduce or eliminate adverse impacts to the refuge resources and refuge operations.

A Section 7 evaluation pursuant to the Endangered Species Act was conducted for the hunts. The listed species considered in this evaluation are pink mucket pearly mussel, fanshell mussel, bald eagle and peregrine falcon. The pink mucket pearly mussel and fanshell mussel occur on sand and gravel substrate found on the river bottom. Hunting on the island terrestrial habitats and from boats around the island perimeters will not impact these mussels or freshwater mussel habitat. Areas having concentrated eagle use will be zoned to prohibit hunting. The peregrine falcon is a rare visitor to the Ohio River Valley, and hunting activity is not expected to have any impact on this species. Accordingly, it was concluded that the hunts are not likely to adversely affect any Federally listed or proposed for listing threatened or endangered species or their critical habitats.

An environmental assessment was developed pursuant to the National Environmental Policy Act (NEPA) and a Finding of No Significant Impact (FONSI) was made with respect to the hunts. During the planning stages of developing the hunt proposal, the refuge was in direct contact with a variety of government agencies, conservation organizations, landowners, and interested members of the public. Alternatives were developed that highlighted all concerns and the alternative for safe management of a hunting program was deemed appropriate. In December 1993, the refuge announced the availability of the environmental assessment to the general public. Public comment was solicited through news releases, radio interviews, writing to area conservation organizations, and contacting individuals who had expressed an interest in the hunting program. The conclusion of the environmental assessment stated that hunting pressure is expected to be low and wildlife disturbance should be minimal. Hunting conditions will be monitored, however, and appropriate actions taken if necessary to protect the biological resources of the refuge.

In addition to staff expenses, estimated at $4,616, the refuge will incur costs for signs, vehicle maintenance, leaflet printing, and miscellaneous supplies at an estimated annual cost of $1,500. These cost estimates bring the total cost for the hunt program to approximately $6,000. Therefore, it is determined that funds are available for the development, operation and maintenance of this hunt program pursuant to the Refuge Recreation Act.

Paperwork Reduction Act

The information collection requirements for part 32 are found in 50 CFR part 25 and have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1018–0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, DC 20503.

Economic Effect

This rulemaking was not subject to the Office of Management and Budget review under Executive Order 12866. In addition, a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) has revealed that the rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations or governmental jurisdictions. This proposed rule will have minimal effect on such entities.

Federalism

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

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), environmental assessments have been prepared for these openings. Based upon the Environmental Assessments, the Service issued Findings of No Significant Impact with respect to the openings. Section 7 evaluations were prepared pursuant to the Endangered Species Act with a finding that no adverse impact would occur to any identified threatened or endangered species.

Primary Author

Duncan L. Brown, Esq., Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, Fishing, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, part 32 of chapter I of Title 50 of the *Code of Federal Regulations* is amended as set forth below:

PART 32—[AMENDED]

1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 32.7 *List of refuge units open to hunting and/or fishing* is amended by adding the alphabetical listing of "Rydell National Wildlife Refuge" under the State of Minnesota and "Ohio River Islands National Wildlife Refuge" under the State of West Virginia.

3. Section 32.42 *Minnesota* is amended by adding the alphabetical listing of Rydell National Wildlife Refuge to read as follows:

§ 32.42 Minnesota.

* * * * *

Rydell National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved.]

B. Upland Game Hunting. [Reserved.]

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required to hunt white-tailed deer in the Special Permit Area of the refuge.

2. Hunting in the Special Permit Area is permitted with firearms only.

3. Antlerless deer only may be taken in the Special Permit Area.

4. Construction or use of permanent blinds, permanent platforms, or permanent ladders is prohibited. Portable stands are permitted but must be removed from the refuge at the end of each day's hunt.

5. Deer taken from the Special Permit Area must be taken to the refuge check station.

D. Sport Fishing. [Reserved.]

* * * * *

4. Section 32.68 *West Virginia* is revised to read as follows:

§ 32.68 West Virginia.

The following refuge units have been opened to hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Ohio River Islands National Wildlife Refuge

A. Hunting of Migratory Game Birds. Migratory game bird hunting is permitted on designated areas of the refuge subject to the following condition: Each hunter must have in his possession a current copy of the Ohio River Islands National Wildlife Refuge Hunting Regulations Leaflet while participating in a refuge hunt.

B. Upland Game Hunting. The hunting of rabbit and squirrel is permitted on designated areas of the refuge subject to the following conditions:

1. The use of dogs for pursuit while rabbit hunting is prohibited.

2. The take of squirrel and rabbit is restricted to shotgun only.

3. Each hunter must have in his possession a current copy of the Ohio River Islands National Wildlife Refuge Hunting Regulations Leaflet while participating in a refuge hunt.

C. Big Game Hunting. The hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Only archery hunting is permitted.

2. Organized deer drives by two or more hunters are prohibited. A drive is hereby defined as the act of chasing, pursuing, disturbing or otherwise directing deer so as to make the animals more susceptible to harvest.

3. Baiting for deer on refuge lands is prohibited.

4. Each hunter must have in his possession a current copy of the Ohio River Islands National Wildlife Refuge Regulations Leaflet while participating in a refuge hunt.

