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Tuesday
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–SW–15–AD; Amendment 39–9148; AD 95–03–12]

Airworthiness Directives; Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A–1, 269B, 269C, and TH–55A Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A–1, 269B, 269C, and TH–55A series helicopters, that currently requires an initial and repetitive visual inspection of the clutch control spring assembly for component wear and replacement of affected unairworthy parts. This amendment requires the same initial and repetitive visual inspection and replacements required by the existing Priority Letter AD, but references a revised service bulletin and provides replacement procedures for the aluminum spring retainer thermofit tube (plastic sleeve). This amendment is prompted by a recent accident involving a Model 269C helicopter that reportedly lost engine drive power at 100 feet above ground level (AGL) with a resulting unsuccessful autorotative landing, and the manufacturer's issuance of revised service information that provides more detailed instructions for replacement of two components of the belt drive clutch control assembly. The actions specified by this AD are intended to prevent failure of the aluminum spring retainer, loss of power to the rotor drive system, and a subsequent forced landing.

DATES: Effective March 1, 1995.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of September 1, 1994 (59 FR 38354, July 28, 1994).

Comments for inclusion in the Rules Docket must be received on or before April 17, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–15–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Reinhardt, Aerospace Engineer, New York Aircraft Certification Office, FAA, New England Region, 10 Fifth Street, Valley Stream, New York 11581, telephone (516) 256–7532; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: On March 4, 1993, the FAA issued Priority Letter AD 93–03–01, to require an initial and repetitive visual inspection of the clutch control spring assembly (assembly) for component wear and security, and replacement of affected unairworthy parts. That action was prompted by an accident involving a Schweizer Aircraft Corporation Model 269C helicopter. Reportedly, the helicopter lost engine drive power and was unsuccessful in performing a forced landing from 100 feet above ground level (AGL). A subsequent investigation revealed that the assembly had failed, and that the aluminum spring retainer, part number (P/N) 269A5483–7, of the failed assembly had excessive wear. That condition, if not corrected, could result in failure of the aluminum spring retainer, loss of power to the rotor drive system, and a subsequent forced landing.

Since the issuance of that AD, the manufacturer has issued a revised service bulletin, Schweizer Service Bulletin (SB) B–256.2, dated June 11, 1993, that describes procedures for an initial and repetitive inspection for component wear of the assembly in greater detail than the previously-issued service bulletin, and describes procedures for further inspections if disassembly is necessary. It also describes procedures for replacement of the aluminum spring retainer, P/N 269A5452, P/N 269A5452–3, P/N 269A5452–5, or P/N 269A5483–7, and the plastic sleeve, P/N 269A5590–101, which was not described in SB B–256.1, dated January 20, 1993, the SB cited in AD 93–03–01.

Since an unsafe condition has been identified that is likely to exist or develop on other Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A–1, 269B, 269C, and TH–55A helicopters of the same type design, this AD supersedes AD 93–03–01 to require an initial and repetitive visual inspection of the assembly for component wear; and, if any worn or unairworthy parts are found, disassembly, further inspections, and replacement of any unairworthy parts. The actions are required to be accomplished in accordance with SB B–256.2, dated June 11, 1993, described previously. The assembly puts tension on the belt drive between the transmission and the main rotor. If the assembly fails and there is no tension on the belt, the transmission will not turn the main rotor. Due to the criticalness of the clutch control assembly, and a short compliance time, this rule must be issued immediately to correct an unsafe condition in aircraft.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or

arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 94–SW–15–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD), Amendment 39–9148, to read as follows:

95–03–12 Schweizer Aircraft Corporation and Hughes Helicopters, Inc.: Amendment 39–9148. Docket No. 94–SW–15–AD. Supersedes Priority Letter AD 93–03–01, issued on March 4, 1993.

Applicability: Model 269A, 269A–1, 269B, 269C, and TH–55A series helicopters, with aluminum spring retainer, part number (P/N) 269A5452, P/N 269A5452–3, P/N 269A5452–5, or P/N 269A5483–7, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the aluminum spring retainer, loss of power to the rotor drive system, and a subsequent forced landing, accomplish the following:

(a) Within the next 5 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 100 hours time-in-service from the last inspection, visually inspect the clutch control spring assembly for component wear in accordance with the provisions of Part I, paragraph a(2) of Schweizer Service Bulletin (SB) B–256.2, dated June 11, 1993.

(b) If worn parts are found during the inspections accomplished in accordance with paragraph (a) of this AD, before the next flight, disassemble and inspect the clutch control spring assembly and replace parts found to be unairworthy with airworthy parts in accordance with Part I, paragraph b. of SB B–256.2, dated June 11, 1993.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York Aircraft Certification Office.

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

(e) The inspections and replacement, if necessary, shall be done in accordance with SB B–256.2, dated June 11, 1993. This incorporation by reference was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of September 1, 1994 (59 FR 38354, July 28, 1994). Copies may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 1, 1995.

Issued in Fort Worth, Texas, on February 6, 1995.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–3513 Filed 2–13–95; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 94–SW–21–AD; Amendment 39–9147; AD 95–03–11]

Airworthiness Directives; McDonnell Douglas Helicopter Systems and Hughes Helicopters, Inc. Model 369, OH–6A, and YOH–6A Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to McDonnell Douglas Helicopter Systems and Hughes Helicopters, Inc. Model 369, OH–6A, and YOH–6A series helicopters. This action requires initial and repetitive inspections of the tail rotor blade abrasion strip (abrasion strip), installation of stainless steel abrasion tape over the inboard end of the abrasion strip, and as a terminating action, installation of a tail rotor blade with a new-design abrasion strip. This amendment is prompted by several incidents of riveted abrasion strips debonding and separating during flight, resulting in severe out-of-balance conditions and subsequent separation of

the tail rotor gearbox from the helicopter. The actions specified in this AD are intended to prevent loss of the abrasion strip, separation of a tail rotor blade, separation of the tail rotor gearbox, and subsequent loss of control of the helicopter.

DATES: Effective March 1, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 1, 1995.

Comments for inclusion in the Rules Docket must be received on or before April 17, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–21–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from McDonnell Douglas Helicopter Systems, Technical Publications, Bldg. 530/B111, 5000 E. McDowell Road, Mesa, Arizona 85205–9797. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Brent Bandley, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, California 90712, telephone (310) 627–5237, fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: On August 30, 1994, the FAA issued AD 94–18–08, Amendment 39–9021 (59 FR 46163, September 7, 1994) to require installation of abrasion strip rivets (rivets) within 25 hours time-in-service or 7 calendar days, whichever occurs first, on certain tail rotor blades. Also required are owner/operator checks of the abrasion strips for evidence of debonding along the abrasion strip bond line before the first flight of each day; a dye-penetrant and tap-test inspection to ensure the abrasion strip is secure if the owner/operator checks reveal evidence of debonding; and, if debonding is confirmed, replacement of the tail rotor blade with an airworthy blade that has been modified with the installation of rivets. Since the issuance of that AD, there have been several incidents of riveted tail rotor blade abrasion strips debonding and separating during flight, resulting in severe out-of-balance conditions, and subsequent separation of the tail rotor gearbox from the helicopter. Based on these incidents, the FAA has determined that riveting the abrasion strips alone does not create a fail-safe design. An analysis has shown that the debonding starts at the inboard end of the abrasion strip. This condition, if not corrected, could result in loss of the abrasion strip, separation of a tail rotor blade, separation of the tail rotor gearbox, and subsequent loss of control of the helicopter. Therefore, installation of stainless steel abrasion tape over the inboard end of the abrasion strips within 25 hours time-in-service (TIS) or 90 calendar days, whichever occurs first, and thereafter, at intervals not to exceed 100 hours TIS, is necessary to prevent debonding of the abrasion strip from the tail rotor and to ensure the integrity of the helicopter. However, owners and operators must install abrasion strip rivets as required by AD 94–18–08 prior to installing the stainless steel abrasion tape. Additionally, within 1,000 hours TIS, installation of a tail rotor blade with a new-design abrasion strip is required.

The FAA has reviewed McDonnell Douglas Helicopter Systems Service Information Notice HN–238, DN–187, EN–80, FN–66, dated October 26, 1994, which describes procedures for inspection of the abrasion strips for separation or voids and replacement if separation or voids are evident; installation of 304 stainless steel abrasion tape (.0027-inch thick) over the inboard end of the abrasion strips; and replacement of existing tail rotor blades with tail rotor blades equipped with new-design abrasion strips.

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Helicopter Systems and Hughes Helicopters, Inc. Model 369, OH–6A, and YOH–6A series helicopters of the same type design, this AD is being issued to prevent loss of the abrasion strip, separation of a tail rotor blade, separation of the tail rotor gearbox, and subsequent loss of control of the helicopter. This AD requires initial and repetitive inspections of the abrasion strip, installation of stainless steel abrasion tape over the inboard end of the abrasion strip, and as a terminating action, installation of a tail rotor blade with a new-design abrasion strip. Due to the criticality of the abrasion strip and maintaining a balanced tail rotor system, and the short compliance time for installation of the stainless steel abrasion tape, this rule must be issued immediately to correct an unsafe condition. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 94–SW–21–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to

correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

95–03–11 McDonnell Douglas Helicopter Systems and Hughes Helicopters, Inc.: Amendment 39–9147. Docket No. 94–SW–21–AD.

Applicability: Model 369, OH–6A, and YOH–6A series helicopters, with tail rotor blade assemblies, part number (P/N) 369A1613–7, 369A1613–503, 369A1613–505, 369A1613–509, 369D21606, 369D21606–509, 369D21613–11, 369D21613–31, 369D21613–41, 369D21613–51, 369D21613–71, 369D21615, 369D21615–21, 369D21615–41, or 421–088, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the abrasion strip, separation of a tail rotor blade, separation of the tail rotor gearbox, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time-in-service (TIS) or 90 calendar days, whichever occurs first, and thereafter, at intervals not to exceed 100 hours TIS, inspect the tail rotor blade abrasion strip for debonding from the tail rotor blade. Prior to conducting the repetitive inspections, remove any abrasion tape from the tail rotor blade.

(1) If the inspection reveals debonding, replace the tail rotor blade with an airworthy blade that has been modified by an installation of rivets, and install 304 stainless steel abrasion tape (.0027-inch thick) over the inboard end of the abrasion strip in accordance with steps B through H of Part I of the Accomplishment Instructions of McDonnell Douglas Helicopter Systems Service Information Notice (SIN) HN–238, DN–187, EN–80, FN–66, dated October 26, 1994.

(2) If the inspection reveals no debonding, install 304 stainless steel abrasion tape (.0027-inch thick) over the inboard end of the abrasion strip in accordance with steps B through H of Part I of the Accomplishment Instructions of McDonnell Douglas Helicopter Systems SIN HN–238, DN–187, EN–80, FN–66, dated October 26, 1994.

(b) Within 1,000 hours TIS after the effective date of this AD, replace the affected tail rotor blades in shipsets with tail rotor blades that contain the new-design abrasion strips in accordance with Part II of the Accomplishment Instructions of SIN HN–238, DN–187, EN–80, FN–66, dated October 26, 1994. Once the new-design abrasion strips are installed on the tail rotor blades, the tail rotor assembly P/N changes as follows:

Old tail rotor assembly No.	New tail rotor assembly No.
369A1613–7	369A1613–11.
369A1613–503	369A1613–507.
369A1613–505	369A1613–507.
369A1613–509	369A1613–507.
369D21606	369D21606–511.
369D21606–509	369D21606–511.
369D21613–11	369D21613–11N.
369D21613–31	369D21613–31N.
369D21613–41	369D21613–61.
369D21613–51	369D21613–61.
369D21613–71	369D21613–61.
369D21615	369D21615–N.
369D21615–21	369D21615–31.
369D21615–41	369D21615–31.
421–088	421–088–11.

(c) Installation of tail rotor blades with new-design abrasion strips installed in accordance with Part II of the Accomplishment Instructions of SIN HN–238, DN–187, EN–80, FN–66, dated October 26, 1994, constitutes a terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

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

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished, provided there is no evidence of debonding of the abrasion strip at any point along the entire abrasion strip bond line of the tail rotor blades.

(f) The modification and replacement shall be done in accordance with McDonnell Douglas Helicopter Systems Service Information Notice HN–238, DN–187, EN–80, FN–66, dated October 26, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Helicopter Systems, Technical Publications, Bldg. 530/B111, 5000 E. McDowell Road, Mesa, Arizona 85205–9797. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 1, 1995.

Issued in Fort Worth, Texas, on February 6, 1995.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–3512 Filed 2–13–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 94–CE–08–AD; Amendment 39–9139; AD 95–03–02]

Airworthiness Directives; Brackett Aircraft Company, Inc. Air Filter Assemblies Installed on Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to airplanes with certain Brackett Aircraft Company, Inc. (Brackett) air filter assemblies that have a neoprene gasket design installed between the carburetor heat box and the air filter frame. This action requires repetitively inspecting (visually) the air filter frame for a loose or deteriorating gasket, and replacing any gasket found loose or deteriorated. An accident report concerning a Cessna Model 172 airplane that experienced engine loss because a six-inch piece of neoprene gasket material was lodged in the carburetor prompted this action. The actions specified by this AD are intended to prevent gasket particles from entering the carburetor because of air filter gasket failure, which could result in partial or complete loss of engine power.

DATES: Effective March 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 17, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from the Brackett Aircraft Company, Inc., 7045 Flightline Drive, Kingman, Arizona 86401. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elizabeth Bumann, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5265; facsimile (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to airplanes that have a Brackett air filter neoprene gasket installed in accordance with Supplemental Type Certificate (STC) SA71GL was published in the **Federal Register** on August 25, 1994 (59 FR 43784). The action proposed to require repetitively inspecting (visually) the air filter frame for a loose or deteriorated gasket, and replacing any gasket found loose or deteriorated.

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

The first commenter, the Brackett Aircraft Co., Inc. (Brackett), states that no full model designation was given of the Cessna 172 airplane referenced in the incident specified by the NPRM. Some Cessna 172's use the Model BA–5110A filter (which uses airlocks in the air filter frame assembly) and others use the Model BA–5110 filter (which uses screws and nuts in the air filter frame assembly). This commenter feels that some reference to this difference should be made in the proposal.

The FAA concurs. Paragraphs (a)(1) and (a)(3) of the proposal have been changed to specify removing or installing airlocks or screws, nuts, and washers, as applicable.

Brackett also states that the proposal is an economic burden to the public and the proposal does not take into account the cost of the repetitive inspections.

The FAA does not concur that this proposal would be an economic burden upon the public. Under the criteria of the Regulatory Flexibility Act of 1980 (RFA), this AD action would not unnecessarily or disproportionally burden any small entities. FAA Order 2100.14A sets the size threshold for small entities operating aircraft for hire at nine aircraft owned and the annualized cost threshold at $69,000 for scheduled operators and $5,000 for unscheduled operators. In order for these cost thresholds to be met (based on the inspection taking 1 workhour at $60 per hour), an owner in scheduled service would have to own 1,150 airplanes and an owner in unscheduled service would have to own 83 airplanes. With this information in mind and based on the above-referenced criteria from FAA Order 2100.14A, no small entities would meet the annualized cost threshold. The FAA has determined that the safety aspect of the proposal outweighs the economic cost upon the public. The FAA does concur that the cost figure does not reflect the cost of repetitive inspections. As specified in the proposal, the FAA has no available means of determining the number of repetitive inspections each owner/operator would incur. The proposal is unchanged as a result of this comment.

In addition, Brackett and the other commenter suggest that the proposal is unnecessary because part 43, appendix D, of the Federal Aviation Regulations (14 CFR part 43, appendix D) already addresses the proposed inspection. Brackett states that 14 CFR part 43, appendix D, specifies inspecting the engine accessories and systems for improper installation, poor general condition, defects, and insecure attachments during each 100-hour or annual inspection. The other commenter states that this proposal specifies a maintenance action as required by 14 CFR part 43, appendix D.

The FAA acknowledges that 14 CFR part 43, appendix D, does address the area of the proposed inspection, but does not specify procedures required to properly inspect Brackett air filter neoprene gaskets installed in accordance with STC SA71GL. Prior to March 16, 1994, procedures for repetitively inspecting the air filter frame were not available to owners/operators of airplanes with the affected air filter assemblies installed. On that date, Brackett Aircraft Company, Inc., issued Brackett Air Filter Document I–194, which specifies inspection procedures for these air filter assemblies. Since there is no way of knowing what type of inspection procedures were utilized prior to the issuance of this document and based on the accident information that prompted the proposal, the FAA has determined that AD action should be taken to ensure proper inspections of Brackett air filter assemblies installed on aircraft. The proposal is unchanged as a result of these comments.

After careful review of all available information, including the comments referenced above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 50,000 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the initial inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,000,000 or $60 per owner/operator. This figure represents the cost of the initial inspection, and does not reflect costs for repetitive inspections or possible replacements. The FAA has no way of determining how many gaskets may need replacement or how many repetitive inspections each owner/operator may incur.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

95–03–02 Brackett Aircraft Company, Inc.: Amendment 39–9139; Docket No. 94–CE–08–AD.

Applicability: The following air filter assemblies that utilize a neoprene gasket incorporated in accordance with Supplemental Type Certificate (STC) SA71GL and installed on, but not limited to, the following corresponding airplanes, certificated in any category:

Air filter assembly	Airplanes installed on
BA–2010	Beech Model 77 Airplanes.
BA–4106	Cessna Models 120, 140, 140A, 150, 150A, 150B, 150C, 150D, 150E, 150F, 150G, 150H, 150J, 150K, 150L, 150M, A150M, 152, and A152; Champion Models 7ACA, 7ECA, and 7FC; Christian Industries Model Husky A–1; Luscombe Models 8, 8A, 8B, 8C, 8D, 8E, 8F, and T–8F; and Piper Models PA–22, PA–22–135, PA–22–150, PA–22–160, PA–22–180, PA–20–115, PA–20–135, PA–38, J–3, J3C–65, J3C–65's, PA–11, PA–11's, J4A, J4AS, J4E, J5A, J5A–80, PA–12, PA–12's, PA–16, PA–17, PA–18, PA–18A, PA–18's, PA–18–"125", PA–18AS–"125", PA–18's–"125", PA–18–"135", PA–18A–"135", PA–18AS–"135", and 8S–135 Airplanes.
BA–4210	Grumman American Aviation Corporation Models AA–1, AA–1A, AA–1B, AA–1C, and AA–5 Airplanes.
BA–5110	Cessna 170, 170A, 170B, 172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 172K, 172L, and 172M; and Mooney Mite Aircraft Corporation Model M–18C Airplanes.
BA–5110A	Cessna Models 172N and 172P Airplanes.
BA–6110	Mooney Models M20, M20A, M20B, M20C, M20D, and M20G; and Maule Models M4, M4C, M4S, M4T, M–4–220, M–4–220C, M–4–220S, M–4–220T, M–4–180C, M–4–180S, M–4–180T, M–5–220C, M–5–235C, M–5–180C, M–5–210TC, M–6–180, M–6–235, and M–7–235 Airplanes.
BA–8910	Aero Commander Models 100 and 100A Airplanes.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished, and thereafter at intervals not to exceed 100 hours TIS.

To prevent gasket particles from entering the carburetor because of air filter gasket failure, which could result in partial or complete loss of engine power, accomplish the following:

(a) Visually inspect the inside and outside of the air filter frame for gasket looseness, movement, or deterioration in accordance with Brackett Air Filter Document I–194, dated March 16, 1994. If any gasket looseness, movement, or deterioration is found, prior to further flight, accomplish the following:

(1) Remove the air filter frame by removing the screws, nuts, and washers on the air filter frame (3 to 4 each) or the airlocks, as applicable. Note that the screws securing the grill to the frame need not be removed.

(2) Remove and replace the neoprene gasket in accordance with Brackett Air Filter Document 1–194. Inspect the carburetor in accordance with the applicable maintenance manual for gasket material ingestion. Remove any material ingested.

(3) Reinstall the filter frame to the carburetor heat box with the screws, nuts, and washers (3 to 4 each) or the airlocks, as applicable, that were earlier removed. Torque each nut to where the neoprene gasket is compressed to one-half its original thickness.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, 3960 Paramount Boulevard, Lakewood, California 90712. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

(d) The inspections required by this AD shall be done in accordance with Brackett Air Filter Document I–194, dated March 16, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Brackett Aircraft Company, Inc., 7045 Flightline Drive, Kingman, Arizona 86401. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–9139) becomes effective on March 17, 1995.

Issued in Kansas City, Missouri, on January 31, 1995.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–2786 Filed 2–13–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–SW–05–AD; Amendment 39–9149; AD 95–03–13]

Airworthiness Directives; McDonnell Douglas Helicopter Systems and Hughes Helicopters, Inc. Model 369 and OH–6A Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD),

applicable to McDonnell Douglas Helicopter Company and Hughes Helicopters, Inc. Model 369 and OH–6A series helicopters with certain main rotor (M/R) blade assemblies or certain M/R hub lead-lag assemblies installed, that currently requires repetitive inspections and checks for cracks. This amendment requires the same inspections as the superseded AD, but would eliminate pilot checks, expand the areas of inspection, and require the application of slippage marks on each M/R blade root fitting lug and related bushings. This amendment is prompted by additional reports of cracks in the M/R blade root fittings, lugs, and adjacent blade skin, and movement of the root fitting bushings. The actions specified by this AD are intended to prevent failure of a M/R blade assembly or a M/R hub lead-lag link assembly, loss of a M/R blade, and subsequent loss of control of the helicopter.

DATES: Effective March 21, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 21, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Helicopter Systems, Technical Publications, Bldg. 530/B111, 5000 E. McDowell Road, Mesa, Arizona 85205–9797. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Brent Bandley, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, California 90712, telephone (310) 627–5237, fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 91–17–04, Amendment 39–8003 (56 FR 42230, August 27, 1991), which is applicable to McDonnell Douglas Helicopter Systems and Hughes Helicopters, Inc. Model 369 and OH–6A series helicopters with certain main rotor (M/R) blade assemblies or certain M/R hub lead-lag assemblies installed, was published in the **Federal Register** on July 21, 1994 (59 FR 37185). That action proposed to require application of a slippage mark on each M/R blade root fitting lug and related bushings to detect movement within 25 hours time-in-service (TIS). In addition, that action proposed to require, within 25 hours TIS after the effective date of the AD and thereafter at intervals not to exceed 100 hours TIS from the last inspection, that the M/R blade assembly be removed and that the M/R blade root fittings (root fittings), root fitting lugs, lead-lag lugs, the M/R blade skin, and the doublers adjacent to the root fittings be inspected for cracks. That action also proposed that the lug bushings be inspected for looseness and slippage, and that slippage marks be applied if not already present. Visual inspections of the root fittings and M/R lead-lag links for cracks and inspection of the bushing slippage marks for movement, without removing the M/R blade, were also proposed at intervals not to exceed 25 hours TIS.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for editorial changes and a change in the manufacturer's name from McDonnell Douglas Helicopter Company to McDonnell Douglas Helicopter Systems. Additionally, the FAA has revised the average labor rate from $55 per work hour to $60 per work hour, which raises the estimated total cost impact of the AD to $1,320,000. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 1,000 helicopters of U.S. registry will be affected by this AD, that it will take approximately 22 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,320,000.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8003 (56 FR 42230, August 27, 1991), and by adding a new airworthiness directive (AD), Amendment 39–9149, to read as follows:

95–03–13 McDonnell Douglas Helicopter Systems and Hughes Helicopters, Inc.: Amendment 39–9149. Docket No. 94–SW–05–AD. Supersedes AD 91–17–04, Amendment 39–8003.

Applicability: Model 369 and OH–6A series helicopters, with any of the following parts installed: (1) Main rotor (M/R) blade assembly (blade assembly), part number (P/N) 369A1100–BSC, –501, –503, –505, –601, or –603; 369D21100–BSC, –503, –505, –507, –509, –511, –513, or –515; 369D21102–BSC or –501; or (2) M/R hub lead-lag link assembly (lead-lag link assembly), P/N 369A1203–BSC, –3, or –11; 369H1203–BSC, –11, –21, or –31, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a M/R blade assembly or a M/R hub lead-lag link assembly, loss of a M/R blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 100 hours TIS from the last inspection, remove each blade assembly from the helicopter and accomplish the following:

(1) Inspect the attachment lugs of the M/R blade root fittings (root fittings) and the M/

R lead-lag links (links) for cracks and the lug bushings (bushings) for looseness. Conduct the inspections in accordance with paragraph (b) of Part I of McDonnell Douglas Helicopter Company Service Information Notice HN–211.4, DN–51.6, EN–42.4, FN–31.4 (SIN), dated January 27, 1993.

(2) Visually inspect the following for cracks—

(i) The root fittings around the blade attachment lugs; and,

(ii) The M/R blade doubler and blade skin adjacent to the root fittings.

(3) Mark the root fittings and bushings with slippage marks in accordance with paragraph (e) of Part I of the SIN, dated January 27, 1993, if the slippage marks are degraded or missing.

(4) Replace any M/R blades or links found to be cracked or to have loose bushings with airworthy parts before further flight.

(b) Within 25 hours TIS after compliance with the requirements of paragraph (a) of this AD, and thereafter at intervals not to exceed 25 hours TIS from the last inspection, accomplish the following without removing the M/R blade:

(1) Visually inspect the root fittings and links for cracks or loose bushings in accordance with Part II of the SIN, dated January 27, 1993.

(2) Replace any M/R blades or links found to be cracked or to have loose bushings with airworthy parts before further flight.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

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

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

(e) The inspections and replacements, if necessary, shall be done in accordance with McDonnell Douglas Helicopter Company Service Information Notice No. HN–211.4, DN–51.6, EN–42.4, FN–31.4, dated January 27, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Helicopter Systems, Technical Publications, Bldg. 530/B111, 5000 E. McDowell Road, Mesa, Arizona 85205–9797. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 21, 1995.

Issued in Fort Worth, Texas, on February 7, 1995.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–3511 Filed 2–13–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 92–CE–22–AD; Amendment 39–9124; AD 95–02–06]

Airworthiness Directives; Jetstream Aircraft Limited (Formerly British Aerospace, Regional Aircraft Limited) Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 91–08–01, which currently requires the following on Jetstream Aircraft Limited (JAL) Jetstream Model 3101 airplanes: revising the maximum speed for flaps at 50 degrees from 153/149 knots indicated airspeed (KIAS) to 130 KIAS; and limiting the maximum flap extension to 20 degrees anytime ice is present on the airplane. This action requires incorporating a flap system modification as terminating action for the requirements of AD 91–08–01. The actions specified by this AD are intended to prevent sudden pitch down of the airplane during icing conditions, which could lead to loss of control of the airplane.

DATES: Effective March 10, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 10, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830; facsimile (322) 230.6899; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal (supplemental notice of proposed rulemaking) to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain JAL Model 3101 airplanes was published in the **Federal Register** on October 13, 1994 (59 FR 51875). The action proposed to supersede AD 91–08–01, Amendment 39–7007, with a new AD that would (1) Retain the flap system operating revision and limitation currently required until the 35-degree flap system modification was incorporated; and (2) eventually require incorporating the 35-degree flap system modification in accordance with the instructions in Jetstream Aircraft Limited Service Bulletin No. 27–JA 910541, which consists of the following pages:

Page Nos.	Revision level	Date
2, 5 through 30 and 33 through 45.	Revision 1	November 11, 1991.
31	Revision 2	February 4, 1992.
1, 3, 4, and 32 ..	Revision 3	November 16, 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received in favor of the proposal and no comments were received concerning the FAA's determination of the cost to the public.

After careful review of all available information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 141 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 23 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. The manufacturer will provide parts at no cost to the owner/operator. Based on these figures, the

total cost impact of the AD on U.S. operators is estimated to be $178,365. This figure is based on the assumption that no affected owner/operator has incorporated the required modification.

Jetstream Aircraft Limited has informed the FAA that 122 modification kits have been delivered to affected airplane owners/operators. Since each of these airplane operators have incorporated revised flight manual supplements, the FAA assumes that each of these kits is installed on one of the affected airplanes. With this in mind, the proposed cost impact upon U.S. operators would be reduced $154,330 from $178,365 to $24,035. In addition, Jetstream Aircraft Limited informed the FAA that the other 19 affected airplanes are in the storage inventory of its sister company JSX. The policy of JSX is to incorporate this modification before distributing one of the affected airplanes to an operator. Taking these factors into consideration, this AD would provide no economic cost impact upon U.S. operators.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 91–08–01, Amendment 39–7007 (56 FR 24333, May 30, 1991), and adding a new AD to read as follows:

95–02–06 Jetstream Aircraft Limited: Amendment 39–9124; Docket No. 92–CE–22–AD. Supersedes AD 91–08–01, Amendment 39–7007.

Applicability: Jetstream Model 3101 airplanes (all serial numbers), certificated in any category, that do not have the flap system modified in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Service Bulletin (SB) 27–JA 910541, which consists of the following pages and revision levels:

Page Nos.	Revision level	Date
2, 5 through 30 and 33 through 45.	Revision 1	November 11, 1991.
31	Revision 2	February 4, 1992.
1, 3, 4, and 32 ..	Revision 3	November 16, 1992.

Note 1: Compliance with a previous revision level of the above-referenced service bulletin fulfills the applicable requirements of this AD.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent sudden pitch down of the airplane during icing conditions, which could lead to loss of control of the airplane, accomplish the following:

(a) Within the next 10 hours time-in-service (TIS) after June 10, 1991 (the effective date of superseded AD 91–08–01), accomplish the following:

(1) Modify the operating limitations placards located on the flight deck in accordance with British Aerospace (BAe) Alert SB No. 27–A–JA 910340, dated March 25, 1991. This modification will limit the maximum flap extension speed at the 50-degree position to 130 knots indicated airspeed (KIAS).

(2) Insert a copy of this AD into the Limitations Section of the airplane flight manual.

(b) Within the next 25 hours TIS after June 10, 1991 (the effective date of superseded AD 91–08–01), accomplish the following:

(1) Fabricate a placard with the words ''Do not extend the flaps beyond the 20-degree position if ice is visible on the airplane and ensure that the landing gear selector is down prior to landing.'' Install this placard on the airplane's instrument panel within the pilot's clear view. Parts of the airplane where ice could specifically be visible include the windshield wipers, center windshield, propeller spinners, or inboard wing leading edges.

(2) Operate the airplane in accordance with BAe Alert SB 27–A–JA 910340, dated March 25, 1991, Section 2.B.—Instruction for Aircraft Operations, paragraphs (1)(a) and (1)(c) until Amendments P/32, P/49, and P/52 have been received. Upon receipt, incorporate these amendments into Airplane Flight Manual (AFM) HP.4.10. Ensure that Amendment G/10 is incorporated into AFM HP.4.10.

(c) Within the next 100 hours TIS after the effective date of this AD, incorporate the 35-degree flap modification (Amendment JA 910541) in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Aircraft Limited SB 27–JA 910541.

(d) The actions required by paragraphs (a) and (b) of this AD may be terminated when the flap system is modified in accordance with Jetstream Aircraft Limited SB 27–JA 910541, as required by paragraph (c) of this AD.

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

(f) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office (ACO), FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

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

(g) The modifications required by this AD shall be done in accordance with Jetstream Aircraft Limited Service Bulletin 27–JA 910541, which consists of the following pages and revision levels:

Page Nos.	Revision level	Date
2, 5 through 30 and 33 through 45.	Revision 1	November 11, 1991.
31	Revision 2	February 4, 1992.
1, 3, 4, and 32 ..	Revision 3	November 16, 1992.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office

of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment (39–9124) supersedes AD 91–08–01, Amendment 39–7007.

(i) This amendment (39–9124) becomes effective on March 10, 1995.

Issued in Kansas City, Missouri, on January 18, 1995.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–1698 Filed 2–13–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–52–AD; Amendment 39–9126; AD 95–02–07]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With General Electric CF6–45 or CF6–50 Engines or Pratt & Whitney JT9D Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires installation of a seal on the wing front spar at each engine strut. This amendment is prompted by a report of a fire that occurred due to fuel leakage from the fuel line coupling in the engine strut area along the wing front spar while the airplane was on the ground after engine shutdown. The actions specified by this AD are intended to ensure that fuel is contained within the strut drainage area and channeled away from ignition sources.

DATES: Effective March 16, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 16, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: G. Michael Collins, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2689; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on June 9, 1994 (59 FR 29744). That action proposed to require installation of a seal on the wing front spar at each engine strut.

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

One commenter supports the proposed rule.

Several commenters state that the one reported incident was an ''isolated incident'' and is not characteristic of industry findings. One commenter also states that the incident was not a safety-of-flight issue since the reported fire occurred while the airplane was on the ground. Because of this, these commenters request that the FAA withdraw the proposed rule. The FAA does not concur. As explained in detail in the preamble to the proposed rule, airflow when the airplane is in flight or airflow from the engine running when the airplane is on the ground does prevent fuel from leaking onto hot engine surface. However, a potential unsafe condition still exists because fire can occur after engine shutdown as a result of the fuel dripping onto the hot engine surface. The reported fire demonstrates that the design of the flammable fluid drainage system does not adequately separate the fuel leak from the hot surface of the engine following engine shutdown. The FAA has determined that the actions required by this AD are warranted in order to address that unsafe condition.

Several commenters contend that the proposed installation of a seal on the wing front spar at each engine will not prevent a fuel leak from occurring. One commenter states that individual modifications, such as the proposed modification, should only be required as part of a more comprehensive program of modifications that will address all known fuel system leakage problems. (The commenter did not, however, provide any specific details of a program.) Another commenter states that periodic replacement of the O-rings in the fitting would prevent the leakage of fuel; therefore, the proposed installation is not necessary. Because of these items, these commenters request that the rule not be issued. The FAA does not concur. Each incident report and each modification presented to correct causes of fuel leakage incidents is evaluated by the FAA. Both the effectiveness of the modification and the economic impact to accomplish corrective action required by an AD are considered. The FAA has determined that the installation required by this AD will improve the drainage system and prevent future fires that could be caused by fuel leakage from the fuel line (Wiggins) coupling in the engine strut area. Scheduled replacement of the O-rings may reduce the potential for fuel leaks caused by worn or aged O-rings, but it will not eliminate all causes of fuel leakage in the area of the modification.

One commenter states that the seal described in the proposed rule will be replaced during an anticipated ''Boeing Model 747 strut modification program,'' and that installing the seal before modifying the strut area would provide a short-lived increase in safety. This commenter, therefore, considers the proposed installation to be unwarranted. The FAA does not concur. The planned strut modification program does not include a requirement for incorporation of the installation required by this AD, nor has a compliance time for the strut modifications been established; it is likely that the compliance time may be a period of three to five years. Although the planned strut modifications may require the removal and reinstallation of the seal installation required by this AD, the risk of a fire occurring before the planned strut modification program is implemented outweighs the convenience of waiting to install the seal until the strut modification is accomplished. The installation required by this AD can be incorporated during normal scheduled maintenance periods, thereby reducing the costs associated with this installation since access to this area will be necessitated in order to accomplish other scheduled maintenance actions.

Several commenters request that the FAA extend the proposed compliance time for the installation. Some of the commenters request the compliance time be extended from the proposed 12 months to as much as 48 months. This would permit ample time to accomplish the installation during scheduled maintenance periods. One of these commenters requests that the compliance time be extended to coincide with the planned strut modification program to reduce the additional cost to the operators. The FAA concurs that the compliance time may be extended somewhat. In

developing an appropriate compliance time for this AD action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the practical aspect of incorporating the required installation into affected operators' scheduled maintenance visits, when the airplanes would be located at a base where facilities and trained personnel would be readily available, if necessary. The FAA has reviewed data submitted by the manufacturer as to recommended installation time, and concurs with the commenters' requests for an extension. The FAA has determined that extending the compliance time from 12 months to 18 months will not compromise safety. Paragraph (a) of the final rule has been revised accordingly.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement.

Additionally, the FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below has been revised to reflect this increase in the specified hourly labor rate.

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

There are approximately 610 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 183 airplanes of U.S. registry will be affected by this AD, that it will take approximately 14 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $57 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $164,151, or $897 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

95–02–07 Boeing: Amendment 39–9126. Docket 94–NM–52–AD.

Applicability: Model 747 series airplanes, equipped with General Electric CF6–45 or CF6–50 engines, or Pratt & Whitney JT9D series engines; as listed in Boeing Service Bulletin 747–28–2160, Revision 1, dated December 16, 1993; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure that fuel is contained within the strut drainage area and channeled away from ignition sources, accomplish the following:

(a) Within 18 months after the effective date of this AD, install a seal on the wing front spar at each engine strut in accordance with Boeing Service Bulletin 747–28–2160 dated July 23, 1992, or Revision 1, dated December 16, 1993.

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

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

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

(d) The installation shall be done in accordance with Boeing Service Bulletin 747–28–2160, dated July 23, 1992, or Boeing Service Bulletin 747–28–2160, Revision 1, dated December 16, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial

Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 16, 1995.

Issued in Renton, Washington, on January 19, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–1846 Filed 2–13–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–CE–16–AD; Amendment 39–9123; AD 95–02-05]

Airworthiness Directives; Jetstream Aircraft Limited (Formerly British Aerospace, Regional Airlines Limited) HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Jetstream Aircraft Limited (JAL) HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. This action requires repetitively inspecting the passenger/crew cabin door handle mounting platform structure for cracks, and, if found cracked, replacing with a structure of improved design as terminating action for the repetitive inspections. The actions specified by this AD are intended to prevent the inability to open the passenger/crew door because of a cracked internal handle mounting platform structure, which, if not detected and corrected, could result in passenger injury if emergency evacuation was needed.

DATES: Effective March 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 17, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC, 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513–3830; facsimile (322) 230–6899; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain JAL HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes was published in the **Federal Register** on October 13, 1994 (59 FR 51879). The action proposed to require repetitively inspecting the passenger/crew cabin door handle mounting platform structure for cracks, and, if found cracked, replacing with a structure of improved design as terminating action for the repetitive inspections. The proposed actions would be accomplished in accordance with Jetstream Service Bulletin 52–A–JA 930901, Revision 1, dated February 11, 1994.

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

After careful review of all available information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 165 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $9,075. This figure does not take into account any possible passenger/crew door internal handle mounting platform structure replacements nor repetitive inspections. The FAA has no way of determining how many of these structures may have cracks or the number of repetitive inspections each owner/operator may incur.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

95–02–05 Jetstream Aircraft Limited: Amendment 39–9123; Docket No. 94–CE–16–AD.

Applicability: HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 airplanes (all serial numbers), certificated in any category. Compliance: Required upon the

accumulation of 1,800 hours time-in-service (TIS) or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter as indicated.

To prevent the inability to open the passenger/crew door because of a cracked internal handle mounting platform structure, which, if not detected and corrrected, could result in passenger injury if emergency evacuation was needed, accomplish the following:

(a) Inspect the passenger/crew door internal handle mounting platform structure for cracks in accordance with Part 1 of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Service Bulletin (SB) 52–A–JA 930901, Revision 1, dated February 11, 1994 .

(1) If any cracked structure is found, prior to further flight, replace the mounting platform structure with a new structure, part number 137450C23, in accordance with Part 2 of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 52–A–JA 930901, Revision 1, dated February 11, 1994.

(2) If no cracks are found, reinspect the mounting platform structure at intervals not to exceed 1,800 hours TIS until a part number 137450C23 mounting platform structure is installed.

(b) The repetitive inspections required by this AD may be terminated upon installing a part number 137450C23 passenger/crew door internal handle mounting platform structure. This installation may be accomplished regardless of whether the existing structure is cracked.

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

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office (ACO), Europe, Africa, Middle East office, FAA, c/o American Embassy, B–1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

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

(e) The inspection and modification (if necessary) required by this AD shall be done in accordance with Jetstream Service Bulletin 52–A–JA 930901, Revision 1, dated February 11, 1994 . This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC, 20041–6029. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–9123) becomes effective on March 17, 1995.

Issued in Kansas City, Missouri, on January 18, 1995.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–1699 Filed 2–13–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–80–AD; Amendment 39–9127; AD 95–02–08]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, that requires modification of certain fuselage support structure for the number 2 galley. This amendment is prompted by results of engineering tests and analyses which revealed that certain fuselage support structure for the number 2 galley is unable to support certain loads that may occur during emergency landing conditions. If the fuselage support structure breaks, the galley may shift and cause blockage of the forward service door (galley door). The actions specified by this AD are intended to prevent inability of passengers and crew to exit the airplane through this door after an emergency landing.

DATES: Effective March 16, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 16, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Rodriguez, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2779; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737 series airplanes was published in the **Federal Register** on September 1, 1994 (59 FR 45249). That action proposed to require modification of certain fuselage support structure for the number 2 galley.

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

Two commenters support the proposed rule.

One commenter requests that the issuance of the proposed AD be delayed until a revision to the referenced service bulletin is issued by the manufacturer. The commenter states that by the time the revision is issued, which is expected to be in the second quarter of 1995, the manufacturer will be able to supply required modification parts ''that fit.'' The FAA does not concur. The FAA does not consider that delaying this action until after the release of the manufacturer's planned service bulletin is warranted, since sufficient technology currently exists to perform the modification within the compliance time. Neither the manufacturer nor any operator has notified the FAA of any problems involving improper fit of parts for the required modification. However, paragraph (b) of the final rule does provide affected operators the opportunity to request an adjustment of the compliance time if a situation were to arise where ample required parts were not available.

One commenter requests that the proposed compliance time of 18 months be extended for an additional 18 months to allow operators to schedule a heavy maintenance visit in which to accomplish the required modification. The FAA does not concur. In developing an appropriate compliance time for this action, the FAA considered not only the safety implications, but the availability of required parts, as well as normal maintenance schedules for timely accomplishment of the modification. The FAA determined that an 18-month compliance time provides sufficient time within which the majority of affected operators can schedule a heavy maintenance visit, and an acceptable level of safety can be maintained. However, paragraph (b) of the final rule does provide affected

operators the opportunity to apply for an adjustment of the compliance time if sufficient data are presented to justify such an adjustment.

One commenter requests that certain editorial changes be made to the rule. The commenter notes that the proposed rule refers to ''the forward service door,'' but the commenter suggests that the term, ''galley door,'' is a more commonly recognized term when referring to the right-hand forward door. The FAA concurs that clarification is necessary, and has revised the final rule to express the term, ''galley door,'' parenthetically after each mention of the forward service door.

This commenter also requests that the rule be clarified to show that the results of engineering tests and analyses revealed that the ''fuselage support structure'' is unable to support certain loads, rather than the ''galley support structure'' or ''overhead tie rods,'' as indicated in the preamble to the proposed rule. The FAA concurs, and the description of the unsafe condition has been revised in this final rule to reflect this clarification.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement.

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

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

There are approximately 613 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 139 airplanes of U.S. registry will be affected by this AD, that it will take approximately 64 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,205 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $701,255, or $5,045 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

95–02–08 Boeing: Amendment 39–9127. Docket 94–NM–80–AD.

Applicability: Model 737 series airplanes; as listed in Boeing Service Bulletin 737–53–1154, dated November 11, 1993; equipped with rectangular intercostal support structures from Body Station (BS) 344 to BS 360 (inclusive) and a number 2 galley weight exceeding 1,170 pounds (including any attached equipment that imposes loads on the galley), or equipped with triangular intercostal support structures from BS 344 to BS 360 (inclusive) and a number 2 galley weight exceeding 1,050 pounds (including any attached equipment that imposes loads on the galley); certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent inability of passengers and crew to exit the forward service door (galley door) during an emergency landing condition, accomplish the following:

(a) Within 18 months after the effective date of this AD, modify the airplane support structure from BS 344 to BS 360 (inclusive), in accordance with Boeing Service Bulletin 737–53–1154, dated November 11, 1993.

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

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

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

(d) The modification shall be done in accordance with Boeing Service Bulletin 737–53–1154, dated November 11, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 16, 1995.

Issued in Renton, Washington, on January 19, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–1847 Filed 2–13–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–217–AD; Amendment 39–9128; AD 95–02–09]

Airworthiness Directives; British Aerospace Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model ATP airplanes, that requires inspections to detect damage, overheating, and proper operation of the DC connections and cooling fans in certain transformer rectifier units (TRU), and repair or replacement, if necessary. This amendment is prompted by a report of the loss of all DC electrical power, except for the battery emergency bus, due to failure of the TRU's, which occurred during flight. The actions specified by this AD are intended to prevent such failures that could lead to loss of essential electrical power required to continue safe flight of the airplane.

DATES: Effective March 16, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 16, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model ATP airplanes was published in the **Federal Register** on February 18, 1994 (59 FR 8145). That action proposed to require inspections of the DC connections and cooling fans in certain transformer rectifier units (TRU) to detect damage or overheating and to ensure correct operation, and repair or replacement, if necessary.

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

The commenter supports the rule.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement.

Additionally, The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

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

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,200, or $120 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

95–02–09 British Aerospace (Commercial Aircraft), Limited: Amendment 39–9128. Docket 93–NM–217–AD.

Applicability: Model ATP airplanes equipped with Ferranti Transformer Rectifier Unit TR202A (Pt. No. 84/59100) or TR202B (Pt. No. 84/60040), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of essential electrical power required to continue safe flight of the airplane, accomplish the following:

(a) Within 225 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 625 hours time-in-service, accomplish paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD.

(1) Perform a visual inspection of the DC connections to detect any damage or overheating, in accordance with Ferranti Service Bulletin 24–20–171, dated September 1993. If any damage or overheating is found, prior to further flight, repair in accordance with a method approved by Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) Perform a torque loading inspection of each DC connection to ensure that torque loads are within the limits specified in Ferranti Service Bulletin 24–20–171, dated September 1993; and, during this inspection, ensure that each terminal stud is secure in its mounting by visually observing that the stud does not rotate; in accordance with Ferranti Service Bulletin 24–20–171, dated September 1993.

(3) Perform a visual inspection of the cooling fan blades to detect any damage due to overheating, in accordance with Ferranti Service Bulletin 24–20–172, dated September 1993. If any damage is found, prior to further flight, replace the fan blade with a serviceable part in accordance with the airplane maintenance manual.

(4) Perform a functional test of the operation of the cooling fan by energizing the relay and confirming that cooling air exits from the grill on top of the unit, in accordance with Ferranti Service Bulletin 24–20–172, dated September 1993. Prior to further flight, repair or replace any malfunctioning or damaged cooling fan or cooling fan relay, in accordance with the airplane maintenance manual.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(d) The inspections and test shall be done in accordance with Ferranti Service Bulletin 24–20–171, dated September 1993; and Ferranti Service Bulletin 24–20–172, dated September 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 16, 1995.

Issued in Renton, Washington, on January 19, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–1849 Filed 2–13–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[TD 8589]

RIN 1545–AS84

User Fees

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to user fees for certain services provided to specific persons and implements the Independent Offices Appropriations Act (IOAA).

EFFECTIVE DATE: March 16, 1995.

FOR FURTHER INFORMATION CONTACT: Concerning costing methodology, Robert Miller, (202) 535–9701(x3222); concerning installment agreements, Kevin Connelly, (202) 622–3640 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The IOAA, codified at 31 U.S.C. 9701, authorizes agencies to prescribe regulations that establish charges for services provided by the agency (user fees). The charges must be fair and be based on the costs to the Government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. The IOAA expressly provides that regulations implementing user fees ''are subject to policies prescribed by the President * * *.''

The FY 1995 Appropriations Bill for the Treasury Department (the 1995 Appropriations Bill) includes a provision relating to the establishment of new fees for services provided by the IRS if the fees are authorized by another law, such as the IOAA.

Since 1959, the Office of Management and Budget (OMB) has issued policy guidance on user fees through Circular A–25 (the OMB Circular). See *FPC* v. *New England Power Co.*, 415 U.S. 345, 349–51 (1974) (citing the OMB Circular). On July 15, 1993, OMB issued a revised version of the OMB Circular in the **Federal Register** (58 FR 38142), which provides updated policy guidance on user fees. Under the OMB Circular, user fees for Government-provided services that confer benefits on identifiable recipients over and above those benefits received by the general public are encouraged. The amount of the user fee imposed should recover the cost for providing the special benefit or the value of the special benefit.

For these fees, the IRS followed the guidance provided by the OMB Circular and the relevant court cases in calculating the costs of the services provided. Under the OMB Circular, each agency is to include in its calculation of the cost of providing a benefit:

(1) Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement.

(2) Physical overhead, consulting, and other indirect costs, including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment.

(3) Management and supervisory costs.

(4) The costs of enforcement, collection, research, establishment of standards, and regulation, including any environmental impact statements.

On December 28, 1994, a notice of proposed rulemaking (PS–39–94) relating to user fees under 31 U.S.C. 9701 was published in the **Federal Register** (59 FR 66828). Written comments responding to the notice were received and a public hearing was held on January 20, 1995. Commenters expressed concern that some taxpayers cannot afford to pay a fee in addition to their installment payments. The IRS is concerned about the effect of the fee on such taxpayers. Accordingly, the IRS intends to use existing administrative procedures to take into account the taxpayer's ability to pay in structuring the payment schedule, including the payment of the fee. After consideration of the comments, the proposed regulations are adopted by this Treasury decision.

Entering into Installment Agreements

Section 6159 of the Internal Revenue Code authorizes the IRS to enter into a written agreement with any taxpayer for the payment of that taxpayer's outstanding tax obligation in installments. Each taxpayer that enters into an installment agreement receives the special benefit of being allowed to pay an outstanding tax obligation over time rather than immediately.

Before entering into an installment agreement, the IRS must first determine whether such an agreement is appropriate, then set up the agreement, process payments, and monitor for conformance with the agreement.

The amount of the installment agreement fee has been determined by using activity-based costing. In a 1993 study, the IRS analyzed the work activities related to establishing new installment agreements at both the Service Center (pre-assessment) and District Office levels (post assessment). The costs incurred in establishing new installment agreements at Service Centers and District Offices were averaged in computing a uniform fee. Projected costs for program start-up and training and software maintenance were developed. Lockbox and remittance processing costs (based on an historic average of 8.5 payments per agreement) were calculated. These figures were added to the initial activity-based costing totals. The activity-based methodology did not include some indirect cost elements (primarily executive support) which were then calculated at a 2.3% indirect cost rate. Based on this costing methodology, the installment agreement fee is $43.

Restructuring or Reinstating Installment Agreements

When a taxpayer fails to meet any of the conditions of an installment agreement, that agreement is deemed to be in default. The IRS has the right to terminate an installment agreement in default. Each taxpayer that has an installment agreement restructured or reinstated receives not only the special benefit of being allowed to pay an outstanding tax obligation over time rather than immediately but also the special benefit of avoiding a potential enforcement action, including but not limited to the filing of liens and the making of levies.

Before restructuring or reinstating an installment agreement, the IRS must monitor for nonconformance, analyze the cause(s) of default, correspond with the taxpayer, analyze the taxpayer's responses, and, if appropriate, restructure or reinstate the agreement.

The amount of the restructuring or reinstatement fee was calculated by determining direct labor costs and overhead labor costs derived from the IRS' Work Planning and Control tracking system, standard correspondence and postage costs incurred in preparing and mailing certified notices, and an indirect cost factor representing support cost. Examining program history through fiscal year 1993, the IRS estimated the total number of installment agreements likely to be restructured or reinstated in fiscal year 1995 as approximately 150,000. Based on this costing methodology, the restructuring or reinstatement fee is $24.

Special Analyses

Although it has been determined that this Treasury decision is a significant regulatory action as defined in EO 12866, the Office of Management and Budget has waived the preparation of a regulatory assessment. Because no substantive changes were made to these regulations subsequent to their submission to the Office of Management and Budget, the provisions of section 6(a)(3)(E) of EO 12866 do not apply. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based on the information that follows. The economic impact of these regulations on any small entity would result from the entity being required to pay a fee prescribed by these regulations in order to obtain a particular service. However, due to the small dollar amount of each of these fees, the economic impact on any entity subject to one of the fees would not be significant. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries) and Tom Baker, Office of Assistant Chief Counsel (General Legal Services). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 300

Estate taxes, Excise taxes, Gift taxes, Income taxes, Reporting and recordkeeping requirements, User fees.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 300 is added to read as follows:

PART 300—USER FEES

Sec.

300.0 User fees; in general.
300.1 Installment agreement fee.
300.2 Restructuring or reinstatement of installment agreement fee.

Authority: 31 U.S.C. 9701.

§ 300.0 User fees; in general.

(a) *In general.* The regulations in this part 300 are designated the User Fee Regulations and provide rules relating to user fees under 31 U.S.C. 9701.

(b) *Applicability.* User fees are imposed on the following services:

(1) Entering into an installment agreement.

(2) Restructuring or reinstating an installment agreement.

(c) *Effective date.* This part 300 is effective March 16, 1995.

§ 300.1 Installment agreement fee.

(a) *Applicability.* This section applies to installment agreements under section 6159 of the Internal Revenue Code.

(b) *Fee.* The fee for entering into an installment agreement is $43.

(c) *Person liable for fee.* The person liable for the installment agreement fee is the taxpayer entering into an installment agreement.

§ 300.2 Restructuring or reinstatement of installment agreement fee.

(a) *Applicability.* This section applies to installment agreements under section 6159 of the Internal Revenue Code that are in default. An installment agreement is deemed to be in default when a taxpayer fails to meet any of the conditions of the installment agreement.

(b) *Fee.* The fee for restructuring or reinstating an installment agreement is $24.

(c) *Person liable for fee.* The person liable for the restructuring or reinstatement fee is the taxpayer that has an installment agreement restructured or reinstated.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: February 1, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–3755 Filed 2–10–95; 12:57 pm]

BILLING CODE 4830–01–P

Office of Foreign Assets Control

31 CFR Part 550

Libyan Sanctions Regulations; Specially Designated Nationals List

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments to the list of specially designated nationals.

SUMMARY: The Office of Foreign Assets Control is amending the Libyan Sanctions Regulations to add 144 entities to appendix A, Organizations Determined to Be Within the Term ''Government of Libya'' (Specially Designated Nationals of Libya), and to add 19 individuals to appendix B, Individuals Determined to Be Specially Designated Nationals of the Government of Libya.

EFFECTIVE DATE: February 14, 1995.

ADDRESSES: Copies of the list of persons whose property is blocked pursuant to the Libyan Sanctions Regulations are available upon request at the following location: Office of Foreign Assets Control, U.S. Department of the Treasury, Annex, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. The full list of persons blocked pursuant to economic sanctions programs administered by the Office of Foreign Assets Control is available electronically on The Federal Bulletin Board (see **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: J. Robert McBrien, Chief, International Programs Division, Office of Foreign Assets Control, tel.: 202/622–2420.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the Federal Register. By modem dial 202/512–1387 or call 202/512–1530 for disks or paper copies. This file is available in Postscript, WordPerfect 5.1 and ASCII.

Background

The Office of Foreign Assets Control (''FAC'') is amending the Libyan Sanctions Regulations, 31 CFR part 550 (the ''Regulations''), to add new entries to appendices A and B. Appendix A, Organizations Determined to Be within the Term ''Government of Libya'' (Specially Designated Nationals of Libya), is a list of organizations determined by the Director of FAC to be within the definition of the term ''Government of Libya,'' as set forth in § 550.304(a) of the Regulations, because they are owned or controlled by or act or purport to act directly or indirectly on behalf of the Government of Libya. Appendix B, Individuals Determined to Be Specially Designated Nationals of the Government of Libya, lists individuals determined by the Director of FAC to be acting or purporting to act directly or indirectly on behalf of the Government of Libya, and thus to fall within the definition of the term ''Government of Libya'' in § 550.304(a).

Appendix A to part 550 is amended to provide public notice of the designation as Specially Designated Nationals of Libya of an additional 144 companies owned by the Government of Libya or by a company owned by the Government of Libya.

Appendix B to part 550 is amended to provide public notice of 19 individuals determined to be Specially Designated Nationals of the Government of Libya.

All prohibitions in the Regulations pertaining to the Government of Libya apply to the entities and individuals identified in appendices A and B. All unlicensed transactions with such persons, or transactions in property in which they have an interest, are prohibited unless otherwise exempted or generally licensed in the Regulations.

Determinations that persons fall within the definition of the term ''Government of Libya'' and are thus Specially Designated Nationals of Libya are effective upon the date of determination by the Director of FAC, acting under the authority delegated by the Secretary of the Treasury. Public notice is effective upon the date of publication or upon actual notice, whichever is sooner.

The list of Specially Designated Nationals in appendices A and B is a partial one, since FAC may not be aware of all agencies and officers of the Government of Libya, or of all persons that might be owned or controlled by, or acting on behalf of the Government of Libya within the meaning of § 550.304(a). Therefore, one may not rely on the fact that a person is not listed in appendix A or B as a Specially Designated National as evidence that such person is not owned or controlled by, or acting or purporting to act directly or indirectly on behalf of, the Government of Libya. The Treasury Department regards it as incumbent upon all persons governed by the Regulations to take reasonable steps to ascertain for themselves whether persons with whom they deal are owned or controlled by, or acting or purporting to act on behalf of, the Government of Libya, or on behalf of other countries subject to blocking or transactional restrictions administered by FAC.

Section 206 of the International Emergency Economic Powers Act, 50 U.S.C. 1705, provides for civil penalties not to exceed $10,000 for each violation of the Regulations. Criminal violations of the Regulations are punishable by fines of up to $250,000 or imprisonment for up to 10 years per count, or both, for individuals, and criminal fines of up to $500,000 per count for organizations. See 50 U.S.C. 1705; 18 U.S.C. 3571.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601–612, does not apply.

List of Subjects in 31 CFR Part 550

Administrative practice and procedure, Banks, Banking, Blocking of assets, Exports, Foreign investment, Foreign trade, Government of Libya, Imports, Libya, Loans, Penalties, Reporting and recordkeeping requirements, Securities, Services,

Specially designated nationals, Travel restrictions.

PART 550—LIBYAN SANCTIONS REGULATIONS

For the reasons set forth in the preamble, 31 CFR part 550 is amended as set forth below:

1. The authority citation for part 550 is revised to read as follows:

Authority: 50 U.S.C. 1701–1706; 50 U.S.C. 1601–1651; 22 U.S.C. 287c; 49 U.S.C. App. 1514; 22 U.S.C. 2349aa–8 and 2349aa–9; 3 U.S.C. 301; E.O. 12543, 51 FR 875, 3 CFR, 1986 Comp., p. 181; E.O. 12544, 51 FR 1235, 3 CFR, 1986 Comp., p. 183; E.O. 12801, 57 FR 14319, 3 CFR, 1992 Comp., p. 294.

2. Appendix A to part 550 is amended by adding the following entries in alphabetical order, to read as follows:

Appendix A to Part 550—Organizations Determined To Be Within The Term "Government of Libya" (Specially Designated Nationals of Libya)

* * * * *

AGRICULTURAL ENGINEERING COMPANY
Libya.

* * * * *

AHLYA BUILDING MATERIALS CO.
P.O. Box 8545, Jumhouriya Street, Tripoli, Libya.
Branch:
P.O. Box 1351, Benghazi, Libya.

* * * * *

AHMAD QASSEM AND SONS CO.
Libya.

* * * * *

AL ABIAR FODDER PLANT
Libya.

* * * * *

AL AHLIYA CO. FOR TRADING AND MANUFACTURE OF CLOTHING
P.O. Box 4152, Benghazi, Libya.
Branch:
P.O. Box 15182, Tripoli, Libya.

* * * * *

AL AMAL CO. FOR TRADING AND MANUFACTURING OF CLOTHING
Libya.

* * * * *

AL GAZEERA BENGHAZI
P.O. Box 2456, Benghazi, Libya.

* * * * *

AL JAMAL TRADING EST. (BENGHAZI)
Benghazi, Libya.

* * * * *

AMAN CO. FOR TYRES AND BATTERIES
Tajura Km. 19, P.O. Box 30737, Tripoli, Libya.
Branches:
Benghazi Branch, P.O. Box 2394, Bengazi, Libya.
Tripoli Branch, Tripoli, Libya.
Misurata Branch, P.O. Box 17757, Misurata, Libya.
Sabha Branch, Sabha, Libya.

* * * * *

ARAB CO. FOR IMPORTATION AND MANUFACTURE OF CLOTHING AND TEXTILES
Libya.

* * * * *

ARAB UNION CONTRACTING CO.
P.O. Box 3475, Tripoli, Libya.

* * * * *

AUTO BATTERY PLANT
Libya.

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AZIZIA BOTTLE PLANT
Libya.

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BENGHAZI CEMENT PLANT
Libya.

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BENGHAZI EST. FOR BUILDING AND CONSTRUCTION
P.O. Box 2118, Benghazi, Libya.

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BENGHAZI LIME PLANT
Libya.

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BENGHAZI PAPER BAGS PLANT
Libya.

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BENGHAZI TANNERY
Libya.

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CIVIL AVIATION AUTHORITY
Sharia El Saidi, Tripoli, Libya.

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COMPRESSED LEATHER BOARD FIBRE PLANT
Tajoura, Libya.

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DRY BATTERY PLANT
Libya.

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EL BAIDA ROADS AND UTILITIES CO.
P.O. Box 232/561, El Baida, Libya.

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EL FATAH AGENCY
P.O. Box 233, Tripoli, Libya.

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EL MAMOURA FOOD COMPANY
P.O. Box 15058, Tripoli, Libya.
Branches:
Tripoli, Libya.
Benghazi, Libya.

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ELECTRIC WIRES AND CABLES PLANT
Libya.

* * * * *

ELECTRICAL CONSTRUCTION CO.
P.O. Box 5309, Tripoli, Libya.
Branches:
Tripoli, Libya (head office).
Benghazi, Libya.
Misurata, Libya.
Sebha and Delhi, India.

* * * * *

ELKHALEGE GENERAL CONSTRUCTION CO.
P.O. Box 445, Agedabia, Libya.
Branches:
Sirti Office, P.O. Box 105, Sirti, Libya.
Benghazi Office, Benghazi, Libya.

* * * * *

EMNUHOOD EST. FOR CONTRACTS
P.O. Box 1380, Benghazi, Libya.

* * * * *

FOOTWEAR PLANT
Misurata, Libya.

* * * * *

GAMOENNS CONTRACTS AND UTILITIES EST.
P.O. Box 3038, Benghazi, Libya.

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GARABULLI FODDER PLANT
Libya.

* * * * *

GENERAL CATERING CORPORATION
P.O. Box 491, Tripoli, Libya.

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GENERAL CLEANING COMPANY
P.O. Box 920, Tripoli, Libya.

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GENERAL CO. FOR AGRICULTURAL MACHINERY AND NECESSITIES
P.O. Box 324, Tripoli, Libya.
Branches:
Alziraia, Libya.
Benghazi Office, P.O. Box 2094, Benghazi, Libya.
Sebha, Libya.
Zawia, Libya.

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GENERAL CO. FOR AGRICULTURAL PROJECTS
P.O. Box 2284, Tripoli, Libya.
Branch:
P.O. Box 265, Gharian, Libya.

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GENERAL CO. FOR CERAMIC AND GLASS PRODUCTS
Aziza, Amiri Bldg., Suani Ben Adam, P.O. Box 12581, Dhara-Tripoli, Libya.

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GENERAL COMPANY FOR CHEMICAL INDUSTRIES
P.O. Box 100/411, 100/071, Zuara, Libya.

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GENERAL CO. FOR CIVIL WORKS
P.O. Box 3306, Tripoli, Libya.
Branch:
P.O. Box 1299, Benghazi, Libya.

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GENERAL CO. FOR CONSTRUCTION AND EDUCATIONAL BUILDINGS
P.O. Box 1186, Tripoli, Libya.
Branch:
P.O. Box 4087, Benghazi, Libya.

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GENERAL CO. FOR ELECTRIC WIRES AND PRODUCTS
P.O. Box 1177, Benghazi, Libya.
Branch:
P.O. Box 12629, Tripoli, Libya.

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GENERAL CO. FOR LAND RECLAMATION
P.O. Box 307, Souani Road, Tripoli, Libya.

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GENERAL CO. FOR LEATHER PRODUCTS AND MANUFACTURE
P.O. Box 2319, Tripoli, Libya.
Branch:

P.O. Box 152, Benghazi, Libya.

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GENERAL CO. FOR MARKETING AND AGRICULTURAL PRODUCTION
P.O. Box 2897, Hadba Al Khadra, Tripoli, Libya.
Branch:
P.O. Box 4251, Benghazi, Libya.

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GENERAL CO. FOR TEXTILES
P.O. Box 1816, Benghazi, Libya.
Branch:
P.O. Box 3257, Tripoli, Libya.

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GENERAL CO. FOR TOYS AND SPORT EQUIPMENT
P.O. Box 3270, Tripoli, Libya.

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GENERAL CONSTRUCTION COMPANY
P.O. Box 8636, Tripoli, Libya.
Branch:
Gharian Office, P.O. Box 178, Gharian, Libya.

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GENERAL CORPORATION FOR PUBLIC TRANSPORT
2175 Sharia Magaryef, Tatanaka Bldg., P.O. Box 4875, Tripoli, Libya.
Branch:
P.O. Box 9528, Benghazi, Libya.

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GENERAL DAIRIES AND PRODUCTS CO.
P.O. Box 5318, Tripoli, Libya.
Branches:
Benghazi Branch, P.O. Box 9118, Benghazi, Libya.
Tripoli Factory, Tripoli, Libya.
Benghazi Factory, Benghazi, Libya.
Khoms Factory, Khoms, Libya.
Jebel Akhdar Factory, Jebel Akhdar, Libya.

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GENERAL ELECTRICITY CORPORATION
P.O. Box 3047, Benghazi, Libya.
Branch:
P.O. Box 668, Tripoli, Libya.

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GENERAL ELECTRONICS CO.
P.O. Box 12580, Tripoli, Libya.
Branch:
P.O. Box 2068, Benghazi.

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GENERAL FURNITURE CO.
Suani Road, Km. 15, P.O. Box 12655, Tripoli, Libya.

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GENERAL LIBYAN CO. FOR ROAD CONSTRUCTION AND MAINTENANCE
P.O. Box 2676, Swani Road, Tripoli, Libya.

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GENERAL NATIONAL CO. FOR FLOUR MILLS AND FODDER
Bab Bin Ghashir, P.O. Box 984, Tripoli, Libya.
Branch:
Benghazi Office, Gamel Abdumaser Street, P.O. Box 209,
Benghazi, Libya.

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GENERAL NATIONAL CO. FOR INDUSTRIAL CONSTRUCTION
P.O. Box 953, Beida, Libya.
Branches:
Tripoli Branch, P.O. Box 295, Tripoli, Libya.
Benghazi Branch, Gamal Abd El Naser Street, P.O. Box 9502.

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GENERAL NATIONAL MARITIME TRANSPORT CO.
(a.k.a. THE NATIONAL LINE OF LIBYA)
P.O. Box 80173, 2 Ahmed Sharif Street, Tripoli, Libya (and at all Libyan ports).
Branch:
P.O. Box 2450, Benghazi, Libya.

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GENERAL NATIONAL ORGANISATION FOR INDUSTRIALIZATION
Shaira Sana'a, P.O. Box 4388, Tripoli, Libya.
Branch:
Benghazi Branch, P.O. Box 2779.

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GENERAL ORGANISATION FOR TOURISM AND FAIRS
P.O. Box 891, Sharia Haiti, Tripoli, Libya.

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GENERAL PAPER AND PRINTING CO.
P.O. Box 8096, Tripoli, Libya.
Branch:
Benghazi, Sebha.

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GENERAL POST AND TELECOMMUNICATIONS CORP.
Maidan al Jazair, Tripoli, Libya.

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GENERAL RAHILA AUTOMOBILE CO.
Libya.

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GENERAL TOBACCO COMPANY
Gorji Road Km. 6, P.O. Box 696, Tripoli.
Branches:
Benghazi, Libya.
Sebha, Libya.
Zavia, Libya.
Garian, Libya.
Khoms, Libya.

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GENERAL WATER WELL DRILLING CO.
P.O. Box 2532, Sharia Omar Muktar, Mormesh Bldg., Tripoli, Libya.
Branch:
P.O. Box 2532, Benghazi, Libya.

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JANUARY SHUHADA (MARTYRS) PLANT
Libya.

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KHOMS CEMENT PLANT
Khoms, Libya.

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KUFRA AGRICULTURAL CO.
P.O. Box 4239, Benghazi, Libya.
Branch:
Tripoli Office, P.O. Box 2306, Damascus Street, Tripoli, Libya.

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KUFRA PRODUCTION PROJECT
P.O. Box 6324, Benghazi, Libya.
Branch:
P.O. Box 2306, Tripoli, Libya.

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LIBYA INSURANCE CO. (CYPRUS OFFICE) LTD.
Cyprus.

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LIBYAN ARAB CO. FOR DOMESTIC ELECTRICAL MATERIALS
P.O. Box 12718, Tripoli, Libya.
Branch:
P.O. Box 453, Benghazi, Libya.

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LIBYAN BRICK MANUFACTURING CO.
P.O. Box 10700, Tripoli, Libya.
Branch:
P.O. Box 25, Km. 17, Suani Road, Suani, Libya.

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LIBYAN CEMENT CO.
P.O. Box 2108, Benghazi, Libya.

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LIBYAN CINEMA CORPORATION
P.O. Box 878, Tripoli, Libya.
Branch:
P.O. Box 2076, Benghazi, Libya.

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LIBYAN ETERNIT COMPANY
P.O. Box 6103, Zanzour Km. 17, Tripoli, Libya.

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LIBYAN FISHING COMPANY
P.O. Box 3749, Tripoli, Libya.

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LIBYAN HOTELS AND TOURISM CO.
P.O. Box 2977, Tripoli, Libya.

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LIBYAN INSURANCE COMPANY
Ousama Bldg., 1st September Street, P.O. Box 2438, Tripoli, Libya.
Branches:
Benghazi, Libya.
Derna, Libya.
Sebha, Libya.
Gharian, Libya.
Misurata, Libya.
Zawiya, Libya.
Homs, Libya.

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LIBYAN MILLS COMPANY
Sharia 1st September, P.O. Box 310, Tripoli, Libya.

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LIBYAN TRACTOR ESTABLISHMENT
P.O. Box 12507, Dahra, Libya.

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MAGCOBAR (LIBYA) LTD.
P.O. Box 867, Tripoli, Libya.
Branch:
Benghazi, Libya.

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MEDICAL EQUIPMENT COMPANY
P.O. Box 12419, Tripoli, Libya.
Branches:
P.O. Box 750, Benghazi, Libya.
P.O. Box 464, Sebha, Libya.

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MISURATA GENERAL ROADS CO.
P.O. Box 200, Misurata, Libya.
Branch:
P.O. Box 958, Tripoli, Libya.

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THE MODERN FASHION CO. FOR TRADING AND MANUFACTURING OF CLOTHING

Libya.

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MAHARI GENERAL AUTOMOBILE CO.
Libya.

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MUHARIKAAT GENERAL AUTOMOBILE CO.
P.O. Box 259, Tripoli, Libya.
Branch:
P.O. Box 203, Benghazi, Libya.

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NATIONAL CEMENT AND BUILDING MATERIALS EST.
P.O. Box 628, Sharia Hayati 21, Tripoli, Libya.

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NATIONAL CO. FOR CHEMICAL PREPARATION AND COSMETIC PRODUCTS
P.O. Box 2442, Tripoli, Libya.
Branch:
Benghazi Office, Benghazi, Libya.

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NATIONAL CO. FOR CONSTRUCTION AND MAINTENANCE OF MUNICIPAL WORKS
P.O. Box 12908, Zavia Street, Tripoli, Libya.
Branch:
P.O. Box 441, Benghazi, Libya.

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NATIONAL CO. FOR LIGHT EQUIPMENT
P.O. Box 8707, Tripoli, Libya.
Branch:
P.O. Box 540, Benghazi, Libya.

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NATIONAL CO. FOR METAL WORKS
P.O. Box 2913, Tripoli, Libya.
Branches:
P.O. Box 4093, Benghazi, Libya.
Lift Department, P.O. Box 1000, Tripoli, Libya.

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NATIONAL CO. FOR ROAD EQUIPMENT
P.O. Box 12392, Tripoli, Libya.
Branch:
P.O. Box 700, Benghazi, Libya.

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NATIONAL CO. FOR ROADS AND AIRPORTS
P.O. Box 4050, Benghazi, Libya.
Branch:
P.O. Box 8634, Sharia Al Jaraba, Tripoli, Libya.

* * * * *

NATIONAL CO. FOR TRADING AND MANUFACTURING OF CLOTHING
Libya.

* * * * *

NATIONAL CO. OF SOAP AND CLEANING MATERIALS
P.O. Box 12025, Tripoli, Libya.
Branch:
P.O. Box 246, Benghazi, Libya.

* * * * *

NATIONAL CONSTRUCTION AND ENGINEERING CO.
P.O. Box 1060, Sharia Sidi Issa, Tripoli, Libya.
Branch:
P.O. Box 259, Benghazi, Libya.

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NATIONAL CONSULTING BUREAU
P.O. Box 12795, Tripoli, Libya.
Branch:
Sirte City Branch Office, Sirte City, Libya.

* * * * *

NATIONAL CORPORATION FOR HOUSING
P.O. Box 4829, Sharia el Jumhuriya, Tripoli, Libya.

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NATIONAL DEPARTMENT STORES CO.
P.O. Box 5327, Sharia el Jumhuriya, Tripoli, Libya.

* * * * *

NATIONAL FOODSTUFFS IMPORTS, EXPORTS AND MANUFACTURING CO. SAL
P.O. Box 11114, Tripoli, Libya.
Branch:
P.O. Box 2439, Benghazi, Libya.

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NATIONAL GENERAL INDUSTRIAL CONTRACTING CO.
Sharia el Jumhouria, P.O. Box 295, Tripoli, Libya.

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NATIONAL LIVESTOCK AND MEAT CO.
P.O. Box 389, Sharia Zawiet Dahmani, Tripoli, Libya.
Branch:
P.O. Box 4153, Sharia Jamal Abdulnasser, Benghazi.

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NATIONAL PHARMACEUTICAL CO. SAL
20 Jalal Bayer Street, P.O. Box 2296, Tripoli, Libya.
Branches:
Jamahiriya Street, P.O. Box 10225, Tripoli, Libya.
P.O. Box 2620, Benghazi, Libya.

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NATIONAL SOFT DRINKS EST.
P.O. Box 559, Benghazi, Libya.
Branch:
Litraco Impex Ltd., P.O. Box 5686, Benghazi, Libya.

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NATIONAL STORES AND COLD STORES CO.
P.O. Box 8454, Tripoli, Libya.
Branch:
Benghazi branch, P.O. Box 9250, Benghazi, Libya.

* * * * *

NATIONAL SUPPLIES CORPORATION (a.k.a. NASCO)
P.O. Box 3402, Sharia Omar Mukhtar, Tripoli, Libya.
Branch:
P.O. Box 2071, Benghazi, Libya.

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NATIONAL TELECOMMUNICATIONS CO.
P.O. Box 886, Shara Zawia, Tripoli, Libya.
Branch:
P.O. Box 4139, Benghazi, Libya.

* * * * *

NORTH AFRICA INDUSTRIAL TRADING AND CONTRACTING CO.
P.O. Box 245, Tripoli, Libya.

* * * * *

OEA DRINKS CO.
P.O. Box 101, Ibn El Jarrah Street, Tripoli, Libya.

* * * * *

OKBA FOOTWEAR PLANT
Tajoura, Libya.

* * * * *

PUBLIC COMPANY FOR GARMENTS
P.O. Box 4152, Benghazi, Libya.

* * * * *

PUBLIC ELECTRICAL WORKS CO.
P.O. Box 8539, Sharia Halab, Tripoli, Libya.
Branch:
P.O. Box 32811, Benghazi, Libya.

* * * * *

PUBLIC SAFETY COMMODITY IMPORTING CO.
(a.k.a. SILAMNIA)
P.O. Box 12942, Tripoli, Libya.

* * * * *

QAFALA GENERAL AUTOMOBILE CO.
Libya.

* * * * *

RAS HILAL MARITIME CO.
P.O. Box 1496, Benghazi, Libya.

* * * * *

READY–MADE SUITS PLANT
Derna, Libya.

* * * * *

SAHABI OIL FIELD PROJECT
P.O. Box 982, Tripoli, Libya.

* * * * *

SEBHA FODDER PLANT
Libya.

* * * * *

SEBHA GRAIN MILL
Libya.

* * * * *

SEBHA ROADS AND CONSTRUCTION CO.
P.O. Box 92, Sebha, Libya.
Branch:
P.O. Box 8264, Tripoli, Libya.

* * * * *

7TH APRIL CARD BOARD FACTORY
Tajoura, Libya.

* * * * *

SHELL PETROLEUM DEVELOPMENT CO. OF LIBYA
P.O. Box 1420, Benghazi, Libya.

* * * * *

SOCIALIST EST. FOR SPINNING AND WEAVING
Zanzour Km. 15, P.O. Box 30186, Tripoli, Libya.
Branch:
P.O. Box 852, Benghazi, Libya.

* * * * *

SORMAN FODDER PLANT
Libya.

* * * * *

SOUK EL KHAMIS CEMENT CO.
Libya.

* * * * *

SOUK EL KHAMIS GENERAL CEMENT AND BUILDING MATERIALS CORP.
Tarhuna, Sharia Bou Harida, P.O. Box 1084, Tripoli, Libya.

* * * * *

SOUK EL KHAMIS LIME FACTORY

Libya.
* * * * *
SOUSA SHIPPING AND STEVEDORING EST.
P.O. Box 2973, Benghazi, Libya.
* * * * *
SUANI GYPSUM PLANT
Libya.
* * * * *
TAJOURA MODERN TANNERY
Libya.
* * * * *
TAHARAR FOOTWEAR PLANT
Tripoli, Libya.
* * * * *
TECHNICAL CO. FOR AGRICULTURAL PEST CONTROL
New Gourgy Road, P.O. Box 6445, Tripoli, Libya.
Branch:
Nacer Street, Benghazi, Libya.
* * * * *
TIBESTI AUTOMOBILE GENERAL CO.
P.O. Box 8456, Tripoli, Libya.
Branches:
P.O. Box 5397, Benghazi, Libya.
Derna, Libya.
Misurata, Libya.
Khums, Libya.
Sebha, Libya.
Gharian, Libya.
Zawia, Libya.
Tripoli, Libya.
* * * * *
TOLMETHA SHIPPING ESTABLISHMENT
P.O. Box 208, Derna, Libya.
* * * * *
TRIPOLI CEMENT SILOS
Libya.
* * * * *
TRIPOLI GRAIN MILL
Libya.
* * * * *
TYRE PLANT
Libya.
* * * * *
TYRES RETREADING CENTRES
Libya.
* * * * *
UNIVERSAL SHIPPING AGENCY
Benghazi, Libya.
UNIVERSAL SHIPPING AGENCY
Mersa El Brega, Libya.
UNIVERSAL SHIPPING AGENCY
Misurata, Libya.
UNIVERSAL SHIPPING AGENCY
Tripoli, Libya.
UNIVERSAL SHIPPING AGENCY
Zuetina, Libya.
* * * * *
WEAVING, DYEING AND FINISHING PLANT
Libya.
* * * * *
WOOL WASHING AND SPINNING PLANT
Marj, Libya.
* * * * *
ZLITEN FODDER PLANT
Libya.
* * * * *
ZLITEN GRAIN MILL
Libya.
* * * * *

3. Appendix B to part 550 is amended by adding a note following the appendix title to read as follows:

Appendix B to Part 550—Individuals Determined To Be Specially Designated Nationals of the Government of Libya

Note: In the entries below, ''DOB'' means ''date of birth'' and ''POB'' means ''place of birth.''

* * * * *

4. Appendix B to part 550 is amended by adding the following entries in alphabetical order, to read as follows:

Appendix b to part 550—Individuals Determined to be Specially Designated Nationals of the Government of Libya

* * * * *
AL–HIJAZI, Mahmud
Secretary of Justice and Public Security of the Government of Libya
Libya
DOB 1944
POB Batta, Libya.
* * * * *
AL–HINSHIRI, Izz Al–Din Al–Muhammad
Secretary of Communications and Transport of the Government of Libya
Libya
DOB 6 October 1951.
* * * * *
AL–JIHIMI, Tahir
Secretary of Economy and Trade of the Government of Libya
Libya.
* * * * *
AL–KAFI, Isa Abd
Secretary of Agrarian Reform, Land Reclamation and Animal Resources of the Government of Libya
Libya.
* * * * *
AL–MAHMUDI, Baghdadi
Secretary of Health and Social Security of the Government of Libya
Libya.
* * * * *
AL–MAL, Muhammad Bayt
Secretary of Planning and Finance of the Government of Libya
Libya.
* * * * *
AL–MUNTASIR, Umar Mustafa
Secretary of People's External Liaison and International Cooperation Bureau of the Government of Libya
Libya
DOB 1939
POB Misurata, Libya.
* * * * *
AL–QADHAFI, Muammar Abu Minyar
Head of the Libyan Government and de facto chief of state
Libya
DOB 1942
POB Sirte, Libya.
* * * * *
AL–QA'UD, Abd Al Majid
Secretary of Libya's General People's Committee
Libya
DOB 1943
POB Ghariar, Libya.
* * * * *
AL–SHAMIKH, Mubarak
Secretary of Housing and Utilities of the Government of Libya
Libya
DOB 1950.
* * * * *
AL–ZANATI, Muhammad
Secretary of the General People's Congress of Libya
Libya.
* * * * *
BADI, Mahmud
Secretary of People's Control and Follow–up of the Government of Libya
Libya.
* * * * *
DURDA, Abu Zayd Umar
Assistant Secretary of Libya's General People's Congress
Libya.
* * * * *
FAZANI, Juma
Secretary of Arab Unity of the Government of Libya
Libya.
* * * * *
IBN SHATWAN, Fathi
Secretary of Industry of the Government of Libya
Libya
DOB 1950.
* * * * *
IBRAHIM, Muhammad Ahmad
Secretary of Information, Culture and Mass Mobilization of the Government of Libya
Libya.
* * * * *
KUWAYBAH, Muftah Muhammad
Secretary of Marine Resources of the Government of Libya
Libya.
* * * * *
MATUQ, Matuq Muhammad
Secretary of Education, Youth, Scientific Research, and Vocational Education of the Government of Libya
Libya
DOB 1956.
* * * * *
OMRANI, Abuzeid Ramadan
Administrative Manager of Libyan Arab Foreign Investment Company
Libya.
* * * * *

Dated: January 25, 1995.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 27, 1995.

John Berry,

Deputy Assistant Secretary (Enforcement).

[FR Doc. 95–3507 Filed 02–8–95; 2:48 pm]
BILLING CODE 4810–25–P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 552, Subpart M

Land Use Policy for Fort Lewis, Yakima Training Center, and Camp Bonneville, Washington

AGENCY: Department of the Army, I Corps and Fort Lewis, DOD.

ACTION: Final rule.

SUMMARY: This action was published in the Federal Register (59 FR 34761), 7 July 1994, as an interim rule. This action establishes 32 CFR 552, Subpart M, Land Use Policy for Fort Lewis, Yakima Training Center, and Camp Bonneville as a final rule. Uninterrupted military use of training areas is vital to the maintenance of US and Allied Armed Forces combat readiness. In addition, maneuver training areas may be dangerous to persons entering without warning provided during training scheduling or use permit processing.

DATES: This final rule is effective February 14, 1995.

ADDRESSES: Headquarters, I Corps and Fort Lewis, ATTN: Range Officer, AZFH–PTM–R, Fort Lewis, Washington, 98433–5000.

FOR FURTHER INFORMATION CONTACT:

Ms. Virginia Lanoue or A. J. Weller, (206) 967–6165/6371.

Executive Order 12291

This final rule has been classified as nonmajor.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980. This final rule does not have a significant impact on small entities.

Paperwork Reduction Act

This final rule does not contain new reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 552, Subpart M

Military personnel, Government employees, Land use.

Accordingly, subpart M to 32 CFR part 552 which was added as an interim rule at 59 FR 34761 (July 7, 1994) is adopted as final without change.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95–3268 Filed 2–13–95; 8:45 am]

BILLING CODE 3710–08–M

32 CFR Part 553

Army National Cemeteries

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: This action adopts as final an interim rule which was published in the **Federal Register** (59 FR 60559) 25 November 1994. In accordance with Section 1176 of the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103–160, the Department of the Army amended the regulations governing eligibility for interment in Arlington National Cemetery to include former prisoners of war (POWs).

DATES: This final rule is effective February 14, 1995.

ADDRESSES: Superintendent, Arlington National Cemetery, Arlington, Virginia 22211–5003.

FOR FURTHER INFORMATION CONTACT: John C. Metzler, Jr., Superintendent, Arlington National Cemetery, (703) 695–3175.

SUPPLEMENTARY INFORMATION: 32 CFR Part 553 changed in accordance with Section 1176 of the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103–160. That section extended eligibility for interment in Arlington National Cemetery to any former prisoner of war who, while a prisoner of war, served honorably in the active military, naval, or air service and who dies on or after the date of enactment of the 1994 Authorization Act (November 30, 1993).

This final rule governs eligibility for interment in Arlington National Cemetery, an Army national cemetery which is under the jurisdiction of the Department of the Army. Because this final rule pertains to a military function of the Department of the Army, the provisions of Executive Order 12866 do not apply. It is hereby certified that this final rule will not have a significant impact on small business or governments in the area.

List of Subjects in 32 CFR Part 553

Cemeteries, National cemeteries.

For the reasons set out in the preamble, the amendments to 32 CFR Part 553 published as an interim rule on November 25, 1994, (59 FR 60559) are adopted as final with the following corrections:

PART 553—ARMY NATIONAL CEMETERIES

1. In § 553.15a, the section heading is corrected to read as follows:

§ 553.15a Persons eligible for inurnment of cremated remains in Columbarium in Arlington National Cemetery.

* * * * *

§ 553.15a [Amended]

2. In paragraph (e)(2) of § 553.15a, the words ''active, military, naval, or air service'' are corrected to read ''active military, naval, or airservice''.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95–3269 Filed 2–13–95; 8:45 am]

BILLING CODE 3710–08–M

POSTAL SERVICE

39 CFR Part 233

Notice of Seizure for Forfeiture

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends Postal Service forfeiture regulations by changing the requirements of the notice of seizure that the Postal Inspection Service must send to each known party that may have a possessory or ownership interest in the seized property. The amended notice must describe the property seized; state the date, place, and cause for seizure; and inform the party of the intent of the Postal Inspection Service to forfeit the property. Modifying the language of the Postal Service's notice requirements will eliminate the redundancy and make Postal Service forfeiture regulations more consistent with Justice and Treasury forfeiture regulations.

EFFECTIVE DATE: February 14, 1995.

FOR FURTHER INFORMATION CONTACT: Frederick I. Rosenberg, Associate Counsel, Postal Inspection Service, (202) 268–5477.

SUPPLEMENTARY INFORMATION: The forfeiture authority and regulations of the Postal Service are published in 39 CFR 233.7. Section 233.7(h)(1) contains the requirements for the notice of seizure that the Postal Inspection Service must send to each known party that may have a possessory or ownership interest in seized property having a value of $500,000 or less, or for monetary instruments or conveyances that were used to transport or store any controlled substance.

Included within the current requirements are provisions requiring

the notice to state the statutory basis of the seizure and a brief narration of the facts leading to the conclusion that the property seized is subject to forfeiture. These two requirements are somewhat redundant, and their language varies from the notice requirements of the seizing agencies of the Departments of Justice and Treasury. Modifying the language of the Postal Service's notice requirements will eliminate the redundancy and make Postal Service forfeiture regulations more consistent with Justice and Treasury forfeiture regulations.

List of Subjects in 39 CFR Part 233

Crime, Law enforcement, Postal service, Seizures and forfeitures.

Accordingly, 39 CFR part 233 is amended as set forth below.

PART 233—INSPECTION SERVICE/ INSPECTOR GENERAL AUTHORITY

1. The authority citation for part 233 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 402, 403, 404, 406, 410, 411, 3005(e)(1); 12 U.S.C. 3401–3422; 18 U.S.C. 981, 1956, 1957, 2254, 3061; 21 U.S.C. 881; Inspector General Act of 1978, as amended (Pub. L. No. 95–452, as amended), 5 U.S.C. App. 3.

2. Section 233.7(h)(1) is amended by revising the second sentence to read as follows:

§ 233.7 Forfeiture authority and procedures.

* * * * *

(h) * * *

(1) * * * The notice must describe the property seized; state the date, place, and cause for seizure; and inform the party of the intent of the Postal Inspection Service to forfeit the property. * * *

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–3559 Filed 2–13–95; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–53–1–6740; FRL–5114–8]

Approval and Promulgation of Implementation Plans Florida: Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the State Implementation Plan (SIP) submitted by the State of Florida through the Florida Department of Environmental Protection (FDEP) for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), which will be fully implemented by November 1994. This implementation plan was submitted by FDEP on February 24, 1993, to satisfy the federal mandate to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the Clean Air Act, as amended (CAA).

EFFECTIVE DATE: This approval is effective March 16, 1995.

ADDRESSES: 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 4 Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Air Resources Management Division, Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Mr. Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555 x4215. Reference file FL053–01–5923.

SUPPLEMENTARY INFORMATION: Implementation of the CAA requires small businesses to comply with specific regulations in order for areas to attain and maintain the national ambient air quality standards (NAAQS) and reduce the emission of air toxics. In anticipation of the impact of these requirements on small businesses, the CAA requires that states adopt a PROGRAM, and submit this PROGRAM as a revision to the federally approved SIP. On February 24, 1993, the Florida Department of Environmental Protection submitted to EPA for approval, the requisite revisions to the SIP establishing the PROGRAM. These revisions were adopted by the Florida Legislature by amending chapter 403 of the Florida Statute, approved on April 8, 1992. The EPA reviewed this request for revision of the federally approved SIP and found it to be in conformance with the requirements of the 1990 CAA. EPA therefore published a notice to approve the revisions without prior proposal (59 FR 8542, February 23, 1994).

In the final rulemaking, EPA advised the public the effective date of the action was deferred for 60 days (until April 25, 1994) to provide an opportunity to submit comments. EPA announced if notice was received within 30 days of the publication of the final rule that someone wanted to submit adverse or critical comments, the final action would be withdrawn and a new rulemaking would begin by proposing a 30 day comment period. EPA had earlier published a general notice explaining this special procedure (56 FR 44477, September 4, 1991). Adverse comments were received on the 59 FR 8542 notice (February 23, 1994). Accordingly, EPA withdrew the direct final rule (59 FR 21664, April 26, 1994) and simultaneously proposed approval (59 FR 21738, April 26, 1994) of the aforementioned Florida revisions to the SIP. The proposed rule formally solicited comments and one adverse comment was subsequently received.

Comments. The commenter, representing a trade association, indicated the proposed structure of the Florida Small Business Assistance Program (SBAP) was ''fraught with risk'' and ''created a potential conflict of interest.'' The Florida Program combines the roles of the ombudsman, technical assistance and staffing for the Compliance Advisory Panel in a single office. The commenter was thus concerned that the inherent checks and balances intended by section 507 of the CAA would be compromised.

Response. The Agency recognizes the legitimacy of the commenter's concerns. Prior to the publication of the February 23, 1994, **Federal Register** notice, the Agency considered this particular issue in depth. The governing document is the Guidelines for Implementation of Section 507 of the 1990 Clean Air Act Amendments; and, in particular, two specific portions therein:

> The State must comply with all statutory requirements of the Act, however, to the extent that the EPA is interpreting the Act requirements, these interpretations are not binding on the States * * * (Preface of Guidelines); and

The EPA does not prescribe the placement of the Ombudsman Office or the office to be charged with the implementation of an SBAP. * * * The critical test for EPA approval, with respect to this element of the PROGRAM [the ombudsman], will be whether (1) the designated office is encumbered with activities that prevent it from performing effectively; (2) sufficient expertise exists to represent small businesses; and (3) no conflicts of interest exist within the office that would prevent the Ombudsman from serving effectively * * * (Section 2.0 of the Guidelines, pp. 14 and 15).

In the spirit of the guidelines, the Agency examined Florida's submission from several perspectives. The State of Florida held public hearings regarding the proposed statutory changes and SIP currently at issue. No one, including trade associations, made an adverse comment either at the hearings or in writing at a later time. The Agency concluded, therefore, every effort had been made to provide the regulated community and other potentially affected parties with an opportunity to craft the PROGRAM in an acceptable form.

The selection of the Ombudsman and the Small Business Section Program Administrator, who has the responsibility of directing the SBAP, is the responsibility of the Chief of the Bureau of Air Regulation. The decision was made to have the current ombudsman also serve as the Program Administrator. Florida has taken the position that the combined functions permit the ombudsman to effect immediate improvements and correct deficiencies in the SBAP through the advocacy responsibilities inherent in the office. The Agency accepts this as the prerogative of the State provided it works as the CAA intended. The CAA does not require that these offices be separate. Should personnel, resources and/or the needs of either the Ombudsman's or the Administrator's office warrant a different approach, the Agency acknowledges that the Bureau Chief can divide the responsibilities accordingly. From its inception, the high quality of Florida's PROGRAM has been recognized by the Agency. Indeed, even the commenter stated: ''Our comments are not meant to convey an impression that we feel the Florida program is not working. In fact it seems to be working better than in many other states.'' The acknowledged fact that Florida's PROGRAM is working well goes to the heart of the issue. The Agency believes the structure of a PROGRAM is secondary to its effectiveness. The Agency has determined the Florida Ombudsman's office has sufficient expertise to represent small businesses and the Florida SBAP is performing efficiently. Florida's proposed SIP revision, therefore, clearly meets the first two of the required tests identified in the Guidance.

After a thorough review of the PROGRAM in light of the comment, EPA believes the PROGRAM meets the requirements of the CAA. The PROGRAM as conceived by the CAA has an inherent system of checks and balances to guard against this potential likelihood. The Florida PROGRAM does not circumvent or obviate any of them. The Florida Ombudsman has direct access to the Governor of the State should the necessary support of the Department to implement the PROGRAM be deemed wanting. The CAP is responsible for assuring adherence to the SIP and providing a source for small businesses to voice concerns regarding either the ombudsman or the SBAP. The utilization of the SBAP staff to serve and assist the CAP is, in fact, mandated by the CAA. In addition, both Region 4 and the EPA Ombudsman are responsible for monitoring and overseeing the implementation of the SIP in Florida. Should any conflict of interest or any other concern be realized, corrective or remedial action can be taken immediately. The Agency concludes, therefore, the Florida PROGRAM as proposed meets the requisite criteria for approval.

Final Action

EPA is approving the PROGRAM SIP revision submitted by the State of Florida through the FDEP for the establishment of a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The Agency has reviewed this request for revision of the federally approved SIP for conformance with the CAA, including sections 507 and 110(a)(2).

The Office of Management and Budget has exempted these actions from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a 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.

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.

By this action, EPA is approving a PROGRAM created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the State. Therefore, because the EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Small business stationary source technical and environmental assistance program.

Dated: November 8, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of 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 K—Florida

2. Section 52.520, is amended by adding paragraph (c)(80) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(80) The Florida Department of Environmental Regulation has submitted revisions to chapter 403.0852 of the Florida Statutes on February 24, 1993. These revisions address the requirements of section 507 of title V of the CAA and establish the Small Business Stationary Source Technical and Environmental Assistance Program (PROGRAM).

(i) Incorporation by reference. Florida Statutes 403.031(20), 403.0852 (1), (2), (3), (4), 403.0872(10)(b), 403.0873, 403.8051, effective on April 28, 1992.

(ii) Other material. None.

* * * * *

[FR Doc. 95–3577 Filed 2–13–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 15

[CGD 94–041]

RIN 2115–AE92

Radar-Observer Endorsement for Operators of Uninspected Towing Vessels

AGENCY: Coast Guard, DOT.

ACTION: Interim rule; reopening of comment period.

SUMMARY: On October 26, 1994 (59 FR 53754), the Coast Guard published an interim rule establishing radar-training requirements for licensed masters, mates, and operators of radar-equipped uninspected towing vessels 8 meters (approximately 26 feet) or more in length. Under the interim rule, on February 15, 1995, these licensed persons would be required to hold either an endorsement as a radar observer or, if holding a valid license issued before February 15, 1995, a certificate from a Radar-Operation course. In response to comments from members of the regulated public, the Coast Guard is amending the interim rule to change the date on which the radar-observer endorsement or the Radar-Operation course certificate will be required from February 15, 1995, to June 1, 1995. The Coast Guard is also reopening the comment period to solicit additional public involvement in this rulemaking.

DATES: This interim rule is effective on February 14, 1995. Comments must be received before June 1, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA, 3406) (CGD 94–041), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Robert S. Spears, Jr., Project Manager, Office of Marine Safety, Security, and Environmental Protection (G–MVP–3), (202) 267–0224, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 94–041) and the specific section of this rule to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this rule in view of the comments.

Drafting Information

The principal persons involved in the drafting of this document are Mr. Robert S. Spears, Jr., Project Manager, Office of Marine Safety, Security, and Environmental Protection, Mr. Patrick J. Murray, Project Counsel, Office of the Chief Counsel, and Commander Thomas Cahill, Office of the Chief Counsel.

Regulatory Information

This rule amends an interim rule issued by the Coast Guard on October 26, 1994 (59 FR 53754). Comments received from members of the regulated public have indicated that difficulties were encountered in obtaining the required training in the time allowed. This rule amends the date by which a license endorsement or a certificate of training must be obtained, and relieves a potential burden on members of the regulated public by providing additional time to achieve compliance. It should not adversely affect navigation safety. Therefore, under 5 U.S.C. 553(d)(3), the Coast Guard certifies that good cause exists for this rule to be effective upon publication.

Background

Following the derailment of the Amtrak Sunset Limited, with extensive injury and loss of life, on September 22, 1993, the Coast Guard conducted a study of uninspected towing vessel safety. The study made a number of recommendations for improving safety in the towing industry. One of the recommendations was to require radar observer training and endorsements for operators of radar-equipped uninspected towing vessels 8 meters (approximately 26 feet) or more in length. That recommendation was approved, and on October 26, 1994 (59 FR 53754), the Coast Guard published an interim rule establishing requirements for radar training. The interim rule also added topics to the list of required subjects taught in approved radar-training courses that must be completed in order to receive a radar-observer endorsement.

The interim rule went into effect on November 25, 1994. However, to provide a reasonable opportunity for affected persons to complete the training and obtain the required endorsements, 46 CFR 15.815(c) provided that the endorsement was required only for those licenses to be issued after February 15, 1995. Persons holding valid licenses issued prior to February 15, 1995, would be required to undergo basic radar training and receive a certificate of completion for that training prior to February 15, 1995. Without the endorsement or certificate of completion, after February 15, 1995, no person may serve as a master, mate, or operator of a radar-equipped towing vessel, 8 meters (approximately 26 feet) or more in length, required to have a licensed operator. For a person holding a license issued before February 15, 1995, the additional training needed to qualify for a radar-observer endorsement would then be required before the individual renewed or upgraded his or her license.

The comment period for the interim rule closed on January 24, 1995. Prior to the close of the comment period, the Coast Guard received over 300 comments. A number of the comments expressed concern that the required training would not be available before February 15, 1995. Therefore, to relieve this potential burden, the Coast Guard is amending the interim rule. The Coast Guard will also continue to evaluate the comments received on this rulemaking.

Discussion of Amendment

This rule changes the date in 46 CFR 15.815(c) by which a radar-observer endorsement or certificate of training must be received from February 15, 1995 to June 1, 1995. This extension permits affected mariners who are not able to complete radar training by February 15 to continue to operate legally. Further, the related reopening of the comment period provides a greater

opportunity for comment on the interim rule.

Mariners opting for the Radar-Operation courses in lieu of radar-observer courses approved by the Coast Guard may renew or upgrade their licenses (to be issued before June 1, 1995) before completing Radar-Operation courses. Upon completion of such courses they must hold the courses' certificates with their licenses.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This rule relieves a potential regulatory burden by providing additional time for persons subject to the rule to obtain required training. It does not significantly change the regulatory evaluation contained in the interim rule published October 26, 1994 (59 FR 53754).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

This rule relieves a potential regulatory burden by providing additional time for persons subject to the rule to obtain required training, and should have no economic impact on small entities. As discussed in the interim rule, the Coast Guard expects that the burdens of complying with the interim rule will fall on individuals, rather than on small entities. This change may provide any affected small entities with additional flexibility in scheduling required training and result in some economic benefit. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. This rule is an administrative matter involving personnel training and licensing and clearly has no environmental impact. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying here indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

For the reasons set forth in the preamble, the Coast Guard amends 46 CFR part 15 as follows:

PART 15—MANNING REQUIREMENTS

1. The citation of authority for part 15 continues to read as follows:

Authority: 46 U.S.C. 2103, 3703, 8502; 49 CFR 1.45, 1.46.

§ 15.815 [Amended]

2. In § 15.815, paragraph (c) is revised to read as follows:

* * * * *

(c) On or after June 1, 1995, each person having to be licensed under 46 U.S.C. 8904(a) for employment or service as master, mate, or operator on board an uninspected towing vessel of 8 meters (approximately 26 feet) or more in length shall, if the vessel is equipped with radar, hold—

(1) A valid endorsement as radar observer; or,

(2) If the person holds a valid license dated before June 1, 1995, a valid certificate from a Radar-Operation course.

Dated: February 2, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–3663 Filed 2–13–95; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[GEN Docket No. 90–357; FCC 95–17]

New Digital Audio Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this action the Commission amends its rules regarding frequency allocation to allocate spectrum in the 2310–2360 MHz band for new satellite digital audio radio services (DARS). This action will bring about a new service, which will provide enhanced quality of reception and increased program diversity to all markets nationwide.

EFFECTIVE DATE: March 16, 1995.

FOR FURTHER INFORMATION CONTACT: Lynn L. Remly, Office of Engineering and Technology, at (202) 776–1623.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in GEN Docket No. 90–357, adopted January 12, 1995 and released January 18, 1995. By this action, the Commission amends its Rules with regard to the establishment and regulation of new satellite digital audio radio services. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554. The full text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street N.W., Washington, D.C. 20037.

Summary of Order

1. In 1990, three parties requested the Commission to allocate spectrum or otherwise authorize the provision of digital audio radio services. On May 18, 1990, Satellite CD Radio, Inc. (SCDR) filed a Petition for Rule Making in which it requested spectrum to offer a compact disk quality digital audio radio

service to be delivered by satellites and complementary radio transmitters. On May 22, 1990, Radio Satellite Corporation filed a Request for Authorization to build and operate an earth station that would provide DARS and other mobile satellite services over a system planned to be built by the American Mobile Satellite Corporation in the 1.6/2.4 GHz bands. Finally, on July 27, 1990, Strother Communications, Inc. filed a Petition for Rule Making requesting that the Commission allocate spectrum and adopt rules for terrestrial digital audio broadcasting services.

2. In August 1990, the Commission issued a *Notice of Inquiry (NOI),* 55 FR 34940 (August 27, 1990), soliciting information necessary to identify spectrum and develop technical rules and regulatory policies for DARS in the United States. In the *NOI,* we noted international interest in the development of digital sound broadcasting and expressed concern that the United States would be disadvantaged if it did not participate in this new technology. In a parallel effort, by a series of inquiries between 1989 and 1991, the Commission solicited comment on appropriate U.S. positions to be taken at the 1992 World Administrative Radio Conference (WARC–92). We sought comment on possible spectrum to be used for the provision of high-quality audio programming by the broadcasting satellite service (BSS Sound). Based on the inquiries, and in coordination with the National Telecommunications Information Administration (NTIA), the Commission supported a U.S. position seeking an allocation for satellite and complementary terrestrial DARS at 2310–2360 MHz.

3. At WARC–92, three different BSS (Sound) allocations were adopted. International Radio Regulation RR750B allocated the 2310–2360 MHz band in the United States for digital audio satellite broadcasting (BSS Sound). This allocation, like those adopted for other areas of the world, was limited to audio broadcasting by digital modulation. In November 1992 the Commission released the *Notice of Proposed Rule Making and Further Notice of Inquiry (NPRM),* 57 FR 57049 (December 2, 1992), in which we proposed to adopt the WARC–92 allocation of 2310–2360 MHz for satellite DARS; proposed to accommodate aeronautical telemetry services now operating in the 2310–2390 MHz band at 2360–2390 MHz; and solicited comment on regulatory and technical aspects of satellite DARS. Also in 1992, we accepted for comment SCDR's license application and invited competing applications. Digital Satellite Broadcasting Company, Primosphere Limited Partnership, and American Mobile Radio Corporation each submitted applications. As a result, there are currently four pending satellite DARS license applications.

4. Further, two industry committees are presently considering DARS technical standards issues. The Electronics Industry Association (EIA) has formed a subcommittee to consider the development of standards for terrestrial and satellite DARS. Also, the National Radio Systems Committee (NRSC) has agreed to examine terrestrial DARS systems which would operate in the AM or FM broadcast bands, and EIA and NRSC are cooperating in testing such DARS technologies.

5. Comments to the *NPRM* comprised a wide variety of parties. Proponents of the allocation, including potential DARS providers, equipment manufacturers, and potential users, state that there will be major benefits from satellite DARS. These parties argued generally that a satellite-delivered system will meet the needs of unserved and undeserved markets as well as provide enhanced quality of reception and increased audio program diversity. Further, they pointed out that a satellite DARS system that would provide enhanced quality of reception for all listeners is currently feasible. In addition, they asserted that the allocation would create economic opportunities in the United States for various segments of industry, especially manufactures of DARS-related equipment. Finally, proponents argued that a satellite DARS allocation will improve U.S. competitiveness in the world marketplace. Opponents, primarily existing broadcast entities, either rejected a satellite DARS allocation or recommended that an allocation not be until terrestrial DARS allocation options have been fully explored. Many of these commenters argued that satellite systems will adversely impact present AM/FM radio services by driving local stations out of business. This, they contended, will cause a loss of local service, which a satellite service by its nature cannot replace. This effect, these opponents argued, contravenes the intent of the Communications Act of 1934 that local needs be met by broadcast media. In addition, opponents argued that programming will become less, not more, diverse as a result of satellite DARS. Some commenters did not oppose a satellite DARS allocations, but recommended that the Commission allocate frequencies in the 1.4–1.5 GHz band in lieu of the proposed allocation.

6. In the *Report and Order* the Commission allocates spectrum in the 2310–2360 MHz band for new satellite DARS. This domestic allocation is in accordance with the international allocation made at WARC–92. We are making this allocation, rather than an alternative allocation in the 1.4–1.5 GHz band, because it was strongly favored by commenters and because this band was allocated for BSS (Sound) at WARC–92. Satellite DARS will provide continuous radio service of compact disk quality on a nationwide or regional basis, including areas which are presently unserved or underserved. In addition, this new service will provide opportunities for domestic economic development and will improve U.S. competitiveness in the world marketplace by promoting rapid technological development in various areas, such as satellite communications and audio compression. Furthermore, we continue to support efforts to implement terrestrial DARS technology. We believe that existing radio broadcasters can and should have the opportunity to profit from new digital radio technologies, and we anticipate that technical advances will soon permit both AM and FM broadcasters to offer improved digital sounds. These innovations will also help promote the future viability of our terrestrial broadcasting system, which provides local news and public affairs programming. Finally, we note that we are deferring licensing and service rules for satellite DARS until a further proceeding.

Ordering Clauses

Accordingly, it is ordered, that Part 2 of the Commission's Rules is amended as specified below, effective March 16, 1995. This action is taken pursuant to Sections 4(i), 7(a), 302, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157(a), 302, 303(c), 303(f), 303(g), and 303(r).

List of Subjects in 47 CFR Part 2

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 154(i), 302, 303, 303(r), and 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations is amended as follows:

a. The entry for 2300–2450 MHz is removed and new entries for 2300–2450 MHz are added in numerical order.

b. International footnotes No. 743A is removed and Nos. 750B, 751A, and 751B are added in numerical order.

c. United States (US) footnotes Nos. US327 and US328 are added in numerical order.

The additions read as follows:

§ 2.106 Table of Frequency Allocations

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation Mhz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
*	*	*	*	*	*	*
2300–2450, FIXED, MOBILE, Amateur, Radiolocation.	2300–2450, FIXED, MOBILE, RADIOLOCATION, Amateur.	.....	2300–2310, RADIOLOCATION, Fixed, Mobile, US253 G2.	2300–2310, Amateur, US253.	Amateur (97).	
			2310–2360, Mobile, Radiolocation, Fixed, US276 US327 US328 G2 751B G120.	2310–2360, BROADCASTING-, SATELLITE, Mobile, US276 US327 US328 751B.	.....	Digital Audio Radio Services
			2360–2390, MOBILE, RADIOLOCATION, Fixed US276 G2 G120.	2360–2390 MOBILE US276.		
			2390–2450 RADIOLOCATION.	2390–2450 Amateur.	Amateur (97).	
664 751A 752 ...	664 750B 751 751B 752.	.....	664 752 G2	664 752.		
*	*	*	*	*	*	*

International Footnotes

* * * * *

750B *Additional allocation:* In the United States of America and India, the band 2310–2360 MHz is also allocated to the broadcasting-satellite service (sound) and complementary terrestrial broadcasting service on a primary basis. Such use is limited to digital audio broadcasting and is subject to the provisions of Resolution 528.

* * * * *

751A In France, the use of the band 2310–2360 MHz by the aeronautical mobile service for telemetry has priority over other uses by the mobile service.

751B Space stations of the broadcasting-satellite service in the band 2310–2360 MHz operating in accordance with No. 750B that may affect services to which this band is allocated in other countries shall be coordinated and notified in accordance with Resolution 33. Complementary terrestrial broadcasting stations shall be subject to bilateral coordination with neighboring countries prior to their bringing into use.

* * * * *

United States (US) Footnotes

* * * * *

US327 The band 2310–2360 MHz is allocated to the broadcasting-satellite service (sound) and complementary terrestrial broadcasting service on a primary basis. Such use is limited to digital audio broadcasting and is subject to the provisions of Resolution 528.

US328 In the band 2310–2360 MHz, the mobile and radiolocation services are allocated on a primary basis until 1 January 1997 or until a broadcasting-satellite (sound) service has been brought into use in such a manner as to affect or be affected by the mobile and radiolocation services in those service areas, whichever is later. The broadcasting-satellite (sound) service during implementation should also take cognizance of the expendable and reusable launch vehicle frequencies 2312.5, 2332.5, and 2352.5 MHz, to minimize the impact on this mobile service use to the extent possible.

* * * * *

[FR Doc. 95–2949 Filed 2–13–95; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 60, No. 30
Tuesday, February 14, 1995

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.

FEDERAL TRADE COMMISSION

16 CFR Part 307

Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On March 20, 1991, the Federal Trade Commission (''the Commission'') issued final regulations (56 FR 11653) amending 16 CFR part 307, the Commission's existing regulations pursuant to the Comprehensive Smokeless Tobacco Health Education Act of 1986 (''the Smokeless Tobacco Act''). The amendments deleted the exemption of utilitarian objects from the regulations, and provided a method for displaying and rotating the health warnings on utilitarian objects. The amendments also changed the requirements for the rotation of the health warnings on point-of-sale and non-point-of-sale promotional materials (''promotional materials''). On January 15, 1993, the Commission deleted the promotional materials portion of the 1991 amendment, indicating that it had failed to receive sufficient comment on this portion of the Regulation. At the same time, the Commission re-proposed its 1991 rule for promotional materials warning label rotations and sought comment. Some of the comments received suggested that the Commission should not only amend the rotational schedule for promotional materials, but also amend the regulations governing the rotation of utilitarian objects. Thus, the Commission is seeking public comment on whether the regulations governing the rotation schedule for utilitarian objects should be amended.

All persons are hereby notified of the opportunity to submit written data, views, and arguments concerning the requirements for the rotation of health warnings on utilitarian objects.

DATES: Written comments will be accepted on or before April 17, 1995.

ADDRESSES: Send comments to Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phillip S. Priesman, Attorney, (202) 326–2484, Division of Advertising Practices, Federal Trade Commission, 6th & Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Section A—Background

On January 15, 1993, the Commission proposed amending 16 CFR part 307 (58 FR 4874) to modify the rotational schedule for health warnings on promotional materials. Some of the comments received suggested that the Commission should not only amend the rotational provisions for promotional materials, but also amend the regulations governing the rotation of utilitarian objects.

The proposed rule would provide that a satisfactory plan for utilitarian objects could provide for rotation according to either the date the object is disseminated or the date the object is ordered. It would also delete the exception permitting random rotation under certain circumstances. This exception was intended to alleviate the hardship caused when date of dissemination was specified as the only acceptable basis for a rotation schedule. The Commission currently permits rotation methods based on dissemination date or order date for promotional materials. *See* 58 FR 4874 (Jan. 15, 1993). The proposed rule for utilitarian items follows the rotation method currently in effect for promotional materials. However, the proposed rule would permit rotation based on dissemination date or order date only if the production of materials is carried out in a manner consistent with customary business practices. Thus, under the proposed rule, there would no longer be any need for random rotation. For these reasons, the Commission is proposing the deletion of the random rotation exception from the regulations.

Section B—Questions

In particular, the Commission is soliciting information on the following questions:

Question 1. What is the likely effect of the proposed requirements for the rotation of health warnings or utilitarian objects on the costs, profitability, competitiveness, and employment of small business entities?

Question 2. The Smokeless Tobacco Act requires smokeless tobacco companies to submit plans to the Commission that specify the method the companies will use to rotate, display, and distribute the required health warning statements on their packaging and advertising. The original requirement for the submission of plans by marketers of smokeless tobacco products was submitted to, and approved by, the Office of Management and Budget. OMB Control No. 3084–0082.

By changing the requirements for the rotation of the health warnings on utilitarian objects, the proposed amendments will require some of the smokeless tobacco companies to revise their rotational plans for utilitarian objects. What are the possible paperwork burdens that the proposed utilitarian objects amendment to 16 CFR Part 307 may impose?

Question 3. What are the possible regulatory alternatives that would reduce the economic impact of the proposed rotational requirements for warning labels on utilitarian objects, yet fully implement the regulatory mandate of the Smokeless Tobacco Act?

Section C—Regulatory Flexibility Act

When the Smokeless Tobacco Regulations were first proposed, the FTC certified that the Regulatory Flexibility Act requirement for regulatory analysis was not applicable because the regulations did not appear to have a significant economic impact on a substantial number of small entities. 51 FR 24378 (1986). The Commission has re-examined that issue with respect to the proposed amendment for utilitarian objects and has preliminarily determined that the proposed amendment will not change that determination because the amendment merely enables manufacturers of smokeless tobacco to modify slightly an already existing schedule by which they rotate the three required warnings on utilitarian objects. In order to ensure, however, that no substantial economic impact is being overlooked, public comment is requested on the effect of the proposed regulations on costs, profitability,

competitiveness, and employment of small entities.

Subsequent to the receipt of public comments, it will be decided whether the preparation of a final regulatory flexibility analysis is warranted.

In light of the above, it is certified that the proposed amendments will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b) (1982). This notice serves as certification to that effect for the purposes of the Small Business Administration.

List of Subjects in 16 CFR Part 307

Health warnings, Smokeless tobacco, Trade practices.

Accordingly, it is proposed that part 307 of 16 CFR be amended as follows:

PART 307—REGULATIONS UNDER THE COMPREHENSIVE SMOKELESS TOBACCO HEALTH EDUCATION ACT OF 1986

1. The authority for part 307 continues to read as follows:

Authority: 15 U.S.C. 4401 *et seq.*

2. Section 307.12 is amended by revising paragraph (b) to read as follows:

§ 307.12 Rotation, display, and dissemination of warning statements in smokeless tobacco advertising.

* * * *

[b] Each manufacturer, packager, or importer of a smokeless tobacco product must submit a plan to the Commission or its designated representative that ensures that the three warning statements are rotated every 4 months in alternating sequence. There may be more than one system, however, that complies with the Act and these regulations. For example, a plan may require all brands to display the same warning during each 4-month period or require each brand to display a different warning during a given 4-month period. A plan shall describe the method of rotation and shall include a list of the designated warnings for each 4-month period during the first year for each brand. A plan shall describe the method that will be used to ensure the proper rotation in different advertising media in sufficient detail to ensure compliance with the Act and these regulations, although a number of different methods may satisfy these requirements. For example, a satisfactory plan for advertising in newspapers, magazines, or other periodicals could provide for rotation according to either the cover or closing date of the publication. A satisfactory plan for posters and placards, other than billboard advertising, could provide for rotation according to either the scheduled or the actual appearance of the advertising. A satisfactory plan for point-of-sale and non-point-of-sale promotional materials each as leaflets, pamphlets, coupons, direct mail circulars, paperback book inserts, or non-print items, or for utilitarian objects, could provide for rotation according to the date the materials or objects are ordered by the smokeless tobacco manufacturer, or the date the objects or materials are scheduled to be disseminated, provided that the production of such materials or objects is carried out in a manner consistent with customary business practices.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–3536 Filed 2–13–95; 8:45 am]

BILLING CODE 6750–01–M

16 CFR Part 310

Telemarketing Sales Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Federal Trade Commission (''FTC'' or ''Commission'') proposes to implement the Telemarketing and Consumer Fraud and Abuse Prevention Act (''Telemarketing Act'' or ''the Act''). Section 3 of the Act directs the FTC to prescribe rules, within 365 days of enactment of the Act, prohibiting deceptive telemarketing acts or practices and other abusive telemarketing acts or practices.

DATES: Written comments must be submitted on or before March 31, 1995. Due to the time constraints of this rulemaking proceeding, the Commission does not contemplate any extensions of this comment period or any additional periods for written comment or rebuttal comment.

Following the period for written comments, Commission staff plan to conduct a Public Workshop Conference to afford Commission staff and interested parties an opportunity to explore and discuss issues raised during the comment period. Notification of interest in representing an affected, interested party at the Public Workshop-Conference must be submitted on or before March 6, 1995. A list of affected interests appears in Section D of the Supplementary Information section.

The Public Workshop-Conference will be held in Chicago, Illinois on April 18 through 20, 1995, from 9 a.m. until 5 p.m. each day.

ADDRESSES: Five paper copies of each written comment should be submitted to the Office of the Secretary, Room 159, Federal Trade Commission, Washington, DC 20580. To encourage prompt and efficient review and dissemination of the comments to the public, all comments also should be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS are preferred. Files from other operating systems should be submitted in ASCII text format to be accepted.) Individuals filing comments need not submit multiple copies or comments in electronic form. Submissions should be captioned: ''Proposed Telemarketing Sales Rule,'' FTC File No. R411001.

Notification of interest in the Public Workshop-Conference should be submitted in writing to Carole Danielson, Division of Marketing Practices, Federal Trade Commission, Washington, D.C. 20580.

The Public Workshop-Conference will be held in Chicago, Illinois, at the Chicago Hilton Hotel, 720 South Michigan Avenue, Chicago, Illinois 60605.

FOR FURTHER INFORMATION CONTACT: David M. Torok, (202) 326–3140, or Judith M. Nixon, (202) 326–3173, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Section A. Background

On August 16, 1994, the President signed into law the Telemarketing Act, Public Law No. 103–297. In enacting the Telemarketing Act, Congress made the following findings, set forth in section 2 of the Act:[1]

(1) Telemarketing differs from other sales activities in that it can be carried out by sellers across State lines without direct contact with the consumer. Telemarketers also can be very mobile, easily moving from State to State.

(2) Interstate telemarketing fraud has become a problem of such magnitude that the resources of the Federal Trade Commission are not sufficient to ensure adequate consumer protection from such fraud.

(3) Consumers and others are estimated to lose $40 billion a year in telemarketing fraud.

(4) Consumers are victimized by other forms of telemarketing deception and abuse.

[1] 15 U.S.C. 6101.

(5) Consequently, Congress should enact legislation that will offer consumers necessary protection from telemarketing deception and abuse.

Based on the above findings, Congress directed the Commission to issue a rule, within 365 days from the date of enactment of the Act, prohibiting deceptive and abusive telemarketing acts and practices.[2] The Act specifies that the rule shall contain a definition of deceptive telemarketing acts or practices.[3] According to the statute, this definition may include acts or practices of entities or individuals that assist or facilitate deceptive telemarketing, including credit card laundering.[4] The Act further specifies that, in order to prohibit other abusive acts or practices, the rule shall include:

(1) A requirement prohibiting a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy;

(2) Restrictions on the hours when unsolicited telephone calls can be made to consumers; and

(3) A requirement that telemarketers promptly and clearly disclose to the person receiving the call that the purpose of the call is to sell goods or services, and make any other disclosures the Commission deems appropriate, including the nature and price of the goods or services being sold.[5] The Act also directs the Commission to consider recordkeeping requirements.[6]

Enforcement actions for violations of the final rule will be brought by the Commission in the same manner as for other rules with respect to unfair or deceptive acts or practices under section 5 of the FTC Act.[7] In addition, Section 4 of the Telemarketing Act[8] authorizes the attorneys general of the States to enforce compliance with the final rule by instituting Federal court enforcement actions, after serving prior written notice upon the Commission when feasible. Moreover, Section 5 of the Telemarketing Act[9] authorizes actions, in Federal district court, by private persons adversely affected by any pattern or practice of telemarketing which violates the final rule, where the amount in controversy exceeds $50,000 in actual damages for each such person. As with State actions, such private persons must give prior written notice to the Commission, when feasible.

Section B of this notice discusses the proposed rule that the Commission has drafted pursuant to the Telemarketing Act.

Section B. Discussion of the Proposed Rule

Section 310.1 Scope of the Regulations

Section 310.1 states that this part implements the Telemarketing Act, and shall be referred to as the ''Telemarketing Sales Rule.''

Section 310.2 Definitions

Section 310.2 of the proposed rule defines the following terms: Acquirer; attorney general; business venture; cardholder; Commission; credit card; credit card sales draft; credit card system; customer; goods or services; investment opportunity; material; merchant; merchant agreement; person; premium; prize; prize promotion; seller; State; telemarketer; telemarketing; telephone solicitation; and verifiable retail sales price.

The definition of ''telemarketing'' sets the parameters of the proposed rule's coverage. It tracks the definition of ''telemarketing'' included in the Telemarketing Act, with certain additions noted below.[10] As set forth in the Act, telemarketing is defined as any plan, program, or campaign which is conducted to induce payment for goods or services by use of one or more telephones and which involves more than one interstate telephone call.[11] One addition to the definition in the proposed rule clarifies that telemarketing includes the use of a facsimile machine, computer modem, or any other telephonic medium.[12] Another addition to the definition explicitly states that telemarketing includes not just calls initiated by telemarketers, but also calls initiated by persons in response to any form of promotional messages used by or on behalf of the seller, including postcards, brochures and advertisements.

The Telemarketing Act and the proposed rule exempt from the definition of telemarketing all solicitations of sales through the mailing of a catalog,[13] when the person making the solicitation does not call customers but only receives calls from customers in response to the catalog and only takes orders during those calls, without further solicitation. The proposed rule states that during such calls from customers, the person taking the order may provide further information to the customer about, or may try to sell, any other item included in the same catalog which prompted the customer's calls without losing the exemption from the definition of ''telemarketing.''

A number of terms are used in the proposed rule's prohibitions on credit card laundering. The term ''acquirer'' is defined, in § 310.2(a) of the proposed rule, to include any business organization, financial institution, or agent of such organization or institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for anything of value. The term ''credit card'' is defined expansively, in § 310.2(f), to include any instrument or device, however named, used by a cardholder to obtain money, goods, services, or anything else of value. § 310.2(g) defines a ''credit card sales draft'' as any record or evidence, including a writing or an electronic or magnetic transmission or record, of a credit card transaction. The term ''credit card system'' is defined, in § 310.2(h), as any method or procedure used to generate, transmit, or process for payment a credit card sales draft. For purposes of this rule, the term ''merchant'' is narrowly defined, in § 310.2(m), to include only those persons authorized under a written contract with an acquirer to honor or accept, transmit, or process credit cards in payment for goods or services. Finally, § 310.2(n) defines the term ''merchant agreement'' as the written contract between a merchant and an acquirer.

The proposed rule includes certain requirements for the telemarketing sale of business ventures and investment opportunities. The term ''business venture'' is defined, in § 310.2(c) of the

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[2] 15 U.S.C. 6102(b).

[3] 15 U.S.C. 6102(a)(2).

[4] *Id.*

[5] 15 U.S.C. 6102(a)(3).

[6] Id.

[7] 15 U.S.C. 45. The Telemarketing Act provides that the FTC rule shall be treated as a rule issued under section 18(a)(1)(B) of the FTC Act, 15 U.S.C. 57a(a)(1)(B).

[8] 15 U.S.C. 6103.

[9] 15 U.S.C. 6104.

[10] See 15 U.S.C. 6106(4).

[11] The Act's definition of the term ''telemarketing'' states that the plan, program, or campaign must be conducted to induce the purchase of goods or services. The proposed rule states that the plan, program, or campaign must be conducted to induce payment for goods or services. This change is intended to make clear that the definition of telemarketing includes plans, programs, or campaigns conducted to induce rentals or leases, as well as certain donations.

[12] Since telemarketing includes the use of computer modems and other telephonic media, the proposed definition states that telemarketing involves not just telephone calls, but also telephone connections.

[13] The Telemarketing Act and the proposed rule require catalogs to include multiple pages of written descriptions or illustrations of the goods or services being offered for sale, to include a business address of the seller, and to be issued not less frequently than once a year.

proposed rule, to include any written or oral business arrangement, however named, including but not limited to franchises,[14] which consists of the payment of consideration for (1) the right or means to offer, sell, or distribute goods or services, and (2) the promise of more than nominal assistance in establishing, maintaining or operating a new business, or an existing business that is entering into a new line or type of business. The term ''investment opportunity'' is defined, in § 310.2(k), to include anything, tangible or intangible, except a business venture, that is offered, offered for sale, sold, or traded either for purposes of profit or income or based on express or implied representations about income, profit, or appreciation.[15] In addition, these two definitions state that any business arrangement in which persons acquire, or purportedly acquire, government-issued licenses, or interests in one or more businesses derived from the possession of such licenses, are considered to be an ''investment opportunity,'' and not a ''business venture.''

The term ''goods or services'' is defined expansively, in § 310.2(j), to cover virtually any item for which payment can be induced over the telephone. A list of specific items is included in the definition for illustrative purposes only.[16]

The proposed definition for ''material,'' in § 310.2(l), is taken from the Commission's deception statement.[17] It states that material means likely to affect a consumer's choice of, or conduct regarding, goods or services.

The proposed rule defines ''prize'' and ''premium'' in a relatively parallel fashion. Section 310.2(q) states that a ''prize'' means anything offered, or purportedly offered, to a person at no cost and with no obligation to purchase goods or services and given, or purportedly given, by chance. A ''premium,'' on the other hand, is defined in § 310.2(p) as anything offered or given, independent of chance, to customers as an incentive to purchase goods or services offered through telemarketing.

The proposed definition of ''prize promotion,'' set forth in § 310.2(r), includes the traditional sweepstakes or other game of chance as well as any oral or written representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize. Thus, the definition of ''prize promotion'' covers not only legitimate contests or sweepstakes, but also fraudulent representations that a consumer has won a prize, when no such prize is to be distributed.

A ''seller'' is defined, in § 310.2(s) of the proposed rule, as any person who, in conjunction with telemarketing, provides or offers to provide goods or services in exchange for consideration or a donation. A ''telemarketer,'' on the other hand, is defined in § 310.2(u) as any person who, in connection with telemarketing, initiates or receives a telephonic communication from a customer. Since many of the provisions in the proposed rule apply to both the seller and the telemarketer, these two definitions make clear that the proposed rule's obligations run not only to the person making or answering a telephone call or telephonic communication from a consumer, but also to the business providing the goods or services to be sold during that call.[18]

The definition of ''telephone solicitation,'' in § 310.2(w) of the proposed rule, is intended to include only out-bound sales calls, i.e., telephone calls that are initiated by a telemarketer to a customer to induce payment for goods or services.

Finally, the definition of ''verifiable retail sales price,'' in § 310.2(x), is based on the Commission's Guides Against Deceptive Pricing.[19] The term means the actual, bona fide price at which one or more retailers, in the area of the seller's principal place of business, has made a substantial number of sales. The seller must be able to document such a retail sales price.

Section 310.3 Deceptive Telemarketing Acts or Practices

Section 310.3 of the proposed rule includes lists of specific, deceptive telemarketing acts or practices prohibited under the rule. It also sets forth prohibited acts or practices that assist and facilitate deceptive telemarketing. This Section ends with prohibitions on the practice of credit card laundering.

1. Prohibited Deceptive Telemarketing Acts or Practices

Section 310.3(a) of the proposed rule states that certain acts or practices, when conducted by any seller or telemarketer, are considered deceptive telemarketing acts or practices and violations of the rule. The first subsection prohibits the failure to disclose certain information before payment is requested for goods or services. The second subsection lists a series of prohibited misrepresentations covering all telemarketing transactions, while the third subsection lists prohibited misrepresentations in connection with the offer, offer for sale, or sale of any business venture. The final two subsections prohibit obtaining funds without proper authorization.

Section 310.3(a)(1) of the proposed rule states that it is a prohibited deceptive telemarketing practice for any seller or telemarketer to fail to disclose certain material information before payment is requested for goods or services offered.[20] These disclosures must be made in the same manner and form as the payment request. The information required to be disclosed is as follows: First, the total costs, terms and material restrictions, limitations, or conditions of receiving any goods or services; second, the quantity of any goods or services sold; and third, all material terms and conditions of the seller's refund, cancellation, exchange, or repurchase policies, including a

[14] The term ''franchise'' is defined in the FTC Franchise Rule, formally entitled ''Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures,'' at 16 CFR 436.2(a).

[15] The application of the proposed rule to investment opportunities is limited, to some extent, by sections 3(d) and (e) of the Telemarketing Act, 15 U.S.C. 6102(d) and (e), which exclude from rule coverage any of the following persons: A broker, dealer, transfer agent, municipal securities dealer, municipal securities broker, government securities broker, government securities dealer (as those terms are defined in section 3(a) of the Securities and Exchange Act of 1934, 15 U.S.C. 78c(a)), an investment adviser (as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-2(a)(11)), an investment company (as that term is defined in section 3(a) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(a)), any individual associated with those persons, or any persons described in section 6(f)(1) of the Commodity Exchange Act, 7 U.S.C. 8, 9, 15, 13b, 9a.

[16] The term ''goods or services'' specifically includes any charitable service that is promoted in conjunction with any offer of a prize, chance to win a prize, or opportunity to purchase any other goods or services. Thus, plans, programs, or campaigns conducted to induce payment for such charitable services are the only charitable solicitations covered by the proposed rule. In addition, only charitable solicitations conducted by an entity ''organized to carry on business for its own profit or that of its members'' are within the jurisdiction of the Commission. *See* 15 U.S.C. 44.

[17] The Commission's Deception Statement, first set out in a letter dated October 14, 1983, to the Honorable John D. Dingell, Chairman, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, is attached as an appendix to Cliffdale Associates, 103 F.T.C. 110 (1984). See also Thompson Medical Co., 104 F.T.C. 648, 816 (1984).

[18] It is possible for a person to be both a seller and a telemarketer in the same transaction, if that person both provides the goods or services in exchange for consideration or a donation and engages in the telephone calls with consumers.

[19] 16 CFR Part 233.

[20] The proposed rule permits sellers or telemarketers to discuss the price of goods or services with potential customers before disclosing the required information, but they may not ask that payment be made until after the disclosures are made.

statement that no such policies exist, if that is the case.

Section 310.3(a)(2) sets forth 24 different misrepresentations prohibited in connection with telemarketing. The first five subsections go to the heart of any telemarketing sales transaction, prohibiting misrepresentations of the total costs, terms or material restrictions, limitations, or conditions [21] of receiving any goods or services. These subsections also prohibit misrepresentations of the quantity of any goods or services, or any material aspect of the performance, efficacy, or central characteristics of any goods or services. In addition, sellers and telemarketers are prohibited from misrepresenting the duration of any offer made, as well as the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies.

Sections 310.3(a)(2) (vi) through (viii) of the proposed rule prohibit misrepresentations about prizes. It is a violation of the proposed rule to misrepresent that any person has been selected to receive a prize, i.e. an item offered, or purportedly offered, at no cost and with no other obligation to make a purchase and given, or purportedly given, by chance. Therefore, a telemarketer could not claim that a consumer has won a prize, when in fact the consumer must pay shipping and handling charges to receive the prize. In addition, a seller or telemarketer is prohibited from misrepresenting that a premium is a prize. Thus, for example, a telemarketer could not claim that a consumer has ''won'' an item, when in fact many consumers will be given that item as an incentive to purchase goods or services, without any element of chance involved in selecting the ''winners.'' Finally, a seller or telemarketer is prohibited from misrepresenting the odds of winning any prize.

The next three prohibited practices, in §§ 310.3(a)(2) (ix) through (xi) of the proposed rule, deal with misrepresentations about compliance with various laws or about an affiliation with law enforcement authorities. Any seller or telemarketer is prohibited from misrepresenting its compliance with any Federal, State, or local law, statute, regulation, or ordinance, or from falsely claiming that such compliance constitutes an endorsement or approval, by the government agency, of the seller's or telemarketer's business or conduct. Thus, a telemarketer cannot falsely claim that it is registered with a State, or, even if registered, that such registration indicates that the State had approved the telemarketer's method of operation. In addition, it is also a violation of the proposed rule to misrepresent any affiliation, association, connection, or relationship with law enforcement, a public safety organization, or other Federal, State, or local government agency.

Under § 310.3(a)(2)(xii) of the proposed rule, any seller or telemarketer is prohibited from misrepresenting the purpose for which the seller or telemarketer will use information relating to a person's checking, savings, share, or similar account number, credit card account number, or social security number. This prohibits, for example, a telemarketer from asking for a consumer's credit card number ''to verify'' the consumer's identity, when in fact the telemarketer plans to charge a fee to that account.

Sections 310.3(a)(2)(xiii) and (xiv) of the proposed rule prohibit misrepresentations particularly common to certain charitable solicitations.[22] Any seller or telemarketer is prohibited from misrepresenting the seller's or telemarketer's non-profit, tax-exempt, or charitable status, purpose, affiliation, or identity. Also prohibited are misrepresentations that a person is eligible or likely to receive a tax deduction, loan, or other benefit if the person pays money to the seller or telemarketer.

It is a prohibited deceptive telemarketing act or practice, under § 310.3(a)(2)(xv) of the proposed rule, for any seller or telemarketer to misrepresent the nature, terms, or existence of any prior affiliation, association, connection, or relationship with any person. Under § 310.3(a)(2)(xvi), neither a seller nor a telemarketer may misrepresent the nature, terms, or existence of any prior purchase or agreement to purchase by any person. These sections prohibit, for example, claims that a telemarketer is calling to confirm a prior order, when no such order exists, or claims that a telemarketer is calling all of its customers to ask if they would like to purchase additional products, when in fact the person called was not a prior customer of that telemarketer.

Sections 310.3(a)(2)(xvii) through (xx) of the proposed rule prohibit misrepresentations concerning investment opportunities. Any seller or telemarketer is prohibited from misrepresenting key attributes of any investment opportunity, such as the level of risk, liquidity, markup over acquisition costs, past performance, earnings potential, or market value. Any seller or telemarketer is also prohibited from misrepresenting the likelihood that the market value for an investment opportunity will either increase or decrease. In addition, a seller or telemarketer cannot misrepresent the seller's success in assisting persons to liquidate goods or services they purchased from the seller, or the profit derived from such liquidation. Thus, for example, false claims about an ability to resell an investment opportunity for a profit are prohibited.

Sections 310.3(a)(2)(xxi) and (xxii) of the proposed rule address the problem of deceptive credit repair or credit opportunity telemarketing claims. Section 310.3(a)(2)(xxi) prohibits misrepresentations that certain goods or services can or are likely to improve a person's credit history, credit record, or credit rating, or that certain goods or services can result in a person obtaining credit. Section 310.3(a)(2)(xxii) prohibits misrepresentations about the eligibility or likelihood that a person, regardless of that person's credit history, will obtain a loan or other credit-related service.

Section 310.3(a)(2)(xxiii) of the proposed rule prohibits misrepresentations that a seller or telemarketer can recover or otherwise effect or assist in the return of money or any other item of value to a person. This would prohibit, for example, telemarketers from falsely claiming that for a fee, paid in advance, they can obtain a refund for a consumer who has been victimized in the past by a telemarketing scam.

Finally, § 310.3(a)(2)(xxiv) of the proposed rule prohibits the misrepresentation of any other information required to be disclosed under this rule. For example, a telemarketer cannot misrepresent the verifiable retail sales price of a prize or premium, or misrepresent that the sales price of a prize or premium is less than $20.00, when that information is required to be disclosed under §§ 310.4(d)(3) and (4) of the proposed rule.

The next section of the proposed rule, § 310.3(a)(3), prohibits any seller or telemarketer from misrepresenting important information in connection with the offer, offer for sale, or sale of any business venture. This information

[21] Given the definition of the term ''material,'' in Section 310.2(l) of the proposed rule, any seller or telemarketer would be prohibited from misrepresenting any restriction, limitation, or condition that would be likely to affect a consumer's choice of, or conduct regarding, goods or services.

[22] Based on the definition of ''goods or services,'' in § 310.2(j) of the proposed rule, only charitable services promoted in conjunction with an offer of a prize, chance to win a prize, or opportunity to purchase any goods or services would be covered by these provisions.

includes the level of earnings for the business venture, the extent or nature of the market for the goods or services to be sold, and the nature or availability of any territory. Thus, a seller of business ventures could not falsely inflate the sales levels of previous owners, or incorrectly claim that a purchaser would obtain exclusive rights to market goods or services in a certain territory. The proposed rule also prohibits misrepresentations about (1) the existence, availability, or provision of retail outlets or accounts; (2) the locations or sites for vending machines, rack displays, or any other sales display; or (3) the nature or availability of any services offered to secure any such outlets, accounts, locations, sites or displays. Also prohibited are misrepresentations that any person owns or operates a business venture purchased from the seller, or that a person can give an accurate, independent description of his or her experience as an owner or operator of such a business venture. These provisions prohibit, for example, false claims that a shill—a phony reference that is paid to tout a business opportunity he does not own or operate—has actually purchased a business venture, or false claims about any person's experience as a business venture owner.

Under § 310.3(a)(4) of the proposed rule, it is a prohibited deceptive telemarketing act or practice for a seller or telemarketer to obtain or submit for payment from a person's checking, savings, share, or similar account, a check, draft, or other form of negotiable paper without that person's express written authorization. For example, a telemarketer cannot submit an unsigned draft on a consumer's bank account without that consumer's prior written authorization. Similarly, § 310.3(a)(5) of the proposed rule prohibits the collection of any amount of money from a person through any means, unless such amount is expressly authorized by the person. This section is intended to cover other forms of payment, in addition to unsigned drafts, and to prohibit misrepresentations of the amount collected. For example, if a consumer pays for goods or services by credit card, no amount may be charged to the consumer's account unless the consumer authorizes that charge. This authorization does not have to be in writing, however.

2. Assisting and Facilitating

Section 310.3(b)(1) of the proposed rule sets forth a general prohibition against assisting or facilitating deceptive telemarketing acts or practices. This section states that it is a deceptive telemarketing act or practice, and a violation of the rule, for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or should know that the seller or telemarketer is engaged in any act or practice that violates the rule.

Section 310.3(b)(2) of the proposed rule lists five specific types of conduct that provide substantial assistance or support to telemarketing. This list is not meant to limit, in any way, the general scope of § 310.3(b)(1) concerning assisting or facilitating deceptive telemarketing acts or practices.[23] Assistors who engage in these activities will violate the rule if they know, or should know, that the person they are assisting is engaged in an act or practice that violates the rule.

The five types of assisting and facilitating activities listed in the proposed rule are as follows: First, providing lists of customer contacts to a seller or telemarketer (e.g., serving as a list broker); second, receiving consideration in exchange for providing a testimonial, endorsement, certification, appraisal, or financing, or for serving as a reference, with respect to any business venture or investment opportunity (e.g., acting as a paid shill or an art appraiser, or providing financing for a business opportunity); third, securing retail outlets or accounts for the sale of goods or services, or locations or sites for vending machines, rack displays, or any other sales displays, used in connection with any business venture (e.g., operating as a locating company); fourth, furnishing any certificate or coupon which may later be exchanged for goods or services (e.g., producing generic vacation certificates used in prize promotion scams); and fifth, providing any script, advertising, brochure, promotional material, or direct marketing piece to be used in telemarketing.

3. Credit Card Laundering

Section 310.3(c) of the proposed rule prohibits credit card laundering, or the practice of depositing into the credit card system a sales draft that is not the result of a credit card transaction between the cardholder and a merchant.[24] For example, credit card laundering involves a merchant with access to the credit card system deceiving an acquirer by submitting for payment credit card transactions that are not the merchant's own. This deception is crucial for telemarketers engaged in fraud, since such telemarketers find it difficult, if not impossible, to obtain merchant accounts to process their credit card transactions. Credit card laundering facilitates deceptive telemarketing acts or practices by providing fraudulent telemarketers with ready access to cash through the credit card system.

This Section of the proposed rule is divided into three parts. Section 310.3(c)(1) of the proposed rule deals with merchants who engage in credit card laundering. Under this section, it is a deceptive telemarketing act or practice, and a violation of the rule, for a merchant to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant. It is also a deceptive act or practice for a merchant to cause another person to present to or deposit into the credit card system for payment such a credit card sales draft.

Section 310.3(c)(2) of the proposed rule deals with telemarketers, brokers, or others who employ merchants to engage in credit card laundering. This section states that it is a deceptive telemarketing act or practice, and a violation of the proposed rule, for any person to employ, solicit, or otherwise cause a merchant or an employee, representative, or agent of a merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant.

Finally, § 310.3(c)(3) prohibits joint ventures or other business relationships between a merchant and a telemarketer for the purpose of engaging in credit card laundering. Specifically, this section prohibits any person from obtaining access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement.

Section 310.4 Abusive Telemarketing Acts or Practices

Section 310.4 of the proposed rule begins with a list of specific abusive conduct that is prohibited. This section also prohibits repeated telemarketing calls and calls to persons who have stated that they do not wish to receive such calls. In addition, this section sets

[23] Thus, practices not included on this list could still be found to provide substantial assistance or support to telemarketing.

[24] As defined in § 310.2(m), a merchant is the person who is under a contractual agreement with an acquirer to honor or accept, transmit, or process credit cards in payment for goods or services.

restrictions on the times when telemarketers may make calls, and includes oral and written disclosures that must be made. This Section of the proposed rule ends with a prohibition on the sale or distribution of lists of customer contacts by persons found to have violated certain provisions of this rule.

1. Abusive Conduct Generally

Section 310.4(a) of the proposed rule sets forth eight different abusive telemarketing acts or practices that are violations of the rule. The first such practice is the use of threats or intimidation in connection with telemarketing. The second prohibited practice is providing for or directing a courier to pick up a payment from a customer. This prohibition is intended to address a prevalent practice used by fraudulent telemarketers of sending an overnight courier to a consumer's home to pick up cash or a check shortly after a successful sales pitch. In this manner, the telemarketer obtains payment from the consumer before the consumer has adequate time to think about the transaction or obtain information about the telemarketer. The proposed rule would prohibit this practice.

Section 310.4(a)(3) of the proposed rule restricts the telemarketing of credit repair services. This section prohibits any seller or telemarketer from requesting or receiving payment of any fee or consideration for goods or services represented to improve a person's credit history, credit record, or credit rating until the contract for the services has expired and the promised results have been achieved. Specifically, two events must occur before payment can be requested or received for these services: first, either the term of the contract or the time frame in which the seller has represented the goods or services will be provided has expired; and second, the seller has provided the purchaser with documentation showing that the promised results have been achieved. This documentation may be either (1) from the original furnisher or provider of the information to the consumer reporting agency, confirming that the promised results have been achieved; or (2) in the form of a consumer report from the consumer reporting agency demonstrating that the promised results have been achieved. Such a report must have been issued more than six months after the results were achieved.[25]

Recovery room scams are the focus of § 310.4(a)(4). In these operations, a telemarketer typically calls a consumer who has lost money in a previous scam, promising that, for a fee paid up front, the telemarketer can recover the money the consumer previously lost. After the consumer pays the requested fee, the promised services are not delivered. In fact, the consumer may never hear from the telemarketer again. This Section of the proposed rule prohibits any seller or telemarketer from requesting or receiving payment of any fee or consideration for goods or services represented to recover or otherwise effect or assist in the return of money or any other item of value to a person until three days after such money or other item is delivered to that person. The proposed rule states that this provision does not apply to goods or services provided to a person by a licensed attorney or licensed private investigator pursuant to a written agreement with that person.

Section 310.4(a)(5) of the proposed rule is intended to limit advance fee loan scams and similar practices, in which telemarketers guarantee that they will obtain a loan or other credit-related service for a consumer, if the consumer pays them a fee in advance. As with recovery room scams, after the consumer pays the fee, the promised services typically are not provided. Under this section of the proposed rule, any seller or telemarketer is prohibited from requesting or receiving payment of any fee or consideration in advance of obtaining a loan or any credit service when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or credit service for a person.

Prize promotions conducted through telemarketing are the subject of § 310.4(a)(6). Any seller or telemarketer conducting such promotions must distribute all prizes or purported prizes offered within 18 months of the initial offer to any person.

Section 310.4(a)(7) of the proposed rule addresses the problem of reloading, the practice of offering to sell additional goods or services to a person who previously has made a purchase from that seller. In deceptive telemarketing scams, consumers may be victimized numerous times by reloading that occurs prior to delivery of the first items sold, before realizing they have been deceived. This serial deception often occurs because consumers have not seen the goods or services already purchased, and therefore do not know that they were deceived in the previous transaction. The proposed rule prohibits any seller or telemarketer from offering or selling goods or services through a telephone solicitation to a person who previously has paid the same seller for goods or services, until all terms and conditions of the initial sales transaction have been fulfilled.[26] The proposed rule makes clear that all prizes or premiums offered in conjunction with the initial transaction must also be distributed before a second offer or sale can be made.

The final abusive telemarketing act or practice prohibited by the proposed rule concerns the use of shills. Section 310.4(a)(8) of the proposed rule prohibits any seller or telemarketer from identifying a person as a reference for a business venture unless the following three criteria are satisfied: (1) Such person has actually purchased the business venture; (2) such person has operated the business venture for at least six months or the seller or telemarketer has disclosed the length of time the reference has operated the business venture; and (3) such person does not receive consideration for any statements made to prospective purchasers.

2. Pattern of Calls

Section 310.4(b) of the proposed rule deals with repeated telemarketing calls, and calls to persons who have indicated an unwillingness to receive such calls. This section prohibits a telemarketer from engaging in such calls, or a seller from causing a telemarketer to engage in such calls.[27] Specifically, this Section states that it is an abusive act or practice and a violation of the rule to call a person's residence to offer, offer for sale, or sell, on behalf of the same seller, the same or similar goods or services more than once within any three-month period. This prohibition does not apply if the person gives prior consent to more frequent calls,[28] or if the person is not reached during an earlier attempted call. It also does not apply to verification calls—those calls made solely to verify a previous telephone sale.

The proposed rule also prohibits calls to a person's residence when that person previously has stated that he or she does not wish to receive telephone solicitations made by or on behalf of the

[25] The proposed rule makes clear that nothing in the rule alters the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose.

[26] By limiting this prohibition to offering or selling goods or services through telephone solicitations, this Section does not prevent consumers from calling telemarketers to make an additional purchase before the first transaction is complete.

[27] A seller may cause a telemarketer to engage in such calls by providing the telemarketer with a customer contact list that includes customers that should not be called.

[28] The person may give prior consent either orally or in writing.

seller whose goods or services are being offered.

Sellers and telemarketers are given a limited safe harbor against liability for violating these provisions. Section 310.4(b)(2) of the proposed rule states that a seller or telemarketer will not be liable for such violations once in any calendar year per person called if the following four requirements are met: (1) It has established and implemented written procedures to comply with §§ 310.4(b)(1)(i) and (ii); (2) it has trained its personnel in those procedures; (3) the seller, or the telemarketer acting on behalf of the seller, has maintained and recorded lists of persons who may not be contacted, in compliance with §§ 310.4(b)(1)(i) and (ii); and (4) any subsequent call is the result of administrative error.

3. Calling Time Restrictions

Under § 310.4(c) of the proposed rule, any telemarketer is prohibited from engaging in telephone solicitations [29] to a person's residence at any time other than between 8 a.m. and 9 p.m. local time at the called person's location. This prohibition does not apply if the person called gives his or her prior consent to receive a call at a different time.[30]

4. Required Oral Disclosures

Section 310.4(d) of the proposed rule sets forth certain oral disclosures that must be made in telemarketing.[31] The preamble to this section states that it is an abusive telemarketing act or practice, and a violation of the rule, for a telemarketer to fail to make any of these required oral disclosures.

All telephone solicitations must begin by disclosing key information to the person called. This information includes the caller's true first and last name, the seller's name, and that the purpose of the call is to sell goods or services. The proposed rule does not require that the telemarketer's name be disclosed, if it is different from the seller's. In addition, the proposed rule does not set forth the exact language that must be used to convey the message that the purpose of the call is to sell goods or services. The choice of language is left to the telemarketer.

If the telephone solicitation includes a charitable solicitation, slightly different and additional information must be disclosed at the beginning of the call. Not only must the caller's true first and last name and the name of the seller or charity be disclosed, but the telemarketer's name also must be disclosed in these calls. In addition, the telemarketer's status as a paid professional fundraiser must be disclosed, as well as the fact that the purpose of the call is to solicit charitable donations. If other goods or services are offered for sale during the call, the caller must disclose that the purpose of the call is also to sell goods or services.

Section 310.4(d)(2) of the proposed rule states that if a caller verifies a telemarketing sale, either during the call containing the original sales presentation or in a separate call, the caller verifying the sale must repeat all of the disclosures required under § 310.3(a)(1).[32] In this fashion, consumers will hear all of the important terms and conditions of the sale at the time they are verifying that purchase.

Section 310.4(d)(3) of the proposed rule requires three additional oral disclosures for any telemarketing which includes a prize promotion. The first disclosure is that no purchase or payment is necessary to win.[33] Second, the caller must disclose the verifiable retail sales price of each prize offered, or a statement that the retail sales price of the prize offered is less than $20.00.[34] The third required disclosure is the odds of winning each prize offered. A true statement that the odds of winning cannot be determined in advance, or that the odds of winning are determined by the number of entrants, would satisfy this requirement.

Under § 310.4(d)(4) of the proposed rule, any telemarketing which includes an offer of a premium must make the additional disclosure of the verifiable retail sales price of such premium or comparable item, or a statement that the retail sales price of the premium is less than $20.00.

5. Written Disclosures/ Acknowledgements

Section 310.4(e) of the proposed rule states that it is an abusive telemarketing act or practice for a seller or telemarketer that conducts a prize promotion or offers for sale any investment opportunity to request or accept any payment from a person without first providing the person with a written disclosure, in duplicate, and receiving from the person a written acknowledgement that the person has read the disclosure. The information required to be disclosed must be printed in not less than 10-point type (unless otherwise noted), in a color or shade that readily contrasts with the background of the notice. The information in the investment opportunity disclosure must be segregated from all other information that may be included in the document, while the information in the prize promotion disclosure must be on one page.

Both disclosures must be sent in an envelope that contains no other enclosures except for a return envelope, if the seller or telemarketer wishes to include such an envelope. The envelope for the prize promotion disclosure may not contain any writing representing that the person to whom the envelope is addressed has been selected or may be eligible to receive a prize.

For prize promotions, the following information is required: (1) The seller's legal name and telephone number, and the complete street address of the seller's principal place of business; (2) if the seller has been in operation under any other name(s), each such name and the length of time the seller operated under each name; (3) the verifiable retail sales price of each prize offered, or a statement that the retail sales price of the prize offered is less than $20.00; (4) the odds of winning each prize offered and the number of persons who will receive each prize; (5) the total amount and description of any shipping or handling fees or any other charges that must be paid to receive or use a prize; (6) a complete description of any restrictions, conditions, or limitations on eligibility to receive or use a prize, including all steps a person must take to receive the most valuable prize offered; (7) the statement: ''No purchase or payment is necessary to win,'' with a description of the no-purchase entry method; (8) a statement that a list of winners is available and the address to which a person may write to obtain such a list; (9) a statement that it is a violation of this rule for the seller to accept payment in any form unless the

[29] Based on the definition of ''telephone solicitation'' in § 310.2(w) of the proposed rule, these calling time restrictions apply only to outbound telemarketing calls.

[30] As with the pattern of calls requirement in § 310.4(b)(1), the person may give prior consent either orally or in writing.

[31] The disclosures required by this section are in addition to the disclosures required under § 310.3(a)(1) of the proposed rule, which must be made before any payment is requested for goods or services.

[32] These disclosures include the total costs, terms, and material restrictions, limitations, or conditions of receiving any goods or services, the quantity of any goods or services, and all material terms and conditions of the seller's refund, cancellation, exchange, or repurchase policies.

[33] If a purchase or payment were required in a prize promotion that by definition involves a game of chance, that promotion would be an illegal lottery. See 18 U.S.C. 1301.

[34] Misrepresenting the retail sales price would be a violation of § 310.3(a)(2)(xxiv) of the proposed rule because such information is required to be disclosed under the rule.

seller has received from the person a written disclosure acknowledgement; and (10) the statement: ''I have read and understand this disclosure.'' This final statement must be in at least 12-point bold face type, immediately preceding a signature block.

For investment opportunities, the following information must be included in the written disclosure: (1) The seller's legal name and telephone number, and the complete street address of the seller's principal place of business; (2) if the seller has been in operation under any other name(s), each such name and the length of time the seller operated under that name; (3) the complete cost to make the investment and a detailed list of all present charges and any anticipated future charges; (4) a description of all known risks associated with the investment opportunity, including the possibility that additional payments might be required for a person purchasing the investment opportunity to retain that person's interest in the investment opportunity, to realize the projected or stated returns of the investment opportunity, to prevent total loss of the investment opportunity, or for any other reason; (5) the length of time the seller has been in business and has offered the particular investment opportunity; (6) a statement disclosing whether or not the seller is licensed and, if so, with whom, the type of license, and the length of time the seller has held such license; (7) a statement that it is a violation of this rule for the seller to effect an investment transaction unless the seller has received from the person a written disclosure acknowledgement; and (8) the statement: ''I have read and understand this disclosure.'' This final statement must be in at least 12-point bold face type, immediately preceding a signature block.

Additional written disclosures, provided in duplicate, are required for certain types of investment opportunities. If a seller or telemarketer offers for sale any investment opportunity involving tangible assets, § 310.4(e)(2)(ii) of the proposed rule requires the following additional information to be included in the written investment disclosure: (1) The percentage markup that the seller places on the item above its own cost in acquiring the item; and (2) an estimate of the value that persons would be likely to receive if they were to liquidate the asset through a market sale immediately following the purchase. The proposed rule makes clear that all such estimates must be substantiated by competent and reliable evidence.

If sellers or telemarketers offer for sale any investment opportunity involving tangible assets sold on credit or leverage, they must include in the written disclosure all of the information set forth in §§ 310.4(e)(2)(i) and (ii) of the proposed rule, as well as the following: (1) The percentage of a person's down payment that would be devoted to fees and costs by the end of the first six months after the investment is made; (2) the percentage of a person's down payment that would be devoted to fees and costs by the end of the first year after the investment is made; and (3) a statement that all such investment opportunities are extremely risky.

Finally, if a seller or telemarketer offers for sale any investment opportunity involving the acquisition of government-issued licenses or interests in businesses derived from the possession of such licenses, the following additional information must be included in the written disclosure set forth in § 310.4(e)(2)(i) of the proposed rule: (1) All material terms and limitations of any government-issued license(s) that serve as the basis for the investment opportunity, including whether and to whom the license or licenses have been issued; (2) the percentage of the person's payment that will be used to acquire any applicable license(s) from the licensee(s) or from any person or entity not affiliated in any way with the seller; and (3) the percentage of the person's payment that will be used to capitalize any business derived from such license(s).

6. Distribution of Lists

The final abusive practice set forth in § 310.4 of the proposed rule involves the distribution of lists of customer contacts. Section 310.4(f) states that it is an abusive telemarketing act or practice, and a violation of the rule, for any person, subject to any federal court order resolving a case in which the complaint alleged a violation of § 310.3, 310.4(a), or 310.4(e) of this rule,[35] and the court did not dismiss or strike all such allegations from the case, to sell, rent, publish, or distribute any list of customer contacts from that person. In other words, any such person will be prohibited from circulating its customer contact lists in any fashion.

[35] The enumerated sections cover all of the prohibited deceptive telemarketing acts or practices, the eight general abusive telemarketing acts or practices, and the written disclosures and acknowledgements required for prize promotions and investment opportunities.

Section 310.5 Recordkeeping Requirements

Section 310.5 of the proposed rule requires any seller or telemarketer to keep, for 24 months from the date the record is produced, certain records relating to its telemarketing activities. Failure to keep those records shall be considered a violation of the rule. The seller and its telemarketer are not required to keep duplicative records, if they have entered into a written agreement allocating responsibility for the recordkeeping requirements of the proposed rule. The terms of any such agreement shall govern, unless those terms are unclear as to whom must maintain any required records. In that case, the responsibility for recordkeeping shall fall on the seller.

Section 310.5(c) of the proposed rule sets forth the parties responsible for maintaining records at the end of, or after a change in ownership of, the seller's or telemarketer's business. In the event of dissolution or termination of such business, the principal of the seller or telemarketer is required to maintain these records. On the other hand, in the event of any sale, assignment, succession, or other change in ownership of the seller's or telemarketer's business, the successor business is required to maintain the records.

Section 310.6 Exemptions

Certain acts or practices are exempt from the proposed rule. The first exemption, set forth in § 301.6(a), is for incidental telemarketing sales—that is, sales by any person who engages in fewer than ten sales each year through the use of the telephone. Second, telephonic contacts between businesses also are exempt, except for such contacts that involve the sale of office or cleaning supplies, or the inducement of payment for any charitable service promoted in conjunction with (1) an offer of a prize, (2) a chance to win a prize, or (3) the opportunity to purchase any goods or services. Finally, on § 310.6(c) of the proposed rule exempts any telephonic contact made solely by a person, when there has been no initial sales contact directed to that particular person, by telephone or otherwise, from the seller or telemarketer. However, this exemption does not apply to calls regarding employment services where the seller or telemarketer requests or receives payment prior to providing the promised services, business ventures, investment opportunities, prize promotions, or credit-related programs.

Given the definition of ''telemarketing'' in § 310.2(v) and the

exemptions set forth in this section, the proposed rule covers all outbound telephone calls intended to induce payment for goods or services, except for calls made by a person who engages in fewer than ten telephone sales each year, or for telephonic contacts made from one business to another that do not involve the sale of office or cleaning supplies or certain charitable solicitations. The only inbound telemarketing calls covered are those received from a person who is responding to an initial communication, other than a catalog, from the seller or telemarketer that was directed to that particular person. In addition, all inbound telemarketing calls related to business ventures, investment opportunities, prize promotions, or credit-related programs are covered.

Section 310.7 Actions by States and Private Persons

The Telemarketing Act permits certain State officials and private persons to bring civil actions in an appropriate Federal district court for violations of this rule.[36] Section 310.7 of the proposed rule sets forth the notice such parties must provide to the Commission concerning those actions. Such parties must serve written notice of its action on the Commission, if feasible, prior to initiating an action under this rule. The notice must include a copy of the complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the State official or private person must serve the Commission with the required notice immediately upon instituting its action.

Section 310.8 Federal Preemption

Section 310.8 of the proposed rule states that nothing in the rule shall be construed to preempt any State law that is not in direct conflict with any provision of the rule. Thus, State statutes concerning telemarketing that contain prohibitions or requirements that are not imposed by this rule would remain in effect, as long as those statutes do not conflict with this rule.

Section 310.9 Severability

Section 310.9 of the proposed rule sets forth the Commission's intent that the provisions of this rule be separate and severable from one another. Thus, if any provision is stayed or determined to be invalid, the remaining provisions shall continue in effect.

Section C. Invitation to Comment

Before adopting this proposed rule as final, consideration will be given to any written comments submitted to the Secretary of the Commission on or before March 31, 1995. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and Commission regulations, on normal business days between the hours of 8:30 a.m. and 5 p.m. at the Public Reference Section, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

Section D. Public Workshop-Conference

The FTC staff will conduct a Public Workshop-Conference to discuss written comments received in response to the Notice of Proposed Rulemaking. The purpose of the conference is to afford Commission staff and interested parties a further opportunity to openly discuss and explore issues raised in the rulemaking proceeding, and, in particular, to examine publicly any areas of significant controversy or divergent opinions that are raised in the written comments. The conference is not intended to achieve a consensus opinion among participants or between participants and Commission staff with respect to any issue raised in the rulemaking proceeding. Commission staff will consider the views and suggestions made during the conference, in conjunction with the written comments, in formulating its final recommendation to the Commission concerning the proposed rule.

Commission staff will select a limited number of parties, from among those who submit written comments, to represent the significant interests affected by the proposed regulations. These parties will participate in an open discussion of the issues. It is contemplated that the selected parties might ask and answer questions based on their respective comments.

In addition, the conference will be open to the general public. Members of the general public who attend the conference may have an opportunity to make a brief oral statement presenting their views on issues raised in the rulemaking proceeding. Oral statements of views by members of the general public will be limited to a few minutes in length. The time allotted for these statements will be determined on the basis of the time allotted for discussion of the issues by the selected parties, as well as by the number of persons who wish to make statements.

Written submissions of views, or any other written or visual materials, will not be accepted during the conference. The discussion will be transcribed and the transcription placed on the public record.

To the extent possible, Commission staff will select parties to represent the following affected interests: Sellers; telemarketers; list providers; representatives of the credit card system; consumers; Federal, State and local law enforcement and regulatory authorities; and any other interests that Commission staff may identify and deem appropriate for representation.

Parties to represent the above-referenced interests will be selected on the basis of the following criteria:

1. The party submits a written comment during the 45-day comment period.
2. The party notifies Commission staff of its interest and authorization to represent an affected interest within 20 days of publication of the Notice of Proposed Rulemaking.
3. The party's participation would promote a balance of interests being represented at the conference.
4. The party's participation would promote the consideration and discussion of a variety of issues raised in the rulemaking proceeding.
5. The party has expertise in activities affected by the proposed regulations.
6. The party adequately reflects the views of the affected interest(s) which it purports to represent, not simply a single entity or firm within that interest.
7. The number of parties selected will not be so large as to inhibit effective discussion among them.

A neutral third-party facilitator will be retained for the conference. It will be held over the course of three consecutive days, on April 18–20, 1995. Parties interested in participating and authorized to represent an affected interest at the conference must notify Commission staff by March 6, 1995. Prior to the conference, parties selected to represent an affected interest will be provided with computer disks containing copies of the comments received in response to this notice.

Section E. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Commission Rule 1.26(b)(5), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral

[36] See 15 U.S.C. 6103 and 6104.

communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and are promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications. Oral communications from members of Congress shall be transcribed or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications.

Section F. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory analysis (5 U.S.C. 603, 604) are not applicable to this document because it is believed that these regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605).

The Telemarketing Act requires the Commission to issue regulations, not later than 365 days after the date of enactment, prohibiting deceptive telemarketing acts or practices and other abusive telemarketing acts or practices. The Act limits the scope of the regulations to entities that engage in telemarketing through one or more interstate telephone calls; telemarketing sales by local companies to local customers would most likely be intrastate calls and thus outside the parameters of the proposed rule. The Act also exempts certain catalog sales operations from the scope of the regulations. In addition, the proposed rule exempts incidental telemarketing sales, i.e., calls made by any person who engages in fewer than ten sales each year through the use of the telephone. The proposed rule also exempts certain contacts between businesses, and certain calls initiated by a person when there is no initial sales contact directed to that particular person from a seller or telemarketer.

As a result of these statutory and regulatory limitations, we believe that many small entities will fall outside the scope of the regulations. In addition, any economic costs imposed on small entities remaining within the parameters of the rule are, in many instances, specifically imposed by statute. Where they are not, efforts have been made to make the proposed rule's requirements flexible, in part to minimize any unforeseen burden on small entities, as described elsewhere in this notice.

To ensure that no substantial economic impact is being overlooked, public comment is requested on the effect of the proposed regulations on the costs to, profitability and competitiveness of, and employment in small entities. Subsequent to the receipt of public comments, it will be decided whether the preparation of a final regulatory flexibility analysis is warranted. Accordingly, based on available information, the Commission hereby certifies under the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the proposed regulations will not have a significant economic impact on a substantial number of small entities. This notice serves as certification to that effect for the purposes of the Small Business Administration.

Section G. Questions on the Proposed Rule

The Commission seeks comments on various aspects of the proposed rule. Without limiting the scope of issues it seeks comment on, the Commission is particularly interested in receiving comments on the questions that follow. Responses to these questions should be itemized according to the numbered questions in this Notice. In responding to these comments, include detailed, factual supporting information whenever possible.

Section 310.2 Definitions

1. The proposed rule defines the following terms for use in the prohibition on credit card laundering: ''acquirer,'' ''cardholder,'' ''credit card,'' ''credit card sales draft,'' ''credit card system,'' ''merchant,'' and ''merchant agreement.''

a. Are these definitions clear, meaningful, and appropriate?

b. Are there other approaches to defining these terms that would be more useful?

2. The proposed rule defines the term ''business venture.''

a. Is this definition clear, meaningful, and appropriate? What are the advantages and disadvantages of defining the term in this manner?

b. Is the definition as drafted sufficiently comprehensive to encompass the types of business ventures which have been, are, or may be sold through telemarketing?

c. Are there other approaches to defining the term ''business venture'' that would be more useful?

3. The proposed rule defines the term ''goods or services.''

a. Is this definition clear, meaningful, and appropriate? What are the advantages and disadvantages of defining the term in this manner?

b. Is the definition as drafted sufficiently comprehensive to encompass the types of products, services, or other offers which have been, are, or may be sold through telemarketing?

c. Are there other approaches for defining the term ''goods or services'' that would be more useful?

4. The proposed rule defines the term ''investment opportunity.''

a. Is this definition clear, meaningful, and appropriate? What are the advantages and disadvantages of defining the term in this manner?

b. Is the definition as drafted sufficiently comprehensive to encompass the types of investment opportunities which have been, are, or may be sold or traded through telemarketing?

c. Are there other approaches to defining the term ''investment opportunity'' that would be more useful?

5. The proposed rule defines the terms ''premium,'' ''prize,'' and ''prize promotion.''

a. Are these definitions clear, meaningful, and appropriate? Are the distinctions between a ''premium'' and a ''prize'' clear, meaningful, and appropriate? What are the advantages and disadvantages of defining these terms in this manner?

b. Are the definitions as drafted sufficiently comprehensive to encompass the types of premiums, prizes, and prize promotions which have been, are, or may be offered through telemarketing?

c. Are there other approaches to defining these terms that would be more useful?

6. The proposed rule defines the terms ''seller'' and ''telemarketer.''

a. Are these definitions clear, meaningful, and appropriate? Are the distinctions between a ''seller'' and a ''telemarketer'' clear, meaningful, and appropriate? What are the advantages and disadvantages of defining these terms in this manner?

b. Are there other approaches to defining these terms that would be more useful?

c. Since most of the provisions of the proposed rule apply to sellers and/or telemarketers, do these definitions reflect the appropriate scope of the rule?

7. The proposed rule states that the term ''telemarketing'' includes the use of a facsimile machine, computer

modem, or any other telephonic medium, as well as calls initiated by persons in response to postcards, brochures, advertisements, or any other printed, audio, video, cinematic, or electronic communications by or on behalf of the seller.

a. Is this definition clear, meaningful, and appropriate?

b. Is the definition of ''telemarketing'' sufficiently broad to encompass current as well as future technology?

c. Are there other approaches to defining the term ''telemarketing'' that would be more useful?

8. The proposed definition of ''telemarketing'' includes within the rule's coverage on-line information services which a person accesses by computer modem.

a. Is such coverage appropriate?

b. Is the proposed rule as drafted sufficiently comprehensive to regulate the types of plans, programs, or campaigns for the sale of goods or services that have been, are, or may be conducted through such computer information services?

9. The proposed definition of ''telemarketing'' tracks the Telemarketing Act in exempting catalog sales from coverage under the rule. One of the requirements of this exemption is that ''the person making the solicitation * * * only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation.'' The proposed rule states that the term ''further solicitation'' does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call.

a. Does the proposed rule sufficiently clarify the types of solicitation activities that are permitted in connection with catalog sales?

b. How much will the additional flexibility provided by this definition benefit catalog sellers? How will it affect law enforcement efforts to stop fraudulent or deceptive telemarketers?

10. The proposed rule defines the term ''verifiable retail sales price.''

a. Is this definition clear, meaningful, and appropriate?

b. Are there other approaches to defining this term that would be more useful?

Section 310.3 Deceptive Telemarketing Acts or Practices

11. Section 310.3(a) of the proposed rule sets forth certain conduct that will be considered a deceptive telemarketing act or practice and a violation of the rule, including the failure to make certain disclosures and the misrepresentation of certain information. Questions 13 through 18 seek comments on the particular types of acts and practices included in this Section of the proposed rule. Looking at § 310.3(a) as a whole:

a. Would it be appropriate to include in the final rule a general prohibition against material misrepresentations or the failure to disclose material information? What would be the advantages and disadvantages to this approach?

b. Are there other approaches to prohibiting deceptive telemarketing acts or practices that would be more useful to consumers? That would be more useful to law enforcement authorities? If so, how would these alternatives affect the burden the rule places on businesses forced to comply with it?

c. Are there other approaches to prohibiting deceptive telemarketing acts or practices that would reduce the burden imposed on legitimate businesses attempting to comply with the rule's requirements? If so, how would these alternatives affect the usefulness of the rule to consumers? To law enforcement authorities?

12. Section 310.3(a) of the proposed rule makes both the seller and the telemarketer equally liable for any deceptive telemarketing acts or practices.

a. Are there parts of this Section that should apply only to the seller or to the telemarketer? If so, what specific Sections should apply only to sellers? To telemarketers? Why are such limitations appropriate?

b. What are the benefits of making both sellers and telemarketers jointly liable for violations?

c. What additional costs or other burdens will the rule impose on sellers and/or telemarketers if the rule makes both liable for any violations of this Section? If the rule makes telemarketers jointly liable with sellers, will this reduce the ability of telemarketers to respond to the needs of their clients in a timely fashion?

d. If telemarketers are not jointly liable for deceptive practices of the sellers for whom they work, would some telemarketers simply seek to avoid knowledge of any questionable practices of the sellers from whom they work? Are there alternative ways to keep telemarketers from taking such an approach, without imposing full liability for all of the actions taken by their clients?

13. Section 310.3(a)(1) of the proposed rule requires that certain disclosures be made before payment is requested for any goods or services offered, and that the disclosures be made in the same manner and form as the payment request.

a. Are there other disclosures that should be required? Are any of the required disclosures unnecessary?

b. Is the description of the information to be disclosed clear, meaningful, and appropriate?

c. What are the current practices of sellers and telemarketers regarding such disclosures?

d. What costs will this disclosure requirement impose on legitimate businesses?

e. What are the advantages or disadvantages of requiring these disclosures before payment is requested? Is it more appropriate to require these disclosures at some other time?

14. As part of the prohibition against deceptive telemarketing acts or practices, § 310.3(a)(2) of the proposed rule prohibits specific misrepresentations in connection with telemarketing.

a. Are there other misrepresentations that should be included in the prohibited list? Are any of the prohibited misrepresentations unnecessary?

b. Is the description of the prohibited misrepresentations clear, meaningful, and appropriate?

c. How will this section benefit consumers or law enforcement efforts? What, if any, costs will this Section impose on legitimate businesses?

15. As part of the prohibition against deceptive telemarketing acts or practices, § 310.3(a)(3) of the proposed rule prohibits specific misrepresentations in connection with the offer, offer for sale, or sale of any business venture.

a. Are there other misrepresentations that should be included in the prohibited list? Are any of the prohibited misrepresentations unnecessary?

b. Is the description of the prohibited misrepresentations clear, meaningful, and appropriate?

c. How will this section benefit consumers or law enforcement efforts? What, if any, costs will this Section impose on legitimate businesses?

16. Section 310.3(a)(4) of the proposed rule prohibits obtaining or submitting a check, draft, or other form of negotiable paper for payment from a person's checking, savings, share, or similar account without that person's express written authorization.

a. Is this prohibition clear, meaningful, and appropriate?

b. What are the advantages or disadvantages of this prohibition?

c. Is the proposed prohibition sufficiently broad to encompass all forms by which a person's account could be debited in this manner for payment of goods or services?

d. What will be the economic impact on sellers and telemarketers of requiring express written authorization prior to debiting a person's account in this manner?

e. What are the current practices of entities regarding authorizations for debiting a person's checking, savings, share, or similar account?

17. Section 310.3(a)(5) of the proposed rule prohibits obtaining any amount of money from a person through any means unless the amount is expressly authorized by the person.

a. Is this prohibition clear, meaningful, and appropriate?

b. What are the advantages or disadvantages of this prohibition?

c. Is the proposed prohibition sufficiently broad to encompass all forms by which a seller or telemarketer could obtain unauthorized amounts of money?

18. Under § 310.3(b)(1) of the proposed rule, it would be a deceptive telemarketing act or practice for any person to provide substantial assistance or support to any seller or telemarketer when that person knows or should know that the seller or telemarketer is engaged in any act or practice that violates the rule.

a. What are the advantages or disadvantages to providing such a general prohibition against ''assisting and facilitating?''

b. Is this general prohibition against ''assisting and facilitating'' clear, meaningful, and appropriate?

c. Are there other approaches to prohibiting ''assisting and facilitating'' that would be more useful to consumers? That would be more useful to law enforcement authorities? If so, how would these alternatives affect the burden the rule places on businesses forced to comply with it?

d. Are there other approaches to prohibiting ''assisting and facilitating'' that would reduce the burden imposed on legitimate businesses attempting to comply with the rule's requirements? If so, how would these alternatives affect the usefulness of the rule to consumers? To law enforcement authorities?

19. Section 310.3(b)(2) of the proposed rule lists specific acts or practices that provide substantial assistance or support to telemarketing.

a. Is it appropriate to single out the acts and practices listed in this section?

b. Are there other acts or practices which should be included in this section?

c. Is the description of the listed acts or practices clear, meaningful, and appropriate?

20. Under § 310.3(c) of the proposed rule, certain acts or practices that constitute ''credit card laundering'' will be considered deceptive and a violation of the rule.

a. Is the description of prohibited acts or practices clear, meaningful, and appropriate?

b. What are the advantages or disadvantages of this provision?

c. Is the proposed prohibition sufficiently comprehensive to encompass all forms of credit card laundering which have been, are, or may be used in connection with telemarketing?

d. Are there other approaches to prohibiting credit card laundering that would be more useful to consumers? To law enforcement authorities? If so, how would these alternatives affect the burden the rule places on businesses required to comply with it?

e. Are there other approaches to prohibiting credit card laundering that would reduce the burden imposed on legitimate businesses attempting to comply with the rule's requirements? If so, how would these alternatives affect the usefulness of the rule to consumers? To law enforcement authorities?

f. Will the regulations against credit card laundering interfere with current practices of legitimate businesses?

Section 310.4 Abusive Acts or Practices

21. Section 310.4(a) of the proposed rule lists specific activities that will be considered to be abusive telemarketing acts or practices and a violation of the Telemarketing Sales Rule. Is there other conduct that should be included in § 310.4(a)?

22. Section 310.4(a) of the proposed rule makes both the seller and the telemarketer equally liable for engaging in the listed abusive telemarketing acts or practices.

a. Are there parts of this Section that should apply only to the seller or to the telemarketer? If so, what specific sections should apply only to sellers? To telemarketers? Why are such limitations appropriate?

b. What are the benefits of making both sellers and telemarketers jointly liable for violations?

c. What additional costs or other burdens will the rule impose on sellers and/or telemarketers if the rule makes both liable for any violations of this Section? If the rule makes sellers and telemarketers jointly liable, will this reduce the ability of telemarketers to respond to the needs of their clients in a timely fashion?

d. If telemarketers are not jointly liable for abusive practices of the sellers for whom they work, would some telemarketers simply seek to avoid knowledge of any questionable practices of the sellers from whom they work? Are there alternative ways to keep telemarketers from taking such an approach, without imposing full liability for all of the actions taken by their clients?

23. Section 310.4(a)(1) of the proposed rule prohibits any seller or telemarketer from engaging in threats or intimidation.

a. Is it appropriate to include this practice as an abusive act or practice?

b. Is the description of the prohibited activity clear, meaningful, and appropriate?

c. Are there other approaches to prohibiting this type of activity?

d. Do the terms ''threats'' and ''intimidation'' need additional definition in order to specify the type of behavior that would violate the rule, or are the terms self-explanatory?

24. Section 310.4(a)(2) prohibits a seller or telemarketer from providing for or directing a courier to pick up payment from a customer.

a. Is it appropriate to include this practice as an abusive act or practice?

b. Is the description of the prohibited activity clear, meaningful, and appropriate?

c. Are there other approaches to prohibiting this type of activity?

d. What will be the economic impact, and the costs and benefits, of this provision?

e. Do legitimate telemarketers use couriers to pick up payments? If so, in what circumstances? How would these businesses be affected if they could not use couriers to pick up payments?

f. Will a prohibition on courier pick-ups be effective in reducing the consumer injury that results from telemarketing fraud? How will a fraudulent telemarketer adjust his or her practices in response to this prohibition?

25. Section 310.4(a)(3) of the proposed rule prohibits requesting or receiving payment of any fee or consideration for ''credit repair'' goods or services until the time frame in which the seller has represented the goods or services will be provided has expired and the seller has provided documentation that the promised results have been achieved.

a. Is it appropriate to include this practice as an abusive act or practice?

b. Is the description of the prohibited activity clear, meaningful, and appropriate?

c. Are there other approaches to prohibiting this type of activity?

d. What will be the economic impact, and the costs and benefits, of this provision?

e. Are there any legitimate services that could not be provided, or would be more costly to provide, if this prohibition were promulgated? If such services exist, how could the rule be crafted to prohibit deceptive credit repair services while still permitting these legitimate activities?

26. Section 310.4(a)(4) of the proposed rule prohibits requesting or receiving payment of any fee or consideration for goods or services represented to recover or otherwise assist in the return of money or any other item of value to a person until three days after such money or other item is delivered to that person. This provision does not apply to a licensed attorney or licensed private investigator who has a written agreement with that person.

a. Is it appropriate to include this practice as an abusive act or practice?

b. Is the description of the prohibited activity clear, meaningful, and appropriate?

c. Are there other approaches to prohibiting this type of activity?

d. What will be the economic impact, and the costs and benefits, of this provision?

e. Are there any legitimate services that could not be provided, or would be more costly to provide, if this prohibition were promulgated? If such services exist, how could the rule be crafted to prohibit deceptive recovery services while still permitting these legitimate activities?

f. Is it necessary, useful, and appropriate to exempt licensed attorneys and licensed private investigators from this provision?

g. Does this prohibition impact on legitimate businesses other than licensed attorneys or licensed private investigators?

27. Section 310.4(a)(5) of the proposed rule prohibits requesting or receiving payment of any fee or consideration in advance of obtaining a loan or any credit service when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or credit service for a person.

a. Is it appropriate to include this practice as an abusive act or practice?

b. Is the description of the prohibited activity clear, meaningful, and appropriate?

c. Are there other approaches to prohibiting this type of activity?

d. What will be the economic impact, and the costs and benefits, of this provision?

e. Are there any legitimate services that could not be provided, or would be more costly to provide, if this prohibition were promulgated? If such services exist, how could the rule be crafted to prohibit deceptive advance-fee loan schemes while still permitting these legitimate activities?

28. Section 310.4(a)(6) of the proposed rule prohibits failing to distribute all prizes or purported prizes offered in a telemarketing prize promotion within 18 months of the initial offer to any person.

a. Is it appropriate to include this practice as an abusive act or practice?

b. Is the description of the prohibited activity clear, meaningful, and appropriate?

c. Are there other approaches to prohibiting this type of activity?

d. What will be the economic impact, and the costs and benefits, of this provision?

e. What are the current practices of sellers or telemarketers regarding the time frame within which prizes are distributed in telemarketing prize promotions?

f. Is 18 months an appropriate period of time in which to require that all prizes or purported prizes be distributed?

29. Section 310.4(a)(7) of the proposed rule prohibits offering or selling goods or services through a telephone solicitation to a person who previously has paid the same seller for goods or services, until all terms and conditions of the initial transaction have been fulfilled, including the distribution of all prizes and premiums offered in conjunction with the initial transaction.

a. Is it appropriate to include this practice as an abusive act or practice?

b. Is the description of the prohibited activity clear, meaningful, and appropriate?

c. Are there other approaches to prohibiting this type of activity?

d. What will be the economic impact, and the costs and benefits, of this provision?

e. What are the current practices of sellers and telemarketers regarding making additional telephone solicitations before fulfilling the terms and conditions of the initial sales transaction?

f. Are there telemarketing activities for which this prohibition would not be feasible?

30. Section 310.4(a)(8) of the proposed rule prohibits identifying a person as a reference for a business venture unless certain requirements are met.

a. Is it appropriate to include this practice as an abusive act or practice?

b. Are the descriptions of the prohibited activity and of the stated requirements clear, meaningful, and appropriate?

c. Are there other approaches to prohibiting this type of activity?

d. What will be the economic impact, and the costs and benefits, of this provision?

e. What are the current practices of telemarketers regarding the use of references in the telemarketing of business ventures?

31. Section 310.4(b)(1) of the proposed rule prohibits more than one telephone solicitation in any three-month period to a person's residence to offer, offer for sale, or sell the same or similar goods or services on behalf of the same seller, without the person's prior consent. The requirement does not apply to calls made solely to verify previous sales or attempted calls which do not reach a person. This Section also would prohibit calling a person's residence when that person has stated that he or she does not wish to receive further telephone solicitations made by or on behalf of the seller.

a. Are the descriptions of the prohibited activities clear, meaningful, and appropriate?

b. Are there other approaches to prohibiting this type of activity?

c. Should these prohibitions be extended to business-to-business calls?

d. What will be the economic impact, and the costs and benefits, of prohibiting more than one telephone solicitation within any three-month period? Is a three-month period of time appropriate?

e. What will be the economic impact, and the costs and benefits, of prohibiting further calls after a person has asked not to receive telephone solicitations by or on behalf of the seller?

f. What are the current practices of sellers and telemarketers regarding the number of calls to a person's residence within a specified period of time for the same or similar goods or services on behalf of the same seller?

g. What are the current practices of sellers and telemarketers regarding identifying those persons who do not wish to receive further telephone solicitations by or on behalf of the seller?

32. Section 310.4(b)(2) of the proposed rule sets forth certain actions that a seller or telemarketer can take that would provide a defense against liability for violating §§ 310.4(b)(1).

a. Is it appropriate to provide a defense against potential liability with regard to these activities?

b. Is it appropriate to limit this defense to one erroneous call per person called in any calendar year?

c. Are there other requirements which should be included in the list of practices which provide a defense against potential liability? Are any of the activities required by the proposed rule inappropriate?

d. Is the description of the requirements to avoid liability clear, meaningful, and appropriate?

e. Are there other approaches to providing a defense for potential liability that would be more useful?

f. What will be the economic impact, and the costs and benefits, of taking the actions set forth in § 310.4(b)(2)?

g. What are the current practices of sellers or telemarketers with respect to the activities set forth in § 310.4(b)(2)?

33. Section 310.4(c) of the proposed rule prohibits telephone solicitations to a person's residence at any time other than between the hours of 8 a.m. and 9 p.m. local time at the called person's location, without the prior consent of the person being called.

a. Is the description of the prohibited activity clear, meaningful, and appropriate?

b. What will be the economic impact, and the costs and benefits, of this provision?

c. What are the current practices of telemarketers regarding the times during which telephone solicitations are made to residences?

d. Should the period when telephone solicitations are permitted be narrowed or expanded? Why or why not?

e. Should this prohibition be extended to contacts between businesses?

34. Section 310.4(d)(1) of the proposed rule requires that certain oral disclosures be made at the beginning of all telephone solicitations.

a. Are the descriptions of the required disclosures clear, meaningful, and appropriate?

b. Are there other oral disclosures that should be required? Are any of the required disclosures unnecessary?

c. What will be the economic impact of requiring these disclosures at the beginning of the telephone solicitation? If these disclosures are not required at the beginning of the telephone solicitation, when should they be required? What are the advantages or disadvantages of this alternative?

d. Are the disclosure requirements for those engaged in charitable solicitations necessary? Will these disclosure requirements provide useful information to consumers? If so, how will this information be useful to consumers? What impact will these disclosure requirements have on professional fundraisers? What impact will these disclosure requirements have on charities that use these professional fundraisers?

e. Do telemarketers currently make the disclosures required by § 310.4(d)(1)? Why or why not?

f. The proposed rule would prohibit the use of aliases by persons making telephone solicitations. Is this appropriate? What are the costs and benefits of prohibiting the use of aliases? Is there an alternative approach that would permit the use of aliases while still ensuring that consumers and law enforcement authorities could identify a particular caller? What are the costs and benefits of such an alternative?

35. Section 310.4(d)(2) of the proposed rule requires that certain oral disclosures be made whenever a caller verifies a telemarketing sale.

a. Are the descriptions of the required disclosures clear, meaningful, and appropriate?

b. Are there other oral disclosures that should be required? Are any of the required disclosures unnecessary?

c. What will be the economic impact of requiring these disclosures in any verification call?

d. Do telemarketers currently make the disclosures required by § 310.4(d)(2)? Why or why not?

36. Sections 310.4(d)(3) and (4) of the proposed rule require additional disclosures where telemarketing includes a prize promotion or an offer of a premium.

a. Is it appropriate to classify the failure to make these additional disclosures as an abusive act or practice?

b. Are the descriptions of the required disclosures clear, meaningful, and appropriate?

c. Are there other oral disclosures that should be required? Are any of the required disclosures unnecessary?

d. What will be the economic impact of requiring these additional oral disclosures? Will these additional oral disclosures help consumers protect themselves from fraudulent or deceptive telemarketers?

e. Is it appropriate to require that these disclosures be made both orally and in writing, as is required by § 310.4(e)(1), or would it be sufficient to permit either an oral or a written disclosure alone? How would the economic costs of this Section be affected if the latter approach were adopted?

f. What are the current practices of telemarketers regarding the disclosure of the information required by §§ 310.4(d)(3) and (4)?

37. In addition to the oral disclosures required during telephone solicitations, § 310.4(e) of the proposed rule requires that written disclosures be provided in duplicate in connection with telemarketing involving a prize promotion or the offer for sale of any investment opportunity.

a. What are the advantages and disadvantages of these required disclosures? Are written disclosures appropriate or necessary?

b. Is it appropriate to include a failure to make these disclosures as an abusive act or practice?

c. Are the descriptions of the required disclosures, their timing, size, and other requirements clear, meaningful, and appropriate?

d. Are there other written disclosures that should be required? Are any of the required written disclosures unnecessary?

e. Are there any forms of prize promotions or investment opportunities for which the disclosures would not be feasible?

f. Section 310.4(e) specifies the size of the disclosures, what else can be included in the envelope with the disclosure, and, for prize promotions, what may appear on the face of the envelope. Are these specifications necessary to ensure the clarity of the disclosures and to ensure that consumers pay attention to them, or would a more general standard (e.g., clear and conspicuous) be equally or more effective? How would the costs of complying with the requirements of this Section be affected if the more general standard were employed?

g. Section 310.4(e)(2)(iii) of the proposed rule requires, for the sale of any investment opportunity involving tangible assets sold on credit or leverage, the written disclosure of the percentage of the purchaser's down payment that would be devoted to fees and costs by the end of both the first six months and the first year after the investment is made. Are these time frames useful and appropriate? Would it be better not to have a time frame in this disclosure requirement?

h. What will be the economic impact, and the costs and benefits, of requiring these disclosures? Of requiring a written acknowledgement prior to payment?

i. What are the current practices of telemarketers regarding the disclosures required in § 310.4(e)? Regarding written acknowledgement prior to payment?

j. What will be the economic impact, and the costs and benefits, of requiring that the written disclosures be provided in duplicate? Will this requirement ensure that consumers retain a copy of the required disclosure, or are there other approaches to achieve this goal? What are the costs and benefits of these alternative approaches?

k. How many telemarketing campaigns per year will be required to comply with the written disclosure requirements? How many prize promotions per year are conducted as part of telemarketing campaigns? How many people participate in the average prize promotion conducted via telemarketing?

l. How many telemarketing campaigns per year involve sales of investment goods? What particular investment goods are sold via telemarketing by legitimate sellers? On average, how many people buy investments as a result of a telemarketing campaign?

38. Section 310.4(f) of the proposed rule prohibits any person who is subject to any federal court order resolving a case in which the complaint alleged a violation of certain sections of the rule, and the court did not dismiss or strike all such allegations from the case, to sell, rent, publish, or distribute any list of customer contacts from that person.

a. Is this prohibition appropriate? Is the description of the prohibited activities clear, meaningful, and appropriate?

b. What will be the economic impact, and the costs and benefits, of prohibiting the sale of lists by such persons?

c. What are the current practices of telemarketers regarding the sale of lists? Specifically, under what circumstances do sellers or telemarketers sell or otherwise distribute lists to others?

d. What would be the effect if this prohibition only applied for a certain period of time after the court order was entered? How would this limitation hinder law enforcement efforts? What would be an appropriate period of time following the entry of an order to prohibit list sales?

e. Should this prohibition extend to a broader class of rule violations than that currently proposed? A narrower class?

39. In addition to or in lieu of some of the provisions in § 310.4 of the proposed rule, would it be more appropriate that telemarketing sales be subject to a cooling-off rule, or a period of time in which the purchaser can cancel a transaction? How would such a rule be structured? Should all telemarketing sales be subject to such a rule? What is an appropriate ''cooling-off'' time period? Should payment be permitted at the time of sale, or should payment be prohibited until the end of the cooling-off period? Would it be more appropriate to impose a mandatory right to a refund in all telemarketing sales? How long of a period would be appropriate for consumers to examine a product before returning it?

Section 310.5 Recordkeeping Requirements

40. Section 310.5(a) of the proposed rule requires sellers or telemarketers to keep certain records relating to their telemarketing activities for a period of 24 months from the date the record is produced.

a. Are the specified records appropriate to verify compliance with the rule? Are any of the required records unnecessary to verify compliance with the rule? Should any additional records be required? Specifically, should sellers and telemarketers keep copies of any consumer complaints they receive? How burdensome would it be to maintain such complaints? How many consumer complaints will the average legitimate firm have involving its telemarketing sales?

b. Is the 24-month record retention period appropriate? Why or why not? If not, what period is appropriate?

c. Are there other approaches to recordkeeping requirements that would be more useful?

d. What are the current record retention policies and practices of sellers and telemarketers with respect to the records listed in § 310.5? Specifically, what records, required to be maintained by § 310.5(a), currently are maintained by sellers or telemarketers? How long are they maintained?

e. What will be the economic impact, and the costs and benefits, of these recordkeeping requirements?

f. If the records listed are not required to be retained, how would rule compliance be verified?

g. What has been the experience of State and local law enforcement agencies with respect to record retention requirements? Have such requirements been useful? If yes, how? If no, why not? What types of enforcement issues could arise if recordkeeping were not required?

h. What volume of records will have to be maintained to comply with the requirements of § 310.5(a)? In particular, how many telemarketing campaigns will the average firm conduct on an annual basis? How many different scripts are used during an average campaign? How many consumers are called during an average telemarketing campaign, and what percentage of the persons called agree to buy goods or services? How many employee records will have to be maintained by the average firm engaged in telemarketing?

41. Under Section 310.5(b) of the proposed rule, a seller and a telemarketer calling on behalf of that seller need not keep duplicative records, but can enter into a written agreement allocating recordkeeping responsibilities between themselves. Section 310.5(c) of the proposed rule sets forth the recordkeeping requirements in the event of the dissolution, termination, or change in ownership of a seller or telemarketer.

a. Are these provisions clear, meaningful, and appropriate?

b. What are the advantages or disadvantages to these provisions?

c. What are the current practices of sellers and telemarketers regarding the distribution of responsibility for maintaining records? Regarding the maintenance of records in the event of the dissolution, termination, or change in ownership of a seller or telemarketer?

Section 310.6 Exemptions

42. The proposed rule exempts the solicitation of sales by any person who engages in fewer than ten telephone sales per year.

a. Is this proposed exemption clear, meaningful, and appropriate?

b. Is the scope of the proposed rule sufficiently limited to exempt those persons who do not regularly engage in telemarketing?

c. Are there other approaches to limiting the scope of the rule that would be more useful?

d. Does this exemption pose problems for law enforcement efforts to stop deceptive or abusive telemarketing acts or practices?

43. The proposed rule also exempts telephonic contacts between businesses, except such contacts involving the sale of office or cleaning supplies or certain charitable solicitations.

a. Is this proposed exemption clear, meaningful, and appropriate?

b. Are there other types of goods or services sold in business-to-business contacts which should not be exempted from the rule?

c. Are there other approaches to limiting the scope of the rule that would be more useful?

d. Does this exemption pose problems for law enforcement efforts to stop deceptive or abusive telemarketing acts or practices?

44. Finally, the proposed rule exempts a telephonic contact made solely by a person when there has been no initial sales contact directed to that particular person by the seller or

telemarketer, except for such contacts related to certain employment services, business ventures, investment opportunities, prize promotions, or credit-related programs.

a. Is this proposed exemption clear, meaningful, and appropriate?

b. Is the scope of the proposed rule sufficiently limited to exempt businesses, such as restaurants, car rental companies, travel agents, and providers of services, such as plumbers, that rely on the telephone for the taking of orders or the scheduling of appointments?

c. Is it appropriate to exclude from this exemption contacts related to employment services, business ventures, investment opportunities, prize promotions, or credit-related programs? Are there other types of goods or services sold through these types of contacts that should not be exempted from the rule?

d. Is this exemption appropriate for on-line computer information services? How would this exemption affect advertising on computer bulletin boards? Is it more appropriate to include all contacts made over computer information services in the rule?

e. Are there other approaches to limiting the scope of the rule that would be more useful?

f. Does this exemption pose problems for law enforcement efforts to stop deceptive or abusive telemarketing?

45. Are there other telemarketing activities, such as the sale of particular products or other particular kinds of telemarketing, currently covered by the proposed rule but which should be exempted? How would the exemption of these firms or activities affect the ability of law enforcement to stop deceptive or abusive telemarketing acts or practices? How would such exemptions affect consumers? How would they benefit the firms exempted from the rule's coverage? How many firms would be exempted from the coverage of the rule if any proposed change were adopted?

46. How many firms in the United States sell their products, either in whole or in part, through telemarketing, as that term is defined in the proposed rule? How many of these firms engage in telemarketing on their own behalf? How many employ others to engage in telemarketing for them? How would the number of firms subject to the rule be changed if one or more of the exemptions in § 310.6 were eliminated?

Section 310.8 Federal Preemption

47. Under § 310.8 of the proposed rule, State laws are preempted only when they are in direct conflict with any provision of the rule. Is this preemption standard clear, meaningful, and appropriate?

Other

48. Is it appropriate for the proposed rule to take effect 30 days after its date of publication in the **Federal Register**?

a. Would 30 days be sufficient time to come into compliance with the rule? Why or why not?

b. For which specific provisions of the rule would compliance be possible within 30 days, and for which specific provisions would compliance take longer? Would a staggered effective date be more appropriate?

c. If 30 days is an insufficient period of time, what time period would be sufficient?

49. One of the findings which led Congress to pass the Telemarketing Act was that telemarketing differs from other sales activities because it can be carried out across State lines without direct, face-to-face contact with the consumer. Are there new types of technology by which sales can be made without direct contact between the buyer and seller? Is the proposed rule broad enough to encompass such forms of technology? Will the proposed rule requirements be appropriate and/or feasible for such other technology?

50. What kinds of technological changes may be anticipated in the area of telemarketing? Will the proposed rule requirements be appropriate and/or feasible after these technological changes are implemented?

51. As already noted in Section F, comment is invited on the effect of the proposed rule with regard to costs, profitability, competitiveness, and employment of small business entities.

52. To the extent not otherwise addressed by the questions above, are there any regulatory alternatives that would reduce any adverse economic impact of the proposed rule, yet fully implement the Telemarketing Act?

53. What are the aggregate costs and benefits of the proposed rule? Are there any provisions in the proposed rule that are not necessary to implement the statute or that impose costs not outweighed by benefits? Who will benefit and who will bear the cost? Can we expect either the costs or benefits of the rule to dissipate over time?

54. Does the proposed rule overlap or conflict with other Federal, State, or local government laws or regulations?

List of Subjects in 16 CFR Part 310

Telemarketing, Trade practices.

Accordingly, it is proposed that chapter I of 16 CFR be amended by adding a new part 310 to read as follows:

PART 310—TELEMARKETING SALES RULE

Sec.

310.1 Scope of regulations in this part.
310.2 Definitions.
310.3 Deceptive telemarketing acts or practices.
310.4 Abusive telemarketing acts or practices.
310.5 Recordkeeping requirements.
310.6 Exemptions.
310.7 Actions by states and private persons.
310.8 Federal preemption.
310.9 Severability.

Authority: 15 U.S.C. 6101–6108.

§ 310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101–6108).

§ 310.2 Definitions.

(a) *Acquirer* means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

(b) *Attorney General* means the chief legal officer of a State.

(c) *Business venture* means any written or oral business arrangement, however denominated, including but not limited to a ''franchise,'' as that term is defined in the ''Franchise Rule,'' 16 CFR 436.2(a), which consists of the payment of any consideration for:

(1) The right or means to offer, sell, or distribute goods or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and

(2) The promise of more than nominal assistance to any person or entity in connection with or incidental to the establishment, maintenance, or operation of a new business or the entry by an existing business into a new line or type of business.

The term ''business venture'' does not include any business arrangement in which persons acquire, or purportedly acquire, government-issued licenses or interests in one or more businesses derived from the possession of such licenses.

(d) *Cardholder* means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(e) *Commission* means the Federal Trade Commission.

(f) *Credit card* means any instrument or device, whether known as a credit

card, credit plate, bank service card, banking card, check guarantee card, charge card, or debit card, or by any other name, issued with or without a fee for the use of the cardholder in obtaining money, goods, services, or anything else of value.

(g) *Credit card sales draft* means any record or evidence of a credit card transaction, including but not limited to any paper, sales record, instrument, or other writing, or any electronic or magnetic transmission or record.

(h) *Credit card system* means any method or procedure used to generate, transmit, or process for payment a credit card sales draft.

(i) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing.

(j) *Goods or services* means any goods or services, including but not limited to: Any investment opportunity; any business venture; any certificate or coupon which may be later exchanged for a product or service; any membership; any license right; any timeshare or campground interest; any offer to list a timeshare or campground interest for sale; any real property interest; any offer to improve a person's credit record, history, rating, or to obtain an extension of credit; any charitable service promoted in conjunction with an offer of a prize, chance to win a prize, or the opportunity to purchase any other goods or services; any service promoted by an employment agency; any multi-level marketing service; and any offer of advice or assistance to a person.

(k) *Investment opportunity* means anything, tangible or intangible, excluding a business venture, that is offered, offered for sale, sold, or traded (1) to be held, wholly or in part, for purposes of profit or income; or (2) based wholly or in part on representations, either express or implied, about past, present or future income, profit, or appreciation. The term ''investment opportunity'' includes, but is not limited to, any business arrangement where persons acquire, or purportedly acquire, government-issued licenses or interests in one or more businesses derived from the possession of such licenses.

(l) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services.

(m) *Merchant* means a person who is authorized under a written contract with an acquirer to honor or accept, transmit, or process credit cards in payment for goods or services.

(n) *Merchant agreement* means a written contract between a merchant and an acquirer authorizing the merchant to honor or accept, transmit, or process credit cards in payment for goods or services.

(o) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(p) *Premium* means anything offered or given, independent of chance, to customers as an incentive to purchase goods or services offered through telemarketing.

(q) *Prize* means anything offered, or purportedly offered, to a person at no cost and with no obligation to purchase goods or services and given, or purportedly given, by chance.

(r) *Prize promotion* means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(s) *Seller* means any person who, in connection with telemarketing, provides or offers to provide goods or services in exchange for consideration or a donation.

(t) *State* means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(u) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives a telephonic communication from a customer.

(v) *Telemarketing* means a plan, program, or campaign which is conducted to induce payment for goods or services by use of one or more telephones (including the use of a facsimile machine, computer modem, or any other telephonic medium) and which involves more than one interstate telephone call or connection. The term includes, but is not limited to, calls initiated by persons in response to postcards, brochures, advertisements, or any other printed, audio, video, cinematic or electronic communications by or on behalf of the seller. The term does not include the solicitation of sales through the mailing of a catalog which: Contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term ''further solicitation'' does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call.

(w) *Telephone solicitation* means the initiation of a telephone call by a telemarketer to induce payment for goods or services.

(x) *Verifiable retail sales price* means the actual, bona fide price at which one or more retailers, in the area of the seller's principal place of business, has made a substantial number of sales, which the seller has documented.

§ 310.3 Deceptive telemarketing acts or practices.

(a) Prohibited deceptive telemarketing acts or practices.

It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before payment is requested for goods or services offered, failing to disclose any of the following information in the same manner and form as the payment request:

(i) The total costs, terms, and material restrictions, limitations, or conditions of receiving any goods or services;

(ii) The quantity of any goods or services; and

(iii) All material terms and conditions of the seller's refund, cancellation, exchange, or repurchase policies, including, if applicable, a statement that no such policies exist;

(2) Misrepresenting, directly or by implication, any of the following:

(i) The total costs, terms, or material restrictions, limitations, or conditions of receiving any goods or services;

(ii) The quantity of any goods or services;

(iii) Any material aspect of the performance, efficacy, or central characteristics of any goods or services;

(iv) The duration of any offer made;

(v) The nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;

(vi) That any person has been selected to receive a prize;

(vii) That a premium is a prize;

(viii) The odds of winning any prize;

(ix) That a seller or telemarketer is in compliance with any Federal, State, or local law, statute, regulation, or ordinance;

(x) That compliance with any Federal, State, or local law, statute, regulation, or ordinance constitutes an endorsement or approval of the seller's or telemarketer's business or conduct;

(xi) Any affiliation, association, connection, or relationship with law

enforcement, a public safety organization, or any Federal, State, or local government agency;

(xii) The purpose for which the seller or telemarketer will use a person's checking, savings, share, or similar account number, credit card account number, social security number, or related information;

(xiii) The nonprofit, tax-exempt, or charitable status, purpose, affiliation, or identity of the seller or telemarketer;

(xiv) A person's eligibility or likelihood to receive a tax deduction, loan, or other benefit if the person pays money to the seller or telemarketer;

(xv) The nature, terms, or existence of any prior affiliation, association, connection, or relationship with any person;

(xvi) The nature, terms, or existence of any prior purchase or agreement to purchase by any person;

(xvii) The level of risk, liquidity, markup over acquisition costs, past performance, or earnings potential of any investment opportunity;

(xviii) The market value of any investment opportunity;

(xix) The likelihood that the market value for an investment opportunity will either increase or decrease;

(xx) The seller's success in assisting persons to liquidate goods or services they purchased from the seller, or the profit derived from such liquidation;

(xxi) That goods or services can or are likely to improve a person's credit history, credit record, or credit rating, or result in a person obtaining credit;

(xxii) The eligibility of, or likelihood that, a person, regardless of that person's credit history, will obtain a loan or other credit-related service;

(xxiii) That a seller or telemarketer can recover or otherwise effect or assist in the return of money or any other item of value to a person; or

(xxiv) Any other information required to be provided under this Rule;

(3) Misrepresenting, directly or by implication, in connection with the offer, offer for sale, or sale of any business venture, any of the following:

(i) The level of earnings;

(ii) The extent or nature of the market for the goods or services to be sold;

(iii) The nature or availability of any territory;

(iv) The existence, availability, or provision of retail outlets or accounts for the sale of goods or services;

(v) The existence, availability, or provision of locations or sites for vending machines, rack displays, or any other sales display;

(vi) The nature or availability of any services offered to secure any retail outlets, accounts, sites, locations, or displays;

(vii) That any person owns or operates a business venture purchased from the seller; or

(viii) That a person can give an accurate, independent, description of his or her experience as an owner or operator of a business venture purchased from the seller;

(4) Obtaining or submitting for payment from a person's checking, savings, share, or similar account, a check, draft, or other form of negotiable paper without the person's express written authorization; or

(5) Obtaining any amount of money from a person through any means, unless such an amount is expressly authorized by the person.

(b) Assisting and facilitating. (1) It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or should know that the seller or telemarketer is engaged in any act or practice that violates this Rule.

(2) Substantial assistance or support to telemarketing for purposes of § 310.3(b)(1) includes, but is not limited to, the following:

(i) Providing lists of customer contacts to a seller or telemarketer;

(ii) Receiving consideration in exchange for providing a testimonial, endorsement, certification, appraisal, or financing, or for serving as a reference, with respect to any business venture or investment opportunity offered by a seller;

(iii) Securing retail outlets or accounts for the sale of goods or services, or locations or sites for vending machines, rack displays, or any other sales displays, used in connection with any business venture;

(iv) Providing any certificate or coupon which may later be exchanged for goods or services; or

(v) Providing any script, advertising, brochure, promotional material, or direct marketing piece to be used in telemarketing.

(c) Credit card laundering. It is a deceptive telemarketing act or practice, and a violation of this Rule, for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement.

§ 310.4 Abusive telemarketing acts or practices.

(a) Abusive conduct generally. It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Threats or intimidation;

(2) Providing for or directing a courier to pick up payment from a customer;

(3) Requesting or receiving payment of any fee or consideration for goods or services represented to improve a person's credit history, credit record, or credit rating until:

(i) The term of the contract, or time frame in which the seller has represented all of the goods or services will be provided to that person, has expired; and

(ii) The seller has provided the person with documentation:

(A) From the original furnisher or provider of the information to the consumer reporting agency, confirming that the promised results have been achieved; or

(B) In the form of a consumer report from the consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule alters the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose.

(4) Requesting or receiving payment of any fee or consideration for goods or services represented to recover or otherwise assist in the return of money or any other item of value to a person until three (3) days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney or licensed private investigator pursuant to a written agreement with that person;

(5) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or any credit service when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or

arranging a loan or credit service for a person;

(6) Failing to distribute all prizes or purported prizes offered in a prize promotion, within 18 months of the initial offer to any person;

(7) Offering or selling goods or services through a telephone solicitation to a person who previously has paid the same seller for goods or services, until all terms and conditions of the initial transaction have been fulfilled, including but not limited to the distribution of all prizes or premiums offered in conjunction with the initial transaction; or

(8) Identifying a person as a reference for a business venture unless:

(i) Such person has actually purchased the business venture;

(ii) Such person has operated that business venture for a period of at least six (6) months, or the seller or telemarketer discloses the length of time the person has operated such business venture; and

(iii) Such person does not receive consideration for any statements made to prospective business venture purchasers.

(b) Pattern of calls. (1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:

(i) Without a person's prior consent, calling that person's residence to offer, offer for sale, or sell, on behalf of the same seller, the same or similar goods or services more than once within any three (3) month period. This requirement does not apply to attempted calls which do not reach a person or to calls made solely to verify a previous telephone sale; or

(ii) Calling a person's residence when that person previously has stated that he or she does not wish to receive telephone solicitations made by or on behalf of the seller whose goods or services are being offered.

(2) A seller or telemarketer will not be liable for violating § 310.4(b)(1) once in any calendar year per person called if:

(i) It has established and implemented written procedures to comply with § 310.4(b)(1) (i) and (ii);

(ii) It has trained its personnel in the procedures established pursuant to § 310.4(b)(2)(i);

(iii) The seller, or the telemarketer acting on behalf of the seller, has maintained and recorded lists of persons who may not be contacted, in compliance with § 310.4(b)(1) (i) and (ii); and

(iv) Any subsequent call is the result of administrative error.

(c) Calling time restrictions. Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in telephone solicitations to a person's residence at any time other than between 8 a.m. and 9 p.m. local time at the called person's location.

(d) Required oral disclosures. It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to fail to make any oral disclosures set forth in this section.

(1) All telephone solicitations shall begin by disclosing:

(i) The caller's true first and last name, the seller's name, and that the purpose of the call is to sell goods or services; or

(ii) If a telephone solicitation includes a charitable solicitation, the caller's true first and last name, the telemarketer's name, the telemarketer's status as a paid professional fundraiser, the seller's name, that the purpose of the call is to solicit charitable donations, and if other goods or services are offered, that the purpose of the call is also to sell goods or services.

(2) If a caller verifies a telemarketing sale, the caller verifying the sale must repeat the disclosures required under § 310.3(a)(1).

(3) Any telemarketing which includes a prize promotion must disclose, in addition to all other disclosures required under this Section, the following information:

(i) That no purchase or payment is necessary to win;

(ii) The verifiable retail sales price of each prize offered or a statement that the retail sales price of the prize offered is less than $20.00; and

(iii) The odds of winning each prize offered.

(4) Any telemarketing which includes an offer of a premium must disclose, in addition to all other disclosures required under this Section, the verifiable retail sales price of such premium or comparable item, or a statement that the retail sales price of the premium is less than $20.00.

(e) Written disclosures/ acknowledgements. It is an abusive telemarketing act or practice and a violation of this Rule for a seller or telemarketer to fail to make any written disclosures set forth in this section.

(1) Prize promotions. If a seller or telemarketer conducts a prize promotion, the seller or telemarketer may not request that a person pay for goods or services, or accept a payment in any form from a person, without first providing the person with a written disclosure, in duplicate, and receiving from the person a written acknowledgement that the person has read the disclosure. The information shall be disclosed on one page, in not less than 10-point type (unless otherwise noted), and of a color or shade that readily contrasts with the background of the notice. This disclosure shall be sent in an envelope that contains no writing representing that the person to whom the envelope is addressed has been selected or may be eligible to receive a prize and shall contain no other enclosures except for a return envelope, if the seller or telemarketer wishes to include such an envelope. This disclosure must contain the following information:

(i) The seller's legal name and telephone number, and the complete street address of the seller's principal place of business;

(ii) If the seller has been in operation under any other name(s), each such name and the length of time the seller has operated under each name;

(iii) The verifiable retail sales price of each prize offered or a statement that the retail sales price of the prize offered is less than $20.00;

(iv) The odds of winning each prize offered and the number of persons who will receive each prize;

(v) The total amount and description of any shipping or handling fees or any other charges that must be paid to receive or use a prize;

(vi) A complete description of any restrictions, conditions, or limitations on eligibility to receive or use a prize, including all steps a person must take to receive the most valuable prize offered;

(vii) The statement: ''No purchase or payment is necessary to win,'' with a description of the no-purchase entry method;

(viii) A statement that a list of winners is available and the address to which a person may write to obtain such a list;

(ix) A statement that it is a violation of this Rule for the seller to accept payment in any form unless the seller has received from the person the written disclosure acknowledgment required pursuant to § 310.4(e)(1); and

(x) The statement: ''I have read and understand this disclosure,'' in at least 12-point bold face type immediately preceding a signature block.

(2) Investment opportunities. (i) If a seller or telemarketer offers for sale any investment opportunity, the seller or telemarketer may not request that a person pay, or accept a payment in any form from a person, for that investment opportunity without first providing the person with a written disclosure, in

duplicate, and receiving from the person a written acknowledgement that the person has read the disclosure. The information shall be disclosed in not less than 10-point type (unless otherwise noted), of a color or shade that readily contrasts with the background of the notice, and segregated from all other information. This disclosure shall be sent in an envelope that contains no other enclosures except for a return envelope, if the seller or telemarketer wishes to include such an envelope. This disclosure must contain the following information:

(A) The seller's legal name and telephone number, and the complete street address of the seller's principal place of business;

(B) If the seller has been in operation under any other name(s), each such name and the length of time the seller has operated under each name;

(C) The complete cost to make the investment and a detailed list of all present charges and any anticipated future charges;

(D) A description of all known risks associated with the investment opportunity, including the possibility that additional payments might be required for a person purchasing the investment opportunity to retain that person's interest in the investment opportunity, to realize the projected or stated returns of the investment opportunity, to prevent total loss of the investment opportunity, or for any other reason;

(E) The length of time the seller has been in business and has offered the particular investment opportunity;

(F) A statement disclosing whether or not the seller is licensed and, if so, with whom, the type of license, and the length of time the seller has held such license;

(G) A statement that it is a violation of this Rule for the seller to effect an investment transaction unless the seller has received from the person the written disclosure acknowledgement required pursuant to § 310.4(e)(2); and

(H) The statement: ''I have read and understand this disclosure,'' in at least 12-point bold face type immediately preceding a signature block.

(ii) If a seller or telemarketer offers for sale any investment opportunity involving tangible assets, the following additional information must be included in the written disclosure set forth in § 310.4(e)(2)(i):

(A) The percentage markup that the seller places on the item above its own cost in acquiring the item; and

(B) An estimate of the value that persons are likely to receive if they were to liquidate the asset through a market sale immediately following the purchase. All such estimates must be substantiated by competent and reliable evidence.

(iii) If a seller or telemarketer offers for sale any investment opportunity involving tangible assets sold on credit or leverage, the following additional information, as well as the information set forth in § 310.4(e)(2)(ii), must be included in the written disclosure set forth in § 310.4(e)(2)(i):

(A) The percentage of a person's down payment that would be devoted to fees and costs by the end of the first six months after the investment is made;

(B) The percentage of a person's down payment that would be devoted to fees and costs by the end of the first year after the investment is made; and

(C) A statement that all such investment opportunities are extremely risky.

(iv) If a seller or telemarketer offers for sale any investment opportunity involving the acquisition of government-issued licenses or interests in businesses derived from the possession of such licenses, the following additional information must be included in the written disclosure set forth in § 310.4(e)(2)(i):

(A) All material terms and limitations of any government-issued license(s) that serve as the basis for the investment opportunity, including but not limited to whether and to whom the license or licenses have been issued;

(B) The percentage of the person's payment that will be used to acquire any applicable license(s) from the licensee(s) or from any person or entity not affiliated in any way with the seller; and

(C) The percentage of the person's payment that will be used to capitalize any business derived from such license(s).

(f) Distribution of lists. It is an abusive telemarketing act or practice and a violation of this Rule for any person who is subject to any federal court order resolving a case in which the complaint alleged a violation of §§ 310.3, 310.4(a) or 310.4(e) of this Rule, and the court did not dismiss or strike all such allegations from the case, to sell, rent, publish, or distribute any list of customer contacts from that person.

§ 310.5 Recordkeeping requirements.

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

(1) All advertising, brochures, telemarketing scripts, and promotional materials;

(2) The name and address of each prize recipient and the prize awarded;

(3) The name and address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;

(4) The name, home address and telephone number, and job title(s) for all current and former employees directly involved in telephone sales; and

(5) Any written notices, disclosures, and acknowledgements required to be provided or received under this Rule.

(b) Failure to keep all records required by § 310.5(a) shall be a violation of this Rule. The seller and telemarketer calling on behalf of the seller are not required to keep duplicative records if the seller and telemarketer have entered into a written agreement allocating responsibility for the recordkeeping required by this Section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern. If the agreement is unclear as to whom must maintain any required record(s), the seller shall be responsible for keeping such record(s).

(c) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this Section. In the event of any sale, assignment, succession, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this Section.

§ 310.6 Exemptions.

The following acts or practices are exempt from this Rule:

(a) The solicitation of sales by any person who engages in fewer than ten (10) sales each year through the use of the telephone;

(b) Telephonic contacts between businesses, except such contacts involving the sale of office or cleaning supplies or the inducement of payment for any charitable service promoted in conjunction with an offer of a prize, chance to win a prize, or the opportunity to purchase any goods or services; and

(c) A telephonic contact made solely by a person when there has been no initial sales contact directed to that particular person, by telephone or otherwise, from the seller or telemarketer; provided, however, that this exemption does not apply to such

contacts related to employment services where the seller or telemarketer requests or receives payment prior to providing the promised services, business ventures, investment opportunities, prize promotions, or credit-related programs.

§ 310.7 Actions by States and private persons.

Any attorney general or other officer of a State authorized by the State to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, and shall include a copy of the State's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the State or private person shall serve the Commission with the required notice immediately upon instituting its action.

§ 310.8 Federal preemption.

Nothing in this Rule shall be construed to preempt any State law that is not in direct conflict with any provision of this Rule.

§ 310.9 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–3537 Filed 2–13–95; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5155–2]

Hazardous Air Pollutants: Provisions Governing Constructed, Reconstructed or Modified Major Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interpretive notice.

SUMMARY: This notice announces the EPA's revised interpretation of the Clean Air Act's (Act) requirements regarding the effective date of section 112(g) of the Act. The interpretation adopted here postpones the effective date of section 112(g) until after the EPA has promulgated a rule addressing that provision.

EFFECTIVE DATE: February 14, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Kaufman at (919) 541–0102, Information Transfer and Program Integration Division (MD–12), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Summary of EPA's Policy

The Administrator of the EPA is today announcing the EPA's interpretation of the Act requirements regarding the effective date of section 112(g) during the period prior to promulgation of a Federal rule addressing implementation of that section. This notice effects changes from the view embodied in the preamble to the proposed rulemaking under section 112(g), **Federal Register** notices of proposed and final approvals of operating permits programs under title V of the Act, and in guidance issued by the EPA's Office of Air Quality Planning and Standards (OAQPS).

For the reasons set forth in this notice, the EPA now interprets section 112(g) not to take effect before the EPA issues notice and comment guidance addressing implementation of that section. In the interim period before this guidance is promulgated, States may, as a matter of State law, implement a program for the review of section 112(g) modifications, constructions, or reconstructions. However, the section 112(g) requirement that major source modifications, constructions, or reconstructions meet the maximum achievable control technology (MACT)—as determined on a case-by-case basis where no Federal standard for a source category has been set—will not take effect as a matter of Federal law until the section 112(g) rule is promulgated.

II. Discussion

A. Requirements of Section 112(g). Previous Policy Position

After the effective date of a title V permit program in a State, section 112(g) prohibits any person from constructing or reconstructing a major source of hazardous air pollutants (HAP), or modifying a major HAP's source, without a determination from ''the Administrator (or the State)'' that MACT will be met. The determination must be on a case-by-case basis by ''the Administrator (or the State)'' if no MACT standard has been issued. Section 112(g)(1)(B) also provides that the Administrator ''shall, after notice and opportunity for comment and not later than [May 15, 1992] publish guidance with respect to implementation of this subsection.'' The guidance must address the relative hazard of HAP in a manner ''sufficient to facilitate the offset showing'' allowed in the definition of ''modification.''

The EPA proposed a rule implementing section 112(g) on April 1, 1994 (59 FR 15504). The EPA currently anticipates promulgation of this rule during the summer of 1995. In anticipation of the fact that many title V permit programs would be approved before the section 112(g) rule was promulgated, the OAQPS issued a guidance memorandum on June 28, 1994 [1] to assist States in their implementation of section 112(g) during this transition period. The guidance states that section 112(g) takes effect upon approval of a title V program in a State regardless of whether the EPA's rule has been promulgated. The guidance also offers suggestions for how States may implement section 112(g) during the transition period.

To date, the EPA has approved several title V programs, the first of which was for the State of Washington on November 9, 1994 (59 FR 55813). EPA also has proposed approval of numerous other programs. In each of these notices, the Agency has restated its position that the requirements of section 112(g) would take effect in these States upon approval of the title V program, and has described its understanding of how section 112(g) would be implemented in that State during the transition period.

B. Reconsideration Based on Concerns Raised

States and the regulated community have voiced considerable concern with the impracticality of implementation of section 112(g) during the transition period.[2] These concerns have focused on the provisions for determining the applicability of section 112(g), and in particular on provisions addressing *de minimis* levels and offsets for modifications, as well as the definition of ''major source'' for constructions and

[1] Guidance for the Initial Implementation of Section 112(g), Memorandum from John S. Seitz to EPA Regional Air Division Directors, June 28, 1994.

[2] For State and regulated community comments submitted on the proposed section 112(g) rule, see Docket Number A–91–64 inserts IV-D–199, IV-D–213, IV-D–217, IV-D–219, IV-D–222, IV-D–229, IV-D–255, IV-D–295, IV-D–323, IV-D–333, IV-D–337, IV-D-PH217, IV-D–199, IV-D–213, IV-D–295, IV-D-PH221, and IV-D-PH222.

reconstructions. States and the regulated community have noted that the applicability of the section 112(g) modification provisions have the potential to vary significantly depending on how these issues are addressed in the final section 112(g) rule, that these provisions are among the most complex and controversial in the section 112(g) proposal, and that implementation of these provisions in the absence of a promulgated rule will present considerable uncertainty and legal and financial risk for States and emissions sources.

After careful consideration, the EPA concludes that these concerns are valid and, as a policy matter, justify re-examining and modifying the Agency's interpretation concerning the effective date of section 112(g). Moreover, the EPA believes it should announce its revised view now, before there is a significant expenditure of State, source, and Agency resources and before questions of source liability are raised. In light of this conclusion, the EPA has revisited its prior legal interpretation that section 112(g) must take effect upon approval of the title V program regardless of whether a rule has been promulgated. These practical difficulties confirm for the Agency the soundness of a reading that implementation of section 112(g) is to be delayed until a rule is promulgated.

C. Analysis of Statutory Requirements for Modifications

On its face, the section 112(g) requirement for case-by-case MACT determination for new major sources, reconstructed sources, and modifications to existing major sources appears to be triggered upon the title V program effective date. However, the Act also calls for guidance ''with respect to the implementation of'' section 112(g) to be issued ''after notice and opportunity for comment and not later than'' May 15, 1992. Section 112(g)(1)(B). Section 112(g)(1)(A) provides further that a greater-than-*de minimis* increase ''shall not be considered a modification'' if it is offset by an equal or greater decrease in a more hazardous pollutant, ''pursuant to guidance issued by the Administrator under subparagraph (B).'' The guidance must specifically ''facilitate the offset showing'' and ''include an identification, to the extent practicable, of the relative hazard to human health resulting from emissions'' of HAP.

Section 112(g) is analogous in certain important respects to statutory provisions at issue in the recent D.C. Circuit decision concerning inspection and maintenance (I/M) programs under the Act. *Natural Resources Defense Council* versus *EPA*, 22 F.3d 1125 (D.C. Cir. 1994). Section 182(c)(3) of the Act requires States to establish programs for ''enhanced'' vehicle inspection and maintenance programs. The statute further requires that these programs must be in compliance with regulatory ''guidance'' published by the Administrator, and must be effective by Nov. 15, 1992. In *NRDC* versus *EPA*, the Court held that, because the EPA was late in issuing the guidance called for in the statute, without which it was impossible as a practical matter for States to create their own programs, the statutory requirement for States to have an effective program should be delayed.

The section 112(g) modification provisions bear two important similarities to the statutory provisions at issue in *NRDC* versus *EPA*. First, the EPA was obligated to issue guidance on section 112(g) for the States well before they were expected to begin implementing section 112(g) on the effective date of title V programs. Second, that guidance is intended to be binding. This is because the guidance forms an essential link between the statutory directives triggered on the effective date of permit program approval and the ability to actually implement these directives.

Regarding offsets, section 112(g)(1)(A) provides that offsets are to be determined ''pursuant to guidance issued by the Administrator * * *'' It follows that the absence of guidance precludes the issuance of valid offset determinations by a reviewing agency. Moreover, the absence of guidance makes it impossible for the owner or operator of the source to submit a ''showing'' provided for by the last sentence ''that such increase has been offset under the preceding sentence,'' that is, pursuant to the Administrator's guidance (emphasis added). While a State permitting authority could decide to impose offsetting provisions that are more stringent than those in the EPA guidance, the EPA believes that Congress intended the EPA guidance as integral to the implementation of this provision.

The concept of *de minimis* values is likewise integral to the definition of ''modification'' in section 112(a)(5). This is because a ''modification'' is defined in section 112(a)(5) as a ''physical change in, or change in the method of operation of, a major source which increases the actual emissions of any hazardous air pollutant * * * by more than a de minimis amount * * *.'' Until *de minimis* values are established in the section 112(g) rule, the definition of ''modification'' remains incomplete, lacking the lower boundary that the statute contemplates will be established through a notice and comment process. The statute, recognizing that establishment of *de minimis* values would require the application of scientific expertise and judgment, called for the EPA to set these values based on a notice and comment process. It would be contrary to the intent of the Act to require the section 112(g) program for review of modifications to go forward when the issue of what constitutes a ''modification'' cannot be resolved with the degree of certainty envisioned by the statute.

It thus appears that certain crucial elements in the section 112(g) program for dealing with modifications are missing until the EPA promulgates guidance. Under these circumstances, it is consistent with the statute, and with applicable precedent, to conclude that the obligation of States to establish the required program for review of modifications hinges on promulgation of the requisite ''guidance''—which is in fact, as the statute makes clear, a binding rule—governing both offsets and *de minimis* values.

D. Analysis of Statutory Requirements for Major Source Construction and Reconstruction

The guidance required to be published under section 112(g)(1)(B) addressing implementation of ''subsection'' 112(g) must extend not only to modifications under section 112(g)(2)(A), but also to major source constructions and reconstructions addressed in section 112(g)(2)((B). This general directive aside, the statutory linkage between the section 112(g) guidance and implementation is not as detailed for constructions and reconstructions as it is for modification requirements. Notwithstanding this, the EPA believes that even with regard to constructions and reconstructions, guidance is necessary to resolve issues critical to the scope of applicability of these provisions, and that delaying the effectiveness of these provisions therefore represents a permissible reading of the Act.

In the April 1, 1994 proposal, the EPA solicited comment on two alternative interpretations of the phrase ''construct a major source.'' *See* 59 FR 15517. One interpretation would treat new major-emitting equipment at existing major source plant sites as ''modifications,'' while the other interpretation would treat such additions as ''constructions.'' Under the ''modification'' alternative, such equipment could be offset by a decrease elsewhere at the plant site. Under the ''construction'' alternative,

such equipment would be required to install new source technology and offsets would not be available.

Similarly, the April 1, 1994 proposal contained two alternative definitions of major source ''reconstruction.'' The alternative definitions are similar in that, for each, the replacement of components, where the cost of the replacement components is greater than 50 percent of the capital cost of ''constructing a major source,'' would trigger reconstruction requirements. The alternatives differ in that one alternative treats the entire plant site as the basis for comparison, while the other alternative treats a major-emitting ''emission unit'' as the basis for comparison.

The ambiguities surrounding the term ''construction'' have potentially significant impacts on the nature and scope of the Federal program, particularly in a transition period during which the modification provisions of section 112(g) are delayed. While there are likely to be few constructions of ''greenfield'' facilities emitting major amounts of HAPs prior to promulgation of the section 112(g) rule, there will be a far greater number of additions of major-emitting units at existing major source plant sites. Until the issue of whether these additions constitute a ''construction'' is clarified through rulemaking, there will be uncertainty as to how these additions must be treated as a matter of Federal law. For similar reasons, the scope of the section 112(g) requirements for ''reconstructions'' will continue to be in doubt until the section 112(g) rule is promulgated.

These implementation difficulties demonstrate that, as is the case for the section 112(g) modification provisions, rulemaking is needed to provide the degree of certainty EPA believes was intended by Congress regarding the applicability of the provisions for major source construction and reconstruction. For this reason, EPA believes it would be unreasonable to require the implementation of the section 112(g) provisions relating to construction and reconstruction prior to completion of the rulemaking.

F. Additional Clarifications

The EPA's interpretation, announced today, regarding the timing for implementation of section 112(g), applies to every title V program that has been or will be approved prior to promulgation of a Federal rule implementing section 112(g). The interpretation concerns the effective date of a Federal requirement set forth in the Act. In this sense, this interpretation need not be addressed in individual title V approvals. The EPA has indicated in a number of title V approval actions that the State would use its existing SIP-approved preconstruction review program to implement section 112(g) during the transition period. However, there have been no approvals of State programs designed specifically to implement section 112(g). Therefore, there is no need to revisit any EPA rulemaking action in order to implement today's notice.

This interpretation should not require significant changes to any title V program submittal. Each State program reviewed by EPA to date has included a general commitment to implement section 112(g), in accordance with the EPA regulations and/or guidance, upon approval of their title V program. However, those commitments were fashioned broadly enough to accommodate today's announced interpretation, and so no program revisions should be necessary for those States.

The EPA is aware of concerns that States may need additional time following the promulgation of the section 112(g) rule before they can begin implementing section 112(g). The EPA believes the statute may be read to allow for an additional period of delay so that States may adopt conforming rules if it would otherwise be impossible for States to implement the program. However, the EPA has not determined whether additional time will in fact be needed. If it is decided that additional time should be provided before the provisions of section 112(g) become effective, the EPA will so provide in the final section 112(g) rulemaking.

Finally, certain States have already promulgated regulations designed to implement section 112(g). The EPA wishes to emphasize that nothing in this notice is intended to preclude or discourage States from implementing a program similar to section 112(g) as a matter of State law prior to promulgation by the EPA of the section 112(g) guidance.

Dated: February 8, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–3661 Filed 2–13–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[MT–001; FRL–5155–3]

Clean Air Act Proposed Interim Approval, or in the Alternative Proposed Disapproval, of Operating Permits Program; State of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes interim approval of the Operating Permits Program submitted by the State of Montana for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources. In the alternative, EPA proposes disapproval of the Montana Operating Permits Program if the corrective actions necessary for final interim PROGRAM approval are not completed and submitted to EPA prior to the statutory deadline.

DATES: Comments on this proposed action must be received in writing by March 16, 1995.

ADDRESSES: Comments should be addressed to Laura Farris at the Region 8 address. Copies of the State's submittal and other supporting information used in developing the proposed rule are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Laura Farris, 8ART–AP, U.S. Environmental Protection Agency, Region 8, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202, (303) 294–7539.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70 (part 70). Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all

major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

B. Federal Oversight and Sanctions

If EPA were to finalize this proposed interim approval, it would extend for two years following the effective date of final interim PROGRAM approval, and could not be renewed. During the interim approval period, the State of Montana would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a Federal permits program for the State of Montana. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the 3-year time period for processing the initial permit applications.

Following final interim PROGRAM approval, if the State of Montana failed to submit a complete corrective program for full approval by the date 6 months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If the State of Montana then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the Act, which would remain in effect until EPA determined that the State of Montana had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of the State of Montana, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State of Montana had come into compliance. In any case, if, six months after application of the first sanction, the State of Montana still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim PROGRAM approval, EPA were to disapprove the State's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State of Montana had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the State of Montana, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State of Montana had come into compliance. In all cases, if, six months after EPA applied the first sanction, the State of Montana had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if a State has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to a State program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for that State upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State Submission

1. Support Materials

The Governor of Montana submitted an administratively complete title V Operating Permit Program (PROGRAM) for the State of Montana on March 29, 1994. EPA deemed the PROGRAM administratively complete in a letter to the Governor dated May 12, 1994. The PROGRAM submittal includes a legal opinion from the Attorney General of Montana stating that the laws of the State provide adequate legal authority to carry out all aspects of the PROGRAM, and a description of how the State intends to implement the PROGRAM. The submittal additionally contains evidence of proper adoption of the PROGRAM regulations, permit application forms, a data management system and a permit fee demonstration.

2. Regulations and Program Implementation

The Montana PROGRAM, including the operating permit regulation (Sub-Chapter 20, §§ 16.8.2001 through 16.8.2025, inclusive, of the Administrative Rules of Montana), substantially meets the requirements of 40 CFR parts 70.2 and 70.3 with respect to applicability; parts 70.4, 70.5, and 70.6 with respect to permit content including operational flexibility; part 70.5 with respect to complete application forms and criteria which define insignificant activities; part 70.7 with respect to public participation and minor permit modifications; and part 70.11 with respect to requirements for enforcement authority.

Section 16.8.2006(3) of Sub-Chapter 20 provides, in part, that ''Insignificant emission units need not be addressed in an application for an air quality operating permit, except that the application must include a list of such insignificant emission units and emissions from insignificant emission units must be included in emission inventories and are subject to assessment of permit fees.'' The term ''insignificant emissions unit'' is defined in § 16.8.2002(22)(a) of Sub-Chapter 20 as ''any activity or emissions unit located within a source that (i) has a potential to emit less than 15 tons per year of any pollutant, other than a hazardous air pollutant listed pursuant to sec. 7412(b) of the FCAA or lead; (ii) has a potential to emit of less than 500 pounds per year of lead; (iii) does not have a potential to emit hazardous air pollutants listed pursuant to sec. 7412(b) in any amount; and (iv) is not regulated by an applicable requirement.'' The 15 ton per year threshold is considered by EPA to be a PROGRAM deficiency that must be addressed prior to full PROGRAM approval and is discussed in more detail below.

Section 70.6(a)(3)(iii)(B) of EPA's operating permit regulations provides that each permit shall require ''prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken.'' Under § 16.8.2010(3)(c) of Sub-Chapter 20 of Montana's regulations, reporting is considered ''prompt'' if made at least every six months as part of the routine reporting requirements and, if applicable, in accordance with the malfunction reporting requirements under § 16.8.705 of Subchapter 7, unless

otherwise specified in an applicable requirement. However, EPA's position is that reporting only once every six months is not sufficiently ''prompt'' to allow for protection of public health and safety and to provide a forewarning of potential problems. Usually, reporting within two to ten days should be sufficient for these purposes, although with more serious permit deviations, earlier reporting may be necessary. Only for sources with a low level of excess emissions, would it be appropriate to allow more than ten days to elapse before reporting. EPA may veto state permits that do not require appropriately prompt reporting.

Montana has the authority to issue a variance from emission limitations. The Clean Air Act of Montana, Section 75–2–212, Montana Code Annotated (MCA), provides that the State may grant a variance if ''(a) the emissions occurring or proposed to occur do not constitute a danger to public health or safety; and (b) compliance with the rules from which exemption is sought would produce hardship without equal or greater benefits to the public.'' EPA regards Montana's variance provision as wholly external to the PROGRAM submitted for approval under part 70, and consequently is proposing to take no action on this provision of State law. The EPA has no authority to approve provisions of State law, such as the variance provision referred to, which are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a Federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. If the State uses its variance provision strictly to establish a compliance schedule for a non-complying source that will be incorporated into a title V permit, then EPA would consider this an acceptable use of a variance provision. However, the routine process for establishing a compliance schedule is through appropriate enforcement action. The EPA reserves the right to enforce the terms of the part 70 permit where the permitting authority purports to grant relief from the duty to comply with a part 70 permit in a manner inconsistent with part 70 procedures.

Comments noting deficiencies in the Montana PROGRAM were sent to the State in a letter dated October 3, 1994. The deficiencies were segregated into those that require corrective action prior to interim PROGRAM approval, and those that require corrective action prior to full PROGRAM approval. In a letter dated October 20, 1994 the State committed to address the deficiencies that require corrective action prior to interim PROGRAM approval by January 20, 1995.

Areas in which the Montana PROGRAM is deficient and require corrective action prior to final interim PROGRAM approval are as follows: (1) Section 16.8.2004(3) of Sub-Chapter 20 allows the State to exempt sources from the requirement to obtain an air quality operating permit by establishing Federally enforceable limitations which limit the source's potential to emit. However, the State's rules do not describe the process which will be used to create these limits. Prior to interim PROGRAM approval, the State must clarify how Federally enforceable limits will be created to limit a source's potential to emit, and verify its authority to create such limits. If the State plans to create Federally enforceable limits through title V operating permits, such permits must go through all of the title V public participation requirements, including affected State review, 45-day EPA review period and EPA veto authority. (2) Section 16.8.2008(2)(j) of Sub-Chapter 20 states that the State's decision regarding issuance, renewal, revision, denial, revocation, reissuance, or termination of a permit is not effective until 30 days have elapsed from the date of the decision, and that the decision may be appealed to the board by filing a request for hearing within 30 days after the date of the decision. EPA interprets this language to mean that the 30-day period for making appeals to the board would occur after EPA's 45-day review/approval period for the proposed permit. If this is the case, any permits appealed to the board that are changed must be submitted to EPA for additional review. Prior to interim PROGRAM approval, the State must clarify whether the appeal process on the State's decisions regarding permit issuance, renewal, revision, denial, revocation, reissuance, or termination occurs before or after EPA's 45-day review/approval period. If the appeal process follows EPA's review/approval period, then language must be added to the State's permitting regulation to ensure that permits that are changed after appeal to the board are submitted to EPA for additional review. (3) Section 16.8.2008(2)(a) allows the State to terminate, or revoke and reissue, permits for continuing and substantial violations, but does not provide the full authority under section 502(b)(5)(D) of the Act which requires that state permit programs have authority to ''terminate, modify, revoke and reissue permits for cause.'' Prior to interim PROGRAM approval, the State must clarify that it has the authority to ''terminate, modify, revoke and reissue permits for cause'' pursuant to section 502(b)(5)(D) of the Act. (4) Section 16.8.2021(1)(c) of Sub-Chapter 20 states that a significant modification includes ''every *significant* relaxation of permit reporting or recordkeeping terms or conditions.'' Section 70.7(e)(4)(i) of the Federal permitting regulation requires that *any* relaxation of reporting or recordkeeping permit terms be processed as a significant modification. Prior to interim PROGRAM approval, the State must provide an Attorney General's opinion that the language in § 16.8.2021(1)(c) of Sub-Chapter 20 regarding significant modifications will be interpreted as ''every relaxation of reporting or recordkeeping permit terms'', and prior to full PROGRAM approval, the word ''significant'' must be removed from this regulatory language.

Areas in which the Montana PROGRAM is deficient and require corrective action prior to full PROGRAM approval are as follows: (1) Section 16.8.2002(1)(d) of Sub-Chapter 20 is part of the definition of administrative permit amendment and allows for the ''department's discretion'' in determining whether or not a change in monitoring or reporting requirements would be as stringent as current monitoring or reporting requirements. Changes in monitoring or reporting requirements must be processed through either the minor permit modification procedures or the significant permit modification procedures, unless the change requires more frequent monitoring or reporting, in which case it can be processed through the administrative permit amendment procedures. This portion of Montana's definition does not meet the criteria of an administrative permit amendment listed in § 70.7(d)(1)(iii) of the Federal permitting regulation. Prior to full PROGRAM approval, the State must delete § 16.8.2002(1)(d) of Sub-Chapter 20, which allows for the ''department's discretion'' in determining whether or not a change in monitoring or reporting requirements would be as stringent as current monitoring or reporting requirements.

(2) Section 16.8.2002(1)(f) of Sub-Chapter 20 is part of the definition of administrative permit amendment and allows the State to determine if other types of permit changes not listed in the definition of administrative permit amendment can be incorporated into a permit through the administrative permit amendment process. Section 70.7(d)(1)(vi) of the Federal permitting

regulation requires that such determinations be made by the Administrator of EPA and be similar to those changes listed in § 70.7(d)(1)(i)-(iv) of the Federal permitting regulation. This provision must be changed prior to full PROGRAM approval to allow the Administrator of EPA (or EPA and the State) to determine if changes not included in the definition of administrative permit amendment can be processed through the administrative permit amendment process.

(3) The definition of ''insignificant emissions unit'' in § 16.8.2002(22)(a) of Sub-Chapter 20 includes an emission threshold of 15 tons per year of any pollutant other than a hazardous air pollutant. EPA does not consider this to be a reasonable level from which to exempt emissions units from title V operating permit requirements. For other State title V programs, EPA has proposed to accept, as sufficient for full approval, emission levels for insignificant activities of 2 tons per year of regulated air pollutants and the lesser of 1000 pounds per year, section 112(g) de minimis levels, or other title I significant modification levels for HAPs and other toxics (40 CFR 52.21(b)(23)(i)). EPA believes that these levels are sufficiently below applicability thresholds for most applicable requirements to assure that no unit potentially subject to an applicable requirement is left off a part 70 application and are consistent with current permitting thresholds for the State under consideration here. EPA is requesting comment on the appropriateness of these emission levels for determining insignificant activities in this State. This request for comment is not intended to restrict the ability of the State to propose and EPA to approve other emission levels if the State demonstrates that such alternative emission levels are insignificant compared to the level of emissions from and types of units that are permitted or subject to applicable requirements. Prior to full PROGRAM approval, the State must lower the emissions cap for defining ''insignificant emissions units'' to assure they will not encompass activities that trigger applicable requirements. If the State defines insignificant activity levels greater than those suggested, a demonstration must be made to show why such levels are, in fact, insignificant.

(4) Section 16.8.2002(24)(ii) of Sub-chapter 20 defines ''non-Federally enforceable requirement'' to include any term contained in a preconstruction permit issued under Sub-Chapters 9, 11, 17, or 18 that is not Federally enforceable. However, everything contained in a preconstruction permit issued under these Sub-Chapters (which currently are, or soon will be, included in the State's SIP) is considered to be Federally enforceable. Prior to full PROGRAM approval this language must be revised or deleted.

(5) Section 16.8.2008 of Sub-Chapter 20 which lists the permit content requirements does not require a severability clause consistent with § 70.6(a)(5) of the Federal permitting regulation. Prior to full PROGRAM approval, the State must include a severability clause in Sub-Chapter 20 consistent with § 70.6(a)(5) of the Federal permitting regulation.

(6) Section IX.C.2 of the checklist that was part of the PROGRAM submittal regarding the implementation of the enhanced monitoring requirements of section 114(a)(3) of the Act states that there are no impediments to using any monitoring data to determine compliance and for direct enforcement. However, the State has incorporated by reference the Federal new source performance standards (NSPS) and national emissions standards for HAPs (NESHAPs) in 40 CFR parts 60 and 61 into its SIP-approved regulations, which provide that compliance can be determined only by performance tests (see 40 CFR 60.11(a) and 40 CFR 61.12(a)).

Prior to full PROGRAM approval, the State must provide an Attorney General's opinion verifying the State's authority to use any monitoring data to determine compliance and for direct enforcement. If the State does not have such authority, then the State's SIP-approved regulations must be revised prior to full PROGRAM approval to provide authority to use any monitoring data to determine compliance and for direct enforcement.

(7) The Attorney General's Opinion regarding the State's authority to terminate permits is unclear. MCA 75–2–211(1) and 217(1) refer to ''issuance, modification, suspension, revocation, and renewal'' of permits, but not ''termination.'' Prior to full PROGRAM approval, the State must provide an Attorney General's interpretation that Montana's statutory authority extends to ''terminating'' permits.

(8) The PROGRAM submittal contained a letter to Douglas M. Skie dated February 28, 1994 certifying the State's authority to implement section 112 of the Act. The letter discusses the State's authority to require permit applications from sources subject to section 112(j) of the Act, but does not address the State's ability to make case-by-case MACT determinations. Prior to full PROGRAM approval, the State must certify its ability to make case-by-case MACT determinations pursuant to section 112(j) of the Act.

(9) The State's February 28, 1994 letter to EPA also discusses the State's authority to implement section 112(r) of the Act, but does not address the State's ability to require annual certifications from part 70 sources as to whether their risk management plans (RMPs) are being properly implemented, or provide a compliance schedule for sources that fail to submit the required RMP. Prior to full PROGRAM approval, the State must certify its ability to require annual certifications from part 70 sources regarding proper implementation of their RMPs and to provide a compliance schedule for sources that fail to submit the required RMP.

Refer to the Technical Support Document accompanying this rulemaking for a detailed explanation of each comment and the corrective actions required of the State.

3. Permit Fee Demonstration

The Montana PROGRAM includes a fee structure that collects in the aggregate fees that are below the presumptive minimum set in part 70. Therefore, it was necessary for the State to include a permit fee demonstration in its PROGRAM submittal to demonstrate that the title V fee structure would collect sufficient fees to cover the reasonable direct and indirect costs of developing and administering the PROGRAM. The permit fee demonstration included a workload analysis which estimated the annual cost of running the PROGRAM to be $585,130 for fiscal year 1994, increasing to $849,705 for fiscal year 1995. The fee structure for fiscal year 1994, based on the previous year's emission inventory, included a fee of $8.55 per ton for particulates, sulfur dioxide and lead; $2.14 per ton for nitrogen oxides and volatile organic compounds; with a minimum fee of $250 per source. These fees are projected to increase to $11.75 and $2.94 per ton, respectively, for fiscal year 1995, and the State anticipates adding a fee for HAPs in the future. After careful review, the State has determined that these fees would support the Montana PROGRAM costs as required by section 70.9(a) of the Federal operating permitting regulation. Upon review of the State's permit fee demonstration, the EPA noted the following concerns:

(1) Although the State has the authority to assess and collect annual permit fees in an amount sufficient to cover all reasonable direct and indirect costs of the PROGRAM, the State Legislature must appropriate the money

to operate the PROGRAM every biennium. If an adequate appropriation is not made, and the State is not able to fund all the costs of the PROGRAM, the EPA would be required to disapprove or withdraw the part 70 program, impose sanctions, and implement a Federal permitting program.

(2) EPA was unable to determine if sufficient fees will be available to fund the PROGRAM due to deficiencies in the State's Permit Fee Demonstration. The State agreed to address these deficiencies in a letter to EPA dated October 20, 1994 and submit a revised Permit Fee Demonstration to EPA prior to final interim PROGRAM approval.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or Commitments for Section 112 Implementation

Montana has demonstrated in its PROGRAM submittal adequate legal authority to implement and enforce all section 112 requirements, with the exception of the deficiencies noted above, through the title V permit. This legal authority is contained in Montana's enabling legislation and in regulatory provisions defining ''applicable requirements'' and stating that the permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow Montana to issue permits that assure compliance with all section 112 requirements, and to carry out all section 112 activities, contingent upon the State completing the above noted corrective actions related to section 112.

For further rationale on this interpretation, please refer to the Technical Support Document accompanying this rulemaking and the April 13, 1993 guidance memorandum titled ''Title V Program Approval Criteria for Section 112 Activities,'' signed by John Seitz.

b. Implementation of 112(g) Upon Program Approval

As a condition of approval of the part 70 PROGRAM, Montana is required to implement section 112(g) of the Act from the effective date of the part 70 PROGRAM. Imposition of case-by-case determinations of maximum achievable control technology (MACT) or offsets under section 112(g) will require the use of a mechanism for establishing Federally enforceable restrictions on a source-specific basis. The EPA is proposing to approve Montana's preconstruction permitting program found in Sub-Chapter 11, §§ 16.8.1101 through 16.8.1120, under the authority of title V and part 70 solely for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations. EPA believes this approval is necessary so that Montana has a mechanism in place to establish Federally enforceable restrictions for section 112(g) purposes from the date of part 70 approval. Section 112(l) provides statutory authority for approval for the use of State air programs to implement section 112(g). Title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g), and does not confer or imply approval for purposes of any other provision under the Act. If Montana does not wish to implement section 112(g) through its preconstruction permit program and can demonstrate that an alternative means of implementing section 112(g) exists, the EPA may, in the final action approving Montana's PROGRAM, approve the alternative instead. To the extent Montana does not have the authority to regulate HAPs through existing State law, the State may disallow new construction or modifications during the transition period.

This approval is for an interim period only, until such time as the State is able to adopt regulations consistent with any regulations promulgated by EPA to implement section 112(g). Accordingly, EPA is proposing to limit the duration of this approval to a reasonable time following promulgation of section 112(g) regulations so that Montana, acting expeditiously, will be able to adopt regulations consistent with the section 112(g) regulations. The EPA is proposing here to limit the duration of this approval to 12 months following promulgation by EPA of section 112(g) regulations. Comment is solicited on whether 12 months is an appropriate period considering Montana's procedures for adoption of Federal regulations.

c. Program for Straight Delegation of Section 112 Standards

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 General Provisions Subpart A and standards as promulgated by EPA as they apply to sources covered by the part 70 Program, as well as non-part 70 sources. Section 112(l)(5) requires that the State's PROGRAM contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. Montana has informed EPA that it intends to accept delegation of section 112 standards through incorporation by reference or case-by-case rulemaking. This program applies to both existing and future standards.