D. Sport Fishing. [Reserved.]

Dated: October 15, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–27283 Filed 11–2–94; 8:45 am]

BILLING CODE 4310–55–P

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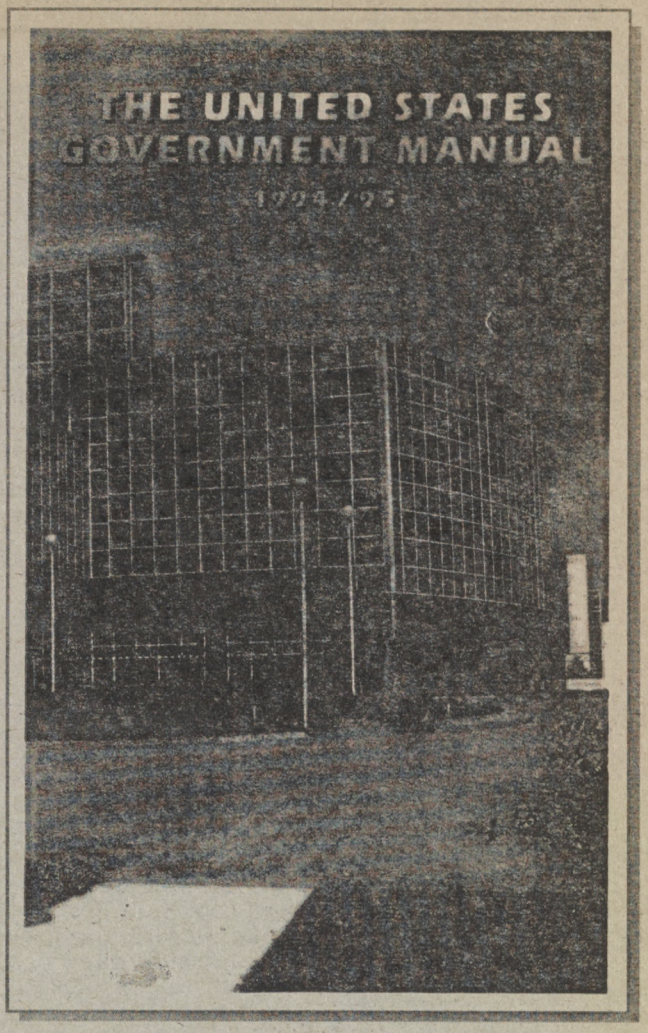

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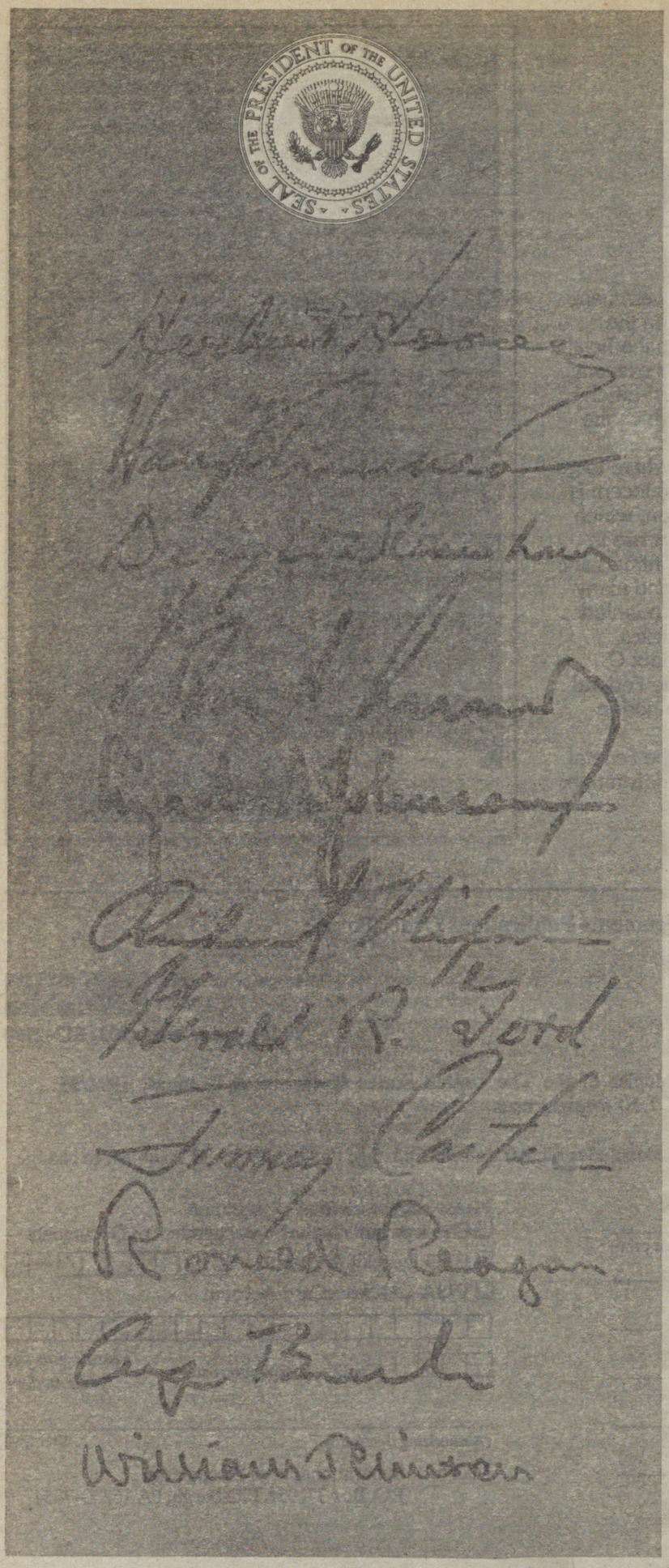

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