The radionuclide NESHAP is a section 112 regulation and therefore, also an applicable requirement under the State PROGRAM. Sources which are currently defined as part 70 sources and emit radionuclides are subject to Federal radionuclide standards. Additionally, sources which are not currently part 70 sources may be defined as major sources under forthcoming Federal radionuclide regulations. The EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

d. Program for Implementing Title IV of the Act

Montana's PROGRAM contains adequate authority to issue permits which reflect the requirements of title IV of the Act, and commits to adopt the rules and requirements promulgated by EPA to implement an acid rain program through the title V permit.

B. Options for Approval/Disapproval and Implications

The EPA is proposing to grant interim approval to the operating permits program submitted by the State of Montana on March 29, 1994. If promulgated, the State must complete the following corrective actions, as discussed above, to receive final interim PROGRAM approval: (1) The State must clarify how the Federally enforceable limits allowed under § 16.8.2004(3) of Sub-Chapter 20 will be created to limit a source's potential to emit, and verify its authority to create such limits. If the State plans to create these Federally enforceable limits through the title V PROGRAM, such permits must go through all of the title V public participation requirements, including affected State review, 45-day EPA review period and EPA veto authority; (2) The State must clarify whether the appeal process in § 16.8.2008(2)(j) of Sub-Chapter 20 on the State's decisions regarding permit issuance, renewal, revision, denial, revocation, reissuance, or termination occurs before or after EPA's 45-day review/approval period. If the appeal process follows EPA's review/approval period, then additional language must be added to the State's

permitting regulation to ensure that permits that are changed after appeal to the board are submitted to EPA for additional review; (3) The State must clarify that it has the authority to ''terminate, modify, revoke and reissue permits for cause'' pursuant to section 502(b)(5)(D) of the Act; (4) The State must provide an Attorney General's opinion that the language in § 16.8.2021(1)(c) of Sub-Chapter 20 regarding significant modifications will be interpreted as ''every relaxation of reporting or recordkeeping permit terms.''

The State must complete the following corrective actions, as discussed above, to receive full PROGRAM approval: (1) The word ''significant'' must be removed from the language in § 16.8.2021(1)(c) of Sub-Chapter 20; (2) The State must delete § 16.8.2002(1)(d) of Sub-Chapter 20 that allows for the ''department's discretion'' in determining whether or not a change in monitoring or reporting requirements would be as stringent as current monitoring or reporting requirements; (3) Section 16.8.2002(1)(f) of Sub-Chapter 20 must be changed to allow the Administrator of EPA (or EPA and the State) to determine if changes not included in the definition of ''administrative permit amendment'' can be processed through the administrative permit amendment process; (4) The State must lower the emissions cap for defining ''insignificant emissions units'' in § 16.8.2002(22)(a) of Sub-Chapter 20 to assure they will not encompass activities that trigger applicable requirements. If the State defines insignificant activity levels greater than those suggested, a demonstration must be made to show why such levels are, in fact, insignificant; (5) The language in § 16.8.2002(24)(ii) of Sub-Chapter 20 which defines ''non-Federally enforceable requirement'' must be revised or deleted to avoid the implication that terms contained in a preconstruction permit issued under Sub-Chapters 9, 11, 17, or 18 are not Federally enforceable; (6) The State must include a severability clause in § 16.8.2008 of Sub-Chapter 20 consistent with § 70.6(a)(5) of the Federal permitting regulation; (7) The State must provide an Attorney General's opinion verifying the State's authority to use any monitoring data to determine compliance and for direct enforcement. If the State does not have such authority, then the State's SIP-approved regulations must be revised to provide authority to use any monitoring data to determine compliance and for direct enforcement; (8) The State must provide an Attorney General's interpretation that Montana's statutory authority under MCA 75–2–211(1) and 217(1) extends to ''terminating'' permits; (9) The State must certify its ability to make case-by-case MACT determinations for sources subject to section 112(j) of the Act; (10) The State must certify its ability to require annual certifications from part 70 sources regarding proper implementation of their section 112(r) RMPs and to provide a compliance schedule for sources that fail to submit the required RMP.

Evidence of these corrective actions for full PROGRAM approval must be submitted to EPA within 18 months of EPA's interim approval of the Montana PROGRAM.

The scope of Montana's part 70 PROGRAM that EPA proposes to approve in this notice would apply to all part 70 sources (as defined in the PROGRAM) within the State, except the following: any sources of air pollution located in ''Indian Country,'' as defined in 18 U.S.C. 1151, including the Northern Cheyenne, Rocky Boys, Blackfeet, Crow, Flathead, Fort Belknap, and Fort Peck Indian Reservations, or any other sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.*, 59 FR 55813, 55815–18 (Nov. 9, 1994). The term ''Indian Tribe'' is defined under the Act as ''any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' *See* section 302(r) of the CAA; *see also* 59 FR 43955, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

In proposing not to extend the scope of Montana's part 70 PROGRAM to sources located in ''Indian Country,'' EPA is not making a determination that the State either has adequate jurisdiction or lacks jurisdiction over such sources. Should the State of Montana choose to seek program approval within ''Indian Country,'' it may do so without prejudice. Before EPA would approve the State's part 70 PROGRAM for any portion of ''Indian Country,'' EPA would have to be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval, that such approval would constitute sound administrative practice, and that those sources are not subject to the jurisdiction of any Indian Tribe.

This interim approval, which may not be renewed, extends for a period of up to 2 years. During the interim approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications.

The EPA is proposing to disapprove in the alternative the Montana PROGRAM if the specified corrective actions for final interim PROGRAM approval are not completed and submitted to EPA prior to EPA's statutory deadline for acting on Montana's title V submittal. If promulgated, this disapproval would constitute a disapproval under section 502(d) of the Act (see generally 57 FR 32253–54). As provided under section 502(d)(1) of the Act, Montana would have up to 180 days from the date of EPA's notification of disapproval to the Governor of Montana to revise and resubmit the PROGRAM.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) of the Act and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations applies to sources covered by the part 70 program as well as non part 70 sources.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development

of this proposed interim approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by March 16, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 3, 1995.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 95–3659 Filed 2–13–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 80

[AMS–FRL–5154–7]

RIN 2060–AD71

Regulation of Fuels and Fuel Additives: Standards for Deposit Control Gasoline Additives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopening of comment period.

SUMMARY: Section 211(l) of the Clean Air Act requires the Environmental Protection Agency to establish specifications for deposit control detergent additives. On November 22, 1993, the Environmental Protection Agency issued a notice of proposed rulemaking for standards for deposit control detergent additives. On October 15, 1994, EPA promulgated a final regulation (published in the **Federal Register** on November 1, 1994 (59 FR 54678)), with an interim program for detergent additives, which will be replaced by a full certification detergent program in a subsequent action.

On December 28, 1994 (59 FR 66860), EPA issued a supplemental notice reopening the comment period for the final detergent additive certification program and requesting comment on issues related to the final detergent additive certification program. This document extends the public comment period for the supplemental notice.

DATES: The comment period for the supplemental notice will be extended from the original closing date of January 27, 1995 to February 21, 1995.

ADDRESSES: Comments on this document should be submitted in duplicate to: EPA Air Docket Section (LE–131); Attention: Public Docket No. A–91–77; Room M–1500, 401 M Street S.W., Washington, DC 20460. (Phone 202–260–7548; FAX 202–260–4000). This docket is open for public inspection from 8:00 a.m. until 4:00 p.m. except on government holidays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying docket materials.

Electronic copies of this and other documents related to this rulemaking are available through the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTNBBS).

FOR FURTHER INFORMATION CONTACT: For general information and information related to technical issues contact: Mr. Jeffery A. Herzog, U.S. EPA (RDSD–12), Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105; Telephone: (313) 668–4227, FAX: (313) 741–7816. For information on enforcement related issues contact: Judith Lubow, U.S. EPA, Office of Enforcement and Compliance Assurance, Western Field Office, 12345 West Alameda Parkway, Suite 300, Lakewood, CO 80228; Telephone: (303) 969–6483, FAX: (303) 966–6490.

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline detergent additives, Gasoline motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: February 7, 1995.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 95–3603 Filed 2–13–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 93–144 and PP Docket No. 93–253; DA 95–67]

Facilitation of Future Development of SMR Systems in the 800 MHz Frequency Band; Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 800 MHz SMR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: On November 4, 1994, the Commission released a Further Notice of Proposed Rule Making, FCC 94–271, concerning establishment of a flexible regulatory scheme and competitive bidding procedures for Specialized Mobile Radio (SMR) systems in the 800 MHz band.

Based on the number of initial comments received and the variety of views expressed in this proceeding, this Order extends the deadline for reply comments from January 20 to March 1, 1995. The intended effect of this action is to provide members of the SMR industry with an opportunity to further evaluate, discuss, and attempt to reach consensus regarding the proposals presented and issues addressed both in the Further Notice of Proposed Rule Making and the initial comments submitted in this proceeding.

DATES: Reply comments must be filed on or before March 1, 1995.

ADDRESSES: Federal Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: D'wana R. Speight, Legal Branch, Commercial Radio Division, Wireless Telecommunications Bureau, (202) 418–0620.

SUPPLEMENTARY INFORMATION:

Order Extending Reply Comment Period

Adopted: January 18, 1995
Released: January 18, 1995

By the Acting Chief, Commercial Radio Division:

1. We have received requests from the American Mobile Telecommunications Association, Inc. (''AMTA''), Personal Communications Industry Association (''PCIA''), and SMR WON for an extension of time for filing Reply Comments in response to the *Further Notice of Proposed Rule Making* on this

proceeding.[1] AMTA's and SMR WON's motions, both filed on January 11, 1995, request that the Commission extend the deadline for filing reply comments (currently January 20, 1995) by 60 days. PCIA's motion, also filed on January 11, 1995, requests that the deadline be extended by 30 days. To date, no opposition to these requests has been filed.

2. AMTA seeks an extension in order to ''facilitate continued industry efforts to resolve certain of the matters on which no consensus has yet been achieved.'' In its motion, SMR WON notes that additional time is necessary to ''work out a consensus acceptable to all major interested parties, even though SMR WON and other trade associations held weekly meetings and conference calls throughout November and December.'' In addition, PCIA observes that ''the number of Comments, the controversial issues discussed, and the complexity of the proceeding dictate that careful consideration be given to the Comments filed by all parties.'' As a result, AMTA, SMR WON and PCIA agree that an extension of time would allow interested and affected parties to submit well-reasoned options and comments on the complex issues addressed in this proceeding.

3. Based on the number of comments received and the variety of views expressed in this proceeding, it appears that an extension of the reply comment period is warranted. We agree with both AMTA and SMR WON that the public interest would be served by granting an extension so that members of the SMR industry can further evaluate, discuss, and attempt to reach consensus regarding the proposals presented and issues addressed both in the *Further Notice* and the initial comments submitted in this proceeding. Both parties indicate that discussions among industry members have been ongoing and that the members are continuing their efforts towards developing consensus positions. We believe that additional time is needed to allow this process to continue. We also agree with PCIA that additional time is needed to enable industry members to review the extensive comment record filed in this proceeding (over 80 comments have been filed) and to submit thorough and well-reasoned reply comments. We nevertheless remain concerned about avoiding a substantial delay in the resolution of issues presented in this proceeding. Thus, we believe that a 40-day extension of the reply comment period is appropriate. We emphasize that in granting this extension, we expect SMR industry representatives to use the additional time productively by continuing their efforts to find solutions to the issues presented in this proceeding that will be broadly supported by industry members.

4. Accordingly, it is hereby ordered that the Motions of Extension of Time filed by the American Mobile Telecommunications Association, the Personal Communications Industry Association, and SMR WON are hereby GRANTED to the extent stated herein.

5. It is further ordered, pursuant to § 1.46 of the Commission's Rules, 47 CFR 1.46, that the deadline for filing reply comments in this proceeding is extended from January 20, 1995 to March 1, 1995.

Federal Communications Commission.

Rosalind K. Allen,

Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau.

[FR Doc. 95–3575 Filed 2–13–95; 8:45 am]

BILLING CODE 6712–01–M

[1] *Further Notice of Proposed Rule Making,* Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 800 MHz SMR, PR Docket No. 93–144 and PP Docket No. 93–253, FCC 94–271, adopted October 20, 1994, released November 4, 1994, 59 FR 60111, published November 22, 1994 (*Further Notice*).

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC99

Endangered and Threatened Wildlife and Plants; Extension of Comment Period on Proposed Endangered Status for Four Plants and Threatened Status for Six Plants From the Foothills of the Sierra Nevada Mountains of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of extension of comment period.

SUMMARY: The Fish and Wildlife Service (Service) provides notice that the comment period on the proposed determination of endangered status for four plants and threatened status for six plants from the foothills of the Sierra Nevada Mountains of California is extended. The species proposed for endangered status are *Brodiaea pallida, Calyptridium pulchellum, Lupinus citrinus* var. *deflexus,* and *Mimulus shevockii,* while the species proposed for threatened status are *Allium tuolumnense, Carpenteria californica, Clarkia springvillensis, Fritillaria striata, Navarretia setiloba,* and *Verbena californica.*

DATES: The comment period, which originally closed on December 5, 1994, and was reopened and extended to February 13, 1995, now closes on June 4, 1995. Any comments received by the closing date will be considered in the final decision on this proposal.

ADDRESSES: Comments and materials should be submitted to the U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, E–1803, Sacramento, California 95825–1846. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Ken Fuller (see **ADDRESSES** section) or at 916/979–2120.

SUPPLEMENTARY INFORMATION:

Background

Allium tuolumnense (Rawhide Hill onion), *Brodiaea pallida* (Chinese Camp brodiaea), *Calyptridium pulchellum* (Mariposa pussypaws), *Carpenteria californica* (carpenteria), *Clarkia springvillensis* (Springville clarkia), *Fritillaria striata* (Greenhorn adobe lily), *Lupinus citrinus* var. *deflexus* (Mariposa lupine), *Mimulus shevockii* (Kelso Creek monkeyflower), *Navarretia setiloba* (Piute Mountains navarretia), and *Verbena californica* (Red Hills vervain) are plant species found in the foothills of the Sierra Nevada Mountains of California. These ten plants are restricted to various substrate-specific habitats in Fresno, Kern, Madera, Mariposa, Tulare, and Tuolumne Counties. These plants face ongoing threats from one or more of the following: urbanization, inadequate regulatory mechanisms, random stochastic events, off-highway vehicle use, logging, overgrazing, illegal dumping, alteration of natural fire regimes, maintenance of roads and rights-of-ways, insect predation, agricultural land conversion, mining, proposed highway projects, and competition from brush species and nonnative grass species.

On October 4, 1994, the Service published a proposed rule to list *Brodiaea pallida, Calyptridium pulchellum, Lupinus citrinus* var. *deflexus,* and *Mimulus shevockii* as endangered, and list *Allium tuolumnense, Carpenteria californica, Clarkia springvillensis, Fritillaria striata, Navarretia setiloba,* and *Verbena californica* as threatened (59 FR 50540). The comment period on this proposal originally closed on December 5, 1994.

On December 29, 1994, the Service reopened and extended the public comment period until February 13, 1995, to accommodate a public hearing held on January 31, 1995, in Bakersfield, California (59 FR 67268). In response to a letter dated January 25, 1995, from Congressmen Richard Pombo and William M. Thomas of California requesting an extension in the public comment period until June and several other similar requests made in writing or given in testimony at the public hearing, the Service extends the comment period to allow for the collection of additional data during 1995 field season on the status and distribution of the proposed plants. Written comments may now be submitted until June 4, 1995, to the Service in the **ADDRESSES** section.

Author

The primary author of this notice is Jim A. Bartel, U.S. Fish and Wildlife Service, Ecological Services, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

Dated: February 8, 1995.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 95–3620 Filed 2–13–95; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 60, No. 30

Tuesday, February 14, 1995

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.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

February 9, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: February 16, 1995.

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) 927–6705. 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).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (URATC), the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987, as amended and extended, and a Memorandum of Understanding (MOU) dated December 31, 1994 between the Governments of the United States and India, establish limits for the period beginning on January 1, 1995 and extending through December 31, 1995.

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 59 FR 65531, published on December 20, 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 and the MOU dated December 31, 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

February 9, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Act, and the Uruguay Round Agreement on Textiles and Clothing (URATC); pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987, as amended and extended, and the Memorandum of Understanding (MOU) dated December 31, 1994 between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 16, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in India and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following levels of restraint:

Category	Twelve-month restraint limit [1]
Levels in Group I	
218	11,111,304 square meters.
219	53,281,729 square meters.
313	29,729,737 square meters.
314	6,343,063 square meters.
315	10,653,804 square meters.
317	34,531,200 square meters.
326	7,848,000 square meters.
334/634	113,378 dozen.
335/635	504,757 dozen.
336/636	695,255 dozen.
338/339	3,400,800 dozen.
340/640	1,662,185 dozen.
341	3,650,191 dozen of which not more than 2,190,114 dozen shall be in Category 341–Y [2].
342/642	1,022,133 dozen.
345	148,544 dozen.
347/348	477,913 dozen.
351/651	216,059 dozen.
363	34,723,417 numbers.
369–D [3]	1,057,586 kilograms.
369–S [4]	576,865 kilograms.
641	1,190,025 dozen.
647/648	691,037 dozen.
Group II	
200, 201, 220–229, 237, 239, 300, 301, 330–333, 349, 350, 352, 359–362, 600–607, 611–629, 630–633, 638, 639, 643–646, 649, 650, 652, 659, 665–O [5], 666, 669, 670, and 831–859, as a group.	90,820,800 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4] Category 369–S: only HTS number 6307.10.2005.

[5] Category 665–O: all HTS numbers except 5702.10.9030, 5702.42.2020, 5702.92.0010 and 5703.20.1000 (rugs exempt from the bilateral agreement).

Imports charged to these category limits for the period January 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the URATC and any administrative arrangements notified to the Textiles Monitoring Body.

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

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of 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. 95–3625 Filed 2–13–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Cost Comparison Studies

The Air Force is conducting the following cost comparison studies in accordance with OMB Circular A–76, Performance of Commercial Activities.

Installation	Cost comparison study
Maxwell AFB, Alabama	Fuels Management.
Maxwell AFB, Alabama	Grounds Maintenance.
Maxwell AFB, Alabama	Refuse Collection.
Little Rock AFB, Arkansas.	Transient Aircraft Maintenance.
Davis Monthan AFB, Arizona.	Military Family Housing Maintenance.
Tyndall AFB, Florida	Grounds Maintenance.
Tyndall AFB, Florida	Multi-Function Study: Base Operating Support & Backshop Aircraft Maintenance.
Moody AFB, Georgia ...	Military Family Housing Maintenance.
Andersen AFB, Guam ..	Grounds Maintenance.
Andersen AFB, Guam ..	Military Family Housing Maintenance.
Andersen AFB, Guam ..	Mess Attendants.
Andersen AFB, Guam ..	Refuse Collection.
Columbus AFB, Mississippi.	Base Operating Support.
Keesler AFB, Mississippi.	Grounds Maintenance.
Nellis AFB, Nevada	Military Family Housing Maintenance.
Wright Patterson AFB, Ohio.	Audiovisual.
Altus AFB, Oklahoma ...	Aircraft Maintenance.
Tinker AFB, Oklahoma .	Grounds Maintenance.
Lackland AFB, Texas ...	Trainer Fabrication.
Laughlin AFB, Texas	Base Operating Support.
Reese AFB, Texas	Base Operating Support.
Hill AFB, Utah	Child Care Center.
Bolling AFB, Washington, DC.	Military Family Housing Maintenance.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–3654 Filed 2–13–95; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Availability of the Record of Decision (ROD) for the Environmental Impact Statement (EIS) for Closure and Disposal of Sacramento Army Depot, California

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: In accordance with Public Law 101–510, the Defense Base Closure and Realignment Act of 1990, the 1991 Defense Base Closure and Realignment Commission recommended the closure of Sacramento Army Depot and transfer of depot missions to other installations/agencies. Maintenance missions would be competed to determine location of transfer. In accordance with the Act, the Secretary of Defense must implement all recommendations for closure or realignment. The EIS focuses on the environmental and socioeconomic impacts and mitigations associated with the disposal and reuse of Sacramento Army Depot.

No long-term adverse ecological or environmental health effects are expected due to this action. The increase in population anticipated by the reuse and disposal activities is expected to have a net positive impact on the local economy. The preferred alternative, prepared with the cooperation of the local community, is not expected to significantly impact environmental resources.

DATES: Written public comments and suggestions can be submitted on or before March 16, 1995 to the address shown below.

ADDRESSES: Copies of the ROD can be obtained by writing to the United States Army Corps of Engineers, Sacramento District, ATTN: CESPK–ED–M (ISS), 1325 J Street, Sacramento, California 95814–2922.

FOR FURTHER INFORMATION CONTACT:

Mr. Wandell Carlton (916) 557–7424.

Dated: February 3, 1995.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (IL&E).

[FR Doc. 95–3592 Filed 2–13–95; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Notice of Public Hearings for the Draft Environmental Impact Statement for Disposal and Reuse of Naval Hospital Long Beach, Long Beach, CA.

Pursuant to Council on Environmental Quality regulations (40 CFR Parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement (DEIS) for disposal and reuse of Naval Hospital Long Beach.

In accordance with legislative requirements in the 1990 Base Closure and Realignment Act (Public Law 101–510) and the results of the 1991 Defense Base Closure and Realignment process, Naval Hospital Long Beach, California was directed to be closed and made available for reuse. Navy has analyzed the environmental effects of reasonably forseeable reuse alternatives of existing buildings and for redevelopment of the site. Five alternatives for potential reuse have been identified by the City of Long Beach and through an extensive scoping process: (1) The Los Angeles County Office of Education (LACOE); (2) a Senior Health Care facility; (3) an industrial park; (4) retail use; and (5) residential use. Alternatives (1) and (2) would rehabilitate existing structures and facilities; alternatives (3) (4) and (5) would require demolition of existing structures and subsequent site redevelopment.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, and special interest groups. Copies of the DEIS have also been placed in local libraries. A limited number of copies are available at the address listed at the end of this notice.

No implementation of the proposed action will occur until the National Environmental Policy Act process has been completed and the Navy releases a Record of Decision.

The Department of the Navy will hold two public hearings to inform the public of the DEIS findings and to solicit comments. The first meeting will be held on Wednesday, March 1, 1995

beginning at 7:00 PM in the Long Beach City College (Liberal Arts Campus) Auditorium. Long Beach City College is located at 4901 East Carson Street in Long Beach, California. The auditorium is located on Harvey Way between Clark and Faculty Avenues. The second meeting will be held on Thursday, March 2, 1995 beginning at 7:00 p.m. in the Lakewood Civic Center, Weingart Ballroom. The Civic Center is located at 5000 Clark Ave, Lakewood, California. Both meetings will be bilingual with a Spanish interpreter present.

The public hearings will be conducted by the Navy. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record and equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by 20 March 1995, to become part of the official record.

Additional information concerning this notice may be obtained by contacting Ms. Jo Ellen Anderson (Code 232.JA), Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, California 93132–5190, telephone (619) 532–3912.

Dated: February 9, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–3664 Filed 2–13–95; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by February 15, 1995.

ADDRESSES: Writeen comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland, Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description attachment to this notice.

Dated: February 8, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: Expedited
Title: State Plan Instructions for Title I, Part A, Improving Basic Programs Operated by Local Educational Agencies
Frequency: Annually
Affected Public: State, Local or Tribal Government
Reporting Burden:
Responses: 53
Burden Hours: 25,440
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: To receive Title I, Part A funds, the SEA must develop and submit a State plan to the Department for peer review. The Department will use the information for program management and to update their plans to reflect changes in the State's programs and strategies.
Additional Information: Clearance for this information collection is requested for February 15, 1995. In order to give the States sufficient time to prepare plans/applications, the applications need to be mailed to the SEAs by mid-February. OMB approval is needed as soon as possible to allow time for revisions or reproductions.

Office of Elementary and Secondary Education

Type of Review: Expedited
Title: State Plan Instructions for Title I, Part D Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At Risk of Dropping Out
Frequency: Annually
Affected Public: State, Local or Tribal Governments
Reporting Burden:
Responses: 52
Burden Hours: 2,080
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: To receive Title I, Part D funds, the statute requires that State agencies develop and submit State plans to the Department of Education for approval.
Additional Information: Clearance for this information collection is requested for February 15, 1995. An expedited review is requested in order to implement the program before the start of the new year.

[FR Doc. 95–3598 Filed 2–13–95; 8:45 am]

BILLING CODE 4000–01–M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection

requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by February 20, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW, room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW, Regional Office Building 3, Washington, DC 202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: February 8, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Expedited
Title: Guaranty Agency Financial Projections
Frequency: Annually
Affected Public: Not-for-profit institutions; and State, Local or Tribal Government
Reporting Burden:
Responses: 45
Burden Hours: 1,350
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by guaranty agencies under the Federal Family Education Loan Program. The Department will use the information to evaluate the current and projected financial status of guaranty agencies, to make comparisons of guaranty agencies for determining a national model for guarantors and projecting the impact of changes in revenue, and to manage guaranty agency reserves.
Additional Information: Clearance for this information collection is requested for February 20, 1995. An expedited review is requested in order to obtain accurate and in-depth information regarding the financial condition of guaranty agencies while the Direct Loan Program is being implemented. To receive a copy of the instrument, please call (202) 401–2280.

[FR Doc. 94–3599 Filed 2–13–94; 8:45 am]

BILLING CODE 4000–01–M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before March 16, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW, room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: February 8, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Reinstatement
Title: Application for the Higher Education Collaboration Between the United States and the European Community (A Special Focus Competition of the Fund for the Improvement of Postsecondary Education)
Frequency: Annually
Affected Public: Not-for-profit institutions; State, Local or Tribal Government
Reporting Burden:
Responses: 300
Burden Hours: 6,000
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The Higher Education Collaboration Between the United States and the European Community is an experimental program that will support new types of cooperation and

exchange between institutions of higher education in the U.S. and counterparts in the member states of the European Community. Eligible institutions will apply for grants under this Special Focus Competition. The Department will use the information to make awards.

[FR Doc. 95–3600 Filed 2–13–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award: Mr. Kevin Bolin

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a financial assistance award under Grant Number DE–FG01–95EE15623 to Mr. Kevin Bolin of EnerTech Environmental, Inc. The proposed grant will provide funding in the estimated amount of $99,995 by the Department of Energy for the purpose of saving energy through development of ''Clean Energy from Municipal Solid Waste'', process technology for environment-friendly utilization of Municipal Solid Waste (MSW) energy resources.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(e)(1) that the unsolicited application for financial assistance submitted by Kevin Bolin, CPA and president of EnerTech Environmental, Inc. The application is meritorious based on the general evaluation required by 10 CFR 600.14(d) and the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The applicant, Mr. Kevin Bolin, has assembled a staff consisting of Michael Klosky, a chemical engineer, and Norm Dickenson, the inventor. EnerTech Environmental, Inc., will supply its resources to process MSW fuel materials, conduct data gathering combustion runs, and perform engineering computer analyses and simulations to estimate scale-up costs to demonstrate the superior efficiency and economics of this process technology. In addition they will have the assistance of the University of North Dakota's Energy and Environmental Research Center to construct and test the pilot scale system. It is expected that if the invention results in using 20 percent of the MSW projected for landfills for fuel, the electricity generated would be the equivalent of about 22 million barrels of crude oil per year. Furthermore, the process removes contaminants and is nearly pollution free. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, HR–531.23, 1000 Independence Ave., S.W., Washington, D.C. 20585.

The anticipated term of the proposed grant is 24 months from the date of award.

Issued in Washington, D.C. on January 30, 1995.

Richard G. Lewis,

Contracting Officer, Office of Placement and Administration.

[FR Doc. 95–3650 Filed 2–13–95; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance Award: Dr. Jesse J. Brown

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a financial assistance award under Grant Number DE-FG01–95EE15598 to Dr. Jesse J. Brown of MATVA, Inc. The proposed grant will provide funding in the estimated amount of $99,606 by the Department of Energy for the purpose of saving energy through further development of the Dr. Jesse J. Brown's ''Syntheses and Sintering of Fine and Ultrafine Grain NZP Ceramics'' process technology for the production of thermal shock resistant ceramics similar to sodium-zirconium-phosphate materials.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(e)(1) that the unsolicited application for financial assistance submitted by Dr. Jesse J. Brown is meritorious based on the general evaluation required by 10 CFR 600.14(d) and the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. Dr. Brown and his subcontractors, Virginia Tech and Caterpillar Corporation, will produce and then test diesel engine manifold liners made from his advanced ceramic materials in low-heat-rejection diesel lines. The materials have physical properties including good thermal insulation, low-coefficient of thermal expansion, good high temperature physical strength and extremely high melting points that make them excellent candidates for use in many energy intensive systems. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, HR–531.23, 1000 Independence Avenue SW., Washington, D.C. 20585.

The anticipated term of the proposed grant is 18 months from the date of award.

Issued in Washington, D.C. on January 30, 1995.

Richard G. Lewis,

Contracting Officer, Office of Placement and Administration.

[FR Doc. 95–3652 Filed 2–13–95; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance Award: Dr. John V. Milewski

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a financial assistance award under Grant Number DE–FG01–95EE15632 to Dr. John V. Milewski of Superkinetic, Inc. The proposed grant will provide funding in the estimated amount of $98,000 by the Department of Energy for the purpose of saving energy through development of Dr. Milewski's ''Hafnium Carbide Single Crystal Fiber for Ceramic Cutting Tool Reinforcement'' composite material technology for the production of superior metal cutting and machining tools through the use of reinforcing whiskers in the cutting component. This method is superior over currently used

silicon carbide and tungsten carbide reinforcement technology in that it is applicable for machining ferrous materials and it uses plentiful raw materials with superior high temperature properties.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(e)(1) that the unsolicited application for financial assistance submitted by Dr. John V. Milewski is meritorious based on the general evaluation required by 10 CFR 600.14(d) and the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. Estimates indicate a ten- to twenty-fold improvement in machining productivity can be expected from the use of this technology. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, HR–531.23, 1000 Independence Ave., S.W., Washington, D.C. 20585.

The anticipated term of the proposed grant is 18 months from the date of award.

Issued in Washington, D.C. on January 30, 1995.

Richard G. Lewis,

Contracting Officer, Office of Placement and Administration.

[FR Doc. 95–3651 Filed 2–13–95; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance Award: Virginia Polytechnic Institute and State University

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a financial assistance award under Grant Number DE–FG01–95EE15584 to the Virginia Polytechnic Institute, Office of Sponsored Products. The proposed grant will provide funding in the estimated amount of $99,743 by the Department of Energy for the purpose of saving energy through the invention, ''Tribopolymerization as an Anti-Wear Mechanism'', a method for reducing both wear and friction between ceramic-ceramic and ceramic-metal surfaces in contact under pressure.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(e)(1) that the unsolicited application by Dr. Michael J. Furey of the Mechanical Engineering Department of the Virginia Polytechnic Institute and State University is meritorious based on the general evaluation required by 10 CFR 600.14(d) and the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The method is regarded as having the potential to play the role of an enabling technology in the development of adiabatec high-temperature ceramic engines that could improve efficiency by 50%. Laboratory tests show that this novel method is more effective at diminishing wear and lubrication needs of ceramic surfaces at higher temperatures than conventional methods. Current technology methods cannot effectively lubricate ceramic materials or operate at temperatures higher than 150 °C. Specifics used in this new process have already shown effectiveness at 250 °C. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, HR–531.23, 1000 Independence Avenue SW., Washington, D.C. 20585.

The anticipated term of the proposed grant is 18 months from the date of award.

Issued in Washington, D.C. on January 30, 1995.

Richard G. Lewis,

Contracting Officer, Office of Placement and Administration.

[FR Doc. 95–3648 Filed 2–13–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[FE Docket No. 95–06–NG]

ANR Pipeline Co.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting ANR Pipeline Company blanket authorization to import up to 350 Bcf of natural gas from Canada over a period of two years beginning on the date of first delivery after January 31, 1995. This order is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on January 30, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–3655 Filed 2–13–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–07–NG]

1 Source Energy Services Company; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it issued DOE/FE Order No. 1024 on January 31, 1995, granting 1 Source Energy Services Company (1SESC) blanket authorization to import a combined total of up to 200 Bcf of natural gas, including LNG, from Canada and Mexico. In addition, 1SESC is authorized to export a combined total of up to 200 Bcf of natural gas, including LNG, to Canada and Mexico. This authorization to import and export natural gas, including LNG, from and to Canada and Mexico is for a period of two years beginning on the date of the initial import or export delivery, whichever occurs first.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585,

(202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on February 6, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–3656 Filed 2–13–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–04–NG]

Selkirk Cogen Partners, L.P. ; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Selkirk Cogen Partners, L.P. authorization to import from and to export to Canada up to a total of 57 Bcf of natural gas. The term of the authorization is for a period of two years, beginning on the date of first import or export after January 20, 1995.

Selkirk's order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., January 30, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–3658 Filed 2–13–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No 95–09–NG]

Transco Energy Marketing Co.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Transco Energy Marketing Company authorization to import up to 730 Bcf of natural gas from Canada over a two-year term beginning on the date of the first delivery after February 6, 1995.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., February 7, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–3657 Filed 2–13–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER95–524–000, et al.]

Delmarva Power & Light Co., et al.; Electric Rate and Corporate Regulation Filings

February 8, 1995.

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

1. Delmarva Power & Light Co.

[Docket No. ER95–524–000]

Take notice that on January 31, 1995, Delmarva Power & Light Company (Delmarva) of Wilmington, Delaware, filed under the provision of § 205 of the Federal Power Act an eight year power supply contract (the Service Agreement) under which Delmarva will provide requirements service to four Delaware Municipal customers, Lewes, Milford, Newark, and New Castle, respectively. Delmarva states that the Service Agreement supersedes Delmarva's Rate Schedule Nos. 61, 66, 67 and 69 under which each customer previously received requirements served from Delmarva. In addition, Delmarva filed a dispatchable generation agreement between Delmarva and Lewes.

Delmarva, with the concurrence of the four Municipal customers, requests an effective date of February 1, 1995.

The Service Agreement provides for the continuation of the requirements service previously furnished the customer, but changes certain terms and conditions. The chief differences between the Service Agreement and the service currently furnished under each customers' currently effective rate schedule, are that the Service Agreement establishes a new rate for the customer which is below the level of the rate currently charged the customer and establish a base rate level for production service that is to apply when the service agreement becomes effective and provides for annual escalations in the base rate. The Service Agreement has an eight-year term. The Dispatchable Service Agreement between Delmarva and Lewes provides the terms and conditions under which Lewes will supply a portion of its own energy needs and implements Article V of the Service Agreement between Delmarva and Lewes.

Delmarva states that the filing has been posted and has been served upon the affected customer and the Delaware Public Service Commission.

Comment date: February 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Company of Oklahoma Southwestern Electric Power Company

[Docket No. ER95–523–000]

Take notice that on January 30, 1995, Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO), tendered for filing an executed service agreement with the Oklahoma Municipal Power Authority for transmission service under the SPP Interpool Transmission Service Tariff. Companies request that the filing be accepted to become effective as of January 1, 1995.

A copy of the filing has been served on the Oklahoma Corporation Commission.

Comment date: February 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. West Texas Utilities Co.

[Docket No. ER95–525–000]

Take notice that on January 31, 1995, West Texas Utilities Company (WTU), submitted an executed Remote Control Area Load Agreement (the RCAL Agreement), dated January 30, 1995, between WTU and Texas Utilities Electric Company (TU Electric). WTU also submitted a service agreement, dated November 30, 1994, with Cap Rock Electric Cooperative, Inc. under its Coordination Sales Tariff.

WTU seeks an effective date for both agreements of February 1, 1995, and, accordingly, seeks waiver of the Commission's notice requirements. WTU served copies of the filing on TU Electric, Cap Rock, the Public Utility Commission of Texas and all parties to this docket. A copy of the filing is also available for inspection at WTU's offices in Abilene, Texas.

Comment date: February 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. PacifiCorp

[Docket No. ER95–527–000]

Take notice that on February 1, 1995, PacifiCorp, tendered for filing in

accordance with 18 CFR 35.12 of the Commission's Rules and Regulations, a copy of the fully executed December 8, 1994, Storage and Integration Services Agreement (Services Agreement) between PacifiCorp and Public Utility District No. 1 of Clark County, Washington (Clark), a copy of the fully executed December 8, 1994, Transmission Facilities Agreement (Facilities Agreement) between PacifiCorp and Clark and a copy of the fully executed Service Agreement between PacifiCorp and Clark dated January 30, 1995, under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 3.

PacifiCorp requests that the Commission grant a waiver of prior notice pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations and that an effective date of December 8, 1994 be assigned to the Services Agreement and the Facilities Agreement. PacifiCorp requests that the Service Agreement under the Tariff be accepted and that an effective date of February 1, 1995 be assigned.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment date: February 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Ocean State Power II

[Docket No. ER95–530–000]

Take notice that on February 1, 1995, Ocean State Power II (Ocean State II), tendered for filing the following supplements (the Supplements) to its rate schedule with the Federal Energy Regulatory Commission (FERC or the Commission):

Supplements No. 16 to Rate Schedule FERC No. 5
Supplements No. 16 to Rate Schedule FERC No. 6
Supplements No. 15 to Rate Schedule FERC No. 7
Supplements No. 16 to Rate Schedule FERC No. 8

The Supplements to the rate schedules request approval of Ocean State II's proposed rate of return on equity for the period beginning on February 1, 1995, the requested effective date of the Supplements, and ending on the effective date of Ocean State II's updated rate of return on equity to be filed in February of 1996. Ocean State II is filing the Supplements pursuant to Section 7.5 of each of Ocean State II's unit power agreements with Boston Edison Company, New England Power Company, Montaup Electric Company, and Newport Electric Corporation, respectively, the Commission's Order in *Ocean State Power II*, 59 FERC ¶ 61,360 (1992) (*Ocean State II Order*), the Commission's Order in *Ocean State Power*, 63 FERC ¶ 61,072 (1993) (April 1993 Order), and the Commission's Order in *Ocean State Power*, 69 FERC ¶ 61,146 (1994) (November 1994 Order). The Supplements constitute a rate increase.

Copies of the Supplements have been served upon Boston Edison Company, New England Power Company, Montaup Electric Company, Newport Electric Corporation, the Massachusetts Department of Public Utilities, the Rhode Island Public Utilities Commission and TransCanada Pipelines Limited.

Comment date: February 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Duquesne Light Co.

[Docket No. ER95–531–000]

Take notice that on February 21, 1995, Duquesne Light Company tendered under the Commission's Rules of Practice and Procedure (18 CFR 35.23) six (6) copies of Appendix 90CAAA to Rate Schedule FPC Nos. 8, 9 and 15. Appendix 90CAAA was tendered to ensure compliance with the Commission's Policy Statement and Interim Rate issued December 15, 1994 at Docket No. PL95–1–000, regarding ratemaking treatment of the cost of emission allowances in coordination sales.

Comment date: February 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Union Electric Co.

[Docket No. ER95–532–000]

Take notice that on February 1, 1995, Union Electric Company (Union), tendered for filing an Addendum to its coordination agreements. Union asserts that the purpose of the Addendum is to explain how the cost of emission allowances are to be calculated, under the requirements of Docket No. PL95–1–000.

Comment date: February 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Ocean State Power

[Docket No. ER95–533–000]

Take notice that on February 1, 1995, Ocean State Power (Ocean State), tendered for filing the following supplements (the Supplements) to its rate schedules with the Federal Energy Regulatory Commission (FERC or the Commission):

Supplements No. 17 to Rate Schedule FERC No. 1
Supplements No. 14 to Rate Schedule FERC No. 2
Supplements No. 13 to Rate Schedule FERC No. 3
Supplements No. 15 to Rate Schedule FERC No. 4

The Supplements to the rate schedules request approval of Ocean State's proposed rate of return on equity for the period beginning on February 1, 1995, the requested effective date of the Supplements, and ending on the effective date of Ocean State's updated rate of return on equity to be filed in February of 1996. Ocean State is filing the Supplements pursuant to Section 7.5 of each of Ocean State's unit power agreements with Boston Edison Company, New England Power Company, Montaup Electric Company, and Newport Electric Corporation, respectively, the Commission's Order in *Ocean State Power II*, 59 FERC ¶ 61,360 (1992) (*Ocean State II Order*), the Commission's Order in *Ocean State Power*, 63 FERC ¶ 61,072 (1993) (April 1993 Order), and the Commission's Order in *Ocean State Power*, 69 FERC ¶ 61,146 (1994) (November 1994 Order). The Supplements constitute a rate increase.

Copies of the Supplements have been served upon Boston Edison Company, New England Power Company, Montaup Electric Company, Newport Electric Corporation, the Massachusetts Department of Public Utilities, the Rhode Island Public Utilities Commission and TransCanada Pipelines Limited.

Comment date: February 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. American Electric Power Service Corp.

[Docket No. ER95–534–000]

Take notice that on February 1, 1995, the American Electric Power Service Corporation (AEPSC), tendered, an initial Rate Schedule, Agreement dated January 1, 1995, between AEPSC, an agent for the AEP System Operating Companies and Citizens Lehman Power Sales (Marketer).

The Agreement provides the Marketer access to the AEP System for short-term transmission service. The parties request an effective date of January 31, 1995.

A copy of the filing was served upon the affected state regulatory commissions of Ohio, Indiana, Michigan, Virginia, West Virginia, Kentucky, Tennessee, and the Marketer.

Comment date: February 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Portland General Electric Co.

[Docket No. ER95–535–000]

Take notice that on February 1, 1995, Portland General Electric Company (PGE), tendered for filing a Letter Agreement Between Portland General Electric Company and the Bonneville Power Administration (BPA) changing transmission loss factors used in the Intertie Agreement, BPA Contract No. DE-MS79–87BP92340, PGE Rate Schedule FERC No. 66. PGE requests waiver of the notice requirement to allow the changes in the loss factors to become effective February 1, 1995. Copies of this filing have been served on the parties listed in the Certificate of Service attached to the filing letter.

Comment date: February 22, 1995, 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. 95–3632 Filed 2–13–95; 8:45 am]

BILLING CODE 6717–01–D

[Docket No. EC95–8–000, et al.]

Southwestern Public Service & Texas New Mexico Power Company, et al.; Electric Rate and Corporate Regulation Filings

February 7, 1995.

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

1. Southwestern Public Service and Texas-New Mexico Power Co.

[Docket No. EC95–8–000]

Take notice that on February 1, 1995, Southwestern Public Service Company (Southwestern), and Texas-New Mexico Power Company (TNP), filed, pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's Regulations, a request for an order authorizing the sale to Southwestern of facilities located in TNP's Panhandle service area. The facilities include TNP's transmission and distribution systems located within Hansford, Ochiltree, and Lipscomb counties in the Texas Panhandle area.

As a result of the acquisition of facilities, Southwestern will own and operate the transmission, distribution, and other facilities currently owned and operated by TNP in the Panhandle area. The 7,967 customers that are presently served by TNP in the Panhandle area will be served by Southwestern. Southwestern and TNP state that customers in the Panhandle area will receive an immediate rate reduction.

Resolution of the municipalities of Follett, Darrouzett, Booker, Spearman, Perryton, and Higgins supporting the acquisition of facilities accompany Southwestern and TNP's filing.

Southwestern and TNP have requested that the Commission expedite consideration of their request and, if possible, approve the acquisition of facilities in 45 days.

Comment date: February 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Western Systems Power Pool

[Docket No. ER91–195–019]

Take notice that on January 30, 1995, the Western System Power Pool (WSSP), filed certain information as required by Ordering Paragraph (D) of the Commission's June 27, 1991 order (55 FERC ¶ 61,495) and Ordering Paragraph (C) of the Commission's June 1, 1992 Order On Rehearing Denying Request Not To Submit Information, and Granting In Part And Denying In Part Privileged Treatment. Pursuant to 18 CFR 385.211, WSPP has requested privileged treatment for some of the information filed consistent with the June 1, 1992 order. Copies of WSPP's informational filing are on file with the Commission, and the non-privileged portions are available for public inspection.

3. Delmarva Power & Light Co.

[Docket No. ER93–96–007]

Take notice that on February 3, 1995, Delmarva Power & Light Company tendered for filing its compliance refund report in the above-referenced docket.

Comment date: February 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Heartland Energy Services, Inc.

[Docket No. ER94–108–002]

Take notice that on January 27, 1995, Heartland Energy Services, Inc. (HES), tendered for filing with the Federal Energy Regulatory Commission information relating to the above docket.

Comment date: February 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. CRSS Power Marketing, Inc.

[Docket No. ER94–142–004]

Take notice that on January 19, 1995, CRSS Power Marketing, Inc. (CRSS), filed certain information as required by the Commission's December 30, 1993, letter order in Docket No. ER94–142–000. Copies of CRSS's informational filing are on file with the Commission and are available for public inspection.

6. Direct Electric Inc.

[Docket No. ER94–1161–003]

Take notice that on January 19, 1995, Direct Electric Inc. (DEI) filed certain information as required by the Commission's July 18, 1994, letter order in Docket No. ER94–1161–000. Copies of DEI's informational filing are on file with the Commission and are available for public inspection.

7. Ashton Energy Corp.

[Docket No. ER94–1246–002]

Take notice that on January 23, 1995, Ashton Energy Corporation (Ashton Energy), filed certain information as required by the Commission's August 10, 1994, letter order in Docket No. ER94–1246–000. Copies of Ashton Energy's informational filing are on file with the Commission and are available for public inspection.

8. Energy Resources Marketing, Inc.

[Docket No. ER94–1580–001]

Take notice that on February 1, 1995, Energy Resource Marketing, Inc. (ERM), filed certain information as required by the Commission's September 30, 1994, letter order in Docket No. ER94–1580–000. Copies of ERM's informational filing are on file with the Commission and are available for public inspection.

9. Entergy Services, Inc. and Entergy Power, Inc.

[Docket Nos. ER95–112–001 and EL95–17–001]

Take notice that on January 25, 1995, Entergy Services, Inc. and Entergy Power, Inc. tendered for filing its compliance filing in the above-referenced dockets.

Comment date: February 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Duke Power Co.

[Docket No. ER95–171–001]

Take notice that on January 23, 1995, Duke Power Company (Duke), tendered for filing additional information in the above-referenced docket.

Comment date: February 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. KCS Energy Management Services, Inc.

[Docket No. ER95–208–000]

Take notice that on February 1, 1995, KCS Energy Management Services, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: February 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Consumers Power Co.

[Docket No. ER95–472–000]

Take notice that on January 25, 1995, Consumers Power Company (Consumers), tendered for filing a Service Agreement with the Michigan Power Agency (MPPA) and Wolverine Power Supply Cooperative, Inc. (Wolverine), pursuant to Consumer's Open Access Transmission Service Tariff. The filed Service Agreement extends the availability of transmission service to MPPA and Wolverine in order to facilitate operation of the Municipal Cooperative Coordinated Pool. A copy of the filing was served upon the MPPA, Wolverine, and the Michigan Public Service Commission.

Comment date: February 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Alabama Power Co.

[Docket No. ER95–526–000]

Take notice that on February 1, 1995, Alabama Power Company filed a letter agreement dated January 6, 1995, revising the Contract executed by the United States of America, Department of Energy, acting by and through the Southeastern Power Administration and Alabama Power Company. The letter agreement extends the term of the existing Contract until the effective date of new arrangements or the filing of a notice of termination, whichever occurs first.

Comment date: February 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–536–000]

Take notice that on February 1, 1995, Consolidated Edison Company of New York, Inc. (''Con Edison''), tendered for filing an agreement with Maine Public Service Company (''MPS''), to provide for the sale of energy and capacity. For energy sold the ceiling rate is 100 percent of the incremental energy cost plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per Kwhr when the SIC in the hour reflects a purchased power resource). The ceiling rate for capacity is $7.70 per megawatt hour.

Con Edison states that a copy of this filing has been served by overnight delivery upon MPS.

Comment date: February 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER95–537–000]

Take notice that on February 1, 1995, Entergy Services, Inc. (Entergy Services), tendered for filing a Transmission Service Agreement (TSA) between Entergy Services and NorAm Energy Services, Inc. (NES). Entergy Services states that the TSA sets out the transmission arrangements under which the Entergy Operating Companies' will provide NES non-firm transmission service under Entergy Services Non-Firm Transmission Service Tariff.

Comment date: February 21, 1995, 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. 95–3633 Filed 2–13–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–191–000, et al.]

Natural Gas Pipeline Company of America, et al.; Natural Gas Certificate Filings

February 7, 1995.

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

1. Natural Gas Pipeline Co. of America

[Docket No. CP95–191–000]

Take notice that on February 1, 1995, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP95–191–000 an application under Sections 7(b) and 7(c) of the Natural Gas Act for authorization to abandon facilities and construct new facilities.

Applicant requests authority for the following actions:

(1) Abandon 99.93 miles of its 24-inch Amarillo No. 1 line located in Beaver County Oklahoma, and Ochiltree, Hansford and Hutchinson Counties, Texas and abandon 2.74 miles of its 30-inch Amarillo No. 1 line located in Hutchinson County, Texas;

(2) Transfer of this abandoned pipe to applicant's affiliate MidCon Gas Products (MidCon) for use as a gathering facility;

(3) Construct and operate 17.98 miles of 30-inch pipeline loop in Hutchinson County, Texas, at an estimated cost of $10,800,000 to

Applicant also asks the Commission to specify that the abandoned pipe line will be a non-jurisdictional facility when operated as a gathering line by MidCon.

Comment date: February 28, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. Northwest Pipeline Corp.

[Docket No. CP95–195–000]

Take notice that on February 2, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP95–195–000, 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 and operate an upgrade of the existing facilities at the South Vancouver Meter Station located in Clark County, Washington, as requested by an existing firm transportation shipper and marketer of natural gas, IGI Resources, Inc. (IGI); all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Northwest proposes to upgrade the South Vancouver Meter

Station by replacing the existing orifice plate in the 6-inch orifice meter run with a larger capacity orifice plate. Northwest states that this change will increase the maximum design delivery capacity of the South Vancouver Meter Station from 14,167 Dths per day to approximately 16,667 Dths per day at a pressure of 400 psig. Northwest states that the South Vancouver Meter Station originally was constructed under certificate authorization in Docket No. G–1429.

Northwest states the IGI, a marketer of natural gas, has requested that Northwest expand the South Vancouver Meter Station to accommodate an additional 2,500 MMBtu per day (at 400 psig) of firm delivery capacity under an existing firm transportation service agreement dated June 29, 1990, or under any other duly authorized transportation agreement.

Northwest states that the total cost of the proposed facility upgrade at the South Vancouver Meter Station is estimated to be approximately $1,000 which will be reimbursed by IGI.

Comment date: March 24, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Columbia Gas Transmission Corp.

[Docket No. CP95–196–000]

Take notice that on February 2, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed request with the Commission in Docket No. CP95–196–000 pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate additional points of delivery, authorized in blanket certificate issued in Docket No. CP83–76–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia proposes to construct and operate new facilities that would establish ten additional points of delivery to existing customers that have asked Columbia to provide firm transportation. Columbia states that the estimated cost would be approximately $150 per tap which would be treated as a O&M Expense.

Comment date: March 24, 1995, in accordance with Standard Paragraph G 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, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 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 Section 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. 95–3634 Filed 2–13–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP93-198–004]

Alabama-Tennessee Natural Gas Co.; Proposed Change In FERC Gas Tariff

February 8, 1995.

Take notice that on February 3, 1995, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), filed to revise the filing previously submitted by Alabama-Tennessee on November 29 1994 in Docket No. RP93–198–003 (November 29 Filing). In particular, Alabama-Tennessee states that the instant filing is designed to reflect a dollar-for-dollar refund of $37,631.73 that Alabama-Tennessee recently received from Tennessee Gas Pipeline Company (Tennessee) relating to a Tennessee billing error.

According to Alabama-Tennessee its November 29 Filing provided for the recovery by Alabama-Tennessee of the net debit balance due and payable by shippers on Alabama-Tennessee's system under Section 33.4(f) of the General Terms and Conditions of Alabama-Tennessee's FERC Gas Tariff, Second Revised Volume No. 1, resulting from a true-up performed by Alabama-Tennessee following the elimination of its Transportation Cost Rate Adjustment. As a further result of the flow-through of the subject refund, however, those shippers which owed Alabama-Tennessee the true-up amounts shown in the November 29 Filing will now receive a credit.

Alabama-Tennessee proposes that the November 29 Filing be deemed revised by the instant filing and that it be permitted to credit the amount due each customer under this revised filing on bills Alabama-Tennessee will be rendering in March 1995, for services provided during February, 1995.

Alabama-Tennessee has requested that the Commission grant such waivers as may be necessary to accept and approve the filing as submitted.

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 385.211). All such protests should be filed on or before February 15, 1995. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3572 Filed 2–13–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–7–003]

Mississippi River Transmission Corp.; Compliance Filing

February 8, 1995.

Take notice that on February 3, 1995, Mississippi River Transmission Corporation (MRT), submitted for filing the following tariff sheets listed below to its FERC Gas Tariff, Third Revised Volume No. 1:

	Proposed effective date
Second Substitute First Revised Sheet No. 127.	November 1, 1994.
Second Substitute First Revised Sheet No. 213.	November 1, 1994.

MRT states that the purpose of the filing is to comply with the Commission's January 19, 1995, order by revising the tariff language on Sheet Nos. 127 and 224 to conform with the tariff language originally proposed by MRT in its October 7, 1994, filing in this proceeding.

MRT states that a copy of the filing has been mailed to each of its customers and the State Commissions of Arkansas, Illinois and Missouri.

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 385.211). All such protests should be filed on or before February 15, 1995. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3571 Filed 2–13–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–198–000]

Northern Natural Gas Co.; Request Under Blanket Authorization

February 8, 1995.

Take notice that on February 3, 1995, Northern Natural Gas Company (Northern), P.O. Box 3330, Omaha, Nebraska 68103–0330, filed in Docket No. CP95–198–000 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 upgrade an existing delivery point to accommodate increased natural gas deliveries to Northern States Power (Minnesota) (NSP–M), under the blanket certificate issued in Docket No. CP82–401–000, 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.

Northern proposes to upgrade an existing town border station (Kandiyohi #1 Town Border Station) located in Kandiyohi County, Minnesota, to accommodate increased natural gas deliveries to NSP-M for commercial, industrial and residential end-use under Northern's currently effective service agreement with NSP-M. Northern estimates increased peak day and annual volumes through the upgraded town border station of 720 Mcf and 91,980 Mcf, respectively. Northern estimates a cost of upgrading the delivery point of $3,500 and indicates that the costs would be financed in accordance with the General Terms and Conditions of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern advises that the total volumes to be delivered to the customer after the request do not exceed the total volumes authorized prior to the request. Also, Northern indicates that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the changes proposed herein without deteriment or disadvantage of Northern's other customers.

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. 95–3574 Filed 2–13–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG95–4–000]

Northwest Pipeline Corp.; Filing

February 8, 1995.

Take notice that on February 2, 1995, Northwest Pipeline Corporation (''Northwest''), filed a ''Petition of Northwest Pipeline Corporation For Waiver of Regulations.'' Northwest seeks waiver of the Federal Energy Regulatory Commission's marketing affiliate regulations described under Order Nos. 497 *et seq.*[1] and Order Nos. 566 *et seq.*[2] Northwest has entered into an agreement with Williams Energy Systems company (''WES'') to act as administrator of WES' ''Streamline'' service which facilities the engagement of buyers and sellers of natural gas at the interface between gas production areas and pipeline interconnections at the Rocky Mountain Market Center located in Opal, Wyoming. Northwest may, in the future, provide similar services for WES at other locations. The requested waiver is limited to Northwest's role, now and in the future, as administrator of this electronic gas trading service.

Northwest states that a copy of this Petition has been served to Northwest's

[1] Order 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] Standard 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 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707 (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994); *appeal docketed, Conoco, Inc.* v. *FERC,* D.C. Cir. No. 94–1745 (December 13, 1994).

jurisdictional customers and relevant State commissions by postage paid, U.S. Mail.

Any person desiring to be heard or 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 or protests should be filed on or before February 23, 1995. 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. 95–3573 Filed 2–13–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM95–6–000]

Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Request for Comments on Alternative Pricing Methods

February 8, 1995.

The Federal Energy Regulatory Commission (Commission) requests comments on criteria to evaluate rates established through methods other than the traditional cost-of-service ratemaking method. The Commission's traditional approach to rate regulation sets an annual revenue requirement based on operating and capital costs occurring during a historical test period, adjusted for known and measurable changes expected to occur by the time suspended rates take effect. Rates are generally designed to recover the annual revenue requirement based on contract capacity entitlements and projected annual or seasonal volumes.

Recently, the Commission has received a number of requests from natural gas pipeline companies to approve rates based on various other pricing methods, some of which are cost-based, and some of which are not. For example, the Commission has approved a number of proposals for market-based rates for storage services.[1] In *Stingray Pipeline Company*,[2] the Commission approved a one-year experimental interruptible transportation rate based on costs allocated to Stingray's interruptible service, subject to a price cap. In *KN Interstate Gas Transmission Company* (*KN*),[3] the Commission addressed KN's proposal to offer market-based rates and negotiated terms and conditions of service on its Buffalo Wallow System. Most recently, Florida Gas Transmission Company's section 4 filing in Docket No. RP95–103–000 included a ''Market Matching Program,'' under which shippers would have the option of negotiating rates and terms of service different from the tariff rates and terms of service. Florida Gas also proposed an experimental inflation indexing mechanism for rate changes, using cost-of-service rates as the starting point.

The Commission is interested in developing a framework for analyzing proposals involving alternative pricing methods for natural gas pipelines. There are a number of different ratemaking methods that could be used instead of the traditional individual company embedded cost-of-service method. In addition to market-based pricing, there are a number of cost-based methods that vary from the individual company cost-of-service method traditionally used by the Commission. The Commission recognizes that it may be necessary to develop different criteria for evaluating alternative pricing proposals, depending upon the method proposed. To this end, the Commission's staff has prepared a paper, which is attached, proposing criteria for the evaluation of proposals for market-based rates. The staff paper draws from basic antitrust market power analysis, that has been used in the past by the Commission and in other contexts, to develop a proposed analytical framework to use in evaluating gas pipeline market-based rate proposals. The Commission is interested in receiving comments on all aspects of the staff paper, including the following:

1. a. Under what circumstances are market-based rates appropriate for natural gas pipelines and services regulated by the Commission?

b. Please identify and discuss any legal issues, beyond those discussed in the staff paper, that should be considered.

2. a. Are the Department of Justice/Federal Trade Commission Horizontal Merger Guidelines, from which the staff proposal is drawn, the best framework to evaluate market power in the interstate natural gas pipeline context?

b. Are there other approaches to evaluating market power that would be less burdensome?

3. a. Are the criteria proposed in the staff paper reasonable, too strenuous, or not strenuous enough?

b. Should the Commission use a different standard for different types of service, such as mainline transmission, storage, or market hub services?

4. a. Should the Commission consider treating companies with a small market share differently from larger or dominant sellers, and if so, under what circumstances?

b. How should the Commission view cases in which large sellers face large buyers (that is, where a single buyer represents a large share of a transporter's market?

c. Can a buyer's monopsony power mitigate a seller's market power, and if so, how should the Commission analyze such cases?

5. Do commenters agree or disagree with staff's analysis that capacity release does not constitute a good alternative to firm transportation?

6. What procedures should the Commission employ to evaluate market-based rate proposals; should the Commission change its current policy of using declaratory orders or ruling on *pro forma* tariff sheets?

7. Are there particular requirements the Commission could impose that would increase the availability of shippers' service alternatives and mitigate the market power of a natural gas company that would not otherwise qualify for market-based pricing?

8. Are there regulatory policies or ratemaking methods that would better serve the Commission's regulatory goals of flexible, efficient pricing in today's environment? For example, should the Commission focus on ''backstop'' proposals, where pipelines would be free to negotiate rates and terms of service, so long as customers could always choose service under traditional cost-of-service rates and terms of service?

In addition, the Commission also invites comments on the criteria for evaluating incentive rate proposals. While the Commission currently has a policy for evaluating cost-based incentive rate proposals, to date no natural gas company has submitted a proposal in response to the Commission's invitation to submit incentive rate proposals for an experimental period. The Commission's October 30, 1992 policy statement on incentive regulation defined the essential elements of an incentive ratemaking policy and set guidelines for incentive rate proposals.[4] The policy statement adopted two general principles: That incentive regulation should encourage efficiency, and that starting rates under incentive regulation must conform to the Commission's

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[1] Avoca Natural Gas Storage, 68 FERC ¶ 61.045 (1994); Koch Gateway Pipeline Co., 66 FERC ¶ 61,385 (1994); Bay Gas Storage Company, LTD. 66 FERC ¶ 61,354 (1994); Petal Gas Storage Co., 64 FERC ¶ 61,190 (1993); Transok, Inc., 64 FERC ¶ 61,095 (1993); Richfield Gas Storage System, 59 FERC ¶ 61,316 (1992).

[2] 66 FERC ¶ 61,202 (1994).

[3] 68 FERC ¶ 61,401 (1994).

[4] Policy Statement on Incentive Regulation, 61 FERC ¶ 61,168 (1992).

traditional cost-of-service ratemaking standards. The policy statement also established five regulatory standards for the evaluation of specific proposals—that incentive proposals must: (1) Be prospective, (2) be voluntary, (3) be understandable, (4) result in quantified benefits to consumers, and (5) demonstrate how they maintain or enhance incentives to improve the quality of service. The standard pertaining to the quantification of benefits requires the inclusion of an absolute upper limit on the risk to consumers, with the overall cap on incentive rate increases based on projected traditional cost-of-service rates. In view of the lack of response to the October 30, 1992 policy statement and the changes in the natural gas market that have occurred since the issuance of the policy statement (principally the implementation of Order No. 636), the Commission believes it is appropriate at this time to revisit the issue of incentive rates for pipeline services and requests comments in response to the following questions:

9. Why have there not been any incentive proposals under the policy established in Docket No. PL92–1–000?

10. a. Should the Commission change its existing standards for incentive rate proposals?

b. If so, what specific criteria should the Commission employ when evaluating incentive rates?

11. Are there models for incentive regulation that the Commission should consider, such as the California performance-based program?

12. a. What are the benefits and drawbacks of incentive rates, and the policy objectives the Commission should pursue with an incentive rate method?

b. Is incentive ratemaking appropriate for the natural gas companies regulated by the Commission?

c. Please identify and discuss any legal issues that the Commission has not yet considered with this type of rate method.

There are other pricing methods which are neither market-based nor incentive-based, such as reference pricing (in which the rate is determined by reference, e.g., to the rates of another company or the price of another product). The Commission also requests comments on criteria for evaluating such proposals:

13. What other rate methods should the Commission consider beyond the market-based and incentive-based methods covered above?

14. a. What would be the benefits and drawbacks of any such methods?

b. Please identify and discuss any particular legal or procedural issues raised by a specific method.

15. What criteria would the Commission use to evaluate such proposals?

The Commission is requesting written comments on these questions and the attached staff paper on market-based rates. The Commission requests parties to identify the numbered questions in their comments to the maximum extent possible. An original and 15 copies of written comments should be filed with the Secretary of the Commission within 60 days of the issuance of this notice, and should refer to Docket No. RM95–6–000.

By direction of the Commission.

Lois D. Cashell,

Secretary.

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Market-Based Rates for Natural Gas Companies

A Staff Paper

The Commission has been requested by various companies to approve market-based pricing for both firm and interruptible transportation, for capacity released in the secondary market, for storage and for market hub services such as the ''switching'' and ''parking'' of natural gas. Approval of any of these proposals is contingent on the Commission finding that the company in question lacks significant market power. The purpose of this paper is to propose criteria that could be used to evaluate these proposals.

In developing these criteria staff has reviewed the Commission's prior experience with market-based ratemaking for natural gas companies, oil pipelines, and public utilities. In those cases the Commission consistently used the same general framework to evaluate requests for market-based rates. In addition, the experiences in three other industries (railroads, telecommunications, and airlines) also have been reviewed to determine whether there are lessons that can be drawn. For illustrative purposes the paper applies the proposed criteria to a hypothetical case. Finally, the paper discusses the other services that may qualify for market-based rates as well as factors the Commission may want to consider in monitoring market-based rates.

I. The Applicable Legal Standards

Operating under the ''just and reasonable'' standard of the Natural Gas Act (NGA), the Federal Power Act (FPA), and the Interstate Commerce Act (ICA), the Commission generally authorizes rates based on the cost of service. However, as the Supreme Court has ruled on numerous occasions,[1] the just and reasonable standard does not limit the Commission to any particular ratemaking methodology; rather, the Commission has flexibility in selecting ratemaking methods.

Courts have held that non-cost factors can legitimate a departure from cost-based rates. Departures from cost-based rates have been found to be justified when: (1) The changing characteristics of the industry make advisable or necessary a new approach; [2] (2) the deviations from costs are not unreasonable or inconsistent with statutory responsibilities; [3] and (3) the regulatory scheme acts as a monitor to determine whether competition will keep prices within a zone of reasonableness or to check rates if it does not.[4] However, in ruling that rates need not be linked to costs in order to be just and reasonable, the court in *Farmers Union II* held that the Commission cannot merely assume that competition will ensure just and reasonable prices: ''[m]oving from heavy to lighthanded regulation within the boundaries set by an unchanged statute,'' can only ''be justified by a showing that under the current circumstances the goals and purposes of the statute will be accomplished through substantially less regulatory oversight.'' [5]

The Commission's authority to approve market-based rates under the

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[1] *See* Mobil Exploration & Producing Southeast Inc. v. United Distribution Companies, 498 U.S. 211 (1991) (affirming the Commission's Authority to consolidate existing ''vintage'' price categories and set a single ceiling price for ''old'' gas); Duquesne Light Co. v. Barash, 488 U.S. 299, 310 (1989); Permian Basin Area Rate Cases, 390 U.S. 508, 517 (1979); FPC v. Hope Natural Gas Co., 320 U.S. 591, 602 (1944).

[2] Farmers Union Central Exchange, Inc. V. FERC, 734 F.2D 1486, 1503 (D.C. Cir. 1984) (*Farmers Union II*), *cert. denied sub nom.*, Williams Pipe Line Co. v. Farmers Union Central Exchange, Inc., 469 U.S. 1034 (1984) (citing Permian Basin Area Rate Cases, 390 U.S. 747 (1968)).

[3] *Farmers Union II* at 1502 (citing Mobil Oil Corp. v. FPC, 417 U.S. 283 (1974)).

[4] *Id.* at 1509 (*citing* Texaco, Inc. v. FPC, 474 F.2d 416, 422 (D.C. Cir. 1972), *vacated*, 417 U.S. 380 (1974) (the court of appeal's decision was vacated on other grounds)).

[5] *Id.*

appropriate circumstances was recently and clearly affirmed in *Elizabethtown Gas Co. v. FERC.*[6] There, the court upheld the Commission's approval of a natural gas pipeline's proposal, as part of a pre-Order No. 636 restructuring settlement entered into with its customers, to sell gas for resale at market-based prices. Noting that the Supreme Court has held on numerous occasions that the just and reasonable standard does not dictate any single pricing methodology,[7] the court held that where there is a competitive market, the Commission ''may rely upon market-based prices in lieu of cost-of-service regulation to assure a 'just and reasonable' result.'' [8] In sustaining the Commission's approval of market pricing in this case, the court alluded to the Commission's specific finding that the pipeline's markets were ''sufficiently competitive to preclude [the pipeline] from exercising significant market power in its merchant function* * *.'' [9] Specifically, the Commission had determined—and no record evidence to the contrary was cited on appeal—that adequate divertible supplies of gas existed to give customers options to buy from sellers other than the pipeline, thus assuring that the pipeline would have to sell its own gas at competitive prices. This finding, the court reasoned, justified the Commission's conclusion that the pipeline would be able to charge only a price that was just and reasonable within the meaning of section 4 of the NGA.

In reaching this result, the court of appeals in *Elizabethtown* distinguished the Supreme Court's decision in *FPC* v. *Texaco, Inc.* (*Texaco*),[10] in which the Supreme Court had remanded an FPC order exempting small gas producers from direct regulation of their prices. The Commission order under challenge in *Texaco* provided that small producers' prices would be subject to scrutiny only as a part of the rates of pipelines and large producers to whom they sold their gas, and then only through review of the pipeline and large producer rates. This indirect review procedure was found by the Court to be permissible under the NGA.[11] However, the order was remanded because the Commission had not clearly shown how, or even whether, the just and reasonable standard would be applied to the small producers' prices in this process.[12] The Court admonished that on remand the Commission must adhere to the principle that ''the prevailing price in the market cannot be the final measure of 'just and reasonable' rates mandated by the Act.'' [13]

The court in *Elizabethtown* reasoned that the point of *Texaco* was only that if Congress has subjected an industry to regulation because of anticompetitive conditions in the industry, the market cannot be the ''final'' arbiter of the reasonableness of a price.[14] Further, the court in *Elizabethtown* stated, in the *Texaco* proceeding the Commission had not even mentioned the ''just and reasonable'' standard, but rather appeared to apply only the marketplace standard in determining the reasonableness of small producers' rates. In contrast, in the order challenged in *Elizabethtown*, the Commission had made it clear that it would exercise its section 5 authority if necessary to assure that a market rate is just and reasonable.

A hybrid cost/market-based pricing scheme under the FPA was approved by the court in *Environmental Action v. FERC.*[15] There the Commission had approved the application of certain regulated and non-regulated electric utilities to operate a power pool in which transactions would be priced according to the market, subject to a uniform ceiling price based upon a hypothetical average utility's costs. The court, in rejecting challenges to the pricing mechanism, emphasized the speed and administrative efficiency benefits of market-based pricing. In addition, the court also cited the Commission's expressed intention to monitor transactions and invoke its investigatory powers under section 206 (either sua sponte or upon complaint) to redress abuses. Thus, the court concluded that ''[i]n sum, FERC sought to preserve the Pool's efficiencies even as it guarded against price gouging. On the facts in evidence, we find no basis for concluding it acted unreasonably.'' [16]

The court's treatment of market-based pricing policies implemented by other agencies offers little guidance to the Commission since much of the focus on increasing competition and reducing federal regulations has been through statutory reform, rather than through agency interpretation of existing statutory authorities. The bounds of agency authority to interpret existing statutory procedural requirements in a manner to facilitate a move to market-based pricing was addressed by the Supreme Court in *MCI Telecommunications Corporation v. American Telephone and Telegraph Company (MCI II),*[17] and by the court of appeals in *Southwestern Bell Corporation v. FCC (Southwestern Bell).*[18] However, *MCI II* and *Southwestern Bell* do not speak to the substantive validity of market-based regulation under a just and reasonable statutory standard. Judicial precedents, as explained above, uphold the use of market-based ratemaking, or some variation thereon, if the agency finds that clearly delineated non-cost factors (including the Commission's oversight and remedial authorities) are sufficient to protect the interests of consumers.

II. The Commission's Prior Experience With Market-Based Rates

A. The Gas Inventory Charge Cases

1. The Analysis Used

In 1988, the Commission began its movement towards light-handed regulation of some aspects of natural gas markets. The light-handed regulation first appeared with the implementation of market-based gas inventory charges (GIC) for pipeline sales service. In determining whether a pipeline could implement a GIC mechanism, the Commission looked at three key factors: Market definition, the availability of divertible gas supplies and measures of market power. Additionally, the Commission considered whether the transportation of alternative supplies would be on a comparable basis to the terms and conditions of transportation service provided for gas purchased under the GIC. If the supply markets were found to be competitive and transportation terms and conditions

[6] 10 F.3d 866, 870 (D.C. Cir. 1993) (Elizabethtown).

[7] The court cited Mobil Oil Exploration v. U.S., 111 S. Ct. 615, 624 (1991): ''* * * the just and reasonable standard does not compel the Commission to use any single pricing formula * * *.'' 10 F.3d at 870.

[8] *Id.* (quoting Tejas Power Corp. v. FERC, 908 F.2d 998, 1104 (D.C. Cir. 1990).

[9] 10 F.3d at 870–71 (*quoting* Transcontinental Gas Pipe Line Corp., 55 FERC ¶ 61,446 at 62,234.

[10] FPC v. Texaco, Inc., 417 U.S. 380, 397 (1974).

[11] 417 U.S. at 387–91

[12] The Commission stated that the just and reasonable standard would be applied, and enumerated various factors, in addition to prevailing market prices, that would be taken into account. The Court observed that these representations were relevant to the validity of the order, but ruled that because they were not made in the order itself—only on appeal—they were unavailing. 417 U.S. at 397.

[13] 417 U.S. at 397.

[14] *Elizabethtown,* 10 F.3d at 870.

[15] 996 F.2d 401 (D.C. Cir. 1993).

[16] *Id.* at 410. *See also* National Rural Telecom Assoc. V. FCC, 988 F.2d 174 (D.C. Cir. 1993) (approving flexible pricing for local exchange companies, subject to a ceiling rate).

[17] 114 S. Ct. 2223 (1994).

[18] Nos. 93–1562, 93–1568, 93–1590, and 93–1624 (D.C. Cir. Jan. 20, 1995).

comparable, pipelines were permitted to implement a GIC.[19]

In applying these standards in *El Paso*, for example, the Commission found that the relevant product market was delivered firm gas. El Paso maintained that the product market was not simply natural gas, but energy generally (*i.e.* fuel oil, coal, propane, hydroelectric power, and purchased power). However, El Paso did not provide sufficient evidence to make such a case. Thus, the Commission excluded alternative fuels from the product market.

The Commission established that ''firm'' gas was a dimension of the product market since El Paso was proposing to sell firm gas under its GIC. The Commission also found that ''delivered'' gas was a second dimension of the relevant product market because firm gas supplies that could not be transported to the city-gate were not substitutes for supplies under the GIC.

In defining El Paso's geographic market, the Commission acknowledged that it could consist of the entire United States or North America. The Commission stated, however, that the relevant geographic market was the geographic area containing those suppliers that can affect any attempt by El Paso to exercise market power. The Commission decided to take a cautious approach and considered three areas of gas supplies in order of the most narrowly defined: (1) The counties in the three basins where El Paso purchases gas that are already connected to El Paso's system, (2) all counties in the three basins, and (3) all counties from which El Paso purchased gas in 1987, including counties outside the three basins. The Commission reasoned that if El Paso lacked market power in the most narrowly defined market, then it would also lack market power in a more broadly defined market. Alternatively, even if El Paso could exercise market power in a narrowly defined market, it might be demonstrated that El Paso nonetheless lacked market power when the definition was expanded.

The Commission found that 1.07 Bcf/d was the minimum measure of the amount of divertible, or alternative, gas supplies needed to prevent El Paso from exercising market power. The 1.07 Bcf/day represented the gas dedicated to El Paso under long-term contracts, together with its affiliates' volumes. The Commission determined that sufficient divertible supplies existed in each of the defined geographic markets, at competitive prices, such that El Paso would be precluded from exercising market power. The Commission defined divertible supplies as those that were uncommitted, or committed under contract to a buyer for no longer than some short period such as one year.

The Commission then measured each seller's share of the market. To compute El Paso's market share the Commission used its sales to each customer at the time of peak usage. These market shares were then used to compute the level of concentration in the market using the Hirschman-Herfindahl Index (HHI).[20] The Commission used an initial screen of .18 to determine if the market concentration was low enough to indicate that the competitors in the market could not exercise market power.[21] The Commission found that the market concentration was low, i.e., below .18.

The Commission also found that the transportation service to be provided by El Paso for the transportation of third party supplies was comparable, with certain modifications, to the transportation provided under the GIC.

Therefore, based on this analysis, the Commission found that El Paso lacked market power and permitted the implementation of a market-based GIC.

2. The Subsequent History of the GIC Cases

On May 11, 1988, the Commission found that Transwestern lacked market power with respect to the gas commodity. Southern California Gas Company (SoCal), the only company directly affected, had sufficient alternative gas supply sources that Transwestern's prices would be constrained. Therefore, the Commission approved, with some modifications, Transwestern's proposed market-based Gas Inventory Charge (GIC).[22]

When Transwestern attempted to put its GIC charges into effect, SoCal nominated zero volumes of Transwestern's gas.[23] This is an extreme example of a lack of market power; an attempt to get a premium above the available spot price led to virtually a 100 percent reduction in Transwestern's sales.

In July, 1990, in *Tejas Power Corp.* v. *FERC*,[24] the court of appeals emphasized the importance of a market power determination in the approval of a GIC mechanism, even in the context of a settlement. In *Tejas*, the court found the Commission's reliance on the agreement of the LDCs, in approving a GIC settlement proposed by Texas Eastern Transmission Corp., was misplaced because there was no finding, supported by substantial evidence, that the pipeline lacked significant market power. All of the Commission's subsequent market-based GIC cases examined the market power of the pipeline applicant.

The series of pipeline-by-pipeline GIC cases allowing market-based pricing for the gas commodity was broadened to a generic finding in Order No. 636. The Commission allowed pipelines to have market-based pricing for unbundled gas sales upon full compliance with the final rule.[25]

In conclusion, the Commission's experience with deregulation of the gas commodity has shown that competition can restrain prices. In fact, the statutory wellhead deregulation and the Commission's open access policies have led to a current price for the gas commodity that is well below the regulated prices that prevailed several years ago.

B. The Storage Cases

1. The Analysis Used

Starting with the the Commission's order in *Richfield Gas Storage System* (Richfield)[26] in June 1992, the Commission has permitted companies to institute market-based storage rates subject to light-handed regulation when the applicants have shown that they lack significant market power. In making these market determinations, the Commission primarily looked at the defined markets, the availability of good alternatives, and measures of market power. However, the Commission also considered other factors, such as the fact that the applicants were generally new entrants, the applications were generally unopposed, and the possibility of other

[19] *See* Transwestern Pipeline Company, 43 FERC ¶ 61,240 (1988); El Paso Natural Gas Company, 49 FERC ¶ 61,262 (1989 and 54 FERC ¶ 61,316 (1991); and Transcontinental Gas Pipe Line Corporation, 55 FERC ¶ 61,446 (1991) *aff'd Elizabethtown, supra.*

[20] An HHI is calculated by summing the squares of each seller's market share. For example, if there are two sellers of a product having shares of total sales of 75 percent and 25 percent, respectively, then the HHI will equal $(.75)^2+(.25)^2=.5625+.0625=.625$. Rounding to two significant digits, the HHI is .63.

[21] An HHI of .18 is equivalent to having 5–6 equal sized competitors in the market. In *El Paso*, the Commission indicated that it would use a case-by-case approach to determine the lack of market power. The HHI was used as an initial screening tool only. *El Paso*, 49 FERC at 61,920. *See also* Petal Gas Storage Co., 64 FERC ¶ 61,190 at 62,573 (1993) (market power determined on a case-by-case basis).

[22] Transwestern Pipeline Co., 43 FERC ¶ 61,240 (1988).

[23] Foster Natural Gas Report, No. 1741, for the week ended September 21, 1989, pp. 2–3.

[24] 908 F.2d 998 (D.C. Cir. 1990) (*Tejas*).

[25] FERC Regulations Preambles, ¶ 30,939 at 30,439.

[26] Richfield Gas Storage System, 59 FERC ¶ 61,316 (1992).

new entrants. In applying these standards in *Koch*, for example, the Commission agreed with Koch's definition of product and geographic markets. Koch applied a narrow and broad definition to both markets. Koch argued that if it did not have market power in narrowly defined markets, it would not have market power when the definitions were broadened.

Koch defined the narrow product market as natural gas storage. The narrow geographic market was defined to contain those storage facilities in the states of Texas, Louisiana, and Mississippi that are connected to Koch.

The record showed that Koch owned only 11.9 percent of the contract storage capacity and 6.1 percent of the contract storage deliverability in the narrow market. The market concentration was computed using the Hirschman-Herfindahl Index (HHI) to be .13 for capacity and .12 for deliverability indicating a relatively low concentration in the narrow market.

The Commission also reviewed the fact that five new suppliers may enter the market by 1996 that would potentially have direct connects to Koch.

The broader product market was defined to include non-storage alternatives and storage alternatives not connected to Koch, such as, capacity release of storage in new or existing storage facilities, purchase of natural gas from producers or other marketers, selling gas to customers that have several suppliers, access to no-notice storage, to name a few. The broader geographic market was defined as alternatives outside of Texas, Louisiana and Mississippi.

The Commission gave much consideration to whether or not the alternatives identified by Koch were ''good'' alternatives. The Commission defined a good alternative as one that is available soon enough, has a price that is low enough, and has a quality high enough to permit customers to substitute the alternative for Koch's service. In addition, the alternative must be available in sufficient quantity to make Koch's price increase unprofitable.

The Commission found that good alternatives were available in sufficient quantities and at competitive prices. The Commission determined that unutilized storage capacity was available in large quantities in Texas, Louisiana and Mississippi during peak periods based on statistics found in EIA's Natural Gas Monthly. The Commission reasoned that if this unutilized capacity was not under contract it was available for purchase. Unutilized capacity that was committed under contract, the Commission reasoned, would be available through capacity release. Therefore, given the small size of Koch in relation to other storage providers, the abundant storage alternatives available to Koch's customers, and that the alternatives are ''good'' alternatives, the Commission concluded that Koch could not exercise market power in providing storage service.

2. The Experience After Approving Market-Based Rates

The market-based storage cases approved by the Commission (Richfield, Petal, Transok, Bay State, Avoca, and Koch) are quite recent. The companies in question were not subjected to any special reporting requirements. Thus, there is little information currently to evaluate these decisions. In addition, the pipelines in several of these cases executed long term contracts at the same time they were seeking market based rates. The contracts set the prices for the term of the contract. No complaints have been filed so far regarding the market based storage rates. However, one would not expect to see the complaints so early in the process. Complaints would be more likely to occur when the parties seek to negotiate new pricing provisions at the end of the contract term, if new capacity becomes available, or if the circumstances which served as the basis of the Commission's decision changed.

Earlier, however, the Commission approved an experiment wherein Koch storage was allowed to charge any price it could negotiate up to a cap which exceeded the cost-based rate. The Commission did not make a finding that Koch lacked significant market power. The results of the ''Market Responsive Storage and Delivery Service'' (MRSDS) experiment suggest that competition constrained Koch to prices actually below the cost-based rates. All market-based MRSDS rates charged by Koch were below the cap. During the two full heating seasons of the experiment, customers fully subscribed all the capacity allocated to MRSDS.[27]

C. The Oil Pipeline Cases

In the oil pipeline area, two companies have the authority to charge market-based rates—Buckeye Pipe Line Company, L.P. (Buckeye) and Williams Pipe Line Company (Williams). In both cases the Commission determined that the pipeline lacked market power in markets for which each was allowed to charge market-based rates.[28]

1. The Analysis Used

In conducting its analysis of whether the applicant had market power, the Commission first defined the product and geographic markets. It then evaluated whether the applicant had significant market power in those markets by first doing an initial screen for market concentration in each market (using the Herfindahl-Hirschman Index) and then considering, weighing and balancing a number of other factors, such as, the potential entry of competitors into the market, available transportation alternatives, market share, availability of excess capacity, and the presence of large buyers able to exert downward monopsonistic pressure on transportation rates.

In *Buckeye*, for example, the relevant product market was defined as the transportation of refined petroleum products. The Commission agreed with the ALJ and rejected the position advanced by ATA that the product market should be markets in which Buckeye transports only jet fuel. The Commission concluded that the ease of product substitution among pipelines is an important reason why the relevant product market should be the transportation of refined petroleum products rather than the transportation of a specific petroleum product, such as gasoline, fuel oil or jet fuel.

The relevant geographic markets were defined as the areas that include all supplies of transportation from all origins to United States Department of Commerce, Bureau of Economic Analysis Economic Areas (BEAs).[29] The Commission concluded that the evidence of record supported the findings of the ALJ that BEAs are shown to be appropriate geographic markets since they are convenient, easily identified and have been used in past studies of the oil pipeline industry.

The Commission also concluded that an analysis of market concentration using HHIs should be the first step in evaluating the likelihood of market power being exercised in a given market. Knowing the degree of concentration in a market provides useful information about where on the competitive spectrum that market lies

[27] Koch Gateway Pipeline Co., 66 FERC ¶ 61,385 at 62,301–302 (1994).

[28] Buckeye Pipe Line Company, L.P., 53 FERC ¶ 61,473 (1990). Williams Pipe Line Company, 69 FERC ¶ 61,136 (1994). Both cases were litigated and the Commission made its findings that certain markets were competitive based on the records presented at the hearings.

[29] BEAs are geographic regions surrounding major cities that are intended to represent areas of actual economic activity.

and what other factors will have to be weighed to enable a finding as to the existence or absence of significant market power. For measuring market concentration, the Commission concluded that a proper screening device is an HHI.[30] The Commission also concluded that the use of delivery data, e.g., deliveries into each BEA, is the best method for calculating HHIs in *Buckeye.*

In *Buckeye* (Opinion No. 380), market power was defined as the ability to profitably raise the price above the competitive level for a significant time period. Significant market power was defined as the ability to control market price by sustaining at least a 15% real price increase, without losing sales, for a period of two years. The Commission further concluded that the relevant price for the purposes of making a determination of whether Buckeye can profitably increase its transportation prices above the competitive level is the delivered product price. Because shippers or customers in the destination market often have the option of switching away from purchasing transportation into the market, and, instead, purchasing the delivered product itself, suppliers of transportation must compete with suppliers of the delivered product.

There were 22 markets examined in Opinion No. 380. The Commission found that in 15 Buckeye lacked significant market power; in two Buckeye had no tariffs on file thus no finding was warranted; in one the record was insufficient and so continued regulation was necessary; and, in four, Buckeye was found to have market power.

2. The Buckeye Experiment

In Opinions No. 380 and 380–A, the Commission also authorized a three year experimental program proposed by Buckeye.[31] During this experiment, rates in each competitive market were subject to two limitations: (1) Individual rate increases could not exceed a ''cap'' of 15% real increase over any two-year period, and (2) individual rate increases would be allowed to become effective without suspension or investigation only if they did not exceed a ''trigger'' of the change in the Gross Domestic Product (GDP) deflator plus 2%. Rate decreases were presumably valid but could not result in rates below marginal costs.

In the markets the Commission did not find to be competitive, no rate could be increased by more than the volume-weighted average rate increase in the competitive markets. Conversely, every rate in the ''non-competitive markets'' had to reflect the volume-weighted average of rate decreases in the competitive markets.[32]

No protests of rate changes or complaints against existing rates were filed during the three year experiment. In addition, no protests were filed in opposition to Buckeye's filing to extend the experiment indefinitely.[33] Buckeye noted that this lack of opposition to its market-based program was ''in sharp contrast to the years of complex and expensive rate litigation that preceded adoption of * * *'' this program.[34]

No rates were changed by more than the GDP+2% trigger during the three year period. In the competitive markets, rate increases were generally well below the trigger, and in the non-competitive markets, rate increases were below the allowed volume-weighted average increase in the competitive markets. The allowable and average actual rate changes are shown in the table below.

BUCKEYE RATE CHANGES

Year (April 1 to March 31)	Cap (GDP+15%) (percent)	Trigger (GDP+2%) (percent)	Competitive markets average rate change (percent)	Non-competitive markets average rate change (percent)
90–91	19.16	6.16	3.86	3.58
91–92	22.32	5.16	3.14	2.74
92–93	20.69	4.53	1.45	0.97

Since all changes in rates are based on an index *not* reflecting the pipeline's costs, there is no danger of the raising of rates in non-competitive markets through shifting costs attributable to competitive markets.[35] This attribute is not exclusive to the Buckeye program; approaches which base rate changes on something other than the pipeline's costs would eliminate this concern about cost shifting.

Finally, under the market-based program Buckeye was able to engage in some successful marketing in very competitive situations. For example, in Indianapolis, where Buckeye held less than three percent of the market in 1990, Buckeye raised its share to 17 percent in 1993. ''These increased volumes resulted from Buckeye's deep price discounts (as deep as 40%) in 1991 and later a volume incentive tariff to attract new refinery business from a recently restarted independent refinery * * *'' [36] As a result of Buckeye's actions, the total size of the Indianapolis market increased and its concentration decreased.

D. The Electric Cases

Since 1986, the Commission has approved many applications from public utilities to sell electricity in wholesale transactions at negotiated market-based rates. In a recent order addressing a request for market-based rates from an electricity marketer affiliated with a traditional public

[30] The Commission used an HHI of .18 as an initial screen in Transcontinental Gas Pipe Line Corp. (*Transco*), 55 FERC ¶ 61,446 at 62,393 (1991).

[31] 53 FERC 61,473 and 54 FERC 61,117.

[32] On March 24, 1994, the Commission accepted a tariff that extended this experiment for an indefinite period (66 FERC ¶ 61,348). However, the Order stated that Buckeye was subject to the requirements of Order No. 561, the simplified and generally applicable ratemaking methodology for oil pipelines, when they take effect on January 1, 1995. On December 6, 1994, the Commission permitted Buckeye to continue its experimental program as an exception to the Commission's oil pricing policies, subject to future reevaluation. Buckeye Pipe Line Co., L.P., 69 FERC ¶ 61,302 (1994).

[33] 66 FERC 61,348.

[34] October 26, 1994 Buckeye Pipeline filing in Docket No. OR94–6–000, *et al.*

[35] While there was concern that Buckeye might be able top ''manipulate'' the program by raising prices in the competitive markets solely to raise prices in the non-competitive markets, the Commission found this to be a very unlikely event under the approved program. It nevertheless committed to monitoring for this occurrence during the experiment (53 FERC 61,473). Since the growth rate of revenues was higher in the competitive markets than in the non-competitive markets (constant annual growth rates of 6.54% versus 2.78% (66 FERC 61,348)), this demonstrates that this potential problem did not occur during the experiment.

[36] February 22, 1994 ''Statement of James A. Spicer on behalf of Buckeye Pipe Line Company, L.P.''

In contrast to oil pipelines, natural gas pipelines are permitted to selectively discount. Thus, gas pipelines would be able to structure such a deal under the Commission's traditional cost-based rate regulation.

utility, the Commission summarized its position. The Commission:

* * * allows market-based rates if the seller (and each of its affiliates) does not have, or has adequately mitigated, market power in generation and transmission and cannot erect barriers to entry. In addition, the Commission considers whether there is evidence of affiliate abuse or reciprocal dealing.[37]

Applicants for whom the Commission approved market-based rates are required to file periodic reports or studies to demonstrate their continuing lack of market power and the absence of abusive affiliate practices.

The first step in evaluating market power in generation is to identify the relevant product and geographic markets.[38] In those markets, suppliers' market shares are calculated. Low market shares demonstrate that the seller is unlikely to be able to assert market power in that market.[39] An applicant with a high market share would be subject to further scrutiny.

For example, in *Enron Power Enterprises Corporation*,[40] the Commission looked at the market for generating services bid to New England Power Company (NEPCO). In that market, Enron's market share was 4 percent. Furthermore, there were 18 projects out of 22 finalists that were not selected. Thus, NEPCO had numerous additional alternatives to choose from other than Enron. In addition, NEPCO negotiated several favorable provisions in its agreement with Enron suggesting that Enron was not a dominant supplier at the time of the solicitation.

There have been two additional factors of concern to the Commission in electricity cases: Affiliate abuse and the ability to erect barriers to entry. With respect to affiliate abuse, in recent cases, the Commission has required the affiliated parties to file separately for any sales or purchases of electric power between the marketer and its affiliated utility. In addition, the Commission requires the affiliated marketer to purchase any transmission services it may receive from its affiliated utility under a generally applicable, open-access, comparable tariff.

With respect to an applicant's ability to erect barriers to entry, only a few electric cases have raised this issue. Some affiliates of natural gas pipelines have sought market rate approval for sales of electricity.[41] However, the Commission has looked to Order No. 636 procedures mandating open access transportation on jurisdictional pipelines to preclude pipelines from erecting barriers to entry.

As a result of *Enron* and other cases, the Commission has developed considerable experience in analyzing generation markets. Recently, in *Kansas City Power and Light*,[42] the Commission concluded that new generating facilities were being built by many different parties and that there was no evidence that any party could assert market power in markets being served by new facilities. Consequently, as did the Commission in its series of GIC decisions, market power analysis is no longer required when the applicant is proposing sales from new facilities.

The Commission's treatment of transmission market power does not parallel its treatment of market power in generation. The Commission has basically equated applicant ownership or control of transmission facilities with the applicant having market power in transmission in that region.[43] The Commission therefore requires transmission owners to file generally applicable open-access, comparable transmission tariffs before the Commission will permit them to charge market rates.[44]

III. Proposed Criteria for Evaluating Market-Based Transportation Rate Proposals

A. General Framework and Criteria

To date, in all cases where the Commission has considered market-based rates, the applicant has been required to show that it lacks significant market power in the relevant markets. Market power is defined as the ability of a pipeline to profitably maintain prices above competitive levels for a significant period of time.

While the Commission has not adopted a mechanistic approach to assessing market power, it has consistently used the same general framework to evaluate requests for market-based rates.

Using this general framework, Commission staff proposes criteria to evaluate the competitiveness of transportation services. To show a lack of market power over firm transportation, for example, staff anticipates that a pipeline would need, initially, to show that its customers have four to five good alternatives to the applicant's firm transportation service. This is the equivalent of an HHI of .18, which the Commission has used as an initial screen in previous cases.[45] Staff suggests that only capacity that the applicant shows will be available on other pipelines when the applicant institutes market-based rates could be considered as an alternative.

One necessary element of showing that customers have alternatives would be the pipeline's agreement to give existing firm transportation customers the right to renominate their contract demand levels if a pipeline is allowed to charge market-based rates under existing contracts. Otherwise, the applicant clearly has market power over its customers if existing contracts prevent its customers from freely choosing alternative service or renegotiating their contracts at the time market forces are permitted to control the rates for services. This situation did not exist in the storage cases where the Commission permitted market-based pricing. In those cases, the applicants were either new entrants or existing entities offering new services. There were no existing contracts in effect that the Commission needed to address. This condition is consistent with the Commission's practice in the GIC proceedings where it allowed customers to renominate their sales contract demand levels if a pipeline instituted a GIC.

The framework proposed would be the same for all types of services. It consists of three major steps:

1. *Define Relevant Markets*
   a. Product market: identify good alternatives to the applicant's product; and
   b. Geographic market: identify sellers of good alternatives.
2. *Measure Firm Size and Market Concentration*
   a. Measure the size of the market, calculate each seller's market share, and evaluate applicant's market share;
   b. Estimate market concentration using the Herfindahl-Hirschman Index (HHI); and
   c. Evaluate market concentration by using an initial HHI screen of 0.18; a finding in that range is equivalent to finding that customers have at least four or five equal-sized alternatives to the applicant's service.
3. *Evaluate Other Factors*
   a. If the applicant's market share is large or the market concentration is high (*i.e.*, HHI exceeds 0.18), examine other factors that might prevent or limit the exercise of market power;

[37] Heartland Energy Services, 69 FERC ¶ 61,223 (1994).

[38] *See, e.g.*, Kansas City Power & Light, 67 FERC ¶ 61,183 (1994).

[39] In PSI, 51 FERC ¶61,367 (1990), *order on reh'g* 52 FERC ¶61,963 (1990), the Commission determined that a seller with a market share of less than 20 percent did not dominate the market.

[40] 52 FERC ¶ 61,193 at 61,708–61,709 (1990).

[41] *See, e.g.*, Hartwell, 60 FERC ¶ 61,143 (1992).

[42] 67 FERC ¶ 61,183 (1994).

[43] *See* Enron Power Marketing, 65 FERC ¶ 61,305 (1993), *order on reh'g*, 66 FERC ¶ 61,244.

[44] The current policy was announced in Hermiston Generating, 69 FERC ¶ 61,035 (1994).

[45] *E.g., Transco*, 55 FERC at 62,393.

b. These other factors might include ease of entry, excess capacity held by competing sellers, and buyer power.

Each of these steps is discussed further below. In section B of this part is an example showing the application of this analysis to a hypothetical interstate pipeline in a market supplied by a number of pipelines.

There are some services that are more likely to pass these criteria than others. These are discussed more fully in section IV.C. below.[46] For example, IT and hub services have different characteristics than firm transportation and might more easily satisfy these criteria. If the capacity release program is functioning well, IT service may compete with capacity release offered by all of the pipeline's customers in the relevant zones. Capacity release may be a good alternative for IT service. There are, by definition, several pipelines at each market hub.[47] Each of the pipelines at the hub may be able to offer the same hub services as good alternatives to each other.

As a practical matter, it may well be difficult for long-term firm transportation to qualify under this framework. The nature of the transportation grid ensures that pipelines typically face few direct competitors in delivering gas from one point to another. In addition, given the long-term contracting for firm transportation service that exists, staff believes it may be difficult for pipelines to show that customers have the ability to freely move to alternative long-term transportation. For example, if a pipeline that proposes market-based rates for firm transportation has existing long-term contracts for that service, the pipeline would need to allow its customers to terminate their contracts to freely move to alternative services.

1. Market Definition

Market definition identifies the specific products or services and the suppliers of those products or services that provide good alternatives to the applicant's product or service. In this market staff would test the applicant's ability to exercise market power. Naturally, the more narrowly the market is defined, the harder it is to show a lack of market power.

The Commission's order approving market-based storage rates for Koch Gateway, defined good alternatives as follows:

A good alternative is an alternative that is available soon enough, has a price that is low enough, and has a quality high enough to permit customers to substitute the alternative for Koch Gateway's service.[48]

a. The Product Market

The applicant's service together with other services that are good alternatives constitute the relevant product market. The applicant must fully, and specifically, define the product market. For example, the applicant must be specific in defining whether the product market consists of firm transportation only, or if the product market consists of off-peak interruptible transportation service only, etc. The applicant must also be responsible for developing and justifying any substitutes for the relevant product that can be considered competitive alternatives, *e.g.*, storage delivery services, gathering services, etc. For example, pipelines might suggest numerous alternatives to FT in their applications: IT, storage services, residual fuel oil, etc.

It is likely that applicants will argue that the market should be defined broadly. Given the natural monopoly features of many transportation services, staff suggests that the Commission take a more conservative approach and define the product market narrowly as only firm transportation. For purposes of defining relevant gas transportation markets, staff focuses here on the pipeline customers' peak.[49]

i. Timeliness

Generally, antitrust authorities have used one year as the time period in which to test whether a product can become a substitute. This is probably not appropriate for long-term firm transportation because capacity on competitors would typically need to be available simultaneously to offer a viable alternative to customers. If the pipeline applicant relies on the existence of capacity that will not be available immediately, it would also need to show that its customers would not be committed to long term contracts on its system under the operation of the right of first refusal rules, so that the alternative would not be available.

ii. Price

Along with showing that alternative capacity will be available in a reasonable time frame, the applicant must demonstrate that the price for the available capacity is low enough to effectively restrain the applicant from increasing prices. In prior cases, the Commission has defined such a threshold price level as being at or below the applicant's *approved* maximum cost-based rate plus 15%.[50]

The regulated price has been used as the prevailing price—a proxy for the competitive price. This is necessary because almost all prices for transportation are regulated and a competitive price level would be at best a guess. However, the use of prevailing prices presents analytic problems. For example, three pipelines that follow parallel courses may have radically different rates because of different historical costs, despite the fact that in a competitive market they would offer almost identical services at almost identical prices. Which of the alternative pipelines' prices should be used as the ''prevailing'' price? This question would have to be addressed in deciding whether the prices of alternatives are appropriate references.

iii. Quality

A good alternative must provide service in which the quality is at least as high as that of the service provided by the applicant. In order to make this showing the applicant must first be required to describe its own services. Then, the applicant must demonstrate that any available third party capacity must be comparable in service to the transportation service provided by the applicant.

Staff believes that with Order Nos. 436 and 636, all interstate pipelines currently provide operationally comparable firm transportation (FT) service.

However, even if a customer can find available capacity on an alternative pipeline, the overall package of services available may not be comparable to that it currently receives from the applicant. For instance, no-notice service may not be available from other pipelines (though a similar service might be available from third parties). Under Order No. 636 interstate pipelines

[46] This paper does not attempt to analyze the capacity release market or IT service in any detail but the same general framework would apply to these.

[47] *See* ''Importance of Market Centers,'' Office of Economic Policy, FERC (Washington, D.C.), August 21, 1992. Some pipelines have defined market hubs differently.

[48] *Koch Gateway*, 66 FERC at 62,299.

[49] During the winter peak period we would expect that excess capacity would be at a minimum and that customers' alternatives would be fewer than in off-peak periods.

[50] In Buckeye Pipe Line Company, L.P., Opinion No. 360, the Commission held that a 15 percent increase was an appropriate level to measure market power. 53 FERC 61,473 at 62,681 (1990), *order on reh'g*, Opinion No. 360–A, 55 FERC ¶ 61,084 (1991). However, in Williams Pipe Line Co., Opinion No. 391, the Commission declined to adopt a specific rate increase as a litmus test for market power. 68 FERC ¶ 61,136 at 61,657. In Koch Gateway Pipeline Company, the Commission suggested that potential alternatives would include services that though presently not used, would be economic if prevailing prices were to rise by a modest amount, e.g., five to 15 percent. 66 FERC ¶ 61,385.

which offered no-notice sales service prior to restructuring were required to offer no-notice transportation service to their existing sales customers at the time of unbundling. Pipelines had the option of making no-notice service available to non-sales customers. Thus, while many interstate pipelines currently provide no-notice transportation service, they do not and are not required to offer such service to new customers. Thus, comparable no-notice service probably is not available on other pipelines.

Also, applicants may wish to demonstrate that intrastate pipelines offer comparable firm transportation service. Transportation services offered by intrastate pipelines under section 311 of the NGPA are also subject to the same open-access and non-discriminatory access standards as interstate pipelines are under Order No. 436. Therefore, to the extent that intrastate pipelines offer firm transportation service, Staff believes that such service would be offered under terms and conditions that are substantially comparable to the firm transportation services offered by open-access interstate pipelines. However, intrastate pipelines are not required to offer firm transportation services and currently only a few intrastate pipelines offer firm transportation. Thus, firm transportation services may not be available on intrastate pipelines.

Applicants wishing to make a showing that interruptible transportation services make good alternatives to the applicant's firm services would have to demonstrate that an adequate amount of capacity is unsubscribed during peak periods so that the quality of the IT service would be comparable to that of the applicant's FT service.

b. The Geographic Market

In addition, in defining the market, one must identify all the sellers of the product or service. The collection of alternative sellers and the applicant constitutes the relevant geographic market. Specifying the relevant product and geographic market tells us what alternatives the customer has if it attempts to avoid a price increase imposed by a seller.

Geographic market definition is particularly important in transportation markets. Gas pipelines can transport gas out of a producing or origin region. They also deliver gas into a consuming or destination region.

The applicant must specify both the origin and destination markets for its FT service. Only in that way can the applicant identify good alternatives to the pipeline's service.

Staff proposes a two-step process of defining the geographic market. First, the applicant would identify those alternative sellers who offer service between the same origin and destination markets. Second, the applicant would identify those competitors that provide service either out of the origin market or into the destination market. This two-step process generally follows the analytic approach developed in the *Report of Commissioner Branko Terzic on Competition in Natural Gas Transportation* (May 24, 1993).

i. Transportation Between Markets

The first stage of the analysis identifies sellers offering transportation service over the same route. Examining different sellers serving the same transportation link simplifies the analysis. For instance, there is no need to consider whether different producing areas offer ''good'' alternatives to each other.

To show that another pipeline provides a good direct alternative, the applicant must show that customers could purchase the relevant service from the alternative supplier. Such a demonstration will probably include showing that capacity would be available on the alternative, that the customer can obtain any services needed to use the competitor's facilities in both origin and destination markets over the term of the service receiving market-based rates.

If a customer has a continuing obligation to take gas at a particular receipt point, or to deliver gas to a specific delivery point, beyond the term of its FT contract, competition from parallel pipelines is particularly important in evaluating market power on a pipeline seeking market-based FT rates. Then the applicant may have market power over the shipper even if both the origin and destination markets are otherwise competitive. While the shipper will have good alternatives to the applicant for getting gas to the city-gate, it may not have good alternatives for getting gas from that particular point to its city-gate. It could, of course, sell its contract gas from that particular point on the spot market in the production area and buy an equal amount of spot gas in an area where it had good transportation alternatives. But the spot price at which it sells might be lower than the spot at which it buys, causing extra expense and providing some opportunity for the applicant pipeline to raise its price. Additionally, the shipper may value the reliability of the contract gas and be concerned that it might not be able to buy spot gas when it needs it.

In practice, parallel route competition is most likely to occur in two situations. One is the secondary market (including pipeline IT) where parties offer service on the same facility. The other is for transportation between well-functioning market centers, as illustrated in the example in part B.

ii. Transportation at Origin and Destination Markets

Parallel route competition is not the only source of market discipline on gas transporters. A shipper in the production area will typically have alternative destination markets to which it could send gas. Similarly, a downstream shipper will typically have a choice of several producing areas from which to buy gas. Pipelines that provide such alternative service may offer an additional check on the market power of a shipper.

Natural gas transportation typically originates in the production area. In the production area (or the mainline receipt point), the applicant must identify the transportation alternatives available to customers. Customers could include producers with gas supplies attached at a receipt point, LDCs, and endusers with firm long-term supply contracts. To define a particular region as an origin market, the pipeline must identify all pipelines which compete with it to move gas out of that area. To demonstrate that these other pipelines are good alternatives (that is, are in the market), the applicant must show that its producer/shippers are physically connected to these other pipeline transportation alternatives.[51] The applicant must also show that these transportation alternatives provide a netback[52] to producer/shippers roughly the same as they would receive if they used the applicant's transportation.[53] An alternative is not a good alternative to a producer seeking to move gas out of the origin market if the alternative is

[51] Alternatively, the applicant could include a seller in the market if the seller can connect to the customer sufficiently cheaply that the customer receives a netback as least as large as it would receive if it used the applicant's transportation service.

[52] The netback is the delivered price of gas less the transportation costs paid by the producer. That is, the netback is the net price received by the producer.

[53] The geographic market is a region in which a hypothetical monopolist that is the only present or future provider of the relevant product at locations in that region would profitably impose at least a ''small but significant and nontransitory'' increase in price. In the case of an origin market, the hypothetical monopsonist will impose a small but significant and nontransitory *decrease* in netbacks. Thus, a service is a good alternative if the netback using the alternative is at least as big as the netback using the applicant's facilities after the netback decrease.

associated with a much higher cost than the applicant's cost-based rates, i.e., it must give roughly the same netback.

In contrast, the ultimate destination market for gas is typically a city-gate. There, the applicant must identify the transportation alternatives available to endusers and LDCs who want to receive gas in this area. To define a destination market, the applicant must demonstrate that its customers are physically connected to alternative gas transportation facilities that move gas into the area.[54] The applicant must also demonstrate that those alternatives will deliver gas at a price no higher than would be paid with the use of the applicant's transportation service to deliver gas into the area.[55]

Applicants for market-based rates might allege that LPG and LNG can be good alternatives to the use of applicant's transportation service. If so, the applicant must show that there are sufficient quantities of these available, and the transport of LPG and LNG into the destination market (*e.g.*, by truck) provides gas at an overall delivered price no higher than the overall delivered price from pipeline transport with a fifteen percent transportation rate increase on the pipeline's transportation rate.

c. Summary and Conclusion

Thus, in order to specify a gas transportation market, the applicant must first identify all products and services available as good alternatives to the applicant's customers. Next, the applicant must identify the origin and destination of that transportation. The relevant geographic market will be defined in two steps: First, those alternative sellers that offer service between the same origin and destination markets and second, all economically substitutable transportation sold by pipelines (or other good alternative products and services) serving either the origin market or the destination market.

2. Firm Size and Market Concentration

Pipelines might be able to exercise market power if customers have few good alternatives to the pipeline's service either, in the first instance, over a given route or, in a second analysis, separately in origin and destination markets. The applicant might have market power in the origin market if producer/shippers have few good alternatives to transport their product out of the origin area. In the destination market, pipelines might be able to exercise market power if downstream customers have few good transportation alternatives that reach their city-gates. If customers have long term supply contracts, it will be particularly important for the pipeline to demonstrate that it has no market power over customers on a given route.

There are two ways in which a seller can exercise market power. It can attempt to raise its price *acting alone* or it can attempt to raise its price by *acting together with other sellers.*

i. Acting Alone

One of the indicators which has been examined to determine whether a seller could exercise market power acting alone is the seller's market share. A large market share is generally a necessary condition for the exercise of market power. If the seller has a small market share it is unlikely that it can exercise market power. But, a company with a large market share may not be able to exert market power if entry into the market is easy[56] or there are other competitive forces at work.

The applicant must submit calculations (and supporting data) of its market share in all relevant origin and destination areas.

ii. Acting Together with Other Sellers

A second way in which a seller can exercise market power is to act together with other sellers to raise prices. To evaluate whether a seller can act together with others to exercise market power, the Commission has typically examined the market's concentration.

To measure market concentration, one generally considers the summary measure of market concentration known as the Herfindahl-Hirschman Index (HHI). If the HHI is small, less than .18, then one can generally conclude that sellers cannot exercise market power in this market. A small HHI indicates that customers have sufficiently diverse sources of supply in this market that no one firm or group of firms acting together could profitably raise market price. If the HHI is greater than .18 then additional analysis is needed to determine if the seller can exercise market power.

The applicant should be required to submit calculations of the HHI for the relevant markets. The HHI must be computed for each origin market as well as each destination market. The Commission should require applicants to submit information for each mainline receipt point (origin market) and each delivery point (destination market). If the applicant wishes to argue for a broader market definition it should also include calculations for its market definitions. Only sales or capacity figures associated with good alternatives should be used in calculating the HHI. In calculating the HHIs, the applicant should be required to aggregate the capacity of affiliated companies into one estimate for those affiliates as a single seller.[57]

In the GIC cases, the Commission established a threshold level for the HHI at .18.[58] In an oil pipeline case, the Commission used .25 as an initial screen.[59] The Commission may wish to establish a standard under which it will presume no potential for the exercise of joint market power exists. Since the Commission has a positive obligation under the Natural Gas Act to ''protect consumers against exploitation at the hands of natural gas companies,'' [60] staff believes it would be appropriate to use the relatively strict initial screen of .18. This would indicate that there are four to five good alternatives to the applicant's service in each market.

3. Entry and Other Competitive Factors

Even if the applicant's market share were large in a concentrated (and properly identified) market, one might not conclude that the applicant would be able to exercise market power. For

[54] The applicant could include a seller in the destination market if the seller can connect to the customer sufficiently cheaply that the customer pays a delivered gas price no higher than that paid when using the applicant's FT service.

[55] The geographic market is a region in which a hypothetical monopolist that is the only present or future provider of the relevant product at locations in that region would profitably impose a least a ''small but significant and nontransitory'' increase in price. In the case of an destination market, a service is a good alternative if the delivered gas price using the alternative is less than or equal to the delivered gas price using the applicant's facilities after the price increase.

[56] Given the nature of the interstate pipeline industry, ease of entry would be difficult to show except in cases involving minor facilities. For major facilities, the cost of construction and the time needed for environmental analysis would suggest that entry may not be easy.

[57] The capacity on pipeline systems owned or controlled by the applicant's affiliates should not be considered among the customer's alternatives. Rather, the capacity of its affiliates offering the same product should be included in the market share calculated for the applicant. Similarly, alternative pipelines must be aggregated with their respective affiliates in order to identify meaningful alternatives to customers. It is not reasonable to expect a profit-maximizing firm to allow its affiliates to compete with one another.

[58] El Paso Natural Gas Company, 49 FERC ¶ 61,262 (1989). *See also Buckeye,* 53 FERC at 62,667.

[59] *See* Williams Pipe Line Co., Opinion No. 391, 68 FERC ¶ 61,136 (1994).

[60] FPC v. Hope Natural Gas Co., 320 U.S. 591, 610 (1944). *See also Elizabethtown, supra* n. 6 (sustaining the Commission's approval of market pricing based on the Commission's conclusion that the pipeline's markets were sufficiently competitive to preclude it from exercising significant market power); *Farmers Union II, supra* n.2 (holding that the Commission cannot merely assume that competition will ensure just and reasonable prices).

example, if the applicant were to increase its price, entry into the market might be so easy that sellers attracted by the profit opportunity created by the higher price would quickly take customers away from the applicant by offering a lower price. This would make the applicant's price increase unprofitable. Thus, the applicant would not be able to exercise market power, despite its large market share and despite the high market concentration.[61]

Ease of entry is one of several competitive factors that might lead to the conclusion that an applicant lacks market power. It is most likely to apply to circumstances that do not require the large sunk costs of major construction—for instance, perhaps in offering short-haul market center services. Another competitive factor that might be alleged by an applicant would be the presence of buyer power. An applicant might argue that if a single buyer is a large customer of the pipeline, is knowledgeable and sophisticated in its buying, and has been in business for a lengthy period of time, the buyer may have the knowledge and large-scale purchasing power to negotiate reasonable rates even in a concentrated market. However, just because buyers develop sophisticated purchasing systems and market knowledge as the result of dealing with various suppliers in numerous markets, there still is reason to have some skepticism that a buyer in a single destination area served by one or a few pipelines will have such capabilities.

The applicant must demonstrate that sufficient quantities of good alternatives are available to its customers to make a price increase unprofitable. In other words, the applicant must show that customers would replace a significant proportion of its throughput with other transportation alternatives if the applicant raised its price.

B. An Example of the Analysis Applied to Firm Transportation

1. Introduction

To illustrate the application of the market power analysis discussed above to a request for market-based transportation rates, staff shows an analysis of a hypothetical filing by an interstate pipeline. In that hypothetical filing, the ABC Pipeline Company seeks Commission approval to offer firm transportation (FT) at market-based rates. ABC's primary proposal is for market-based FT rates for its entire system (see map). As an alternative, ABC requests market-based rates for firm transportation between two market centers, the Free Parking Hub, located in the production area, and the Just Visiting Hub, located in its market area. In its alternative proposal ABC Pipeline offers cost-based rates for service upstream of the Free Parking Hub and downstream of the Just Visiting Hub. Finally, as part of its alternate proposal ABC Pipeline is proposing to add facilities so that it will interconnect with all the pipelines at the Free Parking Hub. The interconnections will allow ABC to provide switching service at the hub. ABC proposes market-based rates for the switching service.

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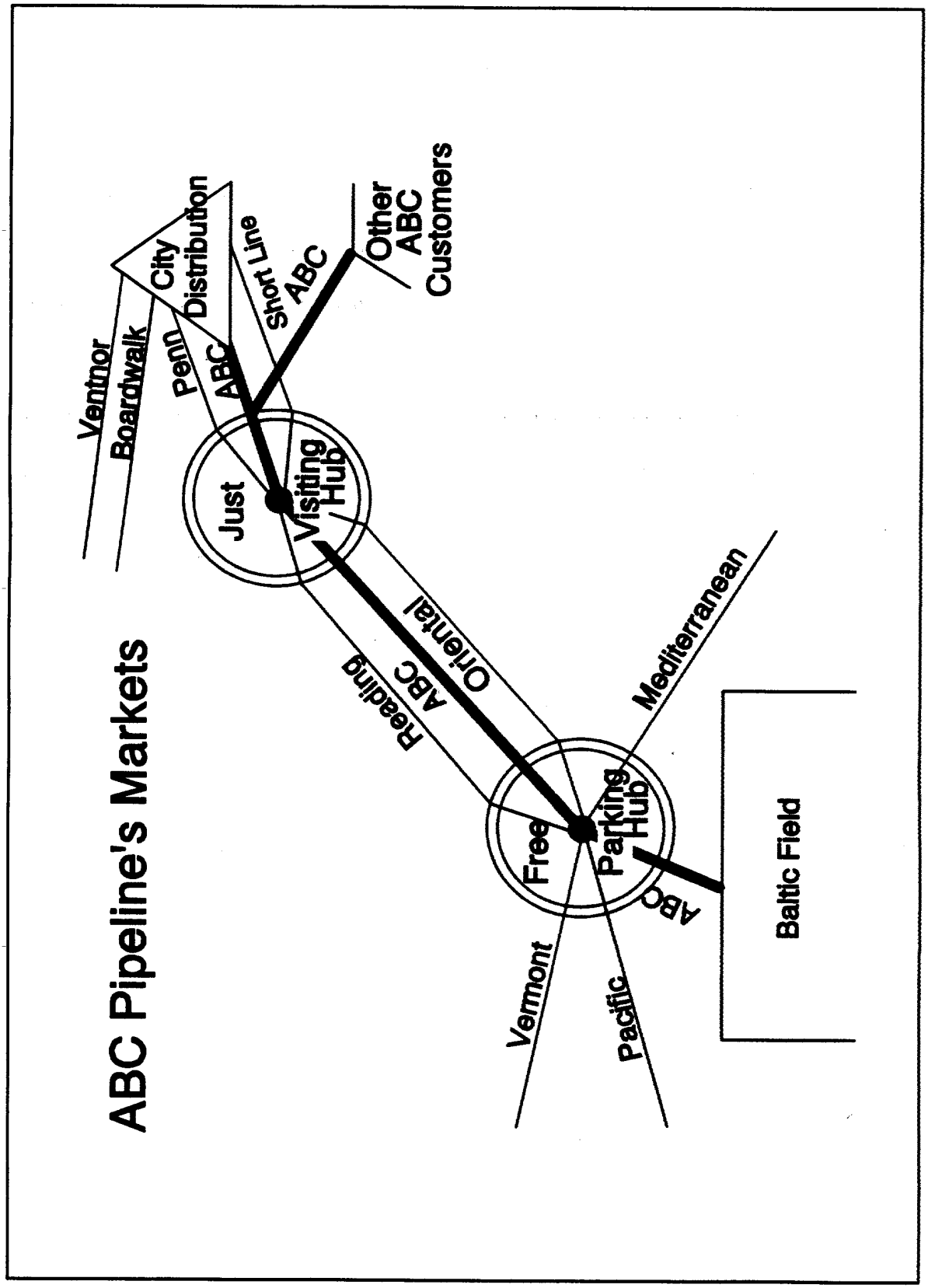
[61] As stated before, entry would probably only be relevant for gas pipelines in the case of minor facilities such as facilities that could be constructed under a blanket certificate.



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The facts in this hypothetical are patterned after the facts of a large pipeline company and one of its major customers. Facts have been added or changed to better illustrate points in the analysis.

In order to analyze ABC's proposal, staff identifies the relevant product and geographic markets, measures the size of the market, and calculates market shares and the market's concentration using the Herfindahl-Hirschman Index (HHI). Where market shares and the HHI are high, staff examines other competitive factors that might constrain the exercise of market power.

A two step analysis is used to examine both of ABC's proposals. First, one examines whether there is sufficient competition along parallel routes for the proposed market-based services. Second, if there is not, one examines if there is sufficient competition in the origin and destination markets to constrain the exercise of market power. The Commission would deny ABC Pipeline's request if it finds that ABC has market power over customers on the relevant routes and in either origin areas or destination areas of the geographic market. To identify relevant geographic markets, one first identifies pairs of origin and destination markets. The pipeline might identify one such pair as the hypothetical Baltic field and City Distribution Company (City).[62]

2. The Applicant's Primary Proposal

a. The Relevant Facts

City Distribution is a large natural gas public utility that serves millions of customers. Its service area covers a large metropolitan area. City's service area is located 100 miles downstream of the Just Visiting Hub.

City has its own storage facilities with a maximum daily storage withdrawal capability of 1.0 Bcf/day and a total working gas capacity of approximately 30 Bcf. Its peak day system demand is approximately 3.0 Bcf/day. Thus, at full utilization of its storage, City needs at least 2.0 Bcf/day (3.0 Bcf/day—1.0 Bcf/day) of transportation capacity on its peak day to meet customer demand.

City has over 30 interconnections with five interstate pipelines: ABC Pipeline Company, the Short Line Pipeline Company, the Boardwalk Pipeline Company, the Ventnor Pipeline Company, and the Pennsylvania Pipeline Company. Table 1 shows City's contract rights to, and use of, transportation capacity on all pipeline connections to its city gate for 1994. Table 1 shows the total capacity of the pipelines in City's metropolitan area. The totals include capacity used to serve another LDC within that metropolitan area.

TABLE 1

Pipeline	MDQ Rights (Bcf)	USE (Bcf)	Capacity (Bcf)
ABC Pipeline (FT)	1.3	1.5	1.5
The Short Line Pipeline	0.3	0.2	0.3
Boardwalk Pipeline (FT)	0.2	0.2	0.7
All Sources of IT	.....	0.3	.....
The Ventnor Pipeline	0.2	0.2	0.7
The Pennsylvania Pipeline	0.1	0.1	0.1
Total	2.1	2.5	3.3

City currently purchases a portion of its peak day from gas produced in the Baltic field. ABC Pipeline is currently the only pipeline that connects to the gathering system in the Baltic field. Table 2 displays the nearest pipelines and the estimated cost to connect these pipelines to the Baltic field gathering system :

TABLE 2

Pipeline*	Connection costs
The Atlantic Pipeline	$1,000,000
The Ventnor Pipeline	2,400,000
The Boardwalk Pipeline	17,000,000
The St. James Pipeline	15,000,000
The Park Place Pipeline	12,000,000

*The Atlantic and Ventnor Pipelines are affiliated, as are the Boardwalk and Park Place Pipelines.

b. Product Market

In its filing to the Commission, ABC might allege that there are numerous good alternatives to its FT service for City. It might start by alleging that two other pipelines directly connect areas that are very close to the Baltic field and City's city gate, and offer good alternatives to customers on both ends of the pipeline. It might further argue that customers on each end can use FT and interruptible transportation (IT) service on other pipelines leading to different market areas (in the case of Baltic field shippers) or other supply areas (in City's case).

FT on other pipelines may be a good alternative to ABC Pipeline's FT. However, ABC must demonstrate that its customers can actually get firm capacity on these other pipelines and that the quality of such FT is comparable to its own. Also, ABC must demonstrate that other pipelines can provide FT that is price competitive with ABC's.

IT service on other pipelines might be a good alternative for FT. Indeed, Table 1 shows that City used 0.3 Bcf of IT to meet its transportation needs on its 1994 peak day. ABC might argue that similar levels of IT have been available at peak for many years and can be expected to be available in the future. If so, this suggests that, at a minimum, IT was of a sufficiently high quality (i.e., had a sufficiently low probability of interruption) that it could substitute for FT in the past and could probably do so in the future. However, ABC Pipeline would need to present evidence that IT was provided at a price that rendered the price of delivered gas using IT at or below the price of delivered gas using FT. That might not be the case if City's receipt of IT required payment of IT rates on several upstream pipelines, thereby making IT not price competitive. City might have been forced to purchase IT even if its price were much higher than that of FT. Also, the IT shown in Table 1 was received by City over several pipelines, including ABC Pipeline. Thus, because ABC would be able to affect the delivered price of gas using IT service, it cannot be counted as a good product alternative to ABC Pipeline's own FT.

Therefore, for both the primary and alternate proposals, staff is defining the product market to include ABC Pipeline's FT and FT on other pipelines. However, interruptible transportation is included in the product market for switching service at the Free Parking Hub.

c. Geographic Market: Parallel Route

In its application, ABC might argue that three pipelines provide service from the same production area as the Baltic field to the same metropolitan area as City and thus are parallel routes: ABC Pipeline (with 1.5 Bcf of capacity), the Boardwalk Pipeline (with .7 Bcf of capacity) and the Ventnor Pipeline (with .7 Bcf of capacity). ABC computes an HHI of .39 for these three routes—equivalent to about three equally large firms. ABC might argue that this provides some degree of competition, which combined with other factors, would justify a market-based rate. One of the factors ABC mentions is that City has buyer power because of its size. However, ABC Pipeline does not provide sufficient factual basis to evaluate the level of City's buyer power, so staff is unable to consider this factor.

A closer examination of the example would show that there are no parallel route pipelines. Neither of the other

[62] Of course, the pipeline would need to provide the same information for all other origin and destination markets.

pipelines directly connect with the producers in the Baltic field. Each would need to build significant facilities to reach the same origin market. Finally, the applicant has not shown that capacity would be available on either of the two other pipelines in the same time frame for which it seeks market-based pricing.

d. Geographic Market: Destination Area

The relevant geographic destination market includes all alternative sellers that can provide FT to City's city-gate priced at or below transportation services over ABC's system, assuming a 15 percent FT price increase by ABC. If ABC Pipeline wished to include all the pipelines listed in Table 1, it would have to demonstrate that their transportation services met this criteria. It would also have to demonstrate that the transportation services over those pipelines at least matched the quality of transportation service over ABC Pipeline.

Consider a simple measure of market size and concentration first. Table 3 displays market shares and market concentration for the FT suppliers to City in 1994. Market shares are calculated based on capacity at City's city-gate. There is additional pipeline capacity within the metropolitan area. ABC Pipeline, however, has not provided evidence to show that the capacity could be easily connected to City's city-gate. Absent such a showing staff has used the lower capacity rights figures in our calculations.

TABLE 3

Seller	MDQ rights (Bcf)	Market share	Contribution to HHI
ABC Pipeline (FT)	1.3	.62	.38
Short Line Pipeline	0.3	.14	.02
Boardwalk Pipeline	0.2	.10	.01
Ventnor Pipeline	0.2	.10	.01
Pennsylvania Pipeline	0.1	.05	—
Total	2.1	1.01	.42

In this instance, ABC has a very large market share, 62 percent. Also, the HHI is quite high (.42) indicating that the market is concentrated. The market's HHI is well above the threshold levels of .18–.25 commonly used by antitrust authorities to identify competitive markets. Were ABC to seek Commission approval for market-based transportation rates, it would have to document that there are other factors, such as ease of entry, excess capacity, etc., that would eliminate the ability to exercise market power that is not ruled out by these high market shares and high HHI.

ABC Pipeline might also allege that released capacity on its own system and on other pipelines would provide good alternatives for City. However, in one very important respect released capacity, especially on ABC Pipeline itself, will have little, if any, impact on the assessment of ABC Pipeline's underlying market power in the primary long-run FT market. An analogy might help. Suppose there were only one manufacturer of automobiles, but robust used-car and leasing markets. Would the manufacturer have monopoly power? Yes. Even with a perfectly competitive secondary market for automobiles, the manufacturer could ''contrive'' a scarcity by making fewer new automobiles and charging a higher price than necessary to cover costs.[63]

Similarly, if a pipeline has market power, it would exploit it by ''contriving a scarcity.'' Although a pipeline with a well-functioning capacity release program might not withhold *existing* capacity, it could choose not to expand. Customers can only release capacity they don't need; they can't build. As demand grows, a pipeline with market power could simply enjoy higher prices and refuse to build even if its customers were willing to pay the incremental cost of expansion. It would build only when the market clearing price for FT went above the monopoly price.

Thus, this analysis suggests that the secondary market on ABC Pipeline may discipline market power the pipeline may have in selling IT and unsubscribed or ''short-term'' FT, but not in new primary FT. Released capacity on other pipelines might discipline any market power ABC Pipeline may have in the long-term FT market, but the secondary market on ABC Pipeline can do little to discipline its market power in supplying primary FT.

e. Other Competitive Factors

ABC Pipeline might argue that entry is sufficiently easy that ABC would be constrained from exercising market power by new firms quickly entering the market at relatively low cost. It seems unlikely that building major new transportation facilities to serve City would be inexpensive or timely. Rather, in a densely-populated urban area, building a new pipeline would likely be a contentious political and environmental issue. ABC Pipeline might, however, argue that the Boardwalk Pipeline or other pipelines could expand their existing interconnections with City. To support this argument it would need to show that the connections could be made without great expense or delay.

It may be that the four other pipelines have significant amounts of excess capacity at or close to City's city-gate. In the event that ABC Pipeline were to attempt to exercise market power, arguably such excess capacity could be used by City to defeat such an attempt. However, evidence currently at hand suggests that only the Short Line Pipeline has excess capacity.

Finally, staff did not address ABC Pipeline's argument regarding buyer power since the destination market was so highly concentrated and the analysis was not fully developed.

f. The Destination Area: Caveats and Conclusion

The market share and HHI calculations in this example are based on simplifying assumptions which minimize market shares and market concentration. First, by assuming that any of City's customers could be supplied by any of the five pipelines connecting to City, staff has intentionally expanded the market and thereby lowered market shares and HHI.

Second, staff did not include no-notice service. For this higher quality service City may have very few alternatives indeed, since no-notice service would only be available to pre-restructuring customers on the alternative pipelines.

Rather than ABC Pipeline, the Ventnor Pipeline or the Short Line Pipeline might file for market-based transportation rates to serve City on the basis that the market shares shown in Table 1 document their lack of market power, despite the destination market's high HHI. If, however, City fully utilized all of its FT at peak, then the Ventnor Pipeline or the Short Line Pipeline would be able to exercise market power despite their small shares of the market. Therefore, the Ventnor Pipeline or the Short Line Pipeline would have to demonstrate that City had alternatives at peak, as well as demonstrating that they lacked market power in the origin markets.

[63] *See* U.S. v. Aluminum Co. of America, 148 F.2d 416, 424 (2d Cir. 1945). The main issue in this case was whether secondary scrap aluminum was in the same market as primary aluminum. Judge Learned Hand held that since Alcoa had produced the metal reappearing as reprocessed scrap, it would have taken into account in its output decisions the effect of scrap reclamation on future prices, and therefore secondary scrap should not be in the same market as primary aluminum.

g. Geographic Market: The Origin Area

ABC's pipeline is connected with the gathering system in the Baltic field in Louisiana. ABC Pipeline is the only inter or intrastate pipeline that is connected to this gathering system.

As for good alternative suppliers in the origin area, ABC Pipeline would have to demonstrate that the quality of FT on other pipelines is comparable to its own. Also, ABC would have to demonstrate that other pipelines can provide FT that is priced competitively with ABC's.

To show that other pipelines could become good FT alternatives, ABC Pipeline would have to show that other pipelines could easily connect with the gathering system in the Baltic field. Or, ABC Pipeline might argue that the producers could build gathering lines to connect to these other pipelines at a nominal cost. In either case, ABC would have to show that building these facilities would not reduce the netback to these producers.

In this example, all of the pipelines would have significant connection costs. At most, it appears that only on Atlantic would the cost of connecting the Baltic field result in a price increase of less than 15%. Thus, in the Baltic origin area, producers seem to have at most one good pipeline alternative to ABC Pipeline. The conclusion, therefore, is that staff cannot rule out the possibility, indeed likelihood, that ABC Pipeline has market power over shippers transporting gas out of the Baltic field origin area.

h. Primary Proposal: Conclusion

Our conclusion from analysis of this hypothetical is simple and straightforward. It is conceptually possible to demonstrate that pipelines lack significant market power over shippers buying transportation from supply fields to their city-gate customers. However, the City example suggests that such a showing would be difficult.

3. The Applicant's Alternate Proposal

a. The Relevant Facts

ABC Pipeline has also included a more limited market based proposal in its filing. ABC argues, at a minimum, it should be able to charge market-based rates for service between two market centers on its system, the Free Parking Hub and the Just Visiting Hub, and for its proposed new switching service at the Free Parking Hub. Table 5 shows the six pipelines at the Free Parking Hub and their capacity:

TABLE 5

	MDQ rights (Bcf)	Market share	HHI
ABC Pipeline	2.0	.21	.04
Oriental	*1.8	.29	.08
Vermont	*1.0	.....	.....
Reading	2.3	.24	.06
Pacific	.8	.08	.01
Mediterranean ...	1.7	.18	.03
Total	9.6	1.00	.22

*Since Vermont and Oriental are affiliated their capacity has been combined in computing market shares and HHIs.

Table 6 shows the five pipelines at the Just Visiting Hub:

TABLE 6

	MDQ rights (Bcf)	Market share	HHI
ABC Pipeline	2.0	.20	.04
Short Line Pipeline	.5	.05	.....
The Pennsylvania	*2.7	.54	.29
Reading	*2.5	.....	.....
Oriental	2.1	.21	.04
Total	9.8	1.00	.37

*Since the Pennsylvania and Reading are affiliated their capacity has been combined in computing market shares and HHIs.

Three pipelines provide firm transportation service between the two hubs. Their capacity on the route is shown in Table 7. In computing market shares and HHIs staff has used the lower of the pipeline's capacity at the Just Visiting and Free Parking Hubs as our estimate of the maximum amount of capacity that shippers can reserve between the two hubs.

TABLE 7

	MDQ rights (Bcf)	Market share	HHI
ABC Pipeline	2.0	.33	.11
Reading	2.3	.38	.14
Oriental	1.8	.30	.09
Total	6.1	*1.01	.34

*Total does not equal 1 due to rounding.

ABC Pipeline generally defines the product market as firm transportation. However, ABC argues that interruptible switching service at the Just Visiting Hub and the Free Parking Hub is the functional equivalent of firm service.

b. Geographic Market: Parallel Route

In the example, three pipelines provide firm transportation service between the Free Parking Hub (origin market) and the Just Visiting Hub (destination market): ABC Pipeline (with a .33 market share), Reading Pipeline (with a .38 market share), and Oriental (with a .30 market share). This results in an HHI of .34 for this route—equivalent to three equal sized firms. ABC Pipeline might argue that the three parallel route pipelines provide some degree of competition. ABC might argue that when this is combined with additional competition at the origin and destination markets there is sufficient competition to justify market-based rates.

In its alternate proposal ABC has not proposed market-based rates for transportation upstream of the Free Parking Hub or downstream of the Just Visiting Hub. Instead, it proposes a regulated rate for such services that would recover only the (relatively small) costs of the facilities between the Baltic field and the Free Parking Hub or between the Just Visiting Hub and City's city-gate. This would ensure ABC could not use market-based rates to exercise market power over shippers at the extremities of its system. However, such a proposal would raise serious cost allocation issues between ABC's market-based and cost-based services.

In the alternate proposal there is the possibility of parallel route competition because there are three pipelines that serve both the origin and destination markets. However, this is only the beginning of the analysis. ABC Pipeline must also show that: its customers can switch gas between ABC and the alternative pipelines at a low cost; its customers can actually get firm capacity on the Reading and the Oriental Pipelines; and the quality and price of firm service on these alternative pipelines is comparable to that provided on ABC Pipeline.

ABC argues that the Free Parking Hub is a header that offers firm switching service at minimal cost and that the Just Visiting Hub offers interruptible switching service among all the pipelines. The first may offer the customers good alternatives. The second probably does not. Potential market power problems here might be mitigated if firm switching service was offered at the Just Visiting Hub.

ABC argues that capacity release programs can make capacity available on the alternative pipelines. However, it has not shown that customers can obtain the same *long-term* FT service through the release program. Potential market power problems might be mitigated if ABC could show that its customers could buy the same long-term service through the release market (perhaps if the customers had many

years remaining on their contracts) or at some future time when the capacity on all the pipelines would be available simultaneously. It would also need to show that such alternatives would be competitively priced. It could do this either by analyzing regulated prices or by showing that all other pipelines would be able to match any likely market-based price on ABC. This would be a difficult showing for any pipeline if it was the only pipeline in the market seeking market-based rates.

In the alternate proposal there is possible parallel route competition between the origin and destination markets. However, even if all additional market power problems were mitigated, the HHI of the route is still well above the .18 screen staff is using. So, staff moves to the second step in the analysis to examine the origin and destination markets separately.

c. Geographic Markets: Destination Markets

ABC Pipeline might argue four other pipelines serve the Just Visiting Hub and each of these pipelines would serve as a good alternative to its service. ABC might also argue two other pipelines, the Ventnor and the Boardwalk have facilities near the Just Visiting Hub.As with the parallel route analysis, these pipelines cannot be considered good alternatives unless ABC Pipeline can demonstrate its customers can get firm transportation capacity at a price and quality comparable to its own service.

The data indicate that the Just Visiting Hub is highly concentrated. In computing the HHI for the destination market the two affiliates, the Reading and the Pennsylvania, are treated as one firm. Because these two pipelines control half the capacity at the hub, the HHI of .37 is actually higher than that for the parallel route.[64]

If ABC Pipeline could show that the Ventnor and the Boardwalk Pipelines could easily connect to the Just Visiting Hub this would significantly reduce the HHI and make it easier to support market-based rates for ABC Pipeline. Alternatively, ABC Pipeline might argue that market power at the Just Visiting Hub is minimal if it could show that there are other market centers close to the Just Visiting Hub that could be accessed by pipelines serving the Free Parking Hub. If ABC Pipeline could not show additional competitive factors that reduce market power, the data would not support market-based rates.

d. Hub Services

To justify market-based rates for service between two markets, ABC must show that both the origin and destination markets are competitive. ABC has not shown that the destination market, the Just Visiting Hub, is competitive. Therefore, it has not supported its proposal for market-based rates between the two hubs. However, ABC has also requested market-based rates for hub services at the Free Parking Hub.

To support its proposal for market-based rates for hub services, ABC Pipeline might argue that currently the Mediterranean Pipeline interconnects with the five other pipelines at the Free Parking Hub. When ABC builds its additional interconnections there will be two pipelines that connect with all the pipelines at the Free Parking Hub. In addition, these pipelines have several other alternative points of interconnection within a 100 mile radius of the hub and within the same rate zone. ABC argues that its customers can get the equivalent of ABC's switching service at these points of interconnection. ABC has provided a chart which shows that in addition to its proposed new facilities a shipper on any one of the five other pipelines has at least three alternative interconnections for each pipeline within the same rate zone. Some of these are direct interconnections and some require switching service at other nearby production area hubs. Further, interruptible capacity is consistently available within the production area and is of a very high quality, i.e., curtailments are rare. Thus, each shipper has at least three good alternatives to ABC's proposed switching service at the Free Parking Hub. This means that the highest HHI for ABC's switching service with any pipeline is .25.

The HHI of .25 for switching service is above staff's initial screen. However, there are other competitive factors that would reduce ABC's ability to exercise market power. One of these factors is the open access requirement that all open access pipelines must receive or deliver gas to other pipelines if capacity is available. By scheduling receipts and deliveries at the alternative points of interconnection a shipper can get the equivalent of switching service. And, when this is part of the basic point-to-point transportation service, there is no additional charge. Another competitive factor is ease of entry. In this area some of the pipelines could build additional interconnections at minimal cost. It would be economic to build these interconnections if ABC attempted to exercise market power by charging excessive rates.

ABC has shown that its customers would have good alternatives to its switching service. Therefore, market-based rates are appropriate for its switching service at the Free Parking Hub.

e. Conclusion

Given the high level of concentration in the route and in the destination market, it is unlikely that ABC Pipeline could justify market-based rates for service between the two hubs. However, using the same criteria, market-based rates can be supported for hub services at the Free Parking Hub.

In the example, staff has assumed that a pipeline might have both cost and market-based FT rates on its system. Any such proposal would require a method for allocating costs between cost-based and market-based services.[65]

4. Results of Analysis of Hypothetical

Staff must conclude that ABC would find it difficult to justify market-based rates for point-to-point FT on its system. Based on current data ABC may be able to justify market-based rates for some hub services. In the future, ABC may be able justify market-based rates for more services. As the transportation market evolves, pipelines may find it economic to build connections to more hubs. This will increase the number of alternatives at each hub and thus will make it easier to satisfy the criteria for market-based rates for hub services or for transportation between hubs.

C. Application of Criteria to Other Services

Under the standards proposed above, as the example involving ABC Pipeline shows, it is unlikely that FT rates for any city-gate customer would be market-based. The same is true for any rates paid by producers directly attached at the other end of the pipe. What role, then, beyond the gas commodity and storage services, would market-based prices play?

The answer is that market prices may play an important role in capacity-release, IT, and market-center services.

As illustrated in the ABC Pipeline example, the many new sources of FT

[64] This example demonstrates the effect that pipeline affiliation can have on market concentration. If Reading and Pennsylvania were not affiliated, the HHI for the Just Visiting Hub would be .22, significantly lower than the .37 HHI calculated with affiliate market share combined. An HHI of .22 is much closer to a level which might be deemed indicative of an unconcentrated market.

[65] For example, it would be necessary to identify the cost of the facilities used for the market-based services as well as any related operation and maintenance costs. Also, there would need to be an allocation of common and joint costs, such as administrative costs, between the cost and market-based services.

potentially available through the capacity release market will have little or no effect on a pipeline's long-run market power. They may, however, have a strong effect on either the primary capacity holder's (i.e. LDC's) or the pipeline's ability to exercise market power in the capacity release market, the short-term firm market, or the IT market. For these services, there are very few existing long term contracts. Moreover, a major interstate pipeline may have 10 to 20 different holders of FT capacity within a zone. Flexible (secondary) firm receipt and delivery point rights, in concept, give any of these primary holders or their replacements the ability to move gas to any upstream city-gate on the system. Thus, the secondary market in FT may well be unconcentrated. If released FT can be shown to be a good substitute for IT or short-term FT from the pipeline, then the released FT, IT and short-term FT market will be unconcentrated.

Any such arguments would depend on the effectiveness of the capacity release program in making released capacity at least the equal of IT. While it is doubtful that any such showing could be made now, with further improvements in the capacity release program this could occur.

In addition, part of the showing must contain evidence that LDCs could not frustrate ''secondary firm'' firm deliveries made at their city-gates by controlling the flows behind their own city-gate delivery points. Flexible receipt and delivery points are the key to a competitive finding; if an LDC is, aside from the pipeline, the only source of FT to its city-gate then it has market power. If secondary firm is an effective alternative, however, then there is a good likelihood that these markets would pass the stringent tests laid out above.

Some market-center services, such as short-term switching and parking, may also pass the test. Market-centers, by their nature, are where many pipelines intersect and, often, where there are multiple suppliers of storage service. In such cases, it is likely that the providers could show that customers will have many good alternatives at the market-center itself or in nearby market-centers.

In conclusion, application of the standards laid out in part IV.A is likely to mean continued cost-based regulation of primary FT, but may permit market pricing for released FT, IT and short-term FT and for market-center services such as switching and parking.

All-in-all, the potential for further reliance on market pricing is rather modest. On the other hand, market pricing in the capacity release and market-center services markets could be a key to their success. Hubs could play an important role in further perfecting the spot market for gas, but to do so is likely to require creative approaches to new services and new ways of adding value to the gas commodity. Creative, economical, new services are far more likely to develop under market pricing than under a cost-of-service approach.

D. Review of Market Power Findings

As discussed in part I, an important factor to the court of appeals in Elizabethtown, in which the Commission permitted gas sales at market prices, was the Commission's assurance that it would exercise its section 5 authority if necessary to assure that the market price was just and reasonable. This means that the Commission must consider how it will monitor market-based rates so that it can exercise its oversight responsibilities.

In past cases the Commission established, on a case-by-case basis some reporting requirements for companies authorized to charge market based rates.[66] The Commission may want to consider developing standard periodic reporting requirements on prices and quantities in market-based transactions. Periodic reports would make it possible for the Commission to monitor market-based rates to ensure that the rates are within a zone of reasonableness. The Commission may also want to establish a more formal procedure for reporting changes in circumstances that could affect the market power finding, i.e., circumstances that reduce the number of good alternatives in a market.[67] If circumstances change the Commission could either reconsider its prior market power findings or wait until a complaint is filed to take action.

Appendix: Analysis of Other Industries

As discussed in the paper, the FERC has consistently used the same general framework to evaluate when the market, rather than cost-of-service rate regulation, could be relied upon to produce just and reasonable rates. This framework has been evolving for over one hundred years in antitrust litigation and analysis and has now been codified in the DOJ/FTC merger guidelines. FERC is neither the first agency to choose light-handed regulation where a lack of significant market power can be shown, nor the only one to use antitrust standards as a framework for the showing. The general framework, however, is far from a set of mechanical rules; the application of the framework to a particular industry calls for many specific decisions and to an individual case requires many judgement calls.[1]

The Interstate Commerce Commission (ICC), the first national regulatory agency and pioneer in cost-of-service ratemaking, was also among the first to move toward deregulation or light-handed regulation for railroads and trucks. About twenty years ago the ICC began to lessen or eliminate regulation of railroads and trucks, the FCC allowed new entrants to compete for long distance telephone service and the CAB relaxed its price and entry controls over the airlines. The experience of these three agencies may provide some useful guidance for the Commission in deciding whether certain natural gas pipeline transportation services should be permitted market-based pricing and, if so, how those services should be identified.

Railroads, airlines, long distance telephones and natural gas pipelines all have much in common besides being regulated. They are all transportation/transmission networks characterized by a high ratio of fixed to variable costs, making ''load factor'' the key to unit operating costs, and, with the possible exception of airlines, all have significant economies of scale (an element of ''natural monopoly''). However, there are also significant differences among all of these industries so analogies and policy conclusions based on their similar characteristics should be made cautiously.

A. Interstate Commerce Commission Regulation of Railroads

Railroads and natural gas pipelines have some important characteristics in common. Both transport using assets that are immobile once they are constructed, though railroads invest in ''rolling stock'' as well track and roadbed. Further, both exhibit the same ''natural monopoly characteristic'' that the construction costs necessary for one company to transport a given amount between two points are usually significantly

[66] For example, Transwestern was required to file monthly reports of market based sales under Rate Schedule ISS. 43 FERC ¶ 61,240 (1988). Buckeye was required to file annual reports showing rates, volumes, and revenues for each destination market. See 66 FERC ¶ 61,348, for a review of these reports. For electric utilities, the Commission has required power marketers selling at market based rates to file quarterly reports showing prices and quantities for individual transactions [e.g., *Heartland*, 68 FERC ¶ 61,223 (1994)]. Among other things, the reports are intended ''to provide for ongoing monitoring of the marketer's ability to exercise market power.''

[67] For example, assume in the original market power analysis the Commission found there were four good alternatives in an origin market. A subsequent corporate merger of two of the pipelines and the abandonment of facilities by another would reduce the number of good alternatives to two. There have been no new entrants into the origin market. These changes probably would significantly affect the continuing validity of the original market power finding.

[1] Judge (now Justice) Stephen Breyer gives an example of how a merger ''pessimist'' might assess a proposed airline merger quite differently from a merger ''optimist,'' though both use the same antitrust framework and agree on all the facts. See discussion of the interplay between antitrust and deregulation of the airline and telephone industries in his contribution to the ''Symposium: Anticpating Antitrust's Centennial: Antitrust, Deregulation and the Newly Liberated Market Place,'' 75 California Law Review 1005–1047 (May 1987).

lower than the construction costs necessary for two companies to jointly transport the same amount between those points. Finally, both industries make extensive use of eminent domain granted from Federal and state governments to acquire land to build networks.

One significant difference between the two, however, is that pipelines carry a fungible product while railroads generally do not. That is, a pipeline customer who tenders gas in Louisiana and withdraws gas in Chicago, does not care if the gas withdrawn came from Appalachia while the tendered Louisiana gas went somewhere else. In contrast, a railroad customer in Chicago expecting a shipment of Louisiana shrimp will be very unhappy if Appalachian coal is delivered instead. Another important difference is that railroads face major intermodal transportation competition (air competition and trucks everywhere and barges in some areas), while there is no viable intermodal competition to pipelines in transporting natural gas.

Important characteristics are similar enough between railroads and pipelines that the Interstate Commerce Commission's (ICC's) handling of market-based pricing may inform FERC's handling of the issue. Of particular note are: (1) The ICC's initial rejection followed by the acceptance of the traditional economic paradigm used to evaluate competitiveness, (2) the guidelines now used by the ICC in evaluating competitiveness, and (3) evaluations of the effects of increased reliance on market forces.

1. Recent Changes in Railroad Regulation [2]

Before 1976, all rail rates were subject to regulation by the Interstate Commerce Commission (ICC) under the statutory ''just and reasonable'' standard.[3] The Railroad Revitalization and Regulatory Reform Act of 1976 was enacted to restore financial stability to the industry.[4] This restoration was to be accomplished partially through reducing regulatory restraints on railroad pricing decisions by limiting ICC jurisdiction over maximum rates to situations where railroads have ''market dominance.'' [5]

Market dominance determinations thus became of the utmost importance when rates were challenged. The ICC initially adopted three ''presumptions'' of market dominance: the railroad handled 70% of traffic (the ''market share'' presumption), revenues exceeded 160% of the variable costs (the ''cost'' presumption), and the shipper had a substantial investment in rail-related plant or equipment (the ''rail investment'' presumption). Any one of these presumptions being established and unrebutted would establish market dominance and ICC jurisdiction.

The ICC determined that the relevant market in the ''market share'' presumption would be confined to direct carrier competition for the specific product movement. The ICC explicitly rejected the traditional antitrust framework used to evaluate competition; the ICC determined that product competition (competition by other products), or geographic competition (availability of the same product from alternative sources or destinations) was not relevant.

Several years of experience combined with the need to implement the Staggers Rail Act of 1980,[6] caused the ICC to abandon the initial presumptions and adopt new guidelines which incorporate the traditional economic paradigm for evaluating competition. The ICC ''. . . concluded that the presumptions did not necessarily reflect the degree of railroad market power, and therefore, yielded inaccurate market dominance determinations.* * * The quantitative measures (i.e., the market share, cost, and rail investment presumptions) were found to be poor indicators of market dominance in the widely varying fact situations to which they were designed to apply.'' [7]

2. Current ICC Guidelines for Evaluating Market Dominance

Some of the ICC market dominance guidelines have no apparent relevance to FERC because they deal with intermodal transportation competition. However, other aspects of the ICC guidelines deal with issues nearly identical to those important to FERC in analyzing competition. These potentially informative portions of the guidelines are briefly summarized here.[8]

The ICC ''market dominance'' guidelines lay out what type of evidence is considered important.

Regarding competition from other railroads, the number of alternatives and the feasibility of alternatives are important. Feasibility is evidenced by (1) the physical characteristics of the alternative, (2) the direct access of both the shipper and receiver, (3) the cost of using the alternative, and (4) the evidence of relevant investment or long-term contracts.

Regarding geographic competition, considered important are: (1) The number of alternative destinations for shippers or alternative sources for receivers, (2) the number of alternative destinations or sources served by alternative carriers, (3) the suitability of the product available at each relevant source or required at each relevant destination, (4) the operational and economic feasibility of transportation from alternative sources or to alternative destinations, (5) the accessibility of alternative transportation, (6) the capacity of alternative sources to supply the product or alternative destinations to absorb the product, and (7) the evidence of relevant investment or long-term contracts.

Regarding product competition, considered important are: (1) the substitutability and availability of the substitute products, and (2) all costs of using the substitute product relative to using the product in question.

3. The Effect of Reducing Railroad Regulation

The 1976 Railroad Revitalization and Regulatory Reform Act and the 1980 Staggers Act were intended to improve the financial health of the railroad industry. By most measures, the railroads' financial condition has improved since 1980. Return on investment averaged about 4.9% from 1980 to 1988; this is up from the 2.5% average in the 1970s. Debt has declined from about 36% of total capital in 1980 to about 24% in 1988.[9]

While the regulatory reforms were successful in improving the financial condition of railroads, these reforms have not achieved total financial health for the industry. ''[T]he railroad industry as a whole has not achieved revenue adequacy—that is, its return on investment has not equaled or exceeded the current cost of capital.'' [10]

Regarding the effects on rates rather than on the railroad's financial condition, a recent journal article concludes ''* * * the effect of deregulation on prices has generally been to lower them. With price decreases and cost savings from deregulation, welfare gains from deregulation are likely to be positive.'' [11]

B. Market-Based Rates in Long Distance Telecommunications

To the extent there are similarities between long distance telecommunications and natural gas pipeline services, lessons can be learned from the FCC's experience with market based pricing. The FCC used a market power framework in its *Competitive Carrier* Proceedings, when determining the appropriate regulation for long distance service.

1. Comparison of the Industries

The long distance telecommunications market has some similarities to the natural gas pipeline market. First, with the original copper and, most recently, fiber optic cable methods of providing service, it has natural monopoly characteristics. Second, it has long been considered a public utility and until recently, was subject to standard cost-of-service regulation. Third, it provides long-

[2] The information provided here on the Interstate Commerce Commission is drawn from the Interstate Commerce Commission Decision, ''Product and Geographic Competition'' Ex Parte No. 320 (Sub-No. 3), October 24, 1985.

[3] Former Section 1(5) of the Interstate Commerce Act.

[4] Pub. L. No. 94–210, 90 Stat 31, February 5, 1976.

[5] Market dominance was defined in the statues as ''an absence of effective competition from other carriers or modes of transportation for the traffic or movement to which a rate applies.''

[6] Pub. L. No. 96–448, 94 Stat. 1895 (1980). One part of the Act directed the ICC to make a finding of no dominance if the carrier shows that a challenged rate would yield a revenue-to-variable cost percentage less than a given percentage. More generally, the Act made it federal policy to rely on competition, rather than regulation, to establish reasonable rail rates. Additionally the Act allowed railroads to enter into confidential agreements with shippers, cancel existing joint rates with other railroads that were not sufficiently profitable, and set time limits on the abandonment process.

[7] ''Product and Geographic Competition,'' *supra.* The adopted guidelines were listed in Appendix C.

[8] It is interesting to also note, that while developing these guidelines, the ICC refused to adopt specific HHI levels for reasons that are similar to those stated by FERC when refusing to adopt specific HHI levels in Gas Inventory Charge and Oil Pipeline cases.

[9] General Accounting Office, ''Railroad Regulation: Economic and Financial Impacts of the Staggers Rail Act of 1980,'' May 1990.

[10] *Id.* at p. 5.

[11] Wesley W. Wilson, ''Market-Specific Effects of Rail Deregulation,'' *Journal of Industrial Economics,* 62 (March, 1994), pp. 1–22. See this article's ''References'' for other articles evaluating the effect of deregulation on prices.

line service, and (since divestiture in 1984) inter-connects with independent local networks to deliver the service.

There are several differences as well. First, there is no production area nor market area for calls, although call concentration is higher in metropolitan areas. Second, the customer cannot determine the route that his calls take on a carrier, and may not switch carriers within the path. Third, calls are not fungible or interchangeable, as are gas molecules. For example, a customer wants to talk to his or her family, friends, or business associates, not someone else's.

2. History of Long Distance Service

The history of telecommunications regulation has been one of playing catch-up to technological change. Local and long-distance services were assumed to be natural monopolies, to be provided by AT&T. The fixed plant was expensive, and subject to a declining average cost of service, and all customers needed to be interconnected.

The natural monopoly disappeared with microwave technology because after a critical mass, more traffic requires a roughly proportionate increase in towers and more transmitters.[12] In 1977, the FCC allowed MCI into the market. It also allowed general OCC (Other Common Carrier) entry in 1977. In 1979, the FCC began the *Competitive Carrier* proceedings which ultimately effectively allowed market-based pricing for carriers other than AT&T. The two largest OCCs, MCI and Sprint, currently control 25% of the long-distance market.[13] Local services remained a natural monopoly.[14]

3. Light-Handed Regulation of Non-Dominant Firms

In the *Competitive Carrier* proceedings,[15] the FCC minimized the regulation of OCCs. It based its actions on two principles: First, in order to retain business with prices above total costs a firm must possess market power and some firms did not. Second, regulation imposes costs. There are the administrative costs of compiling, maintaining, and distributing information necessary to comply with reporting and licensing requirements. More significant costs on society come from the loss of dynamism which can result. The FCC cited to the Averch-Johnson effect in which rate of return regulation can distort the input choices of a regulated firm away from production at minimum cost. It also discussed effective competition being limited by firms being required to give advance notice of innovative marketing plans and having those initiatives subject to public comment and review. The FCC said that the posting of prices and legal obligation to refrain from ''unjust and unreasonable discrimination'' may well result in artificially stabilizing prices to the consumer's eventual disadvantage.

Competitive Carrier characterized carriers as dominant (eventually only AT&T) or non-dominant. Initially, it defined dominant firms as firms with market power.[16] The FCC said that it focused on certain market features to determine if a firm can exercise market power: The number and size distribution of competing carriers, the nature of barriers to entry and the availability of reasonably substitutable services.[17]

As the FCC refined its determination of which carriers could be subject to lighter-handed regulation, it concluded that once a determination of market power was made, it would look at the degree of power before determining whether regulations conferred greater benefits on customers than costs.[18]

The agency reasoned that non-dominant carriers lacked (substantial) market power, and that the costs outweighed the benefits of regulating such firms. It held that non-dominant firms:

- Can't charge excessive rates;
- Can't discriminate without losing their customers; and
- Can't pass on the costs of inefficient investments to customers.

Applying its definitions, the FCC determined that AT&T was a dominant carrier because of its historical market power, immense financial and technological base, control over monopoly interconnection facilities, and substantial cross-subsidization potential. In addition, it is an effective price leader.[19] Over time, the FCC found that all other carriers were non-dominant.

The FCC decreased the regulations for non-dominant carriers in two phases: streamlining and forbearance. Under both, non-dominant carriers were required to charge just and reasonable and non-discriminatory rates. With streamlining, the FCC presumed that tariff filings were legal, and required no cost justification of the tariffs.[20] Forbearance went further than streamlining, by not requiring tariff filings from non-dominant firms. The Supreme Court later overruled this, as discussed in part I above.

C. The Cab and Airlines

Airline transportation and its regulation has many similarities to gas pipeline transportation. On any given trip, the variable cost of flying the aircraft is essentially the cost of the fuel used, just as the variable cost of transporting gas is the fuel used by the compressors. Unit costs, therefore, are highly sensitive to utilization or load factors. Economies of scale attainable through the use of larger airplanes, however, have been thought to be less important than for gas pipelines.[21] Airline companies, like pipeline companies, needed a public convenience & necessity certificate to serve or abandon any interstate route; rates and terms and conditions were strictly regulated. Discounts were allowed, if at all, after a hearing at which competitors could either challenge the proposed rates or match them.

Differences were and are important. Airlines generally have little substantial investment in immobile assets like roadbed, track or in laying pipe. Airports, landing slots and air-traffic control are generally government supplied. Economies of aircraft scale, while present, are less pronounced than for pipelines. Air traffic, in contrast to natural gas, is not fungible. When you go to pick up your grandparents at the airport, you expect unique rather than generic grandparents to deplane. Regulation was thought necessary, not because airlines were a natural monopoly, but because they were thought to be subject to ''excessive competition.'' Under this theory, regulation was necessary to prevent airlines from bankrupting each other through overbuilding and excessive price competition.[22] Another purpose was to provide direct subsidies to encourage the growth of general aviation. The history of airline deregulation also differs greatly from that for natural gas pipelines. While the CAB itself, under Alfred Kahn, initiated some important changes in 1977 under the Civil Aviation Act (1938), Congress decided, in 1978, to phase out all CAB regulation and the agency itself by 1985. The change from a highly regulated environment designed to minimize competition to a free entry environment emphasizing price competition occurred in a remarkably short time.

1. Problems That Led to Deregulation

The Senate held hearings on airline regulation in February 1975. The study released later that year was highly critical of the CAB.[23] Stephen Breyer,[24] summarized the study as revealing several ''serious defects'' relating to rates, routes, efficiency and agency procedures, two of which were:

Rates. Regulation led to high prices and overcapacity. Because the airline industry was highly competitive and because the CAB prevented price competition, the airlines channeled their competitive energies into providing more and costlier service—more flights, more planes, more frills * * * Yet the planes themselves flew more than half empty. (Breyer, 1982, 200)

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[12] Huber, Peter W., *The Geodesic Network II: 1993 Report on Competition in the Telephone Industry*, p. 3.4.

[13] Wall Street Journal, July 22, 1994, p. A2.

[14] Meanwhile, technology has begun to remove the local natural monopoly for telephone service. There are a large number of potential and credible providers of local service including cable television providers and radio-based and cellular carriers.

[15] First Report and Order, 85 F.C.C. 2d 5 (1980).

[16] Notice of Inquiry and Proposed Rulemaking, 77 F.C.C. 2d at 350 (1979); and First Report and Order, at p. 21.

[17] First Report and Order at p. 21.

[18] Further Notice of Proposed Rulemaking, 84 F.C.C. 2d at 499–500 (1981); and Second Report and Order. 91 F.C.C. 2d (1982).

[19] Notice of Inquiry and Proposed Rulemaking, 77 F.C.C. 2d at 352–353; and First Report and Order, *supra*.

[20] Streamlining also gave (1) blanket approval for expansions, (2) reeduced the filing period (substantially) to 14 days, and (3) required no financial information.

[21] Bailey et al., provide some of the evidence indicating that economies of scale are modest at pp. 50–54. Fred Kahn, however, suggests that, from hindsight, economies of scale were underestimated. The ''thoroughgoing'' movement to a hub and spoke system was not foreseen. *See* ''Surprises of Airline Deregulation,'' *American Economic Review*, May, 1985, 316–322.

[22] *See* Stephen Breyer, *Regulation and Its Reform*, Harvard, 1982, 197–221; and Elizabeth Bailey, David Graham and Daniel Kaplan, *Deregulating the Airlines*, MIT, 1985, 11–26.

[23] Senate Comm. on the Judiciary, Subcomm. on Admin. Practice and Procedure, 94th Cong., 1st Sess., *Civil Aeronautics Board Practices and Procedures*. (1975).

[24] Breyer was the Committee's chief investigator.

Routes. Regulation effectively closed the industry to newcomers and guaranteed relatively stable market shares to firms already in the industry. (Id., 205)

The Airline Deregulation Act was signed into law in 1978. The Act phased out the CAB's authority and the Board itself ceased operations entirely by 1985.

2. The Role of Market Power Analysis in Airline Deregulation and Merger Policy

Market power analysis was an important factor in the rapid deregulation of airlines and an even more important factor in the merger policy that controlled consolidation within and exit from the industry. An important element of the case against regulation was that but for regulation, the industry would be much less concentrated at the national level than it was under CAB regulation. The relevant market for the traveler was usually defined to be the ''city-pair,'' the two cities between which the traveler wishes to fly.[25] Advocates of deregulation did not argue that each airline would find itself battling hosts of actual competitors. They claimed only that the threat of entry into a particular market by airlines not currently serving that market would hold prices down. An airline that serves city A and city B, but does not fly between them, can enter the A–B market at very low cost, and there are several such airlines serving most major routes.

The Board based its assessment of the likely effects of a merger on two related findings: that concentration measures based on city-pair markets alone are not an accurate gauge of competitive performance and that potential entry would have an important disciplining effect on performance. (Bailey et al, 1985, 173–202). Market definitions were often contested. The DOJ in the Northwest/Republic merger, for example, argued that the relevant product market was ''non-stop'' flights between city- pairs. In other cases witnesses have argued over whether the appropriate definition should be airport pairs, city pairs, or the complex of services representative of a hub and spoke network. But in all cases the same general relevant market definition framework has been used.

Breyer (1987) suggested that antitrust rules designed to deal with industry in general may not properly reflect the unique features of the airline industry. For example, he cautioned against applying the ''optimistic'' merger view that is more lenient on higher concentration thresholds and places great store on ''potential competitors,'' fearing that such an antitrust view would not be stringent enough. On the other hand, he would be more lenient than the merger guidelines with respect to the ''failing company'' or efficiency defenses for merger, to reflect that fact that the airline industry is emerging from forty years of regulation.

3.The Effects of Airline Deregulation

Virtually all observers agree that airline fares have been much lower and traffic immensely larger than they would have been absent deregulation.[26] However, as Alfred Kahn put it, there were some ''unpleasant surprises'' as well.[27] Although in the early years there was much new entry, most failed and national concentration in the industry failed to decline as most proponents of deregulation had predicted. Quality of service declined. Another unpleasant surprise to Kahn was ''the persistence-indeed, intensification-of price discrimination * * *'' despite which the airline industry has experienced severe losses and only a few carriers have been profitable.

[FR Doc. 95–3631 Filed 02–13–95; 8:45 am]

BILLING CODE 6717–01–P

Issuance of Decisions and Orders for the Week of December 5 Through December 9, 1994

During the week of December 5 through December 9, 1994 the decisions and orders summarized below were issued with respect to appeals and for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Eric Engberg, 12/5/94, VFA–0010

CBS News Correspondent Eric Engberg (Engberg) filed an Appeal from a determination issued by the Albuquerque Operations Office (Albuquerque). The determination denied, in part, a Request for Information which Engberg submitted under the Freedom of Information Act (FOIA). Engberg requested various travel documents submitted by security personnel, known as couriers, who had travelled with Secretary of Energy Hazel R. O'Leary. Albuquerque released responsive documents, from which names, home addresses, Social Security numbers, home telephone numbers, credit card numbers, and expiration dates had been redacted pursuant to FOIA Exemption 6. Engberg appealed only the deletion of the names. In considering the Appeal, the DOE found that Albuquerque had failed to adequately justify the withholding of the couriers' names under Exemption 6. In the course of the Appeal, Albuquerque requested an opportunity to re-evaluate the applicability of Exemption 6 and other FOIA exemptions to the withheld names. Consequently, the DOE granted in part the Appeal and remanded the matter to Albuquerque for a new determination.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Costain Coal, Inc	RF304–15459	12/06/94
Empire Coal Company	RF304–15460	.....
Atlantic Richfield Company/Vaccaro & Son Arco et al	RF304–14638	12/06/94
Crystal Water Co. et al	RF272–85480	12/06/94
Cubby Oil Co., Inc	RF272–97229	12/06/94
Dalton Asphalt Corp et al	RF272–94139	12/06/94
Dart Container Corporation	RF272–66874	12/05/94
Dart Container Corporation	RD272–66874	.....
E & B Paving, Inc	RF272–67026	12/07/94
E & B Paving, Inc	RD272–67026	.....
Epes Transport System, Inc	RF272–93329	12/08/94
Farmers Cooperative Elevator et al	RF272–94704	12/06/94
Good Hope Refineries/Howard Oil Company	RF339–17	12/08/94
Gulf Oil Corporation/City of Rocky River et al	RF300–21325	12/07/94
Gulf Oil Corporation/Fallwood Service Center	RF300–18460	12/06/94
Gulf Oil Corporation/Kirk Brown's Gulf Service et al	RF300–18153	12/08/94

[25] The analog for pipeline transportation would be ''origin-destination'' pairs, but both the Commission and DOJ have generally analyzed pipeline origin and destination markets separately. Why the difference? Oil and gas are fungible, airline passengers and freight are not.

[26] Elizabeth Bailey, David Graham, and Daniel Kaplan, *Deregulating the Airlnes* (MIT, 1985), and Steven Morrison and Clifford Winston, *The Economic Effects of Airline Deregulation* (Brookings, 1986).

[27] Alfred Kahn, ''Supreses of Airline Deregulation,'' *American Economic Review* (May, 1988).

K.A. Baker Construction Co	RF272–68186	12/06/94
S.J. Groves & Sons, Inc	RF272–77504	12/07/94
Seashore Transportation Co	RF272–97223	12/07/94
Texaco Inc./Ortiz Texaco	RF321–21049	12/08/94

Dismissals

The following submissions were dismissed:

Name	Case No.
Alameda Texaco Station	RF321–20865
Antelope County Farmers Cooperative	RF272–92006
Bowers Asphalt Paving, Inc	RF272–94780
Burnup & Sims of Texas, Inc	RF272–89938
Cabo Roto Service Station	RF321–20849
Caranil Service Station	RF321–20720
Castro Texaco Service	RF321–20858
Citizen Action	VFA–0008
Conea Service Station Texaco	RF321–20854
Cortland Water Board	RF321–20167
David M. Diaz Monje	RF321–20824
Don Davo Service Station	RF321–20850
Garage Texaco	RF321–20954
Garage Texaco Altosano	RF321–20999
Garaje Ayala	RF321–20845
Gardner Industries, Inc	RF321–20163
Jorge David Castrodad Quiles	RF321–20956
Jorge Luis Agusto Agosto	RF321–20728
Las Mareas Service Station	RF321–20846
Luis R. Abraham Melendez	RF321–20863
Pablo R. Colon	RF321–20726
Ramon Anibal Russe Torres	RF321–20732
Raul Ignacio Colon	RF321–20725
Rexco Park Texaco	RF321–20836
Sabana Seca Service Station	RF321–20841
Salinas Service Station	RF321–20955
Savannah River Operations	VSO–0003
Sierra Bayamon Service Station	RF321–20842
Sucn. Salustiano Ortiz Acevedo	RF321–20959
Tom Davis Texaco	RF321–19794
Trenton Service Station	RF321–20812
Velez Service Station	RF321–20827

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–3653 Filed 2–13–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5154–2]

Air Pollution Control; Proposed Action on Clean Air Act Grant to the South Coast Air Quality Management District

AGENCY: U.S. Environmental Protection Agency (USEPA)

ACTION: Proposed determination with request for comments and notice of opportunity for public hearing.

SUMMARY: The USEPA has made a proposed determination that a reduction in expenditures of non-Federal funds for the South Coast Air Quality Management District (SCAQMD) in Diamond Bar, California is a result of a non-selective reduction in expenditures. This determination, when final, will permit the SCAQMD to keep the financial assistance awarded to it for FY–94 by EPA under section 105(c) of the Clean Air Act (CAA).

DATES: Comments and/or requests for a public hearing must be received by EPA at the address stated below by March 16, 1995.

ADDRESSES: All comments and/or requests for a public hearing should be mailed to: Douglas K. McDaniel, Air Grants Section (A–2–3), Air and Toxics Division, USEPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901; FAX (415)744–1076.

FOR FURTHER INFORMATION CONTACT: Douglas K. McDaniel, Air Grants Section (A–2–3), Air and Toxics Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901 at (415) 744–1246.

SUPPLEMENTARY INFORMATION: Under the authority of Section 105 of the CAA, EPA provides financial assistance to the SCAQMD, whose jurisdiction includes Los Angeles and Orange Counties in southern California, to aid in the operation of its air pollution control programs. In FY–94, EPA awarded the

SCAQMD $6,670,831, which represented approximately 6% of the SCAQMD's budget.

Section 105(c)(1) of the CAA, 42 U.S.C. 7405(c)(1), provides that ''[n]o agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. In order for [EPA] to award grants under this section in a timely manner each fiscal year, [EPA] shall compare an agency's prospective expenditure level to that of its second preceding year.'' EPA may still award financial assistance to an agency not meeting this requirement, however, if EPA, ''after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government.'' CAA section 105(c)(2). These statutory requirements are repeated in EPA's implementing regulations at 40 CFR 35.210(a).

In its FY–94 section 105 application, which EPA reviewed in early 1994, the SCAQMD projected expenditures of non-Federal funds for recurrent expenditures (or its maintenance of effort (MOE)) of $92,365,069. This MOE would have been sufficient to meet the MOE requirements of the CAA. In January of 1995, however, the SCAQMD submitted to EPA documentation which shows that its actual FY–94 MOE was $80,505,495. This amount represents a shortfall of $11,228,569 from the MOE of $91,734,064 for the preceding fiscal year (FY–93). In order for the SCAQMD to be eligible to keep its FY–94 grant, EPA must make a determination under section 105(c)(2).

The SCAQMD is a single-purpose agency whose primary source of funding is emission fee revenue. It is the ''unit of Government'' for section 105(c)(2) purposes. The SCAQMD submitted documentation to EPA which shows that over the last three years emission reductions brought on by a combination of economic recession and more restrictive emission rules have reduced fee revenues from stationary sources from a high of $74,433,331 in 1990–1991 to $64,923,181 in 1993–1994. As a result of this revenue loss, the SCAQMD has instituted hiring/salary freezes, furloughs, and layoffs, has reduced its equipment purchases and contract expenditures, and has instituted new programs to reduce costs such as permit streamlining, computer-assisted permit processing, and privatization efforts.

The SCAQMD's MOE reductions resulted from a loss of fee revenues due to circumstances beyond its control. The SCAQMD did not, on its own authority, reduce its operating budget. EPA proposes to determine that the SCAQMD's lower FY–94 MOE level meets the section 105(c)(2) criteria as resulting from a non-selective reduction of expenditures. Pursuant to 40 CFR 35.210, this determination will allow the SCAQMD to keep the funds received from EPA for FY–94.

This notice constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All written comments received by March 16, 1995 on this proposal will be considered. EPA will conduct a public hearing on this proposal only if a written request for such is received by EPA at the address above by March 16, 1995. If no written request for a hearing is received, EPA will proceed to a final determination.

Dated: February 6, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–3610 Filed 2–13–95; 8:45 am]

BILLING CODE 6560–0–P

[FRL–5153–8]

Public Water System Supervision Program Revision for the State of Indiana

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with the provisions of section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300f et seq., and 40 CFR part 142, subpart B, the National Primary Drinking Water Regulations (NPDWR), that the State of Indiana is revising its approved Public Water System Supervision (PWSS) primacy program. The Indiana Department of Environmental Management (IDEM) adopted drinking water regulations for Lead and Copper, 44 synthetic organic chemicals (SOCs), 12 inorganic chemicals (IOCs), and 8 volatile organic chemicals (VOCs) that correspond to the NPDWR for Lead and Copper, SOCs, IOCs, and VOCs, promulgated by the U.S. Environmental Protection Agency (U.S. EPA) on June 7, 1991 (56 FR 26460–26564), on January 30, 1991 (56 FR 3526–3597), as amended on July 1, 1991 (56 FR 30266–30281), and on July 17, 1992 (57 FR 31776–31849). The U.S. EPA has completed its review of Indiana's PWSS primacy program revision and has determined that these sets of state program revisions are not less stringent than the corresponding Federal regulations.

The U.S. EPA has determined that the Indiana rule revisions meet the requirements of the Federal rule. Therefore, the U.S. EPA is proposing to approve the IDEM's rule revisions. All interested parties are invited to submit written comments on these proposed determinations, and may request a public hearing on or before March 16, 1995. If a public hearing is requested and granted, the corresponding determination shall not become effective until such time following the hearing, at which the Regional Administrator issues an order affirming or rescinding this action. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator.

Requests for public hearing should be addressed to: Miguel A. Del Toral, (WD–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determinations and of information that the requesting person intends to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of Indiana. A notice will be sent to the person(s) requesting the hearing as well as to the State of Indiana. The hearing notice will include a statement of purpose, information regarding the time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and should the Regional Administrator not elect to hold a hearing on his own

motion, these determinations shall become effective on March 16, 1995. Please bring this notice to the attention of any persons known by you to have an interest in these determinations.

All documents related to these determinations are available for inspection between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Indiana Department of Environmental Management, Drinking Water Branch,100 North Senate Avenue, Indianapolis, Indiana 46206

State Docket Officer: Mr. T.P. Chang, (317) 232–8435

Safe Drinking Water Branch, Drinking Water Section, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590

FOR FURTHER INFORMATION CONTACT: Miguel A. Del Toral, Region 5, Drinking Water Section at the Chicago address given above, telephone 312/886–5253.

(Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Signed this 31st day of January, 1995.

David A. Ullrich,

Acting Regional Administrator, U.S. EPA, Region 5.

[FR Doc. 95–3609 Filed 2–13–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5154–3]

Notice of Intent to Grant Chemical Waste Management, Inc. a Modification of an Exemption From the Land Disposal Restrictions of the Hazardous and Solid Waste Amendments of 1984 (HSWA) Regarding Injection of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to grant Chemical Waste Management, Inc. (CWM), of Oak Brook, Illinois, a modification of an exemption for the injection of certain hazardous wastes.

SUMMARY: The United States Environmental Protection Agency (EPA or Agency) is today proposing to grant a modification to the exemption from the ban on disposal of certain hazardous wastes through injection wells to CWM for its site at Vickery, Ohio. If granted, this modification would allow CWM to inject additional Resource Conservation and Recovery Act (RCRA) regulated wastes, identified by codes: F037, F038, K086, K107, K108, K109, K110, K117, K118, K123, K124, K125, K126, K141, K142, K143, K144, K145, K147, K148, K149, K150, and K151 through four waste disposal wells (WDWs) numbered: 2, 4, 5, and 6. Wastes codes F037, F038, K086, K107, K108, K109, K110, K123, K124, K125, and K126 were inadvertently omitted from the list for which CWM originally requested exemptions. Waste codes K141, K142, K143, K144, K145, K147, K148, K149, K150 and K151 became newly listed waste codes on September 19, 1994, and were banned from waste injection effective December 19, 1994. If granted, this modification would allow CWM to inject RCRA wastes with these codes after that ban date. The Agency has established June 30, 1995, as ban date for waste codes K131, and K132, after which, disposal by injection would be prohibited. If granted, this modification would allow CWM to continue to inject RCRA wastes with these codes beyond that ban date. On August 8, 1990, the Agency issued CWM an exemption for injection of certain hazardous wastes after determining that there is a reasonable degree of certainty that CWM's injected wastes will not migrate out of the injection zone within the next 10,000 years.

DATES: The EPA is requesting public comments on its proposed decision to exempt the wastes listed above. Comments will be accepted until March 31, 1995. Comments postmarked after the close of the comment period will be stamped ''Late''. A public information meeting and a public hearing to allow comment on this action may be scheduled if significant comments are received, and notice of these meetings will be given in a local paper and to all people on a mailing list developed by the Agency. If you wish to request that a public hearing be held, or to be notified of the date and location of any public hearing held, please contact the lead petition reviewers listed below.

ADDRESSES: Submit written comments, by mail, to: United Sates Environmental Protection Agency, Region 5, Underground Injection Control Section (WD–17J), 77 West Jackson Street, Chicago, Illinois 60604, Attention: Richard J. Zdanowicz, Chief.

FOR FURTHER INFORMATION CONTACT: Harlan Gerrish or Nathan Wiser, Lead Petition Reviewers, UIC Section, Water Division; Office Telephone Numbers: (312) 886–2939 and (312) 353–9569, respectively; 17th Floor Metcalfe Building, 77 West Jackson Street, Chicago, Illinois.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

The Hazardous and Solid Waste Amendments of 1984 (HSWA), enacted on November 8, 1984, impose substantial new responsibilities on those who handle hazardous waste. The amendments prohibit the land disposal of untreated hazardous waste beyond specified dates, unless the Administrator determines that the prohibition is not required in order to protect human health and the environment for as long as the waste remains hazardous (RCRA Sections 3004(d)(1), (e)(1), (f)(2), (g)(5)). The statute specifically defined land disposal to include any placement of hazardous waste in an injection well (RCRA Section 3004(k)). After the effective date of prohibition, hazardous waste can be injected only under two circumstances:

(1) When the waste has been treated in accordance with the requirements of Title 40 of the Code of Federal Regulations (40 CFR) Part 268 pursuant to Section 3004(m) of RCRA, (the EPA has adopted the same treatment standards for injected wastes in 40 CFR Part 148, Subpart B); or

(2) When the owner/operator has demonstrated that there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. Applicants seeking an exemption from the ban must demonstrate to a reasonable degree of certainty that hazardous waste will not leave the injection zone until:

(a) The waste undergoes a chemical transformation within the injection zone through attenuation, transformation, or immobilization of hazardous constituents so as to no longer pose a threat to human health and the environment; or

(b) That fluid flow is such that injected fluids will not migrate vertically upward out of the injection zone to a point of discharge for a period of 10,000 years.

The EPA promulgated final regulations on July 26, 1988, (53 FR 28118) which govern the submission of petitions for exemption from the disposal prohibition (40 CFR Part 148). Most companies seeking exemption have opted to demonstrate waste confinement (option (a) above, rather than waste transformation (option (b) above). A time frame of 10,000 years was specified for the confinement demonstration not because migration after that time is of no concern, but because a demonstration which can meet a 10,000 year time frame will likely provide containment for a substantially longer time period, and

also to allow time for geochemical transformations which would render the waste immobile. The Agency's confinement standard thus does not imply that leakage will occur at some time after 10,000 years, rather, it is a showing that leakage will not occur within that time frame and probably much longer.

The EPA regulations at 40 CFR 148.20(f) provide that any person who has been granted an exemption to the land disposal restrictions may request that the Agency modify the exemption to include additional wastes. If the EPA determines, to a reasonable degree of certainty, that the new wastes will behave hydraulically and chemically in a manner similar to previously exempted wastes and that injection thereof will not interfere with the containment capability of the injection zone, the modification may be granted.

Neither the existing exemption nor this modification exempts CWM from the duty to comply with the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) and the Toxic Substances Control Act (TSCA).

B. Facility Operation

The CWM facility accepts wastes from manufacturers and disposes of them as a commercial service. The wastes are tested to ensure that reaction products which might plug the injection interval are not formed, and mixed to ensure uniformity. The waste is filtered and injected into the four wells for permanent disposal. The facility has disposed of a total of 970,858,000 gallons of mostly hazardous wastes since the first well was placed in operation on June 7, 1976.

C. Exemption

The existing exemption allows CWM to dispose of wastes denoted by the following RCRA waste codes:

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This modification will add to the above list of approved codes in the existing exemption, so that CWM may also dispose of wastes denoted by the following RCRA waste codes: F037, F038, F086, K107, K108, K109, K110, K123, K124, K125, K126, K141, K142, K143, K144, K145, K147, K148, K149, K150, and K151 through its deep wells upon the effective date of this petition modification. When K131 and K132 are banned from land disposal on June 30, 1995, this modification will allow continued disposal of those wastes through the deep-well system.

D. Submission

On September 12, 1994, and October 28, 1994, CWM submitted requests to modify its existing petition for exemption from the land disposal restrictions on hazardous waste disposal under the HSWA of RCRA (40 CFR Part 148). The submissions were reviewed by staff at the EPA.

II. Basis for Determination

A. Waste Description and Analysis

CWM reports that the wastes codes for which this modification has been requested have not been disposed of by the Vickery facility. The actual chemical constituents found in the proposed codes are already found in previously exempted waste codes, which CWM does accept. CWM anticipates the possibility that manufacturers may proffer wastes containing the waste codes for which this exemption is requested.

B. Model Demonstration of No Migration

The grant of an exemption from the land disposal restrictions imposed by the HSWA of RCRA is based on a demonstration that disposed wastes will not migrate out of the defined waste management unit for a period of 10,000 years. This demonstration is based on the results of computer simulations which use geological information collected at the site or found to be appropriate for the site and mathematical models which have been proven to be capable of simulating natural responses to injection. The simulator is calibrated by matching simulator results against observations at the site. In this case, CWM simulated movement of a conservatively defined ion released at the top of the injection interval. Using values for geological parameters which have been shown to be exceptionally conservative (their use results in greater vertical movement of waste constituents than can reasonably be expected), CWM demonstrated that injected wastes will not migrate out of the defined injection zone for a period of 10,000 years. The Agency accepted the demonstration and granted the existing exemption in 1990.

A modification of an existing exemption to allow injection of additional hazardous waste constituents must show that the waste constituents denoted by the codes for which the modification is requested must behave similarly to those constituents for which the original demonstration of no migration was made. In this case, the underlying waste constituents have been shown to behave similarly because each is also a constituent of wastes denoted by codes which have already been exempted. This approach eliminated the need to reconsider each waste constituent individually. Comments on this approach are solicited.

III. Conditions of Petition Approval

The existing petition was issued with conditions. Conditions numbered: (5), (6), (7), and (8) required CWM to perform actions which might provide additional confirmation that the conditions at the site were conservatively considered in the demonstration of no migration from the injection zone. The work required under these conditions has been completed by CWM, and no additional work by CWM under these conditions is anticipated, except that the Knox-Kerbel ground water monitoring well (condition 5) must remain active at least as long as the facility is active. The remaining conditions, those numbered: (1), (2), (3), (4), and (9) place well operation conditions on CWM and continue in force. No new conditions are attached to this modification.

Dated: February 6, 1995.

Edward P. Watters,

Acting Director, Water Division, Region 5, U.S. Environmental Protection Agency.

[FR Doc. 95–3611 Filed 2–13–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5154–9]

California State Nonroad Engine and Equipment Pollution Control Standards; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of an Opportunity for Public Hearing and Public Comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted regulations for exhaust emission standards and test procedures for 1996 and later model heavy-duty off-road diesel cycle engines 175 horsepower or greater. CARB has requested that EPA authorize CARB to enforce regulations pursuant to section 209(e) of the Clean Air Act (Act), as amended, 42 U.S.C. 7543. This notice announces that EPA has tentatively scheduled a public hearing to consider CARB's request and to hear comments from interested parties regarding CARB's request for EPA's authorization and CARB's determination that its regulations, as noted above, comply with the criteria set forth in section 209(e). In addition, EPA is requesting that interested parties submit written comments. Any party desiring to present oral testimony for the record at the public hearing, instead of, or in addition to, written comments, must notify EPA by February 21, 1995. If no party notifies EPA that it wishes to

testify on the nonroad emission amendments, then no hearing will be held and EPA will consider CARB's request based on written submissions to the record.

DATES: EPA has tentatively scheduled a public hearing for March 1, 1995 beginning at 9:00 a.m., if any party notifies EPA by February 21, 1995 that it wishes to present oral testimony regarding CARB's request. Any party may submit written comments regarding CARB's requests by March 31, 1995. After February 21, 1995, any person who plans to attend the hearing may call Janice Raburn of EPA's Manufacturers Operations Division at (202) 233–9294 to determine if a hearing will be held.

ADDRESSES: If a request is received, EPA will hold the public hearing announced in this notice at the Channel Inn (Captain's Room), 650 Water Street SW., Washington, DC 20024. Parties wishing to present oral testimony at the public hearing should notify in writing, and if possible, submit ten (10) copies of the planned testimony to: Charles N. Freed, Director, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. In addition, any written comments regarding the waiver request should be sent, in duplicate, to Charles N. Freed at the same address to the attention of Docket A–94–44. Copies of material relevant to the waiver request (Docket A–94–44) will be available for public inspection during normal working hours of 8 a.m. to 5:30 p.m. Monday through Friday, including all non-government holidays, at the U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street SW., Washington, DC 20460. Telephone: (202) 260–7548. FAX Number: (202) 260–4400.

FOR FURTHER INFORMATION CONTACT: Janice Raburn, Attorney/Advisor, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, Washington, DC 20460. Telephone: (202) 233–9294.

SUPPLEMENTARY INFORMATION:

I. Background

Section 209(e)(1) of the Act as amended, 42 U.S.C. 7543(e)(1), provides in part: ''No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this Act: (A) New engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower, and (B) new locomotives or new engines used in locomotives.''

For those new pieces of equipment or new vehicles other than those a State is not permanently preempted from regulating under section 209(e)(1), the State of California may promulgate standards regulating such new equipment or new vehicles provided California complies with Section 209(e)(2). Section 209(e)(2) provides in part that the Administrator shall, after notice and opportunity for public hearing, authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines ''[i]f California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such authorization shall be granted if the Administrator finds that: (i) The determination of California is arbitrary and capricious, (ii) California does not need such California standards to meet compelling and extraordinary conditions, or (iii) California standards and accompanying enforcement procedures are not consistent with this section.''

EPA interpreted the preceding criterion regarding consistency in the final regulation it issued to implement section 209(e) entitled ''Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards'' (section 209(e) rule). This rule sets forth several definitions and the authorization criteria EPA must consider before granting California an authorization to enforce any of its nonroad engine standards.[1] As described in the section 209(e) rule, in order to be deemed ''consistent with this section'', California standards and enforcement procedures must be consistent with section 209. In order to be consistent with section 209, California standards and enforcement procedures must reflect the requirements of sections 209(a), 209(e)(1), and 209(b). Section 209(a) prohibits states from adopting or enforcing emission standards for new motor vehicles or new motor vehicle engines. Section 209(e)(1) identifies the categories preempted from state regulation. As stated above, the preempted categories are (a) new engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower, and (b) new locomotives or new engines used in locomotives. The section 209(e) rule includes definitions for farm equipment or vehicles and construction equipment or vehicles. California's proposed regulations would be considered inconsistent with section 209 if they applied to these permanently preempted categories. Additionally, the section 209(e) rule requires EPA to review nonroad authorization requests under the same ''consistency'' criterion that it reviews motor vehicle waiver requests. Under section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. California's nonroad standards would not be consistent with section 202(a) if there were inadequate lead time to permit the development of technology necessary to meet those standards, giving appropriate consideration to the cost of compliance within that time frame. Additionally, California's nonroad accompanying enforcement procedures would be inconsistent with section 202(a) if the Federal and California test procedures were inconsistent, that is, manufacturers would be unable to meet both the State and Federal test requirements with one test vehicle or engine.

Once California has been granted an authorization, under section 209(e)(2), for its standards and accompanying enforcement procedures for a category or categories of equipment, it may adopt other conditions precedent to initial retail sale, titling or registration of the subject category or categories of equipment without the necessity of receiving further EPA authorization.

By letter dated August 24, 1993, CARB submitted to EPA a request that EPA authorize California to adopt regulations for 1996 and later model heavy-duty off-road diesel cycle engines. By letter dated July 26, 1994, EPA informed CARB that in light of two final rules issued by EPA, it would be necessary for CARB to revise its waiver request before EPA could begin the waiver process. First, EPA had not been able to process the nonroad waiver request until it issued a final section 209(e) rule (discussed above). In addition, EPA issued a rulemaking setting federal nonroad standards under section 213 of the Act.[2] One of the waiver requirements under section 209 is that CARB make a determination that its standards and test procedures are, in

[1] *See* 59 FR 36969, July 20, 1994 (to be codified at 40 CFR Part 85, Subpart Q, §§ 85.1601–85.1606). This final rule titled ''Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards'' was proposed at 56 FR 45866, Sept. 6, 1991.

[2] 59 FR 31306 (June 17, 1994).

the aggregate, at least as protective of public health and welfare as applicable federal standards. At the time CARB made the analysis for its August 23, 1993, waiver request, EPA had proposed but not finalized federal standards for nonroad engines at or above 37kW. Thus, CARB made a determination based upon a comparison between its standards and the standards EPA was proposing at that time. EPA made a few changes to its final rule, thus making it necessary for CARB to revise its finding and determination so as to have compared its standards with the final federal standards. By letter dated August 17, 1994, CARB submitted to EPA a supplement to its request of August 24, 1993, with the updated comparison that EPA requested.

California's regulations apply to all new heavy-duty off-road diesel cycle engines, 175 horsepower or greater, including alternate-fueled engines, produced on or after January 1, 1996. These regulations:

a. Establish tier 1 smoke and exhaust emission standards for engines 175 to 750 horsepower produced on or after January 1, 1996.

b. Establish smoke and exhaust emission standards for engines greater than 750 horsepower produced on or after January 1, 2000. (These engines are low sales volume, so longer development time is allowed.)

c. Establish tier 2 smoke and exhaust emission standards for engines 175 to 750 horsepower produced on or after January 1, 2001.

d. Require that crankcase emissions be controlled for 1996 and later alternate-fueled engines derived from diesel cycle engines and naturally aspirated diesel-fueled engines used in heavy-duty off-road applications.

e. Require that commencing in the year 2000, replacement engines for pre-1996 equipment comply with the 1996 emission regulations. Replacement engines for 1996 and later equipment are required to comply with the emissions standards applicable to the original engine.

f. Establish an 8-mode steady state emissions test for certification testing.

g. Require certification compliance testing, quality audit assembly line testing, and new engine compliance testing.

h. Establish a labeling requirement.

i. Require manufacturers to provide a five year or 3000 hour emissions warranty.

EPA issued a final rule (referenced above) for nonroad engines of similar horsepower on June 17, 1994.[3] EPA set standards for engines at or greater than 130 to 560 kW (175 horsepower to 750 horsepower) identical to the CARB standards and effective January 1, 1996, the same date as the CARB standards. Also, EPA set standards for engines greater than 560 kW (750 horsepower) identical to CARB standards and effective January 1, 2000, the same date as the CARB standards. EPA did not promulgate tier 2 standards for the 175—750 horsepower category, so beginning in 2001 CARB standards would be more stringent than EPA standards.

California states in its August 17, 1994 letter that it has determined that its standards and test procedures for 1996 and later model heavy-duty off-road diesel cycle engines would not cause California emission standards, in the aggregate, to be less protective of public health and welfare as the applicable Federal standards. Further, California references its August 24, 1993 letter, which explained why compelling and extraordinary conditions warrant the need in California for separate standards for heavy-duty off-road diesel cycle engines. Finally, California states that its standards and test procedures are consistent with section 209 of the Act. California's request will be considered according to the criteria for an authorization request as set forth in the section 209(e) regulation.[4] Any party wishing to present testimony at the hearing or by written comment should address, as explained in the section 209(e) rule, the following issues:

(1) Whether California's determination that its standards are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious;

(2) Whether California needs separate standards to meet compelling and extraordinary conditions; and,

(3) Whether California's standards and accompanying enforcement procedures are consistent with (i) section 209(a), which prohibits states from adopting or enforcing emission standards for new motor vehicles or engines, (ii) section 209(e)(1), which identifies the categories preempted from state regulation, and (iii) section 202(a) of the Act.

II. Public Participation

If the scheduled hearing takes place, it will provide an opportunity for interested parties to state orally their views or arguments or to provide pertinent information regarding the issues as noted above and further explained in the section 209(e) rule. Any party desiring to make an oral statement on the record should file ten (10) copies of its proposed testimony and other relevant material along with its request for a hearing with the Director of EPA's Manufacturers Operations Division at the Director's address listed above not later than February 21, 1995. In addition, the party should submit 50 copies, if possible, of the proposed statement to the presiding officer at the time of the hearing.

In recognition that a public hearing is designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements which he deems irrelevant or repetitious and to impose reasonable limits on the duration of the statement of any participant.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until March 31, 1995.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent possible and label it as ''Confidential Business Information.'' To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. If a person making comments wants EPA to base its final decision in part on a submission labeled as confidential business information, then a non-confidential version of the document which summarizes the key data or information should be placed in the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the person making comments.

[3] 59 FR 31306 (June 17, 1994).

[4] ''Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards'' at 59 FR 36969, July 20, 1994 (to be codified at 40 CFR Part 85, Subpart Q, §§ 85.1601–85.1606).

Dated: February 7, 1995.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 95–3608 Filed 2–13–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5154–8]

Common Sense Initiative Council, Electronics Sector Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Common Sense Initiative Council, Electronics Sector Subcommittee, Notice of Meeting.

SUMMARY: The Environmental Protection Agency established the Common Sense Initiative Council (CSIC)—Electronics Sector (CSI–ES) Subcommittee on October 17, 1994, to provide independent advice and counsel to EPA on policy issues associated with the electronics and computer industry. The charter was authorized through October 17, 1996, under regulations established by the Federal Advisory Committee Act (FACA).

OPEN MEETING NOTICE: Notice is hereby given that the CSI–ES Subcommittee will hold an open meeting on Wednesday, March 8, from 8:30 a.m. to 5:00 p.m., and Thursday, March 9, from 8:30 a.m. to 3:00 p.m., at the Sheraton National Hotel, Commonwealth Ballroom, Columbia Pike and Washington Boulevard, Arlington, VA 22204. Seating will be available on a first-come, first-served basis.

The meeting will include a description of the charge to the subcommittee, orientation to the FACA process, review and approval of operating principles, review and discussion of proposed work plan items, and discussion of formation of work groups for accepted work plan items. Opportunity for public comment on major issues under discussion will be provided at intervals throughout the meeting.

INSPECTION OF COMMITTEE DOCUMENTS: Documents relating to the above noted topics will be publicly available at the meeting. Thereafter, these documents, together with the CSI–ES meeting minutes will be available for public inspection in room 2417M of EPA Headquarters, 401 M Street SW., Washington, DC.

FOR FURTHER INFORMATION: Concerning this meeting of the CSI–ES, please contact Gina Bushong, US EPA (202) 260–3797, FAX (202) 260–1096, or by mail at U.S. EPA (7405), 401 M Street SW., Washington, DC 20460; Mark Mahoney, Region 1, US EPA, (617) 565–1155; or Dave Jones, Region 9, U.S. EPA, (415) 744–2266.

Dated: February 7, 1995.

Gina Bushong,

Designated Federal Official.

[FR Doc. 95–3607 Filed 2–13–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5155–1]

New Hampshire; Final Adequacy Determination of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination of Full Program Adequacy for the State of New Hampshire's Municipal Solid Waste Landfill Permitting Program.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 USC 6945(c)(1)(B), requires states to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs), which may receive hazardous household waste or small quantity generator hazardous waste, will comply with the revised Federal MSWLF Criteria (40 CFR Part 258). RCRA Section 4005(c)(1)(C), 42 USC § 6945(c)(1)(C), requires the Environmental Protection Agency (EPA) to determine whether states have adequate ''permit'' programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibilities provided by 40 CFR part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria shall apply to all permitted and unpermitted MSWLF facilities.

The State of New Hampshire applied for a determination of adequacy under Section 4005(c)(1)(C) of RCRA, 42 USC § 6945(c)(1)(C). EPA Region I reviewed New Hampshire's MSWLF permit program adequacy application and made a determination that all portions of New Hampshire's MSWLF permit program are adequate to assure compliance with the revised Federal MSWLF Criteria. After consideration of all comments received, EPA is today issuing a final determination that the State's program is adequate.

EFFECTIVE DATE: The determination of adequacy for the State of New Hampshire shall be effective on February 14, 1995.

FOR FURTHER INFORMATION CONTACT: EPA Region I, John F. Kennedy Federal Building, Boston, MA 02203, Attn: Mr. John F. Hackler, Chief, Solid Waste and Geographic Information Section, mail code HER-CAN 6, telephone (617) 573–9670.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires states to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under 40 CFR part 258. Subtitle D also requires in Section 4005(c)(1)(C), 42 USC § 6945(c)(1)(C), that EPA determine the adequacy of state municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of the STIR. EPA interprets the requirements for states or tribes to develop ''adequate'' programs for permits, or other forms of prior approval and conditions (for example, license to operate) to impose several minimum requirements. First, each State/Tribe must have enforceable

standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Second, the State/Tribe must have the authority to issue a permit or other notice of prior approval and conditions to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in Section 7004(b) of RCRA, 42 USC § 6974(b). Finally, the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an ''adequate'' program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the STIR. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. State of New Hampshire

On July 7, 1993, EPA Region I received New Hampshire's final MSWLF permit program application for adequacy determination. EPA published in the **Federal Register** a tentative determination of adequacy for all portions of New Hampshire's program. Further background on the tentative determination of adequacy appears at 59 FR 52299 (October 17, 1994).

Along with the tentative determination, EPA announced the availability of the application for public comment. In addition, a public hearing was tentatively scheduled. However, there were no requests for such, and as a result the hearing was not held.

C. Public Comment

EPA Region I received the following written comments on the tentative determination of adequacy for New Hampshire's MSWLF permitting program, all of which have been made a part of the administrative record and are available to the public for review.

Several commenters were generally supportive of EPA's tentative determination to provide full program approval to New Hampshire's MSWLF permitting program. These commenters encouraged EPA Region I to work quickly towards the final determination of adequacy of the State's program.

A response was required by only one comment, in which the commenter questioned the effectiveness of the State's Guidance Document for ensuring compliance with both state and federal requirements for MSWLFs. Specifically, the commenter felt there were instances in which the Guidance may prove confusing to the regulated community (due in part to typographical errors and cross-references to part 258). EPA Region I forwarded a summary of the comments to the New Hampshire Department of Environmental Services (NH DES), which agreed that clarifying changes to its Guidance might be beneficial. Without creating any substantive changes, the Guidance was revised after review and approval by EPA Region I. The clarifying revisions ensure consistency with 40 CFR part 258, while maintaining the integrity of the State's original Guidance. To further prevent any chance of confusion, the State of New Hampshire will append the part 258 regulations to its Guidance document for direct reference.

D. Decision

After evaluating the New Hampshire program, EPA Region I concludes that the State of New Hampshire's MSWLF Permitting Program meets all of the statutory and regulatory requirements established by RCRA. The New Hampshire MSWLF Permitting Program is technically comparable to, no less stringent than, and equally as effective as the revised Federal Criteria. Accordingly, the State of New Hampshire is granted a determination of adequacy for all portions of its municipal solid waste permit program.

To ensure full compliance with the Federal Criteria, New Hampshire has revised its current MSWLF permitting requirements by development of the *Guidance Document for the State Permitting of Municipal Solid Waste Landfills Regulated Under Federal Rules (40 CFR Part 258) in New Hampshire.* This guidance document has incorporated those requirements from the Federal Criteria not found in the State's existing MSWLF program which are applicable to all existing MSWLFs and to all MSWLF permit applications. New Hampshire will implement its MSWLF permit program through enforceable permit conditions. These new requirements occur in the following areas:

1. The adoption of the following definitions as required by the revised Federal Criteria, 40 CFR 258.2: Active life, active portion, director, household waste, industrial solid waste, owner, saturated zone, sludge, solid waste, state, state director, and waste management unit boundary.

2. Compliance with the location restrictions of 40 CFR 258.10, 258.11. 258.12, 258.13, 258.14, 258.15, and 258.16, which pertain to airport safety, floodplains, wetlands, fault areas, seismic impact zones, unstable areas and closure of existing MSWLF units.

3. Compliance with the operating criteria of 40 CFR 288.20, 258.21, 258.23, 258.24, 258.28, 258.29, which pertain to excluding the receipt of hazardous waste, cover material requirements, explosive gases control, air criteria, liquid restrictions, and record keeping requirements.

4. Compliance with the design criteria of 40 CFR 258.40.

5. Compliance with the ground-water monitoring and corrective action requirements of 40 CFR 258.53, 258.54, 258.55, 258.56, 258.57, and 258.58, which pertain to groundwater sampling and analysis requirements, detection monitoring, assessment monitoring, assessment of corrective measures, selection of remedy, and implementation of the corrective action program.

6. Compliance with the closure and post-closure criteria of §§ 258.60 and 258.61.

7. Compliance with the financial assurance criteria of 40 CFR 258.70, 258.71, 258.72, 258.73, and 258.74, which pertain to applicability and effective date, financial assurance for closure, financial assurance for post-closure care, financial assurance for corrective action, and allowable mechanisms.

New Hampshire's Department of Environmental Services requires all existing MSWLFs to have either an existing permit or a temporary permit, both of which require compliance with the Federal Criteria in 40 CFR part 258 pursuant to state laws and regulations, found at New Hampshire Revised Statutes Annotated Chapter 149–M:11 and New Hampshire Code of Administrative Rules Env-Wm 308.03. The State of New Hampshire is not asserting jurisdiction over Indian land recognized by the United States government for the purpose of this notice. Tribes recognized by the United States government are also required to comply with the terms and conditions found at 40 CFR Part 258.

Region I notes that New Hampshire's receipt of Federal financial assistance subjects the State to the statutory obligations of Title VI of the Civil Rights Act of 1964. EPA Region I is committed to working with the State to support and ensure compliance with all Title VI requirements. Furthermore, the narrative portion of the State's application expresses New Hampshire's voluntary support of environmental justice principles in the management of the Subtitle D program. Although this is not a criterion for program approval,

Region I acknowledges New Hampshire's support of environmental justice principles.

Section 4005(a) of RCRA, 42 USC § 6945(a) provides that citizens may use the citizen suit provisions of Section 7002 of RCRA, 42 USC 6972, to enforce the Federal MSWLF Criteria set forth in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. *See*, 56 *FR* 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under Section 553(d) of the Administrative Procedure Act, 5 USC § 553(d), to put this action into effect less than 30 days after the publication in the **Federal Register**. All of the requirements and obligations in the State's program are already in effect as a matter of state law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 USC 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of Sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act as amended, 42 USC §§ 6912, 6945 and 6949a(c).

Dated: February 4, 1995.

John P. DeVillars,

Regional Administrator.

[FR Doc. 95–3660 Filed 2–13–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

February 7, 1995.

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: 3060–0136.

Title: Temporary Permit to Operate a General Mobile Radio Service System.

Form Number: FCC Form 574–T.

Action: Extension of a currently approved collection.

Respondents: Individuals or households.

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 1,500 recordkeepers; .10 hours average burden per recordkeeper, 150 hours total annual burden.

Needs and Uses: Commission rules state that eligible applicants for new or modified radio stations in the General Mobile Radio Service complete FCC Form 574–T for immediate authorization to operate the radio station. The applicant is required to retain this form during processing of the application for license grant.

Federal Communications Commission.

William F. Caton,

Secretary.

[FR Doc. 95–3576 Filed 2–13–95; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL MARITIME COMMISSION

[Docket No. 94–29 et al.]

Trans-Atlantic Agreement

In the matter of; docket No. 94–29, practices of the Trans-Atlantic Agreement and its members with respect to independent action; docket No. 94–30, container pool practices of the Trans-Atlantic Agreement and its members; fact finding investigation No. 21, activities of the Trans-Atlantic Agreement and its members, order inviting amicus curiae filings.

On February 2, 1995, the Trans-Atlantic Conference Agreement (''TACA'' or ''Conference'') and its member lines, the Commission's Bureau of Hearing Counsel (''Hearing Counsel'') and the Investigative Officers in Fact Finding Investigation No. 21 submitted a proposed settlement of these proceedings. The settlement is now before the Commission for review.

By this Order, the Commission is inviting any interested member of the public to comment on the settlement. This is being done pursuant to the Commission's *amicus curiae* procedure, 46 CFR 502.76, whereby the Commission at its own initiative may solicit expressions of views on matters of law or policy.

Under the terms of the settlement, the TACA lines would agree to certain undertakings, including broad rate reductions; amendments to the TACA agreement provisions on service contracts, independent action (''IA'') and other matters; cancellation of other agreements; and increased reporting to the Commission. These undertakings are described in more detail below. In exchange, the Commission would terminate or withdraw Dockets Nos. 94–29, 94–30, Fact Finding Investigation No. 21 and its outstanding subpoenas, and certain other orders issued under section 15 of the Shipping Act of 1984 (''1984 Act''). TACA and its members would not admit to any violations of law. In addition, the settlement agreement would bar the Commission from commencing any new actions or proceedings against the Conference or its members for possible violations or actions in contravention of sections 5, 6, and 10 of the 1984 Act, Commission regulations, or Commission orders, if such possible violations arose from activities or practices disclosed to the Commission through one of the following sources: Fact Finding Investigation No. 21; documents or depositions furnished by TACA in Dockets Nos. 94–29 or 94–30; documents furnished pursuant to the settlement agreement; minutes or conference documents provided by TACA to the Commission; additional information requested by the Commission pursuant to section 6(d) of the 1984 Act; and documents furnished by TACA in response to the Commission's section 15 compulsory orders of March 28 and July 17, 1994.

The settlement includes the following commitments from TACA and its member lines:

• Rate Reductions: TACA would suspend all rate increases implemented under its 1995 Business Plan. Specifically, within fifteen (15) days after approval of the settlement by the Commission, TACA would reduce its current tariff rates to those in effect on December 31, 1994. In addition, the Conference would offer to amend current service contracts to undo 1995 rate increases and replace them with the rates offered in 1994. The suspension of the 1995 increases would remain in effect through December 31, 1995, for both tariff rates and service contract rates. In a joint memorandum in support of the settlement proposal, Hearing Counsel estimate that the value to the shipping public of the rate reductions would be $60–70 million, depending on such factors as cargo volumes and trade growth.

• Service Contracts: (1) TACA agreement provisions would be revised to provide that shippers may negotiate with the carrier of the shippers' choice; however, the Conference Secretariat could elect to participate in such negotiations. (2) NVOCC service contracts would be amended to remove volume caps and geographic limits. (3) TACA would offer to remove or revise certain restrictions in existing service contracts, including 7-day booking notice requirements and requirements that cargo must be owned by the shipper. (4) TACA may not adopt a general policy of treating shippers who did not sign service contracts in a prior period less favorably than those who did sign contracts.

• IA: TACA agreement provisions would be revised as follows: (1) When a TACA member communicates an IA rate to the Conference Secretariat, the Secretariat would be required to publish the IA rate immediately, rather than first notifying other members. (2) The lines could not agree that they must discuss IA with other members. (3) Each line would be free to designate who within its company is authorized to take IA. (4) Quarterly IA reporting would be made to the Commission.

• Withdrawal from Discussion Agreements: the TACA lines would withdraw from membership in, or cancel, a number of rate discussion and rate-setting agreements, including the Eurocorde Discussion Agreement, FMC No. 202–010829, and the Gulfway Agreement, FMC No. 203–011141, which authorize discussions about rates between TACA lines and independent lines.

Furthermore, under the settlement, the TACA lines would also eliminate much of their current broad space charter authority; instead, long-term charter arrangements between Conference lines would be covered by separate and discrete filed agreements. Also, all connecting carrier agreements with NVOCCs would be cancelled, and applicable tariffs and service contracts would set forth the terms by which containers and equipment will be made available to shippers. Beginning in September 1995, representatives of TACA and the Commission would meet semi-annually to discuss TACA activities and plans.

As with the proposed rate reductions, the settlement agreement ties the proposed changes to TACA to the date of any settlement approval by the Commission.

As a matter of clarification, it should be noted that the amendments to TACA called for by the settlement are in addition to those which the Commission obtained from the Conference in October 1994, *i.e.:*

• removal of the Conference's ''capacity regulation'' program, whereby the TACA lines had withheld part of their vessel capacity from the shippers;

• authorization allowing Conference carriers not participating in a TACA service contract to unilaterally negotiate different rates with the shippers during a 15-day window following filing of the TACA contract;

• reduction of the IA notice on rates from five to three days;

• reduction of the number of Conference carriers required to approve a service contract from a ''majority-minus-two'' formula to five favorable votes;

• outright elimination of the 100 TEU or $100,000 minimum volume or value requirement for service contracts; and

• the deletion of provisions authorizing TACA carriers to collectively negotiate with inland carriers concerning European inland segments of through transportation, and to enter into agreements with other parties.

The Commission believes that this solicitation of public comment pursuant to the agency's *amicus curiae* procedure is warranted by the general importance of the TACA investigations, which require us to consider any settlement under broad public interest considerations as well as by the usual settlement criteria such as cost savings and effective law enforcement. For that reason and because the rate reduction and other provisions of the settlement could have a direct and immediate effect on the economic interests of shippers currently doing business with TACA, the Commission wishes to allow an opportunity for any interested person to express its opinion on the settlement before we act upon it. The Commission has already received comments opposing the settlement from the National Industrial Transportation League, Container Freight International I/S and Danish Consolidation Services, and favorable comments from the North American Shippers Association, Inc., and the New York/New Jersey Foreign Freight Forwarders and Brokers Association, Inc. These comments will be considered as filed in response to this Order, and need not be refiled.

As a matter of fairness to all parties, the Commission wishes to resolve the status of this proposed settlement as quickly as possible. For that reason, comments from shippers and other interested persons must be received by the Commission no later than February 21, 1995. The Commission intends to meet on the settlement on February 24, 1995.

Therefore, it is ordered, That pursuant to Rule 76 of the Commission's Rules of Practice and Procedure, 46 CFR 502.76, the Commission hereby grants permission to any interested person to file comments as *amicus curiae* on the proposed settlement of these proceedings;

It is further ordered, That an original and fifteen copies of such comments must be physically lodged with the Secretary of the Commission on or before February 21, 1995.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–3754 Filed 2–13–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

City Holding Company; Notice of Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 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.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 28, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. City Holding Company, Charleston, West Virginia; to engage *de novo* in providing to non-affiliated financial institutions data processing services for processing the user bank's deposit and loan applications pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will take place in West Virginia, Ohio, Kentucky, Virginia, Maryland, and Pennsylvania.

Board of Governors of the Federal Reserve System, February 8, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–3614 Filed 2–13–95; 8:45 am]

BILLING CODE 6210–01–F

Carl L. Frickey, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they 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 notice or to the offices of the Board of Governors. Comments must be received not later than March 10, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Carl L. Frickey, trustee of the Carl L. Frickey Revocable Trust, Oberlin, Kansas; to acquire an additional 8.33 percent, for a total of 26.36 percent, of the voting shares of Farmers Bancshares of Oberlin, Inc., Oberlin, Kansas, and thereby indirectly acquire Farmers National Bank of Oberlin, Oberlin, Kansas.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Western Bank Las Cruces Employee Stock Ownership Plan, Las Cruces, New Mexico; to acquire an additional 13.8 percent, for a total of 16.86 percent, of the voting shares of Western Bancshares of Las Cruces, Inc., Carlsbad, New Mexico, and thereby indirectly acquire Western Bank, Las Cruces, New Mexico.

Board of Governors of the Federal Reserve System, February 8, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–3615 Filed 2–13–95; 8:45 am]

BILLING CODE 6210–01–F

Valrico Bancorp, 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 March 10, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Valrico Bancorp, Inc., Valrico, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Valrico State Bank, Valrico, Florida.

Board of Governors of the Federal Reserve System, February 8, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–3616 Filed 2–13–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Application to Office of Management and Budget for Clearance of Information Collection Requirements Contained in Proposed Telemarketing Sales Rule

AGENCY: Federal Trade Commission (''FTC'').

ACTION: Notice of application to the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) for clearance of information collection requirements contained in a proposed trade regulation rule pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act.

SUMMARY: The FTC is seeking OMB clearance for information collection requirements contained in proposed regulations implementing the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101–6108 (''Telemarketing Act'' or ''the Act'').

The Telemarketing Act requires the Commission to issue a rule prohibiting deceptive and abusive telemarketing acts and practices. Section 3(a)(1). In accordance with the statutory directive, the Commission is proposing a rule that prohibits various misrepresentations and other deceptive and abusive acts and practices and that imposes various disclosure and recordkeeping requirements on affected entities.

Specifically, the proposed rule requires that affected entities retain certain records for a two-year period. These records include advertising,

promotional materials, and telemarketing scripts; information regarding prize recipients and prizes; sales information; information regarding employees directly involved in telephone sales; and written notices, disclosures and acknowledgements required under the proposed rule. These records would be available for inspection by Commission staff, by other government law enforcement personnel, and by private litigants to determine compliance with the rule.

Absent the recordkeeping requirements, Commission staff believes that this is the type of information that would be retained by these entities in any event during the normal course of business because this information would be useful in resolving private, non-governmental inquiries and disputes. The definition of ''burden'' for OMB purposes excludes any effort that would be expended regardless of a regulatory requirement. 5 C.F.R. § 1320.7(b)(1). Thus, the only burden would be for retaining the records for an additional period of time.

Currently, staff is estimating that 40,000 entities will be affected and that it will take each affected entity one hour per year to retain these documents for an additional period of time. Thus, the total burden for the proposed rule is estimated at 40,000 hours (1 hour per year times 40,000 industry members). However, staff is seeking comments, particularly quantitative estimates, about the amount of time it would take to comply with these requirements, and the comments may result in a change in the estimated burden hours. The basis for this estimate is described in more detail in the Supporting Statement submitted with the Request for OMB Review.

DATES: Comments on this application must be submitted on or before March 31, 1995.

ADDRESSES: Send comments both to Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, ATN: Desk Officer for the Federal Trade Commission, and to the Office of the Secretary, Room 159, Federal Trade Commission, Washington, DC 20580. Copies of the submission to OMB may be obtained from the Public Reference Section, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: David M. Torok, Attorney, Bureau of Consumer Protection, Division of Marketing Practices, Federal Trade Commission, Washington, DC 20580, (202) 326–3140.

Donald S. Clark,

Secretary.

[FR Doc. 95–3538 Filed 2–13–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD–793–NC]

RIN 0938–AG54

Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice with comment period sets forth a revised schedule of limits on home health agency costs that may be paid under the Medicare program for cost reporting periods beginning on or after July 1, 1993. These limits replace the per-visit limits that were set forth in our July 8, 1993 notice with comment period (58 FR 36748). This notice also provides, in accordance with the provisions of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), that there will be no changes in the home health agency (HHA) cost limits for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996. In addition, this notice responds to public comments on the July 8, 1993 notice with comment period, which originally set forth the HHA cost limits for cost reporting periods beginning on or after July 1, 1993, and on the January 6, 1994 notice with comment period (59 FR 760), which announced the elimination of the hospital based add-on effective for cost reporting periods beginning on or after October 1, 1993.

DATES: *Effective date:* The revised schedule of limits on HHA costs set forth in this notice is effective for cost reporting periods beginning on or after July 1, 1993.

The OBRA '93 provision providing that there be no changes in the HHA cost limits for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996, as set forth in this notice, is effective for cost reporting periods beginning on or after July 1, 1994.

Comment date: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on April 17, 1995.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–793–NC, P.O. Box 7571, Baltimore Maryland 21207–0517.

If you prefer, you may deliver your comments (1 original and 3 copies) to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington DC 20201, or Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore Maryland 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–793–NC. Comments received timely will be available for public inspection as they are received, beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 783–3238 or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Michael Bussacca, (410) 966–4602.

SUPPLEMENTARY INFORMATION:

I. Background

A. History

Section 1861(v)(1)(A) of the Social Security Act (the Act) authorizes the Secretary to set limits on allowable costs incurred by a provider of services for which payment may be made under the Medicare program. These limits are based on estimates of the costs necessary for the efficient delivery of needed health services. Under this

authority, we have maintained limits on home health agency (HHA) per-visit costs since 1979. The limits may be applied to direct and indirect overall costs or to the costs incurred for specific items or services furnished by the provider. Implementing regulations appear at 42 CFR 413.30. Additional statutory provisions governing the limits applicable to HHAs are contained at section 1861(v)(1)(L) of the Act. Section 1861(v)(1)(L)(i) of the Act specifies that the cost limits are not to exceed 112 percent of the mean of the labor-related and nonlabor per-visit costs for freestanding HHAs. For cost reporting periods beginning before October 1, 1993, section 1861(v)(1)(L)(ii) of the Act requires that the Secretary make an adjustment to the cost limits for the administrative and general (A&G) costs of hospital-based HHAs. Section 1861(v)(1)(L)(iii) of the Act requires that the Secretary establish HHA cost limits on an annual basis for cost reporting periods beginning on or after July 1 of each year.

Accordingly, we published a notice with comment period that appeared in the July 8, 1993, issue of the **Federal Register** (58 FR 36748), which set forth a schedule of limits on HHA costs for cost reporting periods beginning on or after July 1, 1993. The limits were computed using the actual cost per-visit data from cost reporting periods ending on or after June 30, 1989, and before May 31, 1991, and were adjusted by the latest estimates in the ''market basket'' index to reflect changes in the price of goods and services furnished by HHAs.

B. Omnibus Budget Reconciliation Act of 1993

On August 10, 1993, the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) (Public Law 103–66) was enacted. Section 13564(a) of OBRA '93 amended section 1861(v)(1)(L)(iii) of the Act to provide that there be no changes in the HHA per-visit cost limits (except as may be necessary to take into account the elimination of the A&G add-on for hospital-based HHAs) for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996. In addition, section 13564(b) of OBRA '93 amended section 1861(v)(1)(L)(ii) of the Act to require that, effective for cost reporting periods beginning on or after October 1, 1993, we no longer include a payment adjustment for A&G costs of hospital-based HHAs in computing the HHA limits. The A&G per-visit add-on for hospital-based HHAs had been applied since 1980. Under this provision, hospital-based HHAs and freestanding HHAs will be treated identically for payment purposes.

On January 6, 1994, we published a notice with comment period in the **Federal Register** to announce the elimination of the A&G add-on for hospital-based HHAs (59 FR 760). In that notice, we stated that in computing a hospital-based HHA's cost limits for cost reporting periods beginning on or after October 1, 1993, the A&G add-on amounts that were to apply, as set forth in Table II of the July 8, 1993 notice (58 FR 36753), will not be used. We also stated that we would publish a separate **Federal Register** notice to explain the effects of the requirement under section 13564(a) of OBRA '93 that there be no changes in the per-visit cost limits for home health services for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996.

II. Discussion of Public Comments

A. Response to Public Comments Received On the July 8, 1993 Notice With Comment Period

We received 28 items of timely correspondence on our HHA cost limits notice issued in the **Federal Register** on July 8, 1993 (58 FR 36748). A discussion of the comments we received on that notice and our responses to those comments is set forth below.

1. Cost Limits

Comment: Many commenters stated that the per-discipline cost limits for skilled nursing and home health aides are inadequate. They believe that the cost limits are arbitrary and not at the level required by law. In addition, two commenters suggested that the limits effective July 1, 1993 should be phased in.

Response: Section 1861(v)(1)(L) of the Act governs the methodology for computing the HHA limits. As noted in section I.A of this notice, section 1861(v)(1)(L)(i) of the Act specifies that the HHA per-visit cost limits are not to exceed 112 percent of the mean of the labor-related and nonlabor per-visit costs for freestanding HHAs. Section 1861(v)(1)(L)(iii) of the Act requires that we establish cost limits on an annual basis for cost reporting periods beginning on or after July 1 of each year (except for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996) and that we use the current hospital wage index to calculate the limits.

Thus, in calculating the limits, we use actual cost-per-visit data from the latest available settled Medicare cost reports. From those data, we compute an average per-visit cost for each Medicare covered home health service. The labor portion of the average per-visit cost is adjusted, using the current hospital wage index, to account for variations in area wage levels. We then apply a statistically valid methodology for eliminating outlier costs to the average per-visit costs for each service. The resulting average per-visit costs are increased by 112 percent, the maximum the statute allows. We believe the methodology used to calculate the cost limits correctly implements the statute and results in a statistically valid national average of the costs estimated to be necessary in the efficient delivery of needed home health services under the Medicare program.

In summary, the implementation of the schedule of limits set forth in our July 8, 1993 notice and the methodology for developing the limits are in full compliance with statutory directives. In developing these limits, we have made no changes, beyond those directly required by OBRA '93, in the methodology used in setting the limits effective July 1, 1991 and July 1, 1992. Finally, the statute does not provide for a phase-in of the limits.

2. Database

Comment: Several commenters questioned the database used to develop the cost limits. Some commenters raised concerns about the possible omission of providers from California. Others suggested that the provider database used to develop the limits was not representative because HCFA relies only on settled cost reports to compute the HHA cost limits.

Response: The data used in the calculations of the cost limits effective July 1, 1993, were actual cost per-visit data extracted from settled Medicare cost reports, for cost reporting periods ending on or after June 30, 1989, and before May 31, 1991. This resulted in a database of 2602 freestanding agencies located throughout the country. Due to concerns with under-representation of HHAs, we reviewed the Provider of Services (POS) file to determine the number of HHAs that were Medicare-certified as of November, 1992 (the cut-off date of the HHA database used to develop the HHA cost limits effective for cost reporting periods beginning on or after July 1, 1993). Our review showed that the POS file contained all HHA providers of service, including terminated providers, existing providers, and new providers. However, the POS file does not indicate whether a HHA needs to file a cost report, or if a cost report is due from an HHA.

Accordingly, we extended our review. We instructed the nine regional home health intermediaries (RHHIs) servicing the freestanding HHAs to review their

files for the time period of our data collection (before November 1992) to determine if any providers had been omitted erroneously when the intermediaries filed their cost report data for the HHA database. The RHHIs identified 309 freestanding ''missing'' providers. Our review of the original database showed that it did not include data from Blue Cross and Blue Shield of California. All ''missing'' providers' cost data were entered into the database and were subject to an extensive edit process to validate the data. In addition, we reexamined the entire database to identify duplicates and as-submitted cost reports. This examination resulted in elimination of 120 duplicate reports from freestanding HHAs and the elimination of 100 hospital-based as-submitted cost reports. The revised database consists of 2911 freestanding providers.

The following table shows the effects of the revised database on the per-discipline cost limits for Metropolitan Statistical Area (MSA) and non-MSA HHAs published in our July 8, 1993 notice. See section IV of this notice for a revised table of limits effective for cost reporting periods beginning on or after July 1, 1993, and before July 1, 1994.

EFFECT ON PER-VISIT COST LIMITS FOR MSA AND NON-MSA HHAS

Type of visit	Effect on limits for MSA HHAs	Effect on limits for non-MSA HHAs
Skilled nursing care	$+0.72	$+0.75
Physical therapy	−1.59	−0.02
Speech pathology	−1.50	+0.02
Occupational therapy	−1.20	+0.54
Medical social services .	+0.06	−1.00
Home health aide	+0.54	+0.26

The following table shows the effects of the revised database on the per-visit hospital-based add-on for MSA and non-MSA HHAs published in our July 8, 1993 notice. See section IV of this notice for a revised table of add-on amounts for hospital-based HHAs with cost reporting periods beginning on or after July 1, 1993, and before October 1, 1993.

EFFECT ON PER-VISIT ADD-ON FOR MSA AND NON-MSA HHAS

Type of visit	Effect on hospital-based add-on for MSA HHAs	Effect on hospital-based add-on for non-MSA HHAs
Skilled nursing care	$+0.03	$+0.57
Physical therapy	−0.22	+0.22
Speech pathology	−0.07	+0.51
Occupational therapy	−0.20	+1.03
Medical social services .	−1.14	+0.16
Home health aide	+0.03	+0.25

We recognize that the conversion to a limited number of fiscal intermediaries and the lack of a internal HCFA system to track settled cost reports for HHAs resulted in missing providers. In the future, HCFA will request that each of the nine regional intermediaries submit a list of all HHAs that it is servicing at the time of data collection. Upon collecting the data, HCFA will cross-check the HHAs included in the database with the lists submitted by the intermediaries.

Concerning the comment on the use of settled cost reports, all of the RHHIs met the Contractor Performance Evaluation (CPEP) standard for settling cost reports timely for FY 1991/1992. For example, in FY 1992, 90 percent of freestanding HHA cost reports were settled timely by the RHHIs and would be available to be included in HCFA's database. Thus, the use of settled cost reports does not affect the representative nature of the database.

Comment: Some commenters believe that the conversion to a limited number of intermediaries that specialize in handling home health claims and the exclusive use of settled cost reports in the database invalidate the rationale for excluding certain outliers from the database as a first step, before proceeding with the calculation of the cost limits. One commenter raised a series of specific questions about the outlier exclusion process, including what constitutes an outlier, how many agencies are classified as outliers, and whether all of an HHA's costs are excluded if the agency has a single outlier discipline?

Response: The use of settled cost report data does not eliminate the need to exclude outliers from the database. Outliers are aberrant costs; these costs are not representative of industry norms. As in previous schedules of HHA cost limits, the elimination of cost per-visit outliers continues to be necessary in developing the limits because the per-discipline cost data in our database are extracted from actual cost reports. Although these cost reports have been settled, the settlement process is designed to ensure that cost report data reflect actual costs associated with covered visits; it does not assess whether the actual costs are reasonable.

The elimination of outliers is on a per-discipline basis. That is, we eliminate costs associated with a specific discipline that are statistical outliers. Based on our longstanding policy, we consider outliers to be those costs that are two standard deviations or more from the mean. Therefore, the high outliers, as well as the low outliers, are eliminated. All other per-discipline costs would be included in the computation of the per-discipline limits. In the table below we have listed the range of high and low per-visit costs for each discipline for both the labor and the nonlabor portions for both MSA limits and non-MSA limits. Only per-visit costs outside these ranges are considered outliers. We believe that using costs beyond these ranges, that is, outliers, to develop the per-visit limits subverts the statistical validity of the national average of estimated costs.

HOME HEALTH AGENCY COST LIMITS OUTLIERS LABOR AND NONLABOR PORTIONS HIGHS AND LOWS

Urban	Labor low	Labor high	Nonlabor low	Nonlabor high
Skilled nursing care	$33.85	$131.24	$6.08 $36.06	
Physical therapy	33.02	132.78	5.37	31.69
Speech pathology	31.59	141.76	6.05	32.45
Occupational therapy	29.85	139.01	6.19	35.88
Medical social services	31.43	252.36	6.09	58.58
Home health aide	16.16	75.30	2.87	19.21
Rural				
Skilled nursing care	39.98	141.46	4.74	29.15

HOME HEALTH AGENCY COST LIMITS OUTLIERS LABOR AND NONLABOR PORTIONS HIGHS AND LOWS—Continued

Urban	Labor low	Labor high	Nonlabor low	Nonlabor high
Physical therapy	41.77	147.54	6.69	28.34
Speech pathology	40.28	160.19	7.36	37.65
Occupational therapy	35.69	161.74	6.22	30.35
Medical social services	36.42	350.59	6.85	62.15
Home health aide	16.18	72.55	2.52	17.07

Comment: Two commenters recommended that we use data from hospital-based agencies in the calculation of the limits. The commenters believe that the calculation of the limits using only freestanding facilities does not reflect the higher costs associated with hospital-based HHAs.

Response: Section 1861(v)(1)(L)(i) of the Act specifies that the Secretary is to establish a single schedule of HHA cost limits based on the cost experience of freestanding agencies. We have no discretion to include hospital-based providers in the calculation of the HHA limits.

Comment: A commenter suggested that the use of settled cost reports ignores the higher claims presented before the Provider Reimbursement Review Board (PRRB) and that these claims should be included in the database for calculation of the HHA cost limits.

Response: The use of settled cost reports in developing the HHA cost limits was established for cost reporting periods beginning on or after July 1, 1992 (see 57 FR 29411). Before July 1, 1992, HHA databases included data from both settled and as-submitted cost reports. We were able to begin using settled cost report data as a result of revised CPEP standards that required Medicare fiscal intermediaries to settle the HHA cost reports sooner than was required under former standards. Consequently, as explained in our July 1, 1992 notice with comment period, settled data are available much sooner than in previous cost reporting periods, and we believe the data accurately reflect current conditions in the health care industry. The use of settled cost reports allows us to eliminate misstated data including nonallowable costs and noncovered visits that inevitably result from using as-submitted cost reports. (See 57 FR 29410.)

Providers that file an appeal before the PRRB must have received a Notice of Program Reimbursement for the fiscal year in question, before filing the appeal. During the cost reporting periods ending on or after June 30, 1989, and before May 31, 1991, on an annual basis, fewer than 2 percent of certified HHAs submitted appeals to the PRRB. If an appeal was decided before we develop the annual HHA per-visit cost limits, the final data would be entered into the database. In those cases in which the PRRB appeal and administrative review processes are not completed until after we have developed the annual HHA per-visit cost limits, the settled data from the cost reports in question would be entered. Including the adjusted data that may result from PRRB appeals into the database would have no significant effect on the calculation of the cost limits. Moreover, since the cost limits are set prospectively, it would be neither necessary nor administratively feasible to include adjusted data resulting from the completed appeals process into the HHA database used to develop the annual limits. We note that the HHA per-visit limits constitute an estimated national average of costs, and individual providers are free to pursue exceptions to these averages where justified.

Comment: Several commenters stated that the limits do not reflect the costs associated with the implementation of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) (Public Law 100–203) quality assurance provisions, specifically, the requirements for home health aide training and competency evaluation programs. They asserted that no additional amount has been added to the HHA limits to account for these costs.

Response: Section 1891(a)(3) of the Act requires HHAs to comply with the requirements relating to home health aide training and competency programs, established by OBRA '87. The cost-per-visit data used in the calculations of the cost limits effective on July 1, 1993 were extracted from settled Medicare cost reports for periods ending on or after June 30, 1989, and before May 31, 1991. We published regulations on August 14, 1989 at 42 CFR § 484.36 to require that HHAs establish a competency evaluation program for home health aides by February 14, 1990 (see 54 FR 33357–33360 and 33372). Therefore, the costs associated with home health aide training and competency evaluation programs are included in this database. However, if a provider believes that it has incurred additional costs not included in the limits relating to home health aide training and competency evaluation programs, the provider may apply for an exception to the cost limits under the exceptions process outlined in § 413.30. This situation could be recognized as an ''extraordinary circumstance'' exception under § 413.30(f)(2).

Comment: A commenter indicated that the database from which the HHA cost limits were developed was not available for public use when the regulation was issued on July 8, 1993.

Response: It is our standard practice to make available to the public the database used to construct the cost limits. HCFA's Bureau of Data Management and Strategy annually publishes a ''Public Use Files Catalog'' that identifies available Medicare/Medicaid data files and gives instructions on how to obtain them. The database used to construct the cost limits outlined in the July 8, 1993 notice (that is, *Medicare HHA Cycle 11 Data Set,* containing data for cost reporting periods ending on June 30, 1989, and before May 31, 1991) was available from the Bureau of Data Management and Strategy, HCFA, to the public, on the date the regulation was published. The HHA database is available on tape or diskette for $680. For further information on obtaining data used in calculating the HHA cost limits, see section VI.C of this notice.

3. Market Basket

Comment: Several commenters believe that the market basket factors that have been used to update the 1990 cost data seemed to understate home care market basket cost increases of between 5 to 7 percent for the 1992–1993 period and need to be updated for current weights and revised wage-price proxies. Specifically, the commenters believe that the market basket factors fail to account properly for increases in the Federal minimum wage, base rates for workers' compensation premiums, reimbursement for mileage, Federal gasoline tax, computers to submit claims via electronic media communications, additional A&G costs,

and FICA taxes. They indicated that there is evidence that the market basket factors now used to update the cost limits are too low and that appropriate alternatives exist and are being used to make budget projections for the Administration and Congress.

Response: For the last several years, the HHA input price index (market basket) has increased at the fastest rate of all the market basket indices for the Medicare program. The increase in the market basket reflects the weights and wage-price proxies in the market basket to capture the special market conditions for HHA services (such as the shortage of several categories of licensed health professionals providing HHA services). The compensation and nonlabor proxies used in the market basket include the effects of taxes on the rates of increase. Wages and salaries include employer contributions (payroll taxes) for social insurance (old age, survivors, disability and hospital insurance). The wage and salary category also includes State unemployment insurance, supplemental unemployment insurance and workmen's compensation. The price proxies for transportation and utilities include the relevant sales taxes. Further, the price proxy for rental and leasing costs includes the impact of all costs including property taxes.

The market basket factors used to update the cost limits are consistent with, but not identical to, the cost-per-visit budget projections for the Administration and Congress. The HHA market basket is designed to measure price inflation for inputs used to produce HHA services. It, therefore, does not take into account changes in the quantity, mix or intensity of services per visit. In contrast, the Administration's budget projections take into account the change in mix of types of visits and the effects of productivity changes on per-visit costs. Productivity changes are a major determinant of cost-per-visit increases and are specifically excluded from the HHA market basket.

We believe that it would be appropriate to do a special study of the weighting and wage-price proxies for the HHA market basket. We intend to begin such a study in the near future, and we welcome public comments on data sources for weights and wage-price proxies.

4. Wage Index

Comment: One commenter stated that the wage index factors used in the calculation of the cost limits effective July 1, 1993 are lower than the July 1, 1992 cost limits in almost all cases. In addition, the commenter stated that the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) mandates use of the most recent hospital wage index for calculation of the labor portion of the cost limits, but it also requires that aggregate payments to HHAs be budget neutral. The commenter asserted that the use of a lower budget neutrality factor than in the previous schedule of limits accounted in itself for a reduction of approximately 2.5 percent in the cost limits. In addition, the commenter noted that the budget neutrality factor of 2.7 percent used in calculating the limits effective July 1, 1993 is a considerable reduction from the 5.9 percent used in calculating the limits effective July 1, 1992 and fails to provide Congressionally mandated budget neutrality between the 1982 and the 1988 hospital wage indexes.

Response: Section 4207(d)(1) of OBRA '90 amended section 1861(v)(1)(L)(iii) of the Act to require that in establishing the HHA schedule of limits annually on July 1 of each year we are to use the current hospital wage index. To lessen the effect on individual HHAs that would have been caused by implementing this requirement immediately, section 4207(d)(3) of OBRA '90 provided for a 2-year transition period during which we would use a blend of 1982 and 1988 hospital wage data. As required by section 1861(v)(1)(L)(iii) of the Act, the limits effective for cost reporting periods beginning on or after July 1, 1993, and before July 1, 1994, use the FY 1993 hospital wage index, that is the hospital wage index effective for hospital discharges on or after October 1, 1992, which is based entirely on 1988 wage survey data (see 58 FR 36750). Thus, although the wage indices used in calculating the limits effective for cost reporting periods beginning on or after July 1, 1993 are in many cases lower than in the past, they reflect the latest available actual wages.

Section 4207(d)(2) of OBRA '90 requires that, in updating the wage index used for establishing the HHA limits, aggregate payments will remain the same as they would have been if the wage index had not been updated. To meet this requirement, as explained in detail in our July 8, 1993 notice with comment period, we determined that it was necessary to apply a budget neutrality adjustment factor of 1.027 (that is, an increase of 2.7 percent) to the labor-related portion of the cost limits (58 FR 36748–36749). However, for this notice, we have recalculated the budget neutrality adjustment factor and have determined that a factor of 1.067 should be applied (that is, a 6.7 percent increase). The change in the budget neutrality adjustment is attributable to the revised limits that have resulted from our validation of the HHA database.

Comment: A commenter stated that a persistent problem in the application of the cost limits that is made more difficult by the new limits are that HHAs, like hospitals, are sometimes assigned to the ''wrong'' geographic area. The commenter suggested that we consider basing hospital wage indices on the wage levels paid by neighboring providers and that wage levels should be standardized according to some predefined occupational mix.

Response: Under section 1886(d)(3)(E) of the Act, the Secretary annually establishes a wage index for the purposes of adjusting payment rates for hospital inpatient services to reflect wages in a geographic area relative to the national average. Section 1861(v)(1)(L)(iii) of the Act requires that, in establishing the HHA schedule of limits, the Secretary is to use the current hospital wage index.

Almost from the beginning of the hospital prospective payment system, we have received comments from the hospital industry objecting to the use of labor market areas based on Metropolitan Statistical Areas (MSAs) established by the Office of Management and Budget to construct the wage index. The Prospective Payment Assessment Commission (ProPAC) has also recommended changes in how the labor market areas used to construct the hospital wage index should be defined. We recognize that, as currently structured, there are certain inefficiencies inherent in the MSA-based system. In light of these concerns, we have continued to examine a variety of options for revising wage index labor market areas.

On May 27, 1994, we published a proposed rule in the **Federal Register** (59 FR 27708) that detailed changes to the hospital prospective payment system for FY 1995. In the proposed rule, we discussed in detail issues raised by commenters concerning a ''nearest neighbor'' approach to the wage index, as recommended by ProPAC, and our research and analysis on alternative methodologies for defining labor market areas (59 FR 27724 through 27732). These alternatives are still under review, and no final decision has been made at this time to use a different methodology in determining future payment rates.

5. Additional Costs/Exceptions

Comment: A commenter suggested that new HHAs be exempt from the limits for the first two full year cost

reports, citing the exemptions presently granted for inpatient facilities (non-PPS hospitals and skilled nursing facilities). The commenter believes that this resulted in discrimination against the establishment of home health care services when the emphasis of health care is away from inpatient services and toward home care.

Response: Prior to 1987, § 413.40(f)(7) (formerly § 405.460(f)(7)) granted an exception to the cost limits to minimize financial barriers to HHAs wanting to enter Medicare markets for the first time, especially in underserved areas. On June 4, 1987, we published a final rule with comment period (52 FR 21216) indicating that the exception for newly-established HHAs was eliminated. As discussed in detail in that final rule with comment period, evidence acquired from FY 1980 through FY 1985 indicated a changing composition of HHAs that suggested that financing was no longer a significant obstacle to entering the market place, and therefore the exception was rescinded. In fact, while hospital-based and proprietary agencies had access to financial resources and patient populations, nonprofit and free-standing agencies did not. We continue to believe that an exception for newly-established HHAs is not necessary to encourage the spread of HHAs services. Moreover, we note that the number of HHAs servicing Medicare beneficiaries has increased approximately 28 percent since 1987, from 5,857 to 7,473 as of March, 1994.

Comment: Several commenters indicated that the recruitment and retention of occupational therapists and physical therapists, especially in rural areas, results in increased costs not incorporated in the HHA cost limits.

In addition, one commenter indicated that the additional amount of $.18 allowed for the OSHA adjustment to account for new standards for universal precautions is not adequate to account for the actual, necessary and reasonable cost being incurred by HHAs after May 31, 1991.

The commenters believe that the failure to reflect these costs fully in the per-visit limits will reduce access and quality of care to beneficiaries.

Response: If a provider can quantify the costs it incurs as a result of recruiting and retaining occupational therapists or physical therapists, or an OSHA add-on amount that exceeds the allowed $.18, the provider may apply for an exception to the cost limits under the exceptions process outlined in § 413.30. These situations could be recognized as an ''extraordinary circumstances'' as defined in § 413.30(f)(2). The HHA cost limits effective for cost reporting periods beginning on or after July 1, 1992 and on or after July 1, 1993 allow a provider an adjustment for costs incurred for OSHA, upon presentation of documentation to the intermediary to substantiate the adjustment. If a provider exceeds the adjustment, an exception to the cost limits is made only to the extent that costs are reasonable, attributable to the circumstances specified, separately identified by the provider, and verified by the intermediary.

Comment: Some of the commenters believe that filing for a waiver to seek an exception from the limits is time consuming, expensive and impractical.

Response: The purpose of establishing the per-visit limits is to cover the costs necessary in the efficient delivery of needed health services. However, because the limits are not intended to take into account every cost, we have established an exceptions process for situations in which providers incur additional costs in excess of the cost limits. Providers may apply for an exception to the cost limits under the exceptions process outlined in § 413.30. We believe that the exceptions process is a fair and equitable method for HHAs to substantiate costs exceeding the limit.

6. Administrative Procedure Act

Comment: A commenter stated that the schedule of cost limits published on July 8, 1993 (58 FR 36748) is void because it is a product of retroactive rulemaking, which is not authorized by the Social Security Act and is prohibited by the Administrative Procedure Act (APA). Specifically, the rule had an effective date of July 1, 1993, but was not published in the **Federal Register** until July 8, 1993. Further, the commenter stated that the rule is void because it was issued in violation of the notice and comment requirements of the Medicare statute and APA. The commenter believes that we did not have ''good cause'' to waive publication of a proposed notice and to waive the 30-day delayed effective date requirements of the APA. The commenter stated that HCFA failed to offer any explanation as to why the rule could not have been published earlier.

Response: Section 1861(v)(1)(L)(iii) of the Act requires that the Secretary update the HHA cost limits on an annual basis for cost reporting periods beginning on or after July 1 of each year. On July 1, 1993, the schedule of limits on HHA costs per visit, effective for cost reporting periods beginning on or after July 1, 1993, was filed with the Office of the Federal Register and was made available for public inspection (see 58 FR 36762 for file date). Under 44 U.S.C. section 1507, the filing of the document is sufficient to give constructive notice of the contents of the document to a person subject to or affected by it.

As explained in our July 8, 1993 notice with comment period, we used the same methodology to develop the schedule of limits that was used in setting the limits published on July 1, 1992. The cost limits were updated to reflect the cost increases occurring between the cost reporting periods for the data contained in the database and December 31, 1993.

Because the methodology used to develop the July 1, 1993 schedule of limits was previously published for public comment and because we are required by section 1861(v)(1)(L)(iii) of the Act to use the current hospital wage index, which was based on 1988 wage survey data, we determined that it would be impractical and unnecessary to request public comment before we implemented the cost limits effective for cost reporting periods beginning on or after July 1, 1993. Thus, we stated that it would be contrary to public interest, and we found good cause to waive publication of a proposed notice.

In response to the comment on the waiver of the 30-day delayed effective date, as we explained in our July 8, 1993 notice with comment period, in order for HHAs to receive timely the benefits of the cost limits that are based on the updated wage index, it was necessary that the limits be effective for cost reporting periods beginning on or after July 1, 1993 as required by section 1861(v)(1)(L)(iii) of the Act (see 58 FR 36762).

B. Response to Public Comments Received on the January 6, 1994 Notice With Comment Period

We received 10 items of timely correspondence on our notice eliminating payment adjustments for the A&G costs of hospital-based HHAs. The comments we received on that notice and our responses to those comments are set forth below.

Many of the comments we received on that notice addressed issues that we have already addressed in section II.A of this notice, particularly, the exclusion of hospital-based agencies from the database. Since we have already addressed these comments, we are not repeating our responses to the comments here.

1. Elimination of the A&G Add-on

Comment: One commenter agreed that the A&G add-on should be eliminated. However, most commenters objected to

the elimination of the A&G add-on, emphasizing that the costs incurred by hospital-based and freestanding agencies are different. One commenter stated that although section 13564 of OBRA '93 eliminates the A&G add-on, it does not preclude the Secretary from making the adjustments that are necessary to ensure fair payment to providers. In addition, another commenter believes that the elimination of the add-on should be phased-in.

Response: Section 13564(b) of OBRA '93 amended section 1861(v)(1)(L)(ii) of the Act to require that, effective for cost reporting periods beginning on or after October 1, 1993, we no longer include a payment adjustment for the A&G costs of hospital-based HHAs in computing the HHA limits. Under this provision, for cost reporting periods beginning on or after October 1, 1993, hospital-based HHAs and free-standing HHAs will be treated identically for payment purposes. The statute does not provide for a phase-in period.

Section 1861(v)(1)(L)(i)(III) of the Act defines fair payment to HHAs at some level determined by the Secretary, but not in excess of 112 percent of the cost experience of freestanding providers. Section 1861(v)(1)(L)(ii) of the Act provides the Secretary with the authority to provide for exceptions to the cost limits. Accordingly, if a provider quantifies and provides an explanation of costs that exceed the limits, it may apply for an exception to the cost limits under the exceptions process outlined in § 413.30.

2. Reimbursement Methodology

Comment: Two commenters indicated that the reimbursement methodology for HHAs should be assessed, including a review of the Medicare step-down cost methodology and the use of severity of illness to determine the cost of care and length of stay for post-acute versus community-based referrals. One commenter stated that the change in methodology, that is, the elimination of the hospital-based add-on, imposes a systematic error in accurately measuring costs of caring for home health patients. Another commenter stated that HCFA should wait for the results of the Federally funded demonstration projects that are currently evaluating home care reimbursement before any changes are made to the present home care reimbursement structure. The commenter stated that the information we obtain from these studies should be used to develop an appropriate industry-wide home care reimbursement system.

Response: We agree that further study of the HHA reimbursement system is desirable. HCFA's Office of Research and Demonstrations is presently conducting a demonstration relating to prospective payment for HHAs. During the second phase of this demonstration, we intend to develop a prototype case-mix or severity adjustment to be tested under the demonstration for possible use in future payment methodologies. In addition, HCFA has begun the Medicare Home Health Initiative, which will review a variety of issues related to the home health benefit including those presented above.

III. Provisions of This Notice With Comment Period

A. Revised Schedule of Limits

As discussed in section II.A.2 of this notice, we have identified problems with the validity of the database used to calculate the cost limits for cost reporting periods beginning on or after July 1, 1993, as set forth in our July 8, 1993 notice. Therefore, we are setting forth in this notice a revised schedule of limits on HHA costs that may be paid under the Medicare program for cost reporting periods beginning on or after July 1, 1993. We also are setting forth revised add-on amounts for hospital-based HHAs for cost reporting periods beginning on or after July 1, 1993, and before October 1, 1993.

Before adopting this approach, which entails the retroactive application of the schedule of limits set forth in this notice, we considered three possible alternatives for dealing with the problems with the database used in the calculation of the cost limits effective July 1, 1993. One option was to take no action to revise the limits, in accordance with the provisions of section 13564(a) of OBRA '93, which explicitly prohibit any changes in the cost limits for HHAs for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996. However, we believe that in enacting these provisions, Congress could not have envisioned that there would be errors in the database that would necessitate revisions to the limits. Thus, we do not believe that the revision of the limits under these circumstances is inconsistent with the statute. In addition, we do not believe that it is appropriate to base payments to HHAs on limits that are known to be based on a limited database and are estimated to result in lower Medicare payments to HHAs. (See section V of this notice for a discussion of its economic impact.)

We also considered applying the changes to the cost limits prospectively, that is, effective upon publication of this notice. Although this option would avoid the administrative difficulties associated with implementing revised limits retroactively for cost reporting periods beginning on or after July 1, 1993, it still would not conform strictly to the OBRA '93 provisions prohibiting any changes in the cost limits until July 1, 1996. In addition, this option again would disadvantage HHAs by not assigning accurate limits effective for cost reporting periods beginning on or after July 1, 1993.

Our remaining option was to apply the changes to the cost limits retroactively. That is, we would publish revised limits that would be effective for cost reporting periods beginning on or after July 1, 1993, in place of the limits set forth in our July 8, 1993 notice. The statute allows us to set the cost limits at a maximum of 112 percent of the mean of per-visit costs for freestanding agencies. As in the past, for the cost limits applicable to cost reporting periods beginning on or after July 1, 1993, we set the limits at that maximum. Because we have identified errors in the database of costs for freestanding agencies, we believe that it is in keeping with the intent of the statute that these errors be rectified. Therefore, we believe it is appropriate, and consistent with the statute, to revise the limits for cost reporting periods beginning on or after July 1, 1993, so that they are based on 112 percent of the mean of the more accurate database of freestanding agencies' per-visit costs. Also, despite the administrative difficulties that may arise, we believe this option is in the best interests of HHAs. Therefore, we have determined that revising the limits, effective for cost reporting periods beginning on or after July 1, 1993 is the most appropriate course of action.

Thus, the revised schedule of limits set forth in Table I of section IV of this notice replaces the per-visit limits set forth in our July 8, 1993 notice. As required by section 13564(a) of OBRA '93, these limits will remain in effect for cost reporting periods beginning before July 1, 1996. In addition, we are setting forth in Table II of section IV of this notice revised A&G add-on amounts for hospital-based HHAs to replace the add-on amounts set forth in our July 8, 1993 notice. In accordance with section 1861(v)(1)(L)(ii) of the Act, as amended by section 13564 of OBRA '93, the intermediaries will make an adjustment for the A&G add-on in computing the adjusted limits for hospital-based HHAs with cost reporting periods beginning on or after July 1, 1993, and before October 1, 1993.

For the convenience of the reader, we are republishing Tables IIIa, IIIb, and IV

that were published in our July 8, 1993 notice. These tables contain the wage indices for urban and rural areas and cost reporting year adjustment factor and also are presented in section IV of this notice.

The intermediaries will compute the adjusted limits using the wage index in Tables IIIa and IIIb set forth in section IV of this notice, and will notify each HHA that they service of its applicable cost per-visit limits for each type of service. Each HHA's aggregate limit cannot be determined prospectively, but depends on each HHA's Medicare visits for each type of service and actual costs for the cost reporting period subject to this notice.

The HHA costs that are subject to the limits include the cost of medical supplies routinely furnished in conjunction with patient care. Durable medical equipment, orthotics, prosthetics, and other medical supplies directly identifiable as services to an individual patient are excluded from per-visit costs and are paid without regard to this schedule of limits. (See Chapter IV of the Home Health Agency Manual (HCFA Pub. 11).)

The intermediary will determine the limit for each HHA by multiplying the number of Medicare visits for each type of service furnished by the HHA by the respective per-visit cost limit. The sum of these amounts is compared to the HHA's total allowable costs.

Example: HHA X, a free-standing agency located in Richmond VA, furnishes 5,000 covered skilled nursing visits, 2,000 covered physical therapy visits, and 4,000 covered home health aide visits to Medicare beneficiaries during its 12-month cost reporting period beginning on July 1, 1993.

The Aggregate Cost Limit is Determined As Follows:

Type of visit	Visits	Nonlabor portion	Adjusted labor portion	Adjusted limit	Aggregate limit
Skilled Nursing Care	5,000	$16.44	$74.72	$92.32	$461,600
Physical Therapy	2,000	16.52	75.28	92.96	185,920
Home Health Aide	4,000	8.33	37.65	46.57	186,280
Total Visits	11,000	.....	.....	.....	.....
Aggregate Cost Limit	.....	.....	.....	.....	$833,800

As noted in section III.A of our July 8, 1993 notice, in order to account for OSHA's universal precaution requirements, we also will allow an additional adjustment to the aggregate cost limit of $.18 per visit for those HHAs that incur costs in complying with these requirements (see 58 FR 36749). An HHA must apply to its intermediary for the add-on amount. The agency must demonstrate that it will exceed its cost limit in order to be in compliance with the OSHA mandated requirements. The HHA must provide the intermediary with adequate documentation to support the add-on amount.

Before the limits are applied during settlement of the cost report, the HHA's actual costs are reduced by the amount of individual items of cost (for example, administrative compensation and contract services) that are found to be excessive under the Medicare reasonable cost principles of provider payment. That is, the intermediary reviews the various reported costs, taking into account all Medicare payment principles (for example, the cost guidelines for physical therapy furnished under arrangement (see § 413.106) and the limitation on costs that are substantially out of line with those of comparable HHAs (see § 413.9)).

B. No Changes in the Cost Limits

As discussed in section I.B of this notice, section 13564(a) of OBRA '93 amended section 1861(v)(1)(L)(iii) of the Act to provide that there be no changes in the HHA per-visit cost limits (except as may be necessary to take into account the elimination of the A&G add-on for hospital-based HHAs) for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996. The effect of this provision is that a HHA's latest per-discipline cost limit for a period beginning on or after July 1, 1993, and before July 1, 1994, as calculated under this notice, without regard to subsequent adjustments under section 1861(v)(1)(L)(ii) of the Act for exceptions, will remain in effect until its cost reporting period beginning on or after July 1, 1996. As explained in our January 6, 1994 notice with comment period, section 13564(b) of OBRA '93 eliminated the A&G add-on for hospital-based HHAs. Accordingly, there will be no changes, besides those due to the elimination of the A&G add-on, to a HHA's cost limit for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996, to account for inflation, changes to the wage index or to MSA designations. Thus, in computing a provider's cost limit for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996, the cost reporting period adjustment factors that were to apply for cost reporting periods beginning on or after July 1, 1994, will not be used. (In our July 8, 1993 notice with comment period, we specified that if we did not publish new limits to be effective on July 1, 1994, the limits effective July 1, 1993 would continue in effect, but the last cost reporting year adjustment factor in Table IV would be multiplied by an inflation factor once for each month between June 1, 1994, and the month in which the cost reporting period begins, until a new schedule of limits or other provision is issued (58 FR 36760). In accordance with section 13564(a) of OBRA '93, the inflation factor will not be used for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996.) The revised schedule of per-visit limits set forth in Table I of section IV of this notice, which replaces the schedule of limits set forth in our July 8, 1993 notice, will be used to compute the limits. Revised Table II will be used to calculate the A&G add-on, when applicable. The wage indices in Tables IIIa and IIIb that were originally published in our July 8, 1993 notice and are republished in section IV of this notice will continue to be used to compute the limits.

In the example below, a freestanding HHA in Dallas, Texas has a cost reporting period beginning date of January 1, 1994. As calculated under this notice, its cost limit for the 12-month period beginning January 1, 1994, for occupational therapy is $96.13. Under the provisions of this notice, the cost limit of $96.13 will remain in effect for its 12-month cost reporting periods beginning January 1, 1995, and January 1, 1996. As explained above, the cost reporting period adjustment factors that would have been used under the July 8, 1993 notice with comment period for calculating the limits for the HHA's new cost reporting periods beginning January 1, 1995, and January 1, 1996, are not used.

Accordingly, the provider in this example will not have any change in its cost limit until its cost reporting period beginning January 1, 1997.

Example: Calculation of Adjusted Limit for Occupational Therapy for a Freestanding HHA Located in Dallas, Texas: Computation of Revised Limit for Occupational Therapy:

Labor Related Component	$74.97	(Table I)
Wage Index	×0.9599	(Table IIIa)
Labor Portion	71.96	
Special Labor Adjustment for Budget Neutrality	×1.067	
Adjusted Labor Component	76.79	
Nonlabor-Related Component	+16.78	(Table I)
OSHA Per Diem Add-On	+.18	
Adjusted Occupational Therapy Limit	93.75	
Cost Reporting Period Adjustment Factor (January 1, 1994)	×1.0254	(Table IV)
Inflation Adjusted Limit (Limit in Effect for January 1, 1994, January 1, 1995, and January 1, 1996)	96.13	

As noted above, for cost reporting periods beginning on or after July 1, 1994, but before July 1, 1996, a freestanding HHA's cost limit will be its latest per-discipline cost limit for the period beginning on or after July 1, 1993, and before July 1, 1994, as calculated under this notice and without regard to any subsequent adjustments, such as an exception to the limit. Thus, if the HHA in the above example received an exception to its cost limit for its cost reporting period beginning January 1, 1993, its cost limit for the cost reporting period beginning January 1, 1994, would not include the exception amount for the previous period. To receive an exception or other adjustment to its cost limit, the HHA would need to submit a request to its fiscal intermediary in accordance with the procedures set forth in § 413.30 of our regulations.

As explained in detail in our January 6, 1994 notice with comment period, a hospital-based HHA's cost limit is computed in an identical manner (59 FR 761) to the example above, since the A&G add-on for hospital-based HHAs is no longer applicable for cost reporting periods beginning on or after October 1, 1993.

C. Periods Other Than 12 Months

The above methodology applies to providers with cost reporting periods of 12 months in duration. If a HHA's cost reporting period is not 12 months in duration, a special adjustment factor is calculated. This is necessary because inflation projections are computed to the midpoint of a cost reporting period, and the adjustment factors in Table IV (58 FR 36760) are based on 12-month reporting periods. For cost reporting periods of other than 12 months, the calculation must be made based on the midpoint of the specific cost reporting period. The HHA's intermediary obtains this adjustment factor from HCFA central office. This methodology results in a different cost limit than if a 12-month adjustment factor were used. However, since the provisions of OBRA '93 require no changes in the cost limit on or after July 1, 1994, the limit calculated with the special adjustment factor will remain in place for subsequent cost reporting periods beginning before July 1, 1996.

D. Providers Entering the Medicare Program

For providers entering the Medicare program on or after July 1, 1994, and before July 1, 1996, the applicable cost limit will be the cost limit for the identical period beginning on or after July 1, 1993, through June 30, 1994. (The only exception to this policy is that, as a result of the elimination of the A&G add-on for hospital-based HHAs effective for cost reporting periods beginning on or after October 1, 1993, the A&G add-on amount is not included in the cost limit calculation for hospital-based HHAs that enter the program.) For example, if a provider enters the Medicare program on October 1, 1994, with a 12-month cost reporting period, its cost limit will be determined in the same manner as a cost limit for a period beginning October 1, 1993, and ending September 30, 1994. If the provider's cost reporting period is a short period, for example, a period beginning October 1, 1994, and ending December 31, 1994, the provider's cost limit will be determined in the same manner as a cost limit for a period beginning October 1, 1993, and ending December 31, 1993. In addition, whether the first period is a full 12-month period or a period other than 12 months, the cost limit determined for the first period will remain in effect until the provider's first cost reporting period beginning on or after July 1, 1996.

E. Next Update of Limits

Before the enactment of OBRA '93, section 1861(v)(1)(L)(iii) of the Act required that the HHA per-discipline cost limits be updated on July 1, 1994, and every year thereafter. Section 13564(a)(2) of OBRA '93 amended that section of the Act to delay the next update until July 1, 1996, and every year thereafter. Accordingly, there will be no changes to the HHA per-discipline cost limits effective under this notice for cost reporting periods beginning on or after July 1, 1993 for inflation, changes in the wage index, or geographic designation until July 1, 1996.

F. Adjustments to the Per-Visit Cost Limits

Section 1861(v)(1)(L)(ii) of the Act provides for appropriate adjustments to the HHA per-discipline cost limits. These adjustments are set forth at § 413.30(f) and include: exceptions to the limits for atypical services and extraordinary circumstances; and other provisions. Section 13564(a)(1) of OBRA '93 mandates that the effect of allowing no changes in the HHA per-visit cost limits for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996, not be considered in making adjustments to the per-visit cost limits under the exceptions process. Therefore, effective for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996, a provider may request an exception only for costs incurred above the amount that the limit would have been had the OBRA '93 provisions set forth in this notice regarding no changes in the cost limits not been enacted. Accordingly, for the purpose of determining the amount of an exception to the HHA per-discipline cost limits under the regulations at

§ 413.30(f), the difference between the amount of a provider's cost limit as determined by the provisions set forth in this notice, and the amount that a provider's cost limit would have been under this notice had the OBRA '93 provisions requiring no changes in the cost limits not been enacted, is not subject to an exception to the per-discipline cost limits. We note that this provision does not apply to the A&G add-on for hospital-based HHAs. That is, for cost reporting periods beginning on or after October 1, 1993, the A&G add-on for hospital-based HHAs will not be used in computing the amount that the hospital-based cost limit would have been had the OBRA '93 provisions requiring no changes in the limits not been enacted.

The example below demonstrates the computation to determine the amount not subject to an exception under the provisions set forth in this notice. The provider's cost limit for occupational therapy is computed for the cost reporting period beginning January 1, 1994, in accordance with the provisions set forth in this notice, and this limit remains in effect until the cost reporting period beginning January 1, 1996. In the example, the provider has requested an exception to its limit for the period beginning January 1, 1995. Again, we calculate what the limit would have been had the OBRA '93 provisions requiring no changes in the limits not been enacted. The difference between the actual limit and the amount the limit would have been ($5.14) is the amount not subject to an exception.

Example: Calculation of Amount Not Subject to an Exception to the Limits for Occupational Therapy for a Freestanding HHA Located in Dallas, Texas

Labor Related Component	$74.97	(Table I)
Wage Index	×0.9599	(Table IIIa)
Labor Portion	$71.96	
Special Labor Adjustment for Budget Neutrality	×1.067	
Adjusted Labor Component	$76.79	
Nonlabor-Related Component	+16.78	(Table I)
OSHA Per Diem Add-On	+.18	
Limit Prior to Inflation Adjustment	$93.75	
Cost Reporting Period Adjustment Factor	×1.0254	(Table IV)
(January 1, 1994)		
Inflation Adjusted Limit (Limit in Effect for January 1, 1994, January 1, 1995, and January 1, 1996)	$96.13	
Cost Reporting Period Adjustment Factor (January 1, 1995 for Exception Purposes Only)	×1.0803	(Table IV)
(Using the calculation procedures in Table IV for cost reporting periods beginning on January 1, 1995, 1.0475 is multiplied by 1.00442 seven times and the resulting factor equals 1.0803.) $(1.0475\times(1.00442)^7=1.0803)$.		
Inflation Adjusted Limit (January 1, 1994 for Exception Purposes Only)	$101.27	
Amount Not Subject to Exception ($101.27 − $96.13=$5.14)		

IV. Tables

TABLE I.—PER VISIT LIMITS FOR HOME HEALTH AGENCIES

Type of visit	Limit	Labor portion	Non-labor portion [1]
MSA (NECMA) Location:			
Skilled Nursing Care	$91.16	$74.72	$16.44
Physical Therapy	91.80	75.28	16.52
Speech Pathology	93.18	76.30	16.88
Occupational Therapy	91.75	74.97	16.78
Medical Social Services	129.62	105.99	23.63
Home Health Aide	45.98	37.65	8.33
Non-MSA Location:			
Skilled Nursing Care	$99.83	$84.88	$14.95
Physical Therapy	105.55	89.71	15.84
Speech Pathology	110.45	93.74	16.71
Occupational Therapy	107.02	90.55	16.47
Medical Social Services	164.60	139.56	25.04
Home Health Aide	46.30	39.36	6.94

[1] Non-labor portion of limits for HHAs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands are increased by multiplying them by the following cost-of-living adjustment factors:

Location	Adjustment factor
Alaska	1.250
Hawaii:	
Oahu	1.225
Kauai	1.175
Maui, Lanai, and Molokai	1.200
Hawaii (Island)	1.150
Puerto Rico	1.100
Virgin Islands	1.125

TABLE II.—ADD-ON AMOUNTS FOR HOSPITAL-BASED HOME HEALTH AGENCIES

Type of visit	A&G Add-on	Labor portion	Non-labor portion
MSA (NECMA) Location:			
Skilled Nursing Care	$12.20	$9.99	$2.21
Physical Therapy	11.30	9.25	2.05
Speech Pathology	11.48	9.39	2.09
Occupational Therapy	11.48	9.35	2.12
Medical Social Services	17.73	14.42	3.32
Home Health Aide	5.50	4.50	1.00
Non-MSA Location:			
Skilled Nursing Care	$14.99	$12.74	$2.25
Physical Therapy	16.14	13.73	2.41
Speech Pathology	16.09	13.67	2.42
Occupational Therapy	17.00	14.36	2.64
Medical Social Services	24.20	20.41	3.80
Home Health Aide	6.01	5.11	0.90

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS

Urban areas (constituent counties or county equivalents)	Wage index
Abilene TX	0.9183
Taylor, TX	
Aguadilla, PR	0.4549
Aguada, PR	
Aguadilla, PR	
Isabella, PR	
Moca, PR	
Akron, OH	0.9455
Portage, OH	
Summit, OH	
Albany, GA	0.8017
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	0.8887
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.0083
Bernalillo, NM	
Alexandria, LA	0.8242
Rapides, LA	
Allentown-Bethlehem, PA-NJ	0.9957
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	0.9201
Blair, PA	
Amarillo, TX	0.8703
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA	1.2217
Orange, CA	
Anchorage, AK	1.4119
Anchorage, AK	
Anderson, IN	0.9544
Madison, IN	
Anderson, SC	0.7229
Anderson, SC	
Ann Arbor, MI	1.1815
Washtenaw, MI	
Anniston, AL	0.7899
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	0.9142
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	0.3938
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	0.8760
Buncombe, NC	
Athens, GA	0.8518
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA	0.9557
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	1.0464
Atlantic , NJ	
Cape May, NJ	
Augusta, GA-SC	0.9363
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	0.9626
Kane, IL	
Kendall, IL	
Austin, TX	0.9560
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.0824
Kern, CA	
Baltimore, MD	1.0115
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	0.9027
Penobscot, ME	
Baton Rouge, LA	0.9052
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	0.9480
Calhoun, MI	
Beaumont-Port Arthur, TX	0.9599
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.0124
Beaver, PA	
Bellingham, WA	1.0454
Whatcom, WA	
Benton Harbor, MI	0.8421
Berrien, MI	
Bergen-Passaic, NJ	1.0733
Bergen, NJ	
Passaic, NJ	
Billings, MT	0.9287
Yellowstone, MT	
Biloxi-Gulfport, MS	0.8030
Hancock, MS	
Harrison, MS	
Binghamton, NY	0.9223
Broome, NY	
Tioga, NY	
Birmingham, AL	0.8734
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	0.8845
Burleigh, ND	
Morton, ND	
Bloomington, IN	0.8604
Monroe, IN	

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban areas (constituent counties or county equivalents)	Wage index
Bloomington-Normal, IL	0.8723
McLean, IL	
Boise City, ID	0.9718
Ada, ID	
Boston-Lawrence-Salem-Lowell-Brockton, MA	1.1762
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	1.0155
Boulder, CO	
Bradenton, FL	0.9225
Manatee, FL	
Brazoria, TX	0.9276
Brazoria, TX	
Bremerton, WA	0.9495
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury	1.1984
Fairfield, CT	
Brownsville-Harlingen, TX	0.8592
Cameron, TX	
Bryan-College Station, TX	0.9451
Brazos, TX	
Buffalo, NY	0.8873
Erie, NY	
Burlington, NC	0.7954
Alamance, NC	
Burlington, VT	0.9320
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	0.4461
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Aguas Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	0.8776
Carroll, OH	
Stark, OH	
Casper, WY	0.8855
Natrona, WY	
Cedar Rapids, IA	0.8938
Linn, IA	
Champaign-Urbana-Rantoul, IL	0.8710
Champaign, IL	
Charleston, SC	0.8298
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	0.9653
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC-SC	0.9432
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	0.9576
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	0.9161
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	0.7876
Laramie, WY	
Chicago, IL	1.0475
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.0937
Butte, CA	
Cincinnati, OH-KY-IN	0.9972
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	0.7352
Christian, KY	
Montgomery, TN	
Cleveland, OH	1.0695
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	0.9777
El Paso, CO	
Columbia, MO	0.9468
Boone, MO	
Columbia, SC	0.8904
Lexington, SC	
Richland, SC	
Columbus, GA-AL	0.7452
Russell, AL	
Chattanoochee, GA	
Muscogee, GA	
Columbus, OH	0.9634
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	0.8559
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	0.8155
Allegany, MD	
Mineral, WV	
Dallas, TX	0.9599
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	0.7476
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	0.8640
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	0.9686
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	0.8907
Volusia, FL	
Decatur, AL	0.7457
Lawrence, AL	
Morgan, AL	
Decatur, IL	0.8253
Macon, IL	
Denver, CO	1.0714
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	0.9225
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI	1.0924
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	0.7524
Dale, AL	
Houston, AL	
Dubuque, IA	0.8341
Dubuque, IA	
Duluth, MN-WI	0.9479
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	0.8444
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	0.8679
El Paso, TX	
Elkhart-Goshen, IN	0.8913
Elkhart, IN	
Elmira, NY	0.8775
Chemung, NY	
Enid, OK	0.8877
Garfield, OK	
Erie, PA	0.9118
Erie, PA	
Eugene-Springfield, OR	1.0123
Lane, OR	
Evansville, IN-KY	0.9422
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	0.9668
Clay, MN	
Cass, ND	
Fayetteville, NC	0.8262
Cumberland, NC	
Fayetteville-Springdale, AR	0.7958
Washington, AR	
Flint, MI	1.1506
Genesee, MI	
Florence, AL	0.7648
Colbert, AL	
Lauderdale, AL	
Florence, SC	0.8395

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban areas (constituent counties or county equivalents)	Wage index
Florence, SC	
Fort Collins-Loveland, CO	1.0197
Larimor, CO	
Ft Lauderdale-Hollywood-Pompano Beach, FL	1.0314
Broward, FL	
Fort Myers-Cape Coral, FL	0.9759
Lee, FL	
Fort Pierce, FL	1.0996
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	0.7900
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	0.8881
Okaloosa, FL	
Fort Wayne, IN	0.8967
Allen, IN	
De Kalb, IN	
Whitley, IN	
Forth Worth-Arlington, TX	0.9708
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.0694
Fresno, CA	
Gadsden, AL	0.8166
Etowah, AL	
Gainesville, FL	0.8763
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	1.0129
Galveston, TX	
Gary-Hammond, IN	0.9853
Lake, IN	
Porter, IN	
Glens Falls, NY	0.9193
Warren, NY	
Washington, NY	
Grand Forks, ND	0.9539
Grand Forks, ND	
Grand Rapids, MI	0.9813
Kent, MI	
Ottawa, MI	
Great Falls, MT	0.9951
Cascade, MT	
Greeley, CO	0.9320
Weld, CO	
Green Bay, WI	0.9547
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	0.9128
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	0.8887
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	0.9121
Washington, MD	
Hamilton-Middletown, OH	0.9347
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	0.9879
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
Hartford-Middletown-New Britain-Bristol, CT	1.1868
Hartford, CT	
Middlesex, CT	
Tolland, CT	
Litchfield, CT	
Hickory, NC	0.8735
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.1534
Honolulu, HI	
Houma-Thibodaux, LA	0.7315
Lafourche, LA	
Terrebonne, LA	
Houston, TX	1.0022
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	0.9400
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	0.8799
Madison, AL	
Indianapolis, IN	0.9665
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	0.9489
Johnson, IA	
Jackson, MI	0.9625
Jackson, MI	
Jackson, MS	0.7702
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	0.7878
Madison, TN	
Jacksonville, FL	0.9122
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	0.7125
Onslow, NC	
Jamestown-Dunkirk, NY	0.7746
Chautaqua, NY	
Janesville-Beloit, WI	0.8432
Rock, WI	
Jersey City, NJ	1.0728
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	0.8633
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	0.8827
Cambria, PA	
Somerset, PA	
Joliet, IL	1.0237
Grundy, IL	
Will, IL	
Joplin, MO	0.7925
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.1765
Kalamazoo, MI	
Kankakee, IL	0.8454
Kankakee, IL	
Kansas City, KS-MO	0.9550
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	0.8934
Kenosha, WI	
Killeen-Temple, TX	1.1250
Bell, TX	
Coryell, TX	
Knoxville, TN	0.8658
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	0.9452
Howard, IN	
Tipton, IN	
LaCrosse, WI	0.8920
LaCrosse, WI	
Lafayette, LA	0.8194
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	0.8588
Tippecanoe, IN	
Lake Charles, LA	0.8341
Calcasieu, LA	
Lake County, IL	0.9953
Lake, IL	
Lakeland-Winter Haven, FL	0.8409
Polk, FL	
Lancaster, PA	0.9221
Lancaster, PA	
Lansing-East Lansing, MI	1.0242
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	0.7248
Webb, TX	
Las Cruces, NM	0.7877
Dona Ana, NM	
Las Vegas, NV	1.0588
Clark, NV	

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban areas (constituent counties or county equivalents)	Wage index
Lawrence, KS	0.8901
Douglas, KS	
Lawton, OK	0.8354
Comanche, OK	
Lewiston-Auburn, ME	0.9021
Androscoggin, ME	
Lexington-Fayette, KY	0.8565
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	0.8030
Allen, OH	
Auglaize, OH	
Lincoln, NE	0.8920
Lancaster, NE	
Little Rock-North Little Rock, AR	0.8373
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	0.8656
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	0.8933
Lorain, OH	
Los Angeles-Long Beach, CA	1.2308
Los Angeles, CA	
Louisville, KY–IN	0.9291
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	0.8766
Lubbock, TX	
Lynchburg, VA	0.8509
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	0.8768
Bibb, GA	
Huston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0270
Dane, WI	
Manchester-Nashua, NH	1.0219
Hillsborough, NH	
Merrimack, NH	
Mansfield, OH	0.8358
Richland, OH	
Mayaguez, PR	0.4752
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
San German, PR	
McAllen-Edinburg-Mission, TX	0.7684
Hidalgo, TX	
Medford, OR	1.0005
Jackson, OR	
Melbourne-Titusville, FL	0.9162
Brevard, FL	
Memphis, TN–AR–MS	0.9023
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Merced, CA	1.0270
Merced, CA	
Miami-Hialeah, FL	1.0147
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	1.0903
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.0335
Midland, TX	
Milwaukee, WI	0.9680
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
Minneapolis-St Paul, MN–WI	1.0774
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	0.8454
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.1530
Stanislaus, CA	
Monmouth-Ocean, NJ	1.0058
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	0.7832
Ouachita, LA	
Montgomery, AL	0.7823
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	0.8397
Delaware, IN	
Muskegon, MI	0.9680
Muskegon, MI	
Naples, FL	1.0282
Collier, FL	
Nashville, TN	0.9360
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY	1.3167
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	0.9962
Bristol, MA	
New Haven-Waterbury-Meriden, CT	1.2046
New Haven, CT	
New London, London-Norwich	1.1525
New London, CT	
New Orleans, LA	0.8967
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
New York, NY	1.3431
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ	1.1350
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	0.8350
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA	0.8481
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA	1.4225
Alameda, CA	
Contra Costa, CA	
Ocala, FL	0.8580
Marion, FL	
Odessa, TX	1.0835
Ector, TX	
Oklahoma City, OK	0.9195
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.0957
Thurston, WA	
Omaha, NE-IA	0.8953
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	0.9815
Orange, NY	
Orlando, FL	0.9582
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	0.8082
Daviess, KY	
Oxnard-Ventura, CA	1.2259
Ventura, CA	
Panama City, FL	0.8598
Bay, FL	
Parkersburg-Marietta, WV-OH	0.8505

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban areas (constituent counties or county equivalents)	Wage index
Washington, OH	
Wood, WV	
Pascagoula, MS	0.8720
Jackson, MS	
Pensacola, FL	0.8589
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	0.8704
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA-NJ	1.0908
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ	1.0387
Maricopa, AZ	
Pine Bluff, AR	0.7840
Jefferson, AR	
Pittsburgh, PA	1.0087
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0739
Berkshire, MA	
Ponce, PR	0.4583
Juana Diaz, PR	
Ponce, PR	
Portland, ME	0.9254
Cumberland, ME	
Sagadahoc, ME	
York, ME	
Portland, OR	1.1529
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	1.0039
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	1.0639
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI	1.0590
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
Provo-Orem, UT	1.0189
Utah, UT	
Pueblo, CO	0.8687
Pueblo, CO	
Racine, WI	0.8814
Racine, WI	
Raleigh-Durham, NC	0.9448
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	0.8366
Pennington, SD	
Reading, PA	0.8778
Berks, PA	

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban areas (constituent counties or county equivalents)	Wage index
Redding, CA	1.0507
Shasta, CA	
Reno, NV	1.1571
Washoe, NV	
Richland-Kennewick, WA	0.9364
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	0.9379
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA	1.1391
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	0.8251
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.0985
Olmsted, MN	
Rochester, NY	0.9671
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	0.9245
Boone, IL	
Winnebago, IL	
Sacramento, CA	1.2280
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.0452
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	0.9382
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	0.9376
Buchanan, MO	
St. Louis, MO-IL	0.9351
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Sullivan City, MO	
Salem, OR	1.0403
Marion, OR	
Polk, OR	

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban areas (constituent counties or county equivalents)	Wage index
Salinas-Seaside-Monterey, CA	1.2988
Monterey, CA	
Salt Lake City-Ogden, UT	0.9892
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	0.8107
Tom Green, TX	
San Antonio, TX	0.8418
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego, CA	1.2095
San Diego, CA	
San Francisco, CA	1.4480
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose, CA	1.4840
Santa Clara, CA	
San Juan, PR	0.4967
Barcelona, PR	
Bayoman, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trojillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.1721
Santa Barbara, CA	
Santa Cruz, CA	1.2733
Santa Cruz, CA	
Santa Fe, NM	0.9102
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.2926
Sonoma, CA	
Sarasota, FL	0.9741
Sarasota, FL	
Savannah, GA	0.8294
Chatham, GA	
Effingham, GA	
Scranton, Wilkes Barre, PA	0.8916
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA	1.0827
King, WA	
Snohomish, WA	
Sharon, PA	0.9024

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban areas (constituent counties or county equivalents)	Wage index
Mercer, PA	
Sheboygan, WI	0.8836
Sheboygan, WI	
Sherman-Denison, TX	0.9052
Grayson, TX	
Shreveport, LA	0.9262
Bossier, LA	
Caddo, LA	
Sioux City, IA-NE	0.8470
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	0.8797
Minnehaha, SD	
South Bend-Mishawaka, IN	1.0142
St. Joseph, IN	
Spokane, WA	1.0648
Spokane, WA	
Springfield, IL	0.9258
Menard, IL	
Sangamon, IL	
Springfield, MO	0.8050
Christian, MO	
Greene, MO	
Springfield, MA	1.0290
Hampden, MA	
Hampshire, MA	
State College, PA	0.9861
Centre, PA	
Steubenville-Weirton, OH-WV	0.8756
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.1566
San Joaquin, CA	
Syracuse, NY	0.9905
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.0276
Pierce, WA	
Tallahassee, FL	0.9183
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg-Clearwater, FL	0.9225
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	0.8791
Clay, IN	
Vigo, IN	
Texarkana-TX-AR	0.7860
Miller, AR	
Bowie, TX	
Toledo, OH	1.0160
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	0.9265
Shawnee, KS	
Trenton, NJ	1.0094
Mercer, NJ	
Tucson, AZ	0.9552
Pima, AZ	
Tulsa, OK	0.8542
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban areas (constituent counties or county equivalents)	Wage index
Wagoner, OK	
Tuscaloosa, AL	0.8487
Tuscaloosa, AL	
Tyler, TX	0.9798
Smith, TX	
Utica-Rome, NY	0.8652
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.3150
Napa, CA	
Solano, CA	
Vancouver, WA	1.0755
Clark, WA	
Victoria, TX	0.8958
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	0.9720
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.0351
Tulare, CA	
Waco, TX	0.7783
McLennan, TX	
Washington, DC-MD-VA	1.0928
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	0.8884
Black Hawk, IA	
Bremer, IA	
Wausau, WI	0.9709
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	1.0095
Palm Beach, FL	
Wheeling, WV-OH	0.8035
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	0.9770
Butler, KS	
Harvey, KS	
Sedgwick, KS	
Wichita Falls, TX	0.8139
Wichita, TX	
Williamsport, PA	0.8829
Lycoming, PA	
Wilmington, DE-NJ-MD	1.0825
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	0.8677
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	1.0782
Worcester, MA	
Yakima, WA	1.0070
Yakima, WA	
York, PA	0.9008
Adams, PA	

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban areas (constituent counties or county equivalents)	Wage index
York, PA	
Youngstown-Warren, OH	0.9826
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0220
Sutter, CA	
Yuba, CA	
Yuma, AZ	0.8850
Yuma, AZ	

TABLE IIIb.—WAGE INDEX FOR RURAL AREAS

Non-urban areas	Wage index
ALABAMA	0.7121
ALASKA	1.3372
ARIZONA	0.8724
ARKANSAS	0.6979
CALIFORNIA	1.0122
COLORADO	0.8382
CONNECTICUT	1.1857
DELAWARE	0.8537
FLORIDA	0.8704
GEORGIA	0.7769
HAWAII	0.9579
IDAHO	0.8917
ILLINOIS	0.7696
INDIANA	0.7830
IOWA	0.7517
KANSAS	0.7426
KENTUCKY	0.7781
LOUISIANA	0.7355
MAINE	0.8294
MARYLAND	0.8029
MASSACHUSETTS	1.1607
MICHIGAN	0.8893
MINNESOTA	0.8288
MISSISSIPPI	0.6935
MISSOURI	0.7240
MONTANA	0.8226
NEBRASKA	0.6967
NEVADA	0.9663
NEW HAMPSHIRE	0.9508
NEW JERSEY	[1]
NEW MEXICO	0.8289
NEW YORK	0.8371
NORTH CAROLINA	0.7992
NORTH DAKOTA	0.7688
OHIO	0.8438
OKLAHOMA	0.7384
OREGON	0.9643
PENNSYLVANIA	0.8620
PUERTO RICO	[2] 0.4316
RHODE ISLAND	[1]
SOUTH CAROLINA	0.7678
SOUTH DAKOTA	0.7179
TENNESSEE	0.7316
TEXAS	0.7578
UTAH	0.8977
VERMONT	0.8997
VIRGINIA	0.7784
VIRGIN ISLANDS	[2] 1.0000
WASHINGTON	0.9597
WEST VIRGINIA	0.8482
WISCONSIN	0.8459
WYOMING	0.8423

[1] All counties within State are classified urban.

[2] Approximate value for area.

TABLE IV.—COST REPORTING YEAR ADJUSTMENT FACTOR [1]

If the HHA cost reporting period begins	The adjustment factor is
August 1, 1993	1.0042
September 1, 1993	1.0085
October 1, 1993	1.0126
November 1, 1993	1.0169
December 1, 1993	1.0211
January 1, 1994	1.0254
February 1, 1994	1.0299
March 1, 1994	1.0340
April 1, 1994	1.0385
May 1, 1994	1.0430
June 1, 1994	1.0475

[1] Based on compounded projected market basket inflation rates of 5.10 percent for 1994 and 5.30 percent for 1995.

V. Impact Statement

For notices such as this, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that this notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all HHAs are treated as small entities.

This notice with comment period sets forth a revised schedule of HHA per-visit cost limits and A&G add-on amounts for hospital-based HHAs for cost reporting periods beginning on or after July 1, 1993. (We note that, in accordance with section 13564(b) of OBRA '93, the A&G add-on for hospital-based HHAs is eliminated effective for cost reporting periods beginning on or after October 1, 1993.) In addition, this notice announces the provisions of section 13564(a) of OBRA '93, which provides for a delay in the updates of the HHA per-visit cost limits until cost reporting periods beginning on or after July 1, 1996.

As discussed below, the aggregate impact of revising the schedule of limits effective for cost reporting periods beginning on or after July 1, 1993 is not significant. In contrast, the requirement under section 13564(a) of OBRA '93 that these limits remain in place for cost reporting periods beginning before July 1, 1996 will result in significant Federal cost savings. The impact of this OBRA '93 provision also is discussed further below. This notice explains the revised methodology for calculating the HHA per-visit cost limits that result from the provisions of OBRA '93. We do not believe that merely explaining the results of these provisions in this notice will have a significant effect on a substantial number of small entities. Therefore, we have determined and the Secretary certifies that a regulatory flexibility analysis under the RFA is not required.

However, to the extent that a legislative provision being announced by a notice such as this may have a significant effect on beneficiaries or providers or may be viewed as controversial, we believe that we should address any potential concerns. In this instance, we believe it is desirable to inform the public of our estimate of the substantial budgetary effect of the statutory requirement that there be no update in the HHA per-visit cost limits until cost reporting periods beginning on or after July 1, 1996.

A. Effects of Revised Cost Limits for Cost Reporting Periods Beginning On or After July 1, 1993 and Before July 1, 1994

In response to comments on the schedule of limits set forth in our July 8, 1993 notice with comment period, we decided to validate the database used in calculating the limits. As discussed in section II.A.2 of this notice, we determined that data were missing from a large number of HHAs and that duplicate cost reports were used in the calculation of the hospital-based add-on. Consequently, it was necessary to recalculate the limits and add-on amounts effective for cost reporting periods beginning on or after July 1, 1993. This notice sets forth revised per-visit cost limits and add-on amounts for hospital-based HHAs for cost reporting periods beginning on or after July 1, 1993. Section II.A.2 of this notice contains tables that illustrate the effects of using the revised database to calculate the limits and the A&G add-on amounts. As the tables illustrate, the per-visit cost limits and A&G add-on amounts change for each discipline. Most notable is the increase in the limits and add-on amounts for skilled nursing care and home health aide visits, since these visits constitute the great majority of covered HHA visits. We estimate that the aggregate impact of these changes on Medicare spending for HHA care will be as follows:

TABLE 1.—IMPACT OF REVISED LIMITS [1]

Fiscal year	Costs
1994	10
1995	10
1996	10
1997	10

[1] All figures are rounded to the nearest 10 million.

We are unable to estimate the effects of these changes on individual HHAs. In general, we believe that most HHAs will experience small revenue increases under the revised limits; the degree of that increase will vary depending on the proportion of the HHA's revenues that come from the Medicare program, the distribution of services provided by the HHA, and the HHA's ability to operate with the cost limits.

B. Effect of Cost Limits On Cost Reporting Periods Beginning On or After July 1, 1994 and Before July 1, 1996

In accordance with section 13564(a) of OBRA '93, this notice with comment period specifies that there will be no changes in the per-visit cost limits for home health services for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996, except as may be necessary to take into account the elimination of the A&G add-on for hospital-based HHAs. We estimate that this statutory provision will result in the following savings to the Medicare program:

TABLE 2.—IMPACT OF DELAY IN THE UPDATE OF HHA LIMITS [1]

Fiscal year	Savings
1994	$ 0
1995	130
1996	330
1997	100

[1] All figures are rounded to the nearest $10 million.

As illustrated in Table 3 below, the delay in updating the cost limits until July 1, 1996, will result in an increase in the number of HHAs exceeding the HHA cost limits in all categories. Table 3 below shows the impact of these changes.

TABLE 3.—AGENCIES EXCEEDING THE COST LIMITS [1]

	HHAs in Model	Exceeding the limits as of 7/1/93	Exceeding the limits as of 7/1/95
Free-standing HHAs	2992	763	1329
Urban	2001	510	911
Rural	991	253	418
Hospital-based HHAs	1053	408	856
Urban	447	173	383

TABLE 3.—AGENCIES EXCEEDING THE COST LIMITS [1]—Continued

	HHAs in Model	Exceeding the limits as of 7/1/93	Exceeding the limits as of 7/1/95
Rural ..	606	235	473

[1] All figures are based on revised cost limits as published in this notice for cost reporting periods beginning on or before July 1, 1993 and before July 1, 1994.

Again, we are unable to identify the effects of these provisions on individual HHAs. However, we anticipate that overall HHA payments for FY 1995 through FY 1997 will be approximately 0.9 percent, 2.0 percent, and 0.5 percent less, respectively, than they would have been in those years if the OBRA '93 provisions were not in effect. The effects of this reduction on the total revenues of individual HHAs will depend on the HHA's ability to operate within the cost limits and on the proportion of the HHA's revenues that come from the Medicare program. We estimate that the delay in updating the limits will not result in a significant number of facilities' total revenues being increased or reduced by 3 percent or more from the revised limits effective for cost reporting periods beginning on July 1, 1993, as set forth in this notice, adjusted for inflation.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a notice such as this may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds located outside of a Metropolitan Statistical Area.

We have not prepared a rural impact statement since we have determined and the Secretary certifies that this final notice will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

VI. Other Required Information

A. Waiver of Proposed Notice and 30-Day Delay in the Effective Date

In adopting notices such as this, we ordinarily publish a proposed notice in the **Federal Register** with a 60-day period for public comment as required under section 1871(b)(1) of the Act. We also normally provide a delay of 30 days in the effective date for documents such as this. However, we may waive these procedures if we find good cause that prior notice and comment or a delay in the effective date are impracticable, unnecessary, or contrary to the public interest.

This notice revises the per-visit limits effective for cost reporting periods beginning on or after July 1, 1993. We believe the revised limits will be beneficial to HHAs. Moreover, we have revised the limits based on public comments on our July 8, 1993 notice with comment period.

In addition, as discussed above, before the enactment of OBRA '93, section 1861(v)(1)(L)(iii) of the Act required that the HHA per-discipline cost limits be updated annually no later than July 1 of each year. However, section 13564(a)(1) of OBRA '93 specifies that there be no changes in the HHA cost limits (except as may be necessary to take into account the elimination of the A&G add-on for hospital-based HHAs) for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996. Section 13564(a)(2) of OBRA '93 amended section 1861(v)(1)(L)(iii) of the Act to delay the next required update of the HHA limits until July 1, 1996.

Thus, in conformance with the clear direction of section 13564(a) of OBRA '93, this notice announces the new HHA provisions and explains the effects of these provisions on the methodology used in calculating the HHA cost limits. We have made no changes in this methodology beyond those directly required by OBRA '93. Moreover, section 13564(a) of OBRA '93 mandates that these provisions are effective beginning with cost reporting periods beginning on or after July 1, 1994. Because many of the provisions in this notice announce, and explain the impact of, changes made by statute that are already effective, we believe it is unnecessary to publish a proposed notice or delay the effective date.

In summary, the only discretionary aspect of this notice is the revision of the schedule of HHA cost limits effective for cost reporting periods beginning on or after July 1, 1993. As noted above, this change is being made in response to public comment and is clearly beneficial to HHAs. Publishing a proposed rule or delaying the effective date would postpone the correction of errors in the database used to compute the HHA cost limits. Thus, we have concluded that in this instance, it would be impracticable, unnecessary, and contrary to the public interest to publish a proposed notice or to provide for a 30-day delay in the effective date of this notice. Therefore, we find good cause to waive publication of a proposed notice and the 30-day delay in effective date. However, we are providing a 60-day period for public comment, as indicated at the beginning of this notice.

B. Paperwork Reduction Act

This notice with comment period does not impose information collection requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

C. Requests for Data From the Public

In order to respond promptly to public requests for data used in calculating the HHA cost limits, we have set up a process under which commenters can gain access to the raw data on an expedited basis. The HHA database is available on computer tape format or diskette for $680. Anyone wishing to purchase data tapes or diskettes should submit a written request along with a company check or money order (payable to HCFA-PUF) to cover the cost, to the following address: Health Care Financing Administration, Public Use Files, Accounting Division, P.O. Box 7520, Baltimore, Maryland 21207–0520, (410) 597–5151.

D. Public Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this notice, and, if we proceed with a subsequent document, we will respond to the comments in that document.

Authority: (Sections 1102, 1814(b), 1861(v)(1)(A) and (v)(1)(L), 1866(a), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395x(v)(1)(A) and (v)(1)(L), 1395cc(a), and 1395hh); section 13564(a) of Public Law 103–66 (42 U.S.C. 1395x(note)) and 42 CFR 413.30.)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: October 11, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: November 4, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 95–3526 Filed 2–13–95; 8:45 am]

BILLING CODE 4120–01–P

Indian Health Service

Health Professions Recruitment Program for Indians

AGENCY: Indian Health Service, HHS.

ACTION: Notice of Competitive Grant Applications for the Health Professions Recruitment Program for Indians.

SUMMARY: The Indian Health Service (IHS) announces that competitive grant applications are now being accepted for the Health Professions Recruitment Program for Indians established by sec. 102 of the Indian Health Care Improvement Act of 1976 (25 U.S.C. 1612), as amended by Pub. L. 102–573. There will be only one funding cycle during fiscal year (FY) 1995. This program is described at § 93.970 in the Catalog of Federal Domestic Assistance and is governed by regulations at 42 CFR 36.310 et seq. Costs will be determined in accordance with OMB Circulars A–21, A–87, and A–122 (cost principles for different types of applicant organizations); and 45 CFR part 74 or 45 CFR part 92 (as applicable). Executive Order 12372 requiring intergovernmental review is not applicable to this program. This program is not subject to the Public Health System Reporting requirements.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2000*, a PHS-led activity for setting priority areas. This program announcement is related to the priority area of Educational and Community-based programs. Potential applicant may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Smoke Free Workplace: The PHS strongly encourage our grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

DATES: A. Application Receipt Date—An original and two copies of the completed grant application must be submitted with all required documentation to the Grants Management Branch, Division of Acquisition and Grants Operations, Twinbrook Building, Suite 100, 12300 Twinbrook Parkway, Rockville, Maryland 20852, by close of business May 15, 1995.

Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline with hand carried applications received by close of business 5 p.m.; or (2) postmarked on or before the deadline and received in time to be reviewed along with all other timely applications. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Late applications not accepted for processing will be returned to the applicant and will *not* be considered for funding.

B. Additional Dates

1. Application Review: June 29, 1995.

2. Applicants Notified of Results: On or about August 1, 1995 (approved, recommended for approval but not funded, or disapproved.

3. Anticipated Start Date: September 30, 1995.

FOR FURTHER INFORMATION CONTACT: For program information, contact Ronald L. Hernandez, Division of Health Professions Recruitment and Training, Indian Health Service, Twinbrook Building, Suite 100A, 12300 Twinbrook Parkway, Rockville, Maryland 20852, (301) 443–6197. For grants application and business management information, contact M. Kay Carpentier, Grants Management Officer, Grants Management Branch, Division of Acquisition and Grants Operations, Indian Health Service, Twinbrook Building, Suite 100, 12300 Twinbrook Parkway, Rockville, Maryland (301) 443–5204. (The telephone numbers are not toll-free numbers).

SUPPLEMENTARY INFORMATION: This announcement provides information on the general program purpose, eligibility and preference, program objectives, required affiliation, fund availability and period of support, type of program activities considered for support, and application procedures for FY 1995.

A. General Program Purpose

The purpose of the Health Professions Recruitment program is to increase the number of American Indians and Alaska Natives entering the health professions and to ensure an adequate supply of health professionals to the IHS, Indian tribes, tribal organizations, and urban Indian organizations involved in the provision of health care to Indian people.

B. Eligibility and Preference

The following organizations are eligible with preference given in the order of priority to:

1. Indian tribes,
2. Indian tribal organizations,
3. urban Indian organizations and other Indian health organizations; and
4. public and other nonprofit private health or educational entities.

C. Program Objectives

Each proposal must address the following *four* objectives to be considered for funding:

1. To identify Indians with a potential for education or training in Public Health (Masters level) and other health professions (excluding nursing), and to encourage and assist them to enroll in such programs. The Nursing profession is excluded because the IHS Nursing Recruitment Grant Program provides funding to increase the number of nurses who deliver health care services to Indians.

2. To deliver the necessary student support systems to help to ensure that students who are recruited successfully complete their academic training. Support services may include providing career counseling and academic advice; assisting students to identify academic deficiencies and to develop plans to correct those deficiencies; assisting students to locate financial aid; monitoring students to identify possible problems; assisting with the determination of need for and location of tutorial services; and other related activities which will help to retain students in school.

3. To publicize existing sources of financial aid available to Indian students interested in enrolling in or enrolled in an accredited Masters of Public Health program or accredited health professions program (excluding nursing).

4. To work in close cooperation with the IHS, tribes, tribal organizations and urban Indian organizations, in locating and identifying non-academic period placement opportunities and practicum experiences, i.e., the IHS Extern Program authorized under section 105 of Pub. L. 94–437, as amended; assisting students with individual development plans in conjunction with identified placement opportunities; monitoring students to identify and evaluate possible problems; and monitoring and evaluating all placement and practicum experiences within the IHS to further develop and modify the program.

D. Required Affiliation

If the applicant is an Indian tribe, tribal organization, urban organization

or other Indian health organization, or a public or nonprofit private health organization, the applicant must submit a letter of support from at least one accredited school of public health or health professions program (excluding nursing), depending on the type of program for which it proposes to recruit. This letter must document linkage with that educational organization.

When the target population of a proposed project includes a particular Indian tribe or tribes, an official document, i.e., a letter of support or tribal resolution, must be submitted indicating that the tribe or tribes will cooperate with the applicant.

E. Fund Availability and Period of Support

It is anticipated that approximately $250,000 will be available for approximately 3 new grants. The average funding level for projects in FY 1994 was $98,000. The anticipated start date for selected projects will be September 30, 1995. Projects will be awarded for a budget term of 12 months. Grant funding levels include both direct and indirect costs.

F. Type of Program Activities Considered for Support

Funds are available to develop grant programs to locate and recruit students with potential for (1) Masters of Public Health or (2) other health professions degree programs (excluding nursing), and to provide support services to Indian students who are recruited.

G. Application Process

An *IHS Recruitment Grant Application Kit,* including the required PHS 5161–1 (Rev. 7/92) (OMB Approval No. 0937–0189) and the U.S. Government Standard forms (SF–424, SF–424A and SF–424B), may be obtained from the Grants Management Branch, Division of Acquisition and Grants Operations, Indian Health Service, 12300 Twinbrook Parkway, Suite 100, Rockville, Maryland 20852, telephone (301) 443–5204. (This is not a toll free number.)

H. Grant Application Requirements

All applications must be single-spaced, typewritten, and consecutively numbered pages using black type not smaller than 12 characters per one inch, with conventional one inch border margins, on only one side of standard size 8½ × 11 paper that can be photocopied. The application narrative (not including abstract, tribal resolutions or letters of support, standard forms, table of contents or the appendix) must not exceed 15 typed pages as described above. All applications must include the following in the order presented:

—Standard Form 424, Application for Federal Assistance
—Standard Form 424A, Budget Information—Non-Construction Programs (Pages 1 and 2)
—Standard Form 424B, Assurances—Non-Construction Programs (front and back)
—Certifications, PHS 5161–1 (pages 17–18)
—Checklist, PHS 5161–1 (pages 23–24)
—Project Abstract (one page)
—Table of Contents
—Program Narrative to include:
—Introduction and Potential Effectiveness of Project
—Project Administration
—Accessibility to Target Population
—Relationship of Objectives to Manpower Deficiencies
—Project Budget
—Appendix to include:
—Tribal Resolution(s) or Letters of Support
—Resumes (Curriculum Vitae) of key staff
—Position descriptions for key staff
—Organizational chart
—Workplan Format
—Completed IHS Application Checklist
—Application Receipt Care, PHS 3038–1 Rev. 5–90.

I. Application Instructions

The following instructions for preparing the application narrative also constitute the standards (criteria or basis for evaluation) for reviewing and scoring the application. Weights assigned each section are noted in parenthesis.

Abstract—An abstract may not exceed one typewritten page. The abstract should clearly present the application in summary form, from a ''who-what-when-where-how-cost'' point of view so that reviewers see how the multiple parts of the application fit together to form a coherent whole.

Table of Contents—Provide a one page typewritten table of contents.

Narrative

1. Introduction and Potential Effectiveness (30 pts.)

a. Describe your legal status and organization.

b. State specific objectives of the project, which are measurable in terms of being quantified, significant to the needs of Indian people, logical, complete and consistent with the purpose of sec. 102.

c. Describe briefly what the project intends to accomplish. Identify the expected results, benefits, and outcomes or products to be derived from each objective of the project.

d. Provide a project specific work plan (milestone chart) which lists each objective, the tasks to be conducted in order to reach the objective, and the timeframe needed to accomplish each task. Timeframes should be projected in a realistic manner to ensure that the scope of work can be completed within the budget period. (A work plan format is provided.)

e. In the case of proposed projects for identification of Indians with a potential for education or training in the health professions (excluding nursing), include a method for assessing the potential of interested Indians for undertaking necessary education or training in such health professions.

f. State clearly the criteria by which the project's progress will be evaluated and by which the success of the project will be determined.

g. Explain the methodology that will be used to determine if the needs, goals, and objectives identified and discussed in the application are being met and if the results and benefits identified are being achieved.

h. Identify who will perform the evaluation and when.

2. Project Administration (20 pts.)

a. Provide an organizational chart and describe the administrative, managerial and organizational arrangements and the facilities and resources to be utilized to conduct the proposed project (include in appendix).

b. Provide the name and qualifications of the project director or other individuals responsible for the conduct of the project; the qualifications of the principal staff carrying out the project; and a description of the manner in which the application's staff is or will be organized and supervised to carry out the proposed project. Include biographical sketches of key personnel (or job descriptions if the position is vacant) (include in appendix).

c. Describe any prior experience in administering similar projects.

d. Discuss the commitment of the organization, i.e., although not required, the level of non-Federal support. List the intended financial participation, if any, of the applicant in the proposed project specifying the type of contributions such as cash or services, loans of full or part-time staff, equipment, space, materials or facilities or other contributions.

3. Accessibility to Target Population (20 pts.)

a. Describe the current and proposed participation of Indians (if any) in your organization.

b. Identify the target Indian population to be served by your proposed project and the relationship of your organization to that population.

c. Describe the methodology to be used to access the target population.

4. Relationship of Objectives to Manpower Deficiencies (20 pts.)

a. Provide data and supporting documentation to address the relationship of objectives to manpower deficiencies.

b. Indicate the number of potential Indian students to be contacted and recruited as well as potential cost per student recruited. Those projects that have the potential to serve a greater number of Indians will be given first consideration.

5. Soundness of Fiscal Plan (10 pts.)

a. Clearly define the budget. Provide a justification and detailed breakdown of the funding by category for the project. Information on the project director and project staff should include salaries and percentage of time assigned to the grant. List equipment purchases necessary for the conduct of the project.

Appendix—to include:

a. Resumes and job descriptions for key staff.

b. Current approved organizational chart.

c. Workplan.

d. Application receipt card, PHS 3038–1 Rev. 5–90.

J. Reporting

1. *Progress Report*—Program progress reports may be required quarterly or semiannually. These reports will include a brief description of a comparison of actual accomplishments to the goals established for the period, reasons for slippage and other pertinent information as required. A final report is due 90 days after expiration of the budget/project period.

2. *Financial Status Report*—Quarterly or semi-annually financial status reports will be submitted 30 days after the end of the quarter or half year. A final financial status report is due 90 days after expiration of the budget/project period. Standard Form 269 (long form) will be used for financial reporting.

K. Grant Administration Requirements

Grants are administered in accordance with the following documents:

1. 45 CFR part 92, HHS, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, or 45 CFR part 74, Administration of Grants.

2. PHS Grants Policy Statement, and

3. Appropriate Cost Principles: OMB Circular A–21, Educational Institutions, OMB Circular A–87, State and Local Governments, and OMB Circular A–122, Non-profit Organizations.

L. Objective Review Process

Applications meeting eligibility requirements that are complete, responsive, and conform to this program announcement will be reviewed by an Objective Review Committee (ORC) in accordance with IHS objective review procedures. The objective review process ensures a nationwide competition for limited funding. The ORC will be comprised of IHS (40% or less) and other Federal or non-Federal individuals (60% or more) with appropriate expertise. The ORC will review each application against established criteria. Based upon the evaluation criteria, the reviewers will assign a numerical score to each application, which will be used in making the final funding decision. Approved applications scoring less than 60 points will not be considered for funding.

M. Results of the Review

The results of the objective review are forwarded to the Director, Division of Health Professions Recruitment and Training (DHPRT), for final review and approval. The Director, DHPRT, will also consider the recommendations from the Grants Management Branch. Applicants are notified in writing on or about August 1, 1995. A Notice of Grant Award will be issued to successful applicants. Unsuccessful applicants are notified in writing of disapproval. A brief explanation of the reasons the application was not approved is provided along with the name of an IHS official to contact if more information is desired.

Dated: February 7, 1995.

Michael H. Trujillo,

Assistant Surgeon General, Director.

[FR Doc. 95–3667 Filed 2–13–95; 8:45 am]

BILLING CODE 4160–16–M

National Institutes of Health

National Institute of Dental Research; 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 National Institute of Dental Research Special Emphasis Panel (SEP) meetings:

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Geriatric Dental Program Project.

Dates: February 14, 1995.

Time: 1:00 p.m.

Place: Natcher Building, NIH, Conf. Rm. 4AS–10.

Contact Person: Dr. Philip Washko, Scientist Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–38J, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Oral Health Survey.

Dates: February 14–15, 1995.

Time: 9:00 a.m.

Place: Ramada Inn, Bethesda, MD 20814.

Contact Person: Dr. Philip Washko, Scientist Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–38J, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Temporomandibular Joint Implants.

Dates: April 5, 1995.

Time: 1:00 p.m.

Place: Natcher Building, NIH, Conf. Rm. 4AS–10.

Contact Person: Dr. H. George Hausch, Chief, Review Section, 4500 Center Drive, Natcher Building, Room 4AN–38J, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

The meetings will be closed in accordance with the provision set forth in secs. 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 fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: February 7, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–3588 Filed 2–13–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, certain authorities vested in the Secretary of Health and Human Services

under Section 1892 of the Social Security Act, as amended hereafter, pertaining to Offset of Medicare Payments to Individuals to Collect Past-Due Obligations Arising from Breach of Scholarship or Loan Contract.

The authorities hereby delegated are (1) the authority to negotiate, approve, and sign Medicare Offset Agreements, and (2) the authority to inform the Attorney General and the Inspector General of the Department of Health and Human Services when a scholarship or loan obligor has refused to enter into, or has breached, a Medicare Offset Agreement. All other authorities under Section 1892 have been delegated to, and remain with, the Administrator, Health Care Financing Administration.

I hereby ratify all actions, with respect to Medicare offsets, taken by the Assistant Secretary for Health or by any Public Health Service Official prior to the effective date of this delegation that, in effect, involved the exercise of either authority delegated herein.

This delegation became effective upon the date of signature.

Dated: January 31, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–3560 Filed 2–13–95; 8:45 am]

BILLING CODE 4160–15–M

Office of the Assistant Secretary for Health

Statement of Organization, Functions and Delegations of Authority

Part H, Public Health Service (PHS), Chapter HA, Office of the Assistant Secretary for Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 59 FR 52553–4, October 18, 1994) is further amended to abolish the *National AIDS Program Office (HAA),* Office of the Assistant Secretary for Health, and to establish a new *Office of HIV/AIDS Policy (HAH)* within the Office of Assistant Secretary for Health. These changes are being made to reflect the major responsibilities in AIDS policy and planning and a heightened role in collaborative coordination across the DHHS and with other Federal, Tribal, State, local and private organizations.

Office of the Assistant Secretary for Health

Under Section HA–10. Office of the Assistant Secretary for Health—Organization, delete item *1. National AIDS Program Office (HAA),* and following item *4. Office of Research Integrity (HAG),* add a new item *4. Office of HIV/AIDS Policy (HAH),* and renumber items 2 through 4 as 1 through 3.

Under Section H–20, Office of the Assistant Secretary for Health (HA)—Functions, delete the title and statement for the *National AIDS Programs Office (HAA).*

Following the statement for the *Office of Research Integrity (HAG),* add the following title and statement:

Office of HIV/AIDS Policy (HAH). Under the direction of the Assistant Secretary for Health, the Director of the Office of HIV/AIDS Policy: (1) Serves as the principal HIV/AIDS staff to the Assistant Secretary for Health; (2) facilitates and/or coordinates HIV/AIDS policy planning processes across the DHHS and the PHS and monitors progress toward achieving established goals; (3) provides PHS liaison with the Office of the National AIDS Policy Coordinator, Executive Office of the President; (4) identifies critical HIV/AIDS national, DHHS, and PHS policy issues, including inter-and intra-agency coordination needs, and advises on how to resolve the issues; (5) provides liaison with other Federal organizations, State and local entities, and non-governmental organizations involved in HIV/AIDS policy; (6) assists in the preparation of responses to inquiries related to HIV/AIDS activities as appropriate; (7) provides analytic and administrative support to DHHS and PHS HIV/AIDS advisory bodies, cross-Departmental; coordinating groups, and other subsidiary or independent task forces, work groups, or subgroups; (8) provides guidance on the cooperative dissemination and exchange of accurate scientific, prevention, and educational information and clinical guidelines with and between public health interest groups and professional and private sector organizations; (9) guides and promotes methods of dissemination and exchange of information to and among the public and, (10) reviews and makes recommendations on PHS agency budget requests and on departmental research, prevention, services, training, information, and infrastructure priorities as incorporated in planning documents or budget proposals.

Dated: February 6, 1995.

Donna M. Shalala,

Secretary.

[FR Doc. 95–3561 Filed 2–13–95; 8:45 am]

BILLING CODE 4160–17–M

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 59 FR 60997–8, November 29, 1994) is amended to reflect the reorganization of the John E. Fogarty International Center for Advanced Study in the Health Sciences (FIC) (HNF) as follows: (1) Establish the Office of International Science Policy and Analysis (HNF12); Office of Administrative Management and International Services (HNF13); Division of International relations (HNF2); Division of International Training and Research (HNF3); and the Division of International Advanced Studies (HNF4).

Section HN–B, Organization and Functions is amended as follows: (1) Under the heading John E. Fogarty International Center for Advanced Study in the Health Sciences (HNF), insert the following:

Office of International Science Policy and Analysis (HNF12)

(1) Advises the Director on the development, analysis, and evaluation of the Center's programs; (2) advises the Director on the development of strategic and operational plans and provides staff support to and liaison with program staff in coordinating, integrating, and articulating these plans; (3) advises the Director on international science policy issues; (4) develops the Center's plan for evaluating the focus and impact of ongoing programs and providing analytical reports of program trends and future forecasts; (5) maintain legislative liaison with the Office of Science Policy and Technology Transfer, NIH; (6) disseminates information on scientific and policy developments related to international research; and (7) plans and implements the Center's public affairs and publications activities.

Office of Administrative Management and International Services (HNF13)

(1) Advises the Director, Deputy Director, and Division/Office Directors on administrative matters affecting the planning and execution of Center programs; (2) plans, directs and conducts administrative management functions of the Center including financial management, human resources management, procurement, international travel, office services, and information resources management; (3)

interprets, analyzes, and implements administrative policies and directives affecting the Center and the NIH; (4) provides visa/passport services to the NIH and PHS; (5) plans and directs the provision of visa, technical, and logistic services in support of NIH programs for visiting foreign scientists; (6) provides policy and technical guidance on immigration regulations and legislation; and (7) maintains liaison with other government agencies involved in international activities.

Division of International Relations (HNF2)

(1) Fosters and facilitates international cooperation in biomedical research by: (a) Providing advice on the development of policies and procedures pertaining to international activities; (b) initiating and maintaining liaison with other U.S. agencies and embassies, foreign health ministries and embassies, and multilateral organizations; and (c) developing, coordinating, and administering international agreements in which NIH participates; (2) collects, analyzes, and disseminates information on the structure and conduct of biomedical research and related scientific programs and policies in foreign countries; (3) plans, directs, and administers the programs of the FIC–WHO Collaborating Center for Research and Training in Biomedicine, Special Foreign Currency and Joint Fund Programs, and health scientist exchange programs on behalf of the NIH; and (4) serves as the NIH focal point for the Department of State, and international components of Federal agencies, international organizations and foreign governments.

Division of International Training and Research (HNF3)

(1) Plans, directs, and administers a program of research grants, cooperative agreements, fellowships, and research contracts designed to support research and research training that: (a) Respond to known or anticipated global health threats; (b) advance science through international cooperation; and (c) develop human resources to meet global research challenges; (2) maintains an overview of the scientific and financial status of the Center's extramural programs; (3) provides advice on extramural research program administration and science in general to the Center Director, staff, and advisory groups; (4) collaborates and serves as liaison with other NIH extramural research and training programs, Federal and public agencies, universities, other centers of medical research, professional and lay organizations, and international organizations in identifying research and research training needs and developing programs to meet those needs; (5) maintains an awareness of related national and international research and research training efforts in program areas; and (6) supervises grants management, processing, and award activities.

Division of International Advanced Studies (HNF4)

(1) Plans and conducts advanced studies of national and international importance that are relevant to the programmatic and policy directions of the Center and that complement the research activities of the categorical institutes of the NIH; (2) plans, directs, and administers the Center's Scholars-in-Residence Program designed to foster collaborative research between scholars and intramural NIH scientists; (3) provides planning, management and program support for international conferences and workshops sponsored by the Center; and (4) provides information and advice on Division-supported activities to the Center's Director.

Dated: January 24, 1995.

Harold Varmus,

Director, NIH.

[FR Doc. 95–3587 Filed 2–13–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–95–3797; FR–3742–N–02]

Announcement of Funding Awards for Fair Housing Initiatives Program, Private Enforcement Initiative Special Project—Fiscal Year 1994

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Announcement of Funding Awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of FY 1994 funding awards made under the Fair Housing Initiatives Program (FHIP), Private Enforcement Initiative Special Project. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing.

FOR FURTHER INFORMATION CONTACT: Jacquelyn J. Shelton, Director, Office of Fair Housing Initiatives and Voluntary Programs, Room 5234, 451 Seventh Street, S.W., Washington, D.C. 20410–2000. Telephone number (202) 708–0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708–3216. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–19 (Fair Housing Act), charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate with State and local agencies administering fair housing laws and to cooperate with and render technical assistance to public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616 note, established the FHIP to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR Part 125.

The FHIP has four funding categories: the Administrative Enforcement Initiative, the Education and Outreach Initiative, the Private Enforcement Initiative, and the Fair Housing Organizations Initiative.

A Notice of Funding Availability (NOFA) announcing the availability of up to $2 million of FY 1994 and $500,000 of FY 1995 Fair Housing Initiatives Program funding for the Private Enforcement Initiative Special Project was published on August 9, 1994 (59 FR 40756).

The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications announced below, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipients of

funding awards. This information is provided in Appendix A to this document.

Dated: February 6, 1995.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

APPENDIX A.—SUCCESSFUL APPLICANTS FY 94 FHIP PRIVATE ENFORCEMENT INITIATIVE—SPECIAL PROJECT

Applicant name and address	Contact name & phone no.	Project focus (insurance or lending)	Region	Amount awarded
Open Housing Center, Inc., 594 Broadway, Suite 608 New York, New York 10012.	Sylvia Kramer, Executive Director, (212) 941–6101.	Insurance	2	$208,798.
National Fair Housing Alliance, 927 15th Street, NW, Suite 600, Washington, DC 20005.	Shanna L. Smith, Executive Director, (202) 898–1661.	Insurance	3	299,981.
Housing Opportunities Made Equal of Richmond, Inc., 1218 West Cary Street, Richmond, Virginia 23220.	Constance Chamberlin, Executive Director, (804) 354–0641.	Insurance	3	200,234.
National Fair Housing Alliance, 927 15th Street, NW, Suite 600, Washington, DC 2005.	Shanna L. Smith, Executive Director, (202) 898–1661.	Lending	3	127,133.
The Housing Advocates, Inc., 3214 Prospect Avenue, East, Cleveland, Ohio 55114.	Edward G. Kramer, Executive Director, (216) 391–5444.	Insurance	5	62,027 (approved for 297,052 if additional funds are available).
Housing Opportunities Made Equal, Committee of Cincinnati, Ohio, 2400 Reading Road, Room 109, Cincinnati, Ohio 45202.	Karla Irvine, Executive Director, (513) 721–4663.	Insurance	5	240,117.
Lawyers' Committee for Better Housing, Inc., 1263 W. Loyola, Chicago, Illinois 60626.	Julie J. Ansel, Executive Director, (312) 274–1111.	Insurance	5	155,830.
Toledo Fair Housing Center, 2116 Madison Avenue, Toledo, Ohio 43624–1131.	Lisa Rice-Coleman, Executive Director, (419) 243–6163.	Insurance	5	299,997.
Fair Housing Center of Metropolitan Detroit, 1249 Washington Blvd., Room 1312, Detroit, Michigan 48226.	Clifford C. Schrupp, FHC Executive Director, (313) 963–1274.	Insurance	5	151,400.
Metropolitan Milwaukee Fair Housing Council, 600 East Mason Street, Suite 200, Milwaukee, Wisconsin 53202.	William R. Tisdale, Executive Director, (414) 278–1240.	Insurance	5	283,044.
Leadership Council for Metropolitan Open Communities, 401 South State Street, Suite 860, Chicago, Illinois 60605.	Aurie A. Pennick, President, (312) 341–5678.	Insurance	5	192,733.
South Suburban Housing Center, 2057 Ridge Road, Homewood, Illinois 60430.	Cynthia A. McMurtrey, Director/Auditing & Compliance (708) 957–4674.	Lending	5	35,000.
Housing For All-Metro Denver Fair Housing Center, 2855 Tremont Place, Suite 205, Denver, Colorado 80205.	Kathryn Cheever, President, (303) 296–6949.	Insurance	8	94,000.
The Fair Housing Council of San Diego, 1744 Euclid Avenue, San Diego, California 92105.	Joyce James, President, (619) 363–3555.	Insurance	9	149,706.

[FR Doc. 95–3563 Filed 2–13–95; 8:45 am]

BILLING CODE 4210–28–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1076–0106), Washington, DC 20503, telephone 202–395–7340.

Title: Higher Education Grant Annual Report Form.

OMB approval number: 1076–0106.

Abstract: Information is collected to obtain facts on measurable program performance results with categorical data and ratios of program performance results with categorical data and ratios of supplementary funding programs consistent to stated goals and objectives.

Bureau form number: None.

Frequency: Annual.

Description of respondents: Tribal, tribal organization or Bureau program administrators responsible for collection of data used in measuring program effectiveness.

Estimated completion time: 3.0 hours.

Annual Responses: 300.

Annual burden hours: 900.

Bureau clearance officer: Gail Sheridan 202–208–2685.

Dated: October 19, 1994.

Reginald Rodriquez,

Chief, Branch of Post Secondary Education Programs.

[FR Doc. 95–3623 Filed 2–13–95; 8:45 am]

BILLING CODE 4310–02–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1076–0101), Washington, DC 20503, telephone 202–395–7340.

Title: Higher Education Grant Program Application Form
OMB approval number: 1076–0101
Abstract: Respondents supply identifying information and data for use in determining applicant eligibility, evidence of college admission and evidence of financial need as prepared by the college financial aid officer. Funds are provided to assist eligible Indian students pursuing their undergraduate baccalaureate degree at accrediated institutions of higher education.
Bureau form number: BIA 6237
Frequency: Annual
Description of respondents: Eligible Indian students pursuing an undergraduate baccalaureate degree.
Estimated completion time: 0:45 minutes
Annual responses: 33,250
Annual burden hours: 14,962
Bureau clearance officer: Gail Sheridan 202–208–2685.

Dated: October 18, 1994.

Reginald Rodriquez,

Chief, Branch of Post Secondary Education Programs.

[FR Doc. 95–3624 Filed 2–13–95; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[AK–962–1410–00–P]

Alaska; Notice for Publication AA–10988; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Section 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Chugach Alaska Corporation for 0.18 acre. The land involved are in the vicinity of Esther Bay, Alaska.

U.S. Survey No. 6918, Alaska

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the ANCHORAGE DAILY NEWS. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until March 16, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of Gulf Rim Adjudication.

[FR Doc. 95–3628 Filed 2–13–95; 8:45 am]

BILLING CODE 4310–JA–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32658]

Caldwell County Economic Development Commission—Acquisition Exemption—Norfolk Southern Railway Company

Caldwell County Economic Development Commission (CCEDC), a noncarrier, has filed a verified notice of exemption to acquire approximately 22.1 miles of railroad known as ''the HG Line'' owned by Norfolk Southern Railway Company (NS)[1] and currently operated by the Caldwell County Railroad Company (CCRC). The line extends from milepost HG–90.6[2] at Hickory, NC, to milepost HG–112.7 at Valmead (Lenoir), NC. CCRC will continue to serve as exclusive freight operator on the subject line, pursuant to a lease and operating agreement executed with CCEDC and pursuant to the exemption in *Caldwell County Railroad Company—Lease, Operation, and Acquisition Exemption—Norfolk Southern Railway Company*, Finance Docket No. 32584 (ICC served Oct. 19, 1994).

CCEDC simultaneously filed in Finance Docket No. 32659, a petition for exemption pursuant to 49 U.S.C. 10505 to exempt it from the provisions of Subtitle IV of Title 49 of the United States Code (the Interstate Commerce Act).

CCEDC expected to consummate acquisition of this rail line on January 26, 1995, at which time CCEDC's previously executed lease and operating agreement with CCRC would also become effective.

Any comments must be filed with the Commission and served on: Robert A. Wimbish, Rea, Cross & Auchincloss, Suite 420, 1920 N St., N.W., Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. 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.

Decided: February 6, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–3630 Filed 2–13–95; 8:45 am]

BILLING CODE 7035–01–P

[1] The acquisition will be pursuant to a donation and sale agreement, whereby NS will donate and sell the subject line to CCEDC.

[2] CCEDC's initially filed notice erroneously reported the Hickory, NC milepost as 90.0. By letter dated January 19, 1995, CCEDC's counsel corrected the milepost to read 90.6, for a total of 22.1 miles to be acquired from NS.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated July 19, 1994, and published in the **Federal Register** on July 28, 1994 (59 FR 38492), Dupont Pharmaceuticals, The Dupont Merck Pharmaceutical Company, 1000 Stewart Avenue, Garden City, New York 11530, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Oxycodone (9143)	II
Hydrocodone (9193)	II
Oxymorphone (9652)	II

No comments or objections have been received. Therefore, pursuant to Section

303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: February 6, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–3626 Filed 2–13–95; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on November 2, 1994, Nycomed Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration to be registered as an importer of Meperidine (9230), a basic class of controlled substance in Schedule II.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than March 16, 1995.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: February 6, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–3627 Filed 2–13–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of January and February, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations For Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,581; Arthur Frisch Co., Inc., Bronx, NY

TA–W–30,561; Nalleys' Fine Foods, A Div. of Curtice Burns Foods, Inc., Tacoma, WA

TA–W–30,511; Lockheed Fort Worth Co., Kingsley Field—Air Defense Site, Klamath, OR

TA–W–30,514; Somerville Paperboard Industries, Rochester, NY

TA–W–30,527; Esselte Pendaflex Corp., Oxford Furniture Div., Moonachie, NJ

TA–W–30,588; A.B. Chance Co., Parkersburg, WV

TA–W–30,531; Rexon Technology, Wayne, NJ

TA–W–30,562; Lockheed Corp., Abilene, TX

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–30,644; Energizer Power Systems, El Paso, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,516; Phillips Petroleum Co., CT, IT, Formerly CIT Bartlesville, OK

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,536; Digital Equipment Corp., Metairie, LA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,572; American Airlines, Inc., Maintenance & Engineering Center, Tulsa, OK

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,521; Xerox Corp., Manufacturing & Resource Team of Office Document Products, Office Document System Div., Cross Keys Office Park, Fairport, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,566; Woods Geophysical, Inc., Mt. Pleasant, MI

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,528; Container Tooling Corp., Neptune, NJ

Container Tooling Corp. is transferring production of can tooling from the subject plant in Neptune, NJ to an affiliated domestic facility.

TA–W–30,556; Dana Corp., Victor Division, Chicago, IL

The investigation revealed that production at the subject plant is being transferred domestically.

TA–W–30,529; BRC, A division of Bryce Corp (Formerly TBC Packing Corp.), Buffalo, NY

U.S. imports of polyethylene sacks and bags declined in the twelve month period of October 1993–September 1994 compared to the same period one year earlier.

TA–W–30,502; General Motors Corp., Delco Chassis Div., Bristol, CT

Sales and production of the subject plant increased in 1994 compared with 1993. Production of automobile bearings was transferred to other General Motors plants or outsourcing from other domestic plants.

TA–W–30,354; Xerox Corp., American Customer Operations, Rochester, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–30,645; Mitchell Energy Corp. (Columbus District), Columbus, OH

A certification was issued covering all workers separated on or after January 3, 1994.

TA–W–30,518; Hope Mfg., Inc., Sparta, TN

A certification was issued covering all workers separated on or after November 17, 1993.

TA–W–30,537; GEO E. Keith Co., Bridgewater, MA

A certification was issued covering all workers separated on or after November 23, 1993.

TA–W–30,463; AT&T Network Systems, Columbus Works, Columbus, OH

A certification was issued covering all workers separated on or after November 1, 1993.

TA–W–30,623; Marilena Fashions, Jersey City, NJ

A certification was issued covering all workers separated on or after December 16, 1993.

TA–W–30,571; Brand S Corp., DBA Brand S Corp., Livingston, MT

A certification was issued covering all workers separated on or after December 2, 1993.

TA–W–30,599; Acme United Corp., Bridgeport, CT

A certification was issued covering all workers separated on or after December 9, 1993.

TA–W–30544; Wirekraft Industries, Inc., Mishawaka, IN

A certification was issued covering all workers separated on or after November 21, 1993.

TA–W–30,636; Goebel Miniatures, Camarillo, CA

A certification was issued covering all workers separated on or after December 31, 1993.

TA–W–30,545; Nacona Boot Co., Nacona, TX

A certification was issued covering all workers separated on or after November 29, 1993.

TA–W–30,596; Ansell Pacific, Inc., Salem, OR

A certification was issued covering all workers separated on or after December 14, 1993.

TA–W–30,549; Franca Fashions, Inc., Hoboken, NJ

A certification was issued covering all workers separated on or after November 28, 1993.

TA–W–30,682; BASF Corp., Polyester Filament Dept., Lowland, TN

A certification was issued covering all workers separated on or after January 10, 1994.

TA–W–30,533; Texaco, Inc., Tulsa Office Building, Tulsa, OK

A certification was issued covering all workers separated on or after November 17, 1993.

TA–W–30,579; McCord Winn Textron, Winchester, MA

A certification was issued covering all workers separated on or after January 8, 1993.

TA–W–30,546; Arcadia Fashions, Paterson, NJ

A certification was issued covering all workers separated on or after November 22, 1993.

TA–W–30,558; Chronos Richardson, Inc., Wayne, NJ

A certification was issued covering all workers separated on or after November 21, 1993.

TA–W–30,576; David Stevens II, Penns Grove, NJ

A certification was issued covering all workers separated on or after December 9, 1993.

TA–W–30,543; Tultex Corp., Screenprint Operations, Martinsville, VA

A certification was issued covering all workers separated on or after November 16, 1993.

TA–W–30,515; Quadrum Telecommunications, Inc., Arab, AL

A certification was issued covering all workers separated on or after November 17, 1993.

TA–W–30,557; Red Kap Industries, Piedmont, AL

A certification was issued covering all workers separated on or after November 29, 1993.

TA–W–30,573; Dynatech Communications, Inc., Woodbridge, VA

A certification was issued covering all workers separated on or after December 7, 1993.

TA–W–30,676; Hasbro, Inc., Pawtucket, RI

TA–W–30,676A & B; Hasbro Toy Group, Pawtucket RI & Cincinnati, OH

TA–W–30,676C & D; Parker Brothers, Beverly & Salem, MA

TA–W–30,676E & F; Playskool Baby, Northvale, NJ & Easley, SC

TA–W–30,676G, H, I; Rhode Island Mfg, Pawtucket, RI, Central Falls, RI & West Warwick, RI

TA–W–30,676J, K; Milton Bradley, East Longmeadow, MA

TA–W–30,676L; Milton Bradley Wood Products, Fairfax, VT

A certification was issued covering all workers separated on or after October 24, 1993.

TA–W–30,550; Grace Energy Corp., Dallas, TX

A certification was issued covering all workers separated on or after December 18, 1994.

TA–W–30,550A & G; Grace Petroleum Corp., Oklahoma City, OK, Jackson, MS and Operating in the Following Other Locations: B; TX, C; AL, D; CO, E; MI, F; MT, H; NM, I; WY

A certification was issued covering all workers separated on or after August 21, 1994.

TA–W–30,554A, B & C; Private Line Group, Inc., Lyndhurst, NJ, Dadeville, AL, Franklin, GA and Bowman, GA

A certification was issued covering all workers separated on or after December 1, 1993.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents

summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of January and February, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof (including workers in any agricultural firm or appropriate subdivision thereof), have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(c) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

NAFTA–TAA–00320; Fenestra Corp., Erie, PA

The investigation revealed that criteria (3) and criteria (4) were not met. There was no shift in production from the subject facility to Mexico or Canada during the period under investigation, nor did the company import steel door and frames from Mexico or Canada.

NAFTA–TAA–00317; Nelson Yacht Corp., Snohomish, WA

The investigation revealed that criteria (1) was not met in conjection with the requirements of Section 506(b)(2) of the Act. The firm closed in March 1993 and all worker separations from the subject firm occurred prior to December 8, 1993, the earliest possible reachback date.

NAFTA–TAA–00310; Tennessee Valley Steel Corp., Harriman/Rockwood, TN

The investigation revealed that criteria (3) and criteria (4) were not met. There was no shift in production from the subject facility to Mexico or Canada during the period under investigation, nor did the company import steel from Mexico or Canada. Customers did not increase imports of steel products from Canada or Mexico during the periods under investigation.

NAFTA–TAA–00311; Indiana Sportswear, Clinton, IN

NAFTA–TAA–00311A; Columbus Sportswear, Columbus, IN

The investigation revealed that criteria (3) and criteria (4) were not met. Survey results revealed that customers did not import ladies jackets from Mexico or Canada during the periods under investigation. There was no shift in production from the subject facility to Mexico or Canada during the period under investigation, nor did the company import ladies jackets from Mexico or Canada.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–00318; Dover/ Parkersburg, Falls River, MA

A certification was issued covering all workers at Dover/Parkersburg located in Falls River, MA separated on or after December 8, 1993.

NAFTA–TAA–00319; Woodward Governor Co., Aircraft Controls Group, Stevens Point, WI

A certification was issued covering all workers of Woodward Governor Co., Aircraft Group, Aircraft Parts Mfg, Stevens Point, WI separated on or after December 8, 1993.

NAFTA–TAA–00321; General Imaging Technology (USA), Inc., Denver Plant, Arvada, CO

A certification was issued covering all workers of the Slitting Division of General Imaging Technology (USA), Inc., Denver, CO separated on or after December 8, 1993.

NAFTA–TAA–00315; Mobil Chemical Co., Films Div., Macedon, NY

A certification was issued covering all workers of Mobil Chemical Co's Films Division plant, located in Macedon, NY separated on or after December 8, 1993.

NAFTA–TAA–00316; Ansell Pacific, Inc., Pacific Dunlop, Inc., Salem, OR

A certification was issued covering all workers of Ansell Pacific, Inc., Salem, OR separated on or after December 20, 1993.

I hereby certify that the aforementioned determinations were issued during the months of January and February, 1995. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: February 7, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–3645 Filed 2–13–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,216]

AEG Transportation Systems; Pittsburgh, Pennsylvania; Revised Determination on Reconsideration

On January 24, 1995, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. The notice will soon be published in the **Federal Register.**

New findings on reconsideration show that the subject firm lost a major bid for the construction of a rapid transit project to a Japanese firm. The loss of this contract contributed importantly to the layoff of personnel in 1993 and 1994 and to decreased sales and production in 1994.

Other findings show decreased production in 1993 compared to 1992 and decreased sales in the first six months of 1994 compared to the same period in 1993. Average employment declined in 1993 compared to 1992 and in the first six months of 1994 compared to the same period in 1993.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that workers and former workers of AEG Transportation Systems, Inc., Pittsburgh, Pennsylvania were adversely affected by increased imports of articles that are like or directly competitive with transit vehicle systems and related equipment.

In accordance with the provisions of the Act, I make the following revised determination for workers of AEG Transportation Systems, Inc., in Pittsburgh, Pennsylvania.

All workers of AEG Transportation Systems, Inc., in Pittsburgh, Pennsylvania who became totally or partially separated from employment on or after August 4, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 2nd day of February 1995.

Victor J. Trunzo,

Program Director, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–3642 Filed 2–13–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,682]

BASF Corporation; Polyester Filament Department, Lowland, Tennessee; Revocation of Certification

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification for workers of the Polyester Filament Department of the subject firm on January 26, 1995. The Notice has not as yet been published in the **Federal Register**.

The Department amended an earlier certification for BASF Corporation (TA–W–30,360) to include the workers of the polyester filament department because they met all the worker group requirements for certification under the Trade Act.

Accordingly, the Department is revoking its certification under petition TA–W–30,682 effective this date because the polyester filament workers are covered under TA–W–30,360.

Signed at Washington, D.C., this 3rd day of February 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–3638 Filed 2–13–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,652]

The Coach Factory, Carlstadt, New Jersey; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 17, 1995, in response to a worker petition which was filed on January 17, 1995, on behalf of workers at The Coach Factory, Carlstadt, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 3rd day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–3640 Filed 2–13–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30, 354; TA–W–30, 354A; Texas et al.; TA–W–30, 354B]

Delhi Gas Pipeline Company; Headquartered in Dallas, Texas and Operating in the Following States, Texas et al.; Negative Determination Regarding Application of Reconsideration

After being granted a filing extension, one of the workers with congressional support, requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on November 14, 1994 and published in the **Federal Register** on December 9, 1994 (59 FR 63822).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers are engaged in natural gas transportation services via pipeline.

The findings show that the Delhi Gas Pipeline Company was established as a common carrier (pipeline) engaged in the transportation of natural gas for its affiliates; and as a common carrier, the subject firm does not own the natural gas shipped through its pipeline.

Access to Delhi's pipelines are open to all shippers on a nondiscriminatory basis. No single shipper can be granted unduly preferential treatment, and as such, Delhi has an ''arm's length'' relationship with its customers. Numerous other unaffiliated companies and individuals are shippers on this common carrier pipeline. Accordingly, Delhi provides a service. Other findings also show that sales increased in 1993 compared to 1992.

The findings show that some natural gas liquids are produced by Delhi; however, the amount of natural gas liquid revenue generated to total pipeline revenue is small.

Prices and profits are not worker group eligibility requirements for certification under the Trade Act. The Trade Act was not intended to provide TAA benefits to everyone who is in some way affected by foreign competition but only to those who produce an article and experienced a decline in sales or production and employment and an increase in imports of like or directly competitive products which ''contributed importantly'' to declines in sales or production and employment.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 3rd day of February 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance

[FR Doc. 95–3639 Filed 2–13–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,332]

INTERA Information Technologies, Inc., Denver, Colorado; Revised Determination on Reconsideration

On January 13, 1995, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on January 27, 1995 (60 FR 5438).

New findings on reconsideration show that the subject firm is engaged in operations related to the exploration and drilling for crude oil. Workers are engaged in exploration activities in the field for unaffiliated firms in the oil industry.

The findings show decreased revenues in 1994 compared to 1993 and substantial worker separations in 1994.

U.S. imports of crude oil and natural gas increased absolutely and relative to domestic shipments in the first eight months of 1994 compared to the same period in 1993.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers and former workers of Intera Information Technologies, Inc., in Denver, Colorado were adversely affected by increased imports of articles like or directly competitive with crude oil.

Accordingly, in accordance with the provisions of the Act, I make the following certification:

All workers of Intera Information Technologies, Inc., in Denver, Colorado who became totally or partially separated from employment on or after September 2, 1993

are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC., this 2nd day of February 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–3641 Filed 2–13–95; 8:45 am]

BILLING CODE 4510–30–M

BASF Corporation Lowland, TN; TA–W–30,360 Nylon Hosiery Department TA–W–30,360A Polyester Filament Department; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 7, 1994, applicable to all workers of the nylon hosiery department. The certification notice was published in the **Federal Register** on January 3, 1995 (60 FR 148).

The Department on its own motion, reviewed the certification for workers of the subject firm. The Department is amending the certification to include the workers of the polyester filament department of BASF Corporation in Lowland, Tennessee. The polyester filament workers met all the criteria for worker group certification under the Trade Act and were issued a certification (TA–W–30,682) on January 26, 1995 which has not as yet been published in the **Federal Register.**

Accordingly, the Department is revoking its certification (TA–W–30,682) for the polyester filament workers of BASF Corporation in Lowland, Tennessee.

The amended notice applicable to TA–W–30,360 is hereby issued as follows:

''All workers of BASF Corporation, Polyester Filament Department and the Nylon Hosiery Department, Lowland, Tennessee who became totally or partially separated from employment on or after September 19, 1993, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C., this 3rd day of February 1995.

Victor J. Trunzo,

Program Director, Policy, and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–3647 Filed 2–13–95; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act Allotments; Wagner-Peyser Act Preliminary Planning Estimates; Program Year (PY) 1995

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces States' Job Training Partnership Act (JTPA) allotments for Program Year (PY) 1995 (July 1, 1995-June 30, 1966) for JTPA Titles II–A, II–C, and III, and for the JTPA Title II–B Summer Youth Employment and Training Program in Calendar Year (CY) 1995; and preliminary planning estimates for public employment service activities under the Wagner-Peyser Act for PY 1995.

FOR FURTHER INFORMATION CONTACT: For JTPA allotments, contact, Mr. Donald Kulick, Deputy Administrator, Office of Job Training Programs, Room N4459, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: 202–219–6236. For Employment Service planning levels contact Mr. John Robinson, Director, U.S. Employment Service, Room N–4666, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: 202–219–5257. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL or Department) is announcing Job Training Partnership Act (JTPA) allotments for Program Year (PY) 1995 (July 1, 1995-June 30, 1996) for JTPA Titles II–A, II–C, and III, and for the Summer Youth Employment and Training Program in Calendar Year (CY) 1995 for JTPA Title II–B; and, in accord with Section 6 of the Wagner-Peyser Act, preliminary planning estimates for public employment service (ES) activities under the Wagner-Peyser Act for PY 1995. The allotments and estimates are based on the appropriations for DOL for Fiscal Year (FY) 1995.

Attached are lists of the allotments for PY 1995 for programs under JTPA Titles II–A, II–C, and III; a list of the allotments for the CY 1995 Summer Youth Employment and Training Program under Title II–B of JTPA; and a list of preliminary planning estimates for public employment service activities under the Wagner-Peyser Act. The PY 1995 allotments for Titles II–A, II–C, and III and the ES preliminary planning estimates, are based on the funds appropriated by the Department of Labor Appropriations Act, 1995, Public Law 103–333, for FY 1995.

The base allotments for Title II–B total $867,070,000. Included in these allotments are additional 1995 summer funds in the amount of $184,788,000 provided by Congress in the FY 1995 appropriation act. These fund were made available for obligation on July 1, 1995. The FY 1994 and FY 1995 funds available for the CY 1995 Summer Program will be issued separately through a Notice of Obligation (NOO).

These JTPA allotments will not be updated for subsequent unemployment data. The Employment Service preliminary estimates will be updated as final allotments to reflect CY 1994 data and published in the **Federal Register** at a later date.

Title II–A Allotments

Attachment I shows the PY 1995 JTPA Title II–A Adult Training Program allotments by State. For all States, Puerto Rico and the District of Columbia, the following data were used in computing the allotments:

—Data for areas of substantial unemployment (ASU) are averages for the 12-month period, July 1993 through June 1994.

—The number of excess unemployed individuals or the ASU excess (depending on which is higher) are averages for this same 12-month period.

—The economically disadvantaged adult data (age 22 to 72, excluding college students and military) are from the 1990 Census.

The allotments for the Insular Areas, including the Freely Associated States, are based on unemployment data from 1990 Census or, if not available, the most recent data available. A 90 percent relative share ''hold-harmless'' of the PY 1994 Title II–A allotments for these areas and a minimum allotment of $75,000 were also applied in determining the allotments.

Title II–A funds are to be distributed among designated service delivery areas (SDAs) according to the statutory formula contained in Section 202(b) of JTPA, as amended by Title VII, Miscellaneous Provisions, of the Job Training Reform Amendments of 1992. (This Title VII provides an interim allocation methodology which applies to the PY 1995 allotments.) This is the same formula that has been used in previous program years; however, prior to PY 1993 a different definition of ''economically disadvantaged'' was used.

In determining any necessary hold-harmless levels for SDAs, the States of Kentucky, Minnesota, Montana, and Wisconsin shall not include any additional funds provided for Rural Concentrated Employment Programs (RCEPs).

JTPA Title II–B Allotments

Attachment II shows the CY 1995 JTPA Title II–B Summer Youth Employment and Training Program allotments by State based on total available appropriations for CY 1995 of $867,070,000. The data used for these allotments are the same unemployment data as were used for Title II–A except that the data for the number for economically disadvantaged youth (age 16 to 21, excluding college students and military) from the 1990 Census was used.

For the Insular Areas and Native Americans, the allotments are based on the percentage of Title II–B funds each received during the previous summer.

Title II–B funds for the 1995 Summer Program are to be distributed among designated SDAs in accordance with the statutory formula contained in Section 252(b) of JTPA, as amended by Title VII, Miscellaneous Provisions, of the Job Training Reform Amendments of 1992. This Title VII provides an interim allocation methodology which applies to the PY 1995 allotments. The Title II–B formula is the same as for Title II–C. This is the same formula which was used in the previous program year.

In determining any necessary hold-harmless levels for SDAs, the State of Kentucky, Minnesota, Montana, and Wisconsin shall not include any additional funds provided for RCEPs.

JTPA Title II–C Allotments

Attachment III shows the PY 1995 JTPA Title II–C Youth Training Program allotments by State for a total appropriation of $598,682,000. The amount is composed entirely of PY 1995 formula funds. For all States, the Insular Areas, Puerto Rico, and the District of Columbia, the data used in computing the allotments are the same data as were used for Title II–B allotments.

The allotments for the Insular Areas are based on unemployment data from the 1990 census or, if not available, the most recent data available. A 90 percent relative share ''hold-harmless'' of the PY 1994 Title II–C allotments for those areas and a minimum allotment of $50,000 were also applied in determining the allotments.

JTPA Title III Allotments

Attachment IV shows the PY 1995 JTPA Title III Dislocated Worker Program allotments by State, for a total of $1,296,000,000. The total includes 80 percent allotted by formula to the States ($1,036,800,000), and 20 percent ($259,200,000) for the National Reserve, including funds allotted to the Insular Areas.

Title III formulas funds are to be distributed to State and substate grantees in accordance with the provisions in Section 302 (c) and (d) of JTPA, as amended.

Except for the Insular Areas, the unemployment data used for computing these allotments, relative numbers of unemployed and relative numbers of excess unemployed, are averages for the October 1993 through September 1994 period. Long-term unemployed data used were for CY 1993.

Allotments for the Insular Areas are based on the PY 1995 Title II–A allotments for these areas.

A reallotment of these published Title III formula amounts, as provided for by Section 303 of JTPA, as amended, will be based on completed program year expenditure reports submitted by the States and received by October 1, 1995. The Title III allotment for each State will be adjusted upward or downward, based on whether the State is eligible to share in reallotted funds or is subject to recapture of funds.

Wagner-Peyser Act Employment Service Preliminary Planning Estimates

Attachment V shows planning estimates which have been produced using the formula set forth at Section 6 of the Wagner-Peyser Act, 29 U.S.C. 49e. These preliminary estimates are based on averages for the most current 12 months ending September 1994 for each State's share of the civilian labor force (CLF) and unemployment. Final planning estimates will be issued based on CY 1994 data, as required by the Wagner-Peyser Act.

The total planning estimate includes $22,019,700, or 2.603 percent of the total amount available, which is being withheld from distribution to States to finance postage costs associated with the conduct of Employment Service business of 1995.

The Secretary of Labor has set aside 3 percent of the total available funds to assure that each State will have sufficient resources to maintain statewide employment services, as required under Section 6(b)(4) of the Wagner-Peyser Act. In accordance with this provision, $24,716,769 is set aside for administrative formula allocation. These setaside funds are included in the total planning estimate. Setaside funds are distributed in two steps to States which have lost in their relative share of resources from the prior year. In step one, States which have a CLF below one million and are below the median CLF density are maintained at 100 percent of their relative share of prior year resources. All remaining set-aside funds are distributed on a pro rata basis in step two to all other States losing in relative share from the prior year, but which do not meet the size and density criteria for step one.

Ten percent of the total sums allotted to each State shall be reserved for use by the Governor to provide performance incentives for public employment service offices, services for groups with special needs, and for the extra costs of exemplary models for delivering job services.

Signed at Washington, D.C., this 7th day of February, 1995.

Doug Ross,

Assistant Secretary of Labor for Employment and Training.

Attachments

BILLING CODE 4510–30–M

ATTACHMENT I

U.S. DEPARTMENT OF LABOR
EMPLOYMENT AND TRAINING ADMINISTRATION
PY 1995 JTPA TITLE II–A ALLOTMENTS

State	Dollars
Alabama	18,422,732
Alaska	2,837,523
Arizona	13,935,061
Arkansas	9,664,236
California	176,173,325
Colorado	9,930,813
Connecticut	10,156,627
Delaware	2,630,042
District of Columbia	3,654,842
Florida	53,192,656
Georgia	22,142,035
Hawaii	2,977,386
Idaho	3,194,169
Illinois	42,901,850
Indiana	15,399,204
Iowa	5,396,367
Kansas	6,345,185
Kentucky	14,745,934
Louisiana	24,378,762
Maine	5,345,984
Maryland	15,292,528
Massachusetts	23,469,898
Michigan	39,070,058
Minnesota	11,057,240
Mississippi	12,961,173
Missouri	17,412,714
Montana	3,158,989
Nebraska	2,630,042
Nevada	5,012,949
New Hampshire	3,850,939
New Jersey	29,934,546
New Mexico	7,024,514
New York	81,867,897
North Carolina	17,084,620
North Dakota	2,630,042
Ohio	38,727,805
Oklahoma	12,070,920
Oregon	12,167,986
Pennsylvania	43,523,589
Puerto Rico	43,537,073
Rhode Island	4,177,738
South Carolina	15,607,751
South Dakota	2,630,042
Tennessee	16,340,812
Texas	78,781,890
Utah	3,004,148
Vermont	2,630,042
Virginia	16,259,008
Washington	20,170,821
West Virginia	11,682,542
Wisconsin	12,191,704
Wyoming	2,630,042
American Samoa	203,076
Guam	515,941
Marshall Islands	431,326
Micronesia	643,072
Northern Marianas	172,306
Palau	131,468
Virgin Islands	699,016
TOTAL	1,054,813,000

ATTACHMENT II

U.S. DEPARTMENT OF LABOR
EMPLOYMENT AND TRAINING ADMINISTRATION
1995 SUMMER YOUTH PROGRAM FUND SOURCES

State	FY 1994	FY 1995	1995 SUMMER TOTAL
Alabama	11,671,729	3,242,960	14,914,689
Alaska	1,804,549	501,389	2,305,938
Arizona	9,088,809	2,525,302	11,614,111
Arkansas	5,999,821	1,667,035	7,666,856
California	114,766,133	31,887,476	146,653,609
Colorado	6,244,666	1,735,065	7,979,731
Connecticut	6,345,341	1,763,037	8,108,378
Delaware	1,662,675	461,970	2,124,645
District of Columbia	2,488,730	691,487	3,180,217
Florida	32,630,814	9,066,388	41,697,202
Georgia	14,237,469	3,955,844	18,193,313
Hawaii	1,733,907	481,761	2,215,668
Idaho	2,072,490	575,836	2,648,326
Illinois	27,354,483	7,600,373	34,954,856
Indiana	9,807,737	2,725,054	12,532,791
Iowa	3,268,434	908,126	4,176,560
Kansas	3,943,190	1,095,605	5,038,795
Kentucky	9,051,805	2,515,021	11,566,826
Louisiana	15,076,197	4,188,883	19,265,080
Maine	3,321,296	922,814	4,244,110
Maryland	9,482,037	2,634,559	12,116,596
Massachusetts	14,850,823	4,126,263	18,977,086
Michigan	24,728,268	6,870,686	31,598,954
Minnesota	7,014,842	1,949,056	8,963,898
Mississippi	8,044,189	2,235,057	10,279,246
Missouri	10,872,159	3,020,802	13,892,961
Montana	1,902,352	528,563	2,430,915
Nebraska	1,662,675	461,970	2,124,645
Nevada	3,160,671	878,184	4,038,855
New Hampshire	2,389,011	663,781	3,052,792
New Jersey	18,584,145	5,163,557	23,747,702
New Mexico	4,524,680	1,257,171	5,781,851
New York	49,501,454	13,753,852	63,255,306
North Carolina	10,656,925	2,960,999	13,617,924
North Dakota	1,662,675	461,970	2,124,645
Ohio	24,424,993	6,786,421	31,211,414
Oklahoma	7,502,792	2,084,632	9,587,424
Oregon	7,608,324	2,113,953	9,722,277
Pennsylvania	26,666,126	7,409,115	34,075,241
Puerto Rico	27,356,352	7,600,892	34,957,244
Rhode Island	2,560,557	711,444	3,272,001
South Carolina	9,893,885	2,748,990	12,642,875
South Dakota	1,662,675	461,970	2,124,645
Tennessee	10,125,155	2,813,248	12,938,403
Texas	52,108,839	14,478,307	66,587,146
Utah	2,012,812	559,255	2,572,067
Vermont	1,662,675	461,970	2,124,645
Virginia	10,319,683	2,867,297	13,186,980
Washington	12,890,602	3,581,621	16,472,223
West Virginia	7,310,420	2,031,181	9,341,601
Wisconsin	7,694,289	2,137,838	9,832,127
Wyoming	1,662,675	461,970	2,124,645
American Samoa	65,823	0	65,823
Guam	802,786	0	802,786
Marshall Islands	23,658	0	23,658
Micronesia	56,063	0	56,063
Northern Marianas	30,791	0	30,791
Palau	9,284	0	9,284
Virgin Islands	455,190	0	455,190
Native Americans	15,768,370	0	15,768,370
NATIONAL TOTAL	682,282,000	184,788,000	867,070,000

ATTACHMENT III

U.S. DEPARTMENT OF LABOR
EMPLOYMENT AND TRAINING ADMINISTRATION
PY 1995 JTPA TITLE II–C ALLOTMENTS

State	Dollars
Alabama	10,468,227
Alaska	1,619,747
Arizona	8,147,782
Arkansas	5,485,147
California	103,021,012
Colorado	5,599,580
Connecticut	5,728,605
Delaware	1,492,737
District of Columbia	2,049,797
Florida	29,277,384
Georgia	12,765,370
Hawaii	1,554,532
Idaho	1,859,197
Illinois	24,538,157
Indiana	8,807,095
Iowa	3,062,825
Kansas	3,535,570
Kentucky	8,097,118
Louisiana	13,836,695
Maine	2,981,560
Maryland	8,508,010
Massachusetts	13,320,850
Michigan	22,175,059
Minnesota	6,285,591
Mississippi	7,356,394
Missouri	9,750,098
Montana	1,694,114
Nebraska	1,492,737
Nevada	2,835,626
New Hampshire	2,157,799
New Jersey	16,682,628
New Mexico	4,055,632
New York	44,419,827
North Carolina	9,555,897
North Dakota	1,492,737
Ohio	21,907,320
Oklahoma	6,727,421
Oregon	6,825,615
Pennsylvania	23,922,944
Puerto Rico	24,530,823
Rhode Island	2,299,196
South Carolina	8,876,017
South Dakota	1,492,737
Tennessee	9,076,497
Texas	46,729,927
Utah	1,794,147
Vermont	1,492,737
Virginia	9,189,895
Washington	11,566,274
West Virginia	6,561,210
Wisconsin	6,898,320
Wyoming	1,492,737
American Samoa	115,260
Guam	292,833
Marshall Islands	244,809
Micronesia	364,990
Northern Marianas	97,796
Palau	74,617
Virgin Islands	396,742
TOTAL	598,682,000

ATTACHMENT IV

U.S. DEPARTMENT OF LABOR
EMPLOYMENT AND TRAINING ADMINISTRATION
PY 1995 JTPA TITLE III (EDWAA)
ALLOTMENT TO STATES

State	Dollars
Alabama	15,772,976
Alaska	3,302,151
Arizona	11,763,895
Arkansas	6,455,146
California	209,035,357
Colorado	8,595,294
Connecticut	12,064,733
Delaware	1,914,294
District of Columbia	3,993,677
Florida	55,165,165
Georgia	22,588,965
Hawaii	2,393,933
Idaho	2,743,202
Illinois	44,861,025
Indiana	13,108,199
Iowa	4,113,077
Kansas	6,565,365
Kentucky	9,462,170
Louisiana	19,530,166
Maine	6,526,340
Maryland	17,811,023
Massachusetts	25,736,954
Michigan	36,000,525
Minnesota	8,728,512
Mississippi	9,277,057
Missouri	14,653,229
Montana	2,091,916
Nebraska	1,418,367
Nevada	5,380,652
New Hampshire	3,680,092
New Jersey	39,375,796
New Mexico	5,200,368
New York	90,822,425
North Carolina	10,996,499
North Dakota	883,621
Ohio	39,386,139
Oklahoma	10,829,815
Oregon	11,295,052
Pennsylvania	47,436,948
Puerto Rico	28,646,133
Rhode Island	5,605,994
South Carolina	15,673,409
South Dakota	670,057
Tennessee	10,684,291
Texas	73,464,543
Utah	2,161,379
Vermont	1,441,075
Virginia	13,396,865
Washington	21,659,661
West Virginia	12,480,721
Wisconsin	8,533,975
Wyoming	1,421,777
American Samoa	200,139
Guam	508,478
Marshall Islands	425,087
Micronesia	633,771
Northern Marianas	169,814
Palau	129,566
Virgin Islands	688,905
National Reserve	256,444,240
TOTAL	1,296,000,000

BILLING CODE 4510–30–C

Attachment V

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION PRELIMINARY PY 1995 WAGNER-PEYSER ALLOTMENTS TO STATES

State	Basic formula	3% Distribution			Total allotment
		Step 1*	Step 2**	Total	
Alabama	11,665,318	0	186,693	186,693	11,852,011
Alaska	7,818,086	1,138,016	0	1,138,016	8,956,102
Arizona	10,962,428	0	0	0	10,962,428
Arkansas	6,585,108	0	224,468	224,468	6,809,576
California	100,509,042	0	0	0	100,509,042
Colorado	10,544,711	0	0	0	10,544,711
Connecticut	9,715,024	0	541,197	541,197	10,256,221
Delaware	2,232,068	0	69,207	69,207	2,301,275
District of Columbia	4,063,968	0	424,662	424,662	4,488,630
Florida	39,304,326	0	132,803	132,803	39,437,129
Georgia	19,950,543	0	0	0	19,950,543
Hawaii	3,190,448	0	0	0	3,190,448
Idaho	6,513,857	948,170	0	948,170	7,462,027
Illinois	33,911,766	0	1,835,084	1,835,084	35,746,850
Indiana	16,065,017	0	74,437	74,437	16,139,454
Iowa	7,698,247	0	386,124	386,124	8,084,371
Kansas	7,263,953	0	0	0	7,263,953
Kentucky	9,736,987	0	517,573	517,573	10,254,560
Louisiana	11,889,765	0	174,435	174,435	12,064,200
Maine	3,873,730	563,868	0	563,868	4,437,598
Maryland	14,835,112	0	141,556	141,556	14,976,668
Massachusetts	18,009,455	0	1,122,149	1,122,149	19,131,604
Michigan	27,543,280	0	1,135,703	1,135,703	28,678,983
Minnesota	12,897,151	0	266,746	266,746	13,163,897
Mississippi	7,142,550	0	203,927	203,927	7,346,477
Missouri	14,482,951	0	622,357	622,357	15,105,308
Montana	5,323,158	774,849	0	774,849	6,098,007
Nebraska	6,397,389	931,217	0	931,217	7,328,606
Nevada	5,174,670	753,235	0	753,235	5,927,905
New Hampshire	3,350,553	0	274,927	274,927	3,625,480
New Jersey	23,789,340	0	370,650	370,650	24,159,990
New Mexico	5,973,519	869,517	0	869,517	6,843,036
New York	52,000,890	0	815,469	815,469	52,816,359
North Carolina	18,488,752	0	489,652	489,652	18,978,404
North Dakota	5,420,567	789,028	0	789,028	6,209,595
Ohio	31,170,198	0	601,116	601,116	31,771,314
Oklahoma	9,574,365	0	1,000,468	1,000,468	10,574,833
Oregon	9,290,917	0	60,694	60,694	9,351,611
Pennsylvania	33,842,741	0	994,023	994,023	34,836,764
Puerto Rico	10,083,046	0	282,584	282,584	10,365,630
Rhode Island	3,090,997	0	114,522	114,522	3,205,519
South Carolina	10,630,355	0	241,416	241,416	10,871,771
South Dakota	5,009,850	729,244	0	729,244	5,739,094
Tennessee	13,907,340	0	51,315	51,315	13,958,655
Texas	54,787,361	0	0	0	54,787,361
Utah	10,957,150	1,594,944	0	1,594,944	12,552,094
Vermont	2,346,901	341,619	0	341,619	2,688,520
Virginia	18,190,693	0	216,196	216,196	18,406,889
Washington	15,743,889	0	310,434	310,434	16,054,323
West Virginia	5,734,268	834,692	0	834,692	6,568,960
Wisconsin	14,596,482	0	0	0	14,596,482
Wyoming	3,886,885	565,783	0	565,783	4,452,668
Formula Total	797,167,167	10,834,182	13,882,587	24,716,769	821,883,936
Guam	385,518	0	0	0	385,518
Virgin Islands	1,622,846	0	0	0	1,622,846
Indicia Postage	22,019,700	0	0	0	22,019,700
National Total	821,195,231	10,834,182	13,882,587	24,716,769	845,912,000

*Funds are allocated to the 13 States whose relative share decreased from PY 1994 to the PY 1995 basic formula amount and which have a Civilian Labor Force (CLF) below one million and are below the median CLF density. These States are held harmless at 100% of their PY 1994 relative share.

**The balance of the 3% funds are distributed to the remaining 31 States losing in relative share from PY 1994 to their PY 1995 total allotment amount.

[FR Doc. 95–3544 Filed 2–13–95; 8:45 am]
BILLING CODE 4510–30–M

Footwear Management Company; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In the matter of NAFTA—00252 Tony Lama Division, El Paso, TX; NAFTA—00252A Justin Boot Company, Fort Worth, TX; NAFTA—00252B Justin Boot Company, Cassville, MO; NAFTA—00252C Nacona Boot Company, Nacona, TX; NAFTA—00252D Justin Boot Company, Sarcoxie, MO; NAFTA—00252E Justin Boot Company, Carthage, MO

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on November 14, 1994, applicable to all workers of the subject firm in El Paso, Texas.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New investigation findings show that the production at Justin Boot Company in Sarcoxie, Missouri and Carthage, Missouri is integrated with the production at Justin Boot Company's plants in Fort Worth, Texas and Cassville, Missouri whose workers are certified by an amendment dated December 21, 1994 to the subject certification. The amendment was published in the **Federal Register** on January 4, 1995 (60 FR 482).

New findings show that sales, production and employment declined sharply at the Justin Boot Company's plants in Sarcoxie, Missouri and Carthage, Missouri in 1993 and 1994.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to NAFTA—00252 is hereby issued as follows:

All workers of the Tony Lama Division of Footwear Management Company, located in El Paso, Texas and all workers of the Justin Boot Company of Footwear Management Company in Fort Worth, Texas; Cassville, Missouri; Sarcoxie, Missouri and Carthage, Missouri and the Nacona Boot Company in Nacona, Texas who became totally or partially separated from employment on or after December 8, 1993 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, D.C., this 6th day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–3646 Filed 2–13–95; 8:45 am]
BILLING CODE 4510–30–M

[NAFTA–00325]

Regency Vegetable House Naples, Florida; Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC (2273), an investigation was initiated on January 9, 1995 in response to a petition filed on behalf of workers at Regency Vegetable House in Naples, Florida. The investigation revealed that workers of Regency Vegetable House were separated in June 1994 when production ceased and that the firm packaged and sold vegetables to substantially the same customers as Regency Packing Company (NAFTA–TAA–00227). On January 31, 1995 an amendment was made to NAFTA–TAA–00227 to include all workers of Regency Vegetable House in Naples, Florida. Because the subject workers have been included in the amendment certification of NAFTA–TAA–00227, further information in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 1st day of February 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–3643 Filed 2–13–95; 8:45 am]
BILLING CODE 4510–30–M

Occupational Safety and Health Administration

Advisory Committee; Establishment

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of establishment of Maritime Advisory Committee for Occupational Safety and Health (MACOSH).

SUMMARY: The Secretary of Labor has determined that it is in the public interest to establish an advisory committee to advise the Assistant Secretary for the Occupational Safety and Health Administration (OSHA) on issues relating to the delivery of occupational safety and health programs, policies, and standards in the maritime industries of the United States. The committee will provide a collective expertise not otherwise available to the Secretary to address the complex and sensitive issues involved.

DATE: Comments must be received on or before March 1, 1995.

ADDRESSES: Any written comments in response to this notice should be sent, in quadruplicate, to the following address: OSHA, Office of Maritime Standards, Room N–3621, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (202) 219–7234, fax (202) 219–7477.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Liberatore, Director, OSHA Office of Maritime Standards, Room N–3621, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (202) 219–7234, FAX (202) 219–7477.

SUPPLEMENTARY INFORMATION: MACOSH is intended to address the concerns of the entire maritime community, focusing on the shipyard and marine cargo (longshoring) handling industries. This committee will continue the efforts of the previously chartered Shipyard Employment Standards Advisory Committee (SESAC) as well as provide a more focused forum of ongoing discussions with the marine cargo handling community. The specific objectives of this committee will be to make recommendations on issues related to: (1) reducing injuries and illnesses in the maritime industries, (2) improving OSHA outreach and training programs through the use of innovative partnerships, and (3) expediting the development and promulgation of OSHA standards.

Background

Establishment of this advisory committee will enable OSHA to be responsive to the uniquenesss of industries that have suffered economically as a result of any changes in the global market. This action is consistent with the President's initiative to make the U.S. shipyard and cargo handling industries competitive in the worldwide community. Furthermore, this committee will be able to focus on the resolution of those controversial issues, particularly those with international implications, that have impact in the shipyard and cargo handling communities. This committee will address the maritime community's

concerns that will result in: streamlined standards promulgation, better focused enforcement efforts, and extended and improved outreach and training initiatives.

In accordance with the provisions of the Occupational Safety and Health Act of 1970 (OSH Act) and the Federal Advisory Committee Act (FACA), and after consultation with the General Services Administration, the Secretary of Labor has determined that the establishment of a short-term advisory committee to address the complexities of the maritime—shipyard and longshoring—community is essential to the conduct of Agency business and in the public interest.

The committee will be composed of approximately 15 members who will be selected to represent the divergent interests of the maritime community. The makeup of the membership shall comply with Section 7(b) of the OSH Act which requires the following: at least one member who is a designee of the Secretary of Health and Human Services; at least one designee of a State safety and health agency; and equal numbers of representatives of employees and employers, respectively. Other members will be selected based on their knowledge and experience to include representatives from professional and other governmental organizations with specific maritime responsibilities. In accordance with Section 2(c) of FACA, the committee will be ''balanced in membership and in terms of point of view and functions * * *'' The Agency intends that this committee provide a comprehensive representation of the maritime community and have the opportunity to offer recommendations on safety and health initiatives that would be considered as part of a integrated U.S. maritime policy.

MACOSH will function solely as an advisory body and in compliance with the provisions of the FACA. In accordance with FACA, its charter will be filed with the appropriate committees of Congress.

Meetings of the committee will be announced in the **Federal Register** and are open to the public.

Interested persons are invited to submit comments regarding the establishment of the committee to Larry Liberatore, Director, Office of Maritime Standards, U.S. Department of Labor, Room N–2625, 200 Constitution Ave., NW, Washington, D.C. 20210; Telephone (202) 219–7234, fax (202) 219–7477.

With this notice I am establishing the Maritime Advisory Committee for Occupational Safety and Health under Section 7(b) of the OSH Act and the FACA to address occupational safety and health issues unique to maritime employment.

Signed at Washington, D.C. this 8th day of February 1995.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 95–3644 Filed 2–13–95; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Public Partnership Advisory Panel (Local Arts Agencies Section) to the National Council on the Arts will be held on March 16–17, 1995. The panel will meet from 8:30 a.m. to 6:00 p.m. on March 16 and from 9:00 a.m. to 12:00 p.m. on March 17 in Room M–14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

The entire meeting will be open to the public on a space available basis for application review.

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 202/682–5433.

Dated: February 8, 1995.

Yvonne M. Sabine,

Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 95–3564 Filed 2–13–95; 8:45 am]

BILLING CODE 7537–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35341; File Nos. SR–AMEX–94–59; SR–CBOE–94–49; SR–CHX–94–27; SR–MSRB–94–17; SR–NASD–94–72; SR–NYSE–94–43; SR–PSE–94–35; and SR–PHLX–94–52]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the American Stock Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., Municipal Securities Rulemaking Board, National Association of Securities Dealers, Inc., New York Stock Exchange, Inc., Pacific Stock Exchange Inc., and Philadelphia Stock Exchange, Inc., Relating to a Continuing Education Requirement for Registered Persons

February 8, 1995.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] on November 30 and December 1, 5, 7, 12, 13, and 14, 1994, the Chicago Stock Exchange, Incorporated (''CHX''), the Chicago Board Options Exchange, Incorporated (''CBOE''), the New York Stock Exchange, Inc. (''NYSE''), the National Association of Securities Dealers, Inc. (''NASD''), the Municipal Securities Rulemaking Board (''MSRB'') and the Pacific Stock Exchange Incorporated (''PSE''), the American Stock Exchange, Inc. (''AMEX''), and the Philadelphia Stock Exchange, Inc. (''PHLX''), respectively (''Self-Regulatory Organizations'' or ''SROs''), submitted to the Securities and Exchange Commission (''Commission'' or ''SEC'') proposed rule changes to establish a formal, two-part continuing education program for securities industry professionals. This program includes a Regulatory Element requiring uniform, periodic training in regulatory matters, and a Firm Element requiring members[3] to maintain ongoing programs to keep their registered persons[4] up-to-date on job and product related subjects.

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] As used herein, the term ''members'' refers to: members and member organizations when used with reference to the AMEX, CBOE, CHX, NYSE, and PSE; members, member organizations, participants, and participant organizations when used with reference to the PHLX; brokers, dealers, and municipal securities dealers when used with reference to the MSRB; and members when used with reference to the NASD.

[4] For purposes of the proposed rules, the term ''registered person'' means any person required to be registered under the rules of the applicable SRO,

The SROs' proposals were published for comment in the **Federal Register** on December 20, 1994.[5] Two comments were received, and are discussed below. On January 30, and 31 and February 1, and 2, 1995, the NASD, CHX, CBOE, MSRB, PSE, AMEX, NYSE, and PHLX each filed Amendment No. 1 to their respective proposals.[6] These amendments made a variety of non-substantive, clarifying changes to the proposals and are incorporated into the discussion below.[7] This order approves the SROs' proposals, including all amendments made thereto.

II. Description of Proposals

The proposed rule changes adopt uniform enabling rules for the implementation of a continuing education program for the securities industry.

A. Background

In May 1993, a self-regulatory organization task force (''Task Force'') was formed by the AMEX, CBOE, MSRB, NASD, NYSE, and PHLX, which also included 12 representatives from a wide range of broker-dealer firms, to study the continuing education needs of the securities industry. In September 1993, the Task Force issued a report recommending a formal two-part continuing education program that would require uniform, industry-wide, periodic training for registered persons in regulatory matters and ongoing training programs conducted by firms to keep their employees updated on job and product-related subjects. The Task Force also recommended that a permanent Council on Continuing Education, composed of broker-dealer and SRO representatives, be formed to develop the content and provide ongoing maintenance of the continuing education program. Pursuant to this recommendation, the Securities Industry/Regulatory Council on Continuing Education (''Council'') was formed in September 1993, with representatives from six SROs and thirteen broker-dealers.

After studying the recommendations of the Council, the SROs participating in the Council submitted proposed rule changes with the Commission to adopt continuing education requirements. The proposed rule changes could codify the Task Force's recommendations, allow uniform implementation of the continuing education program, and provide a means for the SROs to monitor and enforce the program's requirements.

B. The Regulatory Element

The Regulatory Element requires uniform, periodic training in a variety of regulatory subjects. It provides that registered persons, unless exempt, must complete a prescribed training program after their second, fifth, and tenth registration anniversary dates.[8] The Regulatory Element will not apply to registered persons whose activities are limited solely to the transaction of business on the floor of a national securities exchange with members or registered broker-dealers.[9] The Regulatory Element also will not apply to persons registered for more than ten years as of the effective date of the rule, unless such persons become subject to the re-entry provisions described below. Persons registered for ten years or less as of the effective date of the rule will be required to satisfy the Regulatory Element and complete the computer-based training program after the occurrence of the next relevant registration anniversary date and on any applicable registration anniversary date(s) thereafter.[10]

The Regulatory Element will be administered using computer-based interactive training techniques and will consist of standardized subject matters covering compliance, ethics, and sales practice issues, among other subjects. Failure to complete the program within prescribed time-frames (*i.e.,* within 120 days after the occurrence of the applicable registration anniversary date, or as otherwise determined by the SROs) will result in a person's registration being deemed inactive and that person being prohibited from performing the functions of a registered person until such time as the person has completed the program. The applicable SRO will terminate administratively the registration of anyone who is inactive for two years, provided that upon application and a showing of good cause, the SRO may allow a registered person additional time to satisfy the program requirements.[11]

Unless otherwise determined by a self-regulatory organization, a registered person, including anyone who has completed all or part of the Regulatory Element of the program or who meets the exemption for persons registered more than ten years, will be required to re-enter the Regulatory Element and satisfy all of its requirements in the event such person:

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including members and registered representatives, but does not include any person whose activities are limited solely to the transaction of business on the floor of a national securities exchange with members or registered broker-dealers. When used with reference to the MSRB, however, the term ''registered person'' means any person registered with the appropriate enforcement authority as a municipal securities representative, municipal securities principal, municipal securities sales principal, or financial and operations principal pursuant to MSRB rule G–3.

[5] Securities Exchange Act Release No. 35102 (December 15, 1994), 59 FR 65563 (December 20, 1994).

[6] See letters from Craig L. Landauer, Associate General Counsel, NASD, to Mark P. Barraccca, Branch Chief, Division of Market Regulation (''Division''), SEC, dated January 19, 1995, and Francois Mazur, Attorney, Division, SEC, dated January 30, 1995 (''NASD Amendment No. 1''); letter from David T. Rusoff, Foley & Lardner, to Francois Mazur, Attorney, Division, SEC, dated January 30, 1995 (''CHX Amendment No. 1''); letter from Arthur B. Reinstein, Senior Attorney, CBOE, to Holly Smith, Associate Director, Division, SEC, dated January 31, 1995 (''CBOE Amendment No. 1''); letter from Ronald W. Smith, Legal Associate, MSRB, to Francois Mazur, Attorney, Division, SEC, dated February 1, 1995 (''MSRB Amendment No. 1''); letter from Michael D. Pierson, Senior Attorney, PSE, to Francois Mazur, Attorney, Division, SEC, dated February 1, 1995 (''PSE Amendment No. 1''); letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, AMEX,to Glen Barrentine, Team Leader, Division, SEC, dated February 1, 1995 (''AMEX Amendment No. 1''); letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Francois Mazur, Attorney, Division, SEC, dated February 1, 1995 (''NYSE Amendment No. 1''); and letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, PHLX, to Glen Barrentine, Team Leader, Division, SEC, dated February 2, 1995 (''PHLX Amendment No. 1'').

[7] Among other things, the SROs' Amendments No. 1 made conforming changes to clarify the wording of the re-entry provisions of the rule proposals.

[8] Any registered person who has terminated his or her association with a member and who, within two years of the date of termination, becomes reassociated in a registered capacity with a member, would be required to complete the training program at such intervals (two, five, and ten years) as would apply based upon the individuals' initial registration anniversary date rather than the date of reassociation in a registered capacity. In the event a non-associated person's second, fifth, or tenth anniversary date passes without such individual completing the appropriate phase of the training program on a timely basis, that person would be required to complete such phase prior to becoming reassociated in a registered capacity.

[9] Amendments No. 1 as filed by the NYSE, AMEX, CBOE, CHX, PSE, and PHLX revised the language of the proposal to clarify that the foregoing exemption covers non-member registered persons as well as registered persons who are members. See *supra* note 6.

[10] As a result, a person whose tenth year anniversary date falls on the implementation date of the continuing education requirement would have to participate in the Regulatory Element within 120 days of that date. Alternatively, a person registered more than ten years on the implementation date, and not subject to a disciplinary action within the last ten years, would not have to participate in the Regulatory Element.

[11] Anyone administratively terminated must requalify by taking the appropriate exam (*e.g.,* the General Securities Registered Representative Examination or ''Series 7'') before such person's registration could be reactivated. The Commission recently approved the use of a revised Series 7 examination. *See* Securities Exchange Act Release Nos. 35021 (November 29, 1994), 59 FR 62768 (December 6, 1994) (approving PHLX proposal), and 34853 (October 18, 1994), 59 FR 53694 (October 25, 1994) (approving NYSE proposal).

1. because subject to any statutory disqualification as defined in Section 3(a)(39) of the Act; [12]

2. becomes subject to suspension or to the imposition of a fine of $5,000 or more for violation of any provision of any securities law or regulation; or any agreement with, or rule or standard of conduct of, any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or

3. is ordered as a sanction in a disciplinary action to re-enter the continuing education program by any securities governmental agency or securities self-regulatory organization.[13]

Re-entry begins with initial participation within 120 days of the registered person become subject to the statutory disqualification, or the disciplinary action becoming final, and on three additional occasions thereafter, at intervals of two, five, and ten years after re-entry.[14] Although the re-entry provision applies notwithstanding that a registered person has completed all or part of the program requirements based on length of time as a registered person or completion of ten years of participation in the program, it does not apply any registered person whose activities are limited solely to the transaction of business on the floor with the registered persons.[15]

C. The Firm Element

To satisfy the Firm Element of the program, SRO members are required to develop and administer training programs to enhance the knowledge, skills, and professionalism of their registered sales, trading, and investment banking personnel who have direct contact with customers, and for the immediate supervisors of such persons. Members must prepare training plans that take into consideration the organization's size, organizational structure, scope of business activities, and regulatory developments. In addition, training plans should take advantage of the feedback that will be generated from the Regulatory Element regarding the performance of covered persons. At a minimum, programs used to implement a member's training plan must be appropriate for the business and associated risk factors, suitability and sales practice considerations, and applicable regulatory requirements, of the securities products offered by the member.

Members will be required to review and, if necessary, update their training plans annually. The SROs may require their members, either individually or as part of a group, to provide specific training in any areas the SROs deem necessary. Persons subject to the training plan will have an affirmative obligation to participate in the programs identified by the member. Accordingly, members will be required to maintain records documenting the content of their training programs and the completion of the program by registered persons covered under the plan.

The SROs will not pre-approve training materials and programs developed by members or providers. The SROs will, however, communicate regularly with members regarding their expectations for the content of training programs. As the program evolves, it is expected that educational standards will be defined by the SROs for products and services where heightened regulatory concerns exist.

D. Effective Date

The effective date for the Regulatory Element portion of the program is July 1, 1995. Any person registered ten years or less as of the effective date shall participate initially within 120 days after the occurrence of such person's second, fifth, or tenth registration anniversary date, whichever anniversary date first applies. The SROs intend that the requirements of the Firm Element be implemented in two steps under which members will be required to have completed their Firm Element plans by July 1995, with actual implementation of the plans no later than January, 1996.

III. Comments Received by the Commission

The Commission received two comment letters regarding the SROs' proposals, one from the Boston Stock Exchange (''BSE''),[16] and the other from the Certified Financial Planner Board of Standards, Inc. (''CFPBS'').[17] The BSE supports the SROs' proposals and believes that implementation of the continuing education program will elevate the quality of the securities markets and increase the level of service and protection afforded investors.

The CFPBS is concerned that certain requirements of the Firm Element could impose continuing education requirements beyond those currently imposed by the CFPBS upon its licensees. The CFPBS would like the continuing education requirements proposed by the SROs to be completely reciprocal with those of the CFPBS.

While the Commission is sympathetic to the concerns of the CFPBS, it believes that the specialized knowledge expected of individuals who are licensed to sell securities warrant the imposition by the SROs of educational requirements that exceed those required by the CFPBS of its licensees.

IV. Comments Solicited By the SROs

On August 15, 1994, the NASD published Special Notice to Members (''NTM'') 94–59 to request comment regarding the NASD's draft rules to create a mandated continuing education program for the securities industry. thirty-three comment letters were received in response, of which five opposed the proposal, and the remaining commenters either expressed support for, or were not opposed to, the proposal. In addition, on August 15, 1994, the MSRB published its proposed Continuing Education Requirement, Rule G–3, and subsequently received five comment letters.[18] The NYSE received one comment letter.

A. Comments Regarding the Regulatory Element

Several commenters expressed concern about certain provisions of the draft rules. These concerns include a perceived ambiguity regarding when registered persons must participate in the Regulatory Element; the effects of inactive status and how to reactivate registration; and the apparent ability of the SEC and the SROs arbitrarily to mandate re-entry into the Regulatory Element. The SROs subsequently addressed these concerns in the

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[12] 15 U.S.C. § 78c(a)(39) (1988 & Supp. 1993).

[13] Amendment No. 1 as filed by the SROs revised the language of the proposal to provide that an order to re-enter the continuing education program may be made by any securities governmental agency or securities self-regulatory organization. Previously, the proposal provided that such an order was to be made only by the ''Commission, any securities self-regulatory organization or any state securities agency.'' See *supra* note 6.

[14] Amendment No. 1 as filed by the SROs revised the language of the proposal to clarify that the 120 day period would start to run upon a registered person becoming subject to a statutory disqualification as well as within 120 days of a disciplinary action being final. *Id.*

[15] *Id.*

[16] See letter from John I. Fitzgerald, Executive Vice President, Legal Affairs and Trading Services, BSE, to Jonathan G. Katz, Secretary, SEC, dated January 25, 1995.

[17] See letter from Robert P. Goss, CFP, Executive Director, CFPBS, to Secretary, SEC, dated January 4, 1995. The CFPBS establishes qualifications for initial professional certification that include education, examination, experience, and ethics requirements. In addition, it develops and administers continuing post-certification requirements and disciplinary procedures for its licensees. The CFPBS licenses nearly 30,000 persons in the United States, of whom approximately 18,000 are licensed to sell securities.

[18] MSRB Reports, Vol. 14, No. 4 (August 15, 1994).

proposals they filed with the Commission.[19]

Other concerns were raised with respect to the Regulatory Element, including its cost and focus (some found its scope too broad, others too narrow). Concern also was expressed that the re-entry provision's disciplinary fine threshold was ambiguous as written and could be unfair in application. Other commenters focused on the statistics to be generated by the Regulatory Element. Specifically, they were concerned about the types of statistics that would be available, and the intended and acceptable uses of such statistics.

Several commenters were concerned that the Regulatory Element would only be administered at NASD operated testing centers. Suggested alternatives included administering the Regulatory Element at firms, subject to appropriate controls, and reliance on third party interactive programs similar to those provided to the futures industry.

One commenter suggested that the securities industry model the Regulatory Element after state insurance continuing education programs, in which the licensing authority imposes the regulatory requirement directly on the individual, rather than on the firm. Another suggestion was that the Central Registration Depository (''CRD'')[20] help firms comply with the Regulatory Element. Specifically, CRD could be used by firms to determine the length of service of their registered persons and to identify those that would be subject to the Regulatory Element in each of the next few years.

B. Comments Regarding the Firm Element

A concern expressed by several commenters regarding the Firm Element was the cost it will impose on smaller firms. To mitigate this effect, it was suggested that the SROs prepare and administer training programs; provide subsidies to smaller firms to help them comply with the Firm Element; or that a video satellite program be created that would enable firms to secure qualified speakers, and include material that would comply with the Firm Element.

Several commenters stated that the standards for the Firm Element are too vague to allow firms to ensure proper compliance. Some commenters suggested that the Firm Element focus on suitability, and that some form of pre-approval be provided regarding the contents of a firm's program. Another commenter questioned the usefulness of feedback from the Regulatory Element in developing an appropriate Firm Element. Concern also was expressed regarding the apparent authority of an SRO arbitrarily to prescribe specific training for a member firm. Finally, there was uncertainty regarding those who would be deemed ''covered persons.''

C. Response to Comments

In their filings with the Commission, the SROs addressed certain of the commenters' concerns by making three technical changes to the Regulatory Element portion of the rules as originally drafted. First, the SROs revised the rules to state clearly that registered persons must participate in the Regulatory Element on three occasions: after the occurrence of their second, fifth, and tenth registration anniversary dates. Second, the SROs expanded the provision concerning failure to complete the Regulatory Element to state that a registration that is inactive for a period of two calendar years would be terminated administratively, and that a person whose registration is so terminated must requalify by taking the appropriate examination, before such person's registration could be reactivated. Third, the SROs revised the re-entry provision of the Regulatory Element to clarify that a securities governmental agency or securities SRO could only require re-entry into the program in connection with a sanction in a disciplinary action. This change is meant to address the concerns of those commenting on the due process issues that could arise if regulatory authorities were able to mandate re-entry arbitrarily.

In response to comments received, the Council has stated that the CRD system will be used to track and communicate anniversary dates and evidence of completion of the Regulatory Element. The Regulatory Element's computer based systems will also capture, store, and analyze data that will indicate who took the training, when, and where, as well as other information.

V. Discussion

The Commission believes that the SROs' proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, national securities associations, and the MSRB and, in particular, the respective requirements of Sections 6(b)(5), 15A(b)(6), and 15B(b)(2)(C) of the Act.[21] Sections 6(b)(5), 15A(b)(6), and 15B(b)(2)(C) require, among other things, that the rules of an exchange, an association, or the MSRB, respectively, be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Commission further believes that the proposed rule changes also are consistent with the respective provisions of Sections 6(c)(3)(B), 15A(g)(3)(A), and 15B(b)(2)(A) of the Act,[22] each of which makes it the responsibility of an exchange, an association, or the MSRB to prescribe standards of training, experience and competence for persons associated with SRO members.

The Commission also believes that the proposed rule change is consistent with the purposes underlying Section 15(b)(7) of the Act,[23] which generally prohibits a registered broker-dealer from effecting any transaction in, or inducing the purchase or sale of, any security unless such broker-dealer meets the standards of training experience, competence, and other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors.[24] The Commission believes that the SROs' proposals to impose affirmative obligations on registered persons on a continuing basis are an appropriate means of maintaining and reinforcing the qualification standards applicable when a person first is registered. Moreover, it is Commission policy to rely principally on the SROs for the formulation and administration of qualification standards, subject to Commission review and oversight.[25]

The SROs' proposals convey broadly applicable information relating to compliance, regulatory, ethical, and general sales practice standards, as well as job related material for specific professional areas and products. The SROs have divided the continuing

[19] See *infra*, Part IV, Section C.

[20] CRD is a computerized filing and data processing system operated by the NASD that maintains registration information regarding registered broker-dealers and their registered personnel for access by state regulators, SROs, and the Commission.

[21] 15 U.S.C. §§ 78f(b)(5), 78*o*–3(b)(6), and 78*o*–4(b)(2)(C) (1988).

[22] 15 U.S.C. §§ 78f(c)(3)(B), 78*o*–3(g)(3)(A), and 78*o*–4(b)(2)(A) (1988).

[23] 15 U.S.C. § 78*o*(b)(7) (1988).

[24] *Id.*

[25] See Rule 15b7–1 under the Act, 17 CFR 240.15b7–1 (1994), and Securities Exchange Act Release No. 32261 (May 4, 1993), 58 FR 27656 (May 11, 1993) (in adopting Rule 15b7–1 to require broker-dealers to comply with SRO qualification standards, the Commission stated that it has been longstanding Commission policy to rely principally on the SROs in the formulation and administration of qualification standards, subject to Commission review and oversight).

education program into two parts: The Regulatory Element, which emphasizes subjects regarding legal and ethical standards, and the Firm Element, which contemplates the timely transmission of product related information to maintain and expand individuals' professional knowledge. Taken together, the Elements form the basis for an educational program that should ensure that registered persons have the training and knowledge necessary to conduct themselves in an appropriate professional manner, over the course of their careers. The Commission also notes that the re-entry provision of the Regulatory Element, which is triggered by disciplinary action, will ensure that those individuals who have not complied with all applicable regulatory requirements, receive further training as a condition to their re-entry into business.

The Commission believes that a continuing education requirement for persons in the securities industry, administered pursuant to industry developed standards, will benefit public investors as a result of the increased knowledge and enhanced understanding of regulatory and ethical standards by industry members. SRO qualification of registered persons of broker-dealers is of critical importance in promoting compliance with the requirements of the federal securities laws. Increasing the sensitivity of registered persons to regulatory and ethical matters also should enhance investor confidence in the securities industry. Moreover, the recent attention that has been devoted to derivatives underscores the need for securities industry personnel to receive thorough training in the products in which they deal.

The SROs have noted that the Regulatory Element of the program initially will be administered only in the NASD's testing centers, stating that this is necessary to allow the NASD to manage the introduction of the program in a reasonable manner. Nevertheless, interest has been expressed in permitting member firms either to administer the Regulatory Element in-house, or to solicit the services of outside vendors. While recognizing the concerns of the Council and the SROs regarding the technological and administrative issues that arise in connection with the in-house administration of the Regulatory Element, the Commission encourages the Council and the SROs to continue to study whether practical and reasonable alternatives to the NASD's testing centers can be developed.[26]

The Commission notes with approval that the Firm Element Committee of the Council is developing guidelines for dealers' use in devising and carrying out training programs to meet the requirements of the Firm Element, including providing guidance as to how different firms might approach the requirements (*e.g.*, firms that deal with one product, small firms, and firms with large numbers of very small offices or solo representatives).

These guidelines will offer suggestions intended to help firms devise appropriate and reasonable programs consistent with their own unique characteristics and businesses. The Commission believes that such guidance will particularly benefit smaller firms and should lessen their costs of compliance with the Firm Element. The Commission encourages the SROs, as they gain experience with the continuing education program, to continue such efforts.

VI. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule changes (File Nos. SR–AMEX–94–59, SR–CBOE–94–49, SR–CHX–94–27, SR–MSRB–94–17, SR–NASD–94–72, SR–NYSE–94–43, SR–PSE–94–35, and SR–PHLX–94–52) are approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3569 Filed 2–13–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35344; File No. SR–Amex–95–03]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by American Stock Exchange, Inc. Relating to a Pilot Program for Execution of Odd-lot Market Orders

February 8, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 2, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes that the Commission extend for twelve months the Exchange's existing pilot program under Rule 205 requiring execution of odd-lot market orders at the prevailing Amex quote with no differential charged.[1] The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed rule Change

1. Purpose

The Commission has approved, on a pilot basis extending to February 8, 1995, amendments to Exchange Rule 205 to require the execution of odd-lot market orders at the prevailing Amex quote with no odd-lot differential.[2] These procedures initially were approved by the commission on a pilot

[26] Specifically, delivery of the Regulatory Element other than through the NASD's testing centers would require that appropriate safeguards be developed to ensure the integrity of the program and the ability to capture the necessary information for feedback.

[27] 15 U.S.C. § 78s(b)(2) (1988).

[1] The Exchange seeks accelerated approval of the proposed rule change in order to allow the pilot program, which expires on February 8, 1995, to continue without interruption. The Commission notes that, under current Rule 205, no differential may be charged on odd-lot order transactions, except for non-regular way trades. See *infra*, note 5.

[2] See Securities Exchange Act Release No. 34949 (November 8, 1994), 59 FR 58863 (November 15, 1994) (approving File No. SR–AMEX–94–47).

basis,[3] and subsequently were extended ten times.[4]

Under the pilot procedures, odd-lot market orders with no qualifying notations are executed at the Amex quotation at the time the order is represented in the market, either by being received at the trading post or through the Exchange's Post Execution Reporting (''PER'') system. Enhancements to the PER system have been implemented to provided for the automatic execution of odd-lot market orders entered through PER. For purposes of the pilot program, odd-lot limit orders that are immediately executable based on the Amex quote at the time the order is received, at the trading post or through PER, are executed in the same manner as odd-lot market orders.

The Exchange proposes that the pilot program applicable to odd-lot execution procedures be extended for twelve months. The exchange notes that, in approving previous extensions to the Rule 205 pilot procedures, the Commission has expressed interest in the feasibility of the Exchange utilizing the Intermarket Trading System (''ITS'') best bid or offer, rather than the Amex bid or offer, for purposes of the Exchange's odd-lot pricing system. The Exchange has determined to proceed with system modifications, anticipated to be completed within a twelve month period, to provide for execution of odd-lot market orders at the ITS best bid or offer. The Exchange will file appropriate amendments to Rule 205, prior to expiration of the extended pilot program, to accommodate the revised odd-lot pricing procedures.

2. Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) and 11A(a)(1) in particular in that it facilitates the economically efficient execution of odd-lot transactions, and is intended to result in improved execution of customer orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's statements on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-95-03 and should be submitted by March 7, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

For the same rational discussed in its previous orders regarding the Amex's odd-lot execution pilot program,[5] 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)[6] and 11A(a)(1)[7] of the Act and the rules and regulations thereunder. The Commission believes that the revised procedures, under which odd-lot market orders are executed at the prevailing Amex quote rather than at the price of a subsequent round-lot transaction, should provide investors with more timely execution of their orders. The Exchange has implemented enhancements to its PER system to provide for the automatic execution of odd-lot market orders. Based on the data in the Amex's monitoring reports, the Rule 205 amendments have resulted in a superior execution for a significant percentage of such orders.

The Commission, however, is not satisfied that all customers received the best execution, in terms of time *and* price, under the pilot procedures. Specifically, the Commission remains concerned that some odd-lot orders may not receive the best available price, because the Exchange's pricing formula does not include quotations from other markets.[8] In its previous orders,[9] the Commission has requested that the Exchange analyze the difference in odd-lot executions between using the Intermarket Trading System (''ITS'') consolidated best bid or offer and using the Amex quote. The Commission also has encouraged the Amex to evaluate the feasibility of implementing an odd-lot pricing system based on the ITS best bid or offer.[10]

At this time, the Amex has determined to proceed with the necessary system modifications to provide for the execution of odd-lot orders at the ITS best bid or offer. The Exchange anticipates that the system modifications will be completed within a twelve month period. As noted above, the Commission has encouraged the Amex to implement a pricing formula that includes quotations from other markets and believes that such action would substantially alleviate the Commission's best execution concerns. In the interim, due to the relatively low

[3] See Securities Exchange Act Release No. 26445 (January 10, 1989), 54 FR 2248 (January 19, 1989) (approving File No. SR–Amex–88–23).

[4] See Securities Exchange Act Release Nos. 34949 (November 8, 1994), 59 FR 58863 (November 15, 1994) (approving File No. SR–Amex–94–47); 34496 (August 8, 1994), 59 FR 41807 (August 15, 1994) (approving File No. SR–Amex–94–28); 33584 (February 7, 1994), 59 FR 6983 (February 14, 1994) (approving File No. SR–Amex–93–45); 32726 (August 9, 1993), 58 FR 43394 (August 16, 1993) (approving File No. SR–Amex–93–24); 31828 (February 5, 1993) 58 FR 8434 (February 12, 1993) (approving File No. SR–Amex–93–06); 30305 (January 30, 1992), 57 FR 4653 (February 6, 1992) (approving File No. SR–Amex–92–04); 29922 (November 8, 1991), 56 FR 58409 (November 19, 1991) (approving File No. SR–Amex–91–30); 29186 (May 19, 1991), 56 FR 22488 (May 15, 1991) (approving File No. SR–Amex–91–09); 28758 (January 10, 1991), 56 FR 1656 (January 16, 1991) (approving File No. SR–Amex–90–39); and 27590 (January 5, 1990), 55 FR 1123 (January 11, 1990) (approving File No. SR–Amex–89–31).

[5] See e.g., Securities Exchange Act Release No. 26445, *supra* note 3, for a description of the Commission's rationale for approving the Amex's odd-lot procedures on a pilot basis. The discussion in the aforementioned order is incorporated by reference into this order. Since initial approval of the pilot program, however, the Exchange has amended Rule 205 to provide that no differential may be charged on odd-lot order transactions, except for non-regular way trades. *See* Securities Exchange Act Release No. 34591 (August 24, 1994), 59 FR 44783 (August 30, 1994) (approving File No. SR-Amex-94–15).

[6] 15 U.S.C. 78f (1988).

[7] 15 U.S.C. 78k–1(a)(1) (1988).

[8] The Commission has approved amendments to the New York Stock Exchange's (''NYSE'') rules which incorporate the ITS quotation into the NYSE odd-lot pricing procedures through the use of the Best Pricing Quote (''BPQ''). *See* Securities Exchange Act Release No. 27981 (May 2, 1990), 55 FR 19409 (May 9, 1990) (File No. SR–SYSE–90–06).

[9] See *supra,* note 4.

[10] See *supra,* note 8.

number of odd-lot market orders on the Amex [11] and the benefits to customers under the pilot procedures as compared to the former pricing procedures, which priced odd-lot orders based on subsequent round-lot transactions and which raised concerns regarding timeliness of execution, the Commission finds that it is appropriate to extend the pilot program for an additional twelve months. This will enable the pilot program to continue without interruption during the system modifications.

The Commission finds good cause for granting approval of the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are substantially identical to the procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.[12]

It is therefore ordered, pursuant to Section 19(b)(2) [13] of the Act, that the proposed rule change (SR–Amex–95–03) is approved for a twelve month period ending on February 8, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3617 Filed 2–13–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35338; File No. SR–Amex–95–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to Minimum Fractional Changes

February 7, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 31, 1994, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Amex Rule 127 to increase from $5 to $10 the price level below which equity securities are traded in sixteenths.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In August 1992, the Commission approved amendments to Amex Rule 127 to provide that securities selling under $5 and above $.25 may be traded in fractions of 1/16 of $1.00 per share.[1] Prior to the amendment, Rule 127 provided for trading in sixteenths for securities selling under $1 and above $.25, whereas trading in securities selling above $1 were subject to a minimum trading fraction of one-eighth of $1. In expanding the number of securities eligible for trading in sixteenths, the Exchange intended to promote greater liquidity in lower priced stocks by allowing quotations between the then-current one-eighth minimum trading fraction, thereby providing possible improved pricing of orders to the benefit of both public customers and market professionals.

The Exchange proposes to increase significantly the number of Amex-listed securities traded in sixteenths by amending Rule 127 to provide for sixteenths trading in securities selling under $10.[2] The Exchange believes that trading in sixteenths will improve the market for securities trading under $10 by promoting greater liquidity and providing for superior executions of retail and professional orders. In addition, the proposal is responsible to the recommendations of the Division of Market Regulation, in its Market 2000 Study,[3] that the exchanges and Nasdaq convert to a minimum variation of one-sixteenth as soon as possible.

The proposed amendments to Rule 127 do not pertain to bond issues, which will continue to be dealt in at one-eighth of $1. In addition, the Exchange will retain its authority to fix different minimum fractional changes where appropriate.

Prior to implementing expanded sixteenths trading in 1992, the Amex discussed the need for systems enhancements to the Intermarket Trading System (''ITS'')[4] with all ITS participants[5] in order to permit the transmittal of commitments to trade Amex securities priced under $5 via ITS in fractions of one-sixteenth, which enhancements were implemented by the Securities Industry Automation Corporation (''SIAC'').[6] Prior to the proposed expansion of trading in sixteenths, the Amex will consult with all ITS participants to permit them to make any required modifications to their individual systems to accommodate trading through ITS in Amex securities priced under $10.

2. Statutory Basis

Thr proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b) in particular in that it is intended to promote just and equitable principles of trade, to facilitate

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[11] *See* footnote 9 of Securities Exchange Act Release No. 29922 (November 8, 1991), 56 FR 58409.

[12] No comments were received in connection with the proposed rule changes that implemented these procedures. See *supra,* notes 3–4.

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1991).

[1] See Securities Exchange Act Release No. 31118 (August 28, 1992), 57 FR 40484 (September 3, 1992).

[2] The Amex estimates that the rule change will increase the number of securities traded in sixteenths from 362 securities (approximately 37% of Amex-listed securities) to 589 securities (approximately 60% of Amex-listed securities). These estimates were made by the Exchange as of February 3, 1995.

[3] Division of Market Regulation, SEC, Market 2000: An Examination of Current Equity Market Developments (January 1994), at 18 (''Market 2000 Study'').

[4] ITS is a subsystem of the National Market System approved by the Commission pursuant to Section 11A of the Act, 15 U.S.C. 78k–1 (1988). ITS facilitates intermarket trading in exchange-listed equity securities based on the current quotation information emanating from the linked markets. For a discussion of ITS, see Market 2000 Study, *supra* note 3, at Appendix II.

[5] Participants to the ITS Plan include the Amex, the Boston Stock Exchange, the Chicago Board Options Exchange, the Chicago Stock Exchange, the Cincinnati Stock Exchange, the New York Stock Exchange, the Pacific Stock Exchange, the Philadelphia Stock Exchange, and the National Association of Securities Dealers.

[6] SIAC is a jointly owned subsidiary of the New York Stock Exchange and the Amex, which does, among other things, the automated processing for ITS.

transactions in securities, and to protect investors and the public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will remove or lessen existing burdens on competition in that it will enhance the liquidity of and provide for greater price competition in Amex securities trading under $10.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–95–02 and should be submitted by March 7, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3568 Filed 2–13–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35345; File No. SR–CBOE–94–54]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange Relating to Firm Quote Responsibilities

February 8, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(b)(1), notice is hereby given that on January 4, 1995, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to expand the applicability of the firm quote rule to include two-part orders in equity options, in which the component series are on opposite sides of the market and in a one-to-one ratio. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to expand the applicability of Rule 8.51 to certain two part equity orders and thus, to attempt to ensure the ability of public customers to execute defined risk strategies, such as spreads and straddles, at the disseminated market quotes.

CBOE Rule 8.51 places the responsibility on the trading crowd to ensure that non-broker-dealer customer orders are sold or bought, up to ten contracts, at the quoted offer or bid, respectively. This ''firm quote'' or ''ten-up'' requirement is meant to provide confidence that the displayed quotes may be relied upon by the investing public and to ensure that public customer orders will be executed at those quotes.

From its inception the rule was intended to apply to, and has been interpreted to apply only to, single part orders, i.e., either a buy order or a sell order for a particular option series. The Exchange has determined, however, that public customers would be served better if the interpretation were expanded to included a requirement to provide a ten-up market in two-part equity option orders in which the components of the order are on opposite sides of the market and in a one-to-one ration to each other. The expansion in the interpretation of this rule would make it possible for public customers to execute both sides of a defined risk strategy, such as a spread or a straddle, at the disseminated prices. This rule change, then, should help the Exchange compete more effectively for public customer order flow and trading activity.

The Exchange does not believe this rule change would be burdensome to market-makers because, under the current interpretation, the market-makers would be required to satisfy the ten-up requirement as to each leg of a spread or straddle if each was placed as a separate order. This rule change would merely ensure that these two components may be done at the same time, as one order, and at the same prevailing market quotes. The Exchange believes, however, that it is inappropriate, under any circumstances, to extend the firm-quote treatment to multi-part orders with all parts on the same side of the market as this would effectively impose the burden on options market-makers of making markets in the underlying security. For example, a position in a long call and a short put is economically equivalent to being long the underlying stock; and thus, requiring a trading crowd to provide firm quote treatment to an order for this position would essentially be requiring the option market-makers to act as market-makers in the underlying security.

Under Rule 8.51, the firm quote size minimum will not apply whenever a ''fast market'' is declared under rule 6.6, and may be suspended for any class or series on a case by case basis as determined by the Market Performance Committee.

CBOE believes the proposed rule change will contribute to a market that will instill an increasing customer confidence and ability to transact business in an increasingly efficient manner. CBOE believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Exchange Act'') in general and furthers the objectives of Section 6(b)(5) in particular by providing rules that perfect the mechanisms of a free and open market and that protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the file number in the caption above and should be submitted by March 7, 1995.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3618 Filed 2–13–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35342; File No. SR–DTC–94–19]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Regarding Implementation of New Guidelines Regarding Principal and Income Payments in a Same-Day Funds Environment

February 8, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 5, 1994, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by DTC. On January 24, 1995, DTC amended the proposed rule change to include a statement that the proposed rule change did not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to the existing operational arrangements necessary for a securities issue to become eligible for DTC's services. Specifically, the rule change calls for changes to the processing of principal and income distributions in a same-day funds environment.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

DTC's operational arrangements are designed to maximize the number of issues that can be made depository eligible while ensuring orderly processing and timely payments to participants. DTC's experience demonstrates that when issuers, underwriters, and their counsel are aware of DTC's requirements those requirements can be met almost without exception.[4] The purpose of the proposed rule change is to incorporate in DTC's operational arrangements memorandum principles for the processing of principal and income payments in same-day funds.[5] Towards this end, the operational arrangements memorandum will incorporate the relevant provisions of the ''Standards

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[1] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Piku Thakkar, Assistant Counsel, DTC, to Peter R. Geraghty, Division of Market Regulation, Commission (January 24, 1995).

[3] Same-day funds, which are also known as ''Fed funds'', are immediately available for redelivery on the day of receipt.

[4] During 1993, a total of 392,000 new issues were made eligible for DTC's services. This was 99.94% of all new issues submitted to DTC's Underwriting Department for eligibility determinations. These figures include equity, corporate debt, municipal debt, and U.S. Government and Agency securities. In the unusual circumstance where the processing characteristics of a new issue that is being structured would not meet DTC's operational arrangements, if contacted early enough in the planning process DTC staff often is able to assist in suggesting restructuring alternatives that would permit the issue to be made depository eligible.

[5] DTC's operational arrangements memorandum was published in June 1987 and was updated in both June 1988 and February 1992. For a complete description of the operational arrangements memorandum, refer to Securities Exchange Act Release No. 24818 (August 19, 1987), 52 FR 31833 [File No. SR–DTC–87–10] (order approving the implementation of DTC's operational arrangements for the eligibility of security issues), and Securities Exchange Act Release No. 30625 (April 30, 1992), 57 FR 18534 [File No SR–DTC–92–06] (order approving modifications to DTC's operational arrangements).

for Principal and Income Payments Guidelines'' established by the U.S. Working Committee of the Group of Thirty. These principles will become a part of DTC's income and reorganization/redemption payments standards.

First, DTC proposes that all new issues be required to meet depository-eligibility requirements and must be structured so that all payments to depositories of principal and income are made in same-day funds on payment date by 2:30 p.m. Eastern Standard time.

Second, for all depository-eligible issues already outstanding, paying agents must remit to DTC all principal and income payments in same-day funds on payment date by 2:30 p.m. Eastern Standard time according to existing arrangements between the paying agent and DTC. Recognizing that paying agents for certain issues may need to modify their current business arrangements to account for this change, DTC will continue to pay through July 31, 1996, the same rebates as paid now to paying agents that result from paying agents municipal interest and municipal and corporate redemptions to DTC in same-day funds on payment date.

However, once DTC converts to same-day funds settlement for all security transactions, DTC will not have investment funds available to rebate to paying agents because DTC intends to make all payments to its participants on payment date in same-day funds. Recognizing that participants will benefit by receiving all their expected payments in same-day funds on payment date, from the date of the conversion to same-day funds settlement for all security transactions until July 31, 1996, DTC will charge participants in proportion to their holdings in each issue for which a rebate applies the funds needed to pay the rebate. With respect to payments made on or after August 1, 1996, these charges to participants will no longer be required. The rebate will not be applied to payments of corporate interest, dividends, and reorganizations in which the paying agent already pays DTC in same-day funds on payment date. These payments currently are not subject to interest earnings rebates. However, DTC will require that 100% of corporate interest, dividend, and reorganization payments be paid to DTC in same-day funds on payment date by 2:30 p.m. Eastern Standard time.

Third, DTC will require paying agents to provide DTC with the CUSIP numbers for each issue for which payment is being sent as well as the dollar amount of the payment for each issue no later than noon Eastern Standard time on the payment date. Notification of payment details should be made using automated communications.

Finally, if an issuer or agent continually fails to make payment as called for in the guidelines, DTC may decide to systematically prevent the allocation of such payments to participants on the payable date. Eventually, DTC may also elect to deny depository eligibility to issues brought to market by non-complying issuers or agents.

The proposal also seeks to amend the operational arrangements memorandum to introduce the use of a ''Blanket Letter of Representations.'' This document will be submitted by an issuer to DTC only once for all issues thus eliminating the need for individual letters of representations for book-entry-only issues under certain circumstances.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to DTC because the proposal will facilitate the prompt and accurate clearance and settlement of securities transactions by promoting the immobilization of securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC indicated that it did not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in the furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC's operational arrangements were developed in close consultation with many bond trustees, issuers' agents, participants, and industry groups throughout the country in order to assure that these processing standards can be met. DTC has disseminated these memoranda widely to corporate and public finance professionals, underwriters, bond counsel, and issuers so that they may consider whether documentation relating to issues sought to be made depository-eligible adequately accommodates these requirements.

In addition, both industry organizations and self-regulatory organizations have endorsed the four principles discussed above. These organizations include the American Bankers Association, the Bank Depository User Group, the Government Finance Officers Association, the Municipal Securities Rulemaking Board (''MSRB''),[6] the Public Securities Association, and the Reorganization Division, Dividend Division, Securities Operations Division, and the Operations Committee of the Securities Industry Association.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR–DTC–94–19 and should be submitted by March 7, 1995.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3566 Filed 2–13–95; 8:45 am]

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[6] The MSRB has, however, raised questions about how these guidelines would be enforced.

[7] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35340; File No. SR–NASD–94–77]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Granting the Director of Arbitration the Authority to Delegate Duties Under the Code of Arbitration Procedure

February 8, 1995.

On December 20, 1994, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC '' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] The proposed rule change amends Section 3 of the Code of Arbitration Procedure (''Code'')[3] to expressly provide that the Director of Arbitration (''Director'') may delegate decisionmaking authority as appropriate.

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 35168, December 29, 1994) and by publication in the **Federal Register** (60 FR 1822, January 5, 1995). No comment letters were received. This order approves the proposed rule change.

The current provisions of Section 3 of the Code provide for the NASD Board of Governors to appoint a Director to perform all administrative duties and functions in connection with matters submitted for arbitration pursuant to the Code. The Director has found it necessary to delegate certain duties and functions of the Director to other senior management employees of the NASD's Arbitration Department (''Department''), especially as a result of the significant growth in the Department's staff and workload. The NASD believes that the authority of the Director to manage the functions of the NASD's Arbitration Department inherently includes the power to delegate duties and functions as appropriate. Nevertheless, the rule change amends Section 3 of the Code to expressly permit the Director to delegate duties and functions of the Director as appropriate.

The rule change provides that the Director may delegate duties and functions of the Director as appropriate. Further, in the event that the Director is incapacitated, resigns, is removed or is permanently or indefinitely disabled from the performance of the duties and functions of the Director, the rule change permits the NASD President or an NASD Executive Vice President to appoint an interim Director to perform the functions and responsibilities of the Director.

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[4] because the rule change will protect investors and the public interest by avoiding uncertainty and possible litigation about the authority of a Department staff member to act under the Code by permitting the Director to delegate duties and functions vested by the Code with the Director. The Commission further believes that by permitting certain other NASD officers to appoint an interim Director if circumstances render the Director unable to discharge the duties vested with the Director, the proposal will help protect investors and is in the public interest.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that file No. SR–NASD–94–77 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3570 Filed 2–13–95; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. Section 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASD Manual, Code of Arbitration Procedure, Part I, Sec. 3 (CCH) ¶ 3703.

[Release No. 34–35339; File No. SR–NASD 94–71]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Application of ''Do Not Reduce'' and ''Do Not Increase'' Instructions With Respect to the Repricing of Open Orders

February 7, 1995.

On December 7, 1994, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The rule change amends Article III, Section 46 of the Rules of Fair Practice,[3] which governs adjustment of open orders, relating to the applicability of this section to orders marked ''do not reduce'' (''DNR'') and ''do not increase (''DNI''). The provisions of Section 46 deal with the adjustment of open orders in the event of a payment or distribution. As amended, the rule will neither apply to orders marked DNR where the dividend is payable in cash, nor to orders marked DNI where the dividend is payable in stock, provided that the price of such DNI orders shall be adjusted as required by the rule.

Notice of the proposed rule change, together with its terms of substance was provided by issuance of a Commission release[4] and by publication in the **Federal Register**.[5] No comments were received in response to the notice. This order approves the proposed rule change.

Article III, Section 46 of the Rules of Fair Practice, which became effective September 15, 1994, requires a member to adjust the price and size of an open order in proportion to the dividend or other distribution on the day the security is quoted ''ex'',[6] before the member may permit the order to be executed. The amendment has been proposed in response to an inconsistency in the definition of the terms DNR and DNI between the NASD's Section 46 and New York Stock Exchange (''NYSE'') Rule 118,[7] on which Section 46 was patterned. Because Section 46 was intended to operate in the same manner as NYSE Rule 118, the NASD filed the proposed rule change to amend the definitions of DNR and DNI to conform to the definitions in Rule 118.

Under NYSE Rule 118, a DNR instruction applies only with respect to cash dividends. An order with a DNR instruction will not be reduced in price in the event of a cash dividend. Such an order will, however, be reduced in price and increased in size in the event of a stock dividend or split. In addition, under NYSE Rule 118, a DNI instruction applies only with respect to order size adjustments in the event of stock dividends. While an order with a DNI instruction will not increased in size, it will be reduced in price in the event of a stock dividend or split. An order with a DNI instruction is inapplicable in the event of a cash distribution because the

[4] 15 U.S. C. Section 70*o*–3.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASD Manual, of Fair Practice, Article III, Section 46, (CCH) ¶ 2200F.

[4] Securities Exchange Act Release No. 35169 (December 28, 1994).

[5] 60 FR 2169 (January 6, 1995).

[6] The ''ex-date'' represents the day on which the underlying security is traded without a specific dividend or distribution. NASD Manual, Uniform Practice Code, Section 3(e), (CCH) ¶ 3503.

[7] NYSE Guide, Handling of Orders and Reports, Rule 118, (CCH) ¶ 2118.

number of shares is not affected by a cash distribution and, therefore, no order size adjustment is necessary.

Currently, under Section 46, a DNR instruction applies to both cash and stock distributions. For example, the price of an order marked DNR would not be adjusted under the current definition in Section 46 even in the event of a 2 for 1 or similar stock dividend. Such a dividend would halve the quotes for the security, but the order would remain at the original price, far out of line with the adjusted market for that security. Similarly, all orders marked DNI would not be subject to the current adjustment provisions of Section 46. While an order marked DNI would not be increased in size in the event of stock dividend, it also would not be reduced in price pursuant to the provisions of Section 46.

For customers who understand the operation of Section 46 to be the same as NYSE Rule 118, leaving the current definitions in place could result in unexpected executions of certain open orders. To address this concern, the NASD has proposed to amend the applicability of Section 46 to orders marked DNR and DNI. Pursuant to the amendment, the provisions of the rule will not apply to orders marked DNI where the distribution is payable in cash, nor to orders marked DNI where the distribution is payable in stock, provide, however, that the price of such DNI orders will be adjusted as required by the rule.

The Commission has determined to approve the NASD's proposal. The Commission finds that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of Section 15A(b)(6) of the Act.[8] Section 15A(b)(6) requires, in part, that the rules of a national securities association be designed to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change acts to remedy an unintentional inconsistency between Section 46 and NYSE Rule 118. The rule change also protects against the unexpected and unintended execution of open orders.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–94–71 be, and hereby is, approved.

[8] 15 U.S.C. 78*o*–3(b)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3567 Filed 1–13–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35343; File No. SR–NYSE–94–46]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Amending Specialist Combination Review Policy to Require Proponents of Certain Specialist Unit Combinations to Address Issues Related to the Capitalization, Risk Management, and Operational Efficiency of Large Sized Specialized Units

February 8, 1995.

I. Introduction

On December 9, 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 to adopt amendments to the NYSE's Specialist Combination Review Policy (''Policy''). Specifically, the proposal would require proponents of certain specialist unit combinations to address issues related to the capitalization, risk management, and operational efficiency of large sized specialist units.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35171 (December 28, 1994), 60 FR 1818 (January 5, 1995). No comments were received on the proposal.

II. Background

The Exchange's Policy was first approved by the Commission on a six-month pilot basis in 1987.[3] The Commission subsequently granted permanent approval following an interim extension.[4]

The Policy is a three-tier system of review, primarily conducted by the Quality of Markets Committee (''QOMC''), to review proposed specialist combinations that raise concentration-related issues. The Policy calls for review of a potential combination where the combination will result in a specialist unit accounting for more than 5% of any one of four specified concentration measures: Allocation for all listed common stocks; allocation for the 250 most active listed common stocks; total share volume of stock trading on the Exchange; and total dollar value of stock trading on the Exchange. Once a review is triggered under the Policy, the primary factors taken into consideration by the QOMC depend upon whether the proposed combination warrants a Tier I review (exceeding a concentration measure by more than 5%), Tier II review (exceeding a concentration measure by more than 10%, up to and including 15%), or a Tier III review (exceeding a concentration measure by 15%). The level of the burden of proof placed upon the proposed combining units also may vary depending on the Tier of review.

III. Description

The proposal will add several requirements that address issues related to the capitalization, risk management, and operational efficiency of large-sized specialist units.[5] The proposal requires proponents of a combination that would exceed 10% of a concentration measure to:

- Submit an acceptable risk management plan with respect to any line of business in which they engage;
- Submit an operational certification prepared by an independent, nationally recognized management consulting organization with respect to all aspects of the firm's management and operations;
- Agree to maintain a minimum of 1.5 times (2 times, in the case of a 15% combination) the total capital requirement specified in Rule 104.20[6] with respect to the combined entity's stocks;

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] See Securities Exchange Act Release No. 24411 (April 29, 1987), 52 FR 17870 (May 12, 1987).

[4] See Securities Exchange Act Release Nos. 25481 (March 17, 1988), 53 FR 9554 (March 23, 1988) (interim extension); 34167 (June 6, 1994), 59 FR 30625 (June 14, 1994) (permanent approval).

[5] Once the proponents agree that they will abide by the requirements listed below, the Exchange will verify the ability of the units to make such commitments by reviewing their individual capitalization information. If such a review shows that the units do not have the requisite capacity, then the combination will not be approved. Once the combination has been approved, the Exchange will monitor the combined unit to ensure that it continues to meet the additional requirements. In the event the combined unit fails to meet the additional requirements, the Exchange will address the issue as it would any other capital requirements violation. In such circumstances, the Exchange, through its Rule 476, has several courses of action available to it including stock reallocation. Conversations between Don Seimer, NYSE, and Amy Bilbija, Attorney, SEC, on January 27, 1995 and February 6, 1995.

[6] Pursuant to NYSE Rule 104.20, a specialist unit at an active post is required to be able to assume a position of 150 trading units in each common

Continued

• Agree to maintain 2 times (2.5 times, in the case of a 15% combination) the capital requirement specified in Rule 104.20 with respect to each of the combined entity's stocks that are component stocks of the Standard and Poor's 500 Stock Price Index; and

• Agree that all capital required to be dedicated to specialist operations be accounted for separate and apart from any other capital of the combined entity, and that such specialist capital may not be used for any other aspect of the combined entity's operations.

The proposal also requires that proponents of a proposed combination that would result in a specialist unit accounting for more than 5%, but less than or equal to 10%, of a concentration measure, maintain 1.5 times the capital requirement specified in Rule 104.20 with respect to each of the combined entity's stocks that are components stocks of the Standard and Poor's 500 Stock Price Index.

IV. Discussion and Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b).[7] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designated to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public, in that it addresses concerns about capitalization, operational efficiency, and risk management where proposed combinations would result in large sized specialist units.

The Commission agrees with the NYSE that these new requirements are appropriate in that they should minimize the risk of financial and/or operational failure of larger-sized units, and ensure that such units have sufficient, separately dedicated capital with which to meet their market making responsibilities. The Commission believes that it is appropriate to modify the Policy to place additional capitalization requirements when specialist units are combining. The combined entity will be larger than either of the two (or more) original entities, responsible for more securities, and financially exposed to a larger degree. The potential impact of the financial failure of a large-sized specialist unit upon the NYSE would be proportionately greater in comparison to either original unit. Thus, imposing more stringent capitalization requirements upon the new unit should decrease the probability of any such failure, and minimize any subsequent detrimental impact upon the market place.

The Commission also believes that the proposal does not impose any unnecessary or inappropriate burden on competition under Section 6(b)(8) of the Act in that it establishes review procedures to prevent potential under-capitalization of specialist units that could hinder market quality. The Commission recognizes that the revised Policy can prevent certain combinations from occurring by placing additional requirements for such combinations to take place. Nonetheless, the Commission believes that the additional requirements will help to ensure that combinations potentially detrimental to the market place will not be permitted. Accordingly, any potential burden on competition resulting from the proposal is, in the Commission's view, justified as necessary and appropriate under the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–94–46) is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3619 Filed 2–13–95; 8:45 am]

BILLING CODE 8010–01–M

stock in which he is registered and must be able to establish that he can meet, with his own net liquid assets, the greater of, a minimum capital requirement of $1,000,000 or 25% of the foregoing position requirement.

[7] 15 U.S.C. 78f(b) (1988).

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1994).

SMALL BUSINESS ADMINISTRATION

Declaration of Disaster Loan Area, North Carolina

Duplin, Lenoir, and Sampson Counties and the contiguous Counties of Bladen, Crave, Cumberland, Greene, Harnett, Johnston, Jones, Onslow, Pender, Pitt, and Wayne in the State of North Carolina constitute a disaster area as a result of damages caused by severe storms and tornadoes which occurred on January 6 and 7, 1995. Applications for loans for physical damage may be filed until the close of business on April 10, 1995 and for economic injury until the close of business on November 8, 1994 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 276412 and for economic injury the number is 844400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 8, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–3593 Filed 2–13–95; 8:45 am]

BILLING CODE 8025–01–M

Commonwealth of the Northern Mariana Islands; Declaration of Disaster Loan Area

The Islands of Antahan, Saipan, and Tinian in the Commonwealth of the Northern Mariana Islands are hereby declared a disaster area as a result of damages caused by Typhoon Zelda which occurred on November 3, 1994. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on April 7, 1995 and for economic injury until the close of business on November 6, 1995 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303, or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000

	Percent
Others (including non-profit organizations) with credit available elsewhere	7.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 276306 and for economic injury the number is 844300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 6, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–3594 Filed 2–13–95; 8:45 am]

BILLING CODE 8025–01–M

Jiffy Lube Capital Corporation (License No. 06/03–0182); Notice of Surrender of Licensee

Notice is hereby given that Jiffy Lube Capital Corporation, 700 Milam Street, Houston, Texas 77252 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). Jiffy Lube Capital was licensed by the Small Business Administration on December 9, 1987.

Under the authority vested by the Act and Pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on December 21, 1994, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated February 8, 1995.

Robert D. Stillman,

Associated Administrator for Investment.

[FR Doc. 95–3649 Filed 2–13–95; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/02–5379]

New Oasis Capital Corporation; Notice of License Surrender

Notice is hereby given that New Oasis Capital Corporation (''NOCC''), 135–38 39th Avenue, Flushing, NY 11354, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (''the Act''). NOCC was licensed by the Small Business Administration on February 6, 1980.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on January 26, 1995, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 7, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–3595 Filed 2–13–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Safety Performance Standards, Research and Safety Assurance Programs Meetings

AGENCY: National Highway Traffic Safety Administration, Transportation.

ACTION: Notice of NHTSA industry meetings.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's safety performance standards, safety assurance and other programs. In addition, NHTSA will hold a separate public meeting to describe and discuss specific research and development projects.

DATES: The Agency's regular, quarterly public meeting relating to the agency's safety performance standards, safety assurance and other programs will be held on March 29, 1995, beginning at 9:45 a.m. and ending at approximately 12:30 p.m. Questions relating to the agency's safety performance standards, safety assurance and other programs must be submitted in writing by March 20, 1995, to the address shown below. If sufficient time is available, questions received after the March 20 date may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by March 20, 1995, and the issues to be discussed will be mailed to interested persons by March 23, 1995, and will be available at the meeting.

Also, the agency will hold a second public meeting on March 28, devoted exclusively to a presentation of research and development programs.

The meeting will begin at 1:30 p.m. and end at approximately 5:00 p.m. This meeting is described more fully in a separate announcement.

ADDRESSES: Questions for the March 29, NHTSA Technical Industry Meeting, relating to the agency's safety performance standards and safety assurance programs should be submitted to Barry Felrice, Associate Administrator for Safety Performance Standards, NPS–01, National Highway Traffic Safety Administration, Room 5401, 400 Seventh Street SW., Washington, DC 20590. Questions for the Research and Development Program Meeting to be held on March 28, should be submitted to George L. Parker, Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Room 6206, 400 Seventh Street SW., Washington, DC 20590. Both meetings will be held at the Ramada Inn, near the Detroit Metro Airport, 8270 Wickham Road, Romulus, MI 48174.

SUPPLEMENTARY INFORMATION: NHTSA will hold this regular, quarterly meeting to answer questions from the public and the regulated industries regarding the agency's safety performance standards, safety assurance and other programs. Since the agency is holding a separate meeting on its research and development programs, any questions on those issues will only be answered at the afternoon meeting to be held on March 28, 1995, and should be submitted to the Research and Development Office. However, questions on aspects of the agency's research and development activities that relate to ongoing safety performance standards should be submitted, as in the past, to the agency's Safety Performance Standards Office. The March 28th and the March 29th meetings will be held at the Ramada Inn near the Detroit Metro Airport, 8270 Wickham road, Romulus, MI 48174. The purpose of these meetings is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. Transcripts of these meetings will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at ten cents a page, (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street SW., Washington, DC 20590. The Technical Reference Section is open to the public from 9:30 a.m. to 4:00 p.m.

NHTSA will provide auxiliary aids to participants as necessary, during the NHTSA Technical Industry Meeting and the NHTSA Industry Research and Development Meeting. Any person desiring assistance of ''auxiliary aids''

(e.g., sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, Brailled materials, or large print materials and/or a magnifying device), please contact Barbara Carnes on (202) 366–1810, by COB March 20, 1995 for the 9:45 a.m. to 12:30 p.m. portion of meeting or Barbara Coleman (202) 366–1537 by COB March 20, 1995 for the 1:30 p.m. to 5:00 p.m. portion.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–3558 Filed 2–13–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Carteret Federal Savings Bank of New Jersey; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in Section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Carteret Federal Savings Bank of New Jersey, Newark, New Jersey, on January 20, 1995.

Dated: February 8, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–3578 Filed 2–13–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–03; OTS Nos. H–1792 and 02611]

Community Bank Shares, M.H.C., New Albany, Indiana; Approval of Conversion Application

Notice is hereby given that on January 25, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Community Bank Shares, M.H.C., New Albany, Indiana, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street NW., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: February 8, 1995.

By the Office of Thrift Supervision,

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–3579 Filed 2–13–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–02; OTS No. 03052]

Community Federal Savings and Loan Association of Little Falls, Little Falls, Minnesota; Approval of Conversion Application

Notice is hereby given that on January 19, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Community Federal Savings and Loan Association of Little Falls, Little Falls, Minnesota, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street NW., Washington, D.C. 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: February 8, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–3580 Filed 2–13–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–05; OTS No. 00566]

First Federal Banking & Savings, FSB Bemidji, Minnesota; Approval of Conversion Application

Notice is hereby given that on February 2, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Banking & Savings, FSB, Bemidji, Minnesota, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and the Midwest Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: February 8, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–3581 Filed 2–13–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–07; OTS No. 03294]

First Federal Savings & Loan Association of Florence, Florence, Alabama; Approval of Conversion Application

Notice if hereby given that on February 6, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Florence, Florence, Alabama, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street NE., Atlanta, Georgia 30309.

Dated: February 8, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–3582 Filed 2–13–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–08; OTS No. 03512]

Home Loan Bank fsb, Fort Wayne, Indiana; Approval of Conversion Application

Notice is hereby given that on February 8, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Home Loan Bank fsb, Fort Wayne, Indiana, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: February 8, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–3583 Filed 2–13–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–04; OTS No. 06998]

Pendleton Federal Savings and Loan Association, Falmouth, Kentucky; Approval of Conversion Application

Notice is hereby given that on January 26, 1995, the Deputy Assistant Director,

Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Pendleton Federal Savings and Loan Association, Falmouth, Kentucky, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street NW., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: February 8, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–3584 Filed 2–13–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–01; OTS No. 07098]

Security Federal Bank, a Federal Saving Bank, Tuscaloosa, Alabama; Approval of Conversion Application

Notice is hereby give that on January 16, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Security Federal Bank, a Federal Savings Bank, Tuscaloosa, Alabama, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street NW., Washington, D.C. 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street NE., Atlanta, Georgia 30309.

Dated: February 8, 1995.

By the Office of Thrift Supervision,

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–3585 Filed 2–13–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–06; OTS No. 02984]

Wells Federal Bank, fsb, Wells, Minnesota; Approval of Conversion Application

Notice is hereby given that on February 2, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Wells Federal Bank, fsb, Wells, Minnesota, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and the Midwest Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: February 8, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–3586 Filed 2–13–95; 8:45 am]

BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 30

Tuesday, February 14, 1995

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).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given of the following Board meeting and staff briefing:

TIME AND DATE: 2:00 p.m., February 21, 1995.

PLACE: Board Conference Room, Suite 700, 625 Indiana Ave., NW, Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Board will reconvene and continue the open meeting conducted on January 19, 1995, to deliberate upon the Secretary of Energy's response to Board Recommendation 94–1.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (202) 208–6387.

SUPPLEMENTARY INFORMATION: The Staff will continue to brief the Board on the Secretary's response to Board Recommendation 94–1 and related topics, including, but not limited to, DOE's studies on vulnerabilities associated with the DOE's storage of spent nuclear fuel, and the current status of DOE remediation of conditions identified in Board Recommendation 94–1.

The Board specifically reserves its right to further schedule and otherwise regulate the course of this public meeting, to recess, reconvene, postpone or adjourn the meeting, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: February 9, 1995.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 95–3690 Filed 2–10–95; 9:32 am]

BILLING CODE 3670–01–M

FEDERAL ENERGY REGULATORY COMMISSION

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: February 6, 1995, 60 FR 7096.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: February 8, 1995, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Number has been added on the Agenda scheduled for February 8, 1995:

Item No., Docket No. and Company

CAH–2—P–10615–008, Wolverine Power Supply Corporation

Lois D. Cashell,

Secretary.

[FR Doc. 95–3827 Filed 2–10–95; 3:57 pm]

BILLING CODE 6717–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Tuesday, February 21, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 2lst Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 10, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–3812 Filed 2–10–95; 3:55 pm]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 9:00 a.m., February 21, 1995.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the January 17, 1995, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of KPMG Peat Marwick audit reports:

''Pension and Welfare Benefits Administration Review of Thrift Savings Plan C and F Fund Investment Management Operations at Wells Fargo Institutional Trust Company and Wells Fargo Nikko Investment Advisors.''

''Pension and Welfare Benefits Administration Review of Project Management Practices for the Thrift Savings Plan System.''

''Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Participant Support Process at the United States Department of Agriculture, Office of Finance and Management, National Finance System.''

4. Labor Department briefing.
5. Quarterly review of investment policy.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: February 8, 1995.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 95–3689 Filed 2–10–95; 9:31 am]

BILLING CODE 6760–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND PLACE: 9:30 a.m., Wednesday, February 22, 1995.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6527—Aviation Accident Report: Controlled Collision with Terrain, Transportes Aereos Ejectivos, S.A. (TAESA), Learjet 25D, XA–BBA, Dulles International Airport, Chantilly, Virginia, June 18, 1994.

6522— Hazardous Materials Accident Report: Tank Car Failure and Release of Arsenic Acid, Chattanooga, Tennessee, June 6, 1994.

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: February 10, 1995.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 95–3733 Filed 2–10–95; 10:33 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 13, 20, 27, and March 6, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 13

There are no meetings scheduled for the Week of February 13.

Week of February 20—Tentative

There are no meetings scheduled for the Week of February 20.

Week of February 27—Tentative

Tuesday, February 28

10:00 a.m.
Briefing by OIG on Special Evaluation (Public Meeting)
(Contact: Robert Shideler, 301–415–5972)
2:00 p.m.
Discussion of Management Issues (Closed—Ex. 2 and 6)

Wednesday, March 1

10:00 a.m.
Briefing by Electricity Committee of NARUC (Public Meeting)
(Contact: Spiros Droggitis, 301–504–2367)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed—)

Week of March 6—Tentative

Thursday, March 9

2:00 p.m.
Briefing on Performance Indicators in Materials Performance Evaluation Program (Public Meeting)
(Contact: George Pangburn, 301–415–7266)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, March 10

10:00 a.m.
Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: John Larkins, 301–415–7360)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no items has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system will also become available in the near future. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: February 10, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–3813 Filed 2–10–95; 3:56 pm]

BILLING CODE 7590–01–M

STATE JUSTICE INSTITUTE

TIME AND DATE:

Tuesday, February 28, 1995, 9 a.m.–5 p.m.

Wednesday, March 1, 1995, 9 a.m.–5 p.m.

PLACE: Hyatt Regency Albuquerque, 330 Tijeras, N.W., Albuquerque, NM 87102.

MATTERS TO BE CONSIDERED: FY 1995 grant proposals and internal Institute business.

PORTIONS OPEN TO THE PUBLIC: FY 1995 grant proposals and non-personnel-related internal business matters.

PORTIONS CLOSED TO THE PUBLIC: Internal personnel matters; Board committee meetings.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314, (703) 684–6100.

David I. Tevelin,

Executive Director.

[FR Doc. 95–3732 Filed 2–10–95; 10:33 am]

BILLING CODE 6820–SC–M

Federal Register

Tuesday
February 14, 1995

Part II

Department of Agriculture

Agricultural Marketing Service
Grain Inspection, Packers and Stockyards Administration
Office of the Secretary

7 CFR Parts 0 and 1
7 CFR Part 47, et al.
9 CFR Chapter II et al.
Rules of Practice; Final Rule

DEPARTMENT OF AGRICULTURE

Office of the Secretary of Agriculture

7 CFR Parts 0 and 1

Agricultural Marketing Service

7 CFR Parts 47, 50, 51, 52, 53, 54, and 97

Grain Inspection, Packers and Stockyards Administration

9 CFR Chapter II and Part 202

Rules of Practice

AGENCY: Office of the Secretary of Agriculture, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes, the Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act, the Rules of Practice Under the Perishable Agricultural Commodities Act, and the Rules of Practice Applicable to Reparation Proceedings Under the Packers and Stockyards Act. This final rule provides that conferences shall be conducted by telephone or correspondence, hearings shall be conducted by audio-visual telecommunication, and depositions shall be conducted either in the manner agreed to by the parties or by telephone, unless the person conducting the proceeding determines that the conference, hearing, or deposition may be conducted by some other means. The final rule also provides for the use of recordings of hearings and depositions and the exchange of written narrative statements of the direct testimony prior to hearings to be conducted by telephone. These amendments will save the government and those who participate in the proceedings time and money.

In addition, this rule amends 9 CFR chapter II to reflect the abolishment of the Packers and Stockyards Administration and the establishment of the Grain Inspection, Packers and Stockyards Administration in the recent Department of Agriculture reorganization.

EFFECTIVE DATE: This final rule is effective March 16, 1995, except for the amendments to the chapter heading of 9 CFR chapter II and the references to the agency name in the chapter which are effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: William Jenson, Senior Counsel, Regulatory Division, Office of the General Counsel, USDA, room 2422, South Building, 14th Street and Independence Avenue SW., Washington, DC 20250, (202) 720–2453.

SUPPLEMENTARY INFORMATION:

Background

The Department conducts a number of adjudicatory proceedings in which conferences, depositions, and hearings are held. Many of these conferences, depositions, and hearings are conducted by personal attendance which necessitates travel by those who participate in the conferences, depositions, and hearings.

Generally, conferences at which personal attendance is required are attended by the person conducting the proceeding (an administrative law judge, hearing officer, examiner, or presiding officer), the parties to the proceeding, and counsel for the parties to the proceeding. Depositions are attended by an officer authorized to administer oaths, a court reporter, the parties, counsel for the parties, and the deponent. Hearings are attended by the person conducting the proceeding, the parties to the proceeding, counsel for the parties to the proceeding, a court reporter, and witnesses called by the parties.

The costs associated with travel to conferences, depositions, and hearings (meals, lodging, and actual travel expense) are often substantial. These travel costs burden all taxpayers and particularly burden the individuals who attend these proceedings. In addition to expenditure of money, individuals personally attending the proceedings often must spend valuable time traveling to and from these conferences, depositions, and hearings.

Proposed Rule

Therefore, on February 25, 1994, we published a document in the **Federal Register** (59 FR 9114–9136) proposing to amend the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 CFR 1.130 through 1.151) (referred to as the ''Uniform Rules'' below), the Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act (7 CFR 1.160 through 1.175) (referred to as the ''Capper-Volstead Rules'' below), the Rules of Practice Under the Perishable Agricultural Commodities Act Applicable to Reparation Proceedings (7 CFR 47.1 through 47.25 and 47.46) (referred to as the ''PACA Reparation Rules'' below), the Rules of Practice Under the Perishable Agricultural Commodities Act Applicable to Determinations as to Whether a Person is Responsibly Connected With A Licensee Under the Perishable Agricultural Commodities Act (7 CFR 47.1, 47.2(a) through 47.2(h), and 47.47 through 47.68) (referred to as the ''PACA Responsibly Connected Rules'' below), and the Rules of Practice Applicable to Reparation Proceedings Under the Packers and Stockyards Act (9 CFR 202.101 through 202.123) (referred to as the ''P&S Reparation Rules'' below). Specifically, we proposed to provide that: (1) Conferences may be conducted by telephone, correspondence, audio-visual telecommunication, or by personal attendance of the participants; (2) depositions and hearings may be conducted by telephone, audio-visual telecommunication, or personal attendance of the participants; (3) hearings and depositions may be recorded rather than transcribed; and (4) prior to a hearing, parties exchange written narrative statements of the direct testimony they intend to introduce at the hearing.

Comments on the Proposed Rule

We solicited comments concerning the proposal for a 60-day comment period ending April 26, 1994. We received 12 comments by that date. One of the commenters requested that we reopen and extend the comment period. In response to that request, on June 22, 1994, we published a document in the **Federal Register** (59 FR 32138) reopening and extending the comment period until July 22, 1994. We received two additional comments by the close of the reopening and extension of the comment period. The fourteen comments were from the following organizations and individual: (1) The Administrative Law Section of the American Bar Association; (2) the Agriculture Law Committee, Administrative Law Section of the American Bar Association; (3) the American Meat Institute; (4) the Eastern Meat Packers Association; (5) the Federal Administrative Law Judges Conference; (6) the Forum of United States Administrative Law Judges; (7) Janet L. Heins; (8) Holland & Knight; (9) the Livestock Marketing Association; (10) the National Association of Perishable Agricultural Receivers; (11) Olsson, Frank and Weeda, P.C.; (12) the Society for Animal Protective Legislation; (13) the United Fresh Fruit & Vegetable Association; and (14) the Western States Meat Association.

All of the commenters generally opposed the proposed rule. However, many of these commenters supported some aspects of the proposal. Seven of the commenters stated that the Department should experiment with adjudicatory proceedings conducted by telecommunication, two commenters praised the Department's effort to save money expended on adjudicatory proceedings, and two of the commenters supported the elimination of gender specific references.

The comments and our responses to those comments are as follows.

1. Constitutional Due Process

Ten commenters stated that a hearing conducted by telecommunication would violate the constitutional right to due process.

We disagree with these comments. Prior to drafting the proposed rule, we carefully examined whether hearings conducted by telecommunication provide a full and fair evidentiary hearing that comports with due process. We concluded that the due process clause does not preclude the use of telecommunication in adjudicatory proceedings.

The memorandum containing our analysis and findings was placed in the rulemaking record upon publication of the proposed rule. As we stated in that memorandum, due process is flexible and calls for such procedural protections as the particular situation demands. *Morrissey* v. *Brewer,* 408 U.S. 471 (1972). The courts have applied a balancing test that examines: (1) The private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Mathews* v. *Eldridge,* 424 U.S. 319 (1976).

The question of what process is due requires flexibility rather than an either/or analysis which assumes that either face-to-face oral hearings are always required or that face-to-face oral hearings are never required. The proposed rule provides such flexibility. Hearings would be conducted by telephone, audio-visual telecommunication, or by the personal attendance of any individual who is expected to participate in the hearing. Under the proposal, the person conducting the proceeding would determine which method of conducting the hearing is to be used in a particular instance based, in part, on the need to conduct the hearing in a manner that would not prejudice any of the parties to the proceeding. (See proposed 7 CFR 1.141(b) (3) and (4), 1.168(b) (3) and (4), 47.15(c) (3) and (4), and 47.49(f) (2) and (3) and 9 CFR 202.112(a) (3) and (4).)

Despite our view that the proposal provides the person conducting the proceeding with sufficient flexibility to tailor the manner in which a hearing is conducted so that due process is provided, we have made changes that address the due process concerns raised by the commenters.

Specifically, the final rule provides that the hearings held under the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules shall be conducted by audio-visual telecommunication unless the person conducting the proceeding determines that conducting the hearing by personal attendance of any individual who is expected to participate in the hearing: (1) Is necessary to prevent prejudice to a party; (2) is necessary because of a disability of any individual expected to participate in the hearing; or (3) would cost less than conducting the hearing by audio-visual telecommunication.

The person conducting the proceeding may, in his or her sole discretion or in response to a motion by a party to the proceeding, conduct the hearing by telephone only if the person conducting the proceeding finds that a hearing conducted by telephone: (1) Would provide a full and fair evidentiary hearing; (2) would not prejudice any party; and (3) would cost less than conducting the hearing by audio-visual telecommunication or personal attendance of any individual who is expected to participate in the hearing. (See 7 CFR 1.141(b) (3) and (4), 1.168(b) (3) and (4), 47.15(c) (3) and (4), and 47.49(f) (2) and (3) and 9 CFR 202.112(a) (3) and (4) in this final rule.)

2. Compliance with the Administrative Procedure Act

Four commenters stated that a hearing conducted by telecommunication would violate the Administrative Procedure Act. All four commenters stated that a hearing conducted by telecommunication would deprive the parties of their right to cross-examine witnesses in violation of 5 U.S.C. 556(d). Two commenters stated that a hearing conducted by telecommunication would deprive the judge of the ability to control the proceeding to ensure that only reliable evidence is received. One commenter stated that a hearing conducted by telecommunication would deprive the parties of the right to participate in the hearing in violation of 5 U.S.C. 554(c) and the right to present oral or documentary evidence in violation of 5 U.S.C. 556(d).

We disagree with these comments. Prior to drafting the proposed rule, we carefully examined whether hearings conducted by telecommunication would violate the Administrative Procedure Act. We concluded that the Administrative Procedure Act does not preclude the use of telecommunication in adjudicatory proceedings. The memorandum containing our analysis and findings was placed in the rulemaking record upon publication of the proposed rule.

There is no provision in the Administrative Procedure Act that explicitly requires face-to-face adjudicatory hearings and we found nothing to indicate that Congress intended to exclude the use of telecommunication in adjudicatory proceedings conducted pursuant to the Administrative Procedure Act. As previously discussed in this rulemaking document, this final rule amends the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules to provide that the hearings shall be conducted by audio-visual telecommunication unless the person conducting the proceeding determines that conducting the hearing by personal attendance of any individual who is expected to participate in the hearing: (1) Is necessary to prevent prejudice to a party; (2) is necessary because of a disability of any individual expected to participate in the hearing; or (3) would cost less than conducting the hearing by audio-visual telecommunication. A hearing conducted by audio-visual telecommunication allows full cross-examination with an ability to observe the demeanor of the witness; provides an opportunity to transmit and receive documents by the use of facsimile; provides for a prior exchange of exhibits; and allows the person conducting the proceeding full control of the course of the hearing. If a hearing conducted by telecommunication would not constitute a full and fair hearing, the person conducting the hearing may require a face-to-face hearing.

Further, the final rule provides that the person conducting the proceeding may, in his or her sole discretion or in response to a motion by a party to the proceeding, conduct the hearing by telephone only if the person conducting the proceeding finds that a hearing conducted by telephone: (1) Would

provide a full and fair evidentiary hearing; (2) would not prejudice any party; and (3) would cost less than conducting the hearing by audio-visual telecommunication or personal attendance of any individual who is expected to participate in the hearing.

Toward this end, we proposed to amend the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules to authorize the person conducting a proceeding to: (1) Require each party to provide all other parties and the person conducting the proceeding with a copy of any exhibit that the party intends to introduce into evidence prior to any hearing to be conducted by telephone or audio-visual telecommunication; and (2) require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the person conducting the proceeding are able to transmit documents during the hearing. These proposed provisions (see proposed 7 CFR 1.144(c) (9) and (11), 1.173(d) (7) and (8), 47.11(c) (9) and (11), and 47.56 (g) and (h) and 9 CFR 202.118(a) (8) and (10)) regarding the exchange of exhibits prior to a hearing conducted by telecommunication and the ability to transmit documents during a hearing conducted by telecommunication are designed to ensure that all parties have a full opportunity to participate in the hearing, present oral or documentary evidence, and cross-examine witnesses.

We have retained these provisions in the final rule with one minor modification to correct an oversight in the proposed rule. As stated above, proposed 7 CFR 1.144(c)(11), 1.173(d)(8), 47.11(c)(11), and 47.56(h) and 9 CFR 202.118(a)(10) would authorize a person conducting a proceeding to require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the person conducting the proceeding are able to transmit documents during the hearing. We have amended 7 CFR 1.144(c)(11), 1.173(d)(8), 47.11(c)(11), and 47.56(h) and 9 CFR 202.118(a)(10) to authorize a person conducting a proceeding to require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the person conducting the proceeding are able to transmit and receive documents during the hearing.

3. Statutory Requirements

One commenter stated that the plain meaning of statutes that require hearings to be held ''before the Secretary'' is that face-to-face hearings are required. Therefore, any hearings under those statutes which are conducted by telecommunication would be inconsistent with those statutes.

Numerous hearings conducted under the rules of practice which this final rule amends are conducted pursuant to statutes that require hearings ''before the Secretary.'' We fully examined whether hearings conducted by telecommunication in which some or all of the evidence is introduced at locations other than the location at which the person conducting the proceeding is situated would violate statutes that require hearings to be conducted ''before the Secretary.'' We concluded that such hearings would not violate these statutes. The memorandum containing our analysis and findings was placed in the rulemaking record upon publication of the proposed rule.

A few courts have found that telephone hearings were insufficient due to language of the statute under which the hearings were conducted. For example, in *Purba* v. *Immigration & Naturalization Service,* 884 F. 2d 516 (9th Cir. 1989), the court held that a deportation hearing must be conducted in the physical presence of the immigration judge, absent the consent of the parties, because the statute under which the hearing was held required the hearing to be ''before'' the judge. The court found the plain meaning of the word ''before'' is ''in the presence of,'' ''in sight of,'' or ''face-to-face with'' a person and that conducting the hearing by telephone was not a hearing ''before'' the judge. However, the Supreme Court has recently held that where Congress has not decided, any alternative dictionary definition of a word that has a rational effect under a statute is a possibility for agency choice, and the courts are to defer to the agency's choice of the interpretation of the word, if it is reasonable. *National Railroad Passenger Corp.* v. *Boston and Maine Corp.*, ____ U.S. ____, 112 S. Ct. 1394 (1992).

The eleventh circuit, applying the rationale in *National Railroad Passenger Corp.*, found that a hearing conducted by telephone did not violate the Immigration and Nationality Act that provides that a ''[d]etermination of deportability * * * shall be made only on the record in a proceeding *before* a special inquiry officer.'' *Bigby* v. *United States Immigration and Naturalization Service,* 21 F. 3d 1059 (11th Cir. 1994). (Emphasis added.) The eleventh circuit explicitly rejected the argument that ''before'' was susceptible of only one meaning. The court found that the word ''before'' did not of necessity mean ''in front of'' or ''in the presence of,'' thereby mandating that the special inquiry officer be physically present at a hearing required to be held ''before'' the special inquiry officer. The court found that ''before'' could be used in a jurisdictional sense and mean ''to be judged or acted on by'' or ''under the official or formal consideration of.'' The court, citing *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), held that ''[i]n the absence of unambiguous congressional intent, we defer to an agency's reasonable interpretation of a statute it is charged with administering.

None of the statutes that require proceedings to be conducted ''before the Secretary'' under which hearings are conducted pursuant to the rules of practice amended by this final rule define the word ''before'' nor do these statutes provide any clear indication of congressional intent with respect to the meaning of the word ''before'' as used in these statutes. Therefore, it is reasonable for the Department to find that the word ''before,'' as used in these statutes, is jurisdictional and means ''to be judged or acted on by,'' ''under the official or formal consideration of,'' or ''under the cognizance or jurisdiction of.''

4. Credibility Determinations

Seven commenters stated that hearings conducted by telecommunication negatively impact credibility determinations. Five commenters focused exclusively on the need for the judge to observe demeanor to determine credibility. One commenter stated that it is important for all participants to assess credibility of other participants. Four commenters raised the specter of witnesses reading prepared statements without the knowledge of all participants.

Hearings conducted by audio-visual telecommunication do not impact credibility determinations because the fact finder is able to see and hear witnesses in a hearing conducted by audio-visual telecommunication in much the same manner and to the same extent as the fact finder would see and hear witnesses in a face-to-face hearing. Hearings conducted by telephone may, but do not necessarily, negatively impact credibility determinations.

While we believe that the proposal provides the person conducting the proceeding with sufficient flexibility to tailor the manner in which a hearing is conducted so that credibility

determinations are not negatively impacted, in the final rule we made substantial changes to these proposed provisions which address the concerns regarding credibility raised by the commenters. The final rule provides that hearings conducted under the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules shall be conducted by audio-visual telecommunication unless the person conducting the proceeding determines that conducting the hearing by personal attendance of any individual who is expected to participate in the hearing: (1) Is necessary to prevent prejudice to a party; (2) is necessary because of a disability of any individual expected to participate in the hearing; or (3) would cost less than conducting the hearing by audio-visual telecommunication.

The person conducting the proceeding may, in his or her sole discretion or in response to a motion by a party to the proceeding, conduct the hearing by telephone only if the person conducting the proceeding finds that a hearing conducted by telephone: (1) Would provide a full and fair evidentiary hearing; (2) would not prejudice any party; and (3) would cost less than conducting the hearing by audio-visual telecommunication or personal attendance of any individual who is expected to participate in the hearing. (See 7 CFR 1.141(b) (3) and (4), 1.168(b) (3) and (4), 47.15(c) (3) and (4), and 47.49(f) (2) and (3) and 9 CFR 202.112(a) (3) and (4) in this final rule.)

We do expect that, after the effective date of this final rule, a number of hearings will be conducted by telephone based upon a finding by the person conducting the proceeding that a hearing conducted by telephone will provide a full and fair evidentiary hearing; will not prejudice any party; and will cost less than conducting the hearing by audio-visual telecommunication or personal attendance of any individual who is expected to participate in the hearing.

Numerous courts have found that hearings conducted by telephone do not increase the risk of error because witness demeanor cannot be viewed. In *Casey* v. *O'Bannon,* 536 F. Supp. 350 (E.D. Pa. 1982), the court determined that plaintiffs failed to prove that the constitution compels face-to-face hearings and that there is a risk of an erroneous deprivation by virtue of the telephone procedures as they currently exist. The court was influenced by testimony at trial showing that ''hearing examiners can effectively judge credibility over the phone by noting voice responses, pauses, levels of irritation and other factors'' and a survey showing that 82% of examiners who have presided over telephone hearings believe they can judge credibility in hearings conducted by telephone. *Id.,* at 353–54, *citing Attitudes Towards the Use of the Telephone in Administrative Fair Hearings, The California Experience,* 31 Admin. L. Rev. 247 (1979).

Further, in *Utica Mutual Ins. Co.* v. *Vincent,* 375 F.2d 129, 131 (2nd Cir. 1967), the Second Circuit stated, ''Utica finds in the due process clause of the Fifth Amendment a requirement that when there are issues of credibility, as was assumed to be true here, no determination of fact may be made unless the decider has either seen the witnesses himself or has been furnished with a report as to the credibility by another who has * * *. We discern no such absolute in the history laden words of the Fifth Amendment; Utica would freeze what is usually a sensible rule of judicial administration into a constitutional imperative.'' The court further noted that when the Constitution was adopted the settled practice in the English chancery courts was to take evidence almost wholly by deposition. *Id.,* at 131 n. 3. *Utica* was cited as support in at least two other federal cases involving the fact finder's inability to observe demeanor. *See Moore* v. *Ross,* 687 F.2d 604, 609–10 (2nd Cir. 1982), *cert. denied,* 459 U.S. 1115 (1983); *Blake* v. *Ambach,* 691 F.Supp. 651, 655–56 (S.D.N.Y. 1988).

Numerous state courts have also upheld the use of telephone hearings under circumstances in which the issue of demeanor and credibility was raised. In *Babcock* v. *Employment Division,* 696 P.2d 19, 21 (Or. App 1985), the court considered credibility the most difficult issue for unemployment compensation telephone hearings, yet stated that while ''[p]hysical appearance can be a clue to credibility, * * * of equal or greater importance is what a witness says and how she says it.'' The Oregon appellate court was satisfied ''that the audible indicia of a witness' demeanor are sufficient for a referee to make an adequate judgment as to believability.'' *Id.*

In *State, ex. rel. Human Services Department* v. *Gomez,* 657 P.2d 117, 124 (N.M. 1983), the court rejected Gomez's contention that the telephonic hearing was not meaningful because his efforts to remain on welfare depended upon his credibility and the hearing officer could not judge credibility without seeing him. The court did state that credibility may be a minimal factor in disability determination, but ''a requirement that the hearing officer also see Gomez testify * * * would impose the rigidities of judicial procedure on what is supposed to be an informal proceeding.'' *Id.,* at 124–25.

5. Exchange of Direct Testimony of Each Witness a Party Will Call

We proposed to amend the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules to provide that unless the hearing is scheduled to begin less than 20 days after the person conducting the proceeding issues a notice stating the time of the hearing, each party must exchange, in writing, with all other parties, a verified narrative statement of the direct testimony of each witness that the party will call to provide oral direct testimony at the hearing. (See proposed 7 CFR 1.141(g), 1.168(f), 47.15(f), and 47.58(a) and 9 CFR 202.112(e).)

One commenter objected to the exchange of direct testimony of each witness. Two commenters stated that they had no objection to the exchange of direct testimony as long as each witness is required ''to appear in court for cross-examination.''

The requirement that parties exchange the written narrative statements of the direct testimony of witnesses the parties intend to call at a hearing may, in some instances, necessitate a significant expenditure of time and resources. Based on our past experience, many administrative proceedings conducted under the rules of practice which we are amending are settled just prior to the scheduled date of hearing. In these circumstances, the preparation and exchange of a written verified narrative statement of the oral direct testimony of each witness the parties intend to call would constitute an unnecessary expenditure of time and resources. One of the purposes of this final rule is to make adjudicatory proceedings conducted by the Department as efficient as possible. Therefore, this final rule limits the provisions regarding the exchange of written verified narrative statements of the oral direct testimony of witnesses the parties intend to call to hearings to be conducted by telephone. Except as discussed below, we have retained the provision regarding the exchange of written verified narrative statements of oral direct testimony prior to hearings conducted by telephone to expedite these hearings, prevent surprise, ensure that all parties have a full opportunity to participate in the hearing and cross-examine witnesses, and assist the

person conducting the hearing with credibility determinations.

Proposed 7 CFR 1.141(g), 1.168(f), 47.15(f), and 47.58(a) and 9 CFR 202.112(e) would have required each party to obtain written verified narrative statements of oral direct testimony of all witnesses the party intends to call to provide oral direct testimony. Under the proposal, testimony would be limited to the written direct testimony. Occasionally parties call hostile witnesses or witnesses over whom they have no control to provide oral direct testimony at hearings in proceedings conducted under the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules. Requiring a party to obtain and exchange written verified narrative statements from hostile witnesses and witnesses over whom a party has no control could result in a party's inability to introduce relevant and material evidence at a hearing. Therefore, this final rule provides that each party need only obtain and exchange written verified narrative statements of the oral direct testimony of the following witnesses that the party intends to call at hearings to be conducted by telephone: (1) The party; (2) the employees and agents of the party; and (3) the party's expert witnesses. The oral direct testimony provided by a witness at a hearing conducted by telephone will be limited to the presentation of the written direct testimony, unless the person conducting the hearing finds that oral direct testimony which is supplemental to the written direct testimony would further the public interest and would not constitute surprise.

6. Verbatim Recordings in Lieu of Transcripts

We proposed to amend the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules to provide for the use of recordings of hearings, and, where applicable, depositions. Four commenters opposed the use of recordings. One commenter objected to the use of recordings of hearings and depositions rather than transcripts, but did not state the basis for the objection. Three commenters stated that the review of a recording is more time-consuming than the review of a transcript of the same proceeding and the citation of relevant portions of a recording more difficult than the citation of relevant portions of a transcript. Two commenters stated that transcripts of prehearing conferences are necessary at a hearing in order to refer to evidentiary rulings made in prehearing conferences and transcripts of depositions are necessary for the proper cross-examination of witnesses. One commenter noted that the Department would have to purchase equipment to enable its counsel to review recordings.

We made changes based on these comments. The final rule requires that hearings to be conducted by telephone shall be recorded verbatim by electronic recording device. Hearings conducted by audio-visual telecommunication or the personal attendance of any individual who is expected to participate in the hearing shall be transcribed, unless the person conducting the hearing finds that recording the hearing verbatim would expedite the proceeding and the person conducting the hearing orders the hearing to be recorded verbatim. The person conducting the hearing shall certify that to the best of his or her knowledge and belief the recording with exhibits that were accepted into evidence is the record of the hearing. The final rule provides that if a party requests the transcript of a hearing or part of a hearing and the person conducting the hearing determines that the disposition of the proceeding would be expedited by a transcript of the hearing or part of a hearing, the person conducting the hearing shall order the verbatim transcription of the recording as requested by the party. (See 7 CFR 1.141(i), 1.168(h), 47.15(i), and 47.60 and 9 CFR 202.112(i) in this final rule.) The final rule provides that transcripts and recordings of hearings conducted under the Uniform Rules and the Capper-Volstead Rules shall be made available to any person at actual cost of duplication. (See 7 CFR 1.141(i) and 1.168(h) in this final rule.) We have retained the provisions regarding the cost and availability of transcripts that are currently in the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules (see current 7 CFR 47.15(g) and 47.60 and 9 CFR 202.112(h)) and have applied these cost and availability provisions to recordings. (See 7 CFR 47.15(i) and 47.60 and 9 CFR 202.112 (i) in this final rule.)

The discretion provided to the person conducting the hearing to order that a transcript be provided to a party rather than a recording will ensure that transcripts are available when a party does not have access to equipment that enables that party to use recordings. Further, we believe that parties will be able to review recordings as quickly as they review transcripts by using the fast forward and reverse modes that are available on most recording devices. In addition, relevant portions of recordings can be referenced by time, revolution, or some other method, as determined by the person conducting the proceeding.

Prior to this rulemaking proceeding, none of the rules of practice which are the subject of this rulemaking proceeding required that prehearing conferences be recorded and we did not propose to require the transcription of prehearing conferences. Therefore, the comment regarding the transcription of prehearing conferences in order to refer to evidentiary rulings made in prehearing conferences is beyond the scope of this rulemaking proceeding.

7. ''Practical'' Problems

Four commenters stated that hearings conducted by telecommunication would result in what the commenters characterized as ''practical problems.''

(a) One commenter stated that hearings conducted by telecommunication would impair the ability of the parties to observe documents and call witnesses.

We proposed to amend the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules to authorize the person conducting a proceeding to: (1) Require each party to provide all other parties and the person conducting the proceeding with a copy of any exhibit that the party intends to introduce into evidence prior to any hearing to be conducted by telephone or audio-visual telecommunication; and (2) require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the person conducting the proceeding are able to transmit documents during the hearing. These proposed provisions (see proposed 7 CFR 1.144(c) (9) and (11), 1.173(d) (7) and (8), 47.11(c) (9) and (11), and 47.56 (g) and (h) and 9 CFR 202.118(a) (8) and (10)) regarding the exchange of exhibits prior to a hearing conducted by telecommunication and the ability to transmit documents during a hearing conducted by telecommunication are designed to ensure that all parties have a full opportunity to participate in the hearing, present oral or documentary evidence, and cross-examine witnesses.

As we stated above, we have retained these provisions in the final rule with one minor modification to correct an oversight in the proposed rule.

Further, we proposed to amend the Uniform Rules, the Capper-Volstead

Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules to provide that unless the hearing is scheduled to begin less than 20 days after the person conducting the proceeding issues a notice stating the time of the hearing, each party must exchange, in writing, with all other parties, the direct testimony of each witness that the party will call to provide oral direct testimony at the hearing. (See proposed 7 CFR 1.141(g), 1.168(f), 47.15(f), and 47.58(a) and 9 CFR 202.112(e).) The written direct testimony must be in narrative form and must be verified. The written direct testimony of witnesses shall be exchanged by the parties at least 10 days prior to the hearing. The oral direct testimony provided by a witness at the hearing will be limited to the presentation of the written direct testimony, unless the person conducting the proceeding finds that oral direct testimony which is supplemental to the written direct testimony would expedite the proceeding and would not constitute surprise. These provisions regarding exchange of direct testimony are designed to ensure that all parties have a full opportunity to participate in the hearing, and cross-examine witnesses. As discussed above, we have limited the provisions regarding the exchange of written verified narrative statements of oral direct testimony to hearings to be conducted by telephone and to certain specified witnesses.

These provisions will ensure that parties to adjudicatory proceedings conducted under the rules of practice which we are amending will have ample opportunity to observe documents.

We do not agree with the comment that parties will have any more difficulty calling witnesses in a hearing conducted by telecommunication than parties will have when calling witnesses in a face-to-face hearing. The commenter did not provide any basis for this concern.

(b) One commenter stated that no provision can be made in hearings conducted by telecommunication for—the introduction of real evidence, the examination of a witness regarding documents that the witness has in his or her possession on entering the courtroom, the examination of a witness regarding his or her ability to read at a distance, the request that a witness draw a picture; or any ''other unexpected events.''

We have not made any change based on this comment. Very few of the hearings conducted under the rules of practice which this final rule amends necessitate the introduction of real evidence, the examination of a witness regarding documents that the witness has in his or her possession on entering the courtroom, the examination of a witness regarding his or her ability to read at a distance, or the request that a witness draw a picture.

As discussed previously in this rulemaking document, the final rule provides that the person conducting the proceeding may require hearings conducted by telecommunication to be held at locations at which the parties and the person conducting the proceeding are able to transmit and receive documents during the hearing. This requirement will enable parties to examine witnesses regarding documents that the witness has in his or her possession on entering the courtroom and the ability to read at a distance, and to request witnesses to draw pictures or diagrams in hearings conducted by telecommunication.

If real evidence is to be introduced in a hearing, the hearing or that part of the hearing in which the real evidence is to be introduced can be conducted by the personal attendance of those who are to participate in the hearing. As stated above, the person conducting the proceeding can require the hearing to be conducted by personal attendance of any individual who is expected to participate in the hearing if personal attendance is necessary to prevent prejudice to a party. The inability of a party to introduce admissible evidence because a hearing is conducted by telecommunication may prejudice a party, and, in such circumstances, a face-to-face hearing will be conducted.

(c) Two commenters stated that hearings conducted by telecommunication would reduce the appearance of justice.

We disagree with the comment and have not made any change based on this comment. The quality of justice will not be affected by this final rule. If any party will be prejudiced by a hearing conducted by telecommunication, the person conducting the proceeding will require the hearing to be conducted by personal attendance of any individual who is expected to participate in the hearing. The use of audio-visual technology preserves due process, promotes ease of participation by those for whom travel is difficult, and allows each party and the person conducting the proceeding to participate fully and with the effect of face-to-face confrontation. Therefore, we believe that this final rule will in fact heighten the appearance and fact of justice done.

(d) Two commenters stated that hearings conducted by telecommunication would make sequestration difficult.

A person conducting a hearing by telecommunication could order sequestration in the same manner in which it is ordered in a face-to-face hearing. We agree that, in most situations, the person conducting a hearing by telecommunication will not be in a position to determine whether a sequestration order has been followed. We expect that all parties in adjudicatory proceedings conducted by the Department and counsel to those parties will make every effort to comply with lawful orders issued by the person conducting the proceeding.

(e) Two commenters stated that hearings conducted by telecommunication would make recesses impractical.

We disagree and have made no change based on these comments. Recesses can be called as easily in a hearing conducted by telecommunication as in a hearing conducted by personal attendance of those involved with the hearing.

(f) Four commenters stated that prompting witnesses at hearings conducted by telecommunication would be difficult to control.

Prompting of witnesses can occur in face-to-face hearings, but we do agree that, in some situations, it may be more difficult for a person conducting a hearing to detect witness prompting at a hearing conducted by telecommunication than to detect witness prompting at a hearing conducted by personal attendance of participants. However, prompting of witnesses in hearings conducted by audio-visual telecommunication will be far more difficult to conceal from other parties and the person conducting a hearing than in hearings conducted by telephone. In fact, current audio-visual technology can provide the person conducting the proceeding and the parties with virtually unlimited vision in the room in which a hearing is being conducted. We believe that the potential prompting problem is minimized by making audio-visual hearings the prevalent method of hearing.

(g) Two commenters stated that hearings conducted by telecommunication could be negated by a signal or power failure or electronic interference.

We disagree. If a signal or power failure were to occur, the hearing would be adjourned until such time as the hearing could be resumed. That portion of the hearing which is completed prior to the signal or power failure would not be negated. A signal or power failure which causes the adjournment of a

hearing conducted by telecommunication is not different than an event, such as a power failure or fire in the building in which a hearing is being conducted, that may cause the person conducting a face-to-face hearing to temporarily adjourn a hearing.

(h) One commenter stated that the rules of practice would be subject to challenge which would add to uncertainty and cost money to defend.

While proceedings conducted by telecommunication could be challenged, we believe that these challenges can be easily defended. Above, we cited a number of cases in which adjudicatory proceedings conducted by telecommunication have been challenged, and the state and federal agencies conducting proceedings by telecommunication have prevailed.

(i) Two commenters stated that hearings conducted by telecommunication would often necessitate the employment of multiple counsel by each party to observe witness demeanor at each location at which a hearing is being held.

The final rule does not require counsel to be present at the location at which a witness is testifying in a proceeding conducted by telecommunication. While we do not believe that the presence of counsel at each location at which witnesses testify is necessary, a party may chose to have counsel present at some or all of the locations at which witnesses testify in hearings conducted by telecommunication. Such an expenditure would be at the option of each party to the proceeding.

8. The Rulemaking Record

Six commenters stated that the rulemaking record is deficient.

(a) Four commenters stated that the cost-benefit analysis is inadequate or nonexistent.

We have not made any change based upon these comments. In accordance with Executive Order 12866, we prepared an assessment in connection with the preparation of the notice of proposed rulemaking which preceded this final rule. The assessment, which was included in the rulemaking record, contains a discussion of the costs and benefits associated with the proposed rule. Again, in accordance with Executive Order 12866, we prepared an assessment in connection with the preparation of this final rule. The assessment, which was included in the rulemaking record, contains a discussion of the costs and benefits associated with the final rule.

(b) Two commenters stated that there was no ''justification of the technical feasibility of conducting cross-examination *via* audio-visual devices.''

We have not made any change based upon these comments. Prior to preparing the proposed rule, we thoroughly examined the range of equipment available to conduct adjudicatory proceedings by telecommunication. We found that both the telephone and audio-visual telecommunication equipment are generally adequate to conduct cross-examinations. Again, the final rule amends the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules, to provide that hearings will be conducted by the personal attendance of any individual who is expected to participate in the hearing if the person conducting the proceeding finds that personal attendance: (1) Is necessary to prevent prejudice to a party; (2) is necessary because of a disability of any individual expected to participate in the hearing; or (3) would cost less than conducting the hearing by audio-visual telecommunication. The person conducting the proceeding may, in his or her sole discretion or in response to a motion by a party to the proceeding, conduct the hearing by telephone only if the person conducting the proceeding finds that a hearing conducted by telephone: (1) would provide a full and fair evidentiary hearing; (2) would not prejudice any party; and (3) would cost less than conducting the hearing by audio-visual telecommunication or personal attendance of any individual who is expected to participate in the hearing.

(c) One commenter stated that it did not have adequate notice of the proposed rule, and, therefore, the comment period should be extended.

On June 22, 1994, in response to this comment, we published a document in the **Federal Register** (59 FR 32138) reopening and extending the comment period until July 22, 1994.

9. Suggestions

(a) Five commenters stated that the Department should experiment with proceedings conducted by telecommunication on a limited basis.

We have not made any change based on these comments. The use of telecommunication in adjudicatory proceedings is not new. Numerous state and federal agencies have conducted adjudicatory proceedings by telecommunication in the past. We believe that experience of other state and federal agencies is sufficient to enable the Department to forego the implementation of telecommunication on an experimental basis.

(b) Five commenters stated that hearings should only be conducted by telecommunication when the parties agree.

We have not made any change based on this comment. The final rule provides the parties with ample opportunity to make the person conducting the proceeding aware of the parties' preferences regarding the manner in which the hearing should be conducted and to persuade the person conducting the proceeding to conduct the hearing in a manner other than that ordered by the person conducting the proceeding. Specifically, the final rule amends the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules to provide that any party may move that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing rather than by audio-visual telecommunication. Further, within 10 days after the person conducting the proceeding issues a notice stating the manner in which the hearing is to be conducted, any party may move that the person conducting the proceeding reconsider the manner in which the hearing is to be conducted. (See 7 CFR 1.141(b)(2), 1.168(b)(2), 47.15(c)(2), and 47.53 (b) and (c) and 9 CFR 202.112(b) (2) and (3) in this final rule.)

(c) Two commenters stated that the parties should elect the manner in which depositions are to be held and judges should only be involved if the parties cannot agree.

We agree with the commenters with respect to the PACA Reparation Rules and the P&S Reparation Rules. We proposed to amend the Uniform Rules, the PACA Reparation Rules, and the P&S Reparation Rules to provide that a deposition shall be conducted by telephone unless the person conducting the proceeding determines that conducting the deposition by audio-visual telecommunication: (1) Would cost less than conducting the deposition by telephone; (2) is necessary to prevent prejudice to a party; or (3) is necessary because of a disability of any individual expected to participate in the deposition. If the deposition is not conducted by telephone, the deposition shall be conducted by audio-visual telecommunication unless the person conducting the proceeding determines that conducting the deposition by personal attendance of any individual who is expected to participate in the deposition: (1) Would cost less than

conducting the deposition by telephone or audio-visual telecommunication; (2) is necessary to prevent prejudice to a party; or (3) is necessary because of a disability of any individual expected to participate in the deposition.

However, the government is never a party in proceedings conducted under the PACA Reparation Rules and the P&S Reparation Rules and incurs very little cost associated with depositions taken in PACA and P&S reparation proceedings. Therefore, the final rule provides that in proceedings conducted under the PACA Reparation Rules and the P&S Reparation Rules the parties may agree upon the manner in which the depositions are to be conducted and the person conducting the proceeding will only determine the manner in which a deposition is to be conducted when the parties cannot agree. (See 7 CFR 47.16(b) (3) and (4) and 9 CFR 202.109(d) (4) and (5) in this final rule.)

(d) One commenter opposed the proposal, but urged the Department to modernize its rules and to form an ad hoc committee to review the rules.

We welcome any comments or petitions for rulemaking which any interested member of the public may wish to make regarding any of the Department's rules of practice, but we do not believe that it is necessary to form a committee to review the Department's rules or practice. The Department regulation regarding petitions for issuance, amendment, or repeal of a rule is set forth in 7 CFR 1.28.

(e) Two commenters supported conducting conferences by telephone when the judge decides that the use of the telephone is appropriate.

We did not make any change based on these comments. The proposed rule provided that conferences are to be held either by telephone or by correspondence unless certain findings are made by the person conducting the proceeding. The final rule retains those provisions.

Conclusion

Based on the rationale in the proposed rule and this rulemaking document, we are adopting the provisions of the proposal as a final rule except as previously discussed in this rulemaking document and except for minor editorial changes for clarity. In addition, since the preparation of the notice of proposed rulemaking 7 CFR 180.300 has been redesignated as 7 CFR 97.300. Therefore, we have removed the amendment of 7 CFR 180.300 in this final rule and, instead, amended 7 CFR 97.300.

Further, based upon the general need to allow the person conducting the proceeding to tailor the manner in which the proceeding is conducted to prevent prejudice to any party and to ensure that any hearing is a full and fair evidentiary hearing, we have eliminated all of the provisions which appeared in the proposal concerning interlocutory appeal. Specifically, we proposed to amend 7 CFR 1.143(e) to allow any party to appeal to the Judicial Officer a Judge's order: (1) To conduct a conference by audio-visual telecommunication or personally attend a conference; (2) to conduct a hearing by audio-visual telecommunication or personally attend a hearing; or (3) to conduct a deposition by audio-visual telecommunication or personally attend a deposition. Further, we proposed to amend 7 CFR 47.13(b) to allow any party to appeal to the Secretary an examiner's order: (1) To conduct a conference by audio-visual telecommunication or personally attend a conference; (2) to conduct a hearing by audio-visual telecommunication or personally attend a hearing; or (3) to conduct a deposition by audio-visual telecommunication or personally attend a deposition. Further still, we proposed to amend 7 CFR 1.172(e) to allow any party to appeal to the Judicial Officer a Judge's order: (1) To conduct a conference by audio-visual telecommunication or personally attend a conference; or (2) to conduct a hearing by audio-visual telecommunication or personally attend a hearing. Finally, we proposed to amend 9 CFR 202.118(b) to allow any party to appeal to the Judicial Officer a presiding officer's order: (1) To conduct a conference by audio-visual telecommunication or personally attend a prehearing conference; (2) to conduct an oral hearing by audio-visual telecommunication or personally attend an oral hearing; or (3) to conduct a deposition by audio-visual telecommunication or personally attend a deposition. None of these proposed amendments concerning interlocutory appeal have been adopted in this final rule.

Further, the proposed rule amended the Uniform Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules to require hearings to be recorded verbatim by an electronic recording device. Only if a party to the proceeding requests a transcript of the hearing or a part of the hearing and the person conducting the proceeding determines that the disposition of the proceeding would be expedited by a transcript of the hearing could the person conducting the proceeding order the verbatim transcription of the recording as requested by the party. We proposed to require that any presiding person's order to transcribe a hearing and the basis for the order be reduced to a written order and filed with the Hearing Clerk. We have eliminated the requirement that the order of the person conducting the proceeding and the basis of that order be reduced to a written order and filed with the Hearing Clerk. (See 7 CFR 1.141(i) and 47.60 and 9 CFR 202.112(i) in this final rule.) We do not believe that an order regarding transcription of a hearing must be handled in a manner different than any other order issued by the person conducting the proceeding.

Finally, the Department will bear the entire cost of audio-visual transmission and only some of the travel costs related to face-to-face hearings, conferences, and depositions. Therefore, there could be rare circumstances in which the overall cost of conducting a conference, hearing, or deposition by audio-visual telecommunication may be cheaper than conducting the same conference, hearing, or deposition in some other manner and at the same time the Department's cost of conducting the conference, hearing, or deposition by audio-visual telecommunication could be higher than conducting that conference, hearing, or deposition in some other manner. In order to avoid a measurable increase in costs to the Department, this final rule provides that if the person conducting the proceeding finds that a hearing or deposition conducted by audio-visual telecommunication would measurably increase costs to the Department, the hearing or deposition shall be conducted by personal attendance or by telephone. If the person conducting the proceeding finds that a conference conducted by audio-visual telecommunication would measurably increase costs to the Department, the conference shall be conducted by personal attendance, by telephone, or by correspondence. (See 7 CFR 1.140(c), 1.141(b), 1.148(b), 1.167(b), 1.168(b), 47.14(c), and 47.15(c), and 9 CFR 202.110(b) and 202.112(a) in this final rule.) We did not make this change with respect to depositions conducted under the PACA Reparation Rules or the P&S Reparation Rules because the government is never a party in proceedings conducted under those rules and incurs very little cost associated with depositions taken in PACA and P&S reparation proceedings.

Establishment of the Grain Inspection, Packers and Stockyards Administration

Pursuant to Public Law 103–354, the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, the Secretary of Agriculture published a notice of the Department's reorganization establishing the Grain Inspection, Packers and Stockyards Administration (59 FR 66517). This rule includes amendments to 9 CFR chapter II which are necessary to bring agency regulations in alignment with the departmental reorganization.

Executive Order 12866 and Regulatory Flexibility Act

We are issuing this final rule in conformance with Executive Order 12866. This rule has been determined to be significant and has been reviewed by the Office of Management and Budget under Executive Order 12866.

This final rule provides for conducting certain conferences, depositions, and hearings in connection with proceedings under the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules by telecommunication. Further, the final rule provides for the use of recordings in connection with depositions and hearings conducted under the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules. Finally, this final rule requires each party to exchange, in writing, with all other parties in the proceeding a verified narrative statement of the oral direct testimony of certain specified witnesses the party intends to call in hearings to be conducted by telephone. These amendments are designed to save money associated with the purchase of transcripts and time and money associated with travel to conferences, depositions, and hearings.

Most of the costs of the proceedings conducted under the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules are borne by the United States, which is not a small entity. The vast majority of conferences, hearings, and depositions held under the rules we are amending are conducted at locations convenient to the private individuals participating in the proceeding. Therefore, the United States will incur most of the costs associated with travel in connection with the proceedings. Further, most conferences held under the rules that we are amending are currently held by telephone, unless the conference is held during the hearing. Therefore, this final rule will not result in a change with respect to the manner in which most conferences are conducted.

Nonetheless, we believe that private individuals who participate in conferences, depositions, and hearings conducted by telecommunication, which will be paid for by the United States, will reduce costs which are associated with travel, even to convenient locations, and private parties who participate in these proceedings will save the difference between the cost of transcripts and recordings in depositions and hearings in which recordings are used.

Most of the private individuals who participate in proceedings conducted under the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules are small entities. This final rule will result in a small economic impact on private individuals who participate in the proceedings in question.

Under these circumstances, the Secretary 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 this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

The Paperwork Reduction Act of 1980 does not apply to this rule because the rule does not seek answers to identical questions or impose reporting or record keeping requirements on 10 or more persons, and the information collected is not used for general statistical purposes.

List of Subjects

7 CFR Part 0

Conflict of interest.

7 CFR Part 1

Administrative practice and procedure, Agriculture, Antitrust, Blind, Claims, Concessions, Cooperatives, Equal access to justice, Federal buildings and facilities, Freedom of information, Lawyers, Privacy.

7 CFR Part 47

Administrative practice and procedure, Agricultural commodities, Agricultural Marketing Service, Brokers.

7 CFR Part 50

Administrative practice and procedure, Agricultural commodities, Agricultural Marketing Service.

7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, Vegetables.

7 CFR Part 53

Cattle, Hogs, Livestock, Sheep.

7 CFR Part 54

Food grades and standards, Food labeling, Meat and meat products.

7 CFR Part 97

Administrative practice and procedure, Labeling, Plants.

9 CFR Part 202

Agriculture, Animals, Administrative practice and procedure, Reparation proceedings.

Accordingly, 7 CFR part 0, part 1, subpart H and subpart I, part 47, part 50, part 51, part 52, part 53, part 54, and part 97 and 9 CFR part 202 are amended as follows:

TITLE 7—[AMENDED]

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 0—EMPLOYEE RESPONSIBILITIES AND CONDUCT

1. The authority citation for part 0 is revised to read as follows:

Authority: E.O. 11222, 30 FR 6469, 3 CFR, 1965 Comp., page 306; 5 CFR 735.104; 18 U.S.C. 207(j), unless otherwise noted.

§ 0.735–11 [Amended]

2. Section 0.735–11 is amended as follows:

a. In paragraph (b)(6), by adding the words ''or such monitoring or recording occurs in the course of a Department of Agriculture proceeding conducted by telephone or audio-visual telecommunication and the person conducting the proceeding is an administrative law judge, hearing officer, examiner, or presiding officer'' immediately before the semicolon.

b. In paragraph (b)(7), by adding the words ''or such monitoring or recording occurs in the course of a Department of Agriculture proceeding conducted by telephone or audio-visual telecommunication and the person conducting the proceeding is an administrative law judge, hearing officer, examiner, or presiding officer'' immediately before the semicolon.

PART 1—ADMINISTRATIVE REGULATIONS

3. The authority citation for part 1, subpart H, is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 61, 87e, 149, 150gg, 162, 163, 164, 228, 268, 499o, 608c(14), 1592, 1624(b), 2151, 2621, 2714, 2908, 3812, 4610, 4815, 4910; 15 U.S.C. 1828; 16 U.S.C. 620d, 1540(f), 3373; 21 U.S.C. 104, 111, 117, 120, 122, 127, 134e, 134f, 135a, 154, 463(b), 621, 1043; 43 U.S.C. 1740; 7 CFR 2.35, 2.41.

§ 1.131 [Amended]

4. In § 1.131, paragraph (a), the second sentence is revised to read ''Section 1.26 shall be inapplicable to proceedings covered by this subpart.''

§ 1.132 [Amended]

5. Section 1.132 is amended as follows:

a. In paragraph (d), the reference to ''459g'' is removed and ''450g'' added in its place.

b. In paragraph (d), the reference to ''1970 ed. appendix, p. 550'' is removed and ''App. (1988)'' added in its place.

c. In paragraph (d), the reference to ''7 CFR 2.35(a)'' is removed and ''§ 2.35(a) of this chapter'' added in its place.

d. Section 1.132 is amended by removing all alphabetical paragraph designations and placing the definitions in alphabetical order.

§ 1.133 [Amended]

6. In § 1.133, paragraph (a)(1), the first sentence is amended by removing the words ''of this subpart''.

§ 1.140 [Amended]

7. In § 1.140, the section heading is revised to read as set forth below; paragraph (a)(1) introductory text is amended by removing the word ''prehearing'' and revising the second sentence to read ''Reasonable notice of the time, place, and manner of the conference shall be given.''; paragraph (b) is amended by removing the word ''prehearing''; and paragraph (c) is revised to read as follows:

§ 1.140 Conferences and procedure.

* * * * *

(c) *Manner of Conference.* (1) The conference shall be conducted by telephone or correspondence unless the Judge determines that conducting the conference by audio-visual telecommunication:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the conference; or

(iii) Would cost less than conducting the conference by telephone or correspondence. If the Judge determines that a conference conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the conference, the conference shall be conducted by personal attendance of any individual who is expected to participate in the conference, by telephone, or by correspondence.

(2) If the conference is not conducted by telephone or correspondence, the conference shall be conducted by audio-visual telecommunication unless the Judge determines that conducting the conference by personal attendance of any individual who is expected to participate in the conference:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the conference; or

(iii) Would cost less than conducting the conference by audio-visual telecommunication.

* * * * *

§ 1.141 [Amended]

8. Section 1.141 is amended as follows:

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

b. Paragraph (e) is amended by removing the words ''of these rules'' both times they appear.

c. Paragraph (g)(7) is amended by adding the words ''or recording'' immediately after the word ''transcript'' each of the three times the word ''transcript'' appears.

d. Paragraphs (g) and (h) are redesignated as paragraphs (h) and (i) respectively.

e. New paragraph (g) is added to read as set forth below.

f. Redesignated paragraph (i) is revised to read as set forth below.

§ 1.141 Procedure for hearing.

* * * * *

(b) *Time, place, and manner.* (1) If any material issue of fact is joined by the pleadings, the Judge, upon motion of any party stating that the matter is at issue and is ready for hearing, shall set a time, place, and manner for hearing as soon as feasible after the motion is filed, with due regard for the public interest and the convenience and necessity of the parties. The Judge shall file with the Hearing Clerk a notice stating the time and place of the hearing.[3] This notice shall state whether the hearing will be conducted by telephone, audio-visual telecommunication, or personal attendance of any individual expected to participate in the hearing. The Judge's determination regarding the manner of the hearing shall be made in accordance with paragraphs (b)(3) and (b)(4) of this section. If any change in the time, place, or manner of the hearing is made, the Judge shall file with the Hearing Clerk a notice of such change, which notice shall be served upon the parties, unless it is made during the course of an oral hearing and made part of the transcript or recording, or actual notice is given to the parties.

(2) (i) If any material issue of fact is joined by the pleadings and the matter is at issue and is ready for hearing, any party may move that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing rather than by audio-visual telecommunication. Any motion that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than by audio-visual telecommunication.

(ii) Within 10 days after the Judge issues a notice stating the manner in which the hearing is to be conducted, any party may move that the Judge reconsider the manner in which the hearing is to be conducted. Any motion for reconsideration must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than in accordance with the Judges's notice.

[3] The place of hearing in a proceeding under the Packers and Stockyards Act shall be set in accordance with the Packers and Stockyards Act (7 U.S.C. 228 (e) and (f)). In essence, if there is only one respondent, the hearing is to be held as near as possible to the respondent's place of business or residence depending on the availability of an appropriate location for conducting the hearing. If there is more than one respondent and they have their places of business or residence within a single unit of local government, a single geographical area within a State, or a single State, the hearing is to be held as near as possible to their places of business or residence depending on the availability of an appropriate location for conducting the hearing. If there is more than one respondent, and they have their places of business or residence distant from each other, 7 U.S.C. 228 (e) and (f) have no applicability.

(3) The hearing shall be conducted by audio-visual telecommunication unless the Judge determines that conducting the hearing by personal attendance of any individual who is expected to participate in the hearing:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the hearing; or

(iii) Would cost less than conducting the hearing by audio-visual telecommunication. If the Judge determines that a hearing conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the hearing, the hearing shall be conducted by personal attendance of any individual who is expected to participate in the hearing or by telephone.

(4) The Judge may, in his or her sole discretion or in response to a motion by a party to the proceeding, conduct the hearing by telephone if the Judge finds that a hearing conducted by telephone:

(i) Would provide a full and fair evidentiary hearing;

(ii) Would not prejudice any party; and

(iii) Would cost less than conducting the hearing by audio-visual telecommunication or personal attendance of any individual who is expected to participate in the hearing.

* * * * *

(g) *Written statements of direct testimony.* (1) Except as provided in paragraph (g)(2) of this section, each party must exchange with all other parties a written narrative verified statement of the oral direct testimony that the party will provide at any hearing to be conducted by telephone; the direct testimony of each employee or agent of the party that the party will call to provide oral direct testimony at any hearing to be conducted by telephone; and the direct testimony of each expert witness that the party will call to provide oral direct testimony at any hearing to be conducted by telephone. The written direct testimony of witnesses shall be exchanged by the parties at least 10 days prior to the hearing. The oral direct testimony provided by a witness at a hearing conducted by telephone will be limited to the presentation of the written direct testimony, unless the Judge finds that oral direct testimony which is supplemental to the written direct testimony would further the public interest and would not constitute surprise.

(2) The parties shall not be required to exchange testimony in accordance with this paragraph if the hearing is scheduled to begin less than 20 days after the Judge's notice stating the time of the hearing.

* * * * *

(i) *Transcript or recording.* (1) Hearings to be conducted by telephone shall be recorded verbatim by electronic recording device. Hearings conducted by audio-visual telecommunication or the personal attendance of any individual who is expected to participate in the hearing shall be transcribed, unless the Judge finds that recording the hearing verbatim would expedite the proceeding and the Judge orders the hearing to be recorded verbatim. The Judge shall certify that to the best of his or her knowledge and belief any recording made pursuant to this paragraph with exhibits that were accepted into evidence is the record of the hearing.

(2) If a hearing is recorded verbatim, a party requests the transcript of a hearing or part of a hearing, and the Judge determines that the disposition of the proceeding would be expedited by a transcript of the hearing or part of a hearing, the Judge shall order the verbatim transcription of the recording as requested by the party.

(3) Recordings or transcripts of hearings shall be made available to any person at actual cost of duplication.

§ 1.142 [Amended]

9. Section 1.142 is amended as follows:

a. In paragraph (a), the heading is amended by adding the words ''or recording'' immediately after the word ''transcript''.

b. Paragraph (a)(1) is amended by adding the words ''or recording'' immediately after the word ''transcript''.

c. Paragraph (a)(2) is amended by adding the words ''or recording'' immediately after the word ''transcript'' both times the word ''transcript'' appears.

d. Paragraph (a)(3) is amended by adding the words ''or recording'' immediately after the word ''transcript'' each of the three times the word ''transcript'' appears.

e. Paragraph (c)(2) is amended by removing the words ''of the record'' and adding the words ''or recording'' in their place.

§ 1.144 [Amended]

10. Section 1.144 is amended as follows:

a. Paragraph (c)(2) is revised to read as set forth below.

b. Paragraphs (c)(9) and (c)(10) are redesignated as paragraphs (c)(13) and (c)(14) respectively.

c. New paragraphs (c)(9), (c)(10), (c)(11), and (c)(12) are added to read as set forth below.

§ 1.144 Judges.

* * * * *

(c) * * *

(2) Set the time, place, and manner of a conference and the hearing, adjourn the hearing, and change the time, place, and manner of the hearing;

* * * * *

(9) Require each party to provide all other parties and the Judge with a copy of any exhibit that the party intends to introduce into evidence prior to any hearing to be conducted by telephone or audio-visual telecommunication;

(10) Require each party to provide all other parties with a copy of any document that the party intends to use to examine a deponent prior to any deposition to be conducted by telephone or audio-visual telecommunication;

(11) Require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the Judge are able to transmit and receive documents during the hearing;

(12) Require that any deposition to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties are able to transmit and receive documents during the deposition;

* * * * *

§ 1.145 [Amended]

11. Section 1.145 is amended as follows:

a. In paragraph (a), the reference to ''§ 1.141(g)(2)'' is removed and ''§ 1.141(h)(2)'' added in its place.

b. In paragraph (c), the second sentence is amended by adding the words ''or recording'' immediately after the word ''transcript''.

§ 1.147 [Amended]

12. In section 1.147, paragraph (c)(2) is amended by removing the words ''of this part''; and paragraph (d) is amended by removing the words ''of this part''.

§ 1.148 [Amended]

13. Section 1.148 is amended as follows:

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

b. In paragraph (f), the words ''or recording'' are added immediately after the word ''transcript'' in the paragraph heading; in paragraph (f)(1), once; in paragraph (f)(2), twice; and in paragraph (f)(3), twice.

§ 1.148 Depositions.

* * * * *

(b) *Judge's order for taking deposition.* (1) If the Judge finds that the testimony may not be otherwise available at the hearing, the taking of the deposition may be ordered. The order shall be filed with the Hearing Clerk and shall state:

(i) The time of the deposition;

(ii) The place of the deposition;

(iii) The manner of the deposition (telephone, audio-visual telecommunication, or personal attendance of those who are to participate in the deposition);

(iv) The name of the officer before whom the deposition is to be made; and

(v) The name of the deponent. The officer and the time, place, and manner need not be the same as those suggested in the motion for the deposition.

(2) The deposition shall be conducted by telephone unless the Judge determines that conducting the deposition by audio-visual telecommunication:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the deposition; or

(iii) Would cost less than conducting the deposition by telephone. If the Judge determines that a deposition conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the deposition, the deposition shall be conducted by personal attendance of any individual who is expected to participate in the deposition or by telephone.

(3) If the deposition is not conducted by telephone, the deposition shall be conducted by audio-visual telecommunication unless the Judge determines that conducting the deposition by personal attendance of any individual who is expected to participate in the deposition:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the deposition; or

(iii) Would cost less than conducting the deposition by telephone or audio-visual telecommunication.

* * * * *

§ 1.149 [Amended]

14. In § 1.149, paragraph (b), the last sentence is amended by removing the words ''of this part''.

15. The authority citation for part 1, subpart I, is revised to read as follows:

Authority: 7 U.S.C. 291, 292; 7 CFR 2.35, 2.41.

§ 1.161 [Amended]

16. Section 1.161 is amended as follows:

a. In paragraph (c), the words ''or her'' are added immediately after the word ''his''.

b. In paragraph (g), the reference to ''1976 ed., appendix, p. 764'' is removed and ''App. (1988)'' added in its place.

c. In paragraph (g), the reference to ''7 CFR 2.35'' is removed and ''§ 2.35(a) of this chapter'' added in its place.

d. In paragraph (g), the words ''or she'' are added immediately after the word ''he''.

e. Section 1.161 is amended by removing all alphabetical paragraph designations and placing the definitions in alphabetical order.

§ 1.162 [Amended]

17. Section 1.162 is amended as follows:

a. In paragraph (b), in the first sentence, the word ''part'' is removed and the word ''paragraph'' added in its place.

b. In paragraph (b), in the first sentence, the word ''he'' is removed and the words ''the Secretary'' added in its place.

c. In paragraph (b), in the second sentence, the word ''he'' is removed and '', the Secretary'' added in its place.

§ 1.164 [Amended]

18. In § 1.164, paragraph (a), the first sentence is amended by removing the word ''his'' and adding the words ''the respondent's'' in its place.

§ 1.167 [Amended]

19. Section 1.167 is revised to read as follows:

§ 1.167 Conference

(a) *Purpose.* Upon motion of a party or upon the Judge's own motion, the Judge may direct the parties to attend a conference when the Judge finds that the proceeding would be expedited by discussions on matters of procedure and/or possible stipulations. The conference may include discussions regarding:

(1) Simplification of the issues;

(2) Limitation of expert or other witnesses;

(3) The orderly presentation of evidence; and

(4) Any other matters that may expedite and aid in the disposition of the proceeding.

(b) *Manner of the Conference.* (1) The conference shall be conducted by telephone or correspondence unless the Judge determines that conducting the conference by audio-visual telecommunication:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the conference; or

(iii) Would cost less than conducting the conference by telephone or correspondence. If the Judge determines that a conference conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the conference, the conference shall be conducted by personal attendance of any individual who is expected to participate in the conference, by telephone, or by correspondence.

(2) If the conference is not conducted by telephone or correspondence, the conference shall be conducted by audio-visual telecommunication unless the Judge determines that conducting the conference by personal attendance of any individual who is expected to participate in the conference:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the conference; or

(iii) Would cost less than conducting the conference by audio-visual telecommunication.

§ 1.168 [Amended]

20. Section 1.168 is amended as follows:

a. In paragraph (e)(1), the first sentence is amended by removing the word ''reported'' and adding the words ''transcribed or recorded'' in its place.

b. In paragraph (e)(2), the first sentence is amended by removing the word ''he'' and by adding the words ''the party'' in its place.

c. In paragraph (e)(2), the second sentence is amended by adding the words ''or recording'' immediately after the word ''transcript''.

d. Paragraph (e)(6) is amended by adding the words ''or recording'' immediately after the word ''transcript'' each of the three times the word ''transcript'' appears.

e. Paragraphs (b), (c), (d), and (e) are redesignated as (c), (d), (e), and (g) respectively.

f. New paragraphs (b), (f), and (h) are added to read as follows:

§ 1.168 Procedure for hearing.

* * * * *

(b) *Manner of hearing.* (1) The Judge shall file with the Hearing Clerk a notice stating whether the hearing will be conducted by telephone, audio-visual telecommunication, or personal attendance of any individual expected to attend the hearing and the Judge's determination regarding the manner of

hearing shall be made in accordance with paragraphs (b)(3) and (b)(4) of this section. If any change in the manner of the hearing is made, the Judge shall file with the Hearing Clerk a notice of the change, which notice shall be served on the parties, unless it is made during the course of an oral hearing and made part of the transcript or recording, or actual notice is given to the parties.

(2)(i) Any party may move that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing rather than by audio-visual telecommunication. Any motion that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than by audio-visual telecommunication.

(ii) Within 10 days after the Judge issues a notice stating the manner in which the hearing is to be conducted, any party may move that the Judge reconsider the manner in which the hearing is to be conducted. Any motion for reconsideration must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than in accordance with the Judges's notice.

(3) The hearing shall be conducted by audio-visual telecommunication unless the Judge determines that conducting the hearing by personal attendance of any individual who is expected to participate in the hearing:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the hearing; or

(iii) Would cost less than conducting the hearing by audio-visual telecommunication. If the Judge determines that a hearing conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the hearing, the hearing shall be conducted by personal attendance of any individual who is expected to participate in the hearing or by telephone.

(4) The Judge may, in his or her sole discretion or in response to a motion by a party to the proceeding, conduct the hearing by telephone if the Judge finds that a hearing conducted by telephone:

(i) Would provide a full and fair evidentiary hearing;

(ii) Would not prejudice any party; and

(iii) Would cost less than conducting the hearing by audio-visual telecommunication or personal attendance of any individual who is expected to participate in the hearing.

* * * * *

(f) *Written statements of direct testimony.* (1) Except as provided in paragraph (f)(2) of this section, each party must exchange with all other parties a written narrative verified statement of the oral direct testimony that the party will provide at any hearing to be conducted by telephone; the direct testimony of each employee or agent of the party that the party will call to provide oral direct testimony at any hearing to be conducted by telephone; and the direct testimony of each expert witness that the party will call to provide oral direct testimony at any hearing to be conducted by telephone. The written direct testimony of witnesses shall be exchanged by the parties at least 10 days prior to the hearing. The oral direct testimony provided by a witness at a hearing conducted by telephone will be limited to the presentation of the written direct testimony, unless the Judge finds that oral direct testimony which is supplemental to the written direct testimony would further the public interest and would not constitute surprise.

(2) The parties shall not be required to exchange testimony in accordance with this paragraph if the hearing is scheduled to begin less than 20 days after the Judge's notice stating the time of the hearing.

* * * * *

(h) *Transcript or recording.* (1) Hearings to be conducted by telephone shall be recorded verbatim by electronic recording device. Hearings conducted by audio-visual telecommunication or the personal attendance of any individual who is expected to participate in the hearing shall be transcribed, unless the Judge finds that recording the hearing verbatim would expedite the proceeding and the Judge orders the hearing to be recorded verbatim. The Judge shall certify that to the best of his or her knowledge and belief any recording made pursuant to this paragraph with exhibits that were accepted into evidence is the record of the hearing.

(2) If a hearing is recorded verbatim, a party requests the transcript of a hearing or part of a hearing, and the Judge determines that the disposition of the proceeding would be expedited by a transcript of the hearing or part of a hearing, the Judge shall order the verbatim transcription of the recording as requested by the party.

(3) Recordings or transcripts of hearings shall be made available to any person at actual cost of duplication.

* * * * *

§ 1.169 [Amended]

21. Section 1.169 is amended as follows:

a. In paragraph (a), the heading is revised to read ''*Corrections to transcript or recording.*''

b. In paragraph (a)(1), the words ''or recording'' are added immediately after the word ''transcript''.

c. In paragraph (a)(2), the words ''or recording'' are added immediately after the word ''transcript'' both times the word ''transcript'' appears.

d. In paragraph (a)(3), the words ''or recording'' are added immediately after the word ''transcript'' each of the three times the word ''transcript'' appears.

e. In paragraph (c), in the last sentence, the word ''herein'' is removed.

§ 1.170 [Amended]

22. Section 1.170 is amended as follows:

a. In paragraph (a), in the second sentence, the reference to ''§ 1.167(e)(2)'' is removed and ''§ 1.168(g)(2)'' added in its place.

b. In paragraph (c), the words ''or recording'' are added immediately after the word ''transcript''.

c. In paragraph (i), in the last sentence, the word ''herein'' is removed.

§ 1.171 [Amended]

23. Section 1.171 is amended by removing the word ''herein''.

§ 1.172 [Amended]

24. In § 1.172, paragraph (a) is amended by adding the words ''or recording'' immediately after the word ''transcript''.

§ 1.173 [Amended]

25. Section 1.173 is amended as follows:

a. In paragraph (b)(1), the words ''or herself'' are added immediately after the word ''himself''.

b. In paragraph (b)(2), the word ''he'' is removed and the words ''the Judge'' added in its place.

c. In paragraph (b)(2), the words ''or herself'' are added immediately after the word ''himself''.

d. In paragraph (d), in the introductory language, the words ''or her,'' are added immediately after the word ''him''.

e. Paragraph (d)(2) is revised to read as set forth below.

f. Paragraph (d)(7) is redesignated as paragraph (d)(9).

g. New paragraphs (d)(7) and (d)(8) are added to read as set forth below.

h. In paragraph (e), the word ''his'' is removed and the words ''the Judge's'' added in its place.

i. In paragraph (e), the word ''him'' is removed and the words ''the Judge'' are added in its place both times the word ''him'' appears.

§ 1.173 Judges.

* * * * *

(d) * * *

(2) Set the time, place, and manner of any conference, set the manner of the hearing, adjourn the hearing, and change the time, place, and manner of the hearing;

* * * * *

(7) Require each party to provide all other parties and the Judge with a copy of any exhibit that the party intends to introduce into evidence prior to any hearing to be conducted by telephone or audio-visual telecommunication;

(8) Require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the Judge are able to transmit and receive documents during the hearing;

* * * * *

§ 1.174 [Amended]

26. In § 1.174, paragraph (c) is amended by adding the words ''or recording'' immediately after the word ''transcript''.

SUBTITLE B—REGULATIONS OF THE DEPARTMENT OF AGRICULTURE

CHAPTER I—AGRICULTURAL MARKETING SERVICE

PART 47—RULES OF PRACTICE UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT

27. The authority citation for part 47 is revised to read as follows:

Authority: 7 U.S.C. 499o; 7 CFR 2.17(a)(8)(xiii), 2.50(a)(8)(xiii).

§ 47.2 [Amended]

28. Section 47.2 is amended as follows:

a. In paragraph (c), the words ''or her'' are added immediately after the word ''his''.

b. In paragraph (e), the words ''or her'' are added immediately after the word ''his''.

c. In paragraph (f), the words ''or her'' are added immediately after the word ''his''.

d. In paragraph (h), the words ''or her'' are added immediately after the word ''his''.

§ 47.3 [Amended]

29. Section 47.3 is amended as follows:

a. In paragraph (b)(1), in the first sentence, the word ''his'' is removed and the words ''the Director's'' added in its place.

b. Paragraph (c) is revised to read as follows:

§ 47.3 Institution of proceedings.

* * * * *

(c) *Status of person filing informal complaint.* The person filing an informal reparation complaint shall not be a party to any disciplinary proceeding which may be instituted as a result of the informal reparation complaint. The person filing an informal reparation complaint shall have no legal status in the reparation proceeding, except as he or she may be subpoenaed as a witness or deposed without expense to him or her.

§ 47.4 [Amended]

30. In section 47.4, paragraph (b)(2) is amended by removing the words ''of this part''.

§ 47.5 [Amended]

31. Section 47.5 is amended by removing the words ''of these regulations in this part'' and ''of the regulations in this part'' and revising the last sentence to read as follows:

§ 47.5 Scope and applicability of rules of practice.

* * * In addition, except to the extent that they are inconsistent with §§ 1.130 through 1.151 of this chapter, §§ 47.1 through 47.5 and 47.46 are also applicable to procedures governing the filing and disposition of formal complaints and other moving papers relating to administrative proceedings to enforce the Act pursuant to §§ 1.130 through 1.151 of this chapter.

§ 47.11 [Amended]

32. Section 47.11 is amended as follows:

a. In paragraph (b), in the second sentence, the word ''he'' is removed and the words ''the Secretary'' are added in its place.

b. In paragraph (c), in the introductory language, the words ''elsewhere in the regulations'' are removed.

c. In paragraph (c), in the introductory language, the words ''or her'' are added immediately after the word ''him''.

d. Paragraph (c)(2) is revised to read as set forth below.

e. Paragraph (c)(9) is redesignated as (c)(13).

f. New paragraphs (c)(9), (c)(10), (c)(11), and (c)(12) are added to read as set forth below.

g. In paragraph (d), the word ''him'' is removed and the words ''the examiner'' added in its place.

§ 47.11 Examiners.

* * * * *

(c) * * *

(2) Set the time, place, and manner of the hearing, adjourn the hearing, and change the time, place, and manner of the hearing;

* * * * *

(9) Require each party to provide all other parties and the examiner with a copy of any exhibit that the party intends to introduce into evidence prior to any hearing to be conducted by telephone or audio-visual telecommunication;

(10) Require each party to provide all other parties with a copy of any document that the party intends to use to examine a deponent prior to any deposition to be conducted by telephone or audio-visual telecommunication;

(11) Require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the examiner are able to transmit and receive documents during the hearing;

(12) Require that any deposition to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties are able to transmit and receive documents during the deposition;

* * * * *

§ 47.12 [Amended]

33. Section 47.12 is amended by removing the word ''he'' and adding the words ''the petitioner'' each of the three times the word ''he'' appears.

§ 47.13 [Amended]

34. Section 47.13 is amended as follows:

a. In paragraph (a)(1), the words ''or recording'' are added immediately after the word ''transcript''.

b. Paragraph (b) is revised to read as follows:

§ 47.13 Motions and requests.

* * * * *

(b) *Certification to the Secretary.* The submission or certification of any motion, request, objection, or other question to the Secretary prior to transmittal of the record to the Secretary as provided in this part shall be made by and in the discretion of the examiner. The examiner may either rule upon or certify the motion, request, objection, or other question to the Secretary, but not both.

§ 47.14 [Amended]

35. Section 47.14 is revised to read as follows:

(a) In any proceeding in which it appears that a conference will expedite the proceeding, the examiner, at any time prior to or during the course of the oral hearing, may request the parties or their counsel to appear at a conference before the examiner to consider:

(1) The simplification of the issues;

(2) The necessity or the desirability of amendments to the pleadings;

(3) The possibility of obtaining stipulations of fact and of documents which will avoid unnecessary proof;

(4) The limitation of the number of expert or other witnesses; or

(5) Such other matters as may expedite and aid in the disposition of the proceeding.

(b) No transcript or recording of the conference shall be made. If the conference is conducted by correspondence, the examiner shall forward copies of letters and documents to the parties as circumstances require. The correspondence in connection with a conference shall not be part of the record. The examiner shall prepare and file for the record a written summary of the action agreed upon or taken at the conference, which shall incorporate any written stipulations or agreements made by the parties at the conference or as a result of the conference.

(c) *Manner of the Conference.* (1) The conference shall be conducted by telephone or correspondence unless the examiner determines that conducting the conference by audio-visual telecommunication:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the conference; or

(iii) Would cost less than conducting the conference by telephone or correspondence. If the examiner determines that a conference conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the conference, the conference shall be conducted by personal attendance of any individual who is expected to participate in the conference, by telephone, or by correspondence.

(2) If the conference is not conducted by telephone or correspondence, the conference shall be conducted by audio-visual telecommunication unless the examiner determines that conducting the conference by personal attendance of any individual who is expected to participate in the conference:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the conference; or

(iii) Would cost less than conducting the conference by audio-visual telecommunication.

§ 47.15 [Amended]

36. Section 47.15 is amended as follows:

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

b. In paragraph (d)(2), the word ''he'' is removed and the words ''the party'' are added in its place.

c. In paragraph (d)(2), the words ''or her'' are added immediately after the word ''his''.

d. In paragraph (d)(3)(i), the words ''or her'' are added immediately after the word ''him''.

e. In paragraph (f)(2)(i), the word ''he'' is removed and the words ''the party'' are added in its place.

f. In paragraphs (f)(2)(i), the words ''or recording'' are added immediately after the word ''transcript'' both times the word ''transcript'' appears.

g. In paragraph (f)(6)(ii), ''recording,'' is added immediately after ''document,'' both times ''document,'' appears.

h. In paragraph (f)(8), the words ''or recording'' are added immediately after the word ''transcript'' the three times the word ''transcript'' appears.

i. In paragraph (g), in the first sentence, the words ''hereinafter provided'' are removed and the words ''provided in this part'' are added in their place.

j. In paragraph (g), in the second sentence, the word ''he'' is removed and the words ''the examiner'' are added in its place.

k. Paragraphs (f), (g), and (h) are redesignated as (g), (h), and (i) respectively.

l. A new paragraph (f) is added to read as set forth below.

m. Redesignated paragraph (i) is revised to read as set forth below.

§ 47.15 Oral hearing before examiner.

* * * * *

(c) *Time, place, and manner.* (1) If and when the proceeding has reached the stage of oral hearing, the examiner, giving careful consideration to the convenience of the parties, shall set a time for hearing and shall file with the hearing clerk a notice stating the time and place of hearing. Unless the parties otherwise agree, the place of the hearing shall be the place in which the respondent is engaged in business. This notice shall state whether the hearing will be conducted by telephone, audio-visual telecommunication, or personal attendance of any individual expected to participate in the hearing and the examiner's determination regarding the manner of the hearing shall be made in accordance with paragraphs (c)(3) and (c)(4) of this section. If any change in the time, place, or manner of the hearing is made, the examiner shall file with the hearing clerk a notice of the change. The notice of any change in the time, place, or manner of the hearing shall be served on the parties, unless it is made during the course of an oral hearing and made part of the transcript or recording, or actual notice is given to the parties.

(2)(i) If and when the proceeding has reached the stage of oral hearing, any party may move that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing rather than by audio-visual telecommunication. Any motion that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than by audio-visual telecommunication.

(ii) Within 10 days after the examiner issues a notice stating the manner in which the hearing is to be conducted, any party may move that the examiner reconsider the manner in which the hearing is to be conducted. Any motion for reconsideration must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than in accordance with the examiner's notice.

(3) The hearing shall be conducted by audio-visual telecommunication unless the examiner determines that conducting the hearing by personal attendance of any individual expected to attend the hearing:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the hearing; or

(iii) Would cost less than conducting the hearing by audio-visual telecommunication. If the examiner determines that a hearing conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the hearing, the hearing shall be conducted by personal attendance of any individual who is expected to participate in the hearing or by telephone.

(4) The examiner may, in his or her sole discretion or in response to a motion by a party to the proceeding, conduct the hearing by telephone if the examiner finds that a hearing conducted by telephone:

(i) Would provide a full and fair evidentiary hearing;

(ii) Would not prejudice any party; and

(iii) Would cost less than conducting the hearing by audio-visual telecommunication or personal attendance of any individual who is expected to participate in the hearing.

* * * * *

(f) *Written statements of direct testimony.* (1) Except as provided in paragraph (f)(2) of this section, each party must exchange with all other parties a written narrative verified statement of the oral direct testimony that the party will provide at any hearing to be conducted by telephone; the direct testimony of each employee or agent of the party that the party will call to provide oral direct testimony at any hearing to be conducted by telephone; and the direct testimony of each expert witness that the party will call to provide oral direct testimony at any hearing to be conducted by telephone. The written direct testimony of witnesses shall be exchanged by the parties at least 10 days prior to the hearing. The oral direct testimony provided by a witness at a hearing conducted by telephone will be limited to the presentation of the written direct testimony, unless the examiner finds that oral direct testimony which is supplemental to the written direct testimony would further the public interest and would not constitute surprise.

(2) The parties shall not be required to exchange testimony in accordance with this paragraph if the hearing is scheduled to begin less than 20 days after the examiner's notice stating the time of the hearing.

* * * * *

(i) *Transcript or recording.* (1) Hearings to be conducted by telephone shall be recorded verbatim by electronic recording device. Hearings conducted by audio-visual telecommunication or the personal attendance of any individual who is expected to participate in the hearing shall be transcribed, unless the examiner finds that recording the hearing verbatim would expedite the proceeding and the examiner orders the hearing to be recorded verbatim.

(2) If a hearing is recorded verbatim, a party requests the transcript of a hearing or part of a hearing, and the examiner determines that the disposition of the proceeding would be expedited by a transcript of the hearing or part of a hearing, the examiner shall order the verbatim transcription of the recording as requested by the party.

(3) If a reporter transcribes or records the testimony at a hearing, the reporter shall deliver the original transcript or recording, with exhibits thereto attached, to the examiner, who will retain such copy for the official file and for use in preparing his or her report. The reporter will also deliver to the examiner such other copy or copies as may be ordered by the Department, which copy or copies the examiner will forward to the hearing clerk.

(4) Parties to the proceeding, or others, who desire a copy of the transcript or recording of the hearing may place orders at the hearing with the reporter, who will furnish and deliver such copies direct to the purchaser upon payment of the applicable rate.

* * * * *

§ 47.16 [Amended]

37. Section 47.16 is amended as follows:

a. Paragraphs (a)(3) and (a)(4) are revised and (a)(5) and (a)(6) are added to read as set forth below.

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

c. Paragraph (d)(1) is revised to read as set forth below.

d. In paragraph (e), in the first sentence, the word ''him'' is removed and the words ''the officer'' added in its place.

e. In paragraph (e), in the second sentence, the word ''He'' is removed and the words ''The officer'' added in its place.

§ 47.16 Depositions.

(a) * * *

(3) the proposed time of the deposition which, unless otherwise agreed, shall be at least 30 days after the date of the mailing of the application; (4) the proposed place of the deposition; (5) the proposed manner in which the deposition is to be conducted (telephone, audio-visual telecommunication, or by personal attendance of the individuals who are expected to participate in the deposition); and (6) the reasons for taking the deposition.

(b) *Examiner's order for taking deposition.* (1) If, after examination of the application, the examiner is of the opinion that the deposition should be taken, the examiner shall order the taking of the deposition. The order shall be filed with the hearing clerk and shall be served by the hearing clerk upon the parties in accordance with § 47.4.

(2) The order shall state:

(i) The time of the deposition (which unless otherwise agreed shall not be less than 20 days after the filing of the order);

(ii) The place of the deposition;

(iii) The manner of the deposition (telephone, audio-visual telecommunication, or personal attendance of those who are to participate in the deposition);

(iv) The name of the officer before whom the deposition is to be made; and

(v) The name of the deponent.

(3) The deposition shall be conducted in the manner (telephone, audio-visual telecommunication, or personal attendance of those who are to participate in the deposition) agreed to by the parties.

(4) If the parties cannot agree on the manner in which the deposition is to be conducted:

(i) The deposition shall be conducted by telephone unless the examiner determines that conducting the deposition by audio-visual telecommunication:

(A) Is necessary to prevent prejudice to a party;

(B) Is necessary because of a disability of any individual expected to participate in the deposition; or

(C) Would cost less than conducting the deposition by telephone.

(ii) If the deposition is not conducted by telephone, the deposition shall be conducted by audio-visual telecommunication unless the examiner determines that conducting the deposition by personal attendance of any individual who is expected to participate in the deposition:

(A) Is necessary to prevent prejudice to a party;

(B) Is necessary because of a disability of any individual expected to participate in the deposition; or

(C) Would cost less than conducting the deposition by telephone or audio-visual telecommunication.

* * * * *

(d) *Procedure on examination.* (1) The deponent shall be examined under oath or affirmation and shall be subject to cross-examination. The testimony of the deponent shall be recorded by the officer or some person under the officer's direction. In lieu of oral examination, parties may transmit written questions to the officer prior to examination and the officer shall propound the written questions to the deponent.

* * * * *

§ 47.17 [Amended]

38. In § 47.17, paragraph (c), the last sentence is amended by removing the words ''of this part''.

§ 47.19 [Amended]

39. Section 47.19 is amended as follows:

a. In paragraph (a), the heading is revised to read ''*Certification of transcript or recording.*''.

b. In paragraph (a), the words ''or recording'' are added immediately after the word ''transcript'' each of the five times the word ''transcript'' appears.

c. In paragraph (a), the words ''or her'' are added immediately after the word ''his'' both times time the word ''his'' appears.

d. In paragraph (a) the word ''he'' is removed and the words ''the examiner'' added in its place both times the word ''he'' appears.

e. In paragraph (b), in the second sentence, the words ''or she'' are added immediately after the word ''he''.

f. In paragraph (d)(3), the word ''his'' is removed and the words ''the party's'' are added in its place.

g. In paragraph (d)(6), in the first sentence, the words ''or her'' are added immediately after the word ''his''.

h. In paragraph (e), the words ''or her'' are added immediately after the word ''his''.

§ 47.20 [Amended]

40. Section 47.20 is amended as follows:

a. In paragraph (b)(2), the words ''or she'' are added immediately after the word ''he'' both times the word ''he'' appears.

b. In paragraph (h), ''(or she)'' is added immediately after the word ''he'' both times the word ''he'' appears.

c. In paragraph (k), the words ''or her'' are added immediately after the word ''his''.

d. In paragraph (l), the words ''or her'' are added immediately after the word ''his''.

§ 47.21 [Amended]

41. Section 47.21 is amended by adding the words ''or recording'' immediately after the word ''transcript'' and by removing the word ''prehearing''.

§ 47.22 [Amended]

42. In § 47.22, paragraph (a) is amended by removing the reference to ''§ 47.15(g)'' and adding ''§ 47.15(h)'' in its place.

§ 47.23 [Amended]

43. Section 47.23 is amended by removing the word ''he'' and adding the words ''the Secretary'' in its place each of the three times the word ''he'' appears; and by adding the words ''or her'' immediately after the word ''his'' each of the three times the word ''his'' appears.

§ 47.24 [Amended]

44. In § 47.24, paragraph (a) is amended by removing the word ''he'' and adding the words ''the Secretary'' in its place both times the word ''he'' appears.

§ 47.25 [Amended]

45. In § 47.25, paragraph (e) is amended by removing the words ''the regulations in'', and by adding the words ''or her'' immediately after the word ''him''.

§ 47.46 [Amended]

46. Section 47.46 is amended by removing the word ''he'' and adding the words ''the Secretary'' both times the word ''he'' appears; and adding the words ''or her'' immediately after the word ''his''.

§ 47.47 [Amended]

47. Section 47.47 is amended as follows:

a. In the introductory language, the reference to ''7 CFR 47.2 (a) through (h)'' is removed and ''§§ 47.2 (a) through (h)'' added in its place.

b. In the introductory language, the reference to ''7 CFR 47.47 through 47.68'' is removed and ''§§ 47.47 through 47.68'' added in its place.

c. Section 47.47 is amended by removing all paragraph designations and placing the definitions in alphabetical order.

§ 47.49 [Amended]

48. In section 47.49, paragraph (f) is revised to read as follows:

§ 47.49 Determinations.

* * * * *

(f)(1) The presiding officer will order that an oral hearing be held if one is requested by the petitioner, or if the presiding officer determines that an oral hearing is necessary. A verbatim record shall be made of the hearing. In the event that an oral hearing is neither requested by the petitioner, nor ordered by the presiding officer, the presiding officer shall provide the petitioner a copy of the official file, and give the parties an opportunity to submit documents and other evidence to support their positions, as well as written arguments pertaining to their positions.

(2) If an oral hearing is held, it shall be conducted by audio-visual telecommunication unless the presiding officer determines that conducting the hearing by the personal attendance of any individual expected to attend the hearing:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the hearing; or

(iii) Would cost less than conducting the hearing by audio-visual telecommunication. If the presiding officer determines that a hearing conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the hearing, the hearing shall be conducted by personal attendance of any individual who is expected to participate in the hearing or by telephone.

(3) The presiding officer may, in his or her sole discretion or in response to a motion by a party to the proceeding, conduct the hearing by telephone if the presiding officer finds that a hearing conducted by telephone:

(i) Would provide a full and fair evidentiary hearing;

(ii) Would not prejudice any party; and

(iii) Would cost less than conducting the hearing by audio-visual telecommunication or personal attendance of any individual who is expected to participate in the hearing.

§ 47.53 [Amended]

49. Section 47.53 is revised to read as follows:

§ 47.53 *Notice of time, place, and manner of hearing and provision of the official file.*

(a) Upon assignment of the matter for oral hearing, the presiding officer shall notify the parties by serving them with copies of the notice of hearing, stating the time and place of the hearing. The notice shall state whether the oral hearing will be conducted by telephone, audio-visual telecommunication, or personal attendance of any individual expected to attend the hearing, and the presiding officer's determination regarding the manner of the hearing shall be made in accordance with § 47.49(f)(2) and § 47.49(f)(3). The parties will be notified as soon as possible of any change in the time, place, or manner of the hearing.

(b) If the presiding officer orders an oral hearing, any party may move that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing rather than by audio-visual telecommunication. Any motion that the hearing be conducted by telephone or personal attendance of any individual

expected to attend the hearing must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than by audio-visual telecommunication.

(c) Within 10 days after the presiding officer issues a notice stating the manner in which the hearing is to be conducted, any party may move that the presiding officer reconsider the manner in which the hearing is to be conducted. Any motion for reconsideration must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than in accordance with the presiding officer's notice.

(d) Upon assignment of the matter for oral hearing, the presiding officer shall make the official file a part of the records of the proceeding and shall provide the petitioner with a copy of the official file.

§ 47.56 [Amended]

50. Section 47.56 is amended as follows:

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

b. Paragraphs (g) and (h) are redesignated as paragraphs (i) and (j) respectively.

c. New paragraphs (g) and (h) are added to read as set forth below.

§ 47.56 Powers of presiding officer.

* * * * *

(b) Set the time, place, and manner of the hearing, adjourn the hearing, and change the time, place, and manner of the hearing;

* * * * *

(g) Require each party to provide all other parties and the presiding officer with a copy of any exhibit that the party intends to introduce into evidence prior to any hearing to be conducted by telephone or audio-visual telecommunication;

(h) Require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the presiding officer are able to transmit and receive documents during the hearing;

* * * * *

§ 47.58 [Amended]

51. Section 47.58 is amended as follows:

a. In paragraph (b), the words ''or recording'' are added immediately after the word ''transcript'' both times the word ''transcript'' appears.

b. In paragraph (f), the words ''or recording'' are added immediately after the word ''transcript'' both times the word ''transcript'' appears.

c. Paragraphs (a), (b), (c), (d), (e), and (f) are redesignated as (b), (c), (d), (e), (f), and (g) respectively.

d. A new paragraph (a) is added to read as follows:

§ 47.58 Evidence.

(a) *Written statements of direct testimony.* (1) Except as provided in paragraph (a)(2) of this section, each party must exchange with all other parties a written narrative verified statement of the oral direct testimony that the party will provide at any hearing to be conducted by telephone; the direct testimony of each employee or agent of the party that the party will call to provide oral direct testimony at any hearing to be conducted by telephone; and the direct testimony of each expert witness that the party will call to provide oral direct testimony at any hearing to be conducted by telephone. The written direct testimony of witnesses shall be exchanged by the parties at least 10 days prior to the hearing. The oral direct testimony provided by a witness at a hearing conducted by telephone will be limited to the presentation of the written direct testimony, unless the presiding officer finds that oral direct testimony which is supplemental to the written direct testimony would further the public interest and would not constitute surprise.

(2) The parties shall not be required to exchange testimony in accordance with this paragraph if the hearing is scheduled to begin less than 20 days after the presiding officer's notice stating the time of the hearing.

* * * * *

§ 47.59 [Amended]

52. Section 47.59 is amended as follows:

a. The section heading is revised to read *''Filing transcripts or recordings and exhibits.''*

b. In section 47.59, the words ''or recording'' are added immediately after the word ''transcript'' each of the five times the word ''transcript'' appears.

§ 47.60 [Amended]

53. Section 47.60 is revised to read as follows:

§ 47.60 Transcript or recording.

(a) Hearings to be conducted by telephone shall be recorded verbatim by electronic recording device. Hearings conducted by audio-visual telecommunication or the personal attendance of any individual who is expected to participate in the hearing shall be transcribed, unless the presiding officer finds that recording the hearing verbatim would expedite the proceeding and the presiding officer orders the hearing to be recorded verbatim. The presiding officer shall certify that to the best of his or her knowledge and belief any recording made pursuant to this paragraph with exhibits that were accepted into evidence is the record of the hearing.

(b) If a hearing is recorded verbatim, a party requests the transcript of a hearing or part of a hearing, and the presiding officer determines that the disposition of the proceeding would be expedited by a transcript of the hearing or part of a hearing, the presiding officer shall order the verbatim transcription of the recording as requested by the party.

(c) Parties to the proceeding who desire a copy of the transcript or recording of the hearing may place orders at the hearing with the reporter who will furnish and deliver such copies direct to the purchaser upon payment therefore at the rate provided by the contract between the reporter and the Department for such reporting services.

§ 47.62 [Amended]

54. In § 47.62, the last sentence is amended by removing the words ''of this part''.

PART 50—RULES OF PRACTICE GOVERNING WITHDRAWAL OF INSPECTION AND GRADING SERVICES

55. The authority citation for part 50 is revised to read as follows:

Authority: 7 U.S.C. 1621 *et seq.*; 7 CFR 2.35, 2.41.

56. Part 50 is revised to read as follows:

PART 50—RULES OF PRACTICE GOVERNING WITHDRAWAL OF INSPECTION AND GRADING SERVICES

Subpart A—General

Sec.
50.1 Scope and applicability of rules of practice.

Subpart B—Supplemental Rules of Practice

50.10 Definitions.
50.11 Conditional withdrawal of service.
50.12 Summary suspension of service.

Subpart A—General

§ 50.1 Scope and applicability of rules of practice.

(a) The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth in §§ 1.130

through 1.151 of this title are rules of practice applicable to adjudicatory proceedings under the regulations promulgated under 7 U.S.C. 1621 *et seq.* for denial or withdrawal of inspection, certification, or grading service. In addition, the supplemental rules of practice in subpart B of this part shall be applicable to adjudicatory proceedings under the regulations promulgated under 7 U.S.C. 1621 *et seq.* for denial or withdrawal of inspection, certification, or grading service.

(b) Neither the rules of practice in §§ 1.130 through 1.151 of this title nor the supplemental rules of practice in subpart B of this part modify existing procedures for refusing to inspect, grade, or certify a specific lot of a product because of adulteration, improper preparation of the lot for grading, improper presentation of the lot for grading, or because of failure to comply with any similar requirements set forth in applicable regulations.

Subpart B—Supplemental Rules of Practice

§ 50.10 Definitions.

Director. The Director of the Division or any employee of the Division to whom authority to act in his or her stead is delegated.

Division. The Division of the Agricultural Marketing Service, United States Department of Agriculture, initiating the withdrawal of inspection, certification, or grading service.

Mailing. Depositing an item in the United States mail with postage affixed and addressed as necessary to cause the item to be delivered to the address shown by ordinary mail, certified mail, or registered mail.

§ 50.11 Conditional withdrawal of service.

(a) The Director may withdraw grading or inspection service from a person for correctable cause. The grading or inspection service withdrawn, after appropriate corrective action is taken, will be restored immediately, or as soon thereafter as a grader or inspector can be made available.

(b) Written notice of withdrawal of grading or inspection service under this section shall be given to the person from whom grading or inspection services will be withdrawn in advance of withdrawal, whenever it is feasible to provide such an advance written notice. If advance written notice is not given, the withdrawal action and the reasons for the withdrawal shall be confirmed as promptly as circumstances permit, unless the deficiency which is the basis for the withdrawal has already been corrected.

§ 50.12 Summary suspension of service.

(a) *General.* In any situation in which the integrity of grading or inspection service would be jeopardized if the grading or inspection service were continued pending a decision in a proceeding to withdraw grading or inspection service, such service to the respondent may be suspended effective on the third day after mailing of a written notice of the suspension of service to the respondent's last known address or designated address or upon actual receipt of the written notice, whichever is earlier.

(b) Actual or threatened physical violence. In any case of actual or threatened physical violence to an inspector or grader, grading and inspection services to the respondent may be suspended prior to the transmittal of the written notice of suspension to the respondent. A written notice shall be given as promptly as circumstances permit.

PART 51 [AMENDED]

57. The authority citation for part 51 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17, 2.50; unless otherwise noted.

§ 51.46 [Amended]

58. Section 51.46 is amended by revising the last sentence to read ''The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth in §§ 1.130 through 1.151 of this title and the Supplemental Rules of Practice in part 50 of this chapter shall govern proceedings conducted pursuant to this section.''

PART 52 [AMENDED]

59. The authority citation for part 52 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17, 2.50.

§ 52.54 [Amended]

60. In § 52.54, paragraph (a) is amended by revising the last sentence to read ''The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth in §§ 1.130 through 1.151 of this title and the Supplemental Rules of Practice in part 50 of this chapter shall be applicable to such debarment action.''

PART 53–LIVESTOCK (GRADING, CERTIFICATION, AND STANDARDS)

61. The authority citation for part 53 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17, 2.50.

§ 53.13 [Amended]

62. In § 53.13, paragraph (a)(2) is revised to read as follows:

§ 53.13 Denial or withdrawal of service.

(a) * * *

(2) *Procedure.* All cases arising under this paragraph shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth in §§ 1.130 through 1.151 of this title and the Supplemental Rules of Practice in part 50 of this chapter.

* * * * *

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

63. The authority citation for part 54 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17, 2.50.

§ 54.11 [Amended]

64. In § 54.11, paragraph (a)(2) is revised to read as follows:

§ 54.11 Denial or withdrawal of service.

(a) * * *

(2) *Procedure.* All cases arising under this paragraph shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth in §§ 1.130 through 1.151 of this title and the Supplemental Rules of Practice in part 50 of this chapter.

* * * * *

PART 97—PLANT VARIETY PROTECTION

65. The authority citation for part 97 is revised to read as follows:

Authority: 7 U.S.C. 2321, 2326, 2352, 2353, 2356, 2371, 2402(b), 2403, 2426, 2427, 2501(c); 7 CFR 2.17, 2.50.

§ 97.300 [Amended]

66. In § 97.300, paragraph (d), the last sentence is revised to read ''If a formal hearing is requested, the proceeding shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth in §§ 1.130 through 1.151 of this title.''

TITLE 9—[AMENDED]

Chapter II—Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs), Department of Agriculture

67. The heading of 9 CFR chapter II is revised to read as set forth above.

68. In 9 CFR chapter II, consisting of parts 200 to 205, all references to ''Packers and Stockyards Administration'' are revised to read ''Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs)'' and all references to ''P&SA'' are revised to read ''GIPSA''.

PART 202—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE PACKERS AND STOCKYARDS ACT

69. The authority citation for part 202 is revised to read as follows:

Authority: 7 U.S.C. 228(a); 7 CFR 2.17(e), 2.56.

§ 202.102 [Amended]

70. Section 202.102 is amended by removing all paragraph designations and placing the definitions in alphabetical order.

§ 202.103 [Amended]

71. In § 202.103, paragraph (a), the second sentence is amended by removing the words ''the provisions of''.

§ 202.105 [Amended]

72. In § 202.105, paragraph (f)(2) is amended by removing the words ''of this part''.

§ 202.109 [Amended]

73. Section 202.109 is amended as follows:

a. Paragraph (a)(5) is revised to read as set forth below.

b. In paragraph (c)(2), in the second sentence, the word ''pace'' is removed and the word ''place'' is added in its place.

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

d. In paragraph (g), the words ''or recording'' are added immediately after the word ''transcript'' each of the four times the word ''transcript'' appears.

e. In paragraph (h), the words ''or recording'' are added immediately after the word ''transcript'' each of the four times the word ''transcript'' appears.

f. In paragraph (i), the words ''or recording'' are added immediately after the word ''transcript'' each of the six times the word ''transcript'' appears and, in the first sentence, the words ''the provisions of'' are removed.

g. In paragraph (j), the word ''therein'' is removed and the words ''in the deposition'' added in its place.

h. In paragraph (l), the words ''or recording'' are to be added immediately after the word ''transcript'' both times the word ''transcript'' appears.

§ 202.109 Rule 9: Depositions.

(a) * * *

(5) if oral, a suggested time and place where the proposed deposition is to be made and a suggested manner in which the proposed deposition is to be conducted (telephone, audio-visual telecommunication, or by personal attendance of the individuals who are expected to participate in the deposition). The application for an order for the taking of testimony by deposition shall be made in writing, unless it is made orally on the record at an oral hearing.

* * * * *

(d) *Order.* (1) The presiding officer, if satisfied that good cause for taking the deposition is present, may order the taking of the deposition.

(2) The order shall be served on the parties and shall include:

(i) The name and address of the officer before whom the deposition is to be made;

(ii) The name of the deponent;

(iii) Whether the deposition will be oral or on written questions;

(iv) If the deposition is oral, the manner in which the deposition is to be conducted (telephone, audio-visual telecommunication, or personal attendance of those who are to participate in the deposition); and

(v) The time, which shall not be less than 20 days after the issuance of the order, and place.

(3) The officer, time, place, and manner of the deposition as stated in the presiding officer's order need not be the same as the officer, time, place, and manner suggested in the application.

(4) The deposition shall be conducted in the manner (telephone, audio-visual telecommunication, or personal attendance of those who are to participate in the deposition) agreed to by the parties.

(5) If the parties cannot agree on the manner in which the deposition is to be conducted:

(i) The deposition shall be conducted by telephone unless the presiding officer determines that conducting the deposition by audio-visual telecommunication:

(A) Is necessary to prevent prejudice to a party;

(B) Is necessary because of a disability of any individual expected to participate in the deposition; or

(C) Would cost less than conducting the deposition by telephone.

(ii) If the deposition is not conducted by telephone, the deposition shall be conducted by audio-visual telecommunication unless the presiding officer determines that conducting the deposition by personal attendance of any individual who is expected to participate in the deposition:

(A) Is necessary to prevent prejudice to a party;

(B) Is necessary because of a disability of any individual expected to participate in the deposition; or

(C) Would cost less than conducting the deposition by telephone or audio-visual telecommunication.

* * * * *

§ 202.110 [Amended]

74. Section 202.110 is amended as follows:

a. In paragraph (a), the last sentence, the words ''or recording'' are added immediately after the word ''transcript''.

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

§ 202.110 Rule 10: Prehearing Conference.

* * * * *

(b) *Manner of the prehearing conference.* (1) The prehearing conference shall be conducted by telephone or correspondence unless the presiding officer determines that conducting the prehearing conference by audio-visual telecommunication:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the prehearing conference; or

(iii) Would cost less than conducting the prehearing conference by telephone or correspondence. If the presiding officer determines that a prehearing conference conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the prehearing conference, the prehearing conference shall be conducted by personal attendance of any individual who is expected to participate in the prehearing conference, by telephone, or by correspondence.

(2) If the prehearing conference is not conducted by telephone or correspondence, the prehearing conference shall be conducted by audio-visual telecommunication unless the presiding officer determines that conducting the prehearing conference by personal attendance of any individual who is expected to participate in the prehearing conference:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the prehearing conference; or

(iii) Would cost less than conducting the prehearing conference by audio-visual telecommunication.

§ 202.112 [Amended]

75. Section 202.112 is be amended as follows:

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

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

c. In paragraph (e)(2), in the second sentence, the words ''or recording'' are added immediately after the word ''transcript'', and the word ''thereon'' is removed and the words ''on objections'' added in its place.

d. In paragraph (e)(3), the words ''or recording'' are added immediately after the word ''transcript'' both times the word ''transcript'' appears.

e. In paragraph (e)(5), the word ''thereof'' is removed and the words ''of the Department'' added in its place, and the word ''therein'' is removed and the words ''in the record of the Department'' added in its place.

f. Paragraphs (e), (f), (g), (h), (i), and (j) are redesignated as (f), (g), (h), (i), (j), and (k) respectively.

g. New paragraph (e) is added to read as set forth below.

h. Redesignated paragraph (i) is revised to read as set forth below.

i. In redesignated (j), the heading is revised to read *''Filing, and presiding officer's certificate, of the transcript or recording.*''; the words ''or recording'' are added immediately after the word ''transcript'' each of the 10 times the word ''transcript'' appears; and the words ''or recorded'' are added immediately after the word ''transcribed''.

j. In redesignated paragraph (k), the heading is revised to read *''Keeping of copies of the transcript or recording.*''; and the words ''or recording'' are added immediately after the word ''transcript'' each of the three times the word ''transcript'' appears.

§ 202.112 Rule 12: Oral hearing.

(a) *Time, place, and manner.* (1) If and when the proceeding has reached the stage where an oral hearing is to be held, the presiding officer shall set a time, place, and manner for oral hearing. The time shall be set based upon careful consideration to the convenience of the parties. The place shall be set in accordance with paragraph (a)(2) of this section and careful consideration to the convenience of the parties. The manner in which the hearing is to be conducted shall be determined in accordance with paragraphs (a)(3) and (a)(4) of this section.

(2) The place shall be set in accordance with paragraphs (e) and (f) of section 407 of the Act, if applicable. In essence, under paragraphs (e) and (f) of section 407 of the Act, if the complainant and the respondent, or all of the parties, if there are more than two, have their principal places of business or residence within a single unit of local government, a single geographical area within a State, or a single State, the oral hearing is to be held as near as possible to such places of business or residence, depending on the availability of an appropriate location for conducting the hearing. If the parties have such places of business or residence distant from each other, then paragraphs (e) and (f) of section 407 of the Act are not applicable.

(3) The oral hearing shall be conducted by audio-visual telecommunication unless the presiding officer determines that conducting the oral hearing by personal attendance of any individual who is expected to participate in the hearing:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the hearing; or

(iii) Would cost less than conducting the hearing by audio-visual telecommunication. If the presiding officer determines that a hearing conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the hearing, the hearing shall be conducted by personal attendance of any individual who is expected to participate in the hearing or by telephone.

(4) The presiding officer may, in his or her sole discretion or in response to a motion by a party to the proceeding, conduct the hearing by telephone if the presiding officer finds that a hearing conducted by telephone:

(i) Would provide a full and fair evidentiary hearing;

(ii) Would not prejudice any party; and

(iii) Would cost less than conducting the hearing by audio-visual telecommunication or personal attendance of any individual who is expected to participate in the hearing.

(b) *Notice.* (1) A notice stating the time, place, and manner of oral hearing shall be served on each party prior to the time of the oral hearing. The notice shall state whether the oral hearing will be conducted by telephone, audio-visual telecommunication, or personal attendance of any individual expected to participate in the hearing. If any change is made in the time, place, or manner of the oral hearing, a notice of the change shall be served on each party prior to the time of the oral hearing as changed, unless the change is made during the course of an oral hearing and shown in the transcript or on the recording. Any party may waive such notice, in writing, or orally on the record at an oral hearing and shown in the transcript or on the recording.

(2) If the presiding officer orders an oral hearing, any party may move that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing rather than by audio-visual telecommunication. Any motion that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than by audio-visual telecommunication.

(3) Within 10 days after the presiding officer issues a notice stating the manner in which the hearing is to be conducted, any party may move that the presiding officer reconsider the manner in which the hearing is to be conducted. Any motion for reconsideration must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than in accordance with the presiding officer's notice.

* * * * *

(e) *Written statements of direct testimony.* (1) Except as provided in paragraph (e)(2) of this section, each party must exchange with all other parties a written narrative verified statement of the oral direct testimony that the party will provide at any hearing to be conducted by telephone; the direct testimony of each employee or agent of the party that the party will call to provide oral direct testimony at any hearing to be conducted by telephone; and the direct testimony of each expert witness that the party will call to provide oral direct testimony at any hearing to be conducted by telephone. The written direct testimony of witnesses shall be exchanged by the parties at least 10 days prior to the hearing. The oral direct testimony provided by a witness at a hearing conducted by telephone will be limited to the presentation of the written direct

testimony, unless the presiding officer finds that oral direct testimony which is supplemental to the written direct testimony would further the public interest and would not constitute surprise.

(2) The parties shall not be required to exchange testimony in accordance with this paragraph if the hearing is scheduled to begin less than 20 days after the presiding officer's notice stating the time of the hearing.

* * * * *

(i) *Transcript or recording.* (1) Hearings to be conducted by telephone shall be recorded verbatim by electronic recording device. Hearings conducted by audio-visual telecommunication or the personal attendance of any individual who is expected to participate in the hearing shall be transcribed, unless the presiding officer finds that recording the hearing verbatim would expedite the proceeding and the presiding officer orders the hearing to be recorded verbatim. The presiding officer shall certify that to the best of his or her knowledge and belief any recording made pursuant to this paragraph with exhibits that were accepted into evidence is the record of the hearing.

(2) If a hearing is recorded verbatim, a party requests the transcript of a hearing or part of a hearing, and the presiding officer determines that the disposition of the proceeding would be expedited by a transcript of the hearing or part of a hearing, the presiding officer shall order the verbatim transcription of the recording as requested by the party.

(3) Parties to the proceeding who desire copies of the transcript or recording of the oral hearing may make arrangements with the reporter, who will furnish and deliver such copies direct to such parties, upon receipt from such parties of payment for the transcript or recording, at the rate provided by the contract between the reporter and the Department for such reporting service.

* * * * *

§ 202.115 [Amended]

76. Section 202.115 is amended as follows:

a. Paragraph (b), the second sentence is amended by adding the words ''or recording'' immediately after the word ''transcript''.

b. Paragraph (d) is revised to read as set forth below.

§ 202.115 Rule 15: Submission for final consideration.

* * * * *

(d) *Oral argument.* There shall be no right to oral argument other than that provided in rule 12(h), § 202.112(h).

§ 202.118 [Amended]

77. Section 202.118 is amended as follows:

a. Paragraph (a)(1) is revised to read as set forth below.

b. In paragraph (a)(7), the word ''and'' is removed.

b. Paragraph (a)(8) is redesignated as paragraph (a)(12).

c. New paragraphs (a)(8), (a)(9), (a)(10), and (a)(11) are added to read as set forth below.

202.118 Rule 18: Presiding officer.

(a) * * *

(1) Set the time, place, and manner of a prehearing conference and an oral hearing, adjourn the oral hearing from time to time, and change the time, place, and manner of oral hearing;

* * * * *

(8) Require each party to provide all other parties and the presiding officer with a copy of any exhibit that the party intends to introduce into evidence prior to any oral hearing to be conducted by telephone or audio-visual telecommunication;

(9) Require each party to provide all other parties with a copy of any document that the party intends to use to examine a deponent prior to any deposition to be conducted by telephone or audio-visual telecommunication;

(10) Require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the presiding officer are able to transmit and receive documents during the hearing;

(11) Require that any deposition to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties are able to transmit and receive documents during the deposition; and

* * * * *

Done in Washington, D.C., this 31st day of January, 1995.

Richard E. Rominger,

Acting Secretary of Agriculture.

[FR Doc. 95–3464 Filed 2–13–95; 8:45 am]

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Tuesday
February 14, 1995

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 611, et al.

Limited Access Management of Federal Fisheries In and Off of Alaska; Final 1995 Harvest Specifications of Groundfish; Final Rules

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 672, and 676

[Docket No. 950206041–5041–01; I.D. 112894A]

Groundfish of the Gulf of Alaska; Foreign Fishing; Limited Access Management of Federal Fisheries In and Off of Alaska; Final 1995 Harvest Specifications of Groundfish

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

ACTION: Final 1995 harvest specifications of groundfish and associated management measures; closures; request for comments.

SUMMARY: NMFS announces final 1995 harvest specifications for Gulf of Alaska (GOA) groundfish and associated management measures. This action is necessary to establish harvest limits and associated management measures for groundfish during the 1995 fishing year. NMFS is also closing specified fisheries consistent with the final 1995 groundfish specifications. These measures are intended to carry out management objectives contained in the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: The final 1995 harvest specifications are effective on February 8, 1995 through 2400 Alaska local time (A.l.t.), December 31, 1995, or until changed by subsequent notification in the **Federal Register**. The closures to directed fishing are effective February 8, 1995 through 2400 A.l.t., December 31, 1995, or until changed by subsequent notification in the **Federal Register**. Comments are invited on the apportionments of reserves on or before February 23, 1995.

ADDRESSES: Comments should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Copies of the Environmental Assessment (EA) for 1995 Total Allowable Catch Specifications for the Gulf of Alaska, dated February 1995, may be obtained from the above address or by calling (907) 586–7229. The Final Stock Assessment and Fishery Evaluation Report (SAFE report), dated November 1994, is available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 or by calling (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS announces for the 1995 fishing year: (1) Total allowable catch (TAC) amounts for each groundfish species category in the GOA and apportionments thereof among domestic annual processing (DAP), joint venture processing (JVP), total allowable level of foreign fishing (TALFF), and reserves; (2) apportionments of reserves to DAP; (3) assignments of the sablefish TAC to authorized fishing gear users; (4) apportionments of pollock TAC among regulatory areas, seasons, and between inshore and offshore components; (5) apportionment of Pacific cod TAC between inshore and offshore components; (6) ''other species'' TAC; (7) prohibited species catch (PSC) limits relevant to fully utilized groundfish species; (8) closures to directed fishing; (9) Pacific halibut PSC mortality limits; and, (10) seasonal apportionments of the halibut PSC limits. A discussion of each of these measures follows.

The process of determining TACs for groundfish species in the GOA is established in regulations implementing the FMP, which was prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Fishery Conservation and Management Act. The FMP is implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fishery at 50 CFR parts 672 and 676. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

Pursuant to § 672.20(a)(2)(ii), the sum of the TACs for all species must fall within the combined optimum yield (OY) range of 116,000–800,000 metric tons (mt) established for these species in § 672.20(a)(1). Under §§ 611.92(c)(1) and 672.20(a)(2)(i), TACs are apportioned initially among DAP, JVP, TALFF, and reserves. The DAP amounts are intended for harvest by U.S. fishermen for delivery and sale to U.S. processors. JVP amounts are intended for joint ventures in which U.S. fishermen typically deliver their catches to foreign processors at sea. TALFF amounts are intended for harvest by foreign fishermen.

Regulations at § 672.20(a)(2)(ii) establish initial reserves equal to 20 percent of the TACs for pollock, Pacific cod, flatfish species categories, and ''other species.'' Reserve amounts are set aside for possible reapportionment to DAP and/or JVP if the initial apportionments prove inadequate. Reserves that are not reapportioned to DAP or JVP may be reapportioned to TALFF according to § 672.20(d)(2).

The Council met from September 28 to October 5, 1994, and developed recommendations for proposed 1995 TAC specifications for each species category of groundfish on the basis of the best available scientific information. The Council also recommended other management measures pertaining to the 1995 fishing year. Under § 672.20(c)(1)(ii), proposed GOA groundfish specifications and specifications for prohibited species bycatch allowances for the groundfish fishery of the GOA were published in the **Federal Register** on December 22, 1994 (59 FR 65990). Interim amounts of one-fourth the proposed TAC levels were published in the **Federal Register** on December 22, 1994 (59 FR 65975). The final 1995 groundfish harvest specifications and prohibited species bycatch allowances contained in this action supersede the interim specifications.

The Council met on December 7–11, 1994, to review the best available scientific information concerning groundfish stocks, and to consider public testimony regarding 1995 groundfish fisheries. Scientific information is contained in the November 1994 SAFE report for the GOA. The November 1994 SAFE report was prepared and presented by the GOA Plan Team to the Council and the Council's Scientific and Statistical Committee (SSC) and Advisory Panel (AP) and includes the most recent information concerning the status of groundfish stocks based on the most recent catch data, survey data, and biomass projections using different modeling approaches or assumptions.

For establishment of the acceptable biological catches (ABCs) and TACs, the Council considered information in the SAFE report, recommendations from its SSC and AP, as well as public testimony. The SSC adopted the ABC recommendations from the Plan Team, which were provided in the SAFE report, for all of the groundfish species categories, except Pacific ocean perch (POP), Pacific cod, and Atka mackerel.

The Plan Team separated black rockfish from the pelagic shelf rockfish and established an ABC for this species. The SSC did not believe adequate biological information is available to separate this species and did not recommend a separate category. The Council accepted the advice of the SSC and this action continues to include black rockfish as a part of the pelagic shelf rockfish group.

The Plan Team and the SSC recommended removing redbanded rockfish (*Sebastes babcocki*) from the demersal shelf rockfish (DSR) group and placing it in the ''other rockfish'' category because the harvest of this species as bycatch in other fisheries can result in closure of the DSR fishery before other species components may be harvested. Furthermore, redbanded rockfish are caught as bycatch in the ''other rockfish'' category. The DSR and ''other rockfish'' TAC amounts are adjusted in this action to reflect this reclassification of redbanded rockfish.

The Council adopted the SSC's ABC recommendations for each species category, except for POP. The Council's recommended ABCs reflect harvest amounts that are less than the specified overfishing amounts. These amounts are listed in Table 1. The sum of 1995 ABCs for all groundfish is 492,780 mt, which is lower than the 1994 ABC total of 553,050 mt.

As in 1994, the SSC calculated the ABC for POP by applying a fishing mortality rate of F=0.078 adjusted by the ratio of the current biomass to target spawning biomass to provide for rebuilding, which results in an ABC of 8,230 mt. Because this ABC is equal to the overfishing level (OFL), the Plan Team had further reduced this number by $F_{35\%}/F_{30\%}$ to provide a buffer between the ABC and OFL, which results in an ABC of 6,530 mt. As at the September meeting, the SSC did not agree with the latter adjustment and, as it did in 1994, recommended that ABC equal OFL. However, the Council adopted the recommendation of the Plan Team. The ABC for POP is set at 6,530 mt.

1. Specifications of TAC and Apportionments Thereof Among DAP, JVP, TALFF, and Reserves

The Council recommended TACs equal to ABCs for pollock, Pacific cod, sablefish, shortraker/rougheye rockfish, pelagic shelf rockfish, DSR, thornyhead rockfish, Atka mackerel, and northern rockfish. The Council recommended TACs less than the ABC for shallow-water and deep-water flatfish, other slope rockfish, rex sole, flathead sole, and arrowtooth flounder. The final 1995 ABCs, TACs, and OFLs are shown in Table 1. The sum of the TACs for all GOA groundfish is 279,463 mt, which is within the OY range specified by the FMP. The sum of the TACs is lower than the 1994 TAC sum of 304,595 mt.

The 1995 POP ABC was approximately double the 1994 ABC level. This caused some concern for the Council in establishing a 1995 TAC that was significantly higher than the 1994 TAC. Therefore, the Council requested staff to prepare an FMP amendment to the POP rebuilding plan that would establish an upperbound TAC limit but allow the Council to establish TAC below that limit. The current POP rebuilding plan does not allow a TAC to be set that differs from that specified in the rebuilding plan. However, until the FMP has been amended, NMFS must establish a POP TAC consistent with the current POP rebuilding plan, or 5,630 mt. NMFS recognizes the Council's intent, but is required to specify a TAC consistent with the FMP until the FMP is amended to allow a more conservative TAC and a more rapid rebuilding schedule.

The Plan Team's ABC recommendation for Pacific cod (108,000 mt) was approximately double the 1994 ABC (50,400 mt). This was due, in part, to a change from the length-based stock assessment model to a stock synthesis model that used a different recruitment assumption, and that had fitted survey selectivity of catch along with natural mortality rate. However, the SSC was concerned with the Plan Team recommendation because the stock has been declining since 1987 and, with an average recruitment rate, the stock is projected to decline under any catch rate. The SSC advised using a more conservative $F_{40\%}$ exploitation rate. The resulting ABC is 69,200 mt. The AP recommended a TAC equal to the SSC's ABC. This level was accepted by the Council. The 1995 TAC for Pacific cod is set at 69,200 mt.

The Council recommended setting the TAC for the various flatfish groups equal to the 1994 TAC amounts except for the Central Gulf (CG) TAC for arrowtooth flounder. The Council recommended increasing the CG TAC for arrowtooth flounder from 20,000 mt to 25,000 mt, to accommodate anticipated increased groundfish harvest in this area of the GOA. The 1995 TAC for various flatfish groups reflect these recommendations.

The Council approved the AP recommendation of adopting the 1994 TAC amounts for flathead sole as the 1995 TAC amounts. In the GOA Eastern Regulatory Area, the 1994 TAC amount (3,000 mt) is higher than the Council's recommended 1995 ABC (2,740 mt). To maintain consistency with the accepted policy of setting TACs lower than or equal to ABC amounts, NMFS is establishing a 1995 TAC of 2,740 mt for the Eastern Regulatory Area. This number is equal to the 1995 ABC recommended by the Plan Team and the SSC and approved by the Council. Adjustment of the flathead sole TAC in the Eastern Regulatory Area changes the total 1995 flathead sole TAC to 9,740 mt. This revision is also reflected in the 1995 TAC for ''other species.'' NMFS establishes a TAC of 13,308 mt for ''other species'' which represents 5 percent of the sum of the TACs for the other groundfish species categories.

The Council, after specifying the TACs, recommended 1995 apportionments of the TACs for each species category among DAP, JVP, TALFF, and reserves. Existing harvesting and processing capacity of the U.S. industry is capable of utilizing the entire 1995 TAC specification for GOA groundfish; therefore, the Council recommended that the DAP allowance equal the TAC for each species category. NMFS concurs and no TALFF or JVP apportionments for the 1995 fishing year are specified.

NMFS reviewed the Council's recommendations concerning TAC specifications and apportionments. Except as noted, NMFS hereby approves the Council's recommendations and specifications under § 672.20(c)(1)(ii)(B).

The 1995 ABCs, TACs, and overfishing levels are shown in Table 1.

TABLE 1.—1995 ABCS, TACS, AND DAPS OF GROUNDFISH (METRIC TONS) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA. AMOUNTS SPECIFIED AS JOINT VENTURE PROCESSING (JVP) AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF) ARE PROPOSED TO BE ZERO AND ARE NOT SHOWN IN THIS TABLE. RESERVES ARE APPORTIONED TO DAP

Species	Area[1]	ABC	TAC=DAP	Overfishing
Pollock[2]				
Shumagin	(61)	30,380	30,380}	
Chirikof	(62)	15,310	15,310}	266,000

TABLE 1.—1995 ABCS, TACS, AND DAPS OF GROUNDFISH (METRIC TONS) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA. AMOUNTS SPECIFIED AS JOINT VENTURE PROCESSING (JVP) AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF) ARE PROPOSED TO BE ZERO AND ARE NOT SHOWN IN THIS TABLE. RESERVES ARE APPORTIONED TO DAP—Continued

Species	Area[1]	ABC	TAC=DAP	Overfishing
Kodiak	(63)	16,310	16,310}	
Subtotal	W/C	62,000	62,000	
	E	3,360	3,360	14,400
Total		65,360	65,360	280,400
Pacific cod[3]				
Inshore	W	.....	18,090	
Offshore	W	.....	2,010	
Inshore	C	.....	41,085	
Offshore	C	.....	4,565	
Inshore	E	.....	3,105	
Offshore	E	.....	345	
Subtotals				
	W	20,100	20,100	
	C	45,650	45,650	
	E	3,450	3,450	
Total		69,200	69,200	126,000
Flatfish[4] (deep-water)	W	670	460	
	C	8,150	7,500	
	E	5,770	3,120	
Total		14,590	11,080	17,040
Rex sole[4]	W	1,350	800	
	C	7,050	7,050	
	E	2,810	1,840	
Total		11,210	9,690	13,091
Flathead sole	W	8,880	2,000	
	C	17,170	5,000	
	E	2,740	2,740	
Total		28,790	9,740	31,557
Flatfish[5] (shallow-water)	W	26,280	4,500	
	C	23,140	12,950	
	E	2,850	1,180	
Total		52,270	18,630	60,262
Arrowtooth flounder	W	28,400	5,000	
	C	141,290	25,000	
	E	28,440	5,000	
Total		198,130	35,000	231,416
Sablefish[6]	W	2,600	2,600	
	C	8,600	8,600	
	WYK	4,100	4,100	
	SEO	6,200	6,200	
Total		21,500	21,500	25,730
Pacific ocean perch[7]	W	1,180	1,014	1,482
	C	3,130	2,702	3,951
	E	2,220	1,914	2,799
Total		6,530	5,630	8,232
Short raker rougheye[8]	W	170	170	
	C	1,210	1,210	
	E	530	530	
Total		1,910	1,910	2,925
Other rockfish[9 10 11]	W	180	55	

TABLE 1.—1995 ABCS, TACS, AND DAPS OF GROUNDFISH (METRIC TONS) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA. AMOUNTS SPECIFIED AS JOINT VENTURE PROCESSING (JVP) AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF) ARE PROPOSED TO BE ZERO AND ARE NOT SHOWN IN THIS TABLE. RESERVES ARE APPORTIONED TO DAP—Continued

Species	Area[1]	ABC	TAC=DAP	Overfishing
	C	1,170	370	
	E	5,760	1,810	
Total		7,110	2,235	8,395
Northern Rockfish[12]	W	640	640	
	C	4,610	4,610	
	E	20	20	
Total		5,270	5,270	9,926
Pelagic shelf rockfish[13]	W	910	910	
	C	3,200	3,200	
	E	1,080	1,080	
Total		5,190	5,190	8,704
Demersal shelf rockfish[11]	SEO	580	580	1,044
Thornyhead rockfish	GW	1,900	1,900	2,660
Atka mackerel	W	.....	2,310	
	C	.....	925	
	E	.....	5	
Total		3,240	3,240	11,700
Other species[14]	GW	[15] N/A	13,308	
Total[16]		492,780	279,463	839,082

[1] Regulatory areas and districts are defined at § 672.2.
[2] Pollock is apportioned to three statistical areas in the combined Western/Central Regulatory Area (Table 3), each of which is further divided into equal quarterly allowances. In the Eastern Regulatory Area, pollock is not divided into quarterly allowances.
[3] Pacific cod is allocated 90 percent to the inshore, and 10 percent to the offshore component. Component allowances are shown in Table 4.
[4] ''Deep-water flatfish'' means Dover sole and Greenland turbot.
[5] ''Shallow-water flatfish'' means flatfish not including ''deep-water flatfish,'' flathead sole, rex sole, or arrowtooth flounder.
[6] Sablefish is allocated to trawl and hook-and-line gears (Table 2).
[7] ''Pacific ocean perch'' means *Sebastes alutus.*
[8] ''Shortraker/rougheye rockfish'' means *Sebastes borealis* (shortraker) and *S. aleutianus* (rougheye).
[9] ''Other rockfish'' in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category ''other rockfish'' in the Southeast Outside District means slope rockfish.
[10] ''Slope rockfish'' means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegates* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), and *S. reedi* (yellowmouth).
[11] ''Demersal shelf rockfish'' means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).
[12] ''Northern rockfish'' means *Sebastes polyspinis.*
[13] ''Pelagic shelf rockfish'' means *Sebastes melanops* (black), *S. mystinus* (blue), *S. ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).
[14] ''Other species'' means sculpins, sharks, skates, eulachon, smelts, capelin, squid, and octopus. The TAC for ''other species'' equals 5 percent of the TACs of target species.
[15] ''N/A'' means not applicable.
[16] The total ABC is the sum of the ABCs for target species.

2. Apportionment of Reserves to DAP

Regulations implementing the FMP require 20 percent of each TAC for pollock, Pacific cod, flatfish species, and the ''other species'' category be set aside in reserves for possible apportionment at a later date (§ 672.20(a)(2)(ii)). For the preceding 7 years, including 1994, NMFS has apportioned all of the reserves to DAP. For 1995, NMFS apportions reserves for each species category to DAP, anticipating that domestic harvesters and processors will need all the DAP amounts. Specifications of DAP shown in Table 1 reflect apportioned reserves. Under § 672.20(d)(5)(iv), the public may submit comments on the apportionments of reserves. Comments should focus on whether, and the extent to which, operators of vessels of the United States will harvest reserve or DAP amounts during the remainder of the year and whether, and the extent to which, U.S. harvested groundfish can or will be processed by U.S. fish processors or received at sea by foreign fishing vessels.

3. Assignment of the Sablefish TACs to Authorized Fishing Gear Users

Under § 672.24(c), sablefish TACs for each of the regulatory areas and districts are assigned to hook-and-line and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is assigned to hook-and-line gear and 20 percent to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is assigned to hook-and-line gear and 5 percent is assigned to trawl gear. The trawl gear allocation in the Eastern Regulatory Area may only be

used as bycatch to support directed fisheries for other target species. Sablefish caught in the GOA with gear other than hook-and-line or trawl gear must be treated as prohibited species and may not be retained. Table 2 shows the assignments of the 1995 sablefish TACs between hook-and-line and trawl gear.

TABLE 2.—1995 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ASSIGNMENTS THEREOF TO HOOK-AND-LINE AND TRAWL GEAR. VALUES ARE IN METRIC TONS

Area/district	TAC	Hook-and-line share	Trawl share
Western	2,600	2,080	520
Central	8,600	6,880	1,720
West Yakutat	4,100	3,895	205
Southeast Outside	6,200	5,890	310
Total	21,500	18,745	2,755

4. Apportionments of Pollock TAC Among Regulatory Areas, Seasons, and Between Inshore and Offshore Components

In the GOA, pollock is apportioned by area, season, and inshore/offshore components. Regulations at § 672.20(a)(2)(iv) require that the TAC for pollock in the combined Western and Central Areas of the GOA be apportioned among statistical areas Shumagin (61), Chirikof (62), and Kodiak (63) in proportion to known distributions of the pollock biomass. This measure was intended to provide spatial distribution of the pollock harvest as a sea lion protection measure. Each statistical area apportionment is further divided equally among the four quarterly reporting periods of the fishing year (Table 3). Within any fishing year, any unharvested amount of any quarterly allowance of pollock TAC is added in equal proportions to the quarterly allowance of following quarters, resulting in a sum for each quarter that does not exceed 150 percent of the initial quarterly allowance. Similarly, harvests in excess of a quarterly allowance of TAC are deducted in equal proportions from the remaining quarterly allowances of that fishing year. As defined at § 672.23(f), directed fishing for the four quarterly allowances starts on January 1, June 1, July 1, and October 1. The Eastern Regulatory Area pollock TAC of 3,360 mt is not allocated among smaller areas, or quarters.

Regulations at § 672.20(a)(2)(v)(A) require that the DAP apportionment for pollock in all regulatory areas and all quarterly allowances thereof be divided into inshore and offshore components. One hundred percent of the pollock DAP in each regulatory area is apportioned to the inshore component after subtraction of amounts that are determined by the Regional Director to be necessary to support the bycatch needs of the offshore component in directed fisheries for other groundfish species. At this time, incidental amounts of pollock to be caught by the offshore component are unknown, and will be determined during the fishing year.

TABLE 3.—DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA (W/C GOA); BIOMASS DISTRIBUTION, AREA APPORTIONMENTS, AND QUARTERLY ALLOWANCES. ABC FOR THE W/C GOA IS 62,000 METRIC TONS (MT). BIOMASS DISTRIBUTION IS BASED ON 1993 SURVEY DATA. TACS ARE EQUAL TO ABC. INSHORE AND OFFSHORE ALLOCATIONS OF POLLOCK ARE NOT SHOWN. ABCS AND TACS ARE ROUNDED TO THE NEAREST 10 MT

Statistical area	Biomass percent	1995 TAC	Quarterly allowance
Shumagin (61)	49	30,380	7,595
Chirikof (62)	24.7	15,310	3,826
Kodiak (63)	26.3	16,310	4,078
Total	100.0	62,000	15,499

5. Apportionment of Pacific Cod TAC Between Inshore and Offshore Components

Regulations at § 672.20(a)(2)(v)(B) require that the DAP apportionment of Pacific cod in all regulatory areas be allocated to vessels catching Pacific cod for processing by the inshore and offshore components. The inshore component is equal to 90 percent of the Pacific cod TAC in each regulatory area. The remaining 10 percent of the TAC assigned to the offshore component. Inshore and offshore allocations of the 69,200 mt Pacific cod TAC for 1995 are shown in Table 4.

TABLE 4.—1995 ALLOCATION (METRIC TONS) OF PACIFIC COD IN THE GULF OF ALASKA; ALLOCATIONS TO INSHORE AND OFFSHORE COMPONENTS

Regulatory area	TAC	Component allocation	
		Inshore (90%)	Offshore (10%)
Western	20,100	18,090	2,010
Central	45,650	41,085	4,565

TABLE 4.—1995 ALLOCATION (METRIC TONS) OF PACIFIC COD IN THE GULF OF ALASKA; ALLOCATIONS TO INSHORE AND OFFSHORE COMPONENTS—Continued

Regulatory area	TAC	Component allocation	
		Inshore (90%)	Offshore (10%)
Eastern	3,450	3,105	345
Total	69,200	62,280	6,920

6. ''Other Species'' TAC

The FMP specifies that the TAC amount for the ''other species'' category is calculated as 5 percent of the 1995 combined TACs for target species. This results in a TAC amount of 13,308 mt for 1995.

7. PSC Limits Relevant to Fully Utilized Species

Under § 672.20(b)(1), if NMFS determines, after consultation with the Council, that the TAC for any species or species group will be fully utilized in the DAP fishery, a groundfish PSC limit applicable to the JVP fisheries may be specified for that species or species group.

The Council recommended that DAP equal TAC for each species category. NMFS concurs with the Council's recommendation, and has not established any JVP amounts; therefore, no groundfish PSC limits under § 672.20(b)(1) are necessary.

8. Closures to Directed Fishing

The interim 1995 initial specifications of groundfish, associated management measures, and closures for the GOA (59 FR 659575, December 22, 1994) contained several closures to directed fishing for groundfish during 1995. The closures for the final specifications are listed in Table 5.

Under § 672.20(c)(2)(ii), the Director, Alaska Region, NMFS (Regional Director), determined that the entire TACs or allocations of TAC of some groundfish species and species groups will be needed as incidental catch to support other anticipated groundfish fisheries during 1995. The Regional Director is establishing directed fishing allowances of zero mt and prohibiting directed fishing for the remainder of the year for the fisheries listed in Table 5. Directed fishing standards for the aforementioned closures may be found at § 672.20(g).

TABLE 5.—CLOSURES TO DIRECTED FISHING FOR TOTAL ALLOWABLE CATCHES IMPLEMENTED BY THIS ACTION.[1] OFFSHORE=THE OFFSHORE COMPONENT; TRW=TRAWL; ALL=ALL GEARS; WG=WESTERN REGULATORY AREA; CG=CENTRAL REGULATORY AREA; EG=EASTERN REGULATORY AREA; GOA=ENTIRE GULF OF ALASKA

Fishery	Component	Gear	Closed areas
Atka mackerel	Offshore	ALL	GOA
Northern rockfish		ALL	WG, EG
Deep-water flatfish		ALL	WG
Other rockfish[2]		ALL	WG, CG
Pacific cod		ALL	EG
Pacific ocean perch		ALL	WG, CG
Rex sole		ALL	WG
Sablefish		TRW	WG, CG
Shortraker/rougheye rockfish		ALL	GOA
Thornyhead rockfish		ALL	GOA

[1] These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 672.
[2] ''Other rockfish'' includes slope and demersal shelf rockfish in the WG and CG.

In addition to the above closures, NMFS closed statistical areas 62 and 63 to directed fishing for pollock effective noon, A.l.t., January 24, 1995 (60 FR 5337, January 27, 1995; 60 FR 5338, January 27, 1995), under authority of the interim 1995 specifications. In accordance with § 672.20(c)(2)(ii), the closure for Statistical Area 63 will remain in effect until noon, A.l.t., April 1, 1995, or until changed by subsequent notification in the **Federal Register**. The Director, Alaska Region, NMFS, determined that the remaining quarterly allowance of pollock TAC in Statistical Area 62 is sufficient to allow a 48-hour directed fishery. In a separate notification in the **Federal Register**, NMFS is reopening directed fishing for pollock in Statistical Area 62 from 12 noon, A.l.t., February 8, 1995 until 12 noon, A.l.t., February 10, 1995. Effective 12 noon, A.l.t., February 10, 1995, the closure to directed fishing for pollock in Statistical Area 62 is reinstated. In accordance with § 672.20(c)(2)(ii), the closure for Statistical Area 62 will remain in effect until 12 noon, A.l.t., April 1, 1995, or until changed by subsequent notification in the **Federal Register**. Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g). Pursuant to § 672.23(f), directed fishing for pollock is prohibited after the first quarter ends on noon, April 1, 1995, until the second quarter directed fishery opens at 12 noon, A.l.t., June 1, 1995.

9. Halibut PSC (PSC) Mortality Limits

Under § 672.20(f)(2), annual Pacific halibut PSC limits are established and apportioned to trawl and hook-and-line gear and are established for pot gear. The Council recommended that NMFS initiate rulemaking to exempt the hook-and-line sablefish fishery from the halibut PSC limit. The sablefish and halibut Individual Fishing Quota (IFQ) program will be implemented in 1995, and will allow legal-sized halibut to be retained in the sablefish fishery. A proposed rule to implement the Council's recommendation was published in the **Federal Register** on December 29, 1994 (59 FR 67268). If made final, this would also specify a reduced halibut PSC limit for the 1995

GOA hook-and-line gear fisheries other than sablefish.

At its December 1994 meeting, the Council recommended a hook-and-line PSC limit of 300 mt, based on the proposed exemption of the hook-and-line sablefish fishery. Until the regulatory amendment to authorize the exemption of hook-and-line sablefish is approved, NMFS is specifying the PSC limits of 750 mt for hook-and-line and 2,000 mt for trawl gear. The hook-and-line halibut PSC limit is further apportioned between the DSR fishery (10 mt halibut mortality) and all other hook-and-line fisheries (740 mt). The final rule to exempt hook-and-line sablefish, if approved, would establish the hook-and-line PSC limit at 300 mt, as recommended by the Council.

Regulations at § 672.20(f)(1)(i) authorize separate apportionments of the trawl halibut bycatch mortality limit between trawl fisheries for deep-water and shallow-water species. These apportionments are divided seasonally to avoid seasonally high halibut bycatch rates.

As in the proposed specifications, the Council recommended that pot gear be exempt from Pacific halibut PSC limits for the 1995 fishing year. The Council proposed this exemption after considering that the 1994 groundfish catch and associated halibut bycatch mortality (4 mt), which continues to be low relative to other groundfish operations. NMFS concurs with the Council's recommendation.

In making its determinations with respect to halibut PSC mortality limits, NMFS considered information presented in the 1994 SAFE report; in addition, information from Alaska Department of Fish and Game, the International Pacific Halibut Commission (IPHC) and public testimony also were considered. The proposed 1995 specifications discuss: (1) Estimated halibut bycatch in prior years; (2) current estimates of halibut biomass and stock condition; (3) potential impacts of expected fishing for groundfish on halibut stocks and U.S. halibut fisheries; and (4) methods available for, and costs of, reducing halibut bycatches in groundfish fisheries. That discussion is not repeated here. The following information was also considered:

A. Expected Changes in Groundfish Stocks

At its December 1994 meeting, the Council adopted lower ABCs for pollock, deep-water flatfish, rex sole, flathead sole, sablefish, pelagic shelf rockfish, DSR, Atka mackerel, arrowtooth flounder, shortraker/rougheye, ''other'' rockfish, and northern rockfish, than those established for 1994. The Council adopted higher ABCs for Pacific cod, shallow-water flatfish, POP, and thornyhead rockfish than those established for 1994. More information on these changes is included in the Final SAFE Report dated November 1994 and in the Council and SSC minutes.

B. Expected Changes in Groundfish Catch

The total of the 1995 TACs for the GOA is 279,463 mt, a slight decrease from the 1994 TAC total of 304,595 mt. At its December 1994 meeting, the Council changed the 1995 TACs for some fisheries from the 1994 TACs. Those fisheries for which the 1995 TACs are lower than in 1994 are pollock (decreased to 65,360 mt from 109,300 mt), rex sole (decreased to 9,690 mt from 10,140), flathead sole (decreased to 9,740 mt from 10,000 mt), sablefish (decreased to 21,500 mt from 25,500 mt), shortraker/rougheye (decreased to 1,910 mt from 1,960 mt), northern rockfish (decreased to 5,270 from 5,760 mt), pelagic shelf rockfish (decreased to 5,190 mt from 6,890 mt), DSR (decreased to 580 mt from 960 mt), and Atka mackerel (decreased to 3,240 mt from 3,505 mt). Those species for which the 1995 TAC is higher than in 1994 are Pacific cod (increased to 69,200 mt from 50,400 mt), arrowtooth flounder (increased to 35,000 mt from 30,000 mt), POP (increased to 5,630 mt from 2,550 mt), and thornyhead rockfish (increased to 1,900 mt from 1,180 mt).

10. Seasonal Allocations of the Halibut PSC Limits

Under § 672.20(f)(1)(iii), NMFS seasonally allocates the halibut PSC limits based on recommendations from the Council. The FMP requires that certain information be considered by the Council in recommending seasonal allocations of halibut. The publication of the final 1994 groundfish and PSC specifications (59 FR 7647, February 16, 1994) summarizes Council findings with respect to each of the FMP considerations. At this time, the Council's findings are unchanged from those set forth for 1994. Pacific halibut PSC limits, and apportionments thereof, are presented in Table 6. Regulations specify that any overages or shortfalls in a seasonal apportionment of a PSC limit will be deducted from or added to the next respective seasonal apportionment within the 1995 season.

As noted above, the Council requested a change in the hook-and-line PSC limit for 1995, which would be established in a separate rulemaking exempting the hook-and-line sablefish from the PSC limit. Until that final rule becomes effective, NMFS is establishing the same allowances for 1995 as were used in 1994.

TABLE 6.—FINAL 1995 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS. THE PACIFIC HALIBUT PSC LIMIT FOR HOOK-AND-LINE GEAR IS ALLOCATED TO THE DEMERSAL SHELF ROCKFISH (DSR) FISHERY AND FISHERIES OTHER THAN DSR. VALUES ARE IN METRIC TONS

Trawl gear		Hook-and-line gear			
		Other than DSR		DSR	
Dates	Amount	Dates	Amount	Dates	Amount
Jan 1–Mar 31	600(30%)	Jan 1–May 17	200(27%)	Jan 1–Dec 31	10(100%)
Apr 1–June 30	400(20%)	May 18–Aug 31	500(68%)		
Jul 1–Sep 30	600(30%)	Sep 1–Dec 31	40(5%)		
Oct 1–Dec 31	400(20%)				
Total	2,000(100%)		740(100%)		10(100%)

Regulations at § 672.20(f)(1)(i) authorize apportionments of the trawl halibut PSC limit allowance as bycatch allowances to a deep-water species complex and a shallow-water species complex. The deep-water species

complex consists of sablefish, rockfish, deep-water flatfish, and arrowtooth flounder. The shallow-water species complex consists of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ''other species.'' The apportionment for these two complexes is presented in Table 7.

TABLE 7.—FINAL 1995 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE DEEP-WATER SPECIES COMPLEX AND THE SHALLOW-WATER SPECIES COMPLEX. VALUES ARE IN METRIC TONS

Season	Shallow-water	Deep-water	Total
Jan. 20–Mar. 31	500	100	600
Apr. 1–Jun. 30	100	300	400
Jul. 1–Sep. 30	200	400	600
Oct. 1–Dec. 31	No apportionment between shallow and deep for the 4th quarter.		

Except as noted below, the Council proposed that revised halibut discard mortality rates recommended by the IPHC be adopted for purposes of monitoring halibut bycatch mortality limits established for the 1995 groundfish fisheries. These assumed halibut mortality rates are based on an average of mortality rates determined from NMFS-observer data collected during 1992 and 1993, except for the GOA hook-and-line rockfish, for which 1992/93 rates were not available and the rates from 1990 and 1991 were used. For most fisheries, the 1992–93 averages, on which the 1995 mortality rates are based, are somewhat higher than the assumed rate used in 1994. This occurs because the rates used in 1994 were a rollover of the 1993 rates, which had been derived from data for 1990 and 1991.

The Council recommended establishing two separate mortality rates for the GOA bottom trawl pollock fishery: 63 percent for shoreside processors and 74 percent for at-sea processors. The different rates for at-sea and shoreside processors result from analyses by the IPHC that showed that at-sea processing vessels had a significantly higher discard mortality rate than the shorebased operators. The rates for the bottom trawl pollock fishery are revised from the proposed specifications. The rates recommended by the Council are adopted and will be used in calculating halibut mortality. However, NMFS notes that directed fishing for GOA pollock by the offshore component is prohibited under § 672.20(a)(2)(v) and that at-sea processing of pollock would be unlikely.

The Council proposed adjusting the IPHC's recommendation for GOA Pacific cod hook-and-line and trawl mortality rates. The IPHC recommended assumed mortality rates of 20 percent and 58 percent, respectively. The Council recommended setting the Pacific cod hook-and-line halibut mortality rate at 12.5 percent and the trawl rate at 55 percent. NMFS has evaluated the Council's recommendation but adopts mortality rates suggested by the IPHC for 1995, which is the best information available on assumed mortality rates.

The IPHC determined that the careful release measures implemented for vessels using hook-and-line gear did not show appreciable improvements in mortality rates and has recommended one rate for both observed and unobserved vessels in the hook-and-line fisheries. This action was approved by the Council and is adopted by NMFS. The halibut mortality rates are listed in Table 8.

TABLE 8.—1995 ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA. TABLE VALUES ARE PERCENT OF HALIBUT BYCATCH ASSUMED TO BE DEAD

Gear and Target	
Hook-and-Line:	
Sablefish	25
Pacific cod	20
Rockfish	18
Trawl:	
Midwater pollock	66
Rockfish	66
Shallow-water flatfish	64
Pacific cod	58
Deep-water flatfish	59
Bottom pollock:	
Shoreside	63
At-sea	74
Pot:	
Pacific cod	18

Opening Date of the Directed Fishery for Sablefish for Hook-and-Line Gear

Under new regulations implementing the IFQ program (50 CFR part 676) in 1995, the opening of the sablefish fishery is March 1.

Comments

Written comments on the proposed 1994 specifications and other management measures were requested until January 20, 1995 (59 FR 65990; December 22, 1994). No written comments were received.

Classification

This action is authorized under 50 CFR 611.92 and 672.20; and is exempt from review under E.O. 12866.

This action apportions reserves to DAP fisheries on a date other than those specified in § 672.20(d)(1)(ii). Under 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), for the reasons set forth below, finds good cause to waive prior notice and opportunity for public comment provided by the regulations. This waiver is necessary to allow the harvest of TAC and prevent unnecessary closure of the fishery. Closure of the fishery would be contrary to the public interest. In accordance with § 672.20(d)(5)(iv), comments are invited on the reserve apportionments as noted in ''DATES'' above.

This action adopts final 1995 harvest specifications for the GOA, revises associated management measures, and closes specified fisheries. Generally, this action does not significantly revise management measures in a manner that would require time to plan or prepare for those revisions. In some cases, such as closures, action must be taken immediately to conserve fishery resources. Without these closures, specified TAC amounts will be overharvested and retention of these species will become prohibited, which would disadvantage fishermen who could no longer retain bycatch amounts of these species. The immediate effectiveness of this action is required to provide consistent management and conservation of fishery resources. Accordingly, the Assistant Administrator finds there is good cause to waive the 30-day delayed effectiveness period under 5 U.S.C. 553(d)(3) with respect to such provisions and to the apportionment discussed above. In some cases, the interim specifications in effect would be insufficient to allow directed fisheries to operate during a 30-day delayed effectiveness period, which would result in unnecessary closures and disruption within the fishing industry; in many of these cases, the final specifications will allow the fisheries to continue, thus relieving a restriction. Provisions of a rule relieving a restriction under 5 U.S.C. 553(d)(1) are not subject to a delay in effective date.

NMFS has determined that the GOA groundfish fisheries are not likely to affect Steller sea lions in a way or to an extent not already considered in previous Section 7 consultations on this fishery. NMFS has determined that reinitiation of formal consultation under this ESA is not required.

NMFS prepared an environmental assessment (EA) on the 1995 TAC specifications. The Assistant Administrator concluded that no significant impact on the environment will result from their implementation. A copy of the EA is available (see addresses).

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

Dated: February 7, 1995.

Richard H. Schaefer,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 95–3483 Filed 2–8–95; 4:37 pm]

BILLING CODE 3510–22–P

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50 CFR Part 672

[Docket No. 950206041–5041–01; I.D. 020695D]

Groundfish of the Gulf of Alaska; Daily Reporting Requirements

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

ACTION: Notice of change in recordkeeping and reporting requirements.

SUMMARY: NMFS has determined that Daily Production Reports (DPRs) must be submitted by offshore component processor vessels that catch and/or receive Pacific cod in Statistical Areas 61, 62, and 63 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding that portion of the total allowable catch (TAC) of Pacific cod allocated to vessels catching Pacific cod for processing by the offshore component in those areas. This action will enable NMFS to effectively monitor the Pacific cod catch and take inseason action to close the fishery prior to its exceeding the TAC.

EFFECTIVE DATE: From noon, Alaska local time (A.l.t.), February 8, 1995, through the duration of the 1995 directed offshore Pacific cod fishery in these areas or until the Director, Alaska Region, NMFS (Regional Director) determines the supplementary reporting requirements are no longer necessary. This determination will be published in the **Federal Register**.

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.

Pursuant to § 672.5(c)(3)(i) the Regional Director is requiring offshore component processor vessels, as defined at § 672.2, that catch and/or receive Pacific cod in Statistical Areas 61, 62, and 63 in the GOA to submit DPRs in addition to weekly processor reports. DPRs must include the information required by § 675.2(c)(3)(ii).

These requirements are necessary to manage the offshore component Pacific cod fisheries in those areas. The Regional Director is doing so in consideration of the potential for exceeding that portion of the total allowable catch (TAC) of Pacific cod allocated to vessels catching Pacific cod for processing by the offshore component in those areas.

The allocation of the TACs for Pacific cod to vessels catching Pacific cod for processing by the offshore component under § 672.20(a)(2)(v)(B) will become available for directed fishing by offshore component vessels with the filing of the final specifications of groundfish for the GOA and are expected to be rapidly harvested.

DPRs must include all information required by § 672.5(c)(3)(ii) for groundfish harvested from the applicable reporting areas. Processors must submit the required information on the ''Alaska Groundfish Processor Daily Production Report'' form that was distributed to participants in the groundfish fishery with their 1995 Federal fisheries permit. The form also may be obtained from the Regional Director by calling Mary Furuness at 907–586–7228. Processors must transmit their completed DPRs to the Regional Director by facsimile transmission to number 907–586-7131, telex (U.S. code) plus 62296000, or by telephone via number 907–586-7228, no later than 12 hours after the end of the day the groundfish was processed.

If and when the Regional Director determines that these reports are no longer necessary, he may rescind the requirement. Criteria used to assess the need for the reports include the stability of effort and harvest rates in the fishery, and remaining amounts.

The Assistant Administrator for Fisheries, NOAA, finds that reasons justifying implementation of this action also make it impracticable and contrary to the public interest to provide notice and opportunity for prior comment or to delay for 30 days its effective date. Intense fishing effort without DPRs

could result in industry's exceeding these allocations.

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: February 7, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–3484 Filed 2–8–95; 4:37 pm]

BILLING CODE 3510–22–F

50 CFR Parts 611, 675, and 676

[Docket No. 950206040–5040–01; I.D. 111494A]

Groundfish Fishery of the Bering Sea and Aleutian Islands; Foreign Fishing; Limited Access Management of Federal Fisheries In and Off of Alaska; Final 1995 Harvest Specifications of Groundfish

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

ACTION: Final 1995 specifications of groundfish and associated management measures; final rule; technical amendment; closures.

SUMMARY: NMFS announces final 1995 harvest specifications of total allowable catches (TACs), initial apportionments of TACs for each category of groundfish, and associated management measures in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to establish harvest limits and associated management measures for groundfish during the 1995 fishing year. In addition, this action implements a technical amendment to update a directed fishery standard and the definition of a fishery category to reflect a change in a BSAI TAC category that resulted from the annual specification process. The technical amendment is necessary to incorporate a change in a groundfish TAC category to accommodate other regulations that limit bycatch amounts of prohibited species or groundfish species closed to directed fishing. NMFS also is closing specified fisheries consistent with the final 1995 groundfish specifications and fishery bycatch allowances of prohibited species. These measures are intended to conserve and manage the groundfish resources in the BSAI.

EFFECTIVE DATE: The final 1995 harvest specifications are effective on February 8, 1995, through 2400 Alaska local time (A.l.t.) on December 31, 1995, or until changed by subsequent notification in the **Federal Register**. The closures to directed fishing are effective on February 8, 1995, through 2400 A.l.t., December 31, 1995. The amendments to §§ 675.20 and 675.21 are effective on February 8, 1995.

ADDRESSES: Comments on directed fishing closures should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (Attn: Lori Gravel). The final Environmental Assessment prepared for the 1995 Total Allowable Catch Specifications may be obtained from the same address, or by calling 907–586–7229. The final Stock Assessment and Fishery Evaluation (SAFE) report is available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (907–271–2809).

FOR FURTHER INFORMATION CONTACT: Ellen R. Varosi, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Groundfish fisheries in the BSAI are governed by Federal regulations at 50 CFR part 675 that implement the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Island area (FMP). Other applicable regulations are found at 50 CFR 611.93 (foreign fishing) and 50 CFR part 676 (Limited Access Management of Federal Fisheries In and Off of Alaska). The FMP was prepared by the North Pacific Fishery Management Council (Council) and approved by NMFS under the Magnuson Fishery Conservation and Management Act.

The FMP and implementing regulations require NMFS, after consultation with the Council, to specify annually the apportionments of prohibited species catch (PSC) limits among fisheries and seasons (§ 675.21(b)), the TAC, initial TAC (ITAC), initial domestic annual harvest (DAH), and initial total allowable level of foreign fishing (TALFF) for each target species and the ''other species'' category (§ 675.20(a)(2)). The sum of the TACs must be within the optimum yield (OY) range of 1.4 million to 2.0 million metric tons (mt) (§ 675.20(a)(2)). Specifications set forth in Tables 1–9 of this action satisfy these requirements. For 1995, the sum of TACs is 2,000,000 mt.

The proposed BSAI groundfish specifications and specifications for prohibited species bycatch allowances for the groundfish fishery of the BSAI were published in the **Federal Register** on December 14, 1994 (59 FR 64383). Comments were invited through January 9, 1995. No written comments were received within the comment period. Public consultation with the Council occurred during the Council meeting in Anchorage, AK, held on December 5–10, 1994. Council recommendations and biological and economic data that were available at the Council's December meeting were considered in implementing the final 1995 specifications.

Interim Specifications

Regulations under § 675.20(a)(7)(i) authorize one-fourth of each proposed ITAC and apportionment thereof, one-fourth of each PSC allowance, and the first proposed seasonal allowance of pollock to be in effect on January 1 on an interim basis and to remain in effect until superseded by final initial specifications. NMFS published the interim 1995 specifications in the **Federal Register** on December 14, 1994 (59 FR 64346) and corrected January 30, 1995 (60 FR 5762). The final 1995 initial groundfish harvest specifications and prohibited species bycatch allowances contained in this action supersede the interim 1995 specifications.

TAC Specifications and Acceptable Biological Catch (ABC)

The specified TAC for each species is based on the best available biological and socioeconomic information. The Council, its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC) reviewed current biological information about the condition of groundfish stocks in the BSAI at their September and December 1994 meetings. This information was compiled by the Council's BSAI Groundfish Plan Team and is presented in the final 1995 Stock Assessment and Fishery Evaluation (SAFE) report for the BSAI groundfish fisheries, dated November 1994. The Plan Team annually produces such a document as the first step in the process of specifying TACs. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters. From these data and analyses, the Plan Team estimates an acceptable biological catch (ABC) for each species category.

A summary of the preliminary ABCs for each species for 1995 and other biological data from the September 1994 draft SAFE report were provided in the discussion supporting the proposed 1995 specifications. The Plan Team's recommended ABCs were reviewed by the SSC, AP, and Council at their

September 1994 meetings. Based on the SSC's comments concerning technical methods and new biological data not available in September, the Plan Team revised its ABC recommendations in the final SAFE report, dated November 1994. The revised ABC recommendations were again reviewed by the SSC, AP, and Council at their December 1994 meetings. While the SSC endorsed most of the Plan Team's recommendations for 1995 ABCs set forth in the final SAFE report, the SSC recommended revisions to ABC amounts calculated for Bogoslof pollock, Greenland turbot, and Atka mackerel. The Council adopted the SSC's recommendations for the 1995 ABCs. The final ABCs are listed in Table 1.

The Council developed its TAC recommendations based on the final ABCs as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC in the required OY range of 1.4–2.0 million mt. None of the Council's recommended TACs for 1995 exceeds the final 1995 ABC for each species category. Therefore, NMFS finds that the recommended TACs are consistent with the biological condition of groundfish stocks. The final TACs and overfishing levels for groundfish in the BSAI area for 1995 are given in Table 1 of this action.

Apportionment of TAC

As required by § 675.20 (a)(3) and (a)(7)(i), each species' TAC initially is reduced by 15 percent (special provisions apply to the hook-and-line and pot gear allocation for sablefish); this is the ITAC for the species. The sum of these reductions is the reserve. The reserve is not designated by species or species group, and any amount of the reserve may be reapportioned to a target species or the ''other species'' category during the year, providing that such reapportionments do not result in overfishing.

The ITAC for each target species and the ''other species'' category at the beginning of the year is apportioned between the DAH and TALFF, if any. Each DAH amount is further apportioned between two categories of U.S. fishing vessels. The DAP category includes U.S. vessels that process their catch on board or deliver it to U.S. fish processors. The joint venture processors (JVP) category includes U.S. fishing vessels working in joint ventures with foreign processing vessels authorized to receive catches in the U.S. exclusive economic zone.

In consultation with the Council, the initial amounts of DAP and JVP are determined by the Director, Alaska Region, NMFS (Regional Director). Consistent with the final 1991–94 initial specifications, the Council recommended that 1995 DAP specifications be set equal to ITAC and that zero amounts of groundfish be allocated to JVP and TALFF. In making this recommendation, the Council considered the capacity of DAP harvesting and processing operations and anticipated that 1995 DAP operations will harvest the full TAC specified for each BSAI groundfish species category. The ABCs, TACs, ITACs, OFLs, and initial apportionments of groundfish in the BSAI for 1995 are set out in Table 1.

TABLE 1. FINAL 1995 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND OVERFISHING LEVELS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREAS [1] [2]

Species	ABC	TAC	ITAC DAP [3] [4]	Over fishing level
Pollock:				
Bering Sea (BS)	1,250,000	1,250,000	1,062,500	1,500,000
Aleutian Islands (AI)	56,600	56,600	48,110	60,400
Bogoslof District	22,100	1,000	850	22,100
Pacific cod	328,000	250,000	212,500	390,000
Sablefish BS	1,600	1,600	1,360	.....
AI	2,200	2,200	1,870	4,900
Atka mackerel total	125,000	80,000	68,000	335,000
Western AI	55,600	16,500	14,025	.....
Central AI	55,900	50,000	42,500	.....
Eastern AI/BS	13,500	13,500	11,475	.....
Yellowfin sole	277,000	190,000	161,500	319,000
Rock sole	347,000	60,000	51,000	388,000
Greenland turbot total	7,000	7,000	5,950	27,200
BS	4,669	4,669	3,969	.....
AI	2,331	2,331	1,981	.....
Arrowtooth flounder	113,000	10,227	8,693	138,000
Flathead sole	138,000	30,000	25,500	167,000
Other flatfish [5]	117,000	19,540	16,609	137,000
Pacific ocean perch.				
BS	1,850	1,850	1,573	2,910
AI	10,500	10,500	8,925	15,900
Other red rockfish [6].				
BS	1,400	1,260	1,070	1,400
Sharpchin/Northern.				
AI	5,670	5,103	4,338	5,670
Shortraker/Rougheye.				
AI	1,220	1,098	933	1,220
Other rockfish [7]:				
BS	365	329	280	365
AI	770	693	589	770
Squid	3,110	1,000	850	3,110
Other Species [8]	27,600	20,000	17,000	136,000

TABLE 1. FINAL 1995 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND OVERFISHING LEVELS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREAS [1] [2]—Continued

Species	ABC	TAC	ITAC DAP [3] [4]	Over fishing level
Totals	2,836,985	2,000,000	1,700,000	3,655,945

[1] Amounts are in metric tons. These amounts apply to the entire Bering Sea (BS) and Aleutian Islands (AI) area unless otherwise specified. With the exception of pollock and for the purpose of these specifications, the BS includes the Bogoslof district.
[2] Zero amounts of groundfish are specified for Joint Venture Processing (JVP) and Total Allowable Level of Foreign Fishing (TALFF).
[3] Except for the portion of the sablefish TAC allocated to hook-and-line and pot gear, 0.15 of each TAC is put into a reserve. For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, .20 of the allocated TAC is reserved for use by Community Development Quota participants. The ITAC for each species is the remainder of the TAC after the subtraction of these reserves.
[4] DAP = domestic annual processing = ITAC.
[5] "Other flatfish" includes all flatfish species except for Pacific halibut (a prohibited species) and all other flatfish species that have a separate specified TAC amount.
[6] "Other red rockfish" includes shortraker, rougheye, sharpchin, and northern.
[7] "Other rockfish" includes all *Sebastes and Sebastolobus* species except for Pacific ocean perch, sharpchin, northern, shortraker and rougheye.
[8] "Other species" includes sculpins, sharks, skates, eulachon, smelts, capelin, and octopus.

The SSC's revisions to the ABCs recommended by the Plan Team for Bogoslof pollock, Greenland turbot, and Atka mackerel are discussed below.

Bogoslof pollock. The Plan Team indicated in the final 1995 SAFE report that the current estimate of biomass of Aleutian Basin pollock (442,000 mt) is the best estimate, assuming that no recruitment to the stock has occurred and that the natural mortality rate (M) is 0.2. Reassessment of the Bogoslof area hydroacoustic survey with new threshold levels of abundance has not changed previous conclusions that this stock has continued to decrease since 1988. The Plan Team lacks conclusive data that Bogoslof pollock are an independent stock that is self sustaining. Recruitment to the Aleutian Basin is most likely coming from another area from the surrounding continental shelf. To the extent that this recruitment may not be the progeny of Bogoslof spawners, the Plan Team assumed no recruitment will occur in 1995, and projected a biomass for 1995 of 442,000 mt using M=0.2. The Plan Team then calculated the $F_{0.35}$ exploitation rate of 0.26 to derive an ABC of 115,000. However, the SSC continued the policy of adjusting the exploitation rate downward by M/4, or .05, in proportion to the ratio of current biomass to optimal biomass. This leads to an ABC of 22,100. Due to lack of recruitment predicted for 1995, the Council recommended a TAC of 1,000 mt to provide for bycatch in other groundfish operations. That recommendation is adopted in these final specifications (Table 1).

Greenland turbot. The Plan Team used the stock synthesis model to estimate the ABC, which was updated with 1994 catch and survey data. Similar to last year, the Plan Team used a more conservative exploitation rate of $F_{0.40}$ and an increased slope survey catchability coefficient of 0.75, due to the lack of recruitment. These parameters resulted in a conservative ABC of 18,500 mt. Continued poor recruitment and stock abundance levels lead the SSC to recommend a continuation of the present 7,000 mt ABC for this species. The SSC further recommended that the ABC be split into two apportionments: Two-thirds to the eastern Bering Sea, and one-third to the Aleutian Islands. This resulted in ABCs of 4,669 mt and 2,331 mt, respectively. This recommendation is intended to spread fishing effort over a larger area to avoid localized depletion. The Council concurred with the SSC's recommendation for ABC and set the TAC equal to ABC. That recommendation is adopted in these final specifications.

Atka mackerel. The Plan Team was not able to assess the current Atka mackerel stock level and the magnitude of the incoming year classes because data from the 1994 trawl survey and age composition of the 1993 fishery were not available. As a result, the Plan Team's recommended ABC (245,000 mt) was unchanged from 1994. Since 1992, the SSC has been apprehensive about possible environmental problems that may result from an increased catch of the magnitude implied by the Plan Team's estimate of ABC. Atka mackerel is a prey species of northern fur seals (a depleted species under the Marine Mammal Protection Act) and Steller sea lions (a threatened species under the Endangered Species Act). During their migrations, northern fur seals feed heavily on Atka mackerel as they move through the Aleutian passes. Therefore, since 1992, the SSC has recommended phasing in the Plan Team's estimate of ABC over a 6-year period by adopting the Plan Team's biomass estimate (832,000 mt for 1995), and raising the exploitation rate in steps. These incremental steps are as follows: (M)(1/6) in 1992, (M)(2/6) in 1993, (M)(3/6) in 1994, (M)(4/6) in 1995, (M)(5/6) in 1996, and M in 1997. However, due to current uncertainty about the stock status, the SSC recommends that the stairstep be frozen at the level used to reduce the calculated ABC for 1994. According to this revised schedule, the recommended ABC for 1995 is (0.30/2)(832,000)=125,000 mt. The main purpose of this approach is to postpone a large ABC increase until data are available to evaluate the phase-in policy.

The Council recommended an 80,000 mt TAC for Atka mackerel in the BSAI in 1995. Based on the authority provided by Amendment 28 to the FMP, the Council recommended the following apportionment of the TAC for Atka mackerel among the Aleutian Islands (AI) management districts and the Bering Sea relative to survey biomass distribution estimates: 16,500 mt in the western AI district; 50,000 mt in the central AI district; and 13,500 mt in the eastern AI district and Bering Sea combined. These recommendations are adopted in these final specifications (Table 1).

Apportionment of the Pollock TAC to the Inshore and Offshore Components

Regulations at § 675.20(a)(2)(iii) require that the 1995 pollock ITAC specified for the BSAI be allocated 35 percent to vessels catching pollock for processing by the inshore component and 65 percent to vessels catching pollock for processing by the offshore component. Definitions of these components are found at § 675.2. The 1995 ITAC specifications are consistent with these requirements (Table 2).

Seasonal Allowances of Pollock TAC

Under § 675.20(a)(2)(ii), the TAC of pollock for each subarea or district of

the BSAI area is divided, after subtraction of reserves (§ 675.20(a)(3)), into two allowances. The first allowance will be available for directed fishing from January 1 to April 15 (roe season). The second allowance will be available from August 15 through the end of the fishing year (non-roe season).

The Council recommended that the 1995 seasonal allowances of pollock be set at the same relative levels as in 1993 and 1994 with 45 percent of the pollock ITAC specified for each management subarea or district during the roe season and 55 percent during the non-roe season. Although the Council is authorized under § 675.20(a)(7)(ii) to recommend seasonal allowances of the 1995 CDQ pollock reserve, it did not take such action at its December 1994 meeting. Therefore, NMFS is limiting the 1995 fishery to 45 percent of the CDQ reserve during the roe season, consistent with the seasonal split recommended by the Council for the inshore/offshore pollock fisheries (Table 2).

When specifying seasonal allowances of the pollock TAC, the Council and NMFS consider the factors as specified in Section 14.4.10 of the FMP and discussed in the proposed specifications (59 FR 64383), December 14, 1994).

A discussion of these factors relative to the roe and non-roe seasonal allowances (45 and 55 percent of the TAC, respectively) was presented in the final 1993 specifications for BSAI groundfish (58 FR 8703, February 17, 1993). Considerations under these factors remain unchanged from 1993 and 1994, given that the relative seasonal allowances for 1993, 1994, and 1995 are the same.

Apportionment of Pollock TAC to the Nonpelagic Trawl Gear Fishery

Regulations under § 675.24(c)(2) authorize NMFS, in consultation with the Council, to limit the amount of pollock TAC that may be taken in the directed fishery for pollock using nonpelagic trawl gear. This authority is intended to reduce the amount of halibut and crab bycatch that occurs in nonpelagic trawl operations.

The Council did not recommend limiting the amount of pollock TAC that may be taken in the 1995 directed fishery for pollock by vessels using nonpelagic trawl gear, given that regulations at § 675.7 appear to limit effectively the bycatch of halibut and crab when directed fishing for pollock with nonpelagic trawl gear is closed. NMFS concurs with the Council's recommendation, and no limit on the amount of pollock TAC that may be taken in the directed fishery for pollock using nonpelagic trawl gear is specified.

TABLE 2.—SEASONAL ALLOWANCES OF THE INSHORE AND OFFSHORE COMPONENT ALLOCATIONS OF POLLOCK TACS [1] [2]

Subarea	TAC	ITAC [3]	Roe season [4]	Non-roe season [5]
Bering Sea:				
Inshore	.....	371,875	167,344	204,531
Offshore	.....	690,625	310,781	379,844
	1,250,000	1,062,500	478,125	584,375
Aleutian Islands:				
Inshore	.....	16,838	16,838	([6])
Offshore	.....	31,272	31,272	([6])
	56,600	48,110	48,110	([6])
Bogoslof:				
Inshore	.....	298	298	([6])
Offshore	.....	552	552 ([6])	
	1,000	850	850	([6])

[1] TAC = total allowable catch.
[2] Based on an offshore component allocation of 0.65(TAC) and an inshore component allocation of 0.35(TAC).
[3] ITAC = initial TAC = 0.85 of TAC.
[4] January 1 through April 15—based on a 45/55 split (roe = 45 percent).
[5] August 15 through December 31—based on a 45/55 split (non-roe = 55 percent).
[6] Remainder.

Apportionment of the Pollock TAC to the Western Alaska Community Development Quota

Regulations at § 675.20(a)(3)(ii) require one-half of the pollock TAC placed in the reserve for each subarea or district, or 7.5 percent of each TAC, be assigned to a Community Development Quota (CDQ) reserve for each subarea or district. The 1995 CDQ reserve amounts for each subarea are as follows:

BSAI subarea	Pollock CDQ
Bering Sea	93,750 mt
Aleutian Islands	4,245 mt
Bogoslof	75 mt
Total	98,070 mt

Under regulations governing the CDQ program at § 675.27, NMFS may allocate the 1995 pollock CDQ reserves to eligible Western Alaska communities or groups of communities that have an approved community development plan (CDP). NMFS has approved six CDP's and associated percentages of the CDQ reserve for each CDP recipient for 1994–95 (58 FR 61031, November 19, 1993). Table 3 lists the approved CDP recipients, and each recipient's allocation of the 1995 pollock CDQ reserve for each subarea.

TABLE 3.—APPROVED SHARES (PERCENTAGES) AND RESULTING ALLOCATIONS AND SEASONAL ALLOWANCES (METRIC TONS) OF THE 1995 POLLOCK CDQ RESERVE SPECIFIED FOR THE BERING SEA (BS) AND ALEUTIAN ISLANDS (AI) SUBAREAS, AND THE BOGOSLOF DISTRICT (BD) AMONG APPROVED CDP RECIPIENTS

CDP recipient	Percent	Area	Allocation	Roe-season allowance[1]
Aleutian Pribilof	18	BS	16,875	7,594

TABLE 3.—APPROVED SHARES (PERCENTAGES) AND RESULTING ALLOCATIONS AND SEASONAL ALLOWANCES (METRIC TONS) OF THE 1995 POLLOCK CDQ RESERVE SPECIFIED FOR THE BERING SEA (BS) AND ALEUTIAN ISLANDS (AI) SUBAREAS, AND THE BOGOSLOF DISTRICT (BD) AMONG APPROVED CDP RECIPIENTS—Continued

CDP recipient	Percent	Area	Allocation	Roe-season allowance[1]
Island Community	.....	AI	764	.....
Development Assn	.....	BD	14	.....
Total	.....	.....	17,653	.....
Bristol Bay Economic	20	BS	18,750	8,437
Development Corp	.....	AI	849	.....
	.....	BD	15	.....
Total	.....	.....	19,614	.....
Central Bering Sea	8	BS	7,500	3,375
Fishermen's Assn	.....	AI	340	.....
	.....	BD	6	.....
Total	.....	.....	7,846	.....
Coastal Villages	27	BS	25,312	11,390
Fishing Coop	.....	AI	1,146	.....
	.....	BD	20	.....
Total	.....	.....	26,478	.....
Norton Sound	20	BS	18,750	8,438
Fisheries Development	.....	AI	849	.....
Assn	.....	BD	15	.....
Total	.....	.....	19,614	.....
Yukon Delta Fisheries	7	BS	6,563	2,953
Development Assn	.....	AI	297	.....
	.....	BD	5	.....
Total	.....	.....	6,865	.....
Total	100	.....	98,070	42,182

[1] No more than 45 percent of a CDP recipient's 1995 pollock allocation may be harvested during the pollock roe season, January 1 through April 15.

Allocation of the Pacific Cod TAC

Under § 675.20(a)(2)(iv), 2 percent of the Pacific cod ITAC is allocated to vessels using jig gear, 44 percent to vessels using hook-and-line or pot gear, and 54 percent to vessels using trawl gear. At its December 1994 meeting, the Council recommended a seasonal apportionment of the portion of the Pacific cod TAC allocated to the hook-and-line gear fisheries. The seasonal apportionments are intended to provide for the harvest of Pacific cod when flesh quality and market conditions are optimum and Pacific halibut bycatch rates are low. The Council's recommendations for seasonal apportionments are based on: (1) Seasonal distribution of Pacific cod relative to prohibited species distributions, (2) expected variations in prohibited species bycatch rates experienced in the Pacific cod fisheries throughout the year, and (3) economic effects of any seasonal apportionment of Pacific cod on the hook-and-line and pot gear fisheries. The seasonal allocation of the Pacific cod ITAC is specified in Table 4.

TABLE 4.—1995 GEAR SHARES OF THE BSAI PACIFIC COD INITIAL TAC

Gear	Percent TAC	Share ITAC (mt)	Seasonal apportionment		
			Date	Percent	Amount (mt)
Jig	2	4,250	Jan 1	100	4,250
Hook-and-line/pot gear	44	93,500	Jan 1–Apr 30	73	[1] 68,000
	.....	.....	May 1–Aug 31	19	18,000
	.....	.....	Sep 1–Dec 31	8	7,500
Trawl gear	54	114,750	Jan 1	100	114,750
Total	100	212,500	.....	.....	.....

[1] Any portion of the first seasonal apportionment that is not harvested by the end of the first season will become available on September 1, the beginning of the third season.

Sablefish Gear Allocation and CDQ Allocations for Sablefish

Regulations at § 675.24(c)(1) require that sablefish TACs for BSAI subareas be divided between trawl and hook-and-line/pot gear types. Gear allocations of TACs are specified in the following proportions: Bering Sea subarea: Trawl gear—50 percent; hook-and-line/pot gear—50 percent, and Aleutian Islands subarea: trawl gear—25 percent; hook-and-line/pot gear—75 percent. In addition, regulations under § 676.24(b) require NMFS to withhold 20 percent of the hook-and-line and pot gear sablefish allocation as sablefish CDQ reserve. To accommodate the CDQ reserve and allow for the issuance of 1995 sablefish individual fishing quotas (IFQs), NMFS is releasing reserves to make the full amount of the 1995 sablefish TACs available early in the fishing year. Gear allocations and CDQ shares of sablefish TACs are specified in Table 5.

TABLE 5.—1995 GEAR AND CDQ SHARES OF BSAI SABLEFISH TAC

Area (mt)	Gear	Percent of TAC	Share of TAC (mt)	Share of ITAC (mt) [1]	Share of CDQ
BS	Trawl	50	800	800	N/A
	Hook-and-line/Pot [2]	50	800	640	160
AI	Trawl	25	550	550	N/A
	Hook-and-line/Pot	75	1,650	1,320	330
Total			3,800	3,310	490

[1] Reserve added to ITAC.
[2] For the portion of the sablefish TAC allocated to vessels using hook-and-line gear or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants. The ITAC for each species is the remainder of the TAC after the subtraction of these reserves.

Sablefish CDP Allocations

On November 25, 1994, NMFS approved the 1995–97 Community Development Plans (CDPs) for the 1995–97 sablefish CDQ program. The percentages of CDQ fixed gear sablefish allocation for each approved CDP were published in the **Federal Register** on December 2, 1994 (59 FR 61877). The resulting 1995 allocations of sablefish to the approved CDPs are listed in Table 6.

TABLE 6.—APPROVED SHARES (PERCENTAGES) AND RESULTING ALLOCATIONS (MT) OF THE 1995 SABLEFISH CDQ RESERVE SPECIFIED FOR THE BERING SEA (BS) AND ALEUTIAN ISLANDS (AI) SUBAREAS AMONG APPROVED CDP RECIPIENTS

CDP recipient	Sablefish		Amount (mt)
	Area	Percent	
Atka Fishermen's Association	BS	0	0
	AI	0	0
Bristol Bay Economic Development Corp	BS	0	0
	AI	25	82.5
Coastal Villages Fishing Cooperative	BS	0	0
	AI	25	82.5
Norton Sound Economic Development Corporation	BS	25	40
	AI	30	99
Pribilof Island Fishermen	BS	0	0
	AI	0	0
Yukon Delta Fisheries Development Association	BS	75	120
	AI	10	33
Aleutian Pribilof Islands Community Development Association	BS	0	0
	AI	10	33
Total	BS	100	160
	AI	100	330

Allocation of Prohibited Species Catch (PSC) Limits for Crab, Halibut, and Herring

PSC limits of red king crab and *C. bairdi* Tanner crab in Bycatch Limitation Zones (50 CFR 675.2) of the Bering Sea subarea, and for Pacific halibut throughout the BSAI specified under § 675.21(a). The PSC limits are:

—Zone 1 trawl fisheries, 200,000 red king crabs;
—Zone 1 trawl fisheries, 1 million *C. bairdi* Tanner crabs;
—Zone 2 trawl fisheries, 3 million *C. bairdi* Tanner crabs;
—BSAI trawl fisheries, 3,775 mt mortality of Pacific halibut;
—BSAI nontrawl fisheries, 900 mt mortality of Pacific halibut; and
—BSAI trawl fisheries, 1,861 mt Pacific herring.

The PSC limit of Pacific herring caught while conducting any trawl operation for groundfish in the BSAI is 1 percent of the annual eastern Bering Sea herring biomass. The best estimate of 1995 herring biomass is 186,100 mt. This amount was derived using 1994 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game. Therefore, the herring PSC limit for 1995 is 1,861 mt.

Regulations at § 675.21(b)(2) authorize the apportionment of the non-trawl halibut PSC limit among three fishery categories (Pacific cod hook-and-line fishery, groundfish pot gear fishery, and other non-trawl fisheries). The PSC allowances are listed in Table 7. In general, the fishery bycatch allowances listed in Table 7 reflect the recommendations made to the Council by its AP. These recommendations were based on 1994 bycatch amounts, anticipated 1995 harvest of groundfish by trawl gear and fixed gear, and assumed halibut mortality rates in the different groundfish fisheries based on analyses of 1992–93 observer data.

The Council recommended continuing to exempt groundfish pot gear fisheries from halibut bycatch restrictions during 1995. In 1994, total groundfish catch for the pot gear fishery in the BSAI was approximately 8,500 mt with an associated halibut bycatch of 58 mt, or less than 5 mt bycatch mortality, using the mortality rate recommended for 1995 (8 percent). The Council recommended that pot gear be exempt from halibut-bycatch restrictions because (1) potential exists for halibut-bycatch mortality in the Greenland turbot or sablefish hook-and-line fisheries to require closure of the pot gear fishery if the halibut-bycatch allowance is reached, and (2) the groundfish pot gear fishery uses a selective gear type that experiences very low halibut bycatch mortality.

The Council also recommended exempting the BSAI jig gear fishery and the sablefish hook-and-line gear fishery from halibut-bycatch restrictions. A proposed rule was published by NMFS on December 29, 1994 (59 FR 67268) which, if approved, would provide the authority to determine annually whether to apportion the halibut-bycatch limit to the groundfish jig gear fishery or the sablefish hook-and-line fishery or to exempt these fisheries from halibut-bycatch restrictions. At its December 1994, meeting, the Council recommended that the 1995 BSAI groundfish jig gear fishery and the sablefish hook-and-line gear fishery be exempt from halibut-bycatch restrictions. The final rule, if approved, would specify the Council's recommended exemptions.

TABLE 7.—FINAL 1995 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NONTRAWL FISHERIES.

Trawl fisheries	Zone 1	Zone 2	BSAI-wide
Red king crab, number of animals:			
Yellowfin sole	50,000	.....	.....
Rcksol/flatsol/othflat [1]	110,000	.....	.....
Turb/arrow/sab [2]	0	.....	.....
Rockfish	0	.....	.....
Pacific cod	10,000	.....	.....
Plck/Atka/othr [3]	30,000	.....	.....
Total	200,000	.....	.....
C. bairdi Tanner crab, number of animals:			
Yellowfin sole	225,000	1,525,000	.....
Rcksol/flatsol/othflat	475,000	510,000	.....
Turb/arrow/sab	0	5,000	.....
Rockfish	0	10,000	.....
Pacific cod	225,000	260,000	.....
Plck/Atka/othr	75,000	690,000	.....
Total	1,000,000	3,000,000	.....
Pacific halibut, mortality (mt):			
Yellowfin sole	.....	.....	750
Rcksol/flatsol/othflat	.....	.....	690
Turb/arrow/sab	.....	.....	120
Rockfish	.....	.....	110
Pacific cod	.....	.....	1,550
Plck/Atka/othr	.....	.....	555
Total	.....	.....	3,775
Pacific herring, mt:			
Midwater pollock	.....	.....	1,345
Yellowfin sole	.....	.....	315
Rcksol/flatsol/othflat	.....	.....	0
Turb/arrow/sab	.....	.....	0
Rockfish	.....	.....	8
Pacific cod	.....	.....	24
Plck/Atka/othr [4]	.....	.....	169
Total	.....	.....	1,861
Non-trawl fisheries	.....	.....	.....
Pacific halibut, mortality (mt)			
Pacific cod	.....	.....	725
Other non-trawl	.....	.....	175
Groundfish pot gear	.....	.....	([5])
Total	.....	.....	900

[1] Rock sole, flathead sole, and other flatfish fishery category.
[2] Greenland turbot, arrowtooth flounder, and sablefish fishery category.
[3] Pollock, Atka mackerel, and ''other species'' fishery category.
[4] Pollock other than midwater pollock, Atka mackerel, and ''other species'' fishery category.
[5] Exempt.

Seasonal Apportionments of PSC Limits

Regulations at § 675.21(b)(3) authorize NMFS, after consultation with the Council, to establish seasonal apportionments of prohibited species bycatch allowances among the fisheries to which bycatch has been apportioned. Under § 675.21(b)(3), such an apportionment must be based on certain types of information. See the discussion in the proposed specifications (59 FR 64383, December 14, 1994).

At its December 1994 meeting, the Council recommended that the halibut bycatch allowances listed in Table 7 be seasonally apportioned as shown in Table 8, for yellowfin sole, rock sole/flathead sole/other flatfish, rockfish, and pollock/Atka mackerel/''other species'' fishery categories. The recommended seasonal apportionments reflect recommendations made to the Council by its AP.

The Council recommended seasonal apportionments of the halibut bycatch allowances specified for the yellowfin sole, and rocksole, flathead sole, and other flatfish categories to provide additional fishing opportunities in the BSAI early in the year and to reduce the incentive for trawl vessel operators to move from the BSAI to the Gulf of Alaska after the rock sole roe fishery is closed, typically at the end of February.

The AP's recommended seasonal apportionment of the halibut bycatch allowance for the pollock/Atka mackerel/''other species'' fishery category is based on the seasonal allowances of the Bering Sea pollock ITAC recommended for the roe and non-roe seasons, and the assumption that most of the pollock taken during the roe season will be taken with pelagic trawl gear with reduced halibut bycatch rates.

The AP recommended seasonal apportionment of the halibut bycatch allowance for the Pacific cod fishery based on: (1) Anticipation that the proposed rule published in the **Federal Register** on December 29, 1994 (59 FR 67268) would exempt the BSAI jig gear fishery and the sablefish hook-and-line gear fishery from halibut-catch restrictions, and (2) the Council's desire to limit a hook-and-line fishery for Pacific cod during summer months when halibut bycatch rates are high. Seasonal apportionments of the halibut bycatch allowances for 1995 are specified in Table 8.

TABLE 8.—FINAL SEASONAL APPORTIONMENTS OF THE 1995 PACIFIC HALIBUT BYCATCH MORTALITY ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES.

Fishery	Seasonal bycatch mortality allowance (mt halibut)
Trawl gear:	
Yellowfin sole:	
Jan. 20–Jul. 31	280
Aug. 01–Dec. 31	470
Total	750
Rock sole/flathead sole/''other flatfish'':	
Jan. 20–Mar. 31	428
Apr. 01–Jun. 30	180
Jul. 01–Dec. 31	82
Total	690
Turbot/arrowtooth flounder/sablefish Total	120
Rockfish:	
Jan. 20–Mar. 31	30
Apr. 01–Jun. 30	60
Jul. 01–Dec. 31	20
Total	110
Pacific cod:	
Jan. 20–Oct. 24	1,450
Oct. 25–Dec. 31	100
Total	1,550
Pollock/Atka mackerel/''other species'':	
Jan. 20–Apr. 15.	455
Apr. 15–Dec. 31	100
Total	555
Total Trawl Halibut Mortality	3,775
Non-trawl gear	
Pacific cod:	
Jan. 01–Apr. 30	475
May 01–Aug. 31	40
Sep. 01–Dec. 31	210
Total	725
Other non-trawl	175
Groundfish pot	[1]
Total Non-trawl Halibut Mortality	900

[1] Exempt.

For purposes of monitoring the fishery halibut bycatch mortality allowances and apportionments, the Regional Director will use observed halibut bycatch rates reported and observed groundfish catch to project when a fishery's halibut bycatch mortality allowance or apportionment is reached. The Regional Director monitors the fishery's halibut bycatch mortality allowances using assumed mortality rates that are based on the best information available, including information contained in the final annual SAFE report.

The Council recommended that the assumed halibut mortality rates for the BSAI groundfish fisheries remain unchanged from those used in 1994. This recommendation is contrary to the recommendation of International Pacific Halibut Commission (IPHC) staff, who advocated assumed mortality rates that are generally higher, based on 1992–93 observer data. The Council further recommended that NMFS, if possible, conduct a mid-year evaluation of the halibut mortality rates, based on final 1994 and 1995 observer data, and adjust the rates for the remainder of 1995.

NMFS will use the assumed halibut mortality rates recommended by the IPHC staff for the BSAI groundfish fisheries in 1995 except for the BSAI Pacific cod hook-and-line gear fishery. Except for that fishery, NMFS believes data presented by the IPHC staff represent the best available information on halibut discard mortality rates and should be used to estimate halibut bycatch mortality levels.

NMFS will use an assumed halibut mortality rate of 12.5 percent for the BSAI hook-and-line cod fishery during the first half of 1995, instead of the IPHC's recommended rate of 18 percent, for the following reason: Mandatory careful release requirements are expected to result in reduced halibut discard mortality rates relative to the rates experienced in 1992–93; the BSAI hook-and-line fishery for Pacific cod has initiated a program to disseminate timely in-season data on halibut bycatch rates and individual vessel mortality rates that is anticipated to further reduce discard mortality rates within the fleet; vessels using hook-and-line or pot gear are allocated a specified portion of the BSAI Pacific cod TAC; the Council recommended that the halibut bycatch allowance apportioned to the BSAI Pacific cod hook-and-line fishery be apportioned into three seasons, with 28 percent of the annual apportionment allocated to the third season that starts September 1; the NMFS Observer Program Office has indicated that 1995 in-season observer data and final 1994 observer data for the BSAI Pacific cod hook-and-line fishery will be available by mid-1995 to allow for an analysis of observed halibut discard mortality rates and an adjustment from the 12.5 assumed rate in time for the beginning of the third season (September 1). This reconsideration could result in an increase or decrease of the assumed rate; and if the mid-1995 assessment of observer data indicates that the halibut mortality rate in the hook-and-line cod fishery has not declined to the extent anticipated, retroactive adjustments in the estimated 1995 halibut bycatch mortality would be accommodated within the third seasonal apportionment of the annual bycatch allowance specified for this fishery. Although an upward adjustment in estimated bycatch mortality may preclude a fishery for Pacific cod in the third season, NMFS believes that the amount of halibut bycatch mortality apportioned to the third season should prevent the halibut bycatch limit from being exceeded.

Assumed Pacific halibut mortality rates for BSAI fisheries during 1995 are specified in Table 9.

TABLE 9.—ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR THE BSAI FISHERIES DURING 1995

	Percent
Hook-and-line gear fisheries:	
Rockfish	24.0
Pacific cod [1]	12.5
Greenland turbot	19.0
Sablefish	17.0
Trawl gear fisheries:	
Midwater pollock	89.0
Non-pelagic pollock	77.0
Yellowfin sole	76.0
Rock sole, flathead sole, other flatfish	75.0
Rockfish	69.0
Pacific cod	65.0
Atka mackerel	59.0
Arrowtooth	49.0
Greenland turbot	48.0
Pot gear fisheries:	
Pacific cod	8.0

[1] The assumed halibut bycatch mortality rate for the hook-and-line Pacific cod fishery will be re-evaluated mid-1995 using final 1994 observer data and inseason 1995 observer data.

Groundfish PSC Limits

No PSC limits for groundfish species are specified in this action. Section 675.20(a)(6) authorizes NMFS to specify PSC limits for groundfish species or species groups for which the TAC will be completely harvested by domestic fisheries. These PSC limits apply only to JVP or TALFF fisheries. At this time, no groundfish are allocated to either JVP or TALFF and specifications of groundfish PSC limits are unnecessary.

Closures to Directed Fishing

If the Regional Director establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, or, with respect to pollock, before the end of the fishing season, NMFS will prohibit directed fishing for that species or species group in the specified subarea or district under § 675.20(a)(8).

Fishing for groundfish in the BSAI is authorized from January 1 through December 31, with the following exceptions (§ 675.23): (1) Directed fishing for arrowtooth flounder and Greenland turbot is authorized from May 1, 1995, to December 31, 1995, subject to the other provisions in the BSAI regulations; (2) fishing for groundfish with trawl gear in the BSAI is prohibited until January 20, 1995; (3) with certain exceptions, directed fishing for pollock by the inshore component, defined at § 675.2, is authorized January 1, 1995, through April 15, 1995, and August 15, 1995, through the end of the fishing year; (4) with certain exceptions, directed fishing for pollock by the offshore component, defined at § 675.2, is authorized from January 26, 1995, to April 15, 1995, and from August 15, 1995, through the end of the fishing year; (5) directed fishing for pollock under the Western Alaska CDQ Program is authorized from January 1, 1994, through the end of the fishing year (§ 675.23(e)); and (6) directed fishing with trawl gear in Zone 1 for rockfish, Greenland turbot, arrowtooth flounder, and sablefish is closed, as there is no crab PSC to support this fishery (See Table 7).

In addition to these regulatory closures, NMFS may take action to implement closures to directed fishing for species needed as bycatch amounts in other directed fisheries. A principal consideration for the Council in developing its 1995 TAC recommendations was ensuring that the sum of the species TACs did not exceed the maximum OY of 2 million mt. After consideration of the amount of each species category TAC which is required for bycatch in other directed fisheries, the Council recommended that TAC amounts specified for certain species be established as directed fishing allowances.

NMFS concurs with the Council's recommendations, and accordingly, is prohibiting directed fishing for the following species and species groups: (1) Pacific ocean perch in the Bering Sea, (2) other red rockfish in the Bering Sea, (3) shortraker/rougheye in the Aleutian Islands, (4) other rockfish in the BSAI, (5) arrowtooth flounder in the BSAI, and (6) pollock in the Bogoslof district. Species or species groups identified in Table 10 are necessary as incidental catch to support other anticipated groundfish fisheries and TAC amounts for these species will be used for bycatch purposes only. If NMFS determines the full TAC amount will not be used as bycatch, NMFS may open a directed fishery for that species.

TABLE 10.—CLOSURES TO DIRECTED FISHING UNDER 1995 TACS [1]

Fishery (all gear)	Closed area [2]
Pollock in Bogoslof District.	Statistical Area 518.
Pacific ocean perch	Bering Sea.
Shortraker/rougheye rockfish.	AI.[3]
Other rockfish [4]	BSAI.
Other red rockfish [5]	Bering Sea.
Rockfish, Greenland turbot/arrowtooth/ sablefish.	Zone 1.
Arrowtooth	BSAI.

[1] These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 675.

[2] Refer to § 675.2 for definitions of areas.

[3] "AI" means Aleutian Islands area.

[4] In the BSAI, "Other rockfish" includes *Sebastes* and *Sebastolobus* species except for Pacific ocean perch and the "other red rockfish" species.

[5] "Other red rockfish" includes shortraker, rougheye, sharpchin, and northern.

In addition to the above closures, NMFS closed the directed fishery for Atka mackerel in the Eastern Aleutian District and Bering Sea subarea effective noon, A.l.t., February 2, 1995, under authority of the interim 1995 specifications. In accordance with § 675.20(a)(7)(ii), these closures will remain in effect until 12 midnight, A.l.t., December 31, 1995. Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Technical Amendment To Revise Specified Fishery Categories for Directed Fishing Standards and PSC Apportionments

Two technical amendments are necessary to update a directed fishery standard and a definition of a fishery category to reflect the establishment of a flathead sole TAC separate from the "other flatfish" category.

First, regulations under § 675.20(h)(2) establish directed fishing standards for yellowfin sole, rock sole, arrowtooth flounder, and "other flatfish." To the extent that flathead sole now has a separate ABC, TAC, OFL, and ITAC, the standards for directed fishing are revised by technical amendment to add flathead sole to this directed fishing category.

Second, regulations under § 675.21(b) authorize the apportionment of each PSC limit into bycatch allowances for specified trawl fishery categories. The definition of these fishery categories at § 675.21(b)(1)(iii) must be amended to include the new flathead sole fishery at § 675.21(b)(1)(iii)(B)(*2*). The fishery category "rock sole/other flatfish" is revised, therefore, to "rock sole/flathead sole/other flatfish" to provide PSC amounts for this category.

Classification

This action is authorized under 50 CFR 611.93(b), 675.20, and 676; and is exempt from review under E.O. 12866.

The final rule makes minor technical amendments to 50 CFR 675.20 and 675.21. These amendments are a logical outgrowth of the proposed 1995 TAC specifications, which separated flathead sole from the ''other flatfish'' category, and are necessary to implement the specifications. Prior notice and opportunity for public comment would serve no useful purpose and is, therefore, unnecessary. Accordingly, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator) finds good cause to waive prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B).

This action adopts final 1995 harvest specifications for the BSAI, revises associated management measures, and closes specified fisheries. Generally, this action does not significantly revise management measures in a manner that would require time to plan or prepare for those revisions. In some cases, such as closures, action must be taken immediately to conserve fishery resources. Without these closures, specified TAC amounts will be overharvested and retention of these species will become prohibited, which would disadvantage fishermen who could no longer retain bycatch amounts of these species. The immediate effectiveness of this action is required to provide consistent management and conservation of fishery resources. Accordingly, the Assistant Administrator finds there is good cause to waive the 30-day delayed effectiveness period under 5 U.S.C. 553(d)(3) with respect to such provisions and to the technical amendment discussed above. In some cases, the interim specifications in effect would be insufficient to allow directed fisheries to operate during a 30-day delayed effectiveness period, which would result in unnecessary closures and disruption within the fishing industry; in many of these cases, the final specifications will allow the fisheries to continue, thus relieving a restriction. Provisions of a rule relieving a restriction under 5 U.S.C. 553(d)(1) are not subject to a delay in effective date.

NMFS has determined that the BSAI groundfish fisheries are not likely to affect Steller sea lions in a way or to an extent not already considered in previous Section 7 consultations on this fishery. NMFS has determined that reinitiation of formal consultation under this ESA is not required.

NMFS prepared an EA on the 1995 TAC specifications. The Assistant Administrator concluded that no significant impact on the environment will result from their implementation. A copy of the EA is available (see addresses).

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements

50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: February 7, 1995.

Richard H. Schaefer,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 675 is amended as follows:

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

1. The authority citation for part 675 continues to read as follows:

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

2. In § 675.20, paragraph (h)(2) is revised to read as follows:

§ 675.20 General limitations.

* * * * *

(h) * * *

(2) *Yellowfin sole, rock sole, arrowtooth flounder, flathead sole, or ''other flatfish.''* The operator of a vessel is engaged in directed fishing for yellowfin sole, rock sole, arrowtooth flounder, flathead sole or ''other flatfish'' if he or she retains, at any time during a trip, an amount of one of these species equal to or greater than 35 percent of the amount of the other respective species retained at the same time on the vessel during the same trip, plus 20 percent of any groundfish species other than yellowfin sole, rock sole, flathead sole or ''other flatfish'' retained at the same time on the vessel during the same trip.

* * * * *

3. In § 675.21, paragraph (b)(1)(iii)(B)(*2*) is revised to read as follows:

§ 675.21 Prohibited species catch (PSC) limitations.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(B) * * *

(*2*) *Rock sole/flathead sole/''other flatfish'' fishery.* Fishing with trawl gear during any weekly reporting period that is defined as a flatfish fishery under paragraph (b)(1)(iii)(B) of this section and is not a yellowfin sole fishery as defined under paragraph (b)(1)(iii)(B)(*1*) of this section.

* * * * *

[FR Doc. 95–3485 Filed 2–8–95; 4:37 pm]

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February 14, 1995

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Advanced Simulation Plan Revisions; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 28072; Notice No. 95–2]

RIN 2120–AF29

Advanced Simulation Plan Revisions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The FAA proposes to: Revise and clarify certain requirements of the Advanced Simulation Plan for part 121 operators to authorize more training and checking in simulators; clarify the operating experience requirements for certain second-in-command pilots trained and checked in simulators; and eliminate the requirement that the minimum of 1 year of employment as an instructor or check airman be with the operator of the simulator. This action is needed to respond to concerns identified by certain affected certificate holders in petitions for exemption. It is intended to alleviate unnecessary training costs while maintaining an equivalent level of safety.

DATES: Comments must be received by March 16, 1995.

ADDRESSES: Comments on this proposal may be mailed in triplicate or delivered to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 28072, 800 Independence Avenue Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Gary E. Davis, Project Development Branch, AFS–240, Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267–3747.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposal contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comment, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 28072.'' The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Terminology

Appendix H to 14 CFR part 121, ''Advanced Simulation Plan,'' provides guidelines and a means for achieving flightcrew training and checking in advanced airplane simulators. The three-phase plan provides standards for a progressive upgrade of airplane simulators so that the total scope of flightcrew training can be enhanced.

Appendix H specifically describes the simulator and visual system requirements that must be met to obtain approval to conduct certain training and checking in the particular type of simulator (Phase I, II, or III). The term ''phase'' was used because it was expected that operators would be upgrading their simulator inventories in phases while exercising simulator privileges commensurate with the phase of the simulator. The upgrading of simulators in phases is now essentially complete and the designation of ''phase'' for identification of simulator complexity is no longer descriptive. Operators no longer begin at a lower level of qualification and upgrade in phases. The tendency is to acquire a given level simulator that best meets their needs. The agency and the industry now commonly refer to the simulators in terms of ''levels.'' The levels currently used to describe a particular simulator compared with the older phase designations are:

New terminology	Old terminology
Level A	Visual.
Level B	Phase I.
Level C	Phase II.
Level D	Phase III.

It is proposed to revise Appendix H to replace the old terminology with the new throughout the appendix. The new terminology will be used throughout this preamble in discussing other amendments proposed herein.

Advanced Simulation

Appendix H was developed and adopted when there were no ''advanced simulators.'' Currently, however, advanced simulators exist which have permitted virtual duplication of many aircraft performance characteristics and systems. As a result, the vast majority of U.S. airline pilot training is now conducted in these advanced simulators. According to industry members, however, certain limitations originally incorporated into Appendix H still require a small, yet relatively expensive, amount of training to be completed in the actual airplane.

In light of their highly satisfactory experience with these simulators, some industry members believe that a Level C simulator should be approved for those flightcrew training and checking maneuvers that currently are permitted only in the aircraft or in Level D simulators. In a petition for exemption dated October 12, 1992, the Air Transport Association, on behalf of its affected member airlines and other similarly situated airlines, petitioned for an exemption to provide for initial training in a Level C simulator. Trans World Airlines and Tower Airlines petitioned individually to use a Level C simulator to conduct limited initial and upgrade training and checking functions that would normally be conducted in a Level D simulator. Agreeing in part with the petitioners' supportive information and, based on its own experience, the FAA granted some limited relief for training and checking.

More recently, United Airlines (UAL) has requested similar but slightly more

extensive relief than previously granted. UAL believes that its experience with advanced simulation, as well as the FAA's own experience, more than adequately justifies expanding the scope of flightcrew training and checking in a Level C simulator. In support of its request, UAL points out that: (1) The same training curricula and pilot proficiency standards would apply to a Level C or Level D simulator; (2) these curricula can be implemented and proficiency demonstrated effectively in a Level C simulator; and (3) daily local FAA oversight of training and checking programs will assure that these curricula and standards remain sufficient.

UAL further believes that its request would be in the public interest since it is universally acknowledged that simulator training is superior to training in an actual aircraft and the public is served best when high quality training is conducted in the safest and most cost-effective manner.

The FAA agrees with much of UAL's rationale in its petition; however, after consideration of the supportive information, the FAA believes that UAL is not alone or unique in its request. Therefore, the FAA has determined that the appropriate response to the UAL petition for exemption is to propose a change to the existing regulations.

Discussion of the Proposal

Authorizing Additional Training and Checking in a Level C Simulator

All simulators duplicate or simulate the functions of an airplane to varying levels of accuracy. The FAA requires that, for each higher level of simulator, the simulator duplicate the performance of the airplane over larger and more critical portions of the airplane's operating envelope. This performance must be shown by documented evidence. Level D simulators must provide the highest level of flight realism. They must perform as the airplane performs over the largest portion of the airplane's operating envelope, while providing the most complete and technically accurate environment possible. Evidence of this performance must include certain sophisticated aerodynamic modeling that allows more complete replication of the performance of the airplane.

Level C simulators are designed to operate over the same portion of the airplane's operating envelope as Level D simulators, and do so under a relatively sophisticated performance verification process. Level C simulators, however, are not required to have sophisticated aerodynamic modeling factors. Nor do they undergo the degree of performance verification that Level D simulators do. However, based on 13 years of experience using Level C simulators and on the rigorous qualification process and performance standards required for Level C simulators, the FAA has determined that they may now be used for initial qualification and upgrade training and checking for SIC. Because of performance differences between Level C and Level D simulators, however, the pilots qualified using Level C simulators should meet certain prerequisite levels of experience. They should also be required to have supervised post qualification operational experience.

Prior Aeronautical Experience

In Appendix H to part 121, the FAA proposes to add a new paragraph to the section entitled ''Level C, Training and Checking Permitted.'' It would permit SIC applicants to obtain initial and upgrade training and certification checks in Level C simulators if certain preconditions are met. The rule would require that the applicant meet the prior aeronautical experience requirements for an ATP certificate and airplane rating under § 61.155, before beginning training in a Level C simulator and before being checked under § 61.157 in a Level C simulator for an ATP certificate or rating.

In addition, these SIC initial and upgrade applicants must fulfill special operational experience requirements under proposed new provisions in § 121.434(c)(2). Under proposed § 121.434(c)(2)(ii), the SIC would have to obtain line operations experience at the SIC duty position, supervised by a check pilot. These pilots will not have the option, available to other pilots under § 121.434(c)(2)(i), to fulfill operating experience requirements by simply observing another pilot perform SIC duties. In addition, as part of this initial operating experience, these pilots would have to perform a minimum of four takeoffs and four landings also under the supervision of a check pilot.

The proposed amendment to § 121.434(f) would not allow pilots trained in a Level C simulator to substitute takeoffs or landings for required operating experience. The proposed rule would continue to allow other SIC pilots to reduce by 50 percent the hours of required operating experience by the substitution of one additional takeoff and landing for each hour of flight.

Revising Appendix H to authorize expanded use of Level C simulators for additional training and checking would provide an equivalent or higher level of safety. Additionally, by not doing this training and checking in flight in the actual aircraft, these authorized programs would provide benefits in safety, energy conservation, and efficiency.

Modifying Employment Requirement

The FAA is proposing to remove the requirement in Appendix H (in paragraph 3 of the section entitled ''Advanced Simulation Training Program'') that each instructor and check airman have been employed for at least 1 year by the certificate holder applying for approval of the program. The FAA's intention, in originally requiring a minimum period of 1-year of employment with the operator, was to ensure suitable experience levels for individuals selected to be instructors and check airmen. The most sophisticated simulator can be of little value without an experienced, well-trained instructor or check airman to operate it. However, the agency has concluded that this goal can be achieved by 1 year of experience serving as an instructor or check airman with any part 121 operator. The FAA believes that this amount of instructor experience, in addition to the training prerequisites for these individuals in Appendix H, is an adequate level of preparation for an instructor or check airman in a Level C simulator. Modifying the employment requirement in this way will not decrease safety. However, it should be noted that, instructors and check airmen may participate in more than one operator's approved training program; each operator must provide training for each instructor and check airman in its training program. Thus, an instructor or check airman who instructs for more than one operator must receive training in each operator's program.

Similarly, the FAA is proposing to revise the section entitled ''Phase II, Training and Checking Permitted'' in Appendix H to provide that pilots seeking to upgrade to pilot in command (PIC) do not have to have obtained the prerequisite SIC experience ''with the operator,'' nor have served or be serving as SIC ''with that operator.'' Again, the FAA believes that the level of experience required by an approved training program, in addition to the training prerequisites for these individuals in Appendix H and elsewhere under the Federal Aviation Regulations, establishes an adequate level of preparation regardless of employment with any specific operator.

Clarifying Training and Certification Check Requirements for Initial and Upgrading Training for SIC's Upgrading to PIC

The FAA is also proposing to revise paragraph 2 of the section entitled ''Level C, Training and Checking Permitted,'' to clearly distinguish between the prerequisites for initial versus upgrade training and checking. To do this, paragraph 2(a) would be redesignated as paragraph 2 and paragraph 2(b) as paragraph 3. New paragraph 3 would be stated so as to eliminate the need for the flush paragraph currently at the end of the section.

Current paragraph 2(a) sets forth the prerequisites for training and checking in a Level C simulator for SIC's upgrading to PIC in the same equipment. For example, a pilot serving as SIC in a Boeing 727 upgrading to PIC in the same airplane would have to meet the requirements of this paragraph. Under new paragraph 2, these requirements would not change. The pilot would still have to have previously qualified as SIC in the equipment, have at least 500 hours of actual flight time as SIC in an airplane in the same group, and be currently serving as SIC in an airplane in the same group. These requirements are consistent with the definition of upgrade training under Subpart N—Training program. Section 121.400(c)(3) defines ''Upgrade training'' as the training required for crewmembers who have qualified and served as SIC or flight engineer on a particular airplane type, before they serve as PIC or SIC, respectively, on that airplane.

The requirements of current paragraph 2(b) must be read in conjunction with the final paragraph in the section to determine that it applies to initial training and checking for SIC's upgrading to PIC in an airplane type in which the pilot has never served as SIC. This SIC has experience in the same group of airplanes, but not in the same airplane to which the pilot wants to upgrade. For example, a pilot serving as an SIC in a Boeing 737 initially upgrading to PIC in a Boeing 727 must meet the requirements of this paragraph.

New paragraph 3 would not change this requirement, but would make it easier for the reader to see that it applies to initial training and checking. The pilot would still have to be employed by an operator, be currently serving as SIC in an airplane in the same group, have a minimum of 2500 flight hours as SIC in airplanes in the same group, and have served as SIC on at least two airplanes of the same group. Because proposed new paragraph 3 would refer to ''initial'' training, the language in the current last paragraph is no longer needed to explain that pilots meeting these requirements may upgrade to another airplane in that group in which that pilot has not previously qualified. The requirements in new paragraph 3 continue to be consistent with § 121.400(c)(1), which defines ''initial training'' as the training required for crewmembers and dispatchers who have not qualified and served in the same capacity on another airplane of the same group.

Modifying Minimum Flight Hour Requirements

The FAA also is considering whether to propose revising certain flight hour experience requirements for initial and upgrade training and checking in a Level C simulator. Currently, pilots upgrading from SIC to PIC in equipment in which they have previously qualified as SIC are required to have at least 500 hours of actual flight time while serving as SIC in an airplane in the same group. Similarly, pilots who are initially upgrading from SIC to PIC in other equipment in which the pilot has not been previously qualified, must have a minimum of 2500 hours as SIC in airplanes of the same group as the equipment to which they are upgrading.

The flight hour experience requirements ensure that a pilot has adequate experience in order to upgrade to PIC. These values were established, based on the collective opinions of the FAA and industry members, when Appendix H was originally adopted. Since then, industry members have argued that the required hours are excessive. Based on the success of some industry members who have operated under exemptions that provided certain relief of these flight-hour requirements and other specific requirements for upgrade training under Subpart N, the FAA may propose, for example, to eliminate the 500 flight-hour requirement and reduce from 2500 to 500 the number of flight hours required for initial upgrade training and checking.

The FAA seeks comments and additional information that may justify proposing to modify these current flight hour requirements in a future notice of proposed rulemaking.

Standardizing Language and Eliminating Obsolete References

As discussed above, the term ''phase'' is no longer used to describe the various simulators referred to in Appendix H. Accordingly, it is proposed to replace ''phase'' with ''level'' wherever it appears and to use the current alphabetical designations for the various levels.

In addition, it is proposed to remove the section entitled ''Phase IIA Interim Simulator Upgrade Plan for Part 121 Operators'' as obsolete. For the same reason, it is proposed to remove paragraph 7 of the section entitled ''Advanced Simulation Training Program'' which references Phase IIA. Under Phase IIA, any part 121 operator could conduct Phase II training for 3 and ½ years from the date it was approved for Phase I in a simulator approved for the landing maneuver under Phase I. The carrier's upgrade plan had to be submitted to the FAA before July 30, 1981. Thus, these provisions are no longer effective.

Regulatory Analysis

Executive Order 12866 established the requirement that, within the extent permitted by law, a Federal regulatory action may be undertaken only if the potential benefits to society for the regulation outweigh the potential costs to society. In response to this requirement, and in accordance with Department of Transportation policies and procedures, the FAA has estimated the anticipated benefits and costs of this rulemaking action. The FAA has determined that this proposed rule is not a ''significant rulemaking action'', as defined by Executive Order 12866 (Regulatory Planning and Review). The anticipated costs and benefits associated with this proposed rule are summarized below. (A more detailed discussion of costs and benefits is contained in the full regulatory evaluation placed in the docket for this proposed rule).

Costs

The proposed rule would not improve any additional costs on either part 121 air carrier operators or the flying public. The proposed rule would allow certain training practices that the FAA has determined to be safe and efficient methods for training pilots, and it would clarify other portions of Appendix H. Thus, the proposal would not impose any additional costs because it would permit operators to use the least costly methods of training while maintaining an equivalent level of safety for the flying public. Since current training practices would be maintained to current standards under the proposed rule, there would be no reduction in aviation safety imposed on the flying public.

Potential Cost-Relief Benefits

The proposed rule would generate potential cost savings benefits estimated

at $20 million, in 1992 dollars, over the next 10 years (or $12.4 million, discounted, using a 7.0 percent rate of interest). These potential cost savings benefits would take the form of increased operational efficiency (qualitative) and cost savings (quantitative) to those part 121 operators engaged in initial simulator training, in accordance with Appendix H.

The potential cost savings benefits of the proposed rule represent the difference between the costs incurred currently by part 121 air carriers for initial training and checking of SIC pilots and the costs that would be incurred if the proposal were to become a rule. Currently, certain requirements for initial training and checking of SIC pilots that are not performed in a Level D simulator must be performed in the aircraft. Under the proposed rule, those requirements that are performed in the aircraft in lieu of a Level D simulator would be performed in a Level C simulator. The costs of operating the aircraft for those requirements above the costs of operating the less expensive simulator for those same requirements is the estimated benefit of this proposed rule.

In an effort to derive a cost-relief estimate associated with this proposed rule, several part 121 air carriers were contacted. These air carriers provided the agency with estimated aircraft operating costs per hour, the time needed to train and check pilots for those requirements that, under the present rule, cannot be performed in a Level C simulator, and the number of pilots that it expects to train in the next 10 years.

Potential Operational Efficiency Benefits

The potential benefits of the proposed rule would be generated in the form of increased operational efficiency. In the full regulatory evaluation placed in the docket, these potential efficiency benefits are presented qualitatively. These benefits are difficult to estimate quantitatively due, at present, to the lack of available cost information.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires government agencies to determine whether rules will have ''a significant economic impact on a substantial number of small entities'' and, in cases where they will, conduct a Regulatory Flexibility Analysis.

Accordingly to FAA Order 2100.14A (Regulatory Flexibility and Guidance), a substantial number of small entities is defined as a number which is not less than eleven and which is more than one-third of the small entities subject to a proposed or existing rule. A significant economic impact on a small entity is an annualized net compliance cost which, when adjusted for inflation, equals or exceeds the significant cost threshold for the entity type under review.

The entities that potentially would be affected by the proposed rule are small part 121 operators that own, but do not necessarily operate, nine or fewer aircraft. As discussed in the cost section of this evaluation summary, the proposed rule would not impose any costs on these operators because it is cost-relieving in nature. Therefore, the proposed rule would not impose a significant economic impact on a substantial number of small aircraft operators.

International Trade Impact Assessment

The proposed rule would have little, if any, impact on the competitive posture of either U.S. carriers doing business in foreign countries or foreign carriers doing business in the United States. This assessment is based on the fact that the proposed rule would not impose any cost on part 121 operators because it is cost-relieving in nature. These operators do not compete directly with air carriers engaged in foreign operations (part 129).

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12866, it is determined that this proposal would not have federalism implications requiring the preparation of a Federalism Assessment.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices (SARP) to the maximum extent practicable. The FAA is not aware of any differences that this proposal would present if adopted. Any differences that may be presented in comments to this proposal, however, will be taken into consideration.

Paperwork Reduction Act

This proposed rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Initial Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not significant under Executive Order 12866. In addition, it is certified that this proposal, if adopted, will not have a significant economic impact, positive or negative, on an substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Safety, Transportation.

The Proposed Rule

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 121 of the Federal Aviation Regulations (14 CFR part 121) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for Part 121 continues to reads as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. Section 121.434 is amended by revising paragraphs (c)(2) and (f) to read as follows:

§ 121.434 Operating experience.

* * * * *

(c) * * *

(2) A second-in-command pilot must perform the duties of a second in command as follows:

(i) For a second-in-command pilot who received training for second-in-command duties for the relevant type airplane pursuant to any appropriate provision of this part other than paragraph 4 of ''Level C Training and Checking Permitted'' in Appendix H of this part, he or she must perform those duties under the supervision of a check

pilot or observe the performance of those duties on the flight deck.

(ii) For a second-in-command pilot who received training in a Level C simulator in accordance with Appendix H of this part, he or she must perform—

(A) Those duties under the supervision of a check pilot; and

(B) At least four takeoffs and four landings as sole manipulator of the controls under the supervision of a check pilot.

* * * * *

(f) Except for second-in-command pilots who were trained for the airplane type in a Level C simulator in accordance with Appendix H of this part, the hours of operating experience for flight crewmembers may be reduced to 50 percent of the hours required by this section by the substitution of one additional takeoff and landing for each hour of flight.

* * * * *

3. Appendix H is amended by replacing the words ''Phase I'', ''Phase II'', and ''Phase III'' with the words ''Level B'', ''Level C'', and ''Level D'' respectively, wherever they appear; by replacing the words ''Phase I, II, and III'' with the words ''Level B, C, and D'', wherever they appear; by replacing the words ''Phase II or III'' with the words ''Level C or D'', wherever they appear; by replacing the words ''Phase I, II, or III'' with the words ''Level B, C, or D'', wherever they appear; by replacing the words ''Phase II, IIA, or III'' with the words ''Level C or D'', wherever they appear; by replacing the word ''phase'' with the word ''level'', wherever it appears; and by replacing the word ''phases'' with the word ''levels'' wherever it appears.

4. The section entitled ''Advanced Simulation Training Program'' in Appendix H is amended by removing paragraph 7 and revising paragraph 3 to read as follows:

Appendix H to Part 121—Advanced Simulation Plan

* * * * *

Advanced Simulation Training Program

* * * * *

3. Documentation that each instructor and check airman has served for at least 1 year in that capacity in a certificate holder's approved program or has served for at least 1 year as a pilot in command or second in command in an airplane of the group in which that pilot is instructing or checking.

* * * * *

5. Appendix H, ''Phase II, Training and Checking Permitted'' is amended by revising paragraph 2. and adding paragraphs 3. and 4. to read as follows:

* * * * *

Level C—Training and Checking Permitted

1. * * *

2. Upgrade to pilot-in-command training and the certification check when the pilot—

a. Has previously qualified as second in command in the equipment to which the pilot is upgrading;

b. Has at least 500 hours of actual flight time while serving as second in command in an airplane of the same group; and

c. Is currently serving as second in command in an airplane in this same group.

3. Initial pilot-in-command training and the certification check when the pilot—

a. Is currently serving as second in command in an airplane of the same group;

b. Has a minimum of 2,500 flight hours as second in command in an airplane of the same group; and

c. Has served as second in command on at least two airplanes of the same group.

4. For all second-in-command pilot applicants who meet the aeronautical experience requirements of § 61.155 of this chapter in the airplane, the initial and upgrade training and checking required by this part, and the certification check requirements of § 61.157 of this chapter.

* * * * *

6. Appendix H, ''Phase IIA, Interim Simulator Upgrade Plan for Part 121 Operators'' is removed in its entirety.

Issued in Washington, DC, on January 31, 1995.

William J. White,

Acting Director, Flight Standards Service.

[FR Doc. 95–3132 Filed 2–13–95; 8:45 am]

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Federal Register

Tuesday
February 14, 1995

Part V

Department of Energy

Bonneville Power Administration

Pacific Northwest Electric Power Planning and Conservation Act; Proposed Transmission and Wholesale Power Rate Adjustment, Public Hearing, and Opportunities for Public Review and Comment; Notices

DEPARTMENT OF ENERGY

Bonneville Power Administration

Proposed Wholesale Power Rate Adjustment, Public Hearing, and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice and Opportunities for Review and Comment.

SUMMARY: *BPA File No:* WP–95. BPA requests that all comments and documents intended to become part of the Official Record in this process contain the file number designation WP–95.

The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) provides that BPA must establish and periodically review and revise its rates so that they are adequate to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, and to recover the Federal investment in the Federal Columbia River Power System (FCRPS) and other costs incurred by BPA. BPA is proposing wholesale power rate schedules to be effective October 1, 1995, so that the wholesale power rates in total produce revenues that best enable BPA to meet its costs.

The proposal BPA is making at this time is preliminary. While BPA was in the late stages of putting together its proposal, it determined that the proposal as prepared could send an erroneous signal of BPA's commitment to rate stability. Competitive forces are causing fundamental and significant changes in the Pacific Northwest wholesale electric power market on a weekly, and sometimes a daily, basis. The competition is relentless, and BPA can not issue a final rate proposal that does not allow it to meet and beat the competition. Nothing other than that will allow BPA to sustain its statutory responsibilities. As a consequence, BPA has determined that its initial proposal should include a stable, 5-year rate for most, if not all, of its requirements service. BPA anticipates that the work necessary to assemble such a proposal will take until late March or early April of 1995. Since such a rate would cover the bulk of BPA's firm sales, its impact on BPA's overall proposal is fundamental. Thus, the information BPA is releasing now should be considered preliminary. Information in BPA's preliminary proposal concerning rate design, product definition and pricing, revenue requirement, and other matters should provide parties valuable information that will enable them to better assess BPA's initial proposal when it is released in late March or early April. BPA will propose a rate hearing schedule at the prehearing conference that will take into account changes in the markets and allow review of BPA's initial proposal that it intends to make in late March or early April of 1995. The rate hearing schedule will be published in the **Federal Register** immediately following the prehearing conference.

Opportunities will be available for interested persons to review BPA's rate proposal, to participate in the rate hearing, and to submit oral and written comments. During the development of the final rate proposal, BPA will evaluate all written and oral comments received in the rate proceeding. Consideration of comments and more current data may result in the final rate proposal differing from the rates proposed in this Notice.

DATES: Persons wishing to become a formal ''party'' to the proceedings must notify BPA in writing of their intention to do so in accordance with requirements stated in this Notice. Petitions to intervene must be received by 9 a.m. February 13, 1995, and should be addressed as follows: Hearing Officer, c/o Francis (Jamie) Troy, Hearing Clerk-LQ, Bonneville Power Administration, 905 NE. 11th Ave., P.O. Box 12999, Portland, Oregon 97212.

In addition, a copy of the petition must be served concurrently on BPA's Office of Legal Services:, Janet L. Prewitt, Office of Legal Services-LQ, 905 NE. 11th Ave., P.O. Box 3621, Portland, Oregon 97208.

Persons who have been denied party status in any past BPA rate proceeding shall continue to be denied party status unless they establish a significant change of circumstances.

A prehearing conference will be held before the Hearing Officer at 9:00 a.m. on February 13, 1995, in the BPA Rates Hearing Room, 3rd Level, 2032 Lloyd Center; Portland, Oregon. Registration for the prehearing conference will begin at 8:30 a.m. BPA will prefile preliminary proposal studies at the prehearing conference. The Hearing Officer will act on all intervention petitions and oppositions to intervention petitions, rule on any motions, establish additional procedures, establish a service list, establish a procedural schedule, and consolidate parties with similar interests for purposes of filing jointly sponsored testimony and briefs, and for expediting any necessary cross-examination. A notice of the dates and times of any hearings will be mailed to all parties of record. Objections to orders made by the Hearing Officer at the prehearing conference must be made in person or through a representative at the prehearing conference.

The following schedule information is provided for informational purposes. A final schedule will be established by the Hearing Officer at the prehearing conference.

On or about February 9, 1995—Rate Schedules and General Rate Schedule Provisions, mailed to customers and 1993 rate case parties and available from BPA's Public Information Center; 905 NE. 11th, 1st Floor, Portland, Oregon.

February 13, 1995—Deadline for interventions to be filed with Hearing Clerk at above address.

On or about February 13, 1995—Preliminary proposal studies available at BPA's Rates Hearing Room; 2032 Lloyd Center; Portland, Oregon and BPA's Public Information Center; 905 NE. 11th, 1st Floor, Portland, Oregon.

February 13, 1995—Prehearing conference to set schedule and act on petitions to intervene.

On or about April 5, 1995—BPA Initial Proposal filed.

October 29, 1995—Final Record of Decision published.

BPA also will be conducting public field hearings. A field hearing schedule will be announced at the prehearing conference. A notice of the dates, times, and locations of the field hearings will be made later through mailings and public advertising.

When BPA holds public field hearings, written transcripts are made and included in the official record. A notice of the dates and times of the field hearings also will be published in the **Federal Register**.

ADDRESSES: The date for written comments by participants must be received by May 15, 1995, to be considered in the Draft Record of Decision (ROD). Written comments should be submitted to the Manager, Corporate Communications-CK; Bonneville Power Administration; P.O. Box 12999; Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Hansen, Public Involvement and Information Specialist, at the address listed above, (503) 230–4328 or call toll-free 1–800–622–4519. Information may also be obtained from:

Mr. Steve Hickok; Group Vice President, Sales and Customer Service; P.O. Box

3621; Portland, OR 97232 (503–230–5356)
Mr. George Eskridge; Manager, SE Sales and Customer Service District; 1101 W. River, Suite 250; Boise, ID 83702 (208–334–9137)
Mr. Ken Hustad; Manager, NE Sales and Customer Service District; Crescent Court, Suite 500; 707 Main; Spokane, WA 99201 (509–353–2518)
Ms. Ruth Bennett; Manager, SW Sales and Customer Service District; 703 Broadway; Vancouver, WA 98660 (360–418–8600)
Ms. Marg Nelson; Manager, NW Sales and Customer Service District; 201 Queen Anne Ave. N., Suite 400; Seattle, WA 98109–1030 (206–216–4272).

Responsible Official: Mr. Geoff Moorman, Manager for Pricing, Marginal Cost and Ratemaking, is the official responsible for the development of BPA's rates.

SUPPLEMENTARY INFORMATION:

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IV. Major Studies
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VII. Charges Under the Amended and Integrated Pacific Northwest Coordination Agreement

I. Introduction

After the 1993 rate case, BPA conducted a series of workshops on subjects relevant to its ratemaking. The purpose of the workshops was to identify, simplify, and reduce the number of issues that might become part of the 1995 rate case, and to reduce the amount of discovery normally required during the formal rate proceedings. Opportunity was provided to address the impacts of BPA's ''reinvention,'' transmission issues, risk mitigation, forecasted revenue requirements, and rate design issues. The workshops provided opportunity for informal public comment on issues prior to the formal hearing process.

On December 28, 1994, BPA published in the **Federal Register** a Notice of ''Intent to Revise Wholesale Power Rates to Become Effective October 1, 1995,'' 59 F.R. 66947, in order to satisfy contractual provisions between BPA and its customers. Since then, BPA has continued to study the adequacy of its current rates and has concluded that current rates must be adjusted for the FY 1996 and FY 1997 rate period. BPA also is considering setting some rates for periods longer than 2 years.

In order to assess its current rates, BPA first determined the amount of revenues required to meet its financial obligations in FY 1996 and FY 1997. BPA has determined that the revenues it would expect to collect from projected sales under its current rates will not adequately recover these revenue requirements. Therefore, BPA proposes to revise its wholesale power rates. At the conclusion of the rate proceeding, BPA will file its rates with the Federal Energy Regulatory Commission (FERC) for confirmation and approval.

Consistent with the risk mitigation policy adopted in BPA's last rate case, BPA's preliminary proposal contains an Interim Rate Adjustment (IRA) that allows, but does not require, BPA to increase its rates for the second year of the rate period to reverse any serious, unplanned decline in financial reserves that occurs in the first year of the rate period. BPA also is including power rate schedules in this preliminary proposal that are both new and significantly different from BPA's 1993 power rate schedules, as well as including the negotiated rates for the Pacific Northwest Coordination Agreement.

BPA is planning significant changes in the design of its power rates. BPA is proposing to divide its priority firm (PF) and industrial firm power (IP) rates into two tiers, (Tier 1 and Tier 2) and to establish separate rates for each tier. The other services and products that customers may select to complement either firm requirements service provided by BPA, or power acquired from other sources, will be priced separately.

The proposed wholesale power rates were prepared in accordance with BPA's statutory authority to develop rates, including the Bonneville Project Act of 1937, as amended, 16 U.S.C. 832 (1982); the Flood Control Act of 1944, 16 U.S.C. 825s (1982); the Federal Columbia River Transmission System Act (Transmission System Act), 16 U.S.C. 838 (1982); and the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839 (1982). The proposed rate schedules reflect many requirements contained principally in the Northwest Power Act's rate directives (section 7) and the conditions related to classes of customers and services contained in the Northwest Power Act's power sales directives (section 5).

BPA proposes that its wholesale power rate schedules, including the adjustments, charges, and special rate provisions, and the General Rate Schedule Provisions associated with these rate schedules, become effective upon interim approval or upon final confirmation and approval by FERC. (BPA's proposal combines the General Rate Schedule Provisions for Wholesale Power Rates and Transmission Rates into one document—the GRSPs). BPA currently anticipates that it will request FERC approval of its revised rates effective October 1, 1995.

The 1995 wholesale power rate schedules, and the GRSPs associated with those rate schedules, supersede BPA's 1993 rate schedules (which became effective October 1, 1993) to the extent stated in the Availability section of each 1995 rate schedule. These schedules and GRSPs shall be applicable to BPA power sales contracts, as appropriate, including contracts executed both prior to and subsequent to enactment of the Northwest Power Act. In addition, as stated in the availability section of each schedule, certain of the rates and tiered rate methodology will be effective for extended periods of time.

In developing the proposed wholesale power rates, BPA considered many factors, including revenue requirements, ease of administration, revenue stability, rate continuity, ease of comprehension, and BPA's statutory obligations. The studies that have been prepared to support the proposed preliminary rates will be mailed to all parties to BPA's 1993 rate case and will be available for examination on February 13, 1995, at BPA's public Information Center, BPA Headquarters Building, 1st Floor; 905 NE. 11th; Portland, and will be available at the prehearing conference, to the extent they are available. The preliminary studies and documents are:

1. Loads and Resources Study and Documentation
2. Revenue Requirement Study and Documentation
3. Segmentation Study
4. Marginal Cost Analysis Study and Documentation
5. Wholesale Power Rate Development Study and Documentation
6. Wholesale Power and Transmission Rate Schedules.

BPA's proposed Wholesale Power and Transmission Rate Schedules and General Rate Schedule Provisions will be published in a separate **Federal Register** Notice on or about February 13, 1995. In addition, the documents described above will be mailed to BPA's customers, 1993 rate case parties, and other interested persons, and will be available from BPA's Public Information Center on or about February 9, 1995.

To request any of the above documents by telephone, call BPA's document request line: (503) 230–3478 or call toll-free 1–800–622–4520. Please

request the document by its above-listed title. Also state whether you require the accompanying documentation (these can be quite lengthy); otherwise, the study alone will be provided. (For example, ask for the ''Revenue Requirement Study and Documentation.'')

Because of the complexity of the issues in this rate case, in part occasioned by continuing contract negotiations between BPA and its customers, as well as BPA's ''reinvention'' and Competitiveness Project, BPA anticipates that it will need to meet with customers and other interested third parties during the rate case on a very frequent, and possibly extended, basis. To comport with the rate case procedural rule prohibiting ex parte communications, BPA will provide necessary notice of meetings involving rate case issues for participation by all rate case parties. Parties should be aware, however, that such meetings may be held on very short notice and they should be prepared to devote the necessary resources to participate fully in every aspect of the rate proceeding. Consequently, parties should be prepared to attend meetings every day during the course of the rate case.

II. Purpose and Scope of Hearing

BPA's proposal to revise its wholesale power rates is needed in order for BPA to continue to recover all costs and expenses allocated to the Federal power system, including amortization of the Federal investment in the FCRPS over a reasonable period of time, and to recover the costs in a way that achieves the goals of BPA's Competitiveness Project. BPA has found that substantial changes must be made in the ways in which it sets its rates if it is to remain competitive. If BPA is not competitive, it will not recover its costs, and it then will be unable to satisfy its statutory responsibilities.

BPA began its Competitiveness Project in early 1993 in response to market forces and deregulation of the electric utility industry. The project, a re-invention of the agency to make it more competitive in the new marketplace, included the development of a new business concept, a marketing plan, a review of all of BPA's activities leading to structural reorganization, strategic action plans for each of BPA's major activities, an internal effort to promote leadership and employee empowerment, and proposals to eliminate unnecessary administrative and regulatory requirements.

BPA's Draft Strategic Business Plan and the Draft Business Plan EIS were released to the public in June 1994. The Draft Strategic Business Plan sets the overall strategic direction for both serving BPA's customers and meeting BPA's legislated responsibilities, including new statements of BPA's mission, values, and strategic business objectives to guide its activities. The Draft Strategic Business Plan also describes the conceptual framework for the products BPA is offering. As stated in the Draft Strategic Business Plan, BPA's pricing policies are designed to meet many objectives, including (1) providing maximum customer choice and encouraging optimal use of the FCRPS; (2) contributing to BPA's continued viability in an increasingly competitive energy market environment; and (3) allowing BPA to take full advantage of its responsibility and authority to manage the FCRPS, consistent with all statutory requirements.

The Draft Strategic Business Plan envisions BPA as having three separate and distinct business lines—power, transmission, and energy services (conservation)—which will be self-supporting and serve customers according to their unique needs. The Draft Strategic Business Plan also outlines a number of initiatives to improve BPA's competitiveness, including strategies to close the projected gap between BPA's costs and revenues, a financial strategy, and proposals to change BPA's power rate structures to give customers more choice, to more accurately reflect BPA's costs associated with providing the discrete components of electric service selected by customers, and thereby to encourage investment in cost-effective conservation. BPA proposes to close the revenue gap by exerting strict cost management and becoming market-driven.

To provide customers with a price signal that encourages efficient resource investment decisions, including conservation resources, and appropriately shares the benefits of the relatively low-cost Federal power and transmission systems, BPA is proposing to tier its power rates for requirements service and for the residential exchange. The rate for requirements service would be divided into two parts: a Tier 1 rate, and one or several alternative Tier 2 rates. BPA expects that the Tier 1 rate will be available to serve most of the existing customers' firm loads. The Tier 1 rate is expected to be a lower rate than Tier 2 because it will be based primarily on the costs associated with the existing Federal system. The Tier 2 rates will be available to serve regional firm requirements in excess of Tier 1, including future load growth, and will be based on the costs associated with supplying power to meet these loads.

To address the increasingly competitive market for power, transmission, and energy services, BPA is proposing to offer a menu of unbundled products in the 1995 rate case. BPA expects that the products offered will be available both under the current power sales contracts and under new power sales contracts. BPA expects to offer additional unbundled products in future rate cases and to price these products to meet market conditions and its cost recovery obligations. In some cases, BPA expects the market will require flexible pricing. BPA is planning to ''unbundle'' what it offers so customers can choose among products and services based on what they need to meet their loads and support their own resources, if any.

BPA is assessing the potential environmental effects of its rate proposal, as required by the National Environmental Policy Act (NEPA), as part of the Business Plan Environmental Impact Statement (EIS). Beginning in June 1994, BPA solicited input to the Draft Strategic Business Plan and the Business Plan EIS from customers throughout the region. From August 3–August 9, BPA held numerous public comment meetings throughout the region. Additionally BPA held a Draft Business Plan EIS workshop where participants were invited to design their own alternatives and consider the environmental and fiscal result. BPA field staff also were available to brief groups on the Draft Business Plan upon request. A supplemental Draft EIS, revised in response to comments received, will be available for public comment in February. The Draft EIS evaluates BPA's Business Plan proposal and a range of alternatives, including the impacts of the range of potential rate designs for BPA's power and transmission services. It also documents the impact of the current rate proposal for purposes of the National Environmental Policy Act. Comments on the Business Plan EIS will be received outside the formal rate hearing process, but will be included in the rate case record and considered by the Administrator in making a final decision establishing BPA's 1995 rates. The Final Business Plan and the Business Plan EIS that elaborates BPA's strategic action plans will be released in late 1995.

BPA's spending levels are developed as a part of its Strategic Business Plan, with the benefit of a public comment process. They also are determined as a part of the Federal budget process.

Consistent with the Draft Strategic Business Plan, the Administrator formally announced spending levels for FYs 1996–2001 to the public on January 12, 1995. BPA will continue to refine its strategic business objectives, goals, and spending levels, and inform the public accordingly, as part of its Strategic Business Plan development process. That process is expected to culminate in a final Strategic Business Plan published in June 1995. Therefore, except for the limited exceptions hereafter noted, spending level decisions will not be addressed in this rate case. Accordingly, pursuant to section 1010.3(f) of the ''Procedures, Governing Bonneville Power Administration Rate Hearings,'' 51 FR 7611 (March 5, 1986) (hereinafter Procedures), the Administrator directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing which seek to in any way visit the appropriateness or reasonableness of BPA's decisions on spending levels, as included in BPA's cost evaluation period of FY 1995 through FY 2000 and its test period revenue requirement for FYs 1996 through 2000. If, and to the extent, any re-examination of spending levels is necessary, that re-examination will occur outside of the rate case. BPA's Revenue Requirement Study will incorporate spending levels and reflect BPA's risk mitigation, capital funding, and other financial goals in the rates. Excepted from this direction on account of their variable nature, dependency on BPA's rate case models, or timing, are: (1) Forecasts of residential exchange benefits; (2) forecasts of short-term purchase power costs; (3) provision in BPA's revenue requirement for cash working capital or cash lag needs; (4) repayment matters such as interest rate forecasts, scheduled amortization, depreciation, replacements, and interest expense; and (5) updates to forecasts by BPA which may occur in the spring of 1995 and for which no other review forum has been provided.

III. Procedures Governing Rate Adjustments and Public Participation

Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that BPA's rates be established according to certain procedures. These procedures include, among other things, issuance of a **Federal Register** Notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, and arguments; and a decision by the Administrator based on the record. The proceedings for BPA's proposal to adjust wholesale power rates will be combined with the proceedings for BPA's proposal to adjust transmission rates. This proceeding will be governed by BPA's rules for general rate proceedings, § 1010.9 of BPA's Procedures, due to the importance and complexity of the issues involved. These Procedures implement the statutory section 7(i) requirements. Section 1010.7 of the Procedures prohibits *ex parte* communications.

BPA's Procedures distinguish between ''participants in'' and ''parties to'' the hearings. Apart from the formal hearing process, BPA will receive comments, views, opinions, and information from ''participants,'' who are defined in the Procedures as any person who may express views, but who does not petition successfully to intervene as a party. Participants' written comments will be made part of the official record of the case and considered by the Administrator. The participant category gives the public the opportunity to participate and have its views considered without assuming the obligations incumbent upon ''parties.'' Participants are not entitled to participate in the prehearing conference, cross-examine parties' witnesses, seek discovery, or serve or be served with documents, and are not subject to the same procedural requirements as parties.

Written comments by participants will be included in the record if they are received by May 15, 1995. This date is anticipated to follow the submission of BPA's and all other parties' direct cases. Written views, supporting information, questions, and arguments should be submitted to BPA's Manager of Corporate Communications, at the address listed in the Summary section of this Notice, above. In addition, BPA will hold several field hearings in the Pacific Northwest region. Participants may appear at the field hearings and present oral testimony. The transcripts of these hearings will be a part of the record upon which the Administrator makes the rate decision.

The second category of interest is that of a ''party'' as defined in §§ 1010.2 and 1010.4 of BPA's Procedures. Parties may participate in any aspect of the hearing process.

Persons wishing to become a formal ''party'' to BPA's rate proceeding must notify the Hearing Officer and BPA in writing of their request. Petitions to intervene shall state the name and address of the person and the person's interests in the outcome of the hearing. Petitioners may designate no more than two representatives upon whom service of documents will be made. BPA customers and customer groups whose rates are subject to revision in the hearing will be granted intervention based on a petition filed in conformance with this section. Other petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Intervention petitions will be available for inspection in BPA's Public Information Center; 1st Floor; 905 NE. 11th; Portland, Oregon. Any opposition to a petition to intervene must be raised at the February 13, 1995, prehearing conference. All timely applications will be ruled on by the Hearing Officer. Opposition to an untimely petition to intervene shall be filed and served within 2 days after service of the petition. Interventions are subject to § 1010.4 of BPA's Procedures.

The record will include, among other things, the transcripts of any hearings, any written material submitted by the parties and participants, documents developed by BPA staff, BPA's environmental impact statement and comments accepted on it, and other material accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, supplement it if necessary, and certify the record to the Administrator for decision.

The Administrator will develop the final proposed rates based on the entire record, including the record certified by the Hearing Officer, comments received from participants, other material and information submitted to or developed by the Administrator, and any other comments received during the rate development process. The basis for the final proposed rates first will be expressed in the Administrator's Draft Record of Decision (ROD). Parties will have an opportunity to comment on the Draft ROD as provided in BPA's hearing procedures. The Administrator will serve copies of the Final ROD on all parties and will file the final proposed rates together with the record with FERC for confirmation and approval.

IV. Major Studies

1. Loads and Resources Study

BPA's forecasts of regional loads by customer group are the basis from which public utility and direct service industry (DSI) customer purchases from BPA (Federal system firm loads) are projected. BPA also projects Federal transmission losses, obligations to regional investor-owned utilities (IOUs) under their power sales contracts, and other inter- and intraregional contractual obligations.

BPA develops forecasts of regional non- and small-generating public utility

(NSGPU) and generating public utility (GPU) loads using standard econometric techniques. Regional NSGPU and GPU loads are forecasted as a function of average retail electricity prices, weather-related variables, and nonagricultural employment. The regional load forecasts then are adjusted to account for factors such as effects from proposed wholesale tiered rate implementation and conservation programs to derive a projection of NSGPU and GPU purchases from BPA. The IOU load forecast was produced by updating the economic assumptions from the 1991 joint BPA/Northwest Power Planning Council (NPPC) forecast.

Forecasts of aluminum DSI purchases from BPA are prepared by analyzing smelter production costs relative to aluminum prices, and by considering other factors affecting smelter loads, including BPA's proposed tiered rate implementation. Forecasted non-aluminum DSI purchases from BPA are prepared by analyzing historical and technical plant information and forecasted market conditions. Adjustments also are made to incorporate the effects of BPA's tiered rate implementation.

BPA's resource acquisition plans are based on work by BPA and the NPPC staff and reflect extensive input and review by the general public and the region's utilities. The specific resource acquisitions and associated costs included in this proposal are based on BPA's 1994 Draft Strategic Business Plan. Besides emphasizing a diverse resource portfolio, including both conservation and generating resources, BPA is committed to moving toward a blend of acquisition methods, including BPA-designed, utility-designed, and developer-initiated programs. This combination of resource diversity and acquisition approaches allows BPA to better deal with varying circumstances and uncertainties.

The load/resource balance determines BPA's obligation to serve firm loads during the test years under 1930 water conditions. It also contributes to the determination of the supply of surplus firm power in the region and on the Federal system. A related hydro regulation study incorporates the operation of thermal plants, exports and imports of power, projected resource acquisitions, and system constraints such as the Columbia River flow augmentation project, ''spill,'' and the water budget for fish migration. For this preliminary proposal, a 50-year hydro study was completed, which includes assumptions regarding the Columbia River flow augmentation. The hydro study starts in August 1995. The 50-year study determines nonfirm energy availability for the region.

2. Revenue Requirement Study

The Bonneville Project Act, the Flood Control Act of 1944, the Transmission System Act, and the Northwest Power Act require BPA to set rates that are projected to collect revenues sufficient to recover the cost of acquiring, conserving, and transmitting the electric power that BPA markets, including amortization of the Federal investment in the FCRPS over a reasonable period, and to recover BPA's other costs and expenses. The Revenue Requirement Study includes a demonstration as to whether current rates will produce enough revenues to recover all BPA costs and expenses, including BPA's repayment requirements to the U.S. Treasury. Revenue requirements are the major factor in determining the overall level of BPA's proposed power and transmission rates.

The Transmission System Act and the Northwest Power Act require that transmission rates be based on an equitable allocation of the costs of the Federal transmission system between Federal and non-Federal power using the system. In compliance with a FERC order dated January 27, 1984, 26 FERC ¶ 61,096, the Revenue Requirement Study incorporates the results of separate repayment studies for the generation and transmission components of the FCRPS. The repayment studies for generation and transmission demonstrate the adequacy of the projected revenues to recover all of the Federal investment in the FCRPS over the allowable repayment period. Separate generation and transmission revenue requirements are developed in the Revenue Requirement Study. The adequacy of projected revenues to recover test period revenue requirements and to meet repayment period recovery of the Federal investment is tested and demonstrated separately for the generation and transmission functions.

The Revenue Requirement Study for the 1995 preliminary rate proposal is based on cost and revenue estimates for FY 1996 and FY 1997. BPA's Revenue Requirement Study reflects actual amortization and interest payments paid through September 30, 1994. In addition, it reflects all FCRPS obligations incurred pursuant to the Northwest Power Act, including residential exchange costs.

3. Segmentation Study

BPA operates and maintains the Federal Columbia River Transmission System (FCRTS) to provide transmission services throughout the region. Because most services do not require the use of the entire system, the FCRTS is divided into nine segments, each providing a distinct type of service. The nine segments are: integrated network; Pacific Northwest-Pacific Southwest (Southern) Intertie; Northern Intertie; Eastern Intertie; generation integration; fringe area; and delivery segments for public agency, DSI, and IOU customers.

The Segmentation Study categorizes the facilities of the FCRTS according to the types of services it provides. This provides the basis for segmenting the projected transmission revenue requirements used in BPA's rate proposals. The results of the Study include the historical investment and the average of the last three years' operations and maintenance expenses. In addition, the facilities of the integrated network similarly are divided among distinct services. This division of the FCRTS into segments provides the basis for the equitable allocation of transmission costs between Federal and non-Federal customers based on their usage of the segments.

4. Marginal Cost Analysis

The Marginal Cost Analysis (MCA) estimates the marginal cost that BPA incurs to supply energy on a seasonal, daily, and hourly basis to meet customers' loads.

The conditions and terms under which BPA supplies energy necessitate that BPA take actions that impose a cost. The MCA measures the costs that BPA incurs in taking actions to provide energy under different terms. BPA proposes to measure the marginal costs of actions it takes to (1) guarantee availability of energy, (2) provide energy at guaranteed prices, and (3) actually deliver energy. The results of the MCA are used to develop wholesale power rates that promote efficient development and operation of generation and conservation resources.

BPA proposes to measure marginal costs based on the supply and demand conditions BPA faces in the interconnected West Coast wholesale power market. Estimated marginal costs are based on the results from a model that was developed to simulate future wholesale market transactions to aid in BPA's long-term power marketing and resource strategy decisions—the Power Marketing Decision Analysis Model (PMDAM). PMDAM projects the opportunity costs that BPA will face when taking actions to serve its Pacific Northwest customers, at the least cost, under conditions of uncertainty. PMDAM uses information on the costs associated with acquiring and operating

resources to meet load in conjunction with the costs associated with purchasing and/or selling power in the West Coast bulk power market.

The MCA provides estimates of BPA—s marginal costs of supplying energy at different times. These estimates provide the basis for classifying BPA's costs. All of BPA's generation costs were classified to hourly energy; no generation costs were classified to demand. The estimates also provide the basis for the seasonal and hourly time-differentiation of rates, including the identification of time-periods in which different rates may apply and appropriate levels for rates in each time period relative to the others. These time periods consist of hours of the week when the marginal cost of power is high and those when it is relatively low, as well as seasons of the year when different marginal costs prevail. The results of the analysis suggested more seasonality in BPA rates, three annual periods instead of the two previous seasons. The results also suggested that BPA energy rates be diurnally differentiated, which was not a feature of previous rate designs. This analysis does not include any quantitative estimate of marginal costs incurred on the transmission system.

5. Wholesale Power Rate Development Study (WPRDS)

BPA is proposing substantial changes in the method used to develop its wholesale power rates. BPA's wholesale power rate develop is a two step process. First, BPA performs a Cost of Service Analysis (COSA) and then adjusts these results to reflect various rate design objectives and statutory requirements.

A. Cost of Service Analysis

The Cost of Service Analysis (COSA) apportions BPA's test year revenue requirement to customer classes based on the use of specific types of service by each customer class and in accord with the rate directives of the Northwest Power Act. BPA's revenue requirement is functionalized to transmission and generation in the Revenue Requirement Study. Transmission costs are identified with segments of the transmission system in BPA's Segmentation Study. The results of these studies are used in the COSA to determine the costs of providing generation and transmission services to BPA's customers.

The COSA further identifies costs of specific types of service by performing the following steps:

1. *Classification.* BPA classified transmission costs entirely to capacity, and the transmission costs allocated to the power uses of the transmission system form the basis for the power rates demand charge. As described above in the Section concerning the Marginal Cost Analysis, in this rate proposal BPA proposes to classify generation costs to two components of electric power, delivered energy and rights to energy.

2. *Allocation.* The final major step in the COSA is to allocate the functionalized, segmented, and classified costs to customer classes. BPA's proposed tiered rate design necessitates a change in cost allocation approach. BPA is proposing to allocate costs to reflect the difference in costs associated with existing loads and future loads. Costs are allocated to classes of service on the basis of the relative use of services, and on the basis of priorities of service by resource pools provided in the Northwest Power Act. The COSA also determines and allocates the net costs incurred under the Residential Exchange Program prescribed in Section 5(c) of the Northwest Power Act. Costs that cannot be attributed to a particular resource pool or customer are allocated on a uniform basis to all customers.

a. Resource pools: For cost allocation purposes, BPA is proposing to separate resources into two categories: FBS resources and new resources. FBS resources are defined as (1) the Federal Columbia River Power System hydroelectric projects; (2) resources acquired by the Administrator under long-term contracts in force on the effective date of the Pacific Northwest Power Act; and (3) the resources acquired by the Administrator in an amount necessary to replace reductions in capabilities of resources in (1) and (2). Since enactment of the Northwest power Act in 1980, a number of events have occurred that have reduced FBS resources capability. BPA has initiated a consultation process with its customers in which BPA is considering replacing a portion of this lost capability with approximately 450 average megawatts from ten generating resources that BPA has acquired or contracted for since 1980. For the preliminary proposal, these FBS replacement resources are included in the FBS resource pool. Remaining resources are included in the new resource pool.

For the test period, BPA is proposing to allocate the payments BPA makes under the residential exchange program. Under the residential exchange program, BPA purchases power offered by an exchanging utility at its ''average system cost.'' BPA then sells an equivalent amount of power back to the exchanging utility at the applicable PF rate. The residential exchange transaction, however, is only a ''paper transaction'' and does not result in actual power deliveries. The program provides for BPA to pay exchanging utilities the difference between the cost of power ''purchased'' by BPA and the cost of power ''sold'' by BPA. These cash payments by BPA are referred to as the net cost of the exchange. For the test period, BPA is proposing to allocate the net cost of the exchange to all firm loads except preference customer general requirement loads.

b. Tier 1 and Tier 2 Loads: Within each customer class, BPA is proposing to allocate resource costs separately to Tier 1 and Tier 2 loads, instead of allocating costs to the total customer class load. To accomplish this, the resources within the FBS resource pool are separated further into Tier 1 resources and Tier 2 resources. BPA is proposing to identify a set of FBS resources whose costs then will be allocated to Tier 1 loads. All other resource costs, including future FBS replacements or new resources, will be allocated to Tier 2 loads. For the test period, BPA is proposing to include all FBS resources, both existing and replacements, in the specified set of FBS resource costs allocated to Tier 1 loads.

BPA is proposing to allocate the majority of its short-term purchase power costs associated with meeting operational deficits to Tier 2 loads. In the months in which short-term operational purchases are required, these costs are allocated first to Tier 2 loads, new resources loads, and long term surplus firm power contract loads. Any remaining short-term purchase power costs then are allocated to Tier 1 loads.

B. Adjustments to Allocated Costs

The remaining steps in the rate design process use the allocated costs developed in the COSA and modify them to: (1) reflect BPA's rate design objectives; (2) conform with contractual requirements; (3) reflect the results of other BPA studies and commitments made in other public involvement processes under section 7(i) of the Northwest Power Act; and (4) conform with requirements of applicable legislation. BPA's rate design objectives include recovery of BPA's revenue requirement, rate and revenue stability, practicality, fairness, and efficiency.

Major rate design adjustments to the allocated COSA costs include the following:

1. *Excess Revenue Adjustment.* In the initial cost allocation, BPA allocates its entire test period revenue requirement to firm power loads on the basis of

resources available under critical water conditions. However, rates are set assuming BPA recovers nonfirm sales revenues equal to the expected value of revenues under 50 years of streamflows in the historical record. Since no generation costs are allocated to NF service, forecasted NF revenues are credited against costs allocated to firm loads. Similarly, revenues from nonfirm wheeling under the Energy Transmission (ET) rate schedule are credited to firm transmission loads.

2. *Nonfirm Energy Use Adjustment.* The Nonfirm Energy Use adjustment is a new adjustment that accounts for the costs and benefits derived from the use of nonfirm power to displace planned power purchases. The adjustment, in effect, results in loads served by balancing purchases (i.e., purchases necessary to balance loads and resources) ''buying'' the nonfirm energy used to displace some of those purchases, and loads served by the Federal Base System resources receiving a credit for this use of the nonfirm energy produced by those resources. The cost of purchase power is increased to reflect the average revenues received from other sales of nonfirm energy in the same months when power purchases are displaced. Loads served by Federal Base System resources then are credited by the same amount for this use of nonfirm energy.

3. *Surplus Firm Power Excess Revenue Adjustment.* BPA has sold and expects to continue to sell surplus power under long term contracts. Expected revenues from the sale of such power are compared to allocated costs. BPA expects revenues to exceed costs of this power, resulting in a credit to other customers.

4. *7(c)(2) Adjustment.* The rates applicable to the DSIs are set at a level that is equitable in relation to BPA preference customers' industrial rates. The costs allocated to the DSIs are higher than revenues from the ''equitable'' rate. The difference is a revenue deficiency called the ''7(c)(2) delta,'' which is allocated to other customers.

The foregoing list of adjustments identifies some of the major cost adjustments and is not intended to be all-inclusive. All of the above adjustments are functionalized and segmented where appropriate. As a final step in rate design, BPA will develop seasonal and diurnally differentiated delivered energy charges based on the results of the MCA. At this final stage in the rate development process, annual energy costs have been allocated in COSA, and a series of rate design adjustments have reallocated and adjusted the costs by class of service. An average annual energy rate for each class of service then is developed by dividing the adjusted allocated costs by the billing determinants for the class of service. A set of seasonal and diurnally differentiated energy rates which recover an equivalent amount of adjusted costs then is developed.

5. Unbundled Products

For service under the 1981 and 1995 power sales contracts, BPA is unbundling the PF, NR, IP, and VI rates into Tier 1, Tier 2, load shaping and load regulation. Load shaping allows BPA to meet customer load variations from forecast. Load regulation, sometimes called load following, follows variations in the customers' loads on an instantaneous basis. BPA also will be adding unbundled charges for changes from preschedules and for reactive power deliveries. Outside of the PF, NR, and IP rates, BPA has developed the Firm Power Products and Services (FPS) rate schedule, which is the primary vehicle for BPA's marketing of unbundled products described in the Draft Marketing Plan and Draft Strategic Business Plan. The FPS rate schedule will allow BPA to sell firm energy, capacity, or power using a variety of sources of supply, and will specify charges or specifically authorize negotiated charges for control area services and other resource support services. The Control Area Services part of the FPS rate schedule also will specify a charge for the generation control services provided pursuant to section 13(d) of the 1981 utility power sales contracts. Firm power products and services to be marketed by BPA under the FPS rate schedule are intended to be flexible so that BPA can respond to market conditions. Power products and services also are available for ancillary services for transmission of non-Federal resources.

6. Other Rate Design Changes

BPA is proposing other rate design changes. These include, among others, changes to demand charges, the development of a Long-Term Firm Requirements Service option for some customers, elimination of the Irrigation Discount, and development of a charge for reactive power. BPA also is proposing to modify the contract rate in the NF rate schedule.

a. Demand Charges. Only transmission costs are allocated to demand. Demand charges are proposed to be billed based on each customer's coincident peak, rather than on peaks at individual Points of Delivery. Demand charges are seasonally differentiated into two seasons, with charges higher in the months of December through February. The proposed demand billing factors have been designed to be take-or-pay, relieved to a certain extent by the purchase of the Load Shaping product. The Demand Ratchet included in previous rates has been eliminated.

b. Long-Term Firm Requirements Service. Long-Term Firm Requirements Service is a package of services available to purchasers who sign new (''1995'') power sales contracts and make a 6-year commitment to purchase from BPA. It includes an adjustment to the customer's power bill to reflect the value to BPA of a long-term commitment and for customers whose loads are 25 aMW or less, a composite rate.

c. Low Density Discount. The calculation of the proposed Low Density Discount is revised from previous rate proposals. The calculation uses a sliding scale of percentage discounts based on the utility's number of customers per pole mile and the utility's ratio of total electric energy requirements to investment. The two discounts from the two ratios are added to result in the utility's total discount, which is capped at 7 percent.

d. Irrigation Discount. The irrigation discount has been eliminated in the 1995 rate proposal.

e. Reactive Power. Instead of charging a power factor penalty for customers who take excessive quantities of reactive power, BPA proposes to bill the customer directly for measured quantities of reactive demand and reactive energy.

f. Unauthorized Increase. The proposed unauthorized increase charge reflects a penalty rate without seasonal differentiation, and includes a demand component to reflect transmission system usage. In addition, there is an unauthorized deviation charge for partial requirements purchases purchasing under the new (''1995'') power sales contract.

7. Section 7(b)(2) Rate Test Study

Section 7(b)(2) of the Northwest Power Act directs BPA to assure that the wholesale power rates effective after July 1, 1985, to be charged its public body, cooperative, and Federal agency customers (the 7(b)(2) customers) for their general requirements for the rate test period plus the ensuing four years, are no higher than the costs of power to those customers for the same time period if specified assumptions are made. The effect of the rate test is to protect the 7(b)(2) customers' wholesale firm power rates from certain costs resulting from provisions of the

Northwest Power Act. The rate test can result in a reallocation of costs from the 7(b)(2) customers to other rate classes. The section 7(b)(2) Rate Test Study describes the application and results of the section 7(b)(2) rate test implementation methodology.

The rate projections and the actual rate test itself are performed using BPA's Supply Pricing Model (SPM). The SPM simulates BPA's rate development process, using load, resource, and cost data consistent with that used in this rate proposal. The assumptions and rate development processes such as load/resource balancing, cost allocation, and rate design also are consistent with this rate proposal. The SPM calculates two sets of wholesale power rates for BPA's preference customers: (1) a set of rates for the test period and the ensuing four years, assuming that section 7(b)(2) is not in effect (program case rates); and (2) a set for the same period considering the five assumptions listed in section 7(b)(2) (7(b)(2) case rates). Certain costs specified in section 7(g) of the Northwest Power Act (7(g) costs) are subtracted from the program case rates.

The SPM then discounts each year's rates to the test year of the relevant rate case, averages each set of discounted rates, and compares the two resulting averages rounded to the nearest tenth of a mill. If the average of the discounted program case rates, less the 7(g) costs, is larger than the average discounted 7(b)(2) case rates, the rate test triggers. If the rate test triggers, the amount of dollars to be reallocated in the test period (7(b)(2) amount) is calculated by multiplying the difference between the discounted program case and 7(b)(2) case rates by the general requirements loads of the preference customers. The 7(b)(2) amount is used as an adjustment to the allocated costs in the rate case test period. For the preliminary proposal, the 7(b)(2) rate test will not be performed.

V. Tiered Rates Methodology

In this rate period, BPA is proposing to tier its rates for sales to public bodies, cooperatives, and Federal agencies under the Priority Firm Power (PF–95) rate schedule and for sales to its Direct Service Industrial (DSI) customers under the Industrial Firm Power (IP–95) rate schedule. For utilities participating in the residential exchange, BPA is also proposing to tier the PF rate applicable to such exchanges.

Under the proposed tiered rate design, firm power purchases will be divided into two blocks of power. Separate rates will be developed for each block of power for each customer class. The size of the first block of power (Tier 1 power) is set so that most forecasted purchases will be at the Tier 1 rate. BPA is proposing a somewhat higher rate that would apply to Tier 2 power. The forecasted sales of Tier 2 power will be based on the forecasted load above the Tier 1 amount. The proposed Tier 1 and Tier 2 rates will be determined as part of BPA's Wholesale Power Rates Development Study.

BPA is proposing to establish the amounts of Tier 1 power each customer will be able to purchase, based in large part on information submitted by the customers during the course of these rate proceedings. BPA is proposing a nomination process where customers indicate the amount of power they will purchase at the Tier 1 rate for each month during the rate period within boundaries set in this rate proceeding. Customer input will establish the billing factors for the Tier 1 rate, by month, for that purchaser. The boundaries on the customers' nominations also will be established based on information submitted by the customers. The deadlines for customer submittals will be established in BPA's initial proposal and after consultation with parties and customers. BPA encourages all customers to devote the necessary resources to provide the information needed to establish the amounts of power they will be able to purchase at a Tier 1 rate. If a customer is unable to provide the necessary information, BPA is proposing to establish that customer's Tier 1 power amounts using the same approach proposed in this preliminary proposal.

1. Utility Customers' Tier 1 Power: BPA proposes the following process to determine each utility customers share of Tier 1 power. BPA will establish an aggregate annual amount of Tier 1 power for all preference customers based on a percentage share of the Pacific Northwest Loads and Resources Study FY 1996–97 loads forecast. BPA will base each preference customer's annual share of the total FY 1996–97 load forecast on historical sales during the period FY 1986 through FY 1993. Each customer may choose a 12-month historical period for purposes of distributing the forecasted FY 1996–97 load between it and the other customers. This chosen subperiod also will be used to shape the given customer's annual load into monthly amounts. Since customers will submit their choice of historical period during the course of this proceeding, for the preliminary proposal, BPA has selected a historical period for each customer for the historical 12-month period for which BPA sales to that customer were the highest. BPA will shape the load based on sales during the selected historical period. BPA proposes that each utility's Tier 1 amount will be 90% of their shaped monthly Tier 1 energy amounts in August through March, and 100% of their shaped monthly Tier 1 energy amounts in April through July.

Because BPA proposes to establish separate rates for Heavy Load Hours (HLH) and Light Load Hours (LLH), BPA also will establish a separate Tier 1 amount of power for HLH and LLH. Customers will be able to choose how to shape their monthly Tier 1 amount of power into the HLH and LLH. However, for the preliminary proposal, BPA split each customer's monthly amount of Tier 1 power into HLH and LLH based on relative percentage of HLH sales and LLH sales during the selected historical period.

2. DSI's Tier 1 Power: BPA proposes to establish an amount of Tier 1 power for each individual DSI. For the DSI's, however, the aggregate amount of Tier 1 power for the DSI class will be set at 2,450 aMW, in each month. Like utilities, each DSI will select a contiguous 12-month period of sales over the FY1986–93 historical period. An individual DSI's monthly share of the 2,450 aMW will be based on its percentage of historical load compared to the total DSI's historical load. For the preliminary proposal, BPA selected a historical period for each DSI based on the same criteria used to select each utility's historical period. Similarly, BPA will split each DSI's monthly amount of Tier 1 power between HLH and LLH. Although BPA is proposing that a DSI may elect to shape its monthly amounts of Tier 1 power so that its the same in each hour of the month, for the preliminary proposal BPA calculated the monthly amount of Tier 1 power in HLH and LLH based on relative percentage of HLH sales and LLH sales during the selected historical period.

3. Residential Exchange Customers' Tier 1 power: BPA is proposing to establish an amount of Tier 1 power for residential exchange utilities using an approach similar to the approach for establishing utility customers' Tier 1 power. For exchanging utilities, however, BPA will set an exchanging utility's amount of Tier 1 power proportional to the amount of DSI and utility customers' Tier 1 power. The percentage of DSI and preference customer Tier 1 load relative to their total load will be applied to the forecasted exchange load for all utilities in the residential exchange, both active and inactive, to determine the exchange load amount of Tier 1 power.

As part of this rate proceeding, BPA will propose a Long-term Tiered Rate Methodology that will guide the implementation of a tiered rate structure in subsequent rate cases. BPA expects that this Methodology will resolve some of the basic questions associated with developing a tiered rate. The Long-term Tiered Rate Methodology will be published in a separate **Federal Register** Notice.

VI. Wholesale Power Rate Schedules

The wholesale power rates developed in the cost of service analysis and rate design adjustment process are incorporated in the Wholesale Power and Transmission Rate Schedules. The rate schedule document includes three sections. The first section contains the wholesale power and transmission rate schedules. Each schedule is comprised of sections stating to whom the rate schedule is available, rates for the products offered under the schedule, billing factors, and the cost basis of the rates in the schedule (resource contribution). Each rate schedule also lists the adjustments, charges, and special provisions that apply to that rate schedule.

The second section contains detailed descriptions of the adjustments, charges, and special provisions that apply to the various rate schedules. The third section contains the General Rate Schedule Provisions (GRSPs) for power and transmission rates. The GRSPs include a lengthy list of definitions, both of products and services and of rate schedule terms.

The Wholesale Power and Transmission Rate Schedules and the GRSPs will be published in a separate **Federal Register** Notice as described in Section I of this Notice. Following is a description of each wholesale power rate schedule.

Priority Firm Power Rate, PF–95

The proposed PF–95 rate schedule would replace the PF–93 rate schedule. Power is available under the PF–95 rate schedule to public bodies, cooperatives, Federal agencies, and utilities participating in the residential exchange under section 5(c) of the Northwest Power Act. Priority Firm power must be used to meet firm loads within the Pacific Northwest.

The PF rate schedule is available for power purchased both under the 1981 power sales contracts and under the new contracts BPA expects to offer in 1995 (1995 contracts). Rates have been developed for sales under each contract and for the various products available: Tier 1 demand and energy; Standard Tier 2 demand and energy; Enhanced Tier 2 demand and energy; and Load Shaping and Load Regulation. The PF–95 rate schedule also contains a ''composite'' rate, for these products for small full requirement customers (25 aMW) purchasing power under the 1995 contracts. Also available is capacity without energy for computed requirements purchasers under ''1981'' contracts. The PF–95 rate schedule includes demand charges that are seasonally and diurnally differentiated. There is no demand charge for Light Load Hours in any month of the year. The energy charges also are seasonally and diurnally differentiated.

The energy billing factors under the proposed PF–95 rate schedule for Computed Requirements customers purchasing under existing (''1981'') contracts have been changed from those in previous rate proposals (the Availability Charge). The proposed billing factors are now based entirely on contractual entitlements.

New Resource Firm Power Rate, NR–95

The proposed NR–95 rate schedule would replace the NR–93 rate schedule. The NR–95 rate schedule is available to investor-owned utilities under net requirements contracts for resale to consumers, and to publicly owned utilities for New Large Single Loads. Products available under the NR–95 rate schedule include New Resource Firm Power, Load Shaping, and Load Regulation. Demand and energy charges are seasonally and diurnally differentiated.

Industrial Firm Power Rate, IP–95

The proposed IP–95 rate would replace the IP–93 rate. The IP–95 rate schedule is available to BPA's direct-service industrial customers for firm power to be used in their industrial operations. Products available under the IP–95 rate include Tier 1 demand and energy, Standard Tier 2 demand and energy, Enhanced Tier 2 demand and energy, Load Shaping, and Load Regulation. The IP–95 rate schedule includes a composite rate for DSI purchasers under 1995 or later power sales contracts who are qualified and choose to purchase under the composite rate. Demand and energy charges are seasonally and diurnally differentiated.

Variable Industrial Power Rate

The VI–91 rate schedule is available to DSIs purchasing from BPA under both the power sales contracts signed prior to 1995 and the 1986 Variable Rate Contract. The VI–91 rate schedule terminates on June 30, 1996, at the termination of the Variable Rate Contracts, at which time sales to purchasers under the VI rate will be made at the IP–95 rate. The VI–91 rate schedule is unchanged from prior years other than to update the rates and rate parameters based on the rate adjustment criteria established in 1991. Service under the VI rate is not tiered (i.e., there is not Tier 1 and Tier 2 service under this rate). For the preliminary rate proposal, BPA assumed no sales under the VI rate schedule during the rate period.

Firm Power and Services Rate, FPS–95

The proposed FPS–95 rate schedule is available for purchase of firm power products inside and outside the United States, and control area services, until its termination date, September 30, 2000. The FPS–95 rate schedule would supersede both the SP–93 (Surplus Firm Power Rate) and the CE–93 (Emergency Capacity) rate schedules, and also includes products formerly available under other rate schedules, such as construction, test and startup, and station service. Sales under FPS–95 may be made at fixed rates, as specified in the rate schedule, or at flexible rates as established by BPA or mutually agreed to by BPA and the purchaser. Fixed demand charges are diurnally but not seasonally differentiated, and fixed energy charges do not change diurnally or seasonally.

Nonfirm Energy Rate, NF–95

The proposed NF–95 rate schedule replaces the NF–93 rate. The NF–95 rate schedule is available for purchases of nonfirm energy inside and outside the Pacific Northwest for resale to consumers, direct consumption, and resale under Western Systems Power Pool agreements. The form of the NF–95 rate has not changed from previous years, with the schedule including a Standard rate, a Market Expansion rate, an Incremental rate, a Western Systems Power Pool rate, an End-User rate, and a Contract rate. However, the cost basis for the Contract rate has changed to reflect the average cost of nonfirm energy.

The NF Rate Cap, described in the Adjustments, Charges, and Special Rate Provisions section of the rate schedule document, continues to apply to all sales under NF–95 rate schedule. The NF Rate Cap defines the maximum nonfirm energy price for general application. The level of the NF Rate Cap is based on a formula tied to BPA's system cost and California fuel costs.

Reserve Power Rate, RP–95

The RP–95 rate schedule replaces the RP–93 rate schedule. The RP rate is available in cases where a purchaser's

power sales contract states that the rate for Reserve Power shall be applied; when BPA determines no other rate schedule is applicable; or to serve a purchaser's firm power load when BPA does not have a power sales contract in force with such a purchaser, and BPA determines that this rate should be applied. The demand and energy charges are seasonally and diurnally differentiated, with no demand charge during light load hours during any month of the year.

Power Shortage Rate, PS–95

The PS–95 rate schedule is available for sales under the Share-the-Shortage agreement or a similar substitute agreement. BPA is not obligated to make Shortage Power available or broker power under the PF–95 rate schedule unless specified by contract.

VII. Charges Under the Amended and Integrated Pacific Northwest Coordination Agreement

The Pacific Northwest Coordination Agreement (PNCA) is an agreement for planned operations among the utilities and other entities that operate the major electric generating facilities and systems in the Pacific Northwest. The parties jointly and cooperatively plan and coordinate their combined generation facilities so as to produce the optimum firm load carrying capability (FLCC) of the coordinated system. FLCC is the firm load that could be carried under coordinated operation with critical streamflow conditions and with the use of all reservoir storage.

In order to coordinate operations, and so that each party can meet its individual FLCC, the PNCA provides for exchanges of energy and capacity among the parties. The agreement sets up charges for each form of exchange. The parties are negotiating a successor agreement to the PNCA, and have agreed on charges to apply under the new agreement.

The PNCA Rate Schedules will be published in a separate **Federal Register** Notice as described in Section I of this notice.

Issued in Portland, Oregon, on February 7, 1995.

J.H. Curtis,

Acting Administrator.

[FR Doc. 95–3534 Filed 2–13–95; 8:45 am]

BILLING CODE 6450–01–P

Proposed Transmission Rate Adjustment, Public Hearing, and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice and Opportunities for Review and Comment.

SUMMARY: *BPA File No:* TR–95. BPA requests that all comments and documents intended to become part of the Official Record in this process contain the file number designation TR–95.

The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) provides that BPA must establish and periodically review and revise its rates so that they are adequate to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, and to recover the Federal investment in the Federal Columbia River Power System (FCRPS) and other costs incurred by BPA. BPA is proposing to revise its transmission rate schedules to be effective October 1, 1995, through September 30, 1997, to produce sufficient revenues for BPA to meet its costs for Fiscal Year (FY) 1996 and FY 1997.

Opportunities will be available for interested persons to review BPA's rate proposal, to participate in the rate hearing, and to submit oral and written comments. During the development of the final rate proposal, BPA will evaluate all written and oral comments received in the rate proceeding. Consideration of comments and more current data may result in the final rate proposal differing from the rates proposed in this Notice.

DATES: Persons wishing to become a formal ''party'' to the proceedings must notify BPA in writing of their intention to do so in accordance with requirements stated in this Notice. Petitions to intervene must be received by 9 a.m. February 13, 1995, and should be addressed as follows: Hearing Officer, c/o Francis (Jamie) Troy, Hearing Clerk—LQ, Bonneville Power Administration, NE. 11th Ave., Box 12999, Portland, Oregon 97212.

In addition, a copy of the petition must be served concurrently on BPA's Office of Legal Services: Janet L. Prewitt, Office of Legal Services—LQ, Bonneville Power Administration, Box 3621, Portland, Oregon 97208.

Persons who have been denied party status in any past BPA rate proceeding shall continue to be denied party status unless they establish a significant change of circumstances.

A prehearing conference will be held before the Hearing Officer at 9 a.m. on February 13, 1995, in the BPA Rates Hearing Room, 3rd Level, 2032 Lloyd Center, Portland, Oregon. Registration for the prehearing conference will begin at 8:30 a.m. BPA will prefile preliminary proposal studies at the prehearing conference. The Hearing Officer will act on all intervention petitions and oppositions to intervention petitions, rule on any motions, establish additional procedures, establish a service list, establish a procedural schedule, and consolidate parties with similar interests for purposes of filing jointly sponsored testimony and briefs, and for expediting any necessary cross-examination. A notice of the dates and times of any hearings will be mailed to all parties of record. Objections to orders made by the Hearing Officer at the prehearing conference must be made in person or through a representative at the prehearing conference. The rate hearing schedule will be published in the **Federal Register** immediately following the prehearing conference.

The following schedule information is provided for informational purposes.

On or about February 9, 1995

Rate Schedules, General Rate Schedule Provisions, and Transmission Tariffs mailed to customers and 1993 rate case Parties, and available from BPA's Public Information Center; 905 NE. 11th, 1st Floor, Portland, Oregon.

February 13, 1995

Deadline for interventions to be filed with Hearing Clerk at above address.

On or about February 13, 1995

Preliminary proposal studies available at BPA's Rates Hearing Room, 2032 Lloyd Center, Portland, Oregon and BPA's Public Information Center, 905 NE. 11th, 1st Floor, Portland, Oregon.

February 13, 1995

Prehearing conference to set schedule and act on petitions to intervene.

On or about April 5, 1995

BPA Initial Proposal filed.

October 29, 1995

Final Record of Decision published.

BPA also will be conducting public field hearings. A field hearing schedule will be announced at the prehearing conference. A notice of the dates, times, and locations of the field hearings will be made later through mailings and public advertising.

When BPA holds public field hearings, written transcripts are made and included in the official record. A notice of the dates and times of the field hearings also will be published in the **Federal Register**.

ADDRESSES: Written comments by participants must be received by May 15, 1995, to be considered in the Draft Record of Decision (ROD). Written comments should be submitted to the Manager; Corporate Communications—CK; Bonneville Power Administration; 905 NE. 11th; P.O. Box 12999; Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Hansen, Public Involvement and Information Specialist, at the address listed above, (503) 230–4328 or call toll-free 1–800–622–4519.

Information also may be obtained from:

Mr. Steve Hickok; Group Vice President, Sales and Customer Service; P.O. Box 3621; Portland, OR 97208, (503) 230–5356.

Mr. George Eskridge; Manager, SE Sales and Customer Service District; 1101 W. River, Suite 250; Boise, ID 83702, (208) 334–9137.

Mr. Ken Hustad; Manager, NE Sales and Customer Service District; Crescent Court, Suite 500; 707 Main; Spokane, WA 99201, (509) 353–2518.

Ms. Ruth Bennett; Manager, SW Sales and Customer Service District; 703 Broadway; Vancouver, WA 98660, (360) 418–8600.

Ms. Marg Nelson; Manager, NW Sales and Customer Service District; Suite 400, 201 Queen Anne Ave. N.; Seattle, WA 98109–1030, (206) 216–4272.

Responsible Official: Mr. Geoff Moorman, Manager for Pricing, Marginal Cost and Ratemaking, is the official responsible for the development of BPA's rates.

SUPPLEMENTARY INFORMATION:

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Transmission Rate Schedules

I. Introduction

After the 1993 Rate Case, BPA conducted a series of workshops on subjects relevant to BPA's ratemaking. The purpose of the workshops was to identify, simplify, and reduce the number of issues that might become part of the 1995 rate case and to reduce the amount of discovery normally required during the formal rate proceedings. Opportunity was provided to address the impacts of reinvention, transmission issues, risk mitigation, forecasted revenue requirements, and rate design issues. The workshops provided opportunity for informal public comment on issues prior to the formal hearing process.

On December 28, 1994, BPA published in the **Federal Register** a Notice of ''Intent to Revise Transmission Rates to Become Effective October 1, 1995,'' 57 FR 66946, in order to satisfy contractual provisions between BPA and its customers. Since then, BPA has continued to study the adequacy of its current rates and has concluded that current rates must be adjusted for the FY 1996 and FY 1997 rate period.

In order to assess its current rates, BPA first determined the amount of revenues required to meet its financial obligations in FY 1996 and FY 1997. BPA has determined that the revenues it would expect to collect from projected sales under its current rates will not recover these revenue requirements. Therefore, BPA proposes to revise its current transmission rates. At the conclusion of this rate proceeding, BPA will file its rates with FERC for confirmation and approval.

The proposed transmission rates were prepared in accordance with BPA's statutory authority to develop rates, including the Bonneville Project Act of 1937, as amended, 16 U.S.C. 832 (1982); the Flood Control Act of 1944, 16 U.S.C. 825s (1982); the Federal Columbia River Transmission System Act (Transmission System Act), 16 U.S.C. 838 (1982); the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839 (1982); and the Energy Policy Act of 1992, Pub. L. No. 102–486, 106 Stat. 2776 (1992).

In the Energy Policy Act of 1992, Congress approved amendments to the Federal Power Act that allow FERC to order access to transmitting utilities' systems. As a result, FERC has developed standards for providing comparable access including guidelines for pricing such access. This rate proposal includes two new rate schedules (the Network Integration and Point-to-Point Firm rates) to be used for FERC-ordered transmission access and which are designed to allow comparable access to BPA's transmission system. BPA's Energy Transmission rate schedule will be used to price comparable service for nonfirm uses of the transmission system. In a process concurrent with the 1995 rate case, BPA is proposing terms and conditions for these new services for FERC approval. For further information about the terms and conditions process, please contact Mr. Dennis Metcalf, Transmission Team Lead, (503) 230–3410 or Mr. Michael Hansen, Public Involvement and Information Specialist, (503) 230–4328.

BPA proposes that its transmission rate schedules, including the adjustments, charges and special rate provisions, and the General Rate Schedule Provisions (GRSPs) associated with these rate schedules, become effective upon interim approval or upon final confirmation and approval by FERC. (BPA's proposal combines the general rate schedule provisions for wholesale power rates and transmission rates into one document—the GRSPs.) BPA currently anticipates that it will request FERC approval effective October 1, 1995, or at the same time as its revised power rates. The 1995 transmission rate schedules and the GRSPs shall supersede BPA's 1993 rate schedules and General Transmission Rate Schedule Provisions (which became effective October 1, 1993) to the extent stated in the Availability section of each 1995 rate schedule.

BPA is proposing extension of the Townsend-Garrison Transmission rate and the Use of Facilities rate with no changes. The Market Transmission rate is being revised only to the extent that the Reactive Power Charge is being included in the rate schedule. Three new rates are proposed: the Network Integration Transmission rate; the Point-to-Point Firm Transmission rate; and the Advance Funding rate. The proposed Southern Intertie Annual Costs rate is substantially changed to reflect the outcome of contract negotiations. In addition, a Reservation Charge for Transmission Capacity and a Reactive Power Charge are included in many of the transmission rate schedules. BPA also has provided for charging opportunity costs in the firm transmission rates for new requests for transmission capacity.

In developing the proposed transmission rates, BPA considered many factors, including revenue requirements, ease of administration, revenue stability, rate continuity, comparability, ease of comprehension, contract provisions, and BPA's statutory obligations. The studies that have been prepared to support the proposed preliminary transmission rates will be mailed to all parties in BPA's 1993 rate case and will be available for examination on February 13, 1995, at BPA's Public Information Center; BPA Headquarters Building; 1st Floor; 905 NE. 11th; Portland, and will be available at the prehearing conference, to the extent they are available. The preliminary studies and documents that relate to transmission rates are:

1. Loads and Resources Study and Documentation
2. Revenue Requirement Study and Documentation
3. Segmentation Study
4. Wholesale Power Rate Development Study and Documentation
5. Transmission Rate Design Study
6. Wholesale Power Rate and Transmission Rate Schedules

BPA's proposed Wholesale Power and Transmission Rate Schedules, General Rate Schedule Provisions, and Transmission Tariffs will be published in a separate **Federal Register** Notice on or about February 13, 1995. The documents described above will be mailed to BPA's customers, 1993 rate case parties, and other interested persons, and will be available from BPA's Public Information Center on or about February 9, 1995.

To request any of the above documents by telephone, call BPA's document request line: (503) 230–3478 or call toll-free 1–800–622–4520. Please request the document by its above-listed title. Also state whether you require the accompanying documentation (these can be quite lengthy); otherwise the study alone will be provided. (For example, ask for the ''Revenue Requirement Study and Documentation.'')

Because of the complexity of the issues in this rate case, in part occasioned by continuing contract negotiations between BPA and its customers as well as BPA's ''reinvention'' and Competitiveness Project, BPA anticipates that there will be a need to meet with customers and other interested third parties during the rate case on a very frequent, and possibly extended, basis. To comport with the rate case procedural rule prohibiting *ex parte* communications, BPA will provide necessary notice of meetings involving rate case issues for participation by all rate case parties. Parties should be aware, however, that such meetings may be held on very short notice and they should be prepared to devote the necessary resources to fully participate in every aspect of the rate proceeding. Consequently, parties should be prepared to attend meetings every day during the course of the rate case.

II. Purpose and Scope of Hearing

BPA's proposal to revise its rates is needed in order to continue to recover all costs and expenses allocated to the power system, including amortization of the Federal investment in the FCRPS over a reasonable period of time, and to recover costs in a way that achieves the goals of BPA's Competitiveness Project.

BPA began its Competitiveness Project in early 1993 in response to market forces and deregulation of the electric utility industry. The project, a re-invention of the agency to make it more competitive in the new marketplace, included the development of a new business concept, a marketing plan, a review of all of BPA's activities leading to structural reorganization, strategic action plans for each of BPA's major activities, an internal effort to promote leadership and employee empowerment, and proposals to eliminate unnecessary administrative and regulatory requirements.

BPA's Draft Strategic Business Plan and the Draft Business Plan EIS were released to the public in June 1994. The Draft Strategic Business Plan sets the overall strategic direction for both serving BPA's customers and meeting BPA's legislated responsibilities, including new statements of BPA's mission, values, and strategic business objectives to guide BPA's activities. The Draft Strategic Business Plan also describes the conceptual framework for the products BPA is offering. As stated in the Draft Strategic Business Plan, BPA's pricing policies are designed to meet many objectives, including: (1) providing maximum customer choice and encouraging optimal use of the FCRPS; (2) contributing to BPA's continued viability in an increasingly competitive energy market environment; and (3) allowing BPA to take full advantage of its responsibility and authority to manage the FCRPS, consistent with all statutory requirements.

The Draft Strategic Business Plan envisions BPA as having three separate and distinct business lines—power, transmission, and energy services (conservation)—which will be self-supporting and serve customers according to their unique needs. The Draft Strategic Business Plan also outlines a number of initiatives to improve BPA's competitiveness, including strategies to close the projected gap between BPA's costs and revenues, a financial strategy, and proposals to change BPA's power rate structures to give customers more choice, to more accurately reflect BPA's costs associated with providing the discrete components of electric service selected by customers, and thereby to encourage investment in cost-effective conservation. BPA proposes to close the revenue gap by exerting strict cost management and becoming market driven.

To provide customers with a price signal that encourages efficient resource investment decisions, including conservation resources, and appropriately shares the benefits of the relatively low-cost Federal power and transmission systems, BPA is proposing to tier its power rates for requirements service and for the residential exchange. The rate for requirements service would be divided into two parts: a Tier 1 rate, and one or several alternative Tier 2 rates. BPA expects that the Tier 1 rate will be available to serve most of the existing customers' firm loads. The Tier 1 rate is expected to be a lower rate than Tier 2 because it will be based primarily on the costs associated with the existing Federal system. The Tier 2 rates will be available to serve regional firm requirements in excess of Tier 1, including future load growth, and will be based on the costs associated with supplying power to meet these loads.

To address the increasingly competitive market for power, transmission, and energy services, BPA is proposing to offer a limited menu of unbundled products in the 1995 rate case. BPA expects that the products offered will be available both under the current power sales contracts and under new power sales contracts. BPA expects to offer additional unbundled products in future rate cases and to price these products to meet market conditions and its cost recovery obligations. In some cases, BPA expects the market will require flexible pricing. BPA is planning to ''unbundle'' what it offers so customers can choose among products and services based on what they need to meet their loads and support their own resources, if any.

BPA owns most of the high-voltage transmission system in the PNW and recognizes the need to ensure that BPA's transmission system is not an impediment to a fully functioning and competitive bulk power market. To assure that the transmission system does not provide BPA with anticompetitive market power, BPA is proposing network transmission services and prices for such services on a basis comparable to its own use of its system. In setting rates, terms, and conditions of service, BPA will be consistent with FERC comparability standards applicable to other transmitting utilities under sections 210 and 211 of the Federal Power Act except where prohibited by statute or regulation.

BPA is assessing the potential environmental effects of its rate proposal as required by the National Environmental Policy Act (NEPA) as part of the Business Plan Environmental Impact Statement (EIS). Beginning in June 1994, BPA solicited input to the Draft Strategic Business Plan and the Draft Business Plan EIS from customers

throughout the region. From August 3 - August 9, BPA held numerous public comment meetings throughout the region. Additionally, BPA held a Draft Business Plan EIS workshop where participants were invited to design their own alternatives and consider the environmental and fiscal results. The draft EIS evaluates BPA's Business Plan proposal and a range of alternatives, including the impacts of the range of potential rate designs for BPA's power and transmission services. It also documents the impact of the current rate proposal for purposes of the National Environmental Policy Act. A supplemental Draft Business Plan EIS, revised in response to comments received, will be available for public comment in February. Comments will be received outside the formal rate hearing process, but will be included in the rate case record and considered by the Administrator in making a final decision establishing BPA's 1995 rates. The Final Strategic Business Plan and the Business Plan EIS that elaborates BPA's strategic action plans will be released in June 1995.

Spending levels are developed as a part of the BPA Strategic Business Plan, with the benefit of a public comment process. They also are determined as a part of the Federal budget process. Consistent with the Business Plan, the Administrator formally announced spending levels for FYs 1996–2001 to the public on January 12, 1995. BPA will continue to refine its strategic business objectives, goals, and spending levels, and inform the public accordingly, as part of its Strategic Business Plan development process. That process is expected to culminate in a Final Strategic Business Plan published in June 1995. Therefore, except for the limited exceptions hereafter noted, spending level decisions will not be addressed in this rate case. Accordingly, pursuant to § 1010.3(f) of the ''Procedures Governing Bonneville Power Administration Rate Hearings,'' 51 FR 7611 (March 5, 1986) (hereinafter Procedures), the Administrator directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing which seek to visit in any way the appropriateness or reasonableness of BPA's decisions on spending levels, as included in BPA's cost evaluation period of FY 1995 through FY 1997 and its test period revenue requirements for FYs 1996 and 1997. If, and to the extent, any re-examination of spending levels is necessary, that re-examination will occur outside of the rate case. The Revenue Requirement Study will incorporate BPA's spending levels and reflect BPA's risk mitigation, capital funding, and other financial goals in the rates. Excepted from this direction on account of their variable nature, dependency on BPA's rate case models, or timing, are: (1) Forecasts of residential exchange benefits; (2) forecasts of short-term purchase power costs; (3) provision in BPA's revenue requirement for cash working capital or cash lag needs; (4) repayment matters such as interest rate forecasts, scheduled amortization, depreciation, replacements, and interest expense; and (5) updates to forecasts by BPA which may occur in the Spring of 1995 and for which no other review forum has been provided.

III. Procedures Governing Rate Adjustments and Public Participation

Section 7(i) of the Northwest Power Act, 16 U.S.C. § 839e(i), requires that BPA's rates be established according to certain procedures. These procedures include, among other things, issuance of a **Federal Register** Notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, and arguments; and a decision by the Administrator based on the record. The proceedings for BPA's proposal to adjust transmission rates will be combined with the proceedings for BPA's proposal to adjust wholesale power rates. This proceeding will be governed by BPA's rule for general rate proceedings, § 1010.9 of BPA's Procedures. These Procedures implement the statutory section 7(i) requirements. Section 1010.7 of the Procedures prohibits *ex parte* communications.

BPA distinguishes between ''participants in'' and ''parties to'' the hearings. Apart from the formal hearing process, BPA will receive comments, views, opinions, and information from ''participants,'' who are defined in the procedures as any person who may express views, but who does not petition successfully to intervene as a party. Participants' written comments will be made part of the official record of the case and considered by the Administrator. The participant category gives the public the opportunity to participate and have its views considered without assuming the obligations incumbent upon ''parties.'' Participants are not entitled to participate in the prehearing conference, cross-examine parties' witnesses, seek discovery, or serve or be served with documents, and are not subject to the same procedural requirements as parties.

Written comments by participants will be included in the record if they are received by May 15, 1995. This date follows the anticipated submission of BPA's and all other parties' direct cases. Written views, supporting information, questions, and arguments should be submitted to BPA's Manager of Corporate Communications at the address listed in Section I of this Notice. In addition, BPA will hold several field hearings in the Pacific Northwest Region. Participants may appear at the field hearings and present oral testimony. The transcripts of these hearings will be a part of the record upon which the Administrator makes the rate decision.

The second category of interest is that of a ''party'' as defined in §§ 1010.2 and 1010.4 of BPA's Procedures. Parties may participate in any aspect of the hearing process.

Persons wishing to become a party to BPA's rate proceeding must notify the Hearing Officer and BPA in writing of their request. Petitions to intervene shall state the name and address of the person and the person's interests in the outcome of the hearing. Petitioners may designate no more than two representatives upon whom service of documents will be made. BPA customers and customer groups whose rates are subject to revision in the hearing will be granted intervention based on a petition filed in conformance with this section. Other petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Intervention petitions will be available for inspection in BPA's Public Information Center, 1st Floor, 905 NE. 11th, Portland, Oregon. Any opposition to a petition to intervene must be raised at the February 13, 1995, prehearing conference. All timely applications will be ruled on by the Hearing Officer. Opposition to an untimely petition to intervene shall be filed and served within 2 days after service of the petition. Interventions are subject to § 1010.4 of the Procedures.

The record will include, among other things, the transcripts of any hearings, any written material submitted by the parties and participants, documents developed by BPA staff, BPA's environmental analysis and comments accepted on it, and other material accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, will supplement it if necessary, and will certify the record to the Administrator for decision.

The Administrator will develop final proposed rates based on the entire record, including the record certified by the Hearing Officer, comments received from participants, other material and information submitted to or developed by the Administrator, and any other comments received during the rate development process. The basis for the final proposed rates first will be expressed in the Administrator's Draft ROD. Parties will have an opportunity to comment on the Draft ROD as provided in BPA's hearing procedures. The Administrator will serve copies of the Final ROD on all parties and will file the final proposed wholesale power and transmission rates together with the record with FERC for confirmation and approval.

IV. Major Studies

A. Major Studies

1. Loads and Resources Study

BPA's forecast of regional loads by customer group are the basis from which public utility and direct service industry (DSI) customer purchases from BPA (Federal system firm loads) are projected. BPA also projects Federal transmission losses, obligations to regional investor-owned utilities (IOUs) under their power sales contracts, and other inter- and intraregional contractual obligations.

BPA's resource acquisition plans are based on work by BPA and the Northwest Power Planning Council staff and reflect extensive input and review by the general public and the region's utilities. The specific resource acquisitions and associated costs included in this proposal are based on BPA's 1994 Draft Strategic Business Plan.

The load/resource balance determines BPA's obligation to serve firm loads during the test years under 1930 water conditions. It also contributes to the determination of the supply of surplus firm power in the region and on the Federal system. A related hydro regulation study incorporates the operation of thermal plants, exports and imports of power, projected resource acquisitions, and system constraints such as the Columbia River flow augmentation project, ''spill'', and the water budget for fish migration. For this proposal, a 50-year hydro study was completed which includes assumptions regarding the Columbia River flow augmentation. The hydro study starts in August 1995. The 50-year study determines nonfirm energy availability for the region.

2. Revenue Requirement Study

The Bonneville Project Act, the Flood Control Act of 1944, the Transmission System Act, and the Northwest Power Act require BPA to set rates that are projected to collect revenues sufficient to recover the cost of acquiring, conserving, and transmitting the electric power that BPA markets, including amortization of the Federal investment in the FCRPS over a reasonable period, and to recover BPA's other costs and expenses. The Revenue Requirement Study determines whether current rates will produce enough revenues to recover all BPA costs and expenses, including BPA's repayment obligations to the U.S. Treasury. Revenue requirements are the major factor in determining the overall level of BPA's proposed power and transmission rates.

The Transmission System Act and the Northwest Power Act require that transmission rates be based on an equitable allocation of the costs of the Federal transmission system between Federal and non-Federal power using the system. In compliance with a FERC order dated January 27, 1984, 26 FERC ¶ 61,096, the Revenue Requirement Study incorporates the results of separate repayment studies for the generation and transmission components of the FCRPS. The repayment studies for generation and transmission demonstrate the adequacy of the projected revenues to recover all of the Federal investment in the FCRPS over the allowable repayment period. Separate generation and transmission revenue requirements are developed in the Revenue Requirement Study. The adequacy of projected revenues to recover test period revenue requirements and to meet repayment period recovery of the Federal investment is tested and demonstrated separately for the generation and transmission functions.

The Revenue Requirement Study for the 1995 preliminary rate proposal is based on revenues and cost estimates for FY 1996 and FY 1997. BPA's Revenue Requirement Study reflects actual amortization and interest payments paid through September 30, 1994. In addition, it reflects all FCRPS obligations incurred pursuant to the Northwest Power Act, including residential exchange costs.

3. Segmentation Study

BPA operates and maintains the Federal Columbia River Transmission System (FCRTS) to provide transmission services throughout the region. Because most services do not require the use of the entire system, the FCRTS is divided into nine segments, each providing a distinct type of service. The nine segments are: integrated network; Pacific Northwest-Pacific Southwest (Southern) Intertie; Northern Intertie; Eastern Intertie; generation integration; fringe area; and delivery segments for public agency, DSI, and IOU customers.

The Segmentation Study categorizes the facilities of the FCRTS according to the types of services they provide. This provides the basis for segmenting the projected transmission revenue requirements used in BPA's rate proposals. The results of the Study include the historical investment and the average of the last 3 years' operations and maintenance expenses. In addition, the facilities of the integrated network similarly are divided among distinct services. This division of the FCRTS into segments provides for equitable allocation of transmission costs between Federal and non-Federal customers based on their usage of the segments.

4. Wholesale Power Rate Development Study (WPRDS)

BPA is proposing substantial changes in the method used to develop its wholesale power rates. The cost of service analysis (COSA) and rate design adjustments are the two central parts of the rate development process. The COSA apportions BPA's test year generation and transmission revenue requirements to customer classes based on the use of specific types of service by each customer class and in accord with the rate directives of the Northwest Power Act. Costs are allocated to classes of service on the basis of the relative use of services. The coincidental peak (CP) allocation of network transmission costs to customer classes uses an average of a 12–CP and 3–CP (December, January, and February) method to reflect transmission cost causation. The transmission costs allocated to the Federal power uses of the transmission system form the basis for the power rates' demand charge; the transmission costs allocated to non-Federal uses form the basis for the transmission, or wheeling, rates that are calculated in the Transmission Rate Design Study (discussed below).

The rate design adjustment portion of the WPRDS modifies the allocated costs developed in the COSA to: (1) Reflect BPA's rate design objectives; (2) conform with contractual requirements; (3) reflect the results of other BPA studies and commitments made in other public involvement processes under section 7(i) of the Northwest Power Act; and (4) conform with requirements of applicable legislation. BPA's rate design

objectives include recovery of BPA's revenue requirement, rate and revenue stability, practicality, fairness, comparability, and efficiency. All of the rate design adjustments are functionalized, classified, segmented, and seasonalized where appropriate. After all adjustments are made, the final power rates are calculated.

5. Transmission Rate Design Study (TRDS)

In the TRDS, rates for various transmission services are calculated using the portion of the transmission revenue requirement allocated to non-Federal uses of the transmission system. Wheeling load forecasts are developed in the TRDS in order to calculate rates. The design of individual rate schedules also is accomplished in the TRDS.

B. Transmission Rates

In a process concurrent with the 1995 rate case, BPA is proposing terms and conditions for new and existing services (network integration, point-to-point firm, and nonfirm) that allow comparable access to the Federal transmission system. Two new rate schedules (the Network Integration Transmission rate and the Point-to-Point Firm Transmission rate) are proposed to price the new services. BPA's Energy Transmission rate is proposed to price comparable nonfirm transmission services. These new services ensure that all parties have access to the Federal transmission system under comparable terms, conditions, and rates as BPA. Such comparability allows for a competitive marketplace for power products.

BPA also is proposing the Advance Funding rate to allow BPA to collect the cost of specified BPA-owned transmission facilities through advance payment. In addition to the three new rate schedules, all of BPA's traditional transmission rate schedules are proposed to be confirmed. A charge is included in the firm transmission rates to allow BPA to charge opportunity cost when that is higher than the embedded cost charge for new requests for transmission capacity. BPA also provides notice in the firm rate schedules that requests for new or increased firm transmission service may be subject to incremental cost rates that would be developed pursuant to section 7(i) of the Northwest Power Act. In applying incremental or opportunity cost rates, BPA would be consistent with FERC's ''or'' pricing—the higher of embedded cost or incremental cost (or, the higher of embedded cost or opportunity cost), but not the sum of the two. Finally, a Reservation Charge for Transmission Capacity and a Reactive Power Charge are included in the many of the transmission rate schedules.

1. Formula Power Transmission (FPT)

The FPT–95 rate schedule is available for the firm wheeling of power on the network segment of the FCRTS. This rate includes a distance or mileage component for transmission lines and various transformation and terminal charges. The FPT rate form is designed to reflect a wheeling formula that is prescribed by contract provisions.

In calculating the FPT–95 rate, the first step is to quantify costs for the specific types of transmission facilities treated in the rate components. Estimates of the use of these facilities are determined from a simulation of the power flow of the projected peak load during the test period. Unit costs for the FPT rate components are derived by dividing facility cost by facility use as determined in a power flow study.

2. Integration of Resources (IR)

The IR service is a flexible transmission service that may be used to integrate multiple resources and transmit non-Federal power to multiple points of delivery on the FCRTS Integrated Network facilities. The IR–95 rate is structured as a postage-stamp (independent of distance) rate with a demand and energy charge. The proposed IR–95 rate schedule continues to include the Short-Distance Discount, an exception to the postage stamp rate design for contractually specified points of integration.

The IR–95 rate is calculated by dividing the revenue requirement for the class into two equal parts to reflect a 50–50 classification of costs to capacity and energy. The quotient of these costs and the appropriate billing determinant (contract demand for capacity-related costs; total energy usage for energy) yields the rates.

3. Energy Transmission (ET); Southern Intertie (IS), Northern Intertie (IN), and Eastern Intertie (IE) Transmission; and Market Transmission (MT)

The ET–95 rate is designed to approximate the average cost of firm wheeling on the network. It is calculated by dividing the costs allocated to the FPT/IR class of service by all wheeling under firm wheeling contracts. The ET rate applies to use of intra-regional FCRTS facilities excluding the Interties and will provide comparable nonfirm transmission service.

The proposed IS–95 rate consists of two parts: a nonfirm energy-only rate, and a firm rate with separate demand and energy components.

BPA also is proposing two rates for the IN–95 rate schedule: an energy-only rate for nonfirm wheeling, and a rate with demand and energy components for firm wheeling. The cost of the Northern Intertie is allocated to Federal and non-Federal power; the cost allocated to non-Federal power is the basis for the calculation of the rate.

The IE–95 rate is available for nonfirm transmission on the Eastern Intertie. It is calculated as the ratio of the Eastern Intertie segment cost to the projected wheeling of energy from the Colstrip plant.

BPA is continuing its MT–95 rate unchanged, except for the addition of the Reactive Power Charge. This rate schedule was developed for use among Western Systems Power Pool (WSPP) participants and allows for flexible hourly, daily, weekly, and monthly charges.

4. Use of Facilities Transmission (UFT) and Townsend-Garrison Transmission (TGT)

The UFT–95 and TGT–95 rate schedules are formula rates that are being proposed unchanged from the current 1993 rates. The UFT rate recovers the annual cost of identified facilities over which specific wheeling transactions occur. The TGT rate is a contract rate that recovers the cost of the Montana (Eastern) Intertie.

5. Southern Intertie Annual Costs (AC)

BPA is proposing the AC–95 rate to be applied to owners of AC Intertie capacity. This rate recovers the Capacity Owner's prorata share of actual AC Intertie costs: Operations, maintenance, general plant, and other identified expenses, as well as capital costs of replacements and reinforcements. The proposed AC–95 rate takes the place of the AC–93 rate which was a ''bridge'' rate until Capacity Ownership contracts were complete.

6. Network Integration Transmission (NT) and Point-to-Point Firm Transmission (PT)

The proposed NT–95 and PT–95 rates, along with the associated terms and conditions of service, are designed to provide customers with transmission service that is comparable to what BPA provides itself in serving its power customers. Network Integration transmission service allows customers to serve their load located in the PNW region. The proposed NT–95 rate is based on a load-ratio share concept. The load-ratio share measures the Network

Integration customer's contribution to the FCRTS peak.

The proposed PT rate, along with terms and conditions of service, provides transmission service for customer's native load and/or transactions with third parties over the FCRTS Integrated Network. The PT rate is based on transmission costs allocated to the FPT/IR class of service and is structured as a monthly demand charge.

7. Advance Funding (AF)

The proposed AF rate allows BPA to collect the capital and related costs of specified BPA-owned transmission facilities through advance payment. Such facilities could include interconnection and resource integration facilities, and upgrades or reinforcements to the FCRTS. Following commercial operation of the specified facilities, a true-up of estimated costs with actual costs would occur.

8. Reservation Charge for Transmission Capacity, and Reactive Power Charge

The proposed Reservation Charge is included in the firm transmission rate schedules for application to customers who enter into a contract with BPA for new or increased firm transmission service on the FCRTS and want to reserve transmission capacity to accommodate such service. Payment of the Reservation Charge for Transmission Capacity would allow a customer to reserve capacity for up to 3 years, with the possibility of two annual extensions granted by BPA on a case-by-case basis.

The proposed Reactive Power Charge is included in BPA's transmission rate schedules as well as BPA's power rate schedules, and charges customers for their reactive power requirements by point of delivery.

V. Transmission Rate Schedules

The proposed transmission rates are incorporated in the Wholesale Power and Transmission Rate Schedules. The rate schedule document includes three sections. The first section contains the wholesale power and transmission rate schedules. Each schedule is comprised of sections stating to whom the rate schedule is available, rates for the products offered under the schedule, and billing factors. Each rate schedule also lists the adjustments, charges, and special provisions that apply to that rate schedule.

The second section contains detailed descriptions of the adjustments, charges, and special provisions that apply to the various rate schedules. The third section contains the GRSPs for power and transmission rates. The GRSPs include a lengthy list of definitions, both of products and services and of rate schedule terms.

The Wholesale Power and Transmission Rate Schedules and the GRSPs will be published in a separate **Federal Register** Notice as described in Section I of this Notice.

Issued in Portland, Oregon, on February 7, 1995.

J.H. Curtis,

Acting Administrator.

[FR Doc. 95–3535 Filed 2–13–95; 8:45 am]

BILLING CODE 6450–01–P

Hearing and Opportunity for Public Comment; Regarding Proposed Comparable Transmission Terms and Conditions

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Hearing and Opportunity to Comment.

SUMMARY: *BPA File No.* TC–95. BPA requests that all comments and documents intended to become part of the Official Record in this process contain the file number designation TC–95. BPA will be proposing terms and conditions applicable to three transmission services over the network transmission system of the Federal Columbia River Transmission System (FCRTS) which BPA considers to be comparable to the uses BPA itself makes of such system for its own power transactions. The Federal Power Act, as amended by the Energy Policy Act of 1992, provides that BPA may institute a regional hearing process on proposed transmission terms and conditions of general applicability. By this notice, BPA is announcing such a proceeding and the dates on which the proposed transmission terms and conditions will be available.

DATES: Persons wishing to comment on the proposed transmission terms and conditions but not wishing to become ''parties'' to the proceeding must submit written comments on the proposals by May 15, 1995. Persons wishing to become formal ''parties'' to the proceeding must notify BPA in writing of their intention to do so in accordance with requirements stated in this Notice. Intervention petitions must be received by 9 a.m. February 13, 1995.

A prehearing conference will be held before the Hearing Officer at 9:00 a.m. on February 13, 1995, in the BPA Rates Hearing Room located at 2032 Lloyd Center, Portland, Oregon. Registration for the prehearing conference will begin at 8:30 a.m. The prehearing conference for BPA's 1995 power and transmission rate case will occur at the same time and place as the prehearing conference for this proceeding. BPA's present intent is for the Hearing Officer for this transmission terms and conditions proceeding to be other than the Hearing Officer presiding over BPA's 1995 power and transmission rate proceeding. However, it also is BPA's intent to merge as much as possible the schedules and records for these two proceedings in order to address common transmission issues efficiently. At the prehearing conference, BPA may move to consolidate common transmission issues.

The Hearing Officer will act on all intervention petitions and oppositions to intervention petitions, rule on any motions, establish additions or changes to the Procedures, establish a service list, establish a procedural schedule in conjunction with the rates hearing officer, and consolidate parties with similar interests for purposes of filing jointly-sponsored testimony and briefs and for expediting any necessary cross-examination. A notice of the dates and times of any hearings will be mailed to all parties of record. Objections to orders made by the Hearing Officer at the prehearing conference must be made in person or through a representative at the prehearing conference.

The following schedule information is provided for informational purposes. A final schedule will be established by the Hearing Officer at the prehearing conference.

February 9, 1995 (on or about)
Proposed Transmission Terms and Conditions mailed to customers and 1993 rate case parties and available from BPA's Public Information Center, 1st Floor, 905 N.E. 11th Ave., Portland, Oregon.

February 13, 1995 (on or about)
Proposed Transmission Terms and Conditions published in **Federal Register.**

February 13, 1995
Prehearing conference to set schedule and act on petitions to intervene.

April 5, 1995 (on or about)
Supplemental testimony filed.

October 29, 1995
Administrator's Final Decision

BPA also will be conducting public field hearings on it proposed power and transmission rates. Comments on the proposed transmission terms and conditions also will be accepted at these hearings. The dates and locations of the field hearings will be announced later through mailings and public advertising.

ADDRESSES: Written comments by ''participants'' should be submitted by May 15, 1995, to: Manager, Corporate

Communications–CK, Bonnesville Power Administration, 905 N.E. 11th Ave, P.O. Box 12999, Portland, Oregon 97212

Petitions to intervene should be filed by 9 a.m. February 13, 1995. Persons intervening in the power and transmission rate case who also desire to intervene in this proceeding may file a single petition to intervene which specifically identifies both proceedings. Petitions to intervene should be addressed as follows: Hearing Officer, c/o Francis (Jamie) Troy, Hearing Clerk—LQ, Bonneville Power Administration, 905 N.E. 11th Ave., P.O. Box 12999, Portland, Oregon 97212.

In addition, persons intervening in the rate case must serve a copy of the petition on: Janet L. Prewitt, Office of Legal Services—LQ, Bonneville Power Administration, 905 N.E. 11th Ave., P.O. Box 3621, Portland, OR 97208.

Interventions in this proceeding must be served concurrently on: Stephen Larson, Office of Legal Services—LP, 905 N.E. 11th Ave., P.O. Box 3621, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Hansen, Public Involvement and Information Specialist, at the address listed above, (503) 230–4328 or call toll-free 1–800–622–4519. Information also may be obtained from:

Mr. Steve Hickok, Group Vice President, Sales and Customer Service, P.O. Box 3621, Portland, OR, 97232 (503) 230–5356.

Mr. George Eskridge, Manager, SE Sales and Customer Service District, 1101 W. River, Suite 250, Boise, ID 83702, (208) 334–9137.

Mr. Ken Hustad, Manager, NE Sales and Customer Service District, Crescent Court, Suite 500, 707 Main, Spokane, WA 99201, (509) 353–2518.

Ms. Ruth Bennett, Manager, SW Sales and Customer Service District, 703 Broadway, Vancouver, WA 98660, (360) 418–8600.

Ms. Marg Nelson, Manager, NW Sales and Customer Service District, Suite 400, 201 Queen Anne Ave. N., Seattle, WA 98109–1030, (206) 216–4272.

Responsible Official: Mr. Dennis Metcalf, BPA Transmission Team Lead, is the responsible official for the development of BPA's transmission terms and conditions.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to this notice, BPA is initiating a regional hearing process on proposed transmission services terms and conditions. BPA is proposing to establish terms and conditions of general applicability for certain transmission services comparable to the uses Bonneville provides itself over the integrated network transmission system of the FCRTS. These proposed terms and conditions for comparable services are intended to: (1) respond to customer requests in the context of the renegotiation of BPA's power sales contracts that Bonneville eliminate its transmission-based market power, (2) with respect to network transmission services, comply with the Commission's requirement that members of regional transmission associations develop and publish tariffs meeting the Commission's comparability standards; and (3) facilitate an opportunity for FERC to review the rates for these services, which BPA will file as meeting the just, reasonable, and not unduly discriminatory or preferential standard in t′he context of the associated contractual terms and conditions. Though BPA and its customers have not yet concluded their discussions regarding what constitutes comparable access to the Federal transmission system, nevertheless BPA is now initiating this proceeding in order to place it on the same initial schedule as the related transmission rate case, also being noticed today. It is likely that discussions will continue before and during this proceeding, consistent with ex parte rules, in an attempt to settle outstanding issues.

The Federal Power Act amendments passed by Congress in the Energy Policy Act of 1992, Pub. L. No. 102–486, 106 Stat. 2776 (1992), provide that BPA may institute a formal regional hearing on transmission terms and conditions which it proposes to establish for general applicability. 16 U.S.C. § 824k(i)(2). This hearing is in some important respects different in function from BPA's rate case proceedings under section 7(i) of the Northwest Power Act, 16 U.S.C. § 839e(i). If BPA elects to institute a transmission terms and conditions hearing, the agency must (1) give notice in the Federal Register and state in such notice the reasons why the terms and conditions are being offered, and (2) adhere to the procedural requirements of paragraphs (1) through (3) of section 7(i) of the Northwest Power Act, 16 U.S.C. § 839e(i)(1)–(3), except that the Hearing Officer shall make findings and conclusions on material issues of fact, law or discretion presented on the record and make a recommended decision to the BPA Administrator. The Administrator then must make a separate determination, based on the hearing record, the Hearing Officer's recommendation, and applicable law, setting forth the reasons for reaching any findings and conclusions different from those of the hearing officer. Pursuant to BPA's statutory requirements, the rates associated with these terms and conditions will be the subject of a formal hearing, also noticed today, established by BPA under section 7(i) of the Northwest Power Act. The extent to which the schedules for these two related hearings will be merged will be determined at the prehearing conference on February 13, 1995.

BPA will be proposing comparable network transmission tariffs based on similar tariff documents recently developed by the litigation staff of the Federal Energy Regulatory Commission (hereafter ''Commission''). Proposed commitments and requirements will be described for: (1) integrated network service pursuant to which an entity may use the integrated network transmission system of the FCRTS flexibly to meet its network loads on a basis equal to BPA's native load obligations; (2) a flexible, multiple point-to-point firm transmission service over the integrated network transmission system of the FCRTS and available to serve network loads as well as off-system sales; and (3) nonfirm point-to-point transmission service over the integrated network transmission system of the FCRTS. The proposed tariffs will be published in a separate **Federal Register** Notice on or about February 13, 1995. The tariffs also will be mailed to BPA's customers, 1993 rate case parties and other interested persons, and will be available from BPA's Public Information Center on or about February 9, 1995.

Because of the complexity of the issues in this proceeding and the related rate case, in part occasioned by continuing contract negotiations between BPA and its customers together with BPA's reinvention and its Competitiveness Project, BPA anticipates that it will need to meet with customers and other interested third parties on a very frequent, and possibly extended, basis. To comport with the procedural rule prohibiting ex parte communications, BPA will provide necessary notice of meetings involving issues related to transmission terms and conditions of general applicability for participation by all parties to the proceeding. Parties should be aware, however, that such meetings may be held on very short notice. In the interim prior to the prehearing conference, persons who would like notice of such meetings should provide their name, address, phone and fax numbers to: Ms. Janet L. Prewitt, Office of General Counsel—LQ, Bonneville Power

Administration, P.O. Box 3621, Portland, OR 97208, Tel: (503) 230–4201, Fax: (503) 230–7405.

II. Governing Procedures

BPA is adopting the ''Procedures Governing Bonneville Power Administration Rate Hearings,'' 51 FR 7611 (March 5, 1986) (hereafter ''Procedures'') to govern this proceeding, except that the Hearing Officer will make a recommended decision to the Administrator as described in section 212(i)(2)(A)(II) of the Federal Power Act, 16 U.S.C. § 824k(i)(2)(A)(II), and the Administrator will either accept or reject the recommendation. BPA and parties to the proceeding may move to adopt special rules of practice at the February 13 prehearing conference to better address the requirements of this proceeding.

The Procedures distinguish between ''participants'' and ''parties'' to the hearing. Apart from the formal hearing process, BPA will receive comments, views, opinions and information from ''participants,'' who are defined in the Procedures as any person who may express views but who does not petition successfully to intervene as a party. Participants' written comments will be made part of the official record of the case and considered by the Hearing Officer and the Administrator. The participant category gives the public the opportunity to participate and have its views considered without assuming the obligations incumbent upon ''parties.'' Participants are not entitled to participate in the prehearing conference, cross-examine parties' witnesses, seek discovery, serve or be served with documents, and are not subject to the same procedural requirements as parties. Written comments by participants on BPA's proposed transmission terms and conditions will be accepted May 15, 1995, and should be submitted to BPA's Manager of Corporate Communications at the address listed above in the Summary Section of this notice.

The second category of interest is that of a ''party'' as defined in §§ 1010.2 and 1010.4 of the Procedures. Parties may participate in any aspect of the hearing process. Persons wishing to timely become a party to BPA's terms and conditions proceeding must notify the Hearing Officer and BPA in writing of their request by 9:00 am, February 13, 1995. Petitions to intervene shall state the name and address of the person and the person's interests in the outcome of the proceeding in sufficient detail to permit the Hearing Officer to determine whether the person has a relevant interest in the proceeding. Petitioners may designate no more than two representatives upon whom service of documents will be made. Intervention petitions will be available for inspection in BPA's Public Information Center, 1st Floor, 905 N.E. 11th Ave., Portland, Oregon. Any opposition to a petition to intervene must be raised at the February 13, 1995, prehearing conference. All timely applications will be ruled on by the Hearing Officer. Opposition to an untimely petition to intervene shall be filed and served within 2 days after service of petition. Interventions are subject to § 1010.4 of the Procedures.

Issued in Portland, Oregon, on February 7, 1995.

J.H. Curtis,

Acting Administrator.

[FR Doc. 95–3533 Filed 2–13–95; 8:45 am]

BILLING CODE 6450–01–P–M

Federal Register

Tuesday
February 14, 1995

Part VI

The President

Proclamation 6768—American Heart Month

Proclamation 6769—National Older Workers Employment Week

Federal Register
Vol. 60, No. 30
Tuesday, February 14, 1995

Presidential Documents

Title 3—

The President

Proclamation 6768 of February 10, 1995

American Heart Month, 1995

By the President of the United States of America

A Proclamation

Throughout history, the heart has been a symbol of health and well-being. Yet nothing now overshadows Americans' health as much as heart disease—the leading cause of death among men and women. Diseases of the heart and blood vessels kill nearly a million Americans each year, most from the effects of atherosclerosis, the narrowing and stiffening of blood vessels from the buildup of plaque that usually begins early in life.

Today, Americans are enjoying the rewards of the progress humanity has made in understanding and treating cardiovascular disease. Advances in diagnosis make it possible to see the heart beat without the use of invasive procedures. Thousands of heart attack victims are being saved by the rapid administration of drugs to dissolve blood clots. Soon, gene therapy may be able to prevent the smooth muscle cell multiplication that contributes to the narrowing of blood vessels. Perhaps most important, we have greater understanding of how to prevent the development of heart disease. By controlling blood pressure and blood cholesterol, being physically active, and not smoking cigarettes, more Americans can have the chance to lead long, healthy lives.

The Federal Government has contributed to these successes by supporting research and education through the National Heart, Lung, and Blood Institute. Through its commitment to research, its programs to heighten public awareness, and its vital network of dedicated volunteers, the American Heart Association also has played a crucial role in bringing about these remarkable accomplishments.

Yet the heart has not revealed all of its mysteries. No one knows why heart disease begins. And, while it is known that heart disease develops differently in men and women, the reasons for those variations are still being studied. About 50 million Americans continue to suffer from hypertension, a major cause of stroke, and 1.25 million Americans have heart attacks every year.

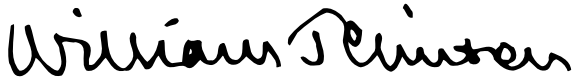
Conquering these diseases requires unwavering national and personal commitment. On the national level, the Federal Government will continue to support research into the prevention, diagnosis, and treatment of heart disease. On the personal level, Americans can take steps to prevent heart disease from striking their families, including teaching their children heart-healthy habits. Working together, we can make the tragedy of heart disease a nightmare of the past.

In recognition of the need for all Americans to become involved in the ongoing fight against cardiovascular disease, the Congress, by Joint Resolution approved December 30, 1963 (77 Stat. 843; 36 U.S.C. 169b), has requested that the President issue an annual proclamation designating February as ''American Heart Month.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim February 1995 as American Heart Month. I invite the Governors of the States, the Commonwealth of Puerto Rico, officials of other areas subject to the jurisdiction of the United States, and

the American people to join me in reaffirming our commitment to combating cardiovascular disease and stroke.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of February, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.



[FR Doc. 95–3886
Filed 2-13-95; 11:16 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 6769 of February 10, 1995

National Older Workers Employment Week, 1995

By the President of the United States of America

A Proclamation

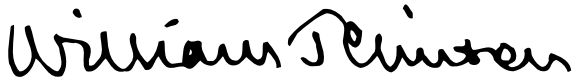
Today, our Nation relies more than ever on the active involvement of citizens 55 years old or older. It is estimated that more than 70 percent of these Americans work every day to keep our Nation running, contributing to all aspects of our economy and our society. And as our population continues to age, the contributions of older workers will play an increasingly important role in maintaining America's leadership in a highly competitive international marketplace.

Yet despite often impressive job qualifications, these citizens find that the search for employment becomes more difficult as they grow older. Those seeking to change careers or those struggling to find new jobs are too often confronted by employer reluctance or stereotyping. Rather than being judged on their abilities, older people sometimes face the injustice of being judged solely on their age.

But we Americans understand the meaning of fairness and the value of honest labor. Every reasonable measure of job performance tells us that older workers are at least as effective as younger employees. In many cases, their unique combinations of knowledge, skills, insight, and experience make older Americans even more effective.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of March 12 through March 18, 1995, as ''National Older Workers Employment Week.'' I urge all employers to consider carefully the qualifications of men and women 55 and older and to make use of their talents and expertise. I also encourage public officials responsible for job placement, training, and related services to intensify efforts to help older workers find suitable jobs and training.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of February, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.



[FR Doc. 95–3887
